TOWNSHIP OF WARMINSTER

BUCKS COUNTY, PENNSYLVANIA

RESOLUTION NO. 2008-12

A RESOLUTION OF THE BOARD OF SUPERVISORS OF WARMINSTER TOWNSHIP, BUCKS COUNTY, COMMONWEALTH OF PENNSYLVANIA, ESTABLISHING A POLICY PURSUANT TO THE RIGHT-TO-KNOW LAW

RE: POLICY FOR RIGHT-TO-KNOW LAW REQUESTS

WHEREAS, the Board of Supervisors is desirous of open and efficient Government in accordance with Pennsylvania Law.

THEREFORE, the Board of Supervisors adopts the following policy to be followed by all Township personnel:

OVERVIEW

Act 3 of 2008, adopting amendments to Pennsylvania's Right-to-Know Law, 65 P.S. §§ 66.1-66.9 (hereafter the "Act", "Act 3" or the "Right-to-Know Law"), was enacted on February 14, 2008. Certain amendments became effective immediately (definitions of terms, including the definition of "record" and "public record", as well as the creation of a new state Office of Open Records), while others became effective on July 1, 2008 (pertaining to state-related institutions and state contract information). The remaining amendments shall become effective on January 1, 2009. The amendments permit an agency to promulgate regulations and policies necessary to implement the Right-to-Know Law, as amended. The following policy establishes the procedure by which the Township of Warminster ("Township") will address requests made to it for records under the Right-to-Know Law. In accordance with Section 504(b) of Act 3, the following policy shall be posted on the Township's website, together with contact information for the newly

designated Open Records Officer and the state Office of Open Records and the Township's form to be used to submit a request for a public record. Upon release by the Office of Open Records of a uniform request form, as required by Section 505(a) of Act 3, the uniform form shall be made available on the Township's website as well as through the Open Records Officer appointed by the Township.

RIGHT-TO-KNOW POLICY

1. Definitions Unless otherwise noted, capitalized terms used herein shall have the meaning given to them in Section 102 of the Right-to-Know Law, as amended by Act 3 of 2008.

2. Designation of Open Records Officer The Township hereby creates the position of Open Records Officer, who shall receive requests submitted to the Township pursuant to this Policy, direct requests to other appropriate persons within the Township or to appropriate persons within any other agency, if applicable, track the Township's progress in responding to requests for Records and issue interim and final Responses pursuant to this Policy. Any employee of the Township who receives a request for a Record shall forward such request to the Open Records Officer.

3. Requests for Records

a. Any request made to the Township under the Right-to-Know Law shall be in writing and shall meet the following procedural requirements:

i. Address to the Open Records Officer of the Township.

ii. Identify the Requester by name.

iii. Provide a return mailing address as well as a daytime telephone number of the Requester.

iv. State that the request is being made under the Right-to-Know Law.

v. Identify the Record or Records requested with sufficient specificity to enable the Township to determine which Record is being requested.

vi. State whether the Requester is a legal resident of the United States.

vii. Include the Requester's signature or, if the Requester is an Agency, include the signature of a person authorized to make the request on behalf of the Agency.

Any failure by a Requester to provide the information set forth herein shall render the request administratively incomplete. The Township shall not be required to respond to an administratively incomplete request.

b. Right-to-Know requests must be sent or delivered to the Township by one of the following approved methods of transmission: (1) United States mail, (2) courier, (3) express delivery, (4) overnight delivery, (5) hand-delivery, (6) E-mail, or (7) facsimile. No other form of transmission is permitted.

c. The Township will not accept any verbal requests for Records.

d. Right-to-Know requests must be sent or delivered to:

Open Records Officer

Township of Warminster

401 Gibson Avenue

Warminster, PA 18974

e. Right-to-Know requests received by the Township after the close of regular business hours shall be deemed to have been received by the Township on the following regular business day. This shall include any facsimile transmission received

after regular business hours. The regular business hours of the Township are 9:00 a.m. to 5:00 p.m., Monday through Friday.

4. Township's Response to Request for Records – (Procedural)

a. The Township's Response to a request for Records shall be administered by the designated Open Records Officer, who shall determine whether the requested Record is a Public Record.

b. Upon receipt of a request for a Record the Open Records Officer shall:

i. Note the date of receipt on the written request.

ii. Compute the day on which the five-day Response period, required pursuant to Section 901 of Act 3, will expire, and make a notation of that date on the written request.

iii. Maintain an electronic or paper copy of a written request, including all documents submitted with the request, until a Response is issued. If the request is denied, the written request shall be maintained for thirty (30) days or, if an appeal is filed, until a final determination is issued pursuant to Section 1101(b) of Act 3, or until the appeal is deemed denied.

iv. Determine whether a fee is applicable to the request and, if so, whether the fee has been submitted with the request.

c. A Right-to-Know request may be denied if it does not identify the Records requested with sufficient specificity.

d. In conducting an initial review of a Right-to-Know request, the Open Records Officer may, but is not required to, contact the Requester to obtain additional information to assist the Township in responding to the request.

