

BOROUGH OF GIRARDVILLE
SCHUYLKILL COUNTY, PENNSYLVANIA
RESOLUTION NO. 2003-2

(Duly Adopted February 13, 2003)

**A RESOLUTION OF THE COUNCIL OF THE BOROUGH
OF GIRARDVILLE OF SCHUYLKILL COUNTY
ESTABLISHING A POLICY REGARDING REQUESTS
FOR PUBLIC RECORDS PURSUANT TO THE
RIGHT-TO-KNOW LAW; AND CONTAINING CLAUSES
FOR SEVERABILITY, REPEAL AND EFFECTIVE DATE.**

WHEREAS, the requests for public records and the copying thereof has been governed by the Right-to-Know Law, Act of June 21, 1957, P.L. 390, No. 212, as amended June 17, 1971, P.L. 190, No. 9; and

WHEREAS, the Right-to-Know Law has been subsequently amended by the Act of June 29, 2002, Act No. 2002-100, which requires, among other things, that each political subdivision and each municipal authority in Pennsylvania adopt a policy regarding requests for public records and the copying thereof; and

WHEREAS, the Council of the Borough of Girardville desires to adopt a policy implementing the Right-to-Know Law.

NOW, THEREFORE, BE IT ADOPTED AND RESOLVED, by the Council of the Borough of Girardville of Schuylkill County, Pennsylvania (the "Council"), and it is hereby **RESOLVED** as follows:

SECTION 1. Definitions. The following terms when used in this Resolution shall have the meanings set forth in this section unless the context clearly indicates otherwise:

"Borough" shall mean the Borough of Girardville of Schuylkill County, organized and existing under the Borough Code, 53 P.S. §§ 45001, et seq.

"Business day" shall mean any day, except for a Saturday, Sunday, holiday or other day when the Borough's employees are not required to work.

"Person" shall mean an individual and any other legal entity determined by final order of a court having jurisdiction over the Council to be a person under the Right-to-Know Law.

"Public Record" shall mean any account, voucher or contract dealing with the receipt or disbursement of funds by the Borough or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by the Borough fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of person: Provided, That the term "public records" shall not mean any report, communication or other paper, the publication of which would disclose the institution progress or result of an investigation undertaken by the Borough in the performance of its official duties; it shall not include any record, document, material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute, law, or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Borough of federal funds, excepting therefrom however the record of any conviction for any criminal act.

"Record" shall mean any document maintained by the Borough, in any form, whether public or not.

"Requester" shall mean a person who is a resident of the Commonwealth of Pennsylvania and requests a record pursuant to the Right-to-Know Law and this Resolution.

"Response" shall mean access to a record or the Borough's written notice granting, denying or partially granting and partially denying access to a record.

"Right-to-Know Law" shall mean the Act of June 21, 1957, P.L. 390, No. 9, as amended from time to time.

SECTION 2. Procedure for Access to Public Records of the Borough.

(a) General Rule. Unless otherwise provided by law, a public record of the Borough shall be accessible for inspection and duplication by a requester in accordance with this Resolution. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of the Borough of Girardville. Nothing in this Resolution shall provide for access to a record which is not a public record.

(b) Verbal Requests. The Borough may fulfill verbal requests for access to records and anonymous requests for access to records, but reserves the right to require that requests for records be in writing and to require the identification of the requester. In the event that the requester wishes to pursue the relief and remedies provided for in the Right-to-Know Law, the requester must initiate such relief with a written request.

(c) Written Requests. A written request for access to records may be received in person, by mail or by facsimile. A written request shall be addressed to the Borough of Girardville, Attention: Borough Secretary, 4th & B Streets, Girardville, PA 17935. The facsimile number is (570) 276-1640. Each written request should identify or describe the records sought with sufficient specificity to enable the Borough to ascertain which records are being requested and shall include the name and address to which the Borough should address its response. A written request need not include any explanation of the requester's reason for requesting or intended use of the records.

