

BOROUGH OF AVALON

RESOLUTION NO. 1047 OF 2008

**A RESOLUTION OF THE BOROUGH OF AVALON,
COUNTY OF ALLEGHENY IN THE COMMONWEALTH OF PENNSYLVANIA,
APPOINTING HARRY W. DILMORE AS THE "OPEN RECORDS OFFICER"
AND LORRAINE MAKATURA AS THE "DEPUTY OPEN RECORDS OFFICER" FOR
THE BOROUGH OF AVALON AND ADOPTING IN FULL THE PROCEDURES
SET FORTH IN THE REVISED RIGHT TO KNOW LAW, SENATE BILL 1
ACT 3 OF 2008, EFFECTIVE JANUARY 1, 2009**

WHEREAS, the Revised Right to Know Law, Senate Bill 1/Act 3 of 2008, is to take effect January 1, 2009 for all record requests made after December 31, 2008;

WHEREAS, section 502 of the Act requires the Borough of Avalon to appoint an "Open Records Officer" with the specific duties and responsibilities as defined by the Act;

WHEREAS, the Borough of Avalon has decided to appoint Harry W. Dilmore as the "Open Records Officer" and Lorraine Makatura as the "Deputy Open Records Officer" for the Borough of Avalon;

WHEREAS, the Borough of Avalon, including its Open Records Officer and Deputy Open Records Officer, intend to comply fully with the requirements of the Act; and

WHEREAS, in order to comply with Act, the Borough herein adopts the following policies and procedures.

NOW THEREFORE, be it resolved by the Council of the Borough of Avalon and it is hereby resolved with authority of the same as follows:

SECTION 1: The Borough of Avalon hereby appoints Harry W. Dilmore as the "Open Records Officer" and Lorraine Makatura as the "Deputy Open Records Officer" for the Borough of Avalon.

**PROCEDURES TO FOLLOW UNDER THE REVISED RIGHT TO KNOW LAW,
SENATE BILL 1, ACT 3 OF 2008**

SECTION 2: Upon receipt of a request for a record, the Open Records Officer is to do all of the following in compliance with section 502 of the Act:

- a. Place a date on the receipt of the written request;
- b. Compute the expiration of the five business days under section 901, and place that deadline on the written request, so as to timely provide initial Notice to the Requestor;
- c. Maintain either an electronic or paper copy of the written request. The Officer will also retain copies of all documents submitted along with the request to the Borough. **If a request is denied, the Borough will retain the written request for thirty (30) days.** However, if an appeal is filed, a written request will be maintained until the appeal is resolved; and
- d. Create a file for retaining the original request, a copy of the response, a record of all written communications to and from the Requestor, and copies of other communications.

SECTION 3: Consistent with section 902 of the Act, the Open Records Officer will determine the following upon receiving a written request for a record:

- a. Whether the request for access requires redaction of a record;
- b. Whether the request for access requires a retrieval of a record stored in a remote facility;
- c. Whether a timely response to the request is impossible due to legitimate staffing limitations;
- d. Whether a legal review is needed to determine whether the record is subject to access under the Act;

- e. Whether the person requesting the record has complied with the Borough's policies regarding requests;
- f. Whether the Requestor has refused to pay the applicable fees; and
- g. Whether the extent or nature of the request precludes a response within the required time.

SECTION 4: Pursuant to sections 901 and 902 of the Act and upon determining which of the above factors set forth in section 3 of this Resolution apply, the Open Records Officer will send a written Notice to the Requestor **within five (5) business days of receiving the request for access**. This Notice shall include the following information:

- a. A statement notifying the Requestor that the request for access is being reviewed;
- b. The reason for the review; and
- c. A reasonable date that a response is expected to be provided and an estimate of the applicable fees owed when the records become available.

SECTION 5: If a response from the Borough is expected to **exceed thirty (30) days beyond the initial five (5) business days**, then, pursuant to section 902 of the Act, the request for access shall be deemed denied unless the Requestor has agreed, in writing, to an extension to the date specified in the Notice. If the Requestor agrees to the extension, the request shall be deemed denied on the date following the date specified in the Notice, if the Borough has failed to meet the deadline.

SECTION 6: In compliance with section 903 of the Act, the Borough will issue all denials in writing, and these denials shall include the following information:

- a. A description of the record requested;

- b. The specific reason for the denial, including a citation to 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. The date of the response; and
- e. The procedure to appeal the denial of access under the Act.

SECTION 7: Assuming that the Borough agrees to release the record, the Borough of Avalon shall, pursuant to section 904 of the Act, provide the Requestor with a certified copy of the record if the Requestor pays the applicable fees.

SECTION 8: If the Borough advises the Requestor that the records are available for pick up at the Borough Office **but the Requestor fails to retrieve the records within sixty (60) days of the Borough's response**, then, consistent with section 905 of the Act, the Borough may dispose of any copies which have been retrieved but retain any fees paid by the Requestor to date.

SECTION 9: The Borough of Avalon may fulfill verbal, written, or anonymous verbal or written requests for access to records, pursuant to section 702 of the Act. However, the Borough is not required to do so, and a Requestor will have no remedy unless a written request for the record is submitted.

