

**Delaware River Port Authority**  
**Right-to-Know/Open Records Policy**

I. SCOPE Defines policy and procedure governing the acquisition by the public of records of the Delaware River Port Authority and Port Authority Transit Corporation.

II. POLICY The Authority seeks to promote greater transparency and accountability in its dealings and communications with the public, recognizing that an informed citizenry enriches the function of government. The Authority has determined that Authority records shall be readily accessible for inspection, copying, or examination by members of the public, with certain exceptions, for the protection of the public interest.

All Authority records, including records stored electronically, shall be subject to public access unless exempt from such access as set forth herein or by Executive Order of the Governor of either Pennsylvania or New Jersey; any federal law, federal regulation, or federal order.

The Authority has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy; and nothing contained herein, shall be construed as affecting in any way the common law right of access to any record, including but not limited to criminal investigatory records of a law enforcement agency.

III. DEFINITIONS

Certain terms as used herein are defined as follows:

A. "Authority" means the Delaware River Port Authority and Port Authority Transit Corporation individually and collectively.

B. "Authority record" or "record" means any paper, written or printed book, document, drawing, map, plan, photograph, microfilm, data processed or image processed document, information stored or maintained electronically or by sound-recording or in a similar device, or any copy thereof, that has been made, maintained or kept on file in the course of the Authority's official business by any employee, officer or commissioner of the Authority, or that has been received in the course of the Authority's official business by any such employee, officer or commissioner. The terms shall not include inter-Governmental or intra-Governmental

material, consultative, pre-decisional or deliberative material, records that are exempt for purposes of this policy, records exempt from disclosure under any other Federal or State law or regulation or judicial order or decree, or records protected by a recognized and valid privilege.

C. "Criminal investigatory record" means a record which is not required by law to be made, maintained or kept on file that is held by a law enforcement agency which pertains to any criminal investigation or related civil enforcement proceeding.

D. "Governmental" means the Authority and any Authority subsidiary or department.

E. "Open Records Officer" means the officer or employee of the Authority officially designated by formal action by the Board to act as the open records officer.

F. "Privilege." 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 either Pennsylvania or New Jersey.

G. "Requester" means a person who is a legal resident of the United States and requests a record pursuant to this policy. The term includes a government agency or other legal entity formed under any state law of the United States.

H. "Response" means access to a record or the Authority's written notice to a requester granting, denying or partially granting and partially denying access to a record.

I "Victim's record" means an individually-identifiable file or document which pertains directly to a victim of a crime except that a victim of a crime shall have access to the victim's own records.

J. "Victim of a crime" means a person who has suffered personal or psychological injury or death or incurs loss of or injury to personal or real property as a result of a crime, or if such a person is deceased or incapacitated, a member of that person's immediate family.

#### IV. OPEN RECORDS OFFICER/RIGHT-TO-KNOW OFFICER

A. The Open Records Officer shall receive requests submitted to the Authority pursuant to this policy, direct requests for information to other appropriate persons within the Authority, track the Authority's 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 Authority who receives a request for access to an Authority record shall immediately forward the request to the Open Records Officer or direct the Requester to the Open Records Officer.

## V. ACCESS TO AUTHORITY RECORDS

A. Unless otherwise provided by this policy or by law, an Authority Record shall be accessible for inspection and duplication, in accordance with this policy. The Open Records Officer shall permit Authority Records to be inspected, and examined by any person during regular business hours; provided that nothing in this policy shall be construed to require access to any computer owned by the Authority or an Authority employee.

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 Authority 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 Authority does not currently compile, maintain, format or organize the record.

D. Access to inspect and examine ordinarily shall be granted to budgets, bills, vouchers, contracts, including collective negotiations agreements and individual employment contracts, and public employee salary and overtime information to the extent that such information is immediately accessible. Copies of these documents shall be requested in writing in accordance with this policy.

