

ALLEGHENY COUNTY SANITARY AUTHORITY

PUBLIC RECORD POLICY

§1. **Short Title.** This Policy shall be known as the “Allegheny County Sanitary Authority Public Record Policy.”

§2. **Definitions.** For purposes of this Policy, the following words and terms shall have the meanings set forth below unless otherwise expressly stated. Any terms or words not defined herein shall be interpreted consistent with the definitions and meanings referenced in §102 of the Pennsylvania Right-to-Know Law, 65 P.S. §67.102, as amended.

Act – The Pennsylvania Right-to-Know Law, 65 P.S. §67.101 *et seq.*, as amended.

Agency – A Commonwealth agency, a local agency, a judicial agency or a legislative agency.

Authority – The Allegheny County Sanitary Authority.

Authority Executive Director – the Executive Director of the Authority.

Authority Office – The offices of the Authority located at 3300 Preble Avenue, Pittsburgh, PA 15233.

Board of Directors – The Board of Directors of the Allegheny County Sanitary Authority.

Confidential Proprietary Information – Commercial or financial information received by the Authority which is privileged or confidential and the disclosure of which would cause substantial harm to the competitive position of the person or entity that submitted the information to the Authority.

Financial Record – Includes the following: (1) any account, voucher or contract dealing with the receipt or disbursement of funds by the Authority or the Authority'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 the Authority, including the name and title of the officer or employee; or (3) a financial audit report which does not include the work papers underlying an audit.

Open Records Officer (ORO) – The Authority official or employee appointed under §3.A. of this Policy to handle the responsibilities of the Open Records Officer established under §3 of this Policy and §502 of the Act, 65 P.S. §67.502.

Policy – The Allegheny County Sanitary Authority Public Record Policy.

Public Record – Any record, including a financial record, maintained by the Authority except in the following circumstances: (1) the record is exempt under §708 of the Act, 65 P.S. §67.708; (2) 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; or (3) the record is exempt from disclosure under any other federal or state law or regulation, or judicial order or decree.

Record – Information, regardless of physical form or characteristics, that documents a transaction or activity of the Authority and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the Authority. 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.

Record Request – A written request submitted under this Policy that seeks to access the Authority’s public records.

Requester – A person that is a legal resident of the United States and requests a record pursuant to this Act. This term also includes a Commonwealth agency, a local agency, a judicial agency or a legislative agency as those terms are defined by §102 of the Act, 65 P.S. §67.102.

Response – Access to a record or the Authority’s written notice granting, denying or partially granting and partially denying access to a record.

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; and (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.

§3. **Open Records Officer.**

A. **Appointment.** The Assistant to the Executive Director is appointed as the Authority Open Records Officer pursuant to the Act.

B. **Functions.** The Open Records Officer shall receive requests submitted to the Authority under the 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 issue interim and final responses under the Act. Upon receipt of a request for a public or financial record, the Open Records Officer shall do all of the following:

- (1) Note the date of receipt on the written request;
- (2) Compute the day on which the five (5) business day response period under §901 of the Act, 65 P.S. § 67.901, will expire and make a notation of that date on the written request;
- (3) 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 calendar days or, if an appeal is filed, until a final determination is issued under §1101(b) of the Act, 65 P.S. § 67.1101(b), or the appeal is deemed denied.

§4. **Posting of Information.** The following information shall be posted at the Authority Office and on the Authority's Internet website:

- A. Contact information for the Authority Open Records Officer;
- B. Contact information for the State Office of Open Records;
- C. The form which shall be used to file a record request; and
- D. The Policy.

§5. **Requests for Access to Authority Public Records.**

A. **General Rule.**

(1) **Public Records.** Unless otherwise provided by law or this Policy, a public record of the Authority shall be accessible for inspection and duplication by a requester in accordance with the Act and this Policy. A record being provided to a requester shall be provided in the medium requested if the record exists in that medium; otherwise it shall be provided in the medium in which it exists. Public records shall be available for access at the Authority Office during the regular business hours of the Authority, which are: 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding legal or governmental holidays. Nothing in this Policy shall provide for access to a record which is not a public record or shall be construed to require access to any Authority computer or any computer of an individual Authority employee.

(2) **Exemptions.** The Authority exempts from disclosure those records set forth in §708 of the Act, 65 P.S. §67.708. The burden of proving that an Authority public record is exempt from public access shall be on the Authority by a preponderance of the evidence.

B. **Written Requests.**

(1) All requests for access to Authority records must be in writing on such form as may be prescribed from time to time by the Open Records Officer. The Authority will not fulfill oral requests or oral or written anonymous requests for access to

records. In the event that the requester wishes to pursue the relief and remedies provided for in the Act, the requester must initiate such relief through a written request to the Authority.

(2) A written request for access to Authority records shall be transmitted to the Authority in person, by mail or by facsimile. A written record request shall be addressed to the Open Records Officer, Allegheny County Sanitary Authority, 3300 Preble Avenue, Pittsburgh, PA 15233 and shall include: (1) an identification or description the requested records with sufficient specificity to enable the Authority to ascertain which records are being requested; and (2) the name and address to which the Authority should address its response. A written record request need not include any explanation of the requester's reason for requesting or intended use of the records. Employees of the Authority are directed to forward all requests for records to the Open Records Officer.

