

COUNTY OF FOREST
OPEN RECORDS LAW
POLICIES & PROCEDURES

I. Definitions

- A. **“Act” or “Open Records Law”** – The Act of June 21, 2957 (P.L. 390, No. 212), as amended by Act 2002-50, 65 P.S. §§ 66.1-66.9, commonly referred to as the “Right-to-Know Law,” and, Act 3 of 2008, commonly referred to as to as the “Open Records Law”.
- B. **“County”** – Forest County, Pennsylvania.
- C. **“County Office(s)”** – Any office of the legislative and/or executive branch of the government of Forest County no matter where physically located, and whether headed by an appointed or an elected official.
- D. **“Deemed Denied”** – A request is deemed denied if one of the following conditions occurs: (i) The Open Records Official receiving a written Open Records Request fails to respond within the initial 5-business-day period; (ii) the Open Records Official extends the 5-business-day period by up to 30-calendar days, but then fails to respond by the end of that extended period; or (iii) the Open Records Official notifies the Requester that it requires additional time to respond in excess of the permitted 30-calendar-day period.
- E. **“Mailing Date”** – The date affixed to a response to a request for access to records, which is to be the date the response is deposited in the United States Mail or, for a person submitting a request, the date of the postmark on the envelope transmitting the request.
- F. **“Open Records Official”** – Any official or employee designated by the Board of Commissioners to receive Open Records Requests.
- G. **“Open Records Request”** – Either (i) a written request submitted to the Open Records Official asking for access to a Record, a copy of a Record or information purported to be in the possession of the County; or (ii) a written request presented to the Open Records Official that invokes the Act.
- H. **“Public Record”** – Any document that satisfies the general definition of “public record” set forth in the Act and does not fall within any of the exceptions set forth therein, as the definition of exceptions are amended from time to time and as the definition and exceptions are interpreted by state, federal, and/or local courts.
- I. **“Record”** – Any document maintained by the County, in any form, whether public or not.
- J. **“Requester”** – A person who requests a record pursuant to the Open Records Law.
- K. **“Response”** – The Open Records Official’s reply to a request made pursuant to the Act. A Response may be either (i) the act of providing the Requester with access to a record, or (ii) the Open Records Official’s written notice granting, denying, or partially granting and partially denying access to a record.

L. **“Solicitor”** – Office of the County Solicitor for the County.

II. **Functions**

A. **Open Records Official** – Pursuant to the Act, the Board of Commissioners shall designate an official or employee of the County as the County’s Open Records Official responsible for receiving, tracking, and responding to Open Records Requests.

III. **Procedure**

A. **Requests –**

- (1) **Oral Requests** - The Act does not require that the County respond to oral requests. Each County Office and the Open Records Official may refuse to accept any oral request.
- (2) **Anonymous Requests** – The Act does not require that the County respond to Anonymous Requests. Each County Office and the Open Records Official shall refuse to accept any written request that does not identify the Requester.
- (3) **Non-anonymous Written Requests** – The Act requires that the County act upon each non-anonymous written request when such request is submitted in person, by mail, or by facsimile, or e-mail. Requests submitted by an electronic method (e-mail) or by facsimile are permitted by the Act.
 - (i) **Contents of a Request** – The Act sets forth various specifications for the contents of a written request. Thus, the request must include the name of the Requester and the address to which the County should address its Response. The request should identify or describe the Records sought with sufficient specificity to enable the County to ascertain which Records are being requested.
 - (ii) **Reason for the Request** – The Act provides that the Requester need not include the reason for the request or the intended use of the Records. Therefore, the County shall not insist that such a statement be provided, nor shall it reject or refuse a request on the grounds that no such reason was given.
 - (iii) **Forms** – The County may create or adopt forms for use by Requesters in preparing written requests. As provided in the Act, the County will also accept the Office of Open Records Request Form published by the Commonwealth of Pennsylvania’s Office of Open Records.
- (4) **Citizenship Requirement** – The Act provides that the County provide a Requester with access to a Public Record if the Requester is a citizen of the United States. The County may require that the Requester produce photographic identification to determine proof of citizenship.

