

## PUBLIC RECORDS POLICY

### Public Records

#### 1. Purpose

The Council of the Town of McCandless recognizes the importance of public records as the record of the Town's actions and the repository of information about the Town. The public has the right to access and procure copies of public records, with certain exceptions, subject to law, Town policy and administrative regulations.

#### 2. Definitions

Financial record - any account, voucher or contract dealing with the receipt or disbursement of funds or acquisition, use or disposal of services, supplies, materials, equipment or property; the salary or other payments or expenses paid to an officer or employee, including the individual's name and title; and a financial audit report, excluding the audit's underlying work papers.

Public record - a record, including a financial record, that is not protected by a defined privilege or is not exempt from being disclosed under one of the exemptions in Pennsylvania's Right-to-Know Law or under other federal or state law or regulation, or judicial decree or order.

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

Response - granting of access to a record or the Town's written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.

Requester - a legal resident of the United States, or an agency, who requests access to a record.

#### 3. Authority

The Council shall make the Town's public records available for access and duplication to a requester, in accordance with law, Town policy and administrative regulations.

#### 4. Delegation of Responsibility

The Town shall designate an Open Records Officer, who shall be responsible to:

1. Receive written requests for access to records submitted to the Town.
2. Review and respond to written requests in accordance with law, Town policy and administrative regulations.
3. Direct requests to other appropriate individuals in the Town or in another agency.

4. Track the Town's progress in responding to requests.
5. Issue interim and final responses to submitted requests.
6. Maintain a log of all record requests and their disposition.
7. Ensure Town staff is trained to perform assigned job functions relative to requests for access to records.

Upon receiving a request for access to a record, the Open Records Officer shall:

1. Note the date of receipt on the written request.
2. Compute and note on the written request the day on which the five-business day period for response will expire.
3. Maintain an electronic or paper copy of the written request, including all documents submitted with the request, until the request has been fulfilled.
4. If the written request is denied, maintain the written request for thirty (30) calendar days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

## 5. Guidelines

Requesters may access and procure copies of the public records of the Town during the regular business hours of the administration offices.

A requester's right of access does not include the right to remove a record from the control or supervision of the Open Records Officer.

The Town shall not limit the number of records requested.

When responding to a request for access, the Town is not required to create a record that does not exist nor to compile, maintain, format or organize a record in a manner which the Town does not currently use.

Information shall be made available to individuals with disabilities in an appropriate format, upon request and with sufficient advance notice.

The Town shall post the following information at the administration office and on the Town's web site:

1. Contact information for the Open Records Officer.
2. Contact information for Pennsylvania's Office of Open Records.

3. Copies of this policy and any administrative regulations and procedures governing requests for access to the Town's public records.
4. The form to be used to file a request, with a notation that the state Office of Open Records form may also be used if the Town decides to create its own form.

### Request For Access

A written request for access to a public record shall be submitted in writing and addressed to the Town's Open Records Officer.

Written requests may be submitted to the Town in person, by mail, to a designated facsimile machine, and to a designated e-mail address.

Each request must include the following information:

1. Identification or description of the requested record, in sufficient detail.
2. Medium in which the record is requested.
3. Name and address of the individual to receive the Town's response.

The Town shall not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.

### Response To Request

Town employees shall be directed to forward requests for access to public records to the Open Records Officer.

Upon receipt of a written request for access to a record, the Open Records Officer shall determine if the requested record is a public record and if the Town has possession, custody or control of that record.

The Open Records Officer shall respond as promptly as possible under the existing circumstances, and the initial response time shall not exceed five (5) business days from the date the written request is received by the Open Records Officer.

If the Town fails to respond to a request within five (5) business days of receipt, the request for access shall be deemed denied.

### Extension Of Time

Upon receipt of a written request for access, the Open Records Officer will determine if any one or more of the following applies:

1. Redaction - the request for access requires redaction of a record.

2. Retrieval Time/Remote Storage - the request for access requires retrieval of a record stored in a remote location.
3. Staffing Limitations - a timely response to the request for access cannot be accomplished due to bona fide and specified staffing limitations.
4. Legal Review - a legal review is necessary to determine whether the requested record is a public record subject to access.
5. Lack of Policy Compliance - the requester has not complied with Town policy governing access to public records.
6. Failure to Pay Fees - the requester refuses to pay applicable, established fees.
7. Nature of Request - the extent or nature of the request precludes a response within the required time period.

