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**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.

44                   **2.     DESIGNATED   OPEN   RECORDS   OFFICER   AND**  
45 **ALTERNATE**

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

66  
67           A.     The Borough ORO may be reached at the New Holland  
68 Borough Office, 436 East Main Street, New Holland, PA 17557, (Phone:  
69 717-354-4567) during normal business hours. The Police Department ORO  
70 may be reached at the New Holland Police Department, 436 East Main  
71 Street, New Holland, PA 17557, (Phone: 717-354-4647) during normal  
72 business hours.

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

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

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81           **3.     OPEN RECORDS BASIC GUIDELINES**

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

87           B.     All requests for public records under this Policy shall  
88 specifically identify and describe each public record requested. The ORO

89 shall NOT be required to create a public record that does not exist, or to  
90 compile, maintain, format, or organize a public record. All requests for  
91 public records shall be on forms promulgated by the ORO or the  
92 Pennsylvania Office of Open Records (PaOOR). All requests for public  
93 records shall be submitted in a legible writing and include the date of the  
94 request; the requester's name, address, telephone number, and any other  
95 desired fax number or email addresses for communications; a certification  
96 of the requesters United State's residency; the signature of requester; and if  
97 duplication is requested, the applicable required payment in cash or other  
98 certified or guaranteed funds acceptable to the ORO.

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

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

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

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

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

129 H. The ORO's response to all public record requests shall

130 consist of either (1) approval for access to the public record; (2) notice that  
131 the request is being reviewed; or (3) denial of access to the record requested.

132 I. The ORO shall promulgate (and may amend from time to time  
133 as deemed appropriate by the ORO) and post in the Borough Office a fee  
134 schedule for all fees and charges applicable to fulfilling public record  
135 requests, which fees and charges shall not exceed any limits imposed by the  
136 RTKL the PaOOR, and the Borough Council. Until the ORO establishes  
137 such fee schedule, the fees for paper copies shall be \$0.25 per page per side;  
138 for police reports shall be \$15 per report or \$0.25 per page per side,  
139 whichever is greater; for certification of a record shall be \$1.00 per record;  
140 for specialized documents including, without limitation, blueprints, color  
141 copies, and nonstandard sized documents, shall be the actual charges for the  
142 cost of production; and for mailing (if such is requested by the requester), the  
143 actual cost of the postage and other mailing charges, costs, and expenses.  
144 The ORO (if not otherwise directed by the Borough) or the Borough may  
145 waive any such fees.

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

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

169 (1) The record public record requested contains  
170 information that is subject to access, as well as information which is  
171 not subject to access, that must be redacted prior to a grant of access.

172 The redacted information is considered a denial as to the redacted  
173 information;

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

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

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

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

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

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

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

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

197 M. If a public record request is denied or deemed denied, the  
198 requester may file an appeal of the denial with the PaOOR within fifteen (15)  
199 business days of the mailing date of the ORO's notice of denial, or fifteen  
200 (15) days of a deemed denial. The appeal shall state the grounds upon which  
201 the requester asserts that the record is a public record and shall address any  
202 grounds stated by the Borough for delaying or denying the public record  
203 request.

204 N. Within thirty (30) days of the mailing date of the final  
205 determination of the PaOOR appeals officer, the requester or the Borough  
206 may file a petition for review (or other document as required by rule of court)  
207 with the Court of Common Pleas for Lancaster County. The proper filing of  
208 such a petition for review shall stay the release of the requested documents

209 that are the subject of the appeal until a final decision is issued by the Court.

210 **4. POSTING OF POLICY**

211  
212 The following information shall be posted at the Borough Office and, if the  
213 Borough maintains an internet website, on the Borough's internet website:

- 214  
215 A. Contact information for the Borough's ORO.
- 216  
217 B. Contact information for the PaOOR.
- 218  
219 C. A form that may be used to file a public record request with  
220 the Borough.
- 221  
222 D. A copy of this Policy and all other written Borough policies  
223 and procedures relating to the RTKL. And
- 224  
225 E. Any fee schedule promulgated pursuant to this Policy.

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

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

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

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

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

242  
243 **ATTEST:**

**BOROUGH OF NEW HOLLAND**  
Lancaster County, Pennsylvania

244  
245  
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247  
248 \_\_\_\_\_  
249 Richard Fulcher  
250 Borough Secretary

By: \_\_\_\_\_  
Print Name:  
(Vice) Chairman

251 [Borough Seal]