

Delaware Valley Regional Planning Commission
Public Participation Plan
Appendix B: Access to Records Policy

Draft

March 26, 2018

Public Comment Period from
April 4, 2018 to 5:00 PM on May 21, 2018.

Comments must be submitted in writing.

- Emailed to public_affairs@dvrpc.org,
- Faxed to 215-592-9125, or
- Mailed to:
DVRPC's Office of Communications & Engagement
ACP Building, 8th Floor
190 N. Independence Mall West
Philadelphia, PA 19106

To request this document in other formats or languages, please call: 215-592-1800.



190 N INDEPENDENCE MALL WEST
8TH FLOOR
PHILADELPHIA, PA 19106-1520
Phone: 215-592-1800
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www.dvrpc.org

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Revised 3/26/2018

I. Overview

The Delaware Valley Regional Planning Commission (DVRPC) was created through an interstate compact between the Commonwealth of Pennsylvania and the State of New Jersey. As such, DVRPC is governed by federal interstate compact law and is not subject to the unilateral control of any one state, including state open records laws. In October 2012, the Pennsylvania Commonwealth Court ruled that DVRPC is not subject to the Pennsylvania Right-to-Know Law, 56 A.3d 40 (Pa. Cmwlth. 2012). In June 2013, the New Jersey Government Records Council ruled that DVRPC is not subject to New Jersey's Open Public Records Act, GRC Case No. 2012-139.

This Access to Records Policy is intended to clarify existing practices of DVRPC regarding public access to DVRPC records and to assist staff in disclosing DVRPC records to the public.

This Policy is intended to balance the benefits of general public access to Commission records with other considerations of privacy, confidentiality, informed decision-making, and security. DVRPC favors the release of and access to records, and will endeavor to make as much information as possible available within the parameters of this Policy. This policy shall apply to all recorded information, regardless of whether the information exists in written or electronic format.

This Policy is not an adjudication or a regulation. It simply establishes a framework within which DVRPC will exercise its administrative discretion on records access issues.

II. Definitions

Certain terms as used herein are defined as follows:

- A. "Application materials" means applications, proposals, and related correspondence pertaining to an application to DVRPC for funding or services.
- B. "Commission" means the Delaware Valley Regional Planning Commission (also known as DVRPC).
- C. "Board" means the decision-making body composed of the 18 voting members of the Commission.
- D. "Executive Committee" means the 10-member body comprised from the full Board. Executive Committee membership consists of the 3 state officials from each state, the City of Philadelphia, the City of Camden, and one county

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representative from each state as selected by their respective county members.

- E. "Records Officer" means the officer or employee of the Commission that acts as the records officer or records custodian.
- F. "Privilege" means the attorney-work product doctrine, the attorney-client privilege, the doctor-patient privilege, the speech and debate privilege, or other privilege recognized by law.
- G. "Requester" means a person who requests a record pursuant to this policy. The term can also be applied to an individual representing an organization, business, or government agency that is requesting a record.
- H. "Response" means access to a record or the Commission's written notice to a requester granting, denying, or partially granting and partially denying access to a record.
- I. "Pre-decisional deliberation" means research, writing, communication, notes, or proceedings staff might undertake; and work-product produced by the review or selection committee members, prior to making a recommendation to the DVRPC Board for action.

III. Records Officer

- A. The Records Officer shall receive requests submitted to the Commission pursuant to this policy, direct requests for information to other appropriate persons within the Commission, track progress in responding to requests, and issue interim and final responses to requesters pursuant to this policy.
- B. Any employee, officer or commissioner of the Commission who receives a formal request for access to a Commission record shall immediately forward the request to the Records Officer.

IV. Access to Records

- A. Unless otherwise provided by this Policy or by law, DVRPC records will normally be accessible for inspection and duplication. The Records Officer shall permit Commission records to be inspected, and examined by a Requester during regular business hours; provided that nothing in this Policy shall be construed to require access to any computer owned by the Commission or a Commission employee.

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- B. A record being provided to a Requester shall be provided in the medium requested if it exists in that medium; otherwise, it shall be provided in the medium in which it exists. All electronic documents will be transmitted to a requester in Portable Document Format (PDF).
- C. When responding to a request for access, the Commission is not required to create a record which does not currently exist or to compile, maintain, format or organize a record in a manner in which the Commission does not currently compile, maintain, format or organize the record.
- D. The Commission may make its records available through any publicly accessible electronic means, including the Commission's website. The Commission may respond to a request by notifying the Requester that the record is already available through publicly accessible electronic means, such as the Commission's website, or that the Commission will provide access to the record through its website at a specified time (example: after a Board action).

