

RESOLUTION NO. 2008-8

A RESOLUTION OF MILLHEIM BOROUGH COUNCIL, MILLHEIM BOROUGH, CENTRE COUNTY, PENNSYLVANIA, DECLARING ITS INTENTION TO COMPLY WITH THE MUNICIPAL RECORDS ACT WITH RESPECT TO THE RETENTION AND DISPOSITION OF PUBLIC RECORDS BY ADOPTING THE MILLHEIM BOROUGH RIGHT-TO-KNOW POLICY FOR PUBLIC RECORDS.

WHEREAS, Millheim Borough ("Borough") is a Municipal Corporation organized under the laws of the Commonwealth of Pennsylvania, specifically The Borough Code; and

WHEREAS, the Commonwealth of Pennsylvania has established the Municipal Records Act, 53 Pa. C.S.A. 1381, et seq. with respect to the retention and disposition of public records; and

WHEREAS, the Borough is desirous of complying with the requirements of the Municipal Records Act and to evidence its intention to do so by adopting this Resolution.

NOW, THEREFORE, be it resolved and is hereby resolved by authority of the same as follows:

1. The Borough hereby adopts the Millheim Borough Right-to-Know Policy for public records attached to this Resolution in compliance with the Municipal Records Act.
2. That all prior Resolutions or Ordinances, or parts thereof inconsistent herewith are hereby repealed.

Enacted as a Resolution of Millheim Borough at the regular meeting of Millheim Borough Council held the 9th day of December, 2008.

ATTEST:

MILLHEIM BOROUGH

SHARON A. HECKMAN

Secretary

KAY A. BROWN

Vice-President

**MILLHEIM BOROUGH RIGHT-TO-KNOW POLICY
FOR PUBLIC RECORDS**

I. Introduction

Millheim Borough ("Borough") is a Municipal Corporation, duly organized and being the governing body in Millheim Borough, Centre County, Pennsylvania, under The Borough Code, 53 P.S. 45101, et seq. As such, the Borough is a local agency for purposes of the new Right-to-Know Law.

All local agencies shall provide public records in accordance with the Right-to-Know Law. Therefore, any record in the possession of the Borough shall be presumed to be a public record, except in the following circumstances;

- (a) The record is exempt under the Right-to-Know Law;
- (b) The record is protected by the attorney-work product doctrine, the attorney-client privilege, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania; or
- (c) The record is exempt from disclosure under any other federal or state law or regulation, or judicial order or decree.

Records are broadly defined under the Right-to-Know Law. The term includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically, and a data-processed or image-processed document.

Requests for public records can be made by any person who is a legal resident of the United States, including resident aliens. Requests to the Borough can also be made by other local agencies, Commonwealth agencies (e.g., The Department of the Auditor General or the Treasury Department), judicial agencies (i.e., the courts), or legislative agencies (e.g., the Senate and House of Representatives).

II. Access and Procedure

Requesters may make oral requests for access to records. However, if the requester wishes to pursue the relief and remedies provided for in the Right-to-Know Law, the request for access to records must be a written request. A written request for access to records may be submitted in person, by mail, by e-mail, or by facsimile.

The Borough has designated Sharon Heckman, to act as the Open-Records Officer ("Officer"). The Officer's contact information is set forth below:

Sharon Heckman
225 East Main Street
P.O. Box 421
Millheim, PA 16854
Telephone: (814) 349-5350
Fax: (814) 349-5733
E-Mail: millheim@verizon.net

Questions regarding this policy may be directed to the Officer at the telephone, fax number or e-mail address listed above.

All written requests must be addressed to the Officer. In the event a written request for records is addressed to a Borough employee other than the Officer, the Borough employee is hereby directed to promptly forward such requests to the Officer.

Written requests should identify or describe the record sought with sufficient specificity to enable the Borough to ascertain which records are being requested. Unless otherwise required by law, a written request need not include any explanation of the requester's reason for requesting the records or the intended use of such records. A **form** which may be used to file a request is posted on the Internet website of Millheim Borough at www.seda-cog.org/cen-millheim. The Borough shall assign a tracking number to each filed form so as to track the Borough's progress in responding to requests under the new Right-to-Know Law.