If the Open Records Officer determines that an extension of time is required to respond to a request, in accordance with the factors stated in law, written notice shall be sent within five (5) business days of receipt of request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and an estimate of applicable fees owed when the record becomes available.

Up to a thirty (30) calendar day extension for one (1) of the listed reasons does not require the consent of the requester. If the response is not given by the specified date, it shall be deemed denied on the day following that date.

A requester may consent in writing to an extension that exceeds thirty (30) calendar days, in which case the request shall be deemed denied on the day following the date specified in the notice if the Open Records Officer has not provided a response by that date.

### Granting Of Request

If the Open Records Officer determines that the request will be granted, the response shall inform the requester that access is granted and either include information on the regular business hours of the administration office, provide electronic access, or state where the requester may go to inspect the records or information electronically at a publicly accessible site. The response shall include a copy of the fee schedule in effect, a statement that prepayment of fees is required in a specified amount if access to the records will cost in excess of one hundred dollars (\$100.00), and the medium in which the records will be provided.

A public record shall be provided to the requester in the medium requested if it exists in that form; otherwise, it shall be provided in its existing medium. However, the Town is not required to permit use of its computers.

The Open Records Officer may respond to a records request by notifying the requester that the record is available through publicly accessible electronic means or that the Town shall provide access to inspect the record electronically. If the requester, within thirty (30) calendar days

following receipt of the Town's notice, submits a written request to have the record converted to paper, the Town shall provide access in printed form within five (5) business days of receipt of the request for conversion to paper.

A public record that the Town does not possess but is possessed by a third party with whom the Town has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of the Town.

If the Open Records Officer determines that a public record contains information both subject to and not subject to access, the Open Records Officer shall grant access to the information subject to access and deny access to the information not subject to access. The Open Records Officer shall redact from the record the information that is not subject to access. The Open Records Officer shall not deny access to a record if information is able to be redacted.

If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the administration office, and the requester does not retrieve the record within sixty (60) calendar days of the Town's response, the Town shall dispose of the copy and retain any fees paid to date.

#### Notification To Third Parties

When the Town produces a record that is not a public record in response to a request, the Open Records Officer shall notify any third party that provided the record to the Town, the person that is the subject of the record, and the requester.

The Open Records Officer shall notify a third party of a record request if the requested record contains a trade secret or confidential proprietary information, in accordance with law and administrative regulations.

#### Denial Of Request

If the Open Records Officer denies a request for access to a public record, whether in whole or in part, a written response shall be sent to the requester, which response shall include the following:

1. Description of the record requested.
2. Specific reasons for denial, including a citation of supporting legal authority.
3. Name, title, business address, business telephone number, and signature of the Open Records Officer on whose authority the denial is issued.
4. Date of the response.
5. Procedure for the requester to appeal a denial of access.

The Open Records Officer may deny a request for access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Town.

The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.

Information that is not subject to access and is redacted from a public record shall be deemed a denial.

### Appeal of Denial

If a written request for access to a public record is denied or deemed denied, the requester may file an appeal with Pennsylvania's Office of Open Records within fifteen (15) business days of the mailing date of the Open Records Officer's response or deemed denial.

### Fees

The Town shall establish and keep current a list of reasonable fees relative to requests for public records.

No fee may be imposed for review of a record to determine whether the record is subject to access under law.

The Town may require prepayment of estimated fees when the fees required to fulfill the request are expected to exceed \$100.

The Town may waive duplication fees when the Town deems it is in the public interest to do so.

Fees:

Postage – Fees for postage shall not exceed the actual cost of mailing.

Photocopies - \$0.25 per page for 11" x 17" or smaller; \$1.00 per page for any larger sheets or the actual cost incurred by the Town, whichever is greater

Copies from Microfilm - \$0.50 per page

Copies of Video/Audiotapes - Actual cost incurred by Town

Printing from Electronic Media - \$0.25 per page

Copying onto Electronic Media - Actual cost incurred by Town

Facsimile Transmission – Local Call, \$1.00 per transmission; Long Distance, \$1.50 per page.

Certification – The Town's fee for official certification of copies containing the Town seal is \$2.00 per copy.