e. The Open Records Officer shall prepare a written Response to a Right-to-Know request within five (5) business days after receiving the request. A business day

does not include Saturday, Sunday or a Federal or State or Township holiday. A business day also does not include any day when the Township offices are closed pursuant to a decision by management, an unanticipated event such as a natural disaster, or at the direction of a local, State, or Federal agency or official. For purposes of determining the end of the five-business-day period, the day a Right-to-Know request is deemed received is not included in that determination. For example, if a Right-to-Know request is received on a Monday, the Township's response is not due until the following Monday, assuming there is no intervening holiday or closure of the Township offices.

f. If the Open Records Officer determines that any of the following is applicable to a request, he or she shall send written notice (for purposes of this paragraph, the "Notice") to the Requester within five (5) business days of receipt of the request, specifying one of the following with respect to the request:

i. the request requires redaction of a Record in accordance with Section 706 of Act 3;

ii. the request requires the retrieval of a Record stored in a remote location;

iii. a timely Response to the request for access cannot be accomplished due to bona fide and specified staffing limitations;

iv. a legal review is necessary to determine whether the Record is a Public Record subject to access under Act 3;

v. the Requester has not complied with the Township's Policy for Right-to-Know Law Requests;

vi. the Requester refuses to pay applicable fees authorized by Act 3; or

vii. the extent or nature of the request precludes a Response within the required time period.

The Notice required under this paragraph shall advise the Requester that the request is being reviewed, state the reason for review, specify a reasonable date by which a Response will be provided, and estimate any applicable fees for provision of the Record. If the date that a Response is expected is more than thirty (30) days following the five-day Notice referenced herein, the request shall be deemed denied, unless the Requester agrees in writing to an extension of the expected date specified in the Notice. If after the Requester grants an extension, the Township does not issue a Response by the date specified in such extension, the request shall be deemed denied on the day following the date specified in such extension.

g. If the Open Records Officer determines that a Record is available through publicly accessible electronic means, he or she may so notify the Requester or may provide access to the Record electronically. Upon such notification, the Requester may, within thirty (30) days of receipt of such notification, submit a written request to the Open Records Officer to have the Record converted to paper. Upon receipt of such request, the Open Records Officer shall provide access to the Record in printed form within five (5) business days of such request.

h. If the Open Records Officer determines that a Public Record may be subject to redaction pursuant to Section 706 of the Act, he or she shall follow the procedures set forth in Section 706.

5. Township's Response to Request for Records – (Substantive)

a. The Township's Response will either grant or deny the request for review of the requested Record. The Township may also partially deny the request, permitting review of some, but not all, of the requested Record.

b. If the Open Records Officer determines that the request is appropriate, he or she will so notify the Requester and schedule an appointment to review the Record or Records at a convenient time for both the Open Records Officer and the Requester.

c. A Response that constitutes a full or partial denial of a request will include the following:

i. A description of the Record requested.

ii. The specific reasons 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 Township's determination that the Record is not a Public Record shall be included.

iii. The name, business address, business telephone number and signature of the Open Records Officer.

iv. Date of the Response.

v. The procedure to appeal the denial of access to the requested Record.

d. If the Open Records Officer does not respond to the request within five (5) business days after a Right-to-Know request is docketed as having been received, a Right-to-Know request shall be deemed to have been denied and the Requester may file an appeal of the deemed denial.

e The Township shall have an additional thirty (30) days (beyond the allotted five-business-day period) to respond to a Right-to-Know request under the following circumstances:

i. The request for access requires redaction of a Public Record.

ii. The request for access requires the retrieval of a Record stored in a remote location.

iii. A timely Response to the request for access cannot be accomplished due to bona fide and specified staffing limitations.

iv. A legal review is necessary to determine whether the Record is a Public Record subject to access.

v. The Requester has not complied with the Township's Policy for Right-to-Know Law Requests.

vi. The Requester refuses to pay applicable fees authorized by the Right-to-Know Law.

vii. The extent or nature of the request precludes a Response within the required time period.

f. Any Record in the possession of the Township shall not be considered a Public Record if:

i. the Record is exempt from access pursuant to Section 708 of the Act;

ii. the Record is protected by a Privilege; or

iii. the Record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.

g. The Township may deny a request for a Record if the Requester has made repeated requests for the same Record and the repeated requests have placed an unreasonable burden on the Township.

h. The Township may deny a request for a Record in the following circumstances:

i. When timely access is not possible due to fire, flood or other disaster; or

ii. For historical, ancient or rare documents, Records, archives and manuscripts when access may, in the professional judgment of the curator or custodian of Records, cause physical damage or irreparable harm to the Record.

i. To the extent possible, the contents of a Record denied pursuant to subsection g or h of this paragraph shall be made accessible to a Requester even if the Record itself is physically unavailable.

