BOROUGH OF SEVEN FIELDS

ORDINANCE NO. 74

AN ORDINANCE ADOPTING THE OPEN RECORDS POLICY

IT IS HEREBY ENACTED AND ORDAINED by the Borough Council of the Borough of Seven Fields, Butler County, Pennsylvania, as follows:

Section I

Purpose

The purpose of this policy is to assure compliance with Act 3 of 2008, The Pennsylvania Right-to-Know Law, as amended; to provide access to public records of Seven Fields Borough; to preserve the integrity of Seven Fields Borough records; and to minimize the financial impact to the residents of the borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

Designated Open Records Officer

It is the policy of the Borough to require the presence of a designated employee when public records are examined and inspected and to charge reasonable fees for duplication of public records of the Borough. Seven Fields Borough designates the Borough Manager as the Open Records Officer, responsible for assuring compliance with the Pennsylvania Right-to-Know Law, in accordance with the following guidelines:

A. The Borough Manager may designate certain employee(s) to process public record requests.

B. The Borough Manager is responsible for minimizing, where possible, the financial impact to the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

C. All requests for public records of the Borough under this policy shall be specific in identifying the describing each public record requested. In no case shall the Borough be required to create a public record which does not exist or to compile, maintain, format or organize the public record. All requests for public records shall be submitted in writing and include the date of the request; requestor's name, address, and telephone number; certification of United States residency; signature of requester; and if duplication is requested, appropriate payment.

D. The designated employee shall make a good faith effort to determine whether each record requested is a public record.

E. The Borough shall facilitate a reasonable response to a request for Seven Fields Borough's public records. In no case is the Borough expected to provide extraordinary staff to respond to the request, but will respond in a manner consistent with the Borough's administrative responsibilities and consistent with the requirements of the Pennsylvania Right-to-Know Law.

F. The designated employee shall respond to the requester within five (5) business days from the date of receipt of the written request. If the Borough does not respond within five (5) business days of receipt thereof, the request is deemed denied.

G. The response provided by the Borough shall consist of (1) approval for access to the public record; (2) review of the request by the designated employee; or (3) denial of access to the record requested.

H. If access to the public record requested is approved, the public record shall be available for access during the regular business hours of the Borough. The designated employee shall cooperate fully with the requester, while also taking reasonable measures to protect Borough public records from the possibility of theft and/or modification. The presence of a designated employee is required when public records are examined and inspected.

I. Fees for duplication of public records shall be as established by the Commonwealth's Office of Open Records. The Borough may at its discretion waive fees.

J. In the event the estimated cost of fulfilling a request submitted under this policy is expected to exceed $100.00, the designated employee(s) shall obtain the expected cost in advance of fulfilling the request to avoid unwarranted expense of Borough resources.

K. If the request is being reviewed, the notice provided by the Borough shall be in writing and include the reason for the review and the expected response date, which shall be within thirty (30) days of the notice of review. If the Borough does not respond within thirty (30) days thereof, the request is deemed denied. Review of the request is limited to situations where:

   (a) The record requested contains information which is subject to access, as well as information which is not subject to access that

must be redacted prior to a grant of access. The redacted information is considered a denial as to that information;

(b) The record requires retrieval from a remote location;
(c) A timely response cannot be accomplished due to staffing limitations;
(d) A legal review is necessary to determine whether the record requested is a public record;
(e) The requester has failed to comply with the Borough's policy and procedure requirements; or
(f) The requester refuses to pay the applicable fees;
(g) The extent or nature of the request precludes a response within the required time period.

Upon a determination that one of the factors listed above applies, the Borough shall send written notice to the requester within five business days of receipt of the request for access. The notice shall include a statement notifying the requester that the request for access is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided and an estimate of applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice. If the requester agrees to the extension, the request shall be deemed denied on the date following the date specified in the notice if the agency has not provided a response by that date.

L. If access to the record requested is denied, the notice provided by the Borough shall be in writing as indicated on the form attached hereto entitled "Denial of Request to Review and/or Duplicate Seven Fields Borough Records."

M. If the request is denied or deemed denied, the requester may file an appeal with the Commonwealth's Office of Open Records within fifteen (15) days of the mailing date of the Borough's notice of denial, or within fifteen (15) days of a deemed denial. The appeal shall state the grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the agency for delaying or denying the request.

N. Within 30 days of the mailing date of the final determination of the appeals officer, the requester or Borough may file a petition for review or other document as required by rule of court with the court of common please of Butler County. The decision of the court shall contain findings of fact and conclusions of law based upon the evidence as a whole. The decision shall clearly and concisely explain the rationale for the decision. A petition

for review under this section shall stay the release of documents until a decision is issued.

