

THE BOROUGH OF MIDDLETOWN RIGHT TO KNOW POLICY

I. Introduction

The Borough of Middletown, (“Middletown”), is a municipal borough in the Commonwealth of Pennsylvania, and therefore is a local agency for purposes of the Pennsylvania Right to Know Law.

All local agencies shall provide public records in accordance with the Right to Know Law. Any record in the possession of Middletown shall be presumed to be a public record, except in the following circumstances:

- (a) The record is exempt under the Right to Know Law;
- (b) The record is protected by the attorney work product doctrine, the attorney client privilege, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania;
- (c) The record is exempt from disclosure under any other federal or state law or regulation, or judicial order or decree; or
- (d) The record is exempt or protected for any other statutory reason or based on judicial ruling. Records are broadly defined under the Right to Know Law. Records include a document maintained by an agency in any form.

Requests for public records can be made by any person who is a legal resident of the United States, including a resident alien. Requests to Middletown can also be made by other local agencies, Commonwealth agencies, judicial agencies, or legislative agencies.

II. Access and Procedure

Requesters may make oral requests for access to records. However, if the requester wishes to pursue the relief and remedies provided for in the Right to Know Law, the request for access to records must be in writing.

Middletown has designated Ronald J. Mull, Borough Manager, to act as the Open Records Officer (“Officer”). The Officer’s contact information is set forth below:

Ronald J. Mull

Middletown Borough

60 West Emaus Street

Middletown, PA 17057

(717) 948-3079

rmull@middletownborough.com

Questions regarding this policy may be directed to the Officer at the telephone or email address listed above.

All written requests must be addressed to the Officer, and all such requests must be submitted in person or by mail. Middletown will not accept facsimile or electronic mail requests. In the event that written requests for records are addressed to Middletown staff or officials other than the Officer, the recipient of such request(s) is hereby directed to promptly forward such request(s) to the Officer.

Written requests should identify or describe the record sought with sufficient specificity to enable Middletown and the Officer to ascertain which records are being requested. Unless otherwise required by law, a written request need not include any explanation of the requester’s reason for requesting the records or the intended use of such records. A form which may be used to file a request is posted on Middletown’s internet website at www.middletownborough.com.

Middletown shall assign a tracking number to each filed form so as to track Middletown's progress in responding to requests under the Right to Know Law.

Prior to granting a request for access in accordance with the Right to Know Law, Middletown may require a requester to prepay an estimate of the fees authorized by law if the fees required to fulfill the request are expected to exceed \$25.00. Fees must be reasonable and based on prevailing fees for comparable duplication services provided by local business entities. Except as otherwise provided by statute, no other fees may be imposed unless Middletown necessarily incurs costs for complying with the request, and, in any event, such fees must be reasonable.

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

A record 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. Middletown is not required to create a record which does not currently exist or to otherwise compile, maintain, format or organize a record in a manner in which it does not currently compile, maintain, format or organize a record. Middletown may impose reasonable fees for official certification of copies if the certification is at the behest of the requester and for the purpose of legally verifying the public record.

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

- (a) Note the date of the receipt of the request on the written request;
- (b) Compute the day on which the five day period for response will expire, and make a notation of that date on the written request; and

(c) Create a file for the retention of the original request, a copy of the response, a record of written communications with the requester, and a copy of other communications.

III. Middletown's Response

Upon receipt of a written request for access to a record, Middletown shall make a good faith effort to determine if the record requested exists and is a public record and whether Middletown has possession, custody or control of the record. Middletown will respond as promptly as possible under the circumstances existing at the time of the request. Under the Right to Know Law, Middletown must send a response within five (5) business days of receipt of the written request for access, or else the written request shall be deemed denied. For purposes of this policy, a business day is any weekday, except those days when Middletown's office is closed due to a holiday, namely: New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, July 5th, Labor Day, Veteran's Day, Thanksgiving Day and Christmas Day.

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

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

(e) The requester refuses to pay applicable fees authorized by the Right to Know

Law and this policy; or

(f) The extent or nature of the request precludes a response within the required five

(5) business day time period.

Upon a determination that one of the circumstances listed above applies, the Officer shall send written notice to the requester within five (5) business days of receipt of the request including a statement notifying the requester that the request is being reviewed, the reason for the review, a reasonable date that a response is expected to be provided, and an estimate of applicable fees owed when the record becomes available. Information which Middletown redacts in accordance with the Right to Know Law shall be deemed a denial for that information.

If the date that a response is expected to be provided is in excess of thirty (30) days, following the five (5) business days allowed for response, the request for access shall be deemed denied unless the requester agrees in writing to an extension to the date specified in the notice. If the requester agrees to the extension, the request shall be deemed denied on the day following the date specified in the notice if Middletown has not provided a response by that date.

For purposes of this policy, the "mailing date" shall be the date affixed to a: (1) response to a request from the Officer, which is the date the response is deposited in the U.S. mail; (2) final determination from the Officer, which is the date the final determination is deposited in the U.S. mail.

IV. Appeal of Middletown's Determination

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

The Office of Open Records has established an internet website with information relating to the Right to Know Law, including information on fees, advisory opinions and decisions, and the name and address of all open records officers in the Commonwealth of Pennsylvania. For information on the Office of Open Records, please go to openrecords.state.pa.us. The Office of Open Records is located at Commonwealth Keystone Building, 400 North Street, Plaza Level, Harrisburg, PA 171200225.

V. Retention of Records/Construction

By adoption of this Right to Know Policy, Middletown publicly declares its intention to follow the Municipal Records Act, 53 Pa. C.S.A. § 1381 et seq., with respect to the retention and disposition of public records. Nothing in the Right to Know Law or this policy shall be construed to modify, rescind or supersede the records retention and disposition policy.

Nothing in the Right to Know Law or this policy shall be construed to require access to any computer, or that of any employee or official of Middletown. This policy shall not be construed to provide any access or rights beyond those contained in the Right to Know Law.