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## Chapter 9 – Public Information

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## Article I — [RESERVED]

## Article II — Access to Public Records

### § 9-201 Short Title.

This Article shall be known, and may be cited, as the “Alburtis Access to Public Records Ordinance.”

### § 9-202 In General.

The Borough shall make its public records available for inspection and duplication by a requester in accordance with the procedures, restrictions, limitations, and other provisions of the Right-to-Know Law, 65 PA. STAT. ANN. § 67.101 *et seq.*, and other applicable laws, regulations, ordinances, and administrative procedures, while protecting the confidentiality of materials which are do not constitute “public records,” such as materials whose access or publication is prohibited, restricted, privileged, or forbidden by state or federal law, regulation, or court order, or otherwise not required to be disclosed under the Right-to-Know Law. The provisions of the

Right-to-Know Law, as in effect on January 1, 2009 and as they may be amended from time to time thereafter are incorporated into this Chapter by reference. This Chapter supplements the statute, and in the event of any conflict between this Chapter and the Right-to-Know Law as it may be amended from time to time (and as it may be affected by other statutes, regulations, and court orders), this Chapter shall be deemed amended to the extent necessary to eliminate the conflict.

### § 9-203 Definitions.

For purposes of this Chapter, the terms defined in this Section shall have the meanings indicated, whether with or without initial capital letters, unless the context in which they are used clearly indicates a different meaning:

(a) **Financial Record.** The term “financial record” means any account, voucher or contract dealing with the receipt or disbursement of funds by the Borough or the Borough’s acquisition, use or disposal of services, supplies, materials, equipment or property; or the salary or other payments or expenses paid to an officer or employee of the Borough, including the individual’s name and title; and a financial audit report (but not including the work papers underling an audit).

(b) **Open Records Officer.** The term “Open Records Officer” means the applicable individual designated under § 9-204 (relating to Open Records Officer).

(c) **Public Record.** The term “public record” means a record of the Borough, including a financial record, that is not exempt from being disclosed under one of the exemptions in the Right-to-Know Law, 65 PA. STAT. ANN. § 67.101 *et seq.*, or under other federal or state law or regulation, or judicial order or decree, and which is not protected by the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege, or other privilege recognized by a court interpreting the laws of the Commonwealth of Pennsylvania.

(d) **Record.** The term “record” means information, regardless of physical form or characteristics, that documents a Borough transaction or activity and is created, received or retained pursuant to law or in connection with a Borough transaction, business or activity, including: 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.

(e) **Response.** The term “response” means the Borough’s notice granting a requester access to a record, or the Borough’s written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.

(f) **Requester.** The term “requester” means a legal resident of the United States, or an agency (as defined in the Right-to-Know Law), who requests access to a record.

## § 9-204 Open Records Officer.

(a) **General.** Except as provided in subsection (b), Council hereby designates the Borough Manager as the Borough's Open Records Officer. In the absence of the Borough Manager, the Treasurer shall serve as the temporary Open Records Officer to the extent action needs to be taken during the absence of the Borough Manager, and if the Treasurer is also absent, the President of Council shall serve as the temporary Open Records Officer to the extent action needs to be taken during the absence of the Borough Manager.

(b) **Police Department.** Council hereby designates the Chief of Police as the Borough's Open Records Officer with respect to records maintained by the Borough's Police Department. In the absence of the Chief of Police, the Chief's designee (or in the absence of a designation, the available police officer with the highest rank and most seniority in that rank) shall serve as the temporary Open Records Officer to the extent action needs to be taken during the absence of the Chief of Police.

(c) **Coordination Between Open Records Officers.** The Open Records Officers designated under subsections (a) and (b) shall coordinate their activities to insure that a request improperly made to one Open Records Officer is forwarded to the other Open Records Officer, to insure that a request applicable to records which are maintained by the Borough Police Department and also to other records of the Borough are addressed by both Open Records Officers, and to provide a single comprehensive response to each request.

