

RESOLUTION

R- 2009 - 33

RESOLUTION ADOPTING THE SWATARA TOWNSHIP
SUPPLEMENTAL RIGHT-TO-KNOW LAW POLICY FOR
PUBLIC RECORDS

WHEREAS, pursuant to Resolution R-2008-82, the Board of Commissioners of Swatara Township adopted "Resolution Adopting the Swatara Township Policy For Implementing the Right-To-Know Law" and

WHEREAS, pursuant to Resolution 2009-R-17, the Board of Commissioners adopted "A Resolution of the Board of Commissioners, Swatara Township, Dauphin County, Pennsylvania, Declaring Its Intent To Follow The Schedules And Procedures For Disposition Of Records As Set Forth In The Municipal Records Manual Approved On December 16, 2008."; and

WHEREAS, the Board of Commissioners desires to amend its Right-To-Know Policy in order to clarify the Township's policy concerning certain administrative, legal, and electronic records, including e-mail messages, and their retention and disclosure under the Right-To-Know Law.

NOW, THEREFORE, BE IT RESOLVED, and it is hereby resolved by the Board of Commissioners of Swatara Township that the "Swatara Township Supplemental Right-To-Know Policy for Public Records", marked Exhibit "A", attached hereto and incorporated herein by reference, is hereby adopted.

AND BE IT FURTHER RESOLVED, that the proper officers, officials, and employees of the Township are directed to take such actions as are necessary to implement the policy according to its terms.

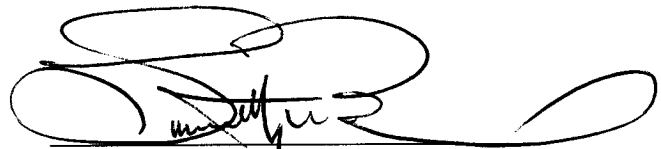
ADOPTED by the Board of Commissioners of Swatara Township this 8th day of July, 2009.

ATTEST:



Secretary

(Seal)



Timothy W. Berard, President
Board of Commissioners of
Swatara Township

SWATARA TOWNSHIP SUPPLEMENTAL POLICY FOR IMPLEMENTING THE AMENDED RIGHT-TO-KNOW LAW

Pursuant to Resolution R-2008-82, the Board of Commissioners of Swatara Township adopted the "Swatara Township Policy for Implementing the Amended Right-To-Know Law" to provide access to public records of Swatara Township ("Swatara") and to preserve the integrity of Swatara's records.

Swatara Township has also addressed the issue of records retention and disposition by adopting the Municipal Records Manual ("Manual"), pursuant to Resolution 2009-R-17, as its authority for all public records, including those e-mail messages that constitute public records. Swatara reserves the right to dispose of public records according to the Manual's various dispositions schedules. It does so with the understanding that, under the new Right-To-Know Law, ***If there is a request for a record prior to destruction, it must be preserved and provided even if it is on a disposition schedule." See the Commonwealth of Pennsylvania's Office of Open Records Advisory Opinion 2009-003. Swatara also recognizes that not every public record identified in the manual is "public" for purposes of the Right-To-Know Law. The determination of whether a public record identified in the Manual is public under the Right-To-Know Law is reserved for the Township and will be based upon the advice of the Township Solicitor.

Under the Manual, Swatara is required to permanently retain all administrative records "that summarize the origin and administration of major municipal policies and programs." (Manual at A.L.-1(1).) This includes "correspondence documenting agency policy." (Manual at A.L.-1.) Administrative records consisting of "routine correspondence and program files" will only be kept "as long as of administrative value." (Manual at A.L.-1(2).)

Swatara Township is governed by a nine-person Board of Commissioners, and minutes of each Board meeting are routinely prepared and promptly approved. Draft minutes will only preserved until the next meeting of the Township at which the official minutes are adopted. Similarly, if the Township determines to record its public meetings, it will only maintain such tape recordings until the official minutes are adopted. See Resolution 2009-R-17.

Swatara will retain, to the best of its ability, various legal documents (e.g., Contracts, Bonds, etc.) in accordance with the Manual Schedules for such public documents. Closed litigation files are kept only "as long as of administrative and legal value." (Manual at A.L.-19). Only in "cases of precedential value" are such litigation files permanently kept. (Manual A.L.-19).

The Manual establishes policy and detailed guidelines for the management of electronic records, including e-mail systems. The stated purpose of the policy and guidelines in the manual is to "Establish and clarify a records management policy for

municipal officers with respect to the creation, use, maintenance, scheduling and disposition of electronic records including those created on e-mail systems.”

Based upon a review of that policy and applicable law, Swatara has determined the following:

(1) e-mail communications between a quorum of the Board of Commissioners are presumptively public if the communications concern the deliberation of agency business, regardless of whether such messages are sent from or received at home computers or hand-held devices; and

(2) Such communications shall not be presumed to be public if restricted to than less than a quorum of the Board.

Swatara actively discourages the use of its computers for personal or non-agency business matters. E-mail messages concerning such matters should not be saved. Rather, in accordance with the Manual’s directions, “E-mail messages and attachments that do not meet the definition of records and are not subject to litigation and other legal proceedings should be deleted immediately after they are read.” (Manual E-mail Policy Section 5.8).

Swatara will continue to review and consider the advisory opinions (i.e., interpretation of the law without binding effect) and final determinations (i.e. decisions on actual cases and controversies) of the Pennsylvania Office of Open Records as such opinions and determinations are documented on its website. Swatara reserves the right to supplement, amend or change its Right-To-Know policy in response to such opinions and determinations, or upon the advice of counsel.