(d) Creation of a Public Record. When responding to a request for access, the Borough shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which it does not currently compile, maintain, format or organize the public record.

(e) Conversion of an Electronic Record to Paper. If a public record is only maintained electronically or in other nonpaper media, the Borough shall, upon request, duplicate the public record on paper when responding to a request for access in accordance with this Resolution.

SECTION 3. Access to Public Records. The Borough may not deny a requester access to a public record due to the intended use of the public record by the requester.

SECTION 4. Redaction. If the Borough determines that a public record contains information which is subject to access as well as information which is not subject to access, the Borough's response shall grant access to the information which is subject to access and deny access to the information which is not subject to access. If the information which is not subject to access is an integral part of the public record and cannot be separated, the Borough shall redact from the public record the information which is subject to access, and the response shall grant access to information which is subject to access. The Borough may not deny access to the public record if the information which is not subject to access is able to be redacted. Information which the Borough redacts in accordance with this subsection shall be deemed a denial under section 5 of this Resolution.

SECTION 5. The Borough's Response to Requests for Access.

(a) General Rule. Upon receipt of a request for access to a record, the Borough shall make a good faith effort to determine if the record requested is a public record and to respond as promptly as possible under the circumstances existing at the time of the request, but shall not exceed five (5) business days from the date the written request is received by the Borough. If the Borough fails to send the response within five (5) business days of receipt of the written request for access, the written request for access shall be deemed denied.

(b) Exception. Upon receipt of a request for access, if the Borough determines that one of the following applies:

- (1) the request for access requires redaction of a public record in accordance with section 4;
- (2) the request for a access requires the retrieval of a record stored in a remote location;
- (3) a timely response to the request for access cannot be accompanied due to bona fide and specified staffing limitations;

- (4) a legal review is necessary to determine whether the record is a public record subject to access under the Right-to-Know Law and this Resolution;
- (5) the requester has not complied with the Borough's policies regarding access to public records; or
- (6) the requester refuses to pay applicable fees;

then the Borough shall send written notice to the requester within five (5) business days of its receipt of the request notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. If the date that a response is expected to be provided is in excess of thirty (30) days, following the five (5) business days allowed in subsection (a), the request for access shall be deemed denied.

(c) Denial. If the Borough's response is a denial of a request for access, whether in whole or in part, a written response shall be issued and include:

- (1) A description of the record requested.
- (2) The specific reason(s) for the denial, including a citation of supporting legal authority. If the denial is the result of a determination that the record requested is not a public record, the specific reasons for the Borough's determination that the record is not a public record shall be included.
- (3) The typed or printed name, title, business address, business telephone number and signature of the public official or public employee on authority at the time the denial is issued.
- (4) Date of the response.
- (5) The procedure to appeal the denial of access under this Act.

(d) Certified Copies. If the Borough's response grants a request for access, it shall, upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees pursuant to section 8.

SECTION 6. Final Determination.

(a) Filing of Exceptions. If a written request for access is denied or deemed denied, the requester may file exceptions with the Borough within fifteen (15) business days of the mailing date of the response or within fifteen (15) days of a deemed denial. The exceptions shall state grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the Borough for delaying or denying the request.

(b) Determination. Unless the requester agrees otherwise, the Borough or it's designee shall make a final determination regarding the exceptions within thirty (30) days of the mailing date of the exceptions. Prior to issuing the final determination regarding the exceptions, the Borough Council or it's designee may in their sole discretion conduct a hearing. The determination shall be the final order of the Borough. If the Borough or it's designee determines that the request was correctly denied, then the Borough or it's designee shall provide a written explanation to the requester of the reason for the denial.

SECTION 7. Judicial Appeal.

(a) Within thirty (30) days of a denial by the Borough under section 5(c) or of the mailing date of a final determination of the Borough affirming the denial of access under section 6(b), a requester may file a petition for review or other document as might be required by rule of court with the Court of Common Pleas of Schuylkill County or bring an action in the local magisterial district having jurisdiction.