V. Exemptions

The following types of records (both in hard copy and digital formats) are not subject to public access under this Policy:

- A. Records related to the internal personnel matters of the Commission, including staff, officers, commissioners, alternates, professionals, and committee members.
- B. Records specifically exempted from disclosure by federal or state statute, law, regulation, court rule, court order, or common law privilege.
- C. Trade secrets, proprietary, commercial, or financial information obtained from any source, and considered privileged or confidential at the time it was obtained.
- D. Confidential business information obtained from a person requesting confidentiality.
- E. Any record subject to privilege, including medical files, attorney-client documents, and/or attorney-client work products. Information which is a communication between the Commission and its insurance carrier or manager.
- F. The internal pre-decisional deliberations of the Commission, its members, alternates, officers, legal counsel, committee members, contractors, employees, and the like, or such pre-decisional deliberations with another agency, its officers,

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legal counsel, employees, and the like relating to any recommendations including, but not limited to, research, memos, budget, funding, procurement, contract, or contemplated or proposed policy or course of action used in pre-decisional deliberations.

- G. Information which, if disclosed, could give an advantage to competing applicants, competitors, or bidders, including the identity of procurement, review, and selection committee members, and their notes.
- H. Records and data that would impair present or imminent contract awards or negotiations, including records relating to contracts with independent contractors providing personal or professional services to the Commission.
- I. Minutes or notes of the Executive Committee, or any internal documents produced solely for use by the Executive Committee.
- J. Copyrighted material or information subject to a licensing, data-sharing or other legal agreement, the disclosure of which would violate the terms of such an agreement.
- K. A record, the disclosure of which creates a reasonable potential of endangering public safety or the security of a building, public utility, resource, infrastructure, facility or information storage system.
- L. Application materials, and any financial information of an applicant. It is the policy of the Commission that application materials shared with members of the Board or review or selection committees as part of carrying out Commission business shall not be subject to public access. Persons interested in obtaining applications or proposals submitted to DVRPC are encouraged to contact applicants directly.
- M. In the event a record involves the privacy rights of an individual, those rights shall be balanced against the public right to access in order to determine whether the record should be made public or declared exempt.

VI. Procedure for Requests

- A. To request a record from DVRPC, the Requester must complete the Access to Records Request Form and mail, fax, or email it to:

Records Officer

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c/o Office of Communications and Engagement
Delaware Valley Regional Planning Commission
The American College of Physicians Building - 8th Floor
190 North Independence Mall West
Philadelphia, PA 19106-1520
Phone: (215) 592-1800; Fax: (215) 592-9125;
Email: public_affairs@dvrpc.org

- B. If the Requester needs assistance in completing the Access to Records Request form, the individual can contact the Commission's Office of Communications and Engagement. Copies of the respective request forms are available on the DVRPC website (www.dvrpc.org) or from the Office of Communications and Engagement.
- C. Requests must be sufficiently specific to enable DVRPC to ascertain which records are being requested. The Commission shall not be required to prepare new records in order to respond to a request for information.
- D. The Records Officer may deny a Requester access to a record if the Requester has made more than one request for that same record within a six month period and the record has been provided or previously denied to the Requester. Any such denial shall not restrict the ability of the Requester to request different records. The Records Officer may also deny a request based on any exemption set forth in this Policy or as required by law.

VII. Commission's Response

- A. Upon receipt of a written request, the Records Officer will review the request to determine:
 - a. whether the request is complete and sufficiently specific;
 - b. if the records are the Commission's records, and whether it has possession, custody and control of the requested records;
 - c. whether the records requested are subject to public access under this Policy; and
 - d. the Commission's ability to fulfill the request in the medium selected.
- B. The Records Officer will then recommend to the Executive Director that the request be granted, partially granted and partially denied, or denied.
- C. Pursuant to the Executive Director's review, the Records Officer shall respond to a request for access to a record as soon as possible, but not later than 30

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calendar days after the day of receiving the request.

