

**SPRING GARDEN TOWNSHIP
YORK COUNTY, PENNSYLVANIA**

RESOLUTION No. 2023- 16

RESOLUTION AMENDING THE PUBLIC RECORDS POLICY

WHEREAS, it is the policy of Spring Garden Township to conform to the mandates of the Right-to-Know Law, codified at 65 P.S. 67.101 et seq., as amended from time to time, Act 22 of 2017, related to requesting audio and video recordings from law enforcement, and the Crime Victim Right of Access Act, Act 134 of 2023;

WHEREAS, in order to comply with recent changes in the law, the Municipality wishes to amend its Public Records Policy;

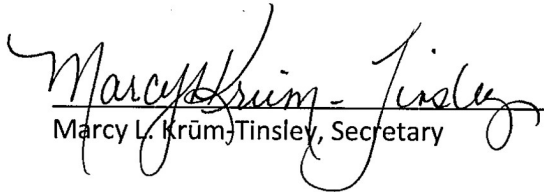
WHEREAS, the Solicitor has prepared an amendment to the Public Records Policy incorporating these recent changes which is attached as "Exhibit A."

NOW, THEREFORE, be it enacted and approved as follows:

- The Public Records Policy for Spring Garden Township has been amended as described in Exhibit A to comply with changes in the law.


ADOPTED AND ORDAINED this 14th day of June, 2023.

ATTEST:



Marcy L. Krüm-Tinsley, Secretary

BOARD OF COMMISSIONERS
SPRING GARDEN TOWNSHIP

By: 

David Detwiler, Vice President
Board of Commissioners





SPRING GARDEN TOWNSHIP PUBLIC RECORDS POLICY

I. PURPOSE

The Spring Garden Township Board of Commissioners recognizes the importance of public records as the record of the Township's actions and the repository of information about this Township. The public has the right to access and procure copies of public records, with certain exceptions, subject to law, Board policy and administrative regulations.

II. DEFINITIONS

Financial record - any account, voucher or contract dealing with the receipt or disbursement of funds or acquisition, use or disposal of services, supplies, materials, equipment, or property; or the salary or other payments or expenses paid to an officer or employee, including the individual's name and title; and a financial audit report, excluding the audit's underlying work papers.

Public record - a record, including a financial record, that is not protected by a defined privilege or is not exempt from being disclosed under one of the exemptions in Pennsylvania's Right-to-Know Law or under other federal or state law or regulation, or judicial decree or order.

Record - information, regardless of physical form or characteristics, that documents a Township transaction or activity and is created, received, or retained pursuant to law or in connection with a Township transaction, business, or activity, including: 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.

Response - the Township's notice informing a requester of a granting of access to a record or the Township's written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.

Requester - a legal resident of the United States, or an agency, who requests access to a record.

III. AUTHORITY

The Board shall make the Township's public records available for access and duplication to a requester, in accordance with law, Board policy, and administrative regulations.

IV. DELEGATION OF RESPONSIBILITY

The Township Manager shall designate an Open Records Officer, who shall be responsible to:

1. Receive written requests for access to records submitted to the Township.
2. Review and respond to written requests in accordance with law, Board policy and administrative regulations.
3. Direct requests to other appropriate individuals in the Township or in another agency.
4. Track the Township's progress in responding to requests.
5. Issue interim and final responses to submitted requests.
6. Maintain a log of all record requests and their disposition.
7. Ensure Township staff members are trained to perform assigned job functions relative to requests for access to records.



Upon receiving a request for access to a record, the Open Records Officer shall:

1. Note the date of receipt on the written request.
2. Compute and note on the written request the day on which the five-business day period for response will expire.
3. Maintain an electronic or paper copy of the written request, including all documents submitted with the request, until the request has been fulfilled.
4. Process the request according to law, policy, and administrative guidelines. If the written request is denied, maintain the written request for 30 days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

V. GUIDELINES

Requesters may access and procure copies of the public records of the Township during the regular business hours of the administration offices.

A requester's right of access does not include the right to remove a record from the control or supervision of the Open Records Officer.

The Township shall not limit the number of records requested.

When responding to a request for access, the Township is not required to create a record that does not exist nor to compile, maintain, format, or organize a record in a manner which the Township does not currently use.

Information shall be made available to individuals with disabilities in an appropriate format, upon request and with sufficient advance notice.

