

Chapter 1

Administration and Government

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Part 1**Preliminary Provisions****§1-101. Short Title.**

The short title of this Code of Ordinances prepared and published for the Township of Old Lycoming shall be the "Township of Old Lycoming Code of Ordinances."

(*Ord. 231, 10/14/2008*)

§1-102. Citation of Code of Ordinances.

The Township of Old Lycoming Code of Ordinances may be cited by Section number. The approved short form is "Code." Thus, "Code, §27-101" refers to §101 of Chapter 27 of this Code of Ordinances.

(*Ord. 231, 10/14/2008*)

§1-103. Arrangement of Code.

1. This Code is divided into Chapters which are subdivided as follows:
 - A. Subchapters, identified by capital letters, beginning with a Chapter title and number.
 - B. Parts, identified by Arabic numerals, beginning with a Part title and number.
 - C. Subparts, identified by Arabic numerals, beginning with a title.
2. The Sections of the Code are subdivided as follows:
 - A. Subsections, identified by Arabic numerals.
 - B. Paragraphs, identified by capital letters.
 - C. Subparagraphs, identified by Arabic numerals enclosed within parentheses.
 - D. Clauses, identified by lower case letters enclosed within parentheses.
 - E. Subclauses, identified by Arabic numerals followed by a parenthesis.
 - F. Items, identified by lower case letters followed by a parenthesis.
 - G. Subitems, identified small Roman numerals.

(*Ord. 231, 10/14/2008*)

§1-104. Headings.

Chapter, Subchapter, Part, Subpart, Section, Subsection, Paragraph, Subparagraph, Clause, and Subclause headings contained in the Code may not be deemed to govern, limit, modify or affect the scope, meaning or intent of the Code. The headings of Sections, Subsections or other divisions of this Code are intended as mere captions to indicate the contents of the Section, Subsection or other division and shall not be deemed to be taken as titles of such Section, Subsection or other division, nor as any part of said Section, Subsection or other division unless expressly so provided.

(*Ord. 231, 10/14/2008*)

§1-105. Tenses, Gender and Number.

Except as may be otherwise stated in any provision of this Code, the present tense includes the past and future tenses, and the future the present; the masculine gender includes the feminine and neuter, the feminine includes the masculine and neuter, and the neuter includes the masculine and feminine; and the singular includes the plural, and the plural the singular.

(Ord. 231, 10/14/2008)

§1-106. Construction.

1. Except as may be otherwise specifically provided by any provision of this Code, the Statutory Construction Act of 1972, 1 Pa.C.S.A. §1501 *et seq.*, shall be applied in construing this Code.

2. *Effect of Repeal or Expiration of Code Section.*

A. The repeal of a Code Section or ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued or any offense committed, any penalty or punishment incurred, or any proceeding commenced before the repeal took effect or the ordinance expired.

B. When any ordinance repealing a former Code Section, ordinance, clause or provision shall itself be repealed, such repeal shall not be construed to revive such former Code Section, ordinance, clause or provision, unless it shall be expressly so provided.

3. *Saving Clause.* The provisions of this Code, so far as they are the same as those ordinances and regulations in force immediately prior to the adoption of this Code, are intended as a continuation of such ordinances, resolutions and regulations and not as a new enactment. The provisions of this Code shall not affect any suit or prosecution pending or to be instituted to enforce any of the prior ordinances or regulations. Except as specifically stated in this Code or in the ordinance adopting this consolidation, codification and revision of the ordinances and regulations of the Township of Old Lycoming, it is the intention of the Board of Supervisors that no ordinance or regulation of the Township be amended, revised or repealed by implication.

4. *Resolutions.* The provisions of this Code of Ordinances may contain resolutions, that is, actions of the Board of Supervisors of the Township of Old Lycoming (in written form and designated "resolution") which did not require prior public notice in accordance with the provisions of the Second Class Township Code, 53 P.S. §65101 *et seq.*, at the time of their passage by the Board of Supervisors. Such "resolutions" are included herein for ease of reference and the Board of Supervisors does not intend by their inclusion herein to require prior public notice before amending, revising or repealing such resolution or resolutions as may have been included herein in the future. It is the intention of the Board of Supervisors that such actions of the Board of Supervisors that may be included in this Code and specifically cited and designated as a resolution shall not become an ordinance (requiring prior public notice before amendment, revision or repeal) by the simple fact of inclusion in this Code.

(Ord. 231, 10/14/2008)

§1-107. Normal Numbering.

1. *Chapters.* Chapters are numbered sequentially in Arabic throughout this Code.
2. *Parts.* Parts are numbered sequentially in Arabic throughout this Code.
3. Whenever other divisions are necessary, Chapters shall be divided into Subchapters, Parts into Subparts and designated with the Chapter or Part number followed by a capital letter. For instance, Chapter 1 may be divided into Subchapters 1A and 1B.
4. *Sections.* Sections are numbered sequentially throughout a Chapter and a Part such that the first number or numbers is the Chapter number, followed by a hyphen, followed by the Part number, followed by the Section number within the Part. For example, "§1-101" designates Chapter 1, Part 1, Section 1. Similarly, "§27-305" designates Chapter 27, Part 3, Section 5.
5. *Internal Divisions of Sections.* Whenever internal divisions are necessary, Sections shall be divided into Subsections, Subsections into Paragraphs, Paragraphs into Subparagraphs, Subparagraphs into Clauses, and Clauses into Subclauses, and Subclauses into Items, designated as follows:

1. Subsection.
 - A. Paragraph.
 - (1) Subparagraph.
 - (a) Clause.
 - 1) Subclause.
 - a) Item.
 - i. Subitem

(Ord. 231, 10/14/2008)

§1-108. Special Numbering Problems.

1. *Addition of New Units Between Existing Units.* If it becomes necessary to introduce a new Chapter, Part or Section between existing Chapters, Parts or Sections, the new Chapter, Part or Section shall be designated by the addition of a capital letter suffix to the preceding Chapter, Part or Section number. Thus, a Chapter introduced between Chapters 5 and 6 would be Chapter 5A and Sections in that Chapter would be numbered, for instance, "§5A-101." If it becomes necessary to introduce a Part between existing Parts 5 and 6 the new Part would be Part 5A and Sections in that Part would be numbered, for instance, "§5-5A01." A new Section introduced between existing Sections 5 and 6 would be "§5-105A." When a number of new Parts or Sections have been introduced the Chapter or Part shall be renumbered.
2. If it becomes necessary to introduce a Subsection between Subsections, for instance, Subsections .5 and .6, the new Subsection would be numbered Subsection .5-A.
3. If it becomes necessary to introduce a unit smaller than a Subsection between existing unites, the entire Subsection shall be revised and renumbered.
4. *Vacated Numbers.* Whenever a number is vacated by a revocation or repeal, the remaining elements in the overall unit shall retain their old numbers until the overall unit is completely revised. Prior to revision, the vacated number may be marked: "[Reserved]."