(d) **Consultation with Solicitor.** The Open Records Officer shall consult with the Solicitor as necessary to assist in complying with this Chapter and the law regarding disclosure of public records and protection of confidential information.

(e) **Duties.** In addition to all other duties set forth in this Chapter, the Open Records Officer shall be responsible to:

- (1) Receive written requests for access to records submitted to the Borough.
- (2) Review and respond to written requests in accordance with law, this Chapter, and administrative regulations.
- (3) Direct requests to other appropriate individuals in the Borough or in another agency.
- (4) Track the Borough'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 Borough employees are trained to perform assigned job functions relative to requests for access to records.

## § 9-205 General Guidelines

(a) **Time for Access.** Requesters may access and procure copies of the public records of the Borough during the regular business hours of the Borough's administrative office.

(b) **No Removal of Records.** A requester's right of access does not include the right to remove a record from the control or supervision of the Borough employee(s) charged with custody over the record, or, to the extent permitted by law, their supervisors or the Open Records Officer or his/her designee. At least one of these individuals must supervise any inspection of a public record by a requester.

(c) **Number of Records.** The Borough shall not limit the number of records requested.

(d) **Creation of Record.** When responding to a request for access, the Borough is not required to create a record that does not exist nor to compile, maintain, format or organize a record in a manner in which the Borough does not currently compile, maintain, format, or organize the record.

(e) **Individuals with Disabilities.** Information shall be made available to individuals with disabilities in an appropriate format, upon request and with sufficient advance notice.

### **§ 9-206 Information to be Posted at Borough Hall and on the Internet.**

The Borough shall post the following information at a publicly-accessible location at Borough Hall and on the Borough's Internet web site:

(a) Contact information for the Open Records Officer.

(b) Contact information for the state's Office of Open Records or other applicable appeals officer.

(c) The form to be used to file a request, with a notation that the uniform form of the state Office of Open Records may also be used if the Open Records Officer establishes a special form for the Borough.

(d) This Chapter and any supplemental administrative regulations and procedures governing requests for access to the Borough's public records.

### **§ 9-207 Request for Access.**

(a) **Form.** A written request for access to a public record shall be submitted on the uniform form provided by the state Office of Open Records or on any form promulgated by the Open Records Officer.

(b) **Submission.** The written request shall be addressed to the Open Records Officer. Written requests may be submitted in person at the Borough Hall, 260 Franklin Street, Alburtis, PA 18011, or by mail to the Borough Hall at the above address, by facsimile machine to 610-965-5517, or by e-mail addressed to office@alburtis.org.

(c) **Information Required.** Each written request must include the following information:

(1) Identification or description of the requested record, with sufficient specificity to enable the Open Records Officer to ascertain which records are being requested.

- (2) Medium in which the record is requested.
- (3) Name and address of the individual to receive the Borough's response.

(d) **Explanations from Requester.** The Borough shall not require an explanation of the reason for the request or the intended use of the requested record, unless otherwise required by law.

(e) **Verbal Requests.** Any Borough employee who receives a verbal request for access to records shall not make the records available to the requester unless the employee has already been specifically authorized by the applicable Open Records Officer to make records of that exact category of information available without further authorization. Otherwise, the Borough employee shall inform the requester that he/she must submit a written request to the Open Records Officer.

### § 9-208 Response to Request.

(a) **Receipt—In General.** Borough employees shall immediately forward requests for access to public records to the applicable Open Records Officer.

(b) **Receipt by Open Records Officer.** 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-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. If the written request is denied, maintain the written request for thirty (30) days or, if an appeal is filed, until a final determination is issued or the appeal is deemed denied.

(c) **Determination by 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 Borough has possession, custody or control of that record.

(d) **Initial Response.** The Open Records Officer shall respond to a written request for access 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. The initial response shall either:

- (1) grant access to the requested record;
- (2) deny access to the requested record;
- (3) partially grant and partially deny access to the requested record;
- (4) notify the requester of the need for an extension of time to fully respond; or
- (5) request more detail from the requester to clearly identify the requested material.