The Township shall post at the administration office and on the Township's web site, if the Township maintains a web site, the following information:

1. Contact information for the Open Records Officer.
2. Contact information for the state's Office of Open Records or other applicable appeals officer.
3. The form to be used to file a request, with a notation that the state Office of Open Records form may also be used if the Township decides to create its own form.
4. Board policy, administrative regulations, and procedures governing requests for access to the Township's public records.

VI. REQUEST FOR ACCESS TO MOST RECORDS

A written request for access to a public record shall be submitted on the required form(s) and addressed to the Open Records Officer.

Written requests may be submitted to the Township in person, by mail, to a designated facsimile machine, and to a designated e-mail address.

Each request must include the following information:

1. Identification or description of the requested record, in sufficient detail.
2. Medium in which the record is requested.
3. Name and address of the individual to receive the Township's response.

The Township shall not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.



Fees

Except for the duplication fee established by the state, the Board shall approve a list of reasonable fees relative to requests for public records. The Township shall maintain a list of applicable fees as permitted by law relative to requests for public records.

No fee may be imposed for review of a record to determine whether the record is subject to access under law.

Prior to granting access, the Township may require prepayment of estimated fees when the fees required to fulfill the request are expected to exceed \$100.

The Township Manager may waive duplication fees when the requester duplicates the record or the Township Manager deems it is in the public interest to do so.

Response To Request

Township employees shall be directed to immediately forward requests for access to public records to the Open Records Officer.

Upon receipt of a written request for access to a record, the Open Records Officer shall determine if the requested record is a public record and if the Township has possession, custody, or control of that record.

The Open Records Officer shall respond as promptly as possible under the existing circumstances, and the initial response time shall not exceed five business days from the date the written request is received by the Open Records Officer.

The initial response shall grant access to the requested record; deny access to the requested record; partially grant and partially deny access to the requested record; notify the requester of the need for an extension of time to fully respond; or request more detail from the requester to clearly identify the requested material.

If the Township fails to respond to a request within five business days of receipt, the request for access shall be deemed denied.

Extension of Time

If the Open Records Officer determines that an extension of time is required to respond to a request, in accordance with the factors stated in law, written notice shall be sent within five business days of receipt of request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and an estimate of applicable fees owed when the record becomes available.

Up to a 30-day extension for one of the listed reasons does not require the consent of the requester. If the response is not given by the specified date, it shall be deemed denied on the day following that date.

A requester may consent in writing to an extension that exceeds 30 days, in which case the request shall be deemed denied on the day following the date specified in the notice if the Open Records Officer has not provided a response by that date.

Granting Of Request

If the Open Records Officer determines that the request will be granted, the response shall inform the requester that access is granted and either include information on the regular business hours of the administration office, provide electronic access, or state where the requester may go to inspect the records or information electronically at a publicly accessible site. The response shall include a copy of



the fee schedule in effect, a statement that prepayment of fees is required in a specified amount if access to the records will cost in excess of \$100, and the medium in which the records will be provided.

A public record shall be provided to the requester in the medium requested if it exists in that form; otherwise, it shall be provided in its existing medium. However, the Township is not required to permit use of its computers. If the requested information can be extracted from Township software or databases, then the information shall be extracted and any costs for extraction shall be charged to the requester.

The Open Records Officer may respond to a records request by notifying the requester that the record is available through publicly accessible electronic means or that the Township shall provide access to inspect the record electronically. If the requester, within 30 days following receipt of the Township's notice, submits a written request to have the record converted to paper, the Township shall provide access in printed form within five days of receipt of the request for conversion to paper and all duplication fees shall be charged to the requester.

A public record that the Township does not possess but is possessed by a third party with whom the Township has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of the Township unless the contractor identifies the record as confidential or proprietary when it is provided to the Township. When the Township contracts with such a third party, the Township shall require the contractor to agree in writing to comply with requests for such records and to provide the Township with the requested record in a timely manner to allow the Township to comply with law.

If the Open Records Officer determines that a public record contains information both subject to and not subject to access, the Open Records Officer shall grant access to the information subject to access and deny access to the information not subject to access. The Open Records Officer shall redact from the record the information that is not subject to access. The Open Records Officer shall not deny access to a record if information is able to be redacted.

If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the administration office and the requester does not retrieve the record within 60 days of the Township's response, the Township shall dispose of the copy and retain any fees paid to date.

Notification to Third Parties

When the Township produces a record that is not a public record in response to a request, the Open Records Officer shall notify any third party that provided the record to the Township, the person that is the subject of the record, and the requester.