B. Submittal of Open Records Requests –

- (1) All Open Records Requests are to be addressed to:

Open Records Official
County of Forest
526 Elm Street #3
Tionesta, PA 16353
(814) 755-3537 (telephone)
(814) 755-8837 (facsimile)
openrecords@co.forest.pa.us (e-mail)

The County shall post this information to its website and shall post it at a location that is publicly accessible.

- (2) The five (5) business day period to respond does not begin until the County's Open Records Official has received a request. If an Open Records Request is submitted to a County Office or to an official or employee of the County other than the Open Records Official, the five (5) business day period has not yet begun.

C. County's Duty to Provide a Prompt Response to an Open Records Request –

- (1) **Five (5) business-day period** - Section 3.3(a) of the Act provides that, upon receipt of a written Open Records Request, the County must make a good faith effort to determine if the requested Record is a Public Record and to respond as promptly as possible under the circumstances existing at the time of the request, and that this time shall not exceed five (5) business days from the date the written request is received by the County's Open Records Official. The Act provides that either a final or an interim written response must be made within five (5) business days from the date that the Open Records Official received the request. If the Open Records Official fails to respond within that time period, the Open Records Request is deemed denied.
- (2) **30-Calendar-Day Extension Period** – Although, in general, the Act and this Policy contemplate that Requesters will receive a Response within the five (5) business day period, it also provides the County with certain specific exceptions to invoke a single extension of time, which may not exceed 30 calendar days. If an extension is invoked and then there is no timely Response, the Open Records Request is Deemed Denied. Likewise, if the Open Records Official has notified the Requester that it needs more than the maximum of 30 days, the Request is Deemed Denied.

D. Processing of Open Records Requests by the Open Records Official –

- (1) Upon receiving an Open Records Request, the Open Records Official shall, at a minimum, promptly complete the following tasks:
- (a) Date-stamp the Open Records Request.
- (b) Assign a tracking number to the Open Records Request.

- (c) Compute the day on which the five (5) business day period will expire and make a notation of that date.
 - (d) Make a paper copy of the Open Records Request, including all documents submitted with it and the envelope (if any) in which it was received.
 - (e) Create an official file for the retention of the original Open Records Request.
 - (f) Record the Open Records Request in the system used by the County for tracking Open Records Requests.
- (2) For purposes of determining the five (5) business-day period:
- (a) A business day shall be from 9:00 am until 4:00 pm on any weekday, except those days when the offices of the County are closed for all or part of a day due to a holiday; severe weather (such as a blizzard or ice storm); natural or other disaster; or at the request or direction of local, state, or federal law enforcement officials.
 - (b) Any Open Records Request received by the Open Records Official after the end of its regular business hours shall be deemed received by that official on the following business day.
 - (c) For purposes of determining the end of the five (5) business day period, the day that an Open Records Request is received (or deemed received) is not counted. The first day of the five (5) business day period is the County's next business day.

E. Responses –

- (1) The act of providing a Requester with physical access to a document or copy of the requested Record is a "Response" for purposes of this Open Records Policy. Unless the County issues written policies to the contrary, only the Open Records Official possesses the authority to permit this access.
- (2) Where timely access is not provided in accordance with (1), the Act requires that the County's response be in writing. The Open Records Official has the duty to prepare and send written Responses. In preparing a written Response, the Open Records Official may consult, as necessary, with the Solicitor, and other County officials and employees having control over or specific knowledge of the Records.
- (3) The County is not required to create a Public Record that does not already exist, nor is the County required to compile, maintain, format, or organize a Public Record in a manner in which the County does not currently do so.

- (4) The Open Records Official shall send written Responses to Requesters by one of the following, at its discretion: United State mail, facsimile transmission, electronic transmission, overnight or parcel delivery service, or courier delivery.

F. Physical Access to Public Records –

- (1) The Act requires that, unless otherwise provided by law, the Public Records of the County must be accessible for inspection by any Requester during the regular business hours of the County.
- (2) Access shall be provided by the Open Records Official in an accessible location which may be determined by the size, complexity, or other circumstances of the request.