(e) **Deemed Denial.** If the Borough fails to respond to a request within five (5) business days after receipt, the request for access shall be deemed denied.

### § 9-209 Extension of Time.

(a) **In General.** If the Open Records Officer determines that an extension of time is required to respond to a request for one of the reasons set forth in 65 PA. STAT. ANN. § 902(a), written notice shall be sent to the requester within five (5) business days after receipt of the request. The notice shall indicate that the request for access is being reviewed, the reason for the review, a reasonable date when the response is expected, and an estimate of applicable fees owed when the record becomes available.

(b) **Up to Thirty Days.** The consent of the requester is not required for an extension of up to thirty (30) days after the initial five (5) business day response period for one of the reasons set forth in 65 PA. STAT. ANN. § 902(a). If the response is not given by the specified date, it shall be deemed denied on the day following that date.

(c) **More than Thirty Days.** A requester may consent in writing to an extension that exceeds thirty (30) 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.

### § 9-210 Grant of Request.

(a) **In General.** If the Open Records Officer determines that the request for access to records will be granted, the response shall inform the requester that access is granted and either include information on the regular business hours of the Borough administration office or police department (as applicable), 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 \$100.00, and the medium in which the records will be provided.

(b) **Delivery.** The Open Records Officer, in his/her reasonable discretion, may agree to deliver copies of the public records to which access is granted to the requester in a manner requested by the requester if the requester prepays all fees, including the delivery charges. The Open Records Officer need not agree to use any delivery method not generally used by the Borough.

(c) **Medium.** 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 the medium in which it exists. However, the Borough shall not permit use of its computers, nor require access to a computer of an individual Borough employee.

(d) **Information Available Electronically.** 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 Borough shall provide access to inspect the record electronically. If

the requester, within thirty (30) days following receipt of the Borough's notice, submits a written request to have the record converted to paper, the Borough shall provide access to the record in printed form within five (5) days of receipt of the request for conversion to paper.

(e) **Records in Possession of a Third Party.** A public record that is not in the possession of the Borough but is in the possession of a party with whom the Borough has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of the Borough. When the Borough contracts with such a third party, the Borough shall require the contractor to agree in writing to comply with requests for such records and to provide the Borough with the requested record in a timely manner to allow the Borough to comply with law. Transcripts of an administrative proceeding shall be provided in accordance with 65 PA. STAT. ANN. § 707(c).

(f) **Redaction.** If the Open Records Officer determines that a public record contains information that is subject to access as well as information that is 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 the information which is not subject to access is able to be redacted.

(g) **Failure to Retrieve.** If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the Borough Hall and the requester does not retrieve the record within sixty (60) days of the Borough's response, the Borough may dispose of the copy and retain any fees paid to date.

## § 9-211 Denial of Request.

(a) **In General.** If the Open Records Officer denies a request for access to a record, whether in whole or in part, a written response shall be sent within five (5) business days of receipt of the request or within the time of any extension under § 9-209 (relating to Extension of Time). The response denying the request shall include the following:

- (1) Description of the record requested.
- (2) Specific reasons for denial, including a citation of supporting legal authority.
- (3) The typed or printed name, title, business address, business telephone number of the Open Records Officer on whose authority the denial is issued, and the signature of the Open Records Officer.
- (4) Date of the response.
- (5) The procedure under the Right-to-Know Law for the requester to appeal a denial of access.

(b) **Burdensome Repeated Requests.** 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 Borough.

(c) **Special Situations.** The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster. The Open Records Officer may deny a request for access to historical, ancient or rare documents, records, archives, and manuscripts when access may cause physical damage or irreparable harm to the record, in the professional judgment of the curator or custodian of the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.