The Open Records Officer shall notify a third party of a record request if the requested record contains a trade secret or confidential proprietary information, in accordance with law and administrative regulations.

The third party shall have five business days from receipt of notification from the agency to provide input on the release of the record. The agency shall deny the request for the record or release the record within ten business days of the provision of notice to the third party and shall notify the third party of the decision.



Denial Of Request

If the Open Records Officer denies a request for access to a record, whether in whole or in part, a written response shall be sent within five business days of receipt of the request. The response denying the request shall include the following:

1. Description of the record requested.
2. Specific reasons for denial, including a citation of supporting legal authority.
3. Name, title, business address, business telephone number, and signature of the Open Records Officer on whose authority the denial is issued.
4. Date of the response.
5. Procedure for the requester to appeal a denial of access.

The Open Records Officer may deny a request for access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Township.

The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.

Information that is not subject to access and is redacted from a public record shall be deemed a denial.

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the state's Office of Open Records within 15 business days of the mailing date of the Open Records Officer's response or deemed denial.

VII. REQUESTS FOR ACCESS TO DASH/BODY CAMERA AUDIO/VIDEO

Individuals seeking access to any audio or video recording made by a law enforcement agency, including the Spring Garden Township Police Department, shall submit a written request to the Township's Open Records Officer.

The request must be made within 60 days of the date the recording was made.

The request must include the following:

1. The date, time and location of the event recorded;
2. A statement describing the requester's relationship to the event recorded; and
3. If the recorded incident took place inside a residence, the request must also identify every person present at the time of the recording, unless unknown and not reasonably ascertainable.

Upon receipt of the request, the recording shall be saved and shall not be overwritten, deleted or destroyed until the time period for any appeal of the Township's response to the request expires.

The Open Records Officer may deny the request in writing if it is determined that the recording contains:

1. Potential evidence of a crime;
2. Information pertaining to an investigation or a matter in which a criminal charge has been filed; or
3. Confidential information or victim information; and
4. The reasonable redaction of the recording would not safeguard potential evidence.

The Township Board of Commissioners shall establish a reasonable fee for the production of an audio or video recording in response to a granted request.

The Township shall have 30 days to respond to a request. Otherwise, the request is deemed denied.



If a request is denied, the requester may appeal in writing to the Court of Common Pleas of York County in accordance with procedures established by law.

VIII. REQUESTS FOR CRIMINAL HISTORY INVESTIGATIVE INFORMATION BY A CRIME VICTIM OR A DEFENDANT IN A CIVIL ACTION

The requesting party, defined as a crime victim or a defendant in a civil action in which the defendant is a party, may request production of otherwise exempt criminal history investigative information if:

1. The information is directly related to a civil action pending in a court in the Commonwealth; or
2. The requesting party is a crime victim, and the requested material is necessary to the investigation or preparation of a civil action in the Commonwealth.

The request must be sufficiently specific, and contain an unsworn statement subject to the penalties of Section 4904 of the Judicial Code that the requested information meets either of the above criteria.

Requests for criminal history investigative information must be made to the Township Open Records Officer. The Township shall have 60 days to respond to the request. Failure to respond shall result in a deemed denial.

The Township shall redact personally identifying information prior to granting access to information, including a persons' social security number, driver's license number, financial information, home or cellular phone number, email address, employee number or other confidential personal identification information.

The Township may deny the request if release of the information, absent reasonable redactions, would:

1. Endangers a person or public safety;
2. Adversely affect an investigation or ongoing prosecution; or
3. Relates to law enforcement's use of confidential informants or discloses investigative techniques and procedures.

Or:

1. The criminal history investigative information is not:
 - A. Directly relating to a civil action pending in a court in this Commonwealth; or
 - B. Material and necessary to the investigation or preparation of a civil action in this Commonwealth.
 - C. Dissemination of the requested information would identify a third-party victim of child abuse, domestic violence or sexual abuse, unless the criminal justice agency determines that reasonable redaction of the information will prevent identification of the third-party victim.

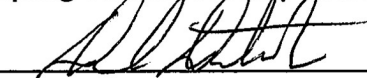
A denied request may be appealed to the Court of Common Pleas of York County in accordance with procedures established by law.

This policy does not affect the Township's procedures for responding to a lawful subpoena or request from an insurance carrier.

The Township Board of Commissioners shall establish a reasonable fee for responding to requests pursuant to this section.

Approved June 14, 2023

Spring Garden Township Board of Commissioners



David Detwiler, Vice President Commissioner

