BOROUGH OF NEW HOLLAND
LANCASTER COUNTY, PENNSYLVANIA

RESOLUTION NO.______

A RESOLUTION OF THE BOROUGH COUNCIL OF THE
BOROUGH OF NEW HOLLAND, LANCASTER COUNTY,
Pennsylvania, Adopting a Policy for Inspection
and Duplication of Public Records in
Accordance With the Pennsylvania Right to
Know Law, as Amended by Act 3 of 2008.

WHEREAS, the Borough of New Holland, Lancaster County, Pennsylvania (Borough) is
an "agency," as that term is defined in the Pennsylvania Right to Know Law, Act 3 of February 14,
2008 (RTKL); and

WHEREAS, Section 8 of the RTKL mandates that the Borough adopt a policy to implement
the RTKL and to establish procedures for inspection and duplication of public records; and

WHEREAS, the RTKL authorizes the Borough to impose reasonable fees based on prevailing fees for comparable duplication services provided by local business entities; and

WHEREAS, the Borough Council desires to adopt a written policy for processing requests
for inspection and duplication of public records under the RTKL and to establish fees.

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED by the Borough Council
of the Borough of New Holland, Lancaster County, Pennsylvania, as follows:

SECTION 1. The Open Records Policy (Policy) of the Borough is hereby amended in its
entirety to read as follows:

1. PURPOSE

The purpose of this Policy is to assure compliance with Act 3 of 2008, The
Pennsylvania Right-to-Know Law, as amended; to provide access to public records
of the Borough; to preserve the integrity of the Borough's records; and to minimize
the financial impact to the residents of the Borough regarding the resources utilized
in the receipt and processing of public record requests and the retrieval and copying
of public records.

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2. DESIGNATED OPEN RECORDS OFFICER AND ALTERNATE

It is the policy of the Borough to require the presence of a designated employee when public records are examined and inspected, and to charge reasonable fees for duplication of public records of the Borough. With respect to Borough records that are not generated or kept by the police department serving the Borough (Police Department), the Borough designates the Borough Manager as the Open Records Officer (ORO), responsible for assuring compliance with the Pennsylvania Right-to-Know law, in accordance with the Policy guidelines described in this Policy. The Borough designates the Borough Operations Assistant as the Alternate Open Records Officer, who shall fulfill the same duties and responsibilities of the ORO in the absence or unavailability of the ORO. With respect to police records relating to the Borough that are generated or kept by the Police Department, the Borough designates the Chief of Police of the Police Department covering the Borough, currently the New Holland Police Department as of the adoption date of this Policy, as the Open Records Officer (ORO), responsible for assuring compliance with the Pennsylvania Right-to-Know law, in accordance with the Policy guidelines described in this Policy. The Borough designates said Police Department’s Secretary in the absence or unavailability of the Police Chief as the Alternate Open Records Officer, who shall fulfill the same duties and responsibilities of the ORO in the absence or unavailability of the ORO.

A. The Borough ORO may be reached at the New Holland Borough Office, 436 East Main Street, New Holland, PA 17557, (Phone: 717-354-4677) during normal business hours. The Police Department ORO may be reached at the New Holland Police Department, 436 East Main Street, New Holland, PA 17557, (Phone: 717-354-4647) during normal business hours.

B. The ORO may designate certain employee(s) to process public record requests on behalf of the ORO in accordance with this Policy.

C. The ORO shall develop and may require use of official Borough forms for the submission public record requests and such other forms as required by the RTKL or as otherwise deemed prudent by the ORO.

3. OPEN RECORDS BASIC GUIDELINES

A. The ORO is responsible for minimizing, whenever possible, the financial impact to the Borough regarding the resources utilized in the receipt and processing of public record requests and the retrieval and copying of public records.

B. All requests for public records under this Policy shall specifically identify and describe each public record requested. The ORO
shall NOT be required to create a public record that does not exist, or to compile, maintain, format, or organize a public record. All requests for public records shall be on forms promulgated by the ORO or the Pennsylvania Office of Open Records (PAOOR). All requests for public records shall be submitted in a legible writing and include the date of the request, the requester's name, address, telephone number, and any other desired fax number or email addresses for communications; a certification of the requesters United State's residency; the signature of requester; and if duplication is requested, the applicable required payment in cash or other certified or guaranteed funds acceptable to the ORO.

C. The ORO shall make a good faith effort to determine whether the record requested is a "public record" in accordance with the RTKI.

D. All documents deemed "public records" shall be available for inspection, retrieval, and duplication at the Borough Office or other office whenever such records are kept during normal business hours. The ORO, or designated employee, shall cooperate with the requester, while also taking reasonable measures to protect public records from the possibility of theft, alteration, modification, or damage. The ORO shall be required to be present when public records are examined and inspected by a requester.

E. The ORO shall facilitate a reasonable response to a request for Borough public records. The Borough is neither required nor expected to provide extraordinary staff to respond to a public record request, but will respond in a manner consistent with the Borough's administrative responsibilities and consistent with the requirements of the RTKI.

F. The ORO shall note on all written public record requests, the date of receipt of the request and the date that is five (5) business days thereafter, and the ORO shall respond to the request within that period. If the Borough does not respond within five (5) business days of the receipt thereof, the request automatically shall be deemed denied without further action to that effect.

G. The ORO shall notify a third party of a request for a record if the third party provided the record and included a written statement signed by a representative of the third party that the record contains a trade secret or confidential proprietary information. Notification to the third party shall be provided within five (5) business days from the receipt of a public record request. The third party shall have five (5) business days from the date of the notice from the ORO to provide input on the release of the record. The ORO shall either deny the request for the record or release the record to the requester within ten (10) business days of the date of notice to the third party and shall notify the third party of the ORO's decision.