(Ord. 231, 10/14/2008)

§1-109. Amending Code.

1. All ordinances passed subsequent to the adoption of this Code which amend, repeal or in any way affect this Code shall be numbered in accordance with the numbering system of this Code and printed for inclusion herein. In the case of repealed Chapters, Parts, Sections, Paragraphs, Clauses or other part or provision hereof, by subsequent ordinance, such repealed portions may be excluded from this Code by omission from reprinted pages affected thereby. The subsequent ordinances as numbered and printed, or omitted in the case of repeal, shall be prima facie evidence of such subsequent ordinances until such time as this Code and subsequent ordinances omitted are readopted as a new Code by the Board of Supervisors.

2. Amendment to any provision of this Code shall be made by specific reference to the Chapter, Part, Section and/or Subsection number of this Code in the following language:

A. *Amendment or Revision.* "Chapter ___, Part ___, Section ___, Subsection ___, is hereby amended (revised) to read as follows" The amended or revised provisions may then be set out in full as desired.

B. *Addition.* "Chapter ___, Part ___, Section ___, Subsection ___, is hereby amended by the addition of the following" The new provision shall then be set out in full as desired.

C. *Repeal.* "Chapter ___, Part ___, Section ___, Subsection ___, is hereby repealed in its entirety."

3. It is the intention of the Board of Supervisors that the numbering scheme of this Code be adhered to in enacting future ordinances. In the event that any ordinance or other enactment be adopted which does not conform to the numbering system of this Code, it is the intention of the Board of Supervisors that such enactment be renumbered in the process of supplementing, revising or updating this Code to conform to the numbering scheme of this Code. The Board of Supervisors hereby acknowledges and confirms that the numbering scheme herein is for ease of reference and that the renumbering of any enactment when added to this Code shall not in any manner affect the validity of said enactment.

(Ord. 231, 10/14/2008)

§1-110. Altering Code.

It shall be unlawful for any person to change or amend by addition or deletion any part or portion of this Code, or to insert or delete pages or portions thereof, or to alter or tamper with such Code in any manner whatsoever, except by ordinance or resolution or other official act of the Board of Supervisors.

(Ord. 231, 10/14/2008)

§1-111. Penalties.

1. *Penalty Where No Penalty Provided.* Whenever in this Code or in any ordinance of the Township any act is prohibited or is declared to be unlawful, or whenever in this Code or other ordinance the doing of any act is declared to be unlawful, and no specific penalty is provided therefor:

A. *Violations of Health, Safety and Welfare Provisions.* For violations of

ordinances adopting building, housing, property maintenance, health, fire or public safety codes; and for ordinances regulating water services, water pollution, air pollution and noise, the following penalty shall be provided:

(1) Any person, firm or corporation who shall violate any provision of this Part, upon conviction thereof in an action brought before a magisterial district judge in the manner provided for the enforcement of summary offenses under the Pennsylvania Rules of Criminal Procedure, shall be sentenced to pay a fine of not more than \$1,000 plus costs and, in default of payment of said fine and costs, or other maximum as established by State law, to a term of imprisonment not to exceed 90 days. Each day that a violation of this Part continues or each Section of this Part which shall be found to have been violated shall constitute a separate offense.

B. *Other Violations.* All other penalties, except for penalties in Chapter 15, "Motor Vehicles and Traffic" (based on the Vehicle Code, 75 Pa.C.S.A. §101 *et seq.*), penalties and ordinances adopted under the authority of the Municipalities Planning Code, 53 P.S. §10101 *et seq.*, earned income tax ordinances adopted under the Local Tax Enabling Act, 53 P.S. §6913, and ordinances adopted under the authority of the Sewage Facilities Act, 35 P.S. §750.1 *et seq.*, should provide, generally:

(1) Any person, partnership or corporation who or which has violated or permitted the violation of any provision of this Part, upon being found liable therefor in a civil enforcement proceeding commenced by the Township, shall pay a judgment of not more than \$600 plus all court costs or other maximum as established by State law. No judgment shall commence or be imposed, levied or payable until the date of the determination of a violation by a magisterial district judge. If the defendant neither pays nor timely appeals the judgment, the Township may enforce the judgment pursuant to the applicable rules of civil procedure, at which time, in addition to any penalties, the violator shall be liable for any attorney's fees and costs incurred by the Township. Each day that a violation continues or each Section of this Part which shall be found to have been violated shall constitute a separate violation.

2. The imposition of a penalty under the provisions of this Code shall not prevent the revocation of any permit or license or the taking of other punitive or remedial action where called for or permitted under the laws of the Commonwealth of Pennsylvania and the United States of America. In addition, the Township may institute injunctive, mandamus or any other appropriate action or proceeding at law or in equity for the enforcement of this Code. Any court of competent jurisdiction shall have the right to issue restraining orders, temporary or permanent injunctions, mandamus, or other appropriate forms of remedy or relief.

(Ord. 231, 10/14/2008)

Part 2**Boards and Commissions****A. Planning Commission****§1-201. Planning Commission Continued and Recreated.**

The Old Lycoming Township Planning Commission, which was originally created on February 1, 1958, in *Ord. 13* of Old Lycoming Township, is hereby continued and recreated within the terms of the law of July 31, 1968, P.L. 805, known as the Pennsylvania Municipalities Planning Code, 53 P.S. 10101 *et seq.*, as amended.

(*Ord. 176*, 12/13/1994, §1)

§1-202. Members.

1. Members of the Old Lycoming Township Planning Commission shall be appointed by the Old Lycoming Township Supervisors and the membership shall be affixed at five.

2. The number of Old Lycoming Township Planning Commission members may be changed by the Old Lycoming Township Supervisors, at their discretion, by resolution, when determined necessary.

3. Officers of the Township may serve as an Old Lycoming Township Planning Commission member so long as said service is consistent with and not in violation of the Second Class Township Code, 53 P.S. §65101 *et seq.*, or the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*

(*Ord. 176*, 12/13/1994, §2; as amended by *Ord. 222*, 8/8/2006, §3)

§1-203. Additional Requirements.