## Exempted Records

To determine if a requested record is exempt from access, the Open Records Officer will consider and apply each exemption separately.

The following records are exempt from public access by a requester in accordance with the Right-To-Know Law\*:

1. Loss of Funds/Physical Harm/Personal Security - when the disclosure of a record would result in the Town's loss of federal or state funds or would reasonably be likely to result in a substantial and demonstrable risk of physical harm to or personal security of an individual.
2. Public Safety - when the disclosure of a record maintained in connection with the military, homeland security, national defense, law enforcement or other public safety activity would reasonably be likely to jeopardize or threaten public safety or public protection activity, or a record that is designated classified by an appropriate federal or state military authority.
3. Safety/Security of Facilities - when the disclosure of a record creates a reasonable likelihood of endangering the safety or physical security of a building, public utility, resource, infrastructure, facility, or information storage system, which may include:
  - a. Documents or data relating to computer hardware; source files; software; and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act.
  - b. Lists of infrastructure, resources and significant special events, including those defined by the federal government in the National Infrastructures Protections, that are deemed critical due to their nature and result from risk analysis; threat assessments; consequences assessments; antiterrorism protective measures and plans; counterterrorism measures and plans; and security needs assessments.
  - c. Building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems; structural elements; technology; communication; electrical; fire suppression; ventilation; water; wastewater; sewage; and gas systems.
4. Computer Systems - when the disclosure of a record regarding computer hardware, software and networks, including administrative and technical records, would reasonably be likely to jeopardize computer security.
5. Medical Information - when the disclosure of a record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation; consultation; prescription; diagnosis or treatment; results of tests, to include drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocational rehabilitation; workers' compensation and

unemployment compensation; or related information would disclose individually identifiable health information.

6. Personal Identification Information - disclosure of the following personal identification information:
  - a. A record containing all or part of an individual's Social Security number; driver's license; driver's license number; personal financial information; home, cellular or personal telephone numbers; personal e-mail addresses; employee number or other confidential personal identification number.
  - b. A spouse's name, marital status, beneficiary or dependent information.
  - c. The home address of a law enforcement officer or judge.

Personal information that must be disclosed includes the name; position; salary; actual compensation or other payments or expenses; employment contract; employment-related contract or agreement; and length of service of a public official or Town employee.

The Open Records Officer may redact from a record the name or other identifying information relating to an individual performing an undercover or covert law enforcement activity.

7. Certain Employee Information - disclosure of the following records relating to a Town employee:
  - a. A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office.
  - b. A performance rating or review.
  - c. The result of a civil service or similar test administered by a Commonwealth agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.
  - d. The employment application of an individual who is not hired by the Town.
  - e. Workplace support services information.
  - f. Written criticisms of a Town employee.
  - g. Grievance material, including documents related to discrimination or sexual harassment.

- h. Information regarding discipline, demotion or discharge contained in a personnel file, except information that applies to the Town's final action that results in demotion or discharge.
  - i. An academic transcript.
8. Labor Relations/Negotiations/Arbitration - disclosure of a record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration proceedings, unless otherwise provided under collective bargaining agreement and the employees' actual file. In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, disclosure of an exhibit entered into evidence at an arbitration proceeding or a transcript of the arbitration or the opinion.

This exemption does not apply to a final or executed contract or agreement between the parties in a collective bargaining agreement, or to the final award or order of the arbitrator in a dispute or grievance procedure.

9. Predecisional Drafts - disclosure of the draft of a bill, resolution, regulation, statement of policy, management directive, or ordinance, or their amendments, prepared by or for the Town.
10. Predecisional Deliberations -

Disclosure of a record that reflects:

- a. The internal, predecisional deliberations of the Town, its Council members, employees or officials, or predecisional deliberations between Town Council members, employees or officials and members, employees or officials of another agency, including predecisional deliberations relating to a budget recommendation; legislative proposal; legislative amendment; contemplated or proposed policy or course of action; or any research, memos or other documents used in the predecisional deliberations, subject to law governing open meetings.

Public records do include a record of any of the above that is not exempt from access by law and which is presented to a quorum for deliberation in accordance with law governing open meetings; a written or Internet application or document that has been submitted to request Commonwealth funds; and the results of public opinion surveys, polls, focus groups, marketing research or similar efforts designed to measure public opinion.