H. The ORO's response to all public record requests shall
consist of either (1) approval for access to the public record, (2) notice that
the request is being reviewed; or (3) denial of access to the record requested.

1. The ORO shall promulgate (and may amend from time to time
as deemed appropriate by the ORO) and post in the Borough Office a fee
schedule for all fees and charges applicable to fulfilling public record
requests, which fees and charges shall not exceed any limits imposed by the
RTKL the PaOOR, and the Borough Council. Until the ORO establishes
such fee schedule, the fees for paper copies shall be $0.25 per page per side;
for police reports shall be $1.50 per report or $0.25 per page per side;
whichever is greater; for certification of a record shall be $1 ($0) per record;
for specialized documents including, without limitation, blueprints, color
copies, and nonstandard sized documents, shall be the actual charges for the
cost of production; and for mailing (if such is requested by the requester), the
actual cost of the postage and other mailing charges, costs, and expenses.
The ORO (if not otherwise directed by the Borough) or the Borough may
waive any such fees.

(1) In the event the estimated cost of fulfilling a public
record request submitted under this Policy is expected to exceed One
Hundred Dollars ($100), the ORO shall obtain the expected cost in
advance of fulfilling the public record request to avoid unwarranted
expense of Borough resources, and if the requester fails or refuses to
duly pay such expected costs at the time of the public record request
or when subsequently requested by the ORO, the request may be
denied by the ORO.

J. If the public record needs to be reviewed in the opinion of the
ORO, the ORO shall provide the requester with a written notice including,
without limitation, a statement notifying the requester that the public record
request for access is being reviewed, the reason for the review, a reasonable
date that a response is expected to be provided, and an estimate of the
applicable fees owed when the record becomes available. If the date that a
response is expected to be provided is in excess of thirty (30) days following
the five (5) business days normally allowed for a response, the public record
request for access automatically shall be deemed denied without further
action to that effect unless the requester has agreed in writing to an extension
to the date specified in the notice. If, the requester agrees to the extension,
the public record request shall be deemed denied on the day following the
date specified in the notice if the ORO has not provided a response by that
date. Review of the public record request generally is limited to the
following situations:

(1) The record public record requested contains
information that is subject to access, as well as information which is
not subject to access, that must be redacted prior to a grant of access.
The redacted information is considered denial as to the redacted information;

(2) The record requires retrieval from a remote location;

(3) A timely response cannot be accomplished due to staffing limitations;

(4) A legal review is necessary to determine whether the record is subject to access;

(5) The requester has failed to comply with the Borough’s Policy and procedure or other applicable requirements;

(6) The requester refuses to pay any or all applicable fees; or

(7) The extent or nature of the public record request precludes a response within the required time period.

K. If access to a requested public record is denied, the notice provided by the ORO shall be in writing and shall contain, without limitation, a notice of denial; the specific reason(s) for denial; any legal authority for the denial; and a notice of the requester’s right to appeal the denial to the PaOOR within fifteen business days of the mailing date of the notice or deemed denial.

L. The ORO shall maintain an electronic or paper copy of each written public record request including, without limitation, all documents submitted with the request until such request has been fulfilled. If the public record request is denied, the written public record request shall be maintained for thirty (30) days or, if an appeal is filed, until a final determination is issued by the Office of Open Records or the appeal is deemed denied.

M. If a public record request is denied or deemed denied, the requester may file an appeal of the denial with the PaOOR within fifteen (15) business days of the mailing date of the ORO’s notice of denial, or fifteen (15) days of a deemed denial. The appeal shall state the 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 public record request.

N. Within thirty (30) days of the mailing date of the final determination of the PaOOR appeals officer, the requester or the Borough may file a petition for review (or other document as required by rule of court) with the Court of Common Pleas for Lancaster County. The proper filing of such a petition for review shall stay the release of the requested documents.
that are the subject of the appeal until a final decision is issued by the Court.

4. POSTING OF POLICY

The following information shall be posted at the Borough Office and, if the Borough maintains an internet website, on the Borough's internet website:

A. Contact information for the Borough's ORO.

B. Contact information for the PAOOR.

C. A form that may be used to file a public record request with the Borough.

D. A copy of this Policy and all other written Borough policies and procedures relating to the RTKL. And

E. Any fee schedule promulgated pursuant to this Policy.

SECTION 2. Repealer. Any Ordinance, Resolution, or parts of either of the foregoing, that conflict with this Resolution is hereby repealed insofar as the same affects this Resolution.

SECTION 3. Severability. If any sentence, clause, section, or part of this Resolution is for any reason found to be unconstitutional, illegal, or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections, or parts of this Resolution. It is hereby declared as the intent of the Borough Council of the Borough that this Resolution would have been adopted had such unconstitutional, illegal, or invalid sentence, clause, section, or part thereof not been included herein.

SECTION 4. Effective Date. This Resolution shall become effective upon passage.

SECTION 5. Application Date. This Resolution shall apply to public record requests filed after December 31, 2008.

DULY ORDAINED AND RESOLVED on January 6, 2009 by the Borough Council of the Borough of New Holland, Lancaster County, Pennsylvania, in lawful session duly assembled.

ATTEST:  

BOROUGH OF NEW HOLLAND  
Lancaster County, Pennsylvania

By:

[Signature]

Print Name:
(Vice) Chairman

Richard Fulcher
Borough Secretary