G. Interim Written Responses –

- (1) The Act requires that the County must provide a Response to the Open Records Request within five (5) business days unless one or more specific conditions are satisfied and the County gives the Requester written notice that additional time will be required. That notice is referred to as an “interim response”.
- (2) The circumstances in which the County may obtain an extension of time in which to provide a final Response are set forth in the Open Records Law.

H. Written Final Responses –

- (1) **Types of Final Responses** – The Act provides for three types of written final responses:
 - (a) The County grants the entire Open Records Request.
 - (b) The County denies the entire Open Records Request.
 - (c) The County grants part of the Open Records Request and denies the remainder.
- (2) **Deemed Denials** – The failure of the County to make a timely final response is a Deemed Denial under the terms of the Act.
- (3) **Final Responses that Deny Open Records Requests, Either in Whole or in Part –**
 - (a) A Response that denies an Open Records Request, either in whole or in part, shall list all of the specific reasons relied upon by the County for denying the Open Records Request and shall include one or more citations of supporting authority.
 - (b) In the event that the County’s Response is a denial or a partial denial, the Response shall also contain a notice informing the Requester of the right to file an appeal.

- (c) Inaction by the County is not a Response, even when it results in a Deemed Denial.

I. Redaction –

- (1) “Redaction” means the eradication of a portion of a record while retaining the remainder.
- (2) Method. A Record shall be redacted when parts of the Record are not Public Record or are protected and shall not be disclosed as set forth in the Act. Redaction shall be performed in such a way as to maintain the confidentiality or security of the protected information. Thus, for instance, merely crossing out text usually does not suffice if the underlying words can be made out by careful examination. An example of effective redaction is to create a photocopy of an existing document; to completely obliterate the selected text using a black marker; and to photocopy that document so that the obliterated text on the first copy cannot be read through the marker ink. Other techniques may also be used. In complying with the Open Records Law’s redaction requirements, the County is not required to alter their original records.

J. Duplication of Public Records –

- (1) A Public Record shall be accessible for duplication by a Requester. The County is not required to make duplication equipment available to a Requester, but shall provide other means by which a Requester may obtain copies, through County personnel.
- (2) The County will assign its own staff to make the duplications requested by the Requester; or it may contract for duplication services and require that the Requester pay the contractor for those services. The County shall charge the Requester a reasonable fee that is consistent with the prevailing charges in the geographic location where the duplication occurs. The Board of Commissioners shall establish such fees from time to time.

IV. Appeals

All appeals of Denials or Deemed Denials shall be filed with the Commonwealth’s Office of Open Records and will be mitigated as described in the Act.

V. Retention and Disposal of Public Records

There are statutes, regulations, and other laws that regulate the County’s retention and disposition of Records. The County shall follow the mandates of these laws and regulations. Neither the Act nor this Policy modifies, rescinds or supersedes any retention or disposition schedule established pursuant to law or other regulation.

VI. Written Policies and Regulations

The County and the Open Records Official each have the discretion to adopt any other written policies consistent with the Act and these Policies and Procedures, as amended from time to time, that they deem to be necessary or prudent, consistent with the Open Records Law. For example,

written policies can be adopted governing the manner in which access to records will be provided, the need and adequacy of proof of identification, restrictions or prohibitions on the removal of records, the availability of County duplicating equipment and associated staff, and the ability of a Requester to bring photocopying or other equipment into the offices of the County.

VII. **Fees and Charges**

- A. Fees and charges as permitted by the Act are hereby established by the Fee Schedule attached as Schedule A and may be amended by the County Commissioners from time to time as appropriate, using the standards provided in the Act.
- B. The Act requires that, in various circumstances, the County shall redact information from records. The Act provides that additional fees may be imposed if the County necessarily incurs costs for complying with a request. However, such fees must be reasonable. The Open Records Official may establish such fees, depending upon the volume and complexity of the Records requested.
- C. The County may, at its discretion, insist that payment be made by certified check. In the alternative, the County may insist that a personal or business account check must first have cleared. If the fee is for copying only, the County may allow access to the Records but may refuse to make copies until the fee is paid. If the fee is for redaction or some other service that is necessary in order for access to be provided, the County may deny access until the fee is paid.