1. Planning Commission members may attend training sessions, as required from time to time by Old Lycoming Township Supervisors, the cost of which shall be borne by Old Lycoming Township, including workshops as well as training. [*Ord. 231*]

2. Planning Commission members will be required to attend a minimum of one meeting per month, but may be required to attend more if determined necessary by Old Lycoming Township Supervisors.

3. When recommending disapproval of a plan presented to the Old Lycoming Township Planning Commission, the Commission as a whole must specifically state the ordinance sections being used as the basis of the decision to recommend disapproval of said plan.

4. If an individual Planning Commission member votes against recommending approval of a plan, said member shall cite the specific section of the ordinance upon which they are basing their decision to recommend disapproval of the plan.

(*Ord. 176*, 12/13/1994, §2; as added by *Ord. 222*, 8/8/2006, §4; and as amended by *Ord. 231*, 10/14/2008)

§1-204. Powers and Duties.

The powers and duties of the Planning Commission, as well as the standards for conduct of business of said Planning Commission, shall be as prescribed by the Pennsylvania Municipalities Planning Code, 53 P.S. §10101 *et seq.*, as the same may be amended from time to time.

(Ord. 176, 12/13/1994, §3)

Part 3**Appointed Officials****A. Township Manager****§1-301. Creation of the Office.**

The office of Township Manager is hereby created by the Township of Old Lycoming.

(*Ord. 200, 11/14/2000, §1*)

§1-302. Appointment and Compensation.

The Manager shall be appointed for an indefinite term by majority of all the members of the Board of Supervisors. The compensation of Township Manager shall be fixed by resolution of the Board of Supervisors and may be changed by resolution from time to time at the discretion of the Board of Supervisors.

(*Ord. 200, 11/14/2000, §2*)

§1-303. Qualifications.

The Manager shall be chosen solely on the basis of his executive and administrative abilities, with special reference to the duties of his office as herein outlined and shall become duly qualified in Township laws and procedures.

(*Ord. 200, 11/14/2000, §3*)

§1-304. Bond.

The Manager may also serve as Township Treasurer and, if so appointed, the Manager shall give a bond to the Township with a bonding company as surety, to be approved by the Board of Supervisors, in the sum to be determined by the Supervisors, conditioned upon the faithful performance of his duties. The premium for said bond to be paid by the Township.

(*Ord. 200, 11/14/2000, §4*)

§1-305. Removal.

Unless the Supervisors grant an employment contract in writing with the Manager for a fixed term, the Manager shall serve at the pleasure of the Board of Supervisors and he may be removed at any time by a majority vote of all its members. At least 30 days written notice of the Board of Supervisors intent to remove the Manager shall be sent to him before such removal is to be effective. Should a notice or removal be sent to the Manager, it can be effective immediately if the Township pays the Manager's wages for 30 days.

(*Ord. 200, 11/14/2000, §5*)

§1-306. Power of Duties.

Subject to recall by ordinance of the Board of Supervisors, the powers and duties

of the Township Manager shall consist of the administration of the day to day operations of the Township including, but not limited to, the following:

A. Make such recommendations to the Board of Supervisors concerning policy formulation as he deems desirable.

B. Keep the Board of Supervisors and the public informed as to the conduct of the Township affairs.

C. See that all laws and ordinances are duly enforced.

D. He shall hold such other Township offices and head such Township Departments as the Board of Supervisors may from time to time direct.

E. He shall attend all meetings of the Board of Supervisors and its committees with the right to take part in the discussions and he shall receive notice of all special meetings of the Board of Supervisors and its committees. He shall be an *ex officio* member of all committees.

F. He shall see that the provisions of all franchises, leases, permits, and privileges granted by the Township are observed.

G. He shall be the spokesman for the Township and the primary contact person for residents and others desiring to discuss Township business, including complaints.

H. He shall make recommendations to the Supervisors concerning hiring, employment, termination from employment, and/or discipline of all Township employees. He shall annually make wage recommendations for Township employees and he shall recommend the employment of consultants.

I. He shall be responsible to prepare the budget for presentation and adoption by the Supervisors, which will include recommendations for rates and taxes shall administer the matters of the Township within the budget.

J. He shall participate in labor negotiations with labor organization.

K. He shall keep Supervisors and Township duly informed of all matters of importance to the Township.

L. He shall perform such other duties as are designated by the Board of Supervisors.

(Ord. 200, 11/14/2000, §6)

§1-307. Acting Manager.

The Manager may designate a qualified Township employee to act as Manager and to exercise the duties of Manager during this temporary absence or disability. During such absence or disability, the Board of Supervisors may remove such designation at any time and appoint another person as acting Manager to serve until the Manager shall return or his disability shall cease.

(Ord. 200, 11/14/2000, §7)

§1-308. The Use of the Term.

The Manager shall apply to the Township Manager regardless of the gender of person appointed.

(*Ord. 200, 11/14/2000, §8*)

Part 4**Public Records, Access To****§1-401. Definitions.**

The following words and phrases shall be defined as follows:

Administrative proceeding - a proceeding by an agency the outcome of which is required to be based on a record or documentation prescribed by law or in which a statute or regulation is particularized in application to individuals. The term includes an appeal.

Agency - a Commonwealth agency, a local agency, a judicial agency or a legislative agency, or when applicable Old Lycoming Township.

Aggregated data - a tabulation of data which relate to broad classes, groups or categories so that it is not possible to distinguish the properties of individuals within those classes, groups or categories.

Appeals officer - as follows:

- (1) For a Commonwealth agency or a local agency, the appeals officer designated under §1-403.3.
- (2) For a judicial agency, the individual designated under §1-403.3.
- (3) For a legislative agency, the individual designated under §1-403.3.
- (4) For the Attorney General, State Treasurer, Auditor General and local agencies in possession of criminal investigative records, the individual designated under §1-403.3.

Commonwealth agency - any of the following:

- (1) Any office, department, authority, board, multi-state agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:
 - (a) The Governor's office.
 - (b) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.
 - (c) An organization established by the Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.
- (2) The term does not include a judicial or legislative agency.

Confidential proprietary information - commercial or financial information received by an agency:

- (1) Which is privileged or confidential.
- (2) The disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

Financial record - any of the following:

- (1) Any account, voucher or contract dealing with:

(a) The receipt or disbursement of funds by an agency.

(b) An agency's acquisition, use or disposal of services, supplies, materials, equipment or property.

(2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.

(3) A *Financial Audit Report*. The term does not include work papers underlying an audit.