6. Appeal of Township's Denial of Access to Record – (Procedural)

a. When a written request for a Record is denied or deemed denied, a Requester may file an appeal with the Office of Open Records pursuant to Section 503(a)(2) of the Act.

b. An appeal of a Response must be filed within fifteen (15) business days of the mailing date of the Response.

c. An appeal of a deemed denial must be filed within fifteen (15) business days of the date the request is deemed denied.

d. Upon receipt of an appeal, the Office of Open Records shall assign an Appeals Officer to review the Response or deemed denial.

e. Any person other than the Township or the Requester who has a direct interest in a Record that is the subject of an appeal pursuant to this paragraph may, within

fifteen (15) days following receipt of actual knowledge of the appeal, but no later than the date on which the Appeals Officer issues a determination, file a written request to either appear before the Appeals Officer or to provide information in support of the Requester's or Township's position. Copies of such request shall be provided to the Requester and the Township at the time the request is submitted to the Appeals Officer. The Appeals Officer, upon receipt of such request, may grant the request only if (i) no hearing has been held on the appeal; (ii) the Appeals Officer has not yet issued a determination; and (iii) the Appeals Officer believes the information proferred by the party having a direct interest will be probative.

7. Appeal of Township's Response – (Substantive)

a. The appeal must be set forth in writing and must state the grounds upon which the Requester asserts that the Record is a Public Record and shall address any grounds stated by the Township for delaying or denying the request.

b. The Appeals Officer may, in his or her discretion, conduct a hearing on the appeal. The decision whether to conduct a hearing or not shall be a final order not subject to appeal.

c. The Appeals Officer shall:

i. Set a schedule for the Requester and Open Records Officer to submit documents in support of their respective positions;

ii. Review all information submitted with respect to the appeal;

iii. Admit into evidence testimony, evidence and documents the Appeals Officer believes to be reasonably probative and relevant to the issue in dispute, and limit the nature and extent of evidence found to be cumulative;

iv. Consult with counsel for the Township as appropriate;

v. Issue a final determination on behalf of the Office of Open Records or other Agency, as appropriate; and

vi. Permit any other person having a direct interest in the Record to provide information relevant to the appeal or to appear before the Appeals Officer, as applicable, pursuant to Section 1101(c) of the Act.

d. The Appeals Officer will issue a final determination and mail such determination to the Requester and to the Township within thirty (30) calendar days of receipt of the appeal unless a different timetable is agreed to by the Requester. If the Appeals Officer fails to issue a final determination within thirty (30) calendar days of receipt of the appeal, the appeal shall be deemed denied.

e. Within thirty (30) days of the mailing date of the final determination of the Appeals Officer, or of the date an appeal is deemed denied, a Requester or the Township may file a petition for review or other document as required by rule of court, with the Bucks County Court of Common Pleas. Any decision issued by such Court shall contain findings of fact and conclusions of law based upon the evidence as a whole and shall clearly and concisely explain the rationale for the decision. The filing of a petition for review or other document with the Court of Common Pleas shall stay the release of a Record until the Court issues a decision.

8. Access to Township's Records

a. Providing a requester with physical access to a Record in the Township's office is a "Response" for the purposes of the Right-to-Know Law. Only the Township

has the authority to permit this access. Hours of access shall be 9:00 a.m. to 5:00 p.m., Monday through Friday.

b. Only a natural person who is a legal resident of the United States, or an "Agency," as defined in the Right-to-Know Law, is entitled to access to Public Records under the Right-to-Know Law. In determining whether a Requester is a legal resident of the United States, the Township will require the Requester to provide proof of citizenship and/or residency, such as a current, valid photographic identification. A current driver's license issued by any State within the United States, containing a picture of the Requester and an address within such State will be considered acceptable photographic identification.

c. A Public Record will be provided to the Requester in the medium requested if the Record currently exists in that medium. Otherwise, the Public Record will be provided in the medium in which it currently exists. If a Record is only available in electronic form, the Township may respond to the request by notifying the Requester that the Record is available through publicly accessible electronic means or that the Township will provide access to inspect the Record electronically. If the Requester is unwilling or unable to access the Record electronically, the Requester may, within thirty (30) days following receipt of the notification from the Township, submit a written request to the Township to have the Record converted to paper. In the event of such a request, the Township shall provide access to the Record in printed form within five (5) days of receipt of the written request for conversion to paper.

9. Costs

a. Fees for duplication by photocopying, printing from electronic media or microfilm copying onto electronic media, transmission by facsimile or other electronic means and other means of duplication shall be established by the Office of Open Records.

b. Fees for complex and extensive data sets, including geographic information systems or integrated property assessment lists shall be based on the reasonable market value of the same or closely related data sets; provided, however, that such fees shall not be applicable to persons obtaining information for publication or broadcast, or to nonprofit organizations obtaining information for the conduct of educational research, as provided in Section 1307 (b)(4)(ii) of the Act.

c. Fees for conversion of a Record to paper shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original medium, unless the Requester specifically requests that the Record be duplicated in the more expensive medium.

d. The Township may establish user fees for the provision of enhanced electronic access to Records, as set forth in Section 1307(e) of the Act.

e. Postage: Fees for postage shall not exceed the actual cost of mailing.

f. The Township may impose a reasonable fee for official certification of copies of a Record if requested by the person or Agency who is the Requester, for the purpose of legally verifying the Public Record.