- b. The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation.
11. Trade Secret/Confidential Proprietary Information - disclosure of a record that constitutes or reveals a trade secret or confidential proprietary information.
12. Personal Notes/Working Papers - disclosure of notes and working papers prepared by or for a Town public official or employee used solely for that official's or employee's own

personal use, including telephone message slips; routing slips; and other materials that do not have an official purpose.

13. Donor Identity - disclosure of records that would disclose the identity of an individual who lawfully makes a donation to the Town, unless the donation is intended for or restricted to providing remuneration or personal tangible benefit to a Town public official or employee, including lists of potential donors compiled by the Town to pursue donations; donor profile information; or personal identifying information relating to a donor.
14. Unpublished Academic Works - disclosure of unpublished lecture notes, unpublished manuscripts, unpublished articles, creative works in progress, research-related material, and scholarly correspondence of a community college or an institution of the State System of Higher Education or one of their faculty members, employees, guest speakers or students.
15. Academic Records - disclosure of academic transcripts, examinations, examination questions, scoring keys and answers to examinations, including licensing and other examinations relating to the qualifications of an individual; examinations; and examinations given in institutions of higher education.
16. Criminal Investigations - disclosure of a record of the Town or an agency relating to or resulting in a criminal investigation, including:
  - a. Complaints of potential criminal conduct other than a private criminal complaint.
  - b. Investigative materials, notes, correspondence, videos and reports.
  - c. A record that includes the identity of a confidential source or of a suspect who has not been charged with an offense to whom confidentiality has been promised.
  - d. A record that includes information made confidential by law or court order.
  - e. Victim information, including any information that would jeopardize the safety of a victim.
  - f. A record that if disclosed would reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges; deprive an individual of the right to a fair trial or impartial adjudication; impair the ability to locate a defendant or codefendant; hinder an agency's ability to secure an arrest, prosecution or conviction; or endanger the life or physical safety of an individual.

This exemption does not apply to information contained in a police blotter as defined in law and utilized or maintained by the State Police, local, campus, transit or port authority police department or other law enforcement agency, or in a traffic report except as provided by law.
17. Noncriminal Investigations - disclosure of a Town record relating to a noncriminal investigation, including:

- a. Complaints submitted to the Town.
  - b. Investigative materials, notes, correspondence and reports.
  - c. A record that includes the identity of a confidential source, including individuals subject to the Whistleblower Law.
  - d. A record that includes information made confidential by law.
  - e. Work papers underlying an audit.
  - f. A record that if disclosed would reveal the institution, progress or result of a Town investigation, except the imposition of a fine or civil penalty; the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by an agency or an executed settlement unless the agreement is determined to be confidential by a court; deprive a person of the right to an impartial adjudication; constitute an unwarranted invasion of privacy; hinder an agency's ability to secure an administrative or civil sanction; or endanger the life or physical safety of an individual.
18. Emergency Communications - disclosure of records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings, unless the agency or a court determines that the public interest in disclosure outweighs the interest in nondisclosure.
  19. DNA/RNA - disclosure of DNA and RNA records.
  20. Coroner/Medical Examiner - disclosure of specific records and reports of a coroner or medical examiner.
  21. Draft Minutes - disclosure of draft minutes of any Council meeting until the next regularly scheduled Council meeting, minutes of an executive session, and any record of discussions held in executive session.
  22. Real Estate Appraisals/Feasibility Studies - disclosure of the contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Town relative to the leasing, acquiring, or disposing of real property or an interest in real property; the purchase of public supplies or equipment included in the real estate transaction; and construction projects.
- This exemption does not apply to the documents listed above once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property, the purchase of public supplies, or a construction project.
23. Library Records - disclosure of library and archive circulation and order records of an identifiable individual or groups of individuals.

24. Library/Museum Materials - disclosure of library archived and museum materials or valuable or rare book collections or documents contributed by gift, grant, bequest or devise, to the extent of any limitations imposed by the donor as a condition of the contribution.
25. Archeological Site/Endangered Species - disclosure of a record identifying the location of an archeological site or an endangered or threatened plant or animal species if not already known to the general public.
26. Pre-Contract Award Documents - disclosure of a proposal pertaining to Town procurement or disposal of supplies, service or construction prior to the award of the contract or prior to the opening and rejection of all bids; financial information of a bidder or offerer requested in an invitation for bid or request for proposals to demonstrate the bidder's or offerer's economic capability; or the identity of members, notes and other records of Town proposal evaluation committees established under law relating to competitive sealed proposals.
27. Insurance Communications - disclosure of a record or information relating to a communication between the Town and its insurance carrier, administrative service organization or risk management office.