Homeland security - governmental actions designed to prevent, detect, respond to and recover from acts of terrorism, major disasters and other emergencies, whether natural or man-made. The term includes activities relating to the following:

(1) Emergency preparedness and response, including preparedness and response, activities by volunteer medical, police, emergency management, hazardous materials and fire personnel.

(2) Intelligence activities.

(3) Critical infrastructure protection.

(4) Border security.

(5) Ground, aviation and maritime transportation security.

(6) Biodefense.

(7) Detection of nuclear and radiological materials.

(8) Research on next-generation securities technologies.

Independent agency - any board, commission or other agency or officer of the Commonwealth, that is not subject to the policy, supervision, and control of the Governor. The term does not include a legislative or judicial agency.

Judicial agency - a court of the Commonwealth or any other entity or office of the unified judicial system.

Legislative agency - any of the following:

(1) The Senate.

(2) The House of Representatives.

(3) The Capitol Preservation Committee.

(4) The Center for Rural Pennsylvania.

(5) The Joint Legislative Air and Water Pollution Control and Conservation Committee.

(6) The Joint State Government Commission.

(7) The Legislative Budget and Finance Committee.

(8) The Legislative Data Processing Committee.

(9) The Independent Regulatory Review Commission.

(10) The Legislative Reference Bureau.

(11) The Local Government Commission.

(12) The Pennsylvania Commission on Sentencing.

- (13) The Legislative Reapportionment Commission.
- (14) The Legislative Office of Research Liaison.
- (15) The Legislative Audit Advisory Commission.

Legislative record - any of the following relating to a legislative agency or a standing committee, subcommittee or conference committee of a legislative agency:

- (1) A financial record.
- (2) A bill or resolution that has been introduced and amendments offered thereto in committee or in legislative session, including resolutions to adopt or amend the rules of a chamber.
- (3) Fiscal notes.
- (4) A co-sponsorship memorandum.
- (5) The journal of a chamber.
- (6) The minutes of, record of attendance of members at a public hearing or a public committee meeting and all recorded votes taken in a public committee meeting.
- (7) The transcript of a public hearing when available.
- (8) Executive nomination calendars.
- (9) The rules of a chamber.
- (10) A record of all recorded votes taken in a legislative session.
- (11) Any administrative staff manuals or written policies.
- (12) An audit report prepared pursuant to the act of June 30, 1970, (LP.L.442, No. 151) entitled, "an act implementing the provisions of Article VIII, Section 10 of the Constitution of Pennsylvania, by designating the Commonwealth officers who shall be charged with the function of auditing the financial transactions after the occurrence thereof of the Legislative and Judicial branches of the government of the Commonwealth, establishing a Legislative Audit Advisory Commission, and imposing certain powers and duties on such commission."
- (13) Final or annual reports required by law to be submitted to the General Assembly.
- (14) Legislative budget and finance committee reports.
- (15) Daily legislative session calendars and marked calendars.
- (16) A record communicating to an agency the official appointment of a legislative appointee.
- (17) A record communicating to the appointing authority the resignation of a legislative appointee.
- (18) Proposed regulations, final-form regulations and final-omitted regulations submitted to a legislative agency.
- (19) The results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion funded by a legislative agency.

Local agency - any of the following:

(1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.

(2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or similar governmental entity.

Office of Open Records - the Office of Open Records established in §1-408.

Personal financial information - an individual's personal credit, charge or debit card information; bank account information; bank, credit or financial statements; account or PIN numbers and other information relating to an individual's personal finances.

Privilege - the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege or other privilege recognized by a court interpreting the laws of this Commonwealth.

Public record - a record, including a financial record, of a Commonwealth or local agency that:

(1) Is not exempt under §1-404.9.

(2) Is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree.

(3) Is not protected by a privilege.

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

Requester - a person that is a legal resident of the United States and requests a record pursuant to this Part. The term includes an agency.

Response - access to a record or an agency's written notice to a requester granting, denying or partially granting and partially denying access to a record.

Social services - cash assistance and other welfare benefits, medical, mental and other health care services, drug and alcohol treatment, adoption services, vocational services and training, occupational training, education services, counseling services, workers' compensation services and unemployment compensation services, foster care services, services for the elderly, services for individuals with disabilities and services for victims of crimes and domestic violence.

State-affiliated entity - a Commonwealth authority or Commonwealth entity. The term includes the Pennsylvania Higher Education Assistance Agency and any entity established thereby, the Pennsylvania Gaming Control Board, the Pennsylvania Game Commission, the Pennsylvania Fish and Boat Commission, the Pennsylvania Housing Finance Agency, the Pennsylvania Municipal Retirement Board, the State System of Higher Education, a community college, the Pennsylvania Turnpike Commission, the Pennsylvania Public Utility Commission, the Pennsylvania Infrastructure Investment Authority, the State Public School Building Authority, the Pennsylvania Interscholastic Athletic Association and the Pennsylvania Educational Facilities authority. The term does not include a State-

related institution.

State-related institution - includes:

- (1) Temple University.
- (2) The University of Pittsburgh.
- (3) The Pennsylvania State University.
- (4) Lincoln University.

Terrorist act - a violent or life-threatening act that violates the criminal laws of the United States or any state and appears to be intended to:

- (1) Intimidate or coerce a civilian population.
- (2) Influence the policy of a government.
- (3) Affect the conduct of a government by mass destruction, assassination or kidnapping.

Trade secret - information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) Derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use.
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The term includes data processing software obtained by an agency under a licensing agreement prohibiting disclosure.

(Ord. 232, 11/12/2008, §1)

§1-402. Presumption.

1. *General Rule.* A record in the possession of a Commonwealth agency or local agency shall be presumed to be a public record. The presumption shall not apply if:

- A. The record is exempt under §1-404.9.
- B. The record is protected by a privilege.
- C. The record is exempt from disclosure under any other Federal or State law or regulation or judicial order or decree.

2. *Nature of Document.* Nothing in this Part shall supersede or modify the public or nonpublic nature of a record or document established in Federal or State law, regulation or judicial order or decree.

(Ord. 232, 11/12/2008, §2)

§1-403. Access.

1. *Scope of Part.* This Part applies to all agencies.

2. *Open-Records Officer.*

A. *Establishment.* Old Lycoming Township shall designate an official or employee to act as the open-records officer by resolution.

B. *Functions.*

(1) The open-records officer shall receive requests submitted to the agency under this Part, direct requests to other appropriate persons within the agency or to appropriate persons in another agency, track the agency's progress in responding to requests and issue interim and final responses under this Part.

(2) Upon receiving a request for a public record, legislative record or financial record, the open-records officer shall do all of the following:

(a) Note the date of receipt on the written request.