SECTION 10: In accord with section 704 of the Act, the Borough may respond to a request by notifying the Requestor that the record is available through publicly accessible electronic means or that the Borough will provide access to inspect the records electronically. Nevertheless, if the Requestor is unwilling or unable to access the record electronically, the Requestor may, **within thirty (30) days following the receipt of the**

Borough's notification, submit a written request to the Borough to have the record converted to paper. If this written request is made, the Borough will provide access to the record in printed form **within five (5) days of receiving this written request** so as to comply with section 704 of the Act.

SECTION 11: In accord with section 705 of the Act, this Resolution does not require the Borough to create a record which does not currently exist or to compile, maintain, format, and/or organize a record in a manner in which the Borough does not currently compile, maintain, format, or organize its records.

SECTION 12: So as to comply with section 701 of the Act, a record shall be provided to a person in the medium requested by that person---so long as the record already exists in that medium.

SECTION 13: If the information which is not subject to access is nevertheless an integral part of the public record which is subject to access, the Borough will redact from the record the information which is not subject to access, as authorized by section 706 of the Act. Therefore, the Borough will grant access to the non-redacted portions of the record. Further, the Borough will clearly delineate what has been redacted with the word "redacted" and set forth a very brief reason as to the basis for the redaction.

SECTION 14: Pursuant to section 506 of the Act, the Borough may deny a request or access to a record if the person requesting the record has made repeated requests for the same record, and repeated requests have placed an unreasonable burden on the Borough.

SECTION 15: In accord with section 506 of the Act, the Borough may deny a Requestor access under the following circumstances:

- a. When timely access is not possible due to fire, flood, or other disaster; or
- b. When, in the professional judgment of the Open Records Officer, accessing historical, ancient, or rare documents or records may cause irreparable harm or physical damage to those records.

SECTION 16: Pursuant to section 506 of the Act, the Borough may, in its discretion, make otherwise exempt records accessible for inspection and copying if all of the following conditions apply:

- a. Disclosure of the record is not prohibited under either federal law, state law or regulation, or providing the record will not violate a judicial order or decree;
- b. The record is not protected by a privilege (i.e., attorney client/doctor patient); and
- c. The Borough has determined that the public interest favoring access outweighs any individual, Borough, or public interest that may favor restriction or access.

SECTION 17: If possible and so as to comply with section 506 of the Act, the Borough will make the contents of a record available when the record itself is unavailable—provided those contents are subject to disclosure in the first instance.

SECTION 18: If the record requested is possessed by a third party with whom the Borough has contracted to perform a governmental function on the Borough's behalf, then the Borough will consider that record a public record so long as it pertains to a governmental function performed by the third party on the Borough's behalf. Under these circumstances, the Open Records Officer will assess and collect a copying fee from the Requestor and shall then pay the fee to the third party which possesses the record.

SECTION 19: As permitted by section 701 of the Act, the Borough's policy under the Open Records Act does not provide a Requestor access to a computer or an individual employee of the Borough.

SECTION 20: The Borough herein intends to exempt from disclosure those records set forth in section 708 of the Act.

SECTION 21: The Borough herein intends to follow the procedural guidelines set forth in section 707 of the Act regarding the disclosure of trade secrets or proprietary information.

SECTION 22: Pursuant to section 703 of the Act, if another employee of the Borough receives a request for records, then that employee will immediately forward that request to the Open Records Officer.

SECTION 23: As authorized by section 1307 of the Act, the Borough shall assess the following fees:

- a. Fees for postage will not exceed the actual cost of mailing;
- b. Fees for photocopying, printing from electronic media or microfilm, copying onto electronic media, facsimile, or other electronic means of duplication as established by the Office of Open Records, but all fees will be reasonable and based on prevailing fees for comparable duplication services provided by local business entities;
- c. The Borough may impose reasonable fees for official certified copies, if the certification is requested by the Requestor;
- d. If a record is only maintained electronically or in another non-paper medium, duplication fees will be limited to the lesser of the fee for duplicating the paper or the fee for duplicating the original medium, unless the Requestor specifically requests the record to be duplicated in a more expensive medium;
- e. The Borough will not impose any other fees, unless the Borough necessarily incurred costs for complying with the request; and

- f. If fees required to fulfill a request are expected to exceed \$100.00, the Borough will, prior to granting a request for access, require the Requestor to prepay an estimate of the fees.

SECTION 24: The Borough will post the following information at its municipal office, located at 640 California Avenue:

- a. Contact information for the Open Records Officer;
- b. Once obtained, contact information for the Office of Open Records at the state level or applicable Appeals Officer;
- c. A form that the Borough may create for making a request; and
- d. The Regulations and Policies detailed in this Resolution.

RESOLVED, this 18th day of November, 2008.

ATTEST:

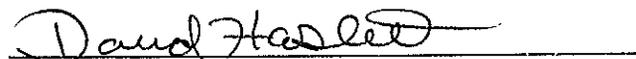


Harry Dilmore
Secretary/Borough Manager



Ed Klicker
President of Borough Council

THIS RESOLUTION EXAMINED AND APPROVED BY ME
this 18th day of NOVEMBER 2008.



Mayor, David Haslett