

# 801

## PUBLIC RECORDS

BOARD ADOPTED APRIL 27, 2017

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### 801 PUBLIC RECORDS

#### A. PURPOSE

1. The Board recognizes the importance of public records as the record of the Carbon Lehigh Intermediate Unit's ("CLIU") actions and the repository of information about this agency. The public has the right to access and procure copies of public records, with certain exceptions, subject to law, Board policy and administrative regulations.

#### B. DEFINITIONS

1. **Financial record** - any account, voucher or contract dealing with the receipt or disbursement of funds or 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, including the individual's name and title; and a financial audit report, excluding the audit's underlying work papers.
2. **Public record** - a record, including a financial record, that is not protected by a defined privilege or is not exempt from being disclosed under one of the exemptions in Pennsylvania's Right-to-Know Law or under other federal or state law or regulation, or judicial decree or order.
3. **Record** - information, regardless of physical form or characteristics, that documents a CLIU transaction or activity and is created, received or retained pursuant to law or in connection with a CLIU 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.
4. **Response** - the CLIU's notice informing a requester of a granting of access to a record or the CLIU's written notice to a requester granting, denying, or partially granting and partially denying access to a requested record.
5. **Requester** - a legal resident of the United States, or an agency, who requests access to a record.

#### C. AUTHORITY

1. The Board shall make the CLIU's public records available for access and duplication to a requester, in accordance with law, Board policy and administrative regulations.

#### D. DELEGATION OF RESPONSIBILITY

1. The Board shall designate an Open Records Officer, who shall be responsible to:
  - a. Receive written requests for access to records submitted to the CLIU;
  - b. Review and respond to written requests in accordance with law, Board policy and administrative regulations;

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- 36 c. Direct requests to other appropriate individuals in the CLIU or in another agency;
- 37 d. Track the CLIU's progress in responding to requests;
- 38 e. Issue interim and final responses to submitted requests;
- 39 f. Maintain a log of all record requests and their disposition; and
- 40 g. Ensure CLIU staff members are trained to perform assigned job functions relative to requests
- 41 for access to records.
- 42 2. Upon receiving a request for access to a record, the Open Records Officer shall:
- 43 a. Note the date of receipt on the written request;
- 44 b. Compute and note on the written request the day on which the five-day period for response
- 45 will expire;
- 46 c. Maintain an electronic or paper copy of the written request, including all documents
- 47 submitted with the request, until the request has been fulfilled; and
- 48 d. If the written request is denied, maintain the written request for thirty (30) days or, if an
- 49 appeal is filed, until a final determination is issued or the appeal is deemed denied.

50

51 **E. GUIDELINES**

- 52 1. Requesters may access and procure copies of the public records of the CLIU during the regular
- 53 business hours of the administration offices.
- 54 2. A requester's right of access does not include the right to remove a record from the control or
- 55 supervision of the Open Records Officer.
- 56 3. The CLIU shall not limit the number of records requested.
- 57 4. When responding to a request for access, the CLIU is not required to create a record that does not
- 58 exist nor to compile, maintain, format or organize a record in a manner which the CLIU does not
- 59 currently use.
- 60 5. Information shall be made available to individuals with disabilities in an appropriate format, upon
- 61 request and with sufficient advance notice.
- 62 6. The CLIU shall post at the administration office and on the CLIU's web site, if the CLIU
- 63 maintains a web site, the following information:
- 64 a. Contact information for the Open Records Officer;
- 65 b. Contact information for the state's Office of Open Records or other applicable appeals
- 66 officer;
- 67 c. The form to be used to file a request, with a notation that the state Office of Open Records
- 68 form may also be used if the CLIU decides to create its own form; and

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69 d. Board policy, administrative regulations and procedures governing requests for access to the  
70 CLIU's public records.

71 7. Request For Access

72 a. A written request for access to a public record shall be submitted on the required form(s) and  
73 addressed to the Open Records Officer.

74 b. Written requests must be submitted to the CLIU in person, by facsimile, by email or by mail.

75 8. Each request must include the following information:

76 a. Identification or description of the requested record, in sufficient detail.

77 b. Medium in which the record is requested.

78 c. Name and address of the individual to receive the CLIU's response.

79 9. The CLIU shall not require an explanation of the reason for the request or the intended use of the  
80 requested record, unless otherwise required by law.

81 10. Fees

82 a. Except for the duplication fee established by the state, the Board shall approve a list of  
83 reasonable fees relative to requests for public records. The CLIU shall maintain a list of  
84 applicable fees and disseminate the list to requesters.

85 b. No fee may be imposed for review of a record to determine whether the record is subject to  
86 access under law.

87 c. Prior to granting access, the CLIU may require prepayment of estimated fees when the fees  
88 required to fulfill the request are expected to exceed \$100.

89 d. The Executive Director may waive duplication fees when the requester duplicates the record  
90 or the Superintendent deems it is in the public interest to do so.

91 11. Response To Request

92 a. CLIU employees shall be directed to immediately forward requests for access to public  
93 records to the Open Records Officer.

94 b. Upon receipt of a written request for access to a record, the Open Records Officer shall  
95 determine if the requested record is a public record and if the CLIU has possession, custody  
96 or control of that record.