(b) Compute the day on which the 5-day period under §1-405 will expire and make a notation of that date on the written request.

(c) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until the request has been fulfilled. If the request is denied, the written request shall be maintained for 30 days or, if an appeal is filed, until a final determination is issued under §1-406.1.B or the appeal is deemed denied.

(d) 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. This subparagraph shall only apply to Commonwealth agencies.

3. *Appeals Officer.*

A. Old Lycoming Township shall designate by resolution, an appeals officer under §1-406.2 for all appeals from requests under the Right-to-Know Law.

B. *Authority.* An agency may promulgate regulations and policies necessary for the agency to implement this Part. The Office of Open Records may promulgate regulations relating to appeals involving a Commonwealth agency or local agency.

C. *Posting.* The following information shall be posted at each agency and, if the agency maintains an internet website, on the agency's internet website:

(1) Contact information for the open records officer.

(2) Contact information for the Office of Open Records or other applicable appeals officer.

(3) A form which may be used to file a request.

(4) Regulations, policies and procedures of the agency relating to this Part.

D. *Uniform Form.*

(1) *Commonwealth and Local Agencies.* The Office of Open Records shall develop a uniform form which shall be accepted by all Commonwealth and local agencies in addition to any form used by the agency to file a request under this Part. The uniform form shall be published in the Pennsylvania Bulletin and on the Office of Open Record's internet website.

E. *Requests.*

(1) *Disruptive Requests.*

(a) An agency may deny a requester 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 agency.

(b) A denial under this subsection shall not restrict the ability to request a different record.

(2) *Disaster or Potential Damage.*

(a) An agency may deny a requester access.

1) When timely access is not possible due to fire, flood or other disaster.

2) To 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.

(b) To the extent possible, the contents of a record under this subsection shall be made accessible to a requester even when the record is physically unavailable.

(3) *Agency Discretion.* An agency may exercise its discretion to make any otherwise exempt record accessible for inspection and copying under this Section, if all of the following apply:

(a) Disclosure of the record is not prohibited under any of the following:

1) Federal or State law or regulation.

2) Judicial order or decree.

(b) The record is not protected by a privilege.

(c) The agency head determines that the public interest favoring access outweighs any individual, agency or public interest that may favor restriction of access.

(4) *Agency Possession.*

(a) A public record that is not in the possession of an agency but is in the possession of a party with whom the agency has contracted to perform a governmental function on behalf of the agency, and which directly relates to the governmental function and is not exempt under this Part, shall be considered a public record of the agency for purposes of this Part.

(b) Nothing in this Part shall be construed to require access to any other record of the party in possession of the public record.

(c) A request for a public record in possession of a party other than the agency shall be submitted to the open records officer of the agency. Upon a determination that the record is subject to access under this Part, the open records officer shall assess the duplication fee established under §1-407.7.B and upon collection shall remit the fee to the party in possession of the record if the party duplicated the record.

F. *Retention of Records.* Nothing in this Part shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of an agency established pursuant to law, regulation, policy or other directive.

(Ord. 232, 11/12/2008, §3)

§1-404. Procedure/Access.

1. *General Rule.* Unless otherwise provided by law, a public record, legislative record or financial record shall be accessible for inspection and duplication in accordance with this Part. 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. Public records, legislative records or financial records shall be available for access during the regular business hours of an agency.

2. *Construction.* Nothing in this Part shall be construed to require access to any computer either of an agency or individual employee of an agency.

3. *Requests.* Agencies may fulfill verbal, written or anonymous verbal or written requests for access to records under this Part. If the requester wishes to pursue the relief and remedies provided for in this Part, the request for access to records must be a written request.

4. *Written Requests.* A written request for access to records may be submitted in person, by mail, by e-mail, by facsimile or, to the extent provided by agency rules, any other electronic means. A written request must be addressed to the open records officer designated. Employees of an agency shall be directed to forward requests for records to the open records officer. A written request should identify or describe the records sought with sufficient specificity to enable the agency to ascertain which records are being requested and shall include the name and address to which the agency 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 unless otherwise required by law.

5. *Electronic Access.*

A. *General Rule.* In addition to the requirements of §1-404.1, an agency may make its records available through any publicly accessible electronic means.

B. *Response.*

(1) In addition to the requirements of §1-404.1, an agency may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the agency will provide access to inspect the record electronically.

(2) If the requester is unwilling or unable to access the record electronically, the requester may, within 30 days following receipt of the agency notification, submit a written request to the agency to have the record converted to paper. The agency shall provide access to the record in printed form within 5 days of the receipt of the written request for conversion to paper.

6. *Creation of Record.* When responding to a request for access, an agency shall not be required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the agency does not currently compile, maintain, format or organize the record.

7. *Redaction.* If an agency determines that a public record, legislative record or financial record contains information which is subject to access as well as information which is not subject to access, the agency'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, legislative record or financial record and cannot be separated, the

agency shall redact from the record the information which is not subject to access, and the response shall grant access to the information which is subject to access. The agency may not deny access to the record if the information which is not subject to access is able to be redacted. Information which an agency redacts in accordance with this subsection shall be deemed a denial under §1-405.

8. *Production of Certain Records.*

A. *General Rule.* If, in response to a request, an agency produces a record that is not a public record, legislative record or financial record, the agency shall notify any third party that provided the record to the agency, the person that is the subject of the record and the requester.

B. *Transcripts.*

(1) Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester by the agency stenographer or a court reporter, in accordance with agency procedure or an applicable contract.

(2) Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding shall be provided to a requester in accordance with the duplication rates established in §1-407.7.B.

9. *Exceptions for Public Records.*

A. *Burden of Proof.*

(1) The burden of proving that a record of a Commonwealth agency or local agency is exempt from public access shall be on the Commonwealth agency or local agency receiving a request by a preponderance of the evidence.

(2) The burden of proving that a legislative record is exempt from public access shall be on the legislative agency receiving a request by a preponderance of the evidence.

(3) The burden of proving that a financial record of a judicial agency is exempt from public access shall be on the judicial agency receiving a request by a preponderance of the evidence.

B. *Exceptions.* Except as provided in subsections .9.C and .9.B(2), the following are exempt from access by a requester under this Part:

(1) A record the disclosure of which:

(a) Would result in the loss of Federal or State funds by an agency or the Commonwealth.

(b) Would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual.

(2) A record maintained by an agency in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate Federal or State military authority.

(3) A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility,

resource, infrastructure, facility or information storage system, which may include:

(a) Documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act.