(d) **Redacted Information.** When information that is not subject to access is redacted from a public record, the redaction of such information shall be deemed a denial of access to such information.

(e) **Appeal.** If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the state Office of Open Records (except to the extent set forth in subsection (f)) within fifteen (15) business days of the mailing date of the Open Records Officer's response or within fifteen (15) business 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 Open Records Officer for delaying or denying the request.

(f) **Criminal Investigative Records.** Notwithstanding subsection (e), any appeal relating to denial or deemed denial of access to criminal investigative records in the possession of the Borough shall be filed with an appeals officer designated by the District Attorney of Lehigh County. The appeals officer designated by the District Attorney shall determine in the record requested is a criminal investigative record.

## § 9-212 Fees.

(a) **Duplication.** Fees for duplication by photocopying, printing from electronic media or microfilm, copying onto electronic media, transmission by facsimile or other electronic means, and other means of duplication shall be as established from time to time by the state Office of Open Records. If a record is only maintained electronically or in other nonpaper media, duplication fees shall be limited to the lesser of the fee for duplication on paper or the fee for duplication in the original media, unless the requester specifically requests for the record to be duplicated in the more expensive medium. The Open Records Officer may waive duplication fees when the requester duplicates the record or the Open Records Officer deems it is in the public interest to do so.

(b) **Delivery.** Fees for postage or other delivery shall be equal to the actual cost of mailing or other delivery.

(c) **Certification of Copies.** The fee for official certification of copies when such certification is at the behest of the requester and for the purpose of legally verifying the public record shall be Ten Dollars (\$10.00).

(d) **Other Costs.** Except as provided in subsection (e), other reasonable costs necessarily incurred by the Borough in complying with a request shall be charged to the requester at the cost reasonably incurred by the Borough, to the extent permitted by law. The fee for supervision of a requester who elects to inspect records in person rather than obtain a duplicate of the records, and the fee for labor costs incurred by the Borough in responding to a request (other than labor incurred for duplication of a record) shall be the equal to the number of hours expended

multiplied by the hourly cost of the employee to the Borough (including benefits and taxes). The Open Records Officer shall inform the requester of the hourly rate(s) when responding to the request.

(e) **Legal Review.** No fee may be imposed for review of a record to determine whether the record is subject to access under the law. No fee shall be charged for time spent in preparing a formal response under this Chapter to a request for access.

(f) **Prepayment of Estimated Fees.** Prior to granting access, the Open Records Officer may require prepayment of estimated fees when the fees required to fulfill the request are expected to exceed One Hundred Dollars (\$100.00).

**§ 9-213 Notification to Third Parties.**

(a) **In General.** When the Borough produces a record that is not a public record or financial record in response to a request, the Open Records Officer shall notify any third party that provided the record to the Borough, the person that is the subject of the record, and the requester.

(b) **Requests for Trade Secrets.** The Open Records Officer shall notify a third party of a record request 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. In that event, the procedures set forth in 65 PA. STAT. ANN. § 707(b) shall apply.

**Appendix**

**¶ 9-A Disposition of Ordinance 414.**

Ordinance 414 was never codified to the 1981 Code.

<u>Ordinance 414</u>	<u>2003 Codified Ordinances</u>
§ 1	§ 9-102
§ 2	§ 9-103
§ 3	§ 9-104
§ 4	§ 9-105
§ 5	§ 9-106
§ 6	§ 9-107
§ 7	§ 9-108
§ 8	§ 9-109
§ 9	§ 9-110

**§ 9-B Source Ordinances.**

Ordinance 414	10-29-2003
Ordinance 415	10-29-2003
Ordinance 478	12-29-2008
Ordinance 484	08-12-2009
Ordinance 526	01-28-2015

**§ 9-C Pennsylvania Standard Right-to-Know Request Form.**

A copy of the Standard Right-to-Know Request Form as issued by the Pennsylvania Office of Open Records is provided with the online and CD-ROM versions of the Codified Ordinances.