

REQUEST FOR PUBLIC RECORDS

Elk County Policy

The County of Elk and each of its offices governed by a separate elected official constitute "non-Commonwealth Agencies" as defined by the Open Records Law, Act 100 of 2002. This law is an amendment and addition to the Pennsylvania Right to Know Act, Act No. 212 of 1957. The following policies are intended to provide general guidance and may be subject to adjustment because of the differing nature of records received and maintained in the different offices within the County.

1. What constitutes a "public record"?

The Right to Know Act contains a detailed definition of what constitutes a "public record". There have also been many court cases interpreting this definition. As a general rule, all records which are in the possession of all County offices are public records. However, certain records may contain confidential or proprietary information which should be redacted before such records are made available for public access. If there is any question about the obligation to disclose a specific record, the office involved should consult with its solicitor or with the County solicitor prior to taking action on a request for disclosure.

2. What procedure should be followed to obtain access to public records?

- A. The Open Records Law does not require action on a request for public records unless the request is made in writing. In some county offices, public records are copied on a daily basis; and the person in charge of that office has the sound discretion to determine whether a written request must be provided in every instance.
- B. The County will provide a request form. This form should be used in all cases where there is a likelihood of denial or appeal.
- C. The County office must respond to all written requests for public records within five (5) business days, which includes only those days in which the particular office is actually open for business.

- D. Every response should be made in writing, with a copy retained by the County office. The response may include a claim for additional time to provide the records in the following instances:
1. Redaction of the records is required;
 2. Legitimate shortages in staff impose an unreasonable burden in responding;
 3. The requested records must be retrieved from storage at a remote location;
 4. A legal review is required to determine whether the request is appropriate;
 5. The requestor has failed to pay the required fee.

A written response claiming additional time must state the specific time, not exceeding thirty (30) days, in which the final response will be issued.

E. If the response is a denial, the response should be given on a fully-completed County denial form.

3. What procedure should be followed if a requestor takes exception to a denial?

- A. The requestor must file written exceptions with the elected official having jurisdiction over the office which maintains the records;
- B. The responsible elected official must furnish a written response to the exceptions within thirty (30) days after receipt of the written exceptions;
- C. A copy of the denial, exceptions and response must be filed with the Chief Clerk at the time that the response is issued.

4. What must be done if a requestor appeals a denial to court?

- A. The Open Records Law contains provisions for the possible assessment of attorney fees and civil penalties if a denial is appealed to court. This may therefore involve a claim under the County's errors and omissions insurance. Therefore, the Chief Clerk must be immediately notified of such an appeal, and a copy of the appeal documents must be provided to the Chief Clerk;
- B. The County Commissioners will determine whether the County Solicitor or another attorney is assigned to represent the County in the appeal. This will not prohibit the involvement of the elected official's solicitor in the appeal proceedings.

5. What if a request is in conflict with the County's written public record retention and disposition schedule?

If a County office believes that a request is in conflict with the County's written public record retention and disposition schedule, the request should immediately be referred to the Chief Clerk for review, in consultation with the County Solicitor and the solicitor for the office involved.

6. Is a County office required to gather or assemble records in the manner determined by the requestor?

No, unless the requestor agrees in advance to pay for any additional, reasonable fees or expenses to be incurred by the office to produce the records in the form set forth in the request. The office should require advance payment of the estimated cost of providing the records in the requested format.

7. What fees may be charged for providing public records?

- A. Each County office must establish and post a schedule of fees for duplication of any public records in any medium available to that office. No fee may be charged merely for conducting a review of the record to determine whether it is a public record subject to access;
- B. Each office may waive the fees for duplication of a public record where:
 - 1. The requestor duplicates the public record; or
 - 2. The elected official deems it in the public interest to do so.

8. May a county office restrict duplication of public records by the requestor on his/her own?

Yes, a county office may restrict a requestor's efforts to duplicate public records by his/her own equipment, where such self-duplication may interfere with the operations of the office or raise legitimate concerns about compromising the integrity of the records. Even where a county office permits self-duplication, the county office may still assess a reasonable fee for copying said records.