

WEST WYOMING ORDINANCE NUMBER 1-2003

AN ORDINANCE OF THE BOROUGH OF WEST WYOMING SETTING FORTH THE POLICY REGARDING REQUESTS FOR PUBLIC RECORDS PURSUANT TO THE RIGHT TO KNOW LAW

WHEREAS: Act 100-2002 was enacted on June 29, 2002 amending the Right to Know Law and requiring municipal subdivisions and authorities to adopt a policy implementing the provisions and requirements of the law; and

WHEREAS: The Borough of West Wyoming is an "agency" as defined by the "Right to Know Law," as amended; and

WHEREAS: The purpose of the resolution is to set forth a policy regarding requests for public records made to the Borough of West Wyoming pursuant to the Right to Know Law; and

NOW THEREFORE BE IT RESOLVED BY THE Council of the Borough of West Wyoming and it is hereby ordained by the authority of same:

Section I: Definitions

The following words and phrases when used in this ordinance shall have the meanings given to them in this section and unless the context clearly indicated otherwise:

"Borough" The Borough of West Wyoming

"Administrator" The Borough Administrator for West Wyoming

"Public Record" Any account ,voucher or contract dealing with the receipt or disbursement of funds by the Borough of West Wyoming or its acquisition, use or disposal of services or of supplies, materials, equipment or other property and any minute, order or decision by the Borough of West Wyoming fixing the personal or property rights, privileges, immunities, duties or obligations of any person or group of persons, :provided that the term "Public Records" shall not mean any report, communication or other paper , the publication of which would disclose the institution progress or result of an investigation undertaken by the Borough of West Wyoming in the performance of fits official duties; it shall not include any record , document , material, exhibit, pleading, report, memorandum or other paper, access to or the publication of which is prohibited, restricted or forbidden by statute, law or order or decree of court, or which would operate to the prejudice or impairment of a person's reputation or personal security, or which would result in the loss by the Borough of West Wyoming of federal, or state funds, excepting there from however the record of any conviction for any criminal act.

"Record" Any document maintained by the Borough of West Wyoming, in any form, whether public or not.

“Requester” A person who is a resident of the Commonwealth of Pennsylvania and requests a record pursuant to this act.

“Response” Access to a record or the Borough’s written notice granting, denying or partially granting and partially denying access to a record.

“Town Council” The Town Council of the Borough of West Wyoming

Section II: Procedure for Access to Public Records of the Borough

- (a) **General Rule:** Unless otherwise provided by law, a public record of the Borough of West Wyoming shall be accessible for inspection and duplication by a requester in accordance with this ordinance. A public record shall be provided to a requester in the medium requested if the public record exists in that medium; otherwise, it shall be provided in the medium in which it exists. Public records shall be available for access during the regular business hours of the Borough. Nothing in this Act shall provide for access to a record, which is not a public record.
- (b) **Requests:** The Borough will not fulfill verbal requests for access to records and anonymous requests for access to records. In the event that the requester wishes to pursue the relief and remedies provided for in the Right to Know Law, the requester must initiate such relief with a written request. All requests for records must be in writing.
- (c) **Written Requests:** A written request for access to records may be received in person, by mail, by facsimile or by electronic means. A written request shall be addressed to the Manager of the Borough of West Wyoming, 464 West Eighth Street, P.O. Box 35, West Wyoming, PA 18644-0035. Written requests shall identify or describe the records sought with sufficient specificity to enable the Borough to ascertain which records are being requested and shall include the name and address to which the Borough should address its response. A written request need not include any explanation of the requester’s reason for requesting or intended use of the records.
- (d) **Creation of a Public Record:** When responding to a request for access the Borough shall not be required to create a public record which does not currently exist or to compile, maintain, format or organize a public record in a manner in which does not currently compile, maintain, format or organize the public record.
- (e) **Conversion of an Electronic Record to Paper:** If a public record is only maintained electronically or in other non-paper media, the Borough shall, upon request, duplicate the public record on paper when responding to a request for access in accordance with this ordinance.

Section III. Access to Public Records

The Borough may not deny a requester access to a public record due to the intended use of the public record by the requester.

Redaction. If the Borough determines that a public record contains information, which is subject to access as well as information, which is not subject to access, the Borough'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, the Borough shall redact from the public record the information which is not subject to access and the response shall grant access to the information which is subject to access. The Borough 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 Borough redacts in accordance with this section, shall be deemed under section "The Borough's Response to Written Request for Access."