§6. **Authority Response to Record Requests.**

A. **General Rule.**

(1) Upon receipt of a written record request, the Authority shall make a good faith effort to determine if the record requested is a public record and whether the Authority 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 full in order to receive access to the record requested. The time period for the Authority's response to a written record request shall not exceed five (5) business days from the date the written request is received by the Authority. If the Authority fails to send the response within five (5) business days of receipt of the written record request, then said record request shall be deemed denied.

(2) The Authority may not deny a requester access to a public record due to the intended use of the public record by the requester.

B. **Extension of Time.** Upon receipt of a written record request, if the Open Records Officer determines that one of the following situations applies to said record request, then the Open Records Officer shall send written notice to the requester within five (5) business days of the Authority's receipt of the record request. This written notice shall include: (1) a statement notifying the requester that the request for access is being reviewed; (2) the reason for the review; (3) a reasonable date by which a response is expected to be provided; and (4) an estimate of the applicable fees owed when the record becomes available. If the date by which the response is expected to be provided is in excess of 30 calendar days, following the five (5) business days from the Authority's receipt of the written record request, then 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. If the requester agrees to such extension, the request shall be deemed denied on the day following the date specified in the notice if the Authority has not provided a response by that date.

The situations referenced above are as follows:

- (1) The request for access requires redaction of a public record in accordance with §6(G) hereof.
- (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 limitations.
- (4) A legal review is necessary to determine whether the record requested is a record subject to access under the Act.
- (5) The requester has not complied with the Authority's policies regarding access to records contained in this Policy.
- (6) The requester refuses to pay applicable fees authorized by the Act and imposed by §10 hereof.
- (7) The extent or nature of the request precludes a response within the required time period.

C. **Denial of Record Request.** If the Authority's response is a denial of a written record request, whether in whole or in part, then the Authority shall send a written response to the requester at the address listed on the written record request. The written response denying the written record request shall include the following:

- (1) A description of the record requested.
- (2) The specific reasons for the denial, including a citation of supporting legal authority. If the denial is a result of a determination by the Authority that the record requested is not a public record, then the specific reasons for such determination must be included.
- (3) The typed or printed name, title, business address, business telephone number and signature of the Open Records Officer on whose authority the denial was issued.
- (4) The date of the response.
- (5) The procedure to appeal the denial under the Act and this Policy.

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

E. **Certified Copies.** If the Authority's response grants a request for access, then the Authority shall, upon request, provide the requester with a certified copy of the record if the requester pays the applicable fees referenced in §10 hereof.

F. **Electronic Access.** The Authority may respond to a written record request by notifying the requester that the record is available through publicly accessible electronic means or that the Authority will provide access to inspect the record electronically. If the requester is unwilling or unable to access the record electronically, the requester may, within 30 calendar days following receipt of the Authority's written response, submit a written request to the Authority to have the record converted to paper. The Authority shall provide access to the record in printed form within five (5) business days of the receipt of the written request for conversion to paper.

G. **Redaction.** If the Authority determines that a public record contains information which is subject to access as well as information which is not subject to access, then the Authority'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 and cannot be separated, then the Authority 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 Authority may not deny access to the public record if the information which is not subject to access is able to be redacted. Information which the Authority redacts in accordance with this subsection, shall be deemed a denial under §6 hereof.

H. **Disruptive Requests.** The Authority may deny a written record request if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Authority. A denial by the Authority of a disruptive request shall not restrict the ability of the requester to request a different record.

I. **Disaster or Potential Damage.** The Authority may deny a written record request: (1) when timely access is not possible due to fire, flood or other disaster; or (2) to historical, ancient or rare documents, records, archives and manuscripts when access may, in the professional judgment of the custodian of such record, cause physical damage or irreparable harm to the record. To the extent possible, the contents of a record described herein shall be made accessible to a requester even when the record is physically unavailable.

J. **Public Record Possession.** A public record that is not in the possession of the Authority but is in the possession of a party with whom the Authority has contracted to perform a governmental function on behalf of the Authority, and which directly relates to its governmental function and is not otherwise exempt under this Act, shall be considered a public record of the Authority. Nothing in these regulations or the Act shall be construed to require access to any other record of the party in possession of the public record.

K. **Discarding Requested Records.** If the Authority's response to a requester states that copies of the requested records are available for delivery at the Authority Office and the

requester fails to retrieve the records within 60 calendar days of the Authority's response, the Authority may dispose of any copies which have not been retrieved and retain any fees paid to date.

L. **Record Retention.** Nothing in this Policy or the Act shall be construed to modify, rescind or supersede any record retention policy or disposition schedule of the Authority established pursuant to law, regulation, policy or other directive.

§7. **Production of Certain Records.**

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

B. **Requests for Trade Secrets.** Prior to the Authority's disclosure of a record, the Authority shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification shall be provided within five (5) business days of receipt of the request for the record. The third party shall have five (5) business days from receipt of notification from the Authority to provide input on the release of the record. The Authority shall deny the record request or release the record within 10 business days of the provision of notice to the third party and shall notify the third party of the decision.