O. This policy shall be available for review at the Borough office.

Section 2

Repealer. That any Ordinance, or part of Ordinance, conflicting with the Ordinance be and the same is hereby repealed insofar as the sale affects this Ordinance.

Section 3

Severability. If any sentence, clause, section, or part of this Ordinance is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance. It is hereby declared as the intent of the Seven Fields Borough Council that this Ordinance would have been adopted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included herein.

Section 4

Effective Date. This Ordinance shall become effective on July 14, 2008.

ENACTED AND ORDAINED this 14th day of July 2008.

SEVEN FIELDS BOROUGH COUNCIL

John Oakley, President

ATTEST:

Thomas B. Smith, Secretary/Borough Manager

Fee Structure

Section 1307 of the Right-To-Know law requires the Office of Open Records to establish a fee structure for Commonwealth Agencies and Local Agencies. To promote uniformity among all agencies, the Office of Open Records encourages Judicial and Legislative agencies, which can set their own fees, to adopt the following fee structure. All agencies are advised that duplication fees can be waived.

The Office of Open Records establishes the following fee structure in accordance with the law. The Law requires that the Office of Open Records review the fee structure biannually. The Office will review the fee structure in June of 2009. Any updates will be placed on our website by June 30, 2009.

Fee Structure

Record Type	Fee
Copies: (*A "photocopy" is either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5" x 11" page*)	Between .10 per page to a maximum .25 per page.
Certification of a Record:	$1 per record, not per page. Please note that certification fees do not include notarization fees.
Specialized documents : For example, but not limited to, blue prints, color copies, non-standard sized documents	Actual Cost
Facsimile/Microfiche/Other Media:	Actual Cost
Redaction Fee:	No Redaction Fee May be Imposed
Conversion to Paper:	If a record is only maintained electronically or in other non-paper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media unless the requester specifically requests for the record to be duplicated in the more expensive medium. (Sec. 1307(e)).
Postage Fees:	Fees for Postage May Not Exceed the Actual Cost of Mailing

Please Also Be Advised:

- **Statutory Fees:** If a separate statute authorizes an agency to charge a set amount for a certain type of record, the agency may charge no more than that statutory amount. For example, a Recorder of Deeds may charge a copy fee of 50 cents per uncertified page and $1.50 per certified page under 42 P.S. § 21051. Police departments have the authority to charge up to $15 per report for providing a copy of a vehicle accident report. 75 Pa.C.S. §3751 (b)(2). Philadelphia police may charge up to $25 per copy. *Id* . at (b)(3). State police are authorized to charge "$5 for each copy of the Pennsylvania State Police full report of investigation." 75 Pa.C.S. §1956(b).

- **Inspection of Redacted Records:** If a requester wishes to inspect rather than receive a copy of a record and the record contains both public and non-public information, the agency shall redact the non-public information. An agency may not charge the requester for the redaction. However, the Agency may charge for the copies it must make of the redacted material in order for the requester to view the public record. The fee structure outlined above will apply. If, after inspecting the records, the requester chooses to obtain the copies, no additional fee may be charged.

- **Enhanced Electronic Access** : If an agency offers enhanced electronic access to records in addition to making the records accessible for inspection and duplication by a requester, the agency may establish user fees specifically for the provision of the enhanced electronic access, but only to the extent that the enhanced electronic access is in addition to making the records accessible for inspection and duplication by a requester as required by this Act. The user fees for enhanced electronic access may be a flat rate, a subscription fee for a period of time, a per-transaction fee, a fee based on the cumulative time of system access or any other reasonable method and any combination thereof. **The user fees for enhanced electronic access must be reasonable, must be pre-approved by the Office of Open Records and shall not be established with the intent or effect of excluding persons from access to records or duplicates thereof or of creating profit for the agency.** Please submit any request to the

  Office of Open Records
  400 North Street
  Harrisburg , PA. 17120.

- **Fee Limitations:** Except as otherwise provided by statute, the law states that **no other fees may be imposed** unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable. No fee may be imposed for an agency's review of a record to determine whether the record is a public record, legislative record or financial record subject to access in accordance with this Act. No fee may be charged for searching for or retrieval of documents. An agency may not charge staff time or salary for complying with a RTK request.

- **Prepayment:** Prior to granting a request for access in accordance with this Act, an agency may require a requester to prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed $100.

  - Once the request is fulfilled and prepared for release, the Office of Open Records recommends that the agency obtain the cost of the records prior to releasing the records. This recommendation is designed to avoid situations in which the agency provides the records and the requester fails to submit payment.

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