## VI. EXEMPTIONS:

The following records are exempt from public access under this policy:

A. Any memorandum, correspondence, notes, report or other communication prepared by, or for, the specific use of a member of the Authority Board in the course of the board member's official duties;

B. Notes and records papers prepared by or for an official or Authority employee used solely for that official's or employee's own personal use,

including telephone message slips, routing slips and other materials that do not have an official purpose;

C. The draft of a resolution, statement of policy, management directive, memorandum, audit or amendment thereto prepared by or for the Authority;

D. A record that reflects the internal, predecisional deliberations of the Authority, its members, commissioners, employees or officials or predecisional deliberations between Authority members, commissioners, employees or officials and members, employees or officials of a governmental agency, including predecisional deliberations relating to a budget recommendation, procurement, legislative proposal, legislative amendment, contract, contemplated or proposed policy or course of action or any research, memos or other documents used in the predecisional deliberations. The strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation. This exemption shall not apply to records accessible under the Authority's open meetings policy;

E. Draft minutes of any meeting of the Authority until the next regularly scheduled meeting of the Authority when such minutes are approved, and minutes or notes of an executive session, draft documents produced solely for use in executive session and any record of discussions held in executive session;

F. Any copy, reproduction or facsimile of any photograph, negative or print, including instant photographs and videotapes of the body, or any portion of the body, of a deceased person, taken by or for the medical examiner at the scene of death except:

- (1) when used in a criminal action or proceeding which relates to the death of that person,
- (2) for the use as a court of Pennsylvania or New Jersey permits, by order after good cause has been shown and after written notification of the request for the court order has been served at least five days before the order is made upon the county prosecutor for the county in which the post mortem examination or autopsy occurred,
- (3) for use in the field of forensic pathology or for use in medical or scientific education or research, or
- (4) for use by any law enforcement agency in Pennsylvania or New Jersey or any other state or federal law enforcement agency;

G. Criminal investigatory records including, but, not limited to:

- (1) Complaints of potential criminal conduct other than a private criminal complaint.
- (2) Investigative materials, notes, correspondence, videos and reports.
- (3) A record that includes the identity of a confidential source or the identity of a suspect who has not been charged with an offense to whom confidentiality has been promised.
- (4) A record that includes information made confidential by law or court order.
- (5) A record that, if disclosed, would do any of the following: (A) reveal the institution, progress or result of a criminal investigation, except the filing of criminal charges, (B) deprive a person of the right to a fair trial or an impartial adjudication, (C) impair the ability to locate a defendant or codefendant, (D) hinder the Authority's ability to secure an arrest, prosecution or conviction, (E) endanger the life or physical safety of an individual.

H. Victims' records, except that a victim of a crime shall have access to the victim's own records;

I. Trade secrets and proprietary commercial or financial information obtained from any source. For the purposes of this paragraph, trade secrets shall include data processing software obtained by a public body under a licensing agreement which prohibits its disclosure;

J. Any record subject to privilege. This paragraph shall not be construed as exempting from access attorney or consultant bills or invoices except that such bills or invoices may be redacted to remove any information protected by the attorney-client privilege;

K. Administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security;

L. A record maintained by the Authority in connection with the military, homeland security, national defense, law enforcement or other public safety activity that if disclosed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection activity or a record that is designated classified by an appropriate federal or state military authority;

M. A record, the disclosure of which creates a reasonable likelihood of endangering the safety or the physical security of a building, public utility, resource, infrastructure, facility or information storage system, which may include:

- (1) documents or data relating to computer hardware, source files, software and system networks that could jeopardize computer security by exposing a vulnerability in preventing, protecting against, mitigating or responding to a terrorist act;
- (2) lists of infrastructure, resources and significant special events, including those defined by the Federal Government in the National Infrastructure Protections, which are deemed critical due to their nature and which result from risk analysis; threat assessments; consequences assessments;
- (3) antiterrorism protective measures and plans; counterterrorism measures and plans; and security and response needs assessments;
- (4) building plans or infrastructure records that expose or create vulnerability through disclosure of the location, configuration or security of critical systems, including public utility systems, structural elements, technology, communication, electrical, fire suppression, ventilation, water, wastewater, sewage and gas systems; and
- (5) emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;

