

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE COUNTY OF THE LACKAWANNA TRANSIT SYSTEM AUTHORITY ("AUTHORITY") ESTABLISHING AN OPEN RECORDS POLICY AND PROVIDING FOR THE APPOINTMENT OF AN OPEN RECORDS OFFICER

WHEREAS, the Authority's Board of Directors ("Board") is a municipal authority created pursuant to the Municipal Authorities Act of 1945, as amended, that provides public transportation services to the Lackawanna County Area;

WHEREAS, because Authority exists as a municipal authority it is considered a local agency pursuant to Act 3 of 2008, otherwise known as the Right to Know Law (the "Act"), and therefore adopts the following procedure for requesting, processing and providing public records;

WHEREAS, this Resolution also sets forth the process for the denial of a request for public records;

WHEREAS, this Resolution also provides the procedure in which an Open Records Officer shall be acknowledged and appointed by the Board of Directors; and

WHEREAS, this Resolution seeks to incorporate herein the purpose and intent of the Right to Know Law of 2008 and the definitions and provisions set forth therein.

NOW THEREFORE, in consideration of the Right to Know Law and the requirements under the Act, the Board of Directors hereby resolves as follows:

Section 1. Open Records Officer.

- A. Each year at the first meeting that shall occur in a calendar year, the Board of Directors shall appoint an Open Records Officer. This Officer shall be responsible for processing, recording, tracking and otherwise administering all portions of this Resolution, as well as any resolutions that may provide procedures for the retention of documents and the destruction of Documents of the Authority.
- B. Authority shall note the identity and manner of communication to the Open Records Officer on its website and post said information at a conspicuous location at the Authority.

C. In the event an Open Records request is submitted to an employee other than the Open Records Officer, that person must immediately provide the request to the Open Records Officer. All employees should refrain from accepting Open Records Requests and direct all such requests to the Open Records Officer.

D. Duties of the Open Records Officer:

1. The open-records officer shall receive requests submitted to the Authority under this act, direct requests to other appropriate persons within the Authority or to appropriate persons in another agency, track the Authority's progress in responding to requests and issues interim and final responses under this act.
2. Upon receiving a request for a public record or financial record, the Open Records Officer shall do all of the following:
 - (i) Note the date of receipt on the written request.
 - (ii) Compute the day on which the five-day period under section 901 will expire and make a notation of that date on the written request.
 - (iii) Maintain an electronic or paper copy of a written request, including all documents submitted with the request until 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 section 1101(b) or the appeal is deemed denied.

Section 2. Public Records.

A. Public Records as defined by the Act shall be provided to any legal resident of the United States, unless otherwise exempted pursuant to the Act.

B. A record shall be defined as a "Public Record" as follows:

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

- a. is not exempt under Section 708 of the Act.
- b. is not exempt from being disclosed under any other Federal or State law or regulation or judicial order or decree; or
- c. is not protected by a privilege.

- C. The Authority shall not provide records that are exempted from public disclosure pursuant to Section 708(b) of the Act, regardless of whether a person or entity provides a release for such information.
- D. Pursuant to Section 708(b), draft meeting minutes of the Board of Directors shall be provided to Board Members, the Executive Director, and the Solicitor to review. Such a dissemination of draft minutes for review for purposes of subsequent approval shall not constitute a waiver of the exemption concerning meeting minutes.
- E. Regardless of the exemptions set forth in Section 708(b), Authority shall not provide documents or records that are privileged or protected by federal or state law or by any court order. In the event the Open Records Officer cannot determine the nature of a document with regard to privileged or other exemption, the Open Records Officer is authorized to seek guidance from the Authority Solicitor with regard to the same.
- F. Authority shall individually evaluate all exemptions and apply each exemption separately for purposes of determining what documents shall be provided pursuant to the Act.

Section 3. Procedure for Requesting Records.

- A. All requests for documents must be a written request submitted on a form as established by the Authority. Verbal requests shall not be considered official requests for purposes of the timeframes established by the Right to Know Law. For purposes of defining a "written request" the Authority shall accept requests by email, facsimile, mail or in person pursuant to the regulations outlined herein.
- B. All requests must be submitted to the Open Records Officer. In no event shall a request be considered officially submitted until received by the Open Records Officer.
- C. Upon receipt of a written request for a public record, the Open Records Officer shall make a diligent attempt to determine whether such a request involves a public record and whether the Authority is in possession of the subject record.

- D. Authority shall not be required to create a record which does not currently exist or compile, maintain format or organize a record in a manner not maintained as of the date of the request.
- E. Authority shall follow the Open Records Law procedures for redaction when appropriate.

Section 4. Extension of Time

- A. Authority shall respond to all requests within five business days. In instances of a voluminous request requiring a thirty day extension as provided under Section 902(a)(7) of the Act, or any other circumstances noted in Section 902 relating to an extension of time, Authority shall advise the requester within five (5) days of the need for additional time.

Additional time may be necessary when any of the following factors apply:

- 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 section 706;
- 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 specific staffing limitations;
- 4. a legal review is necessary to determine whether the record is a record subject to access under this act;
- 5. the requester has not complied with the agency's policies regarding access to records;
- 6. the extent or nature of the request precludes a response within the required time period.

- B. When an extension of time is necessary under the factors set forth above the Open Records Officer shall provide the following information:

1. 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 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 five business days allowed for in section 901, 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.
2. 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.

Section 5. Authority Discretion. The Authority may exercise its discretion to make an otherwise exempt record accessible for inspection and copying as set forth in the Pennsylvania Open Records law, if all of the following conditions apply:

- A. disclosure of the record is not prohibited by state or federal law or regulation or judicial order or decree;
- B. the record is not protected by a privilege
- C. the Executive Director determines that the public interest favoring access outweighs any individual agency or public interest that may favor restriction of access.

Section 6. Fees for Records Requests.

- A. The Authority shall adopt the fees as established by the Pennsylvania Office of Open Records and shall revise said fee schedule as the Pennsylvania Office of Open Records provides updates or additional information.
- B. In the event that a fee for the processing a request shall exceed or is reasonably believed to exceed \$100.00, the Authority shall require a pre-payment of \$100.00 in order to process said request.

Section 7. Denial of Access. In the event that the Authority seeks to deny a request for information, in whole or in part, the denial shall be in writing and set forth the following information:

- A. a description of the request;
- B. the specific reasons for denial and the support therefore;
- C. the typed or printed name, title business address , business telephone number and signature of the open-records officer who has issued such denial; and
- D. the date of the response;
- E. the procedure to appeal said denial under the Open Records Act.

Section 8. Posting. Authority shall post the following information at the Authority and on the Authority's web-site and maintain such information in an up-to-date format when necessary:

- A. Contact information for the Authority Open Records Officer;
- B. Contact information for the Pennsylvania Office of Open Records or other applicable appeals officer;
- C. A form that may be used to file a request
- D. Regulations, policies and procedures of the Authority relating to this Resolution.

Section 9. Bid Documents. Authority shall provide notice on all competitive bid forms related to authority procurement that information within proposals, including financial information of a bidder may be provided as a public record, if appropriate pursuant to the discretion of the Open Records Officer, after a bid is awarded.

Section 10. Appeals. The appeal of any action which is covered by this Resolution shall take place pursuant to the time limitations, provisions and procedures outlined in Section 1101 of the Pennsylvania Open Records Law.

DULY ADOPTED as a Resolution by the Authority's Board of Directors,
Lackawanna County, Pennsylvania, this ____ day of _____, 2008.

By the Board

Chair