Prior to granting a request for access in accordance with the Right-to-Know Law, the Borough may require a requester to prepay an estimate of the fees authorized by law if the fees required to fulfill the request are expected to exceed \$100.00. The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities. Except as otherwise provided by statute, no other fees may be imposed unless the agency necessarily incurs costs for complying with the request, and such fees must be reasonable.

In all circumstances, the requester must agree to pay applicable fees authorized by the new Right-to-Know Law, such as, but not limited to, postage (not to exceed actual cost of mailing) duplication and certification. **All applicable fees shall be paid before a requester receives access to the record(s) requested.**

A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. **In other words, the Borough shall not be required to create a record which does not currently exist or to otherwise compile, maintain, format or organize a record in a manner in which it does not currently compile, maintain, format or organize such record.** The Borough may impose reasonable fees 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.

Upon receipt of a written request for a public record, the Officer shall do the following:

- (a) Note the date of the receipt on the written request;
- (b) Compute the day on which the five-day period (see discussion of response, below) will expire, and make a notation of that date on the written request; and
- (c) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

III. Borough's Response

Upon receipt of a written 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 whether the Borough has possession, custody or control of the identified record. When doing so, the Borough will respond as promptly as possible under the circumstances existing at the time of the request. **Under the Right-to-Know Law, the Borough must send a response within five (5) business days of receipt of the written request for access, or else the written request shall be deemed denied.** For the purposes of this policy, a business day is any Monday, Tuesday, Wednesday, Thursday or Friday, except those days when the Borough's office is closed for all or part of a day due to a holiday.

Upon receipt of a written request for access, the Officer shall determine if one of the following applies:

- (a) The request for access requires redaction of a record in accordance with the Right-to-Know Law;
- (b) The request for access requires the retrieval of a record stored in a remote location;
- (c) A timely response to the request for access can not be accomplished due to bonified and specified staffing limitations;
- (d) A legal review is necessary to determine whether the record is a record subject to access under the Right-to-Know Law;

- (e) The requester has not complied with the Borough's policies regarding access to records;
- (f) The requester refuses to pay applicable fees authorized by the Right-to-Know Law; or
- (g) The extent or nature of the request precludes a response within the required time period of five (5) business days.

Upon a determination that one of the factors listed above applies, the Officer shall send written notice to the requester within five (5) 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. Information which the Borough redacts in accordance with the Right-to-Know Law shall be deemed a denial.

If the date that a response is expected to be provided is in excess of thirty (30) calendar days, following the five (5) business days allowed for above, 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 day following the date specified in the notice if the Borough has not provided a response by that date.

For purposes of this policy, the "mailing date" shall be the date affixed to a:

(1) response from the Officer to a request, which is to be the date the response is deposited in the U.S. mail; (2) final determination from the Officer, which is to be the date the final determination is deposited in the U.S. mail.

IV. Appeal of Borough's Determination

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records within fifteen (15) business days of the mailing date of the Borough's response or within fifteen (15) business 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 Borough for delaying or denying the request.

The Office of Open Records has established an internet website with information relating to the Right-to-Know Law, including information on fees, advisory opinions and decisions, plus the name and address of all Open-Records Officers in the Commonwealth of Pennsylvania. For information on the Office of Open Records, please go to openrecords.state.pa.us. (Please note: among other matters, the Office of Open Records shall establish fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, and other means of duplication.)

V. Retention of Records

By adoption of Resolution No. 2008-8 on December 9, 2008, the Borough publicly declared its intention to follow the Municipal Records Act, 53 Pa. C.S.A. §1381 et seq., with respect to the retention and disposition of public records. Nothing in the Right-to-Know Law shall be construed to modify, rescind or supercede the Borough's lawfully adopted record retention and disposition policy. Moreover, nothing in the Right-to-Know Law shall be construed to require access to any computer of the Borough, or that of an individual or employee of the Borough.