- D. The Record Officer's response may be in the form of:
- a. a grant of access, where the record(s) are immediately accessible;
 - b. a denial of access, where DVRPC does not have care, custody or control of the record, the record does not exist, or the record is exempt from production as provided in this Policy or by law;
 - c. a partial grant and partial denial of access; or
 - d. some other appropriate response including, but not limited to, an explanation that further time is required in order to respond.
- E. DVRPC may take an additional 30 calendar days to respond if additional time is required and may take additional time beyond that date if required to provide a complete response. In the case of an explanation of necessary additional time, the Records Officer will explain why additional time is required and will estimate the date on which a further response is to be expected.
- F. If the Records Officer asserts that part of a particular record is exempt from public access pursuant to this Policy, the Records Officer shall provide a redacted copy of the record, as the redacted portion is exempt from access.
- G. If the record requested is temporarily unavailable because it is in use, in storage, or pending a Board decision, the Records Officer shall so advise the Requester and shall make arrangements to promptly make available a copy of the record.
- H. If DVRPC requires an extension of time to respond to a request because (1) it requires redaction in accordance with this Policy, (2) a response cannot be accomplished due to bona fide and specified staffing limitations, (3) a legal review is necessary to determine whether the record is a record subject to access; or (4) the extent and nature of the request precludes a response within the required time period, the Records Officer shall so advise the Requester and will estimate the date on which a further response is to be expected.
- I. If the Requester has elected not to provide a name, mailing address, email address or telephone number, or other means of contacting the Requester, the Records Officer shall not be required to respond. The request form must be sufficiently completed to enable the Records Officer to respond.

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VIII. Appeals Procedure

- A. If a request for DVRPC records is denied, the Requester may appeal that decision to the Executive Committee of the DVRPC Board. The requester shall have 30 days from the date of the denial to file an appeal.
- B. To file an appeal, the Requester must address the appeal in writing, and send by mail or facsimile to the:

Chairperson of the Board
c/o Delaware Valley Regional Planning Commission
The American College of Physicians Building – 8th Floor
190 North Independence Mall West, 8th Floor
Philadelphia, PA 19106-1520
Fax (215) 592-9125

- C. The appeal must include all information, including copies of the original request and all DVRPC responses, as well as any other information deemed appropriate for DVRPC Executive Committee review.
- D. Upon receipt of an appeal to a denial issued under this Policy, the matter will be placed on the next available Executive Committee meeting agenda for review and action.
- E. If the Executive Committee finds that the Executive Director correctly applied the approved policy and the denial was in compliance with the approved policy, a written explanation of the affirmation of the denial will be provided to the Requester. If the finding is that the request should be fulfilled, DVRPC will begin immediately to fulfill the request in accordance with the provisions of this Policy.
- F. DVRPC shall keep copies of documents it provides in response to written requests for records submitted under this Policy for five (5) years, or as instructed by the Commission's document retention policy, whichever is longer.

IX. Fees

- A. For reproduction of existing hard copy information, DVRPC will charge a reproduction fee per page. All reproduction in other formats shall be at the actual cost of the format for reproduction. DVRPC reserves the right to limit the number of copies of any document that will be provided to one person.

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- B. Commission staff will estimate the total reproduction fee and the Records Officer will provide the estimate to the Requester.
- C. If the cost estimate of fulfilling the request is less than \$100.00, the fee is due at the time the request is completed. The Commission reserves the right to withhold documents until such time as the fee is paid.
- D. Should the cost estimate of fulfilling the request exceed \$100.00, the fee must be paid before fulfillment has begun.
- E. If the Requester refuses to pay the applicable fee, the request will be deemed denied and subject to the applicable appeal procedures outlined above.
- F. If the Requester owes fees on a prior request, the Requester shall be required to pay the outstanding fees prior to obtaining additional records.
- G. It is at the discretion of the Records Officer to waive all fees that total Ten Dollars (\$10.00) or less.



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Access to Records Request Form

Please complete and send to DVRPC by email (public_affairs@dvrpc.org), U.S. Mail, fax (215-592-9125), or in-person at DVRPC's offices.

Date requested: _____

Request submitted by: E-mail U.S. Mail Fax In-person

Name of Requester (Required): _____

Street Address (Required): _____

City/State/Zip (Required): _____

Telephone (Optional): _____

Email (Optional): _____

Records Requested: Please provide as much specific detail as possible so that DVRPC can identify the information. Please use additional sheets if necessary.

Do you want to be notified in advance if the cost exceeds \$10? Yes No

For DVRPC Use Only

Date Received by Records Officer: _____

30-Calendar Day Response Deadline: _____ Extension (if applicable): _____

Date Response Provided: _____

Records Officer Signature: _____