(b) Notice. The Borough shall be served notice of any court or other actions commenced, and shall have an opportunity to respond in accordance with applicable court rules.

(c) Record on Appeal. The record before a court shall consist of the request, the Borough's response, the requester's exceptions, if applicable, the hearing transcript, if any, and the Borough's final determination, if applicable.

SECTION 8. Fees.

(a) Postage. The Borough hereby imposes a fee for postage equal to the actual prevailing cost of mailing.

(b) Duplicating. The Borough hereby imposes fees for duplication of public records by photocopying equal to fifty cents (\$.50) per page, printing from electronic media or microfilm, copying into electronic media, transmission by facsimile equal to one dollar (\$1.00) per page or other electronic means and other means of duplication which fees do not exceed the prevailing fee for comparable duplication services provided by local business entities in the Schuylkill County area. All requests must be in writing.

(c) Certification. The Borough may impose a fee of ten (\$10.00) dollars for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.

(d) Conversion of Paper. If a public record is only maintained electronically or in other non-paper media the Borough may impose fees which shall be limited to one dollar (\$1.00) per page unless the requester specifically requests for the public record to be duplicated in the more expensive medium.

(e) Waiver of Fees. The Borough may waive the fees for duplication of a public record, including, but not limited to, when:

- (1) The requester duplicates the public record; or
- (2) The Borough deems it is in the public interest to do so.

(f) Other Fees/Limitations. Except as otherwise provided by statute, no other fees may be imposed. A reasonable fee equal to the actual cost shall be imposed if the Borough out of necessity incur costs not otherwise described in this Resolution for complying with the request. However, the Borough recognizes it may not impose a fee for its review of a record to determine whether the record is a public record subject to access.

(g) Prepayment. Prior to granting a request for access in accordance with the Right-to-Know Law and this Resolution, a requester shall prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed one hundred dollars (\$100.00).

SECTION 9. Confidentiality. If the Borough receives a request for a record that is subject to a confidentiality agreement executed before December 26, 2002, the effective

date of Act 2002-100, the law in effect at the time the agreement was executed, including judicial interpretation of the law, shall govern access to the record, even if the record is a public record, unless all parties to the confidentiality agreement agree in writing to be governed by the Right-to-Know Law, as amended by Act 2002-100.

SECTION 10. Posting. A copy of this Resolution shall be conspicuously posted at the offices of the Borough.

SECTION 11. Headings. The headings of sections and parts thereof are for convenience only and shall not affect the construction hereof.

SECTION 12. Severability. Should any section, paragraph or provision of this Resolution be declared by a court of competent jurisdiction to be invalid, such judgment shall not affect the validity of this Resolution as a whole or any part or provision thereof, other than the part so declared to be invalid or unconstitutional.

SECTION 13. Repealer. This Resolution shall supersede and repeal all resolutions and parts thereof inconsistent or conflicting herewith.

SECTION 14. Effective Date. This Resolution shall become effective upon adoption.

DULY RESOLVED, this 13th day of February, 2003, by the Council of the Borough of Girardville, Schuylkill County, Pennsylvania, in lawful session duly assembled.

**BOROUGH OF GIRARDVILLE,
SCHUYLKILL COUNTY, PENNSYLVANIA**

By: _____

Charles Marquardt, President

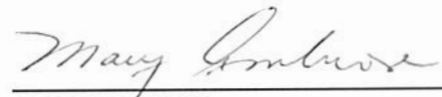
Attest:


Mary Ambrose, Secretary

CERTIFICATE OF ADOPTION

The undersigned, Secretary of the Borough of Girardville, Schuylkill County, PA, does hereby certify that the foregoing resolution was duly adopted by a majority vote of the entire Council of the Borough of Girardville at a duly advertised, called and held public meeting of said Council, which meeting was held at on the 13th day of February, 2003, at the Girardville Borough Hall on 4th & B Streets, Girardville, PA.

CERTIFIED, this 13th day of February, 2003.



SECRETARY