C. **Transcripts.** Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding before Board of Directors shall be provided to a requester by the Authority stenographer or a court reporter, in accordance with the Authority's procedure or an applicable contract. Following an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding before Board of Directors shall be provided to a requester in accordance with the duplication rates established in §10 of this Policy.

D. **Audio/Video Tapes and Meeting Minutes.**

(1) **General.** Tape recordings (in audio or video format) may be made of public meetings of the Board of Directors and/or other Authority agencies and commissions. Tape recordings of such meetings and the proposed minutes related to the same shall not be reviewed by the public until the minutes of the subject meeting have been adopted by formal action of the Board of Directors or respective Authority agency/commission.

(2) **Public Review.** Tape recordings and meeting minutes shall be available for public review after the respective meeting minutes have been adopted. The tape recordings may be reviewed by members of the public at the Authority Office during the regular business hours referenced in §5.A.(1) hereof, as long as the method of review does not interfere with the operation of the Authority Office. Tape recordings of public meetings referenced in Subsection (1) above shall not leave the Authority

Office.

(3) **Destruction of Tape Recordings.** Tape recordings of public meetings referenced in Subsection (1) above may be erased, recycled and/or destroyed by the Authority after six (6) months have elapsed from the subject public meeting.

§8. **Appeal of Authority's Determination.**

A. **Filing of an Appeal.** If a written request for access is denied or deemed denied, then the requester may file an appeal with the State Office of Open Records within 15 business days of the mailing date of the Authority's response or within 15 business days of a deemed denial. The appeal shall specifically state the grounds upon which the requester asserts that the record is a public record and shall specifically address any grounds stated by the Authority for delaying or denying the request.

B. **Determination.** Unless the requester agrees otherwise, the Appeals Officer from the State Office of Open Records shall make a final determination regarding the requester's appeal within 30 calendar days of the mailing date of the appeal. Prior to issuing the final determination regarding the appeal, a hearing may be conducted. The determination of 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 to the Authority.

§9. **Judicial Appeal.**

A. **General Procedure.** Within 30 calendar days of the date a request for access is deemed denied or of the mailing date of a final determination by the Appeals Officer, a requester may file a petition for review (or other document as may be required by rule of court) with the Court of Common Pleas of Allegheny County. A requester is entitled to a reasoned decision containing findings of fact and conclusions of law based upon the evidence as a whole which clearly and concisely states and explains the rationale for the decisions so that all can determine why and how a particular result was reached. A petition for review shall stay the release of documents until a decision is issued by the Court of Common Pleas of Allegheny County.

B. **Notices.** The Authority, the requester and the State Office of Open Records shall be served notice of any court or other actions commenced, and shall have an opportunity to respond in accordance with applicable court rules.

C. **Record on Appeal.** The record before the Court of Common Pleas of Allegheny County shall consist of: the request; the Open Records Officer's response; the requester's appeal; the hearing transcript, if any; and the a final written determination of the Appeals Officer from the State Office of Open Records, if applicable.

§10. **Fees for Authority Services and Expenses.**

A. **Schedule of Fees.** The Authority shall charge a requester the following fees related to the fulfillment of a record request:

- (1) Copies: 25¢ per page. A copy is defined as either a single-sided copy or one side of a double-sided black-and-white copy of a standard 8.5 inch by 11 inch page.
- (2) Specialized Document Copies: Actual cost. Specialized documents shall include, but not be limited to, blue prints, color copies, and non-standard sized documents.
- (3) Certification of a Record: \$1 per record (not per page). This certification fee does not include any necessary notarization fees.
- (4) Facsimile/Microfiche/Other Media: Actual cost.
- (5) Postage: The actual cost of mailing.
- (6) Conversion to Paper: If a public record is only maintained electronically or in other non-paper media, the Authority shall charge the requester a fee for converting the document to paper. This fee shall be limited to the lesser of the fee for duplication on paper or for duplication in the native media as provided by §10.A.(2) above, unless the requester specifically requests for the public record to be duplicated in the more expensive medium.

B. **Waiver of Fees.** The Authority may waive the fees for duplication of a public record, including, but not limited to, when: (1) the requester duplicates the public record; or (2) the Authority deems it is in the public interest to do so.

C. **Other Fees/Limitations.** Except as otherwise provided by statute, no fees other than those listed in subsection A. above may be imposed upon the requester unless the Authority necessarily incurs costs for complying with the record request, and such fees shall be reasonable. However, the Authority recognizes it shall not impose a fee for its review of a record to determine whether the record is a public record subject to access under the Act.

D. **Prepayment.** Prior to granting a request for access in accordance with the Act, a requester shall prepay an estimate of the fees authorized under this section if the fees required to fulfill the request are expected to exceed \$100. In no event shall any public records or reports be released until the requester first pays the Authority all fees due and payable.

§11. **Amendments.** The Board of Directors delegates to the Authority Executive Director the authority to amend this Policy, in writing from time to time, at the discretion of the Authority Executive Director without further action by the Board of Directors.