(b) Lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protection, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counter terrorism measures and plans; and security and response needs assessments.

(c) Building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems.

(4) A record regarding computer hardware, software and networks, including administrative or technical records, which, if disclosed, would reasonably be likely to jeopardize computer security.

(5) A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information.

(6) (a) The following personal identification information:

1) A record containing all or part of a person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.

2) A spouse's name, marital status, beneficiary or dependent information.

3) The home address of a law enforcement officer or judge.

(b) Nothing in this subparagraph shall preclude the release of the name, position, salary, actual compensation or other payments or expenses, employment contract, employment-related contract or agreement and length of service of a public official or an agency employee.

(c) An agency may redact the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity from a record.

(7) The following records relating to an agency employee:

(a) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.

(b) A performance rating or review.

(c) The result of a civil service or similar test administered by Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.

(d) The employment application of an individual who is not hired by the agency.

(e) Workplace support services program information.

(f) Written criticisms of an employee.

(g) Grievance material, including documents related to discrimination or sexual harassment.

(h) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of an agency that results in demotion or discharge.

(i) An academic transcript.

(8) (a) A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure.

(b) In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure.

(9) The draft of a bill, resolution, regulation, statement of policy, management directive, ordinance or amendment thereto prepared by or for an agency.

(10) (a) A record that reflects:

1) The internal, predecisional deliberations of an agency, its members, employees or officials or predecisional deliberations between agency members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation, legislative proposal, legislative amendment, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations.

2) The strategy to be used to develop or achieve the successful

adoption of a budget, legislative proposal or regulation.

(b) Subparagraph (10)(a)1) shall apply to agencies subject to 65 Pa.C.S. Chapter 7 (relating to open meetings) in a manner consistent with 65 Pa.C.S. Chapter 7. A record which is not otherwise exempt from access under this Part and which is presented to quorum for deliberation in accordance with 65 Pa.C.S. Chapter 7 shall be a public record.

(c) This subparagraph shall not apply to a written or internet application or other document that has been submitted to request Commonwealth funds.

(d) This subparagraph shall not apply to the results of public opinion surveys, polls, focus groups, marketing research or similar effort designed to measure public opinion.

(11) A record that constitutes or reveals a trade secret or confidential proprietary information.

(12) Notes and working papers prepared by or for a public official or agency employee used solely for that official's or employee's own personal use, including telephone message slips, routing slips and other materials that do not have an official purpose.

(13) Records that would disclose the identity of an individual who lawfully makes a donation to an agency unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a named public official or employee of the agency, including lists of potential donors compiled by an agency to pursue donations, donor profile information or personal identifying information relating to a donor.

(14) Unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material and scholarly correspondence of a community college or an institution of the State System of Higher Education or a faculty member, staff employee, guest speaker or student thereof.

(15) (a) Academic transcripts.

(b) Examinations, examination questions, scoring keys or answers to examinations. This subparagraph shall include licensing and other examinations relating to the qualifications of an individual and to examinations given in primary and secondary schools and institutions of higher education.

(16) A record of an agency relating to or resulting in a criminal investigation, including:

(a) Complaints of potential criminal conduct other than a private criminal complaint.

(b) Investigative materials, notes, correspondence, videos and reports.

(c) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.

(d) A record that includes information made confidential by law or court order.

(e) Victim information, including any information that would jeopardize the safety of the victim.

(f) A record that, if disclosed, would do any of the following:

1) Reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges.

2) Deprive a person of the right to a fair trial or an impartial adjudication.

3) Impair the ability to locate a defendant or codefendant.

4) Hinder an agency's ability to secure an arrest, prosecution or conviction.

5) Endanger the life or physical safety of an individual.

This subparagraph shall not apply to information contained in a police blotter as defined in 18 Pa.C.S §9102 (relating to definitions) and utilized or maintained by the Pennsylvania State Police, local, campus, transit or port authority police department or other law enforcement agency or in a traffic report except as provided under 75 Pa.C.S §3754 b. (relating to accident prevention investigations).

(17) A record of an agency relating to a noncriminal investigation, including:

(a) Complaints submitted to an agency.

(b) Investigative materials, notes, correspondence and reports.

(c) A record that includes the identity of a confidential source, including individuals subject to the Act of December 12, 1986, (P.L. 1559, No. 169), known as the Whistleblower Law.

(d) A record that includes information made confidential by law.

(e) Work papers underlying an audit.

(f) A record that, if disclosed, would do any of the following:

1) Reveal the institution, progress or result of an agency investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement agreement unless the agreement is determined to be confidential by a court.

2) Deprive a person of the right to an impartial adjudication.

3) Constitute an unwarranted invasion of privacy.

4) Hinder an agency's ability to secure an administrative or civil sanction.

5) Endanger the life or physical safety of an individual.

(18) (a) Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency

dispatch personnel, including 911 recordings.

(b) This subparagraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.

(19) DNA and RNA records.

(20) An autopsy record of a coroner or medical examiner and any audiotape of a postmortem examination or autopsy, or a copy, reproduction or facsimiles of an autopsy report, a photograph, negative or print, including a photograph or videotape of the body or any portion of the body of a deceased person at the scene of death or in the course of a postmortem examination or autopsy taken or made by or caused to be taken or made by the coroner or medical examiner. This exception shall not limit the reporting of the name of the deceased individual and the cause and manner of death.

(21) (a) Draft minutes of any meeting of an agency until the next regularly scheduled meeting of the agency.

(b) Minutes of an executive session and any record of discussions held in executive session.

(22) (a) The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by an agency relative to the following:

- 1) The leasing, acquiring or disposing of real property or an interest in real property.
- 2) The purchase of public supplies or equipment included in the real estate transaction.
- 3) Construction projects.

(b) This subparagraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

(23) Library and archive circulation and order records of an identifiable individual or groups of individuals.

(24) Library archived and museum materials, or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.

(25) A record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.

(26) A proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offeror requested in an invitation for bid or request for proposals to demonstrate the bidder's or offeror's economic capability; or the identity of members, notes and other records of agency proposal evaluation committees established under 62 Pa.C.S. §513 (relating to competitive sealed proposals).

(27) A record or information relating to a communication between an agency and its insurance carrier, administrative service organization or risk management office. This subparagraph shall not apply to a contract with an insurance carrier, administrative service organization or risk management office or to financial records relating to the provision of insurance.

(28) A record or information:

(a) Identifying an individual who applies for or receives social services.

(b) Relating to the following:

1) The type of social services received by an individual.