This exemption does not apply to a contract with an insurance carrier, administrative service organization or risk management office, or to financial records relating to the provision of insurance.

28. Social Services - disclosure of a record or information identifying an individual who applies for or receives social services, the type of social services received by an individual, an individual's application to receive social services, or eligibility to receive social services.
29. General Assembly Correspondence - disclosure of correspondence between an individual and member of the General Assembly and records accompanying the correspondence that would identify an individual requesting assistance or constituent services, except for correspondence between a member of the General Assembly and a principal or lobbyist under law.
30. Minors - disclosure of a record identifying the name, home address or date of birth of a child seventeen (17) years of age or younger.
31. Town Does Not Possess Record – A request for a public record that the Town does not possess but is possessed by a third party with whom the Town has contracted to perform a governmental function and which relates directly to that governmental function must be submitted to the Town's Open Records Officer.

If the Open Records Officer determines that the requested record is subject to public access, the Open Records Officer will respond and grant access in accordance with law, Town policy and administrative regulations.

The requester will pay the established duplication fee.

If the third party that possessed the requested public record duplicated the record in response to the request, the Open Records Officer will remit the fee to the third party.

The third party is not required to provide access to any other of its records.

32. Transcripts Of Administrative Proceedings – Prior to an adjudication becoming final, binding and nonappealable, a transcript of an administrative proceeding will be provided to a requester by the proceeding’s stenographer.

To request access to a pre-final adjudication transcript possessed by a stenographer that is subject to disclosure, the requester must directly contact the stenographer and pay the fees assessed by the stenographer.

After an adjudication becomes final, binding and nonappealable, a transcript of an administrative proceeding will be provided to a requester, and the established duplication fee will be charged.

33. Trade Secrets/Confidential Proprietary Information

When a third party provides a record to the Town and includes a written statement signed by its representative that the record contains a trade secret or confidential proprietary information, the Open Records Officer will notify that third party of a request for access to that record.

Trade secret is defined as information, including a formula; drawing; pattern; compilation such as a customer list; program; device; method; technique; or process that 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 is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The term includes data processing software obtained by the Town under a licensing agreement prohibiting disclosure.

Confidential proprietary information is defined as commercial or financial information that is privileged or confidential and the disclosure of which would cause substantial harm to the competitive position of the individual that submitted the information.

The Open Records Officer will provide notice within five (5) business days of receipt of the request. The third party will have five (5) business days from receipt of the Open Records Officer’s notice to provide input on the release of the requested record.

The Open Records Officer will provide access to the record or will deny the request for access within ten (10) business days of providing notice to the third party and will notify the third party of the Open Records Officer’s decision.

34. Computer Access

The Open Records Officer will not grant requests for access to the Town’s or its employees’ computers.

35. Discretionary Access

The Open Records Officer may exercise discretion and make an otherwise exempt record accessible in response to a request.

The exempted record will be made accessible for access and duplication, in accordance with law and Town policy, if all of the following apply:

- a. Disclosure of the record is not prohibited by federal or state law or regulation, or by judicial order or decree.
- b. The record is not protected by privilege, to include the attorney-work product doctrine; attorney-client privilege; doctor-patient privilege; speech and debate privilege; or other privilege recognized by a relevant court.
- c. The Town Manager determines that the public interest favoring access outweighs any individual, Town or public interest that may favor restriction of access.

\*The Town reserves the right to deny a request for any record which has been deemed to be exempt by the Office of Open Records or a court of competent jurisdiction.

#### Financial Records

The listed exemptions do not apply to financial records, except that the Open Records Officer shall redact the portions of a financial record protected under exemptions 1, 2, 3, 4, 5, 6, 16 or 17.

#### Aggregated Data

The listed exemptions do not apply to aggregated data maintained or received by the Town, except for data protected under exemptions 1, 2, 3, 4 or 5.

#### Law Enforcement Activity

The Open Records Officer will not disclose the identity of an individual performing an undercover or covert law enforcement activity.