97 c. The Open Records Officer shall respond as promptly as possible under the existing  
98 circumstances, and the initial response time shall not exceed five (5) business days from the  
99 date the written request is received by the Open Records Officer.

100 d. The initial response shall grant access to the requested record; deny access to the requested  
101 record; partially grant and partially deny access to the requested record; notify the requester

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102 of the need for an extension of time to fully respond; or request more detail from the  
103 requester to clearly identify the requested material.

104 e. If the CLIU fails to respond to a request within five (5) business days of receipt, the request  
105 for access shall be deemed denied.

106 12. Extension Of Time

107 a. If the Open Records Officer determines that an extension of time is required to respond to a  
108 request, in accordance with the factors stated in law, written notice shall be sent within five  
109 (5) business days of receipt of request. The notice shall indicate that the request for access is  
110 being reviewed, the reason that the review requires an extension, a reasonable date when the  
111 response is expected, and an estimate of applicable fees owed when the record becomes  
112 available.

113 b. Up to a thirty (30) day extension for one (1) of the listed reasons does not require the consent  
114 of the requester. If the response is not given by the specified date, it shall be deemed denied  
115 on the day following that date.

116 c. A requester may consent in writing to an extension that exceeds thirty (30) days, in which  
117 case the request shall be deemed denied on the day following the date specified in the notice  
118 if the Open Records Officer has not provided a response by that date.

119 13. Granting Of Request

120 a. If the Open Records Officer determines that the request will be granted, the response shall  
121 inform the requester that access is granted and either include information on the regular  
122 business hours of the administration office, provide electronic access, or state where the  
123 requester may go to inspect the records or information electronically at a publically accessible  
124 site. The response shall include a copy of the fee schedule in effect, a statement that  
125 prepayment of fees is required in a specified amount if access to the records will cost in  
126 excess of \$100, and the medium in which the records will be provided.

127 b. A public record shall be provided to the requester in the medium requested if it exists in that  
128 form; otherwise, it shall be provided in its existing medium. However, the CLIU is not  
129 required to permit use of its computers.

130 c. The Open Records Officer may respond to a records request by notifying the requester that  
131 the record is available through publicly accessible electronic means or that the CLIU shall  
132 provide access to inspect the record electronically. If the requester, within thirty (30) days  
133 following receipt of the CLIU's notice, submits a written request to have the record converted  
134 to paper, the CLIU shall provide access in printed form within five (5) days of receipt of the  
135 request for conversion to paper.

136 d. A public record that the CLIU does not possess but is possessed by a third party with whom  
137 the CLIU has contracted to perform a governmental function and which directly relates to  
138 that governmental function shall be considered a public record of the CLIU. When the CLIU

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139 contracts with such a third party, the CLIU shall require the contractor to agree in writing to  
140 comply with requests for such records and to provide the CLIU with the requested record in a  
141 timely manner to allow the CLIU to comply with law.

142 e. If the Open Records Officer determines that a public record contains information both subject  
143 to and not subject to access, the Open Records Officer shall grant access to the information  
144 subject to access and deny access to the information not subject to access. The Open Records  
145 Officer shall redact from the record the information that is not subject to access. The Open  
146 Records Officer shall not deny access to a record if information is able to be redacted.

147 f. If the Open Records Officer responds to a requester that a copy of the requested record is  
148 available for delivery at the administration office and the requester does not retrieve the  
149 record within sixty (60) days of the CLIU's response, the CLIU shall dispose of the copy and  
150 retain any fees paid to date.

### 151 14. Notification To Third Parties

152 a. When the CLIU produces a record that is not a public record in response to a request, the  
153 Open Records Officer shall notify any third party that provided the record to the CLIU, the  
154 person that is the subject of the record, and the requester.

155 b. The Open Records Officer shall notify a third party of a record request if the requested record  
156 contains a trade secret or confidential proprietary information, in accordance with law and  
157 administrative regulations.

### 158 15. Denial Of Request

159 a. If the Open Records Officer denies a request for access to a record, whether in whole or in  
160 part, a written response shall be sent within five (5) business days of receipt of the request.  
161 The response denying the request shall include the following:

162 i. Description of the record requested.

163 ii. Specific reasons for denial, including a citation of supporting legal authority.

164 iii. Name, title, business address, business telephone number, and signature of the Open  
165 Records Officer on whose authority the denial is issued.

166 iv. Date of the response.

167 v. Procedure for the requester to appeal a denial of access.

168 b. The Open Records Officer may deny a request for access to a record if the requester has made  
169 repeated requests for that same record and the repeated requests have placed an unreasonable  
170 burden on the CLIU.

171 c. The Open Records Officer may deny a request for access to a record when timely access is  
172 not possible due to a disaster, or when access may cause physical damage or irreparable harm

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- 173 to the record. To the extent possible, a record's contents shall be made accessible even when  
174 the record is physically unavailable.
- 175 d. Information that is not subject to access and is redacted from a public record shall be deemed  
176 a denial.
- 177 e. If a written request for access to a record is denied or deemed denied, the requester may file  
178 an appeal with the state's Office of Open Records within fifteen (15) business days of the  
179 mailing date of the Open Records Officer's response or deemed denial.