2) An individual's application to receive social services, including a record or information related to an agency decision to grant, deny, reduce or restrict benefits, including a quasi-judicial decision of the agency and the identity of a caregiver or others who provide services to the individual.

3) Eligibility to receive social services, including the individual's income, assets, physical or mental health, age, disability, family circumstances or record of abuse.

(29) Correspondence between a person and a member of the General Assembly and records accompanying the correspondence which would identify a person that requests assistance or constituent services. This subparagraph shall not apply to correspondence between a member of the General Assembly and a principal or lobbyist under 65 Pa.C.S. Chapter 13A (relating to lobbyist disclosure).

(30) A record identifying the name, home address or date of birth of a child 17 years of age or younger.

C. *Financial Records.* The exceptions set forth in paragraph .B shall not apply to financial records, except that an agency may redact that portion of a financial record protected under paragraph .B(1), .B(2), .B(3), .B(4), .B(5), .B(6), .B(16), or .B(17). An agency shall not disclose the identity of an individual performing an undercover or covert law enforcement activity.

D. *Aggregated Data.* The exceptions set forth in paragraph .B(1)(b) shall not apply to aggregated data maintained or received by an agency, except for data protected under paragraph .B(1), .B(2), .B(3), .B(4), or .B(5).

E. *Construction.* In determining whether a record is exempt from access under this Section, an agency shall consider and apply each exemption separately.

(Ord. 232, 11/12/2008, §4)

§1-405. Agency Response.

1. *General Rule.* Upon receipt of a written request for access to a record, an agency shall make a good faith effort to determine if the record requested is a public record, legislative record or financial record and whether the agency has possession, custody or control of the identified record, and to respond as promptly as possible under the circumstances existing at the time of the request. All applicable fees shall be paid in order to receive access to the record requested. The time for response shall not exceed

5 business days from the date the written request is received by the open-records officer for an agency. If the agency fails to send the response within 5 business days of receipt of the written request for access, the written request for access shall be deemed denied.

2. *Extension of Time.*

A. *Determination.* Upon receipt of a written request for access, the open-records officer for an agency shall determine if one of the following applies:

(1) The request for access requires redaction of a record in accordance with §1-404.7.

(2) The request for access requires the retrieval of a record stored in a remote location.

(3) A timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitation.

(4) A legal review is necessary to determine whether the record is a record subject to access under this Part.

(5) The requester has not complied with the agency's policies regarding access to records.

(6) The requester refuses to pay applicable fees authorized by this Part.

(7) The extent or nature of the request precludes a response within the required time period.

B. *Notice.*

(1) Upon a determination that one of the factors listed in paragraph .A applies, the open-records officer shall send written notice to the requester within 5 business days of receipt of the request for access under paragraph .A.

(2) 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 5 business days allowed for in §1-403, 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.

(3) 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 agency has not provided a response by that date.

3. *Denial.* If an agency's response is a denial of a written request for access, whether in whole or in part, the denial shall be issued in writing and shall include:

A. A description of the record requested.

B. The specific reasons for the denial, including a citation of supporting legal authority.

C. The typed or printed name, title, business address, business telephone number and signature of the open-records officer on whose authority the denial is issued.

D. Date of the response.

E. The procedure to appeal the denial of access under this Part.

4. *Certified Copies.* If an agency's response grants a request for access, the agency shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees under §1-407.7.

5. *Record Discard.* If an agency response to a requester states that copies of the requested records are available for delivery at the office of an agency and the requester fails to retrieve the records within 60 days of the agency's response, the agency may dispose of any copies which have not been retrieved and retain any fees paid to date.

(Ord. 232, 11/12/2008, §5)

§1-406. Appeal.

1. *Filing of Appeal.*

A. *Authorization.*

(1) 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 or judicial, legislative or other appeals officer designated under §1-403.3.A, within 15 business days of the mailing date of the agency's response or within 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, legislative record or financial record and shall address any grounds stated by the agency for delaying or denying the request.

(2) Except as provided in §1-403.3.A, in the case of an appeal of a decision by a Commonwealth agency or local agency, the Office of Open Records shall assign an appeals officer to review the denial.

B. *Determination.*

(1) Unless the requester agrees otherwise, the appeals officer shall make a final determination, which shall be mailed, to the requester and the agency within 30 days of receipt of the appeal filed under paragraph .A.

(2) If the appeals officer fails to issue a final determination within 30 days, the appeal is deemed denied.

(3) Prior to issuing a final determination, a hearing may be conducted. The determination by the appeals officer shall be a final order. The appeals officer shall provide a written explanation of the reason for the decision to the requester and the agency.

C. *Direct Interest.*

(1) A person other than the agency or requester with a direct interest in the record subject to an appeal under this subsection may, within 15 days following receipt of actual knowledge of the appeal but no later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the requester's or agency's position.

(2) The appeals officer may grant a request under subparagraph (1) if:

(a) No hearing has been held.

(b) The appeals officer has not yet issued its order.

(c) The appeals officer believes the information will be probative.

(3) Copies of the written request shall be sent to the agency and the requester.

2. *Appeals Officer.*

A. *Duties.* An appeals officer designated under §1-403.3 shall do all of the following:

(1) Set a schedule for the requester and the open-records officer to submit documents in support of their positions.

(2) Review all information filed relating to the request. The appeals officer may hold a hearing. A decision to hold or not to hold a hearing is not appealable. The appeals officer may admit into evidence testimony evidence and documents that the appeals officer believes to be reasonably probative and relevant to an issue in dispute. The appeals officer may limit the nature and extent of evidence found to be cumulative.

(3) Consult with agency counsel as appropriate.

(4) Issue a final determination on behalf of the Office of Open Records or other agency.

B. *Procedures.* The Office of Open Records, a judicial agency, a legislative agency, the Attorney General, Auditor General, State Treasurer or district attorney may adopt procedures relating to appeals under this Part.

(1) If an appeal is resolved without a hearing, 1 Pa.Code Pt. II (relating to general rules of administrative practice and procedure) does not apply except to the extent that the agency has adopted these Sections in its regulations or rules under this subsection.

(2) If a hearing is held, 1 Pa.Code Pt. II shall apply unless the agency has adopted regulations, policies or procedures to the contrary under this paragraph.

(3) In the absence of a regulation, policy or procedure governing appeals under this subsection, the appeals officer shall rule on procedural matters on the basis of justice, fairness and the expeditious resolution of the dispute.

(Ord. 232, 11/12/2008, §6)

§1-407. Judicial Review.