The Borough's Response to Written Requests for Access

- (a) **General Rule:** Upon receipt of a written request for access to a record, the Borough shall make a good faith effort to determine if the record requested is a public record and to respond as promptly as possible under the circumstances existing at the time of the request, but shall not exceed five (5) business days from the date the written request is received by the Borough. If the Borough fails to send the response within five (5) business days of receipt of the written request for access, the written request for access shall be deemed denied.
- (b) **Exception:** Upon receipt of written request for access, if the Borough determines that one of the following applies: If Borough's response grants a request for access, it shall upon request, provide the requester with a certified copy of the public record if the requester pays the applicable fees.

Final Determination

- (a) **Filing of Exceptions:** If a written request for access is denied or deemed denied, the requester may file exceptions with the Town Council within 15 business days of the mailing date of the responses or within 15 days of a deemed denial. The exceptions shall state grounds upon which the requester asserts that the record is a public record and shall address any grounds stated by the Borough for delaying or denying the request.
- (b) **Determination:** Unless the requester agrees otherwise the Town Council or its designee shall make a final determination regarding the exceptions within 30 days of the mailing date of the exceptions. Prior to issuing the final determination regarding the exceptions, the Town Council of the Borough of West Wyoming or its designees may conduct a hearing. The determination shall be the final order of the Borough. If the Council or its designees determined that the request for access was correctly denied, then the Borough shall provide a written explanation to the requester of the reason for the denial.

Judicial Appeal

- (a) Within 30 days of a denial by the Borough under the above section or of the mailing of a final determination of the Borough affirming the denial of access, a requester may file a petition for review or other document as might be required by rule of court with the Court of Common Pleas of Luzerne County or bring an action in the local magistrate district having jurisdiction.
- (b) Notice The Borough shall be served notice of any court or other action commenced and shall have an opportunity to respond in accordance with applicable court rules.

Fees

- (a) Postage: The Borough may impose a fee for postage, which may not exceed the actual prevailing cost of mailing.
- (b) Duplication: (1) the request for access requires redaction of a public record in accordance with that section; (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 accompanied due to bona fide and specified staffing limitations; (4) a legal review is necessary to determine whether the record is a public record subject to access under this act;; (5) the requester has not complied with the Borough's policies regarding access to public records; (6) the requester refuses to pay applicable fees. Then the borough shall send written notice to the requester within 5 business days of its receipt of the request notifying the requester that the request for access is being reviewed, the reason for the review and a reasonable date that a response is expected to be provided. If the date that a response is expected to be provided is in excess of 30 days , following the five business days allowed , the request for access shall be deemed denied.
- (c) Denial: If the Borough's response is a denial of a written request for access, whether in whole or in part, a written response shall be issued and include: (1) A description of the record requested; (2) specific reason for the denial; (3) identification of the official who issued the denial; (4) a copy of the ordinance to which the person can review the appeal procedure.
- (d) Cost of Copies; The Borough may charge not more than 50 cents per sheet or the prevailing fee for comparable duplication services provided by local business entities in the Luzerne County area.
- (e) Certification: Borough may charge \$15.00 for a certified copy.
- (f) Other Fees/Limitations Except as otherwise provide by statute, no other fees may be imposed. A reasonable fee equal to the actual cost shall be imposed by the Borough, out of necessity if it incurs costs not otherwise described by this ordinance for complying with the request. However, the borough may not impose a fee on the requester for a review of a record to determine whether it is a public record.

(g) Prepayment Prepayment will be required if the costs to fulfill a request exceeds \$100.00

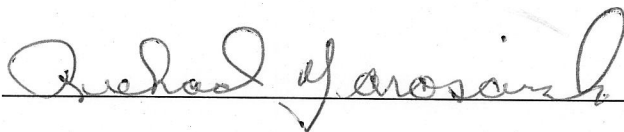
Section IV: Severability

The provisions of this ordinance are severable. If any part of this Ordinance is declared to be unconstitutional, illegal or invalid, the validity of the remaining provision shall be unaffected thereby.

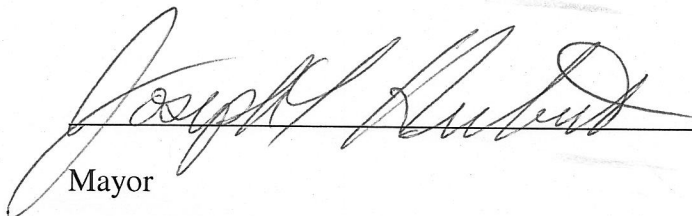
Section V: Repealer

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

Passed by West Wyoming Borough Council on 13th day of January, 2003 and signed by the Mayor on the 13th day of JAN, 2003.

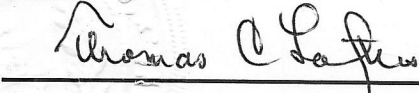


President of Council



Mayor

Attest:



Borough Secretary