1. *Commonwealth Agencies, Legislative Agencies and Judicial Agencies.*

A. *General Rule.* Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a Commonwealth agency, a legislative agency or a judicial agency issued under §1-406.1.B or the date a request for access is deemed denied, a requester or the agency may file a petition for review or other document as might be required by rule of court with the Commonwealth Court. 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.

B. *Stay.* A petition for review under this subsection shall stay the release of documents until a decision under paragraph .A is issued.

2. *Local Agencies.*

A. *General Rule.* Within 30 days of the mailing date of the final determination of the appeals officer relating to a decision of a local agency issued under §1-406.1.B or of the date a request for access is deemed denied, a requester or local agency may file a petition for review or other document as required by rule of court with the court of common pleas for the county where the local agency is located. 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.

B. *Stay.* A petition for review under this section shall stay the release of documents until a decision under paragraph .A is issued.

3. *Notice and Records.*

A. *Notice.* An agency, the requester and the Office of Open Records or designated appeals officer shall be served notice of actions commenced in accordance with subsection .1 or subsection .2 and shall have an opportunity to respond in accordance with applicable court rules.

B. *Record of Appeal.* The record before a court shall consist of the request, the agency's response, the appeal filed under §1-406.1, the hearing transcript, if any, and the final written determination of the appeals officer.

4. *Court Costs and Attorney Fees.*

A. *Reversal of Agency Determination.* If a court reverses the final determination of the appeals officer or grants access to a record after a request for access was deemed denied, the court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to a requester if the court finds either of the following:

(1) The agency receiving the original request willfully or with wanton disregard deprived the requester of access to a public record subject to access or otherwise acted in bad faith under the provisions of this Part.

(2) The exemptions, exclusions or defenses asserted by the agency in its final determination were not based on a reasonable interpretation of law.

B. *Sanctions for Frivolous Requests or Appeals.* The court may award reasonable attorney fees and costs of litigation or an appropriate portion thereof to an agency if the court finds that the legal challenge under this Part was frivolous.

C. *Other Sanctions.* Nothing in this Part shall prohibit a court from imposing penalties and costs in accordance with applicable rules of court.

5. *Civil Penalty.*

A. *Denial of Access.* A court may impose a civil penalty of not more than \$1,500 if an agency denied access to public record in bad faith.

B. *Failure to Comply with Court Order.* An agency or public official who does not promptly comply with a court order under this Part is subject to a civil penalty of not more than \$500 per day until the public records are provided.

6. *Immunity.*

A. *General Rule.* Except as provided in subsection .4 and other statutes governing the release of records, no agency, public official or public employee shall

be liable for civil penalties resulting from compliance or failure to comply with this Part.

B. *Schedules.* No agency, public official or public employee shall be liable for civil or criminal damages or penalties under this Part for complying with any written public record retention and disposition schedule.

7. *Fee Limitations.*

A. *Postage.* Fees for postage may not exceed the actual cost of mailing.

B. *Duplication.*

(1) 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 resolution by the Office of Open Records, for the Township.

(2) The fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities.

(3) Fees for local agencies may reflect regional price differences.

(a) The following apply to complex and extensive data sets, including geographic information systems or integrated property assessment lists.

(4) Fees for copying may be based on the reasonable market value of the same or closely related data sets.

(5) Subparagraph (4) shall not apply to:

(a) A request by an individual employed by or connected with a newspaper or magazine of general circulation, weekly publication, press association or radio or television station, for the purpose of obtaining information for publication or broadcast.

(b) A request by a nonprofit organization for the conduct of educational research.

(6) Information obtained under subparagraph (5) shall be subject to subparagraphs (1), (2), and (3).

C. *Certification.* An agency 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.

D. *Conversion to Paper.* If a record is only maintained electronically or in other nonpaper 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 as provided by paragraph .B unless the requester specifically requests for the record to be duplicated in the more expensive medium.

E. *Enhanced Electronic Access.* If an agency offers enhanced electronic access to record in addition to making the records accessible for inspection and duplication by a requester as required by this Part, 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 Part. 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 approved by the Office of Open Records and may 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.

F. *Waiver of Fees.* An agency may waive the fees for duplication of a record, including, but not limited to, when:

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

G. *Limitations.* 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. 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 Part.

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

8. *Prohibition.* A policy or regulation adopted under this Part may not include any of the following:

A. A limitation on the number of records which may be requested or made available for inspection or duplication.

B. A requirement to disclose the purpose or motive in requesting access to records.

9. *Practice and Procedure.* The provisions of 2 Pa.C.S. (relating to administrative law and procedure) shall not apply to this Part unless specifically adopted by regulation or policy.

(Ord. 232, 11/12/2008, §7)

§1-408. Office of Open Records.

1. *Establishment.* There is established, in the Department of Community and Economic Development, an Office of Open Records. The office shall do all of the following:

A. Provide information relating to the implementation and enforcement of this Part.

B. Issue advisory opinions to agencies and requesters.

C. Provide annual training courses to agencies, public officials and public employees on this Part and 65 Pa.C.S. Chapter 7 (relating to open meetings).

D. Provide annual, regional training courses to local agencies, public officials and public employees.

E. Assign appeals officers to review appeals of decisions by Commonwealth agencies or local agencies, except as provided in §1-405.3.D, filed under §1-406 and issue orders and opinions. The office shall employ or contract with attorneys to serve as appeals officers to review appeals and, if necessary, to hold hearings on a

regional basis under this Part. Each appeals officer must comply with all of the following:

(1) Complete a training course provided by the Office of Open Records prior to acting as an appeals officer.

(2) If a hearing is necessary, hold hearings regionally as necessary to ensure access to the remedies provided by this Part.

(3) Comply with the procedures under §1-406.2.B.

F. Establish an informal mediation program to resolve disputes under this Part.

G. Establish an internet website with information relating to this Part, including information on fees, advisory opinions and decisions and the name and address of all open records officers in this Commonwealth.

H. Conduct a bi-annual review of fees charged under this Part.

I. Annually report on its activities and findings to the Governor and the General Assembly. The report shall be posted and maintained on the internet website established under paragraph .G.

2. *Executive Director.* Terry Mutchler is an executive director of the office and shall serve for a term of 6 years and the executive director may serve no more than two terms.

3. *Duties.* The executive director shall ensure that the duties of the Office of Open Records are carried out and shall monitor cases appealed to the Office of Open Records. (Ord. 232, 11/12/2008, §8)

§1-409. Relations to Other Laws.

If the provisions of this Part regarding access to records conflict with any other Federal or State law, the provisions of this Part shall not apply.

(Ord. 232, 11/12/2008, §9)