N. Security measures and surveillance techniques, including but not limited to, a record regarding computer hardware, software, networks, administrative and technical records, which, if disclosed, would create a risk to the safety of persons, property, electronic data or software;

O. Information which, if disclosed, would give an advantage to competitors or bidders, including identity of procurement committee members, and procurement member notes;

P. Information generated by or on behalf of the Authority in connection with any sexual harassment or Title VII complaints filed with the Authority or with any grievance filed by or against an individual or in connection with collective negotiations, including documents and statements of strategy or negotiating position;

Q. Information which is a communication between the Authority and its insurance carrier, broker, administrative service organization or risk management office;

R. Information which is to be kept confidential pursuant to court order or confidentiality order entered by the Authority and a third party;

S. That portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except that a social security number contained in a record required by law to be made, maintained or kept on file by the Authority shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by Pennsylvania, New Jersey or federal law;

#### T. Victim's Rights Exceptions

- (1) Notwithstanding the provisions of this policy or of any other law to the contrary, where it shall appear that a person who is convicted of any indictable offense under the laws of any state or the United States is seeking Authority records containing personal information pertaining to the person's victim or the victim's family, including but not limited to a victim's home address, home telephone number, work or school address, work telephone number, social security account number, medical history or any other identifying information, the right of access provided for in this policy shall be denied.
- (2) An Authority record containing personal identifying information which is protected under the provisions of this section may be released only if the information is necessary to assist in the defense of the requestor. A determination that the information is necessary to assist in the requestor's defense shall be made by the court upon motion by the requestor or his representative.
- (3) Notwithstanding the provisions of this policy, or any other law to the contrary, the Open Records Officer shall not comply with an anonymous request for a Authority record which is protected under the provisions of this section;

#### U. Exception for Ongoing Investigations

- (1) Notwithstanding the provisions of this policy, where it shall appear that the record or records which are sought to be inspected, copied, or examined shall pertain to an investigation in progress by the Authority, the right of access provided for in this policy, may be denied if the inspection, copying or examination of such record or records shall be inimical to the public interest; provided, however, that this provision shall not be construed to allow the Authority to prohibit access to a record of the Authority that was open for public inspection, examination or copying before the investigation commenced.
- (2) Records of the Authority relating to a noncriminal investigation which are exempt include but are not limited to:
  - (a) Complaints submitted to the Authority.
  - (b) Investigative materials, notes, correspondence and reports.
  - (c) A record that includes the identity of a confidential source, including individuals subject to Pennsylvania or New Jersey Whistleblower Laws.
  - (d) A record that includes information made confidential by law.
  - (e) Work papers underlying an audit.
  - (f) A record that, if disclosed, would do any of the following: (A) reveal the institution, progress or result of an Authority investigation, except the imposition of a fine or civil penalty, the suspension, modification or revocation of a license, permit, registration, certification or similar authorization issued by the Authority or an executed settlement agreement unless the agreement is determined to be confidential by a court, (B) deprive a person of the right to an impartial adjudication, (C) constitute an unwarranted invasion of privacy, (D) hinder the Authority's ability to secure an administrative or civil sanction, (E) endanger the life or physical safety of an individual.
- (3) Notwithstanding the provisions of this policy, the following information concerning a criminal investigation shall be

available to the public within 24 hours or as soon as practicable, of a request for such information:

- (a) where a crime has been reported but no arrest yet made, information as to the type of crime, time, location and type of weapon, if any;
  - (b) if an arrest has been made, information as to the name, address and age of any victims unless there has not been sufficient opportunity for notification of next of kin of any victims of injury and/or death to any such victim or where the release of the names of any victim would be contrary to existing law or court rule. In deciding on the release of information as to the identity of a victim, the safety of the victim and the victim's family, and the integrity of any ongoing investigation, shall be considered;
  - (c) if an arrest has been made, information as to the defendant's name, age, residence, occupation, marital status and similar background information and, the identity of the complaining party unless the release of such information is contrary to existing law or court rule;
  - (d) information as to the text of any charges such as the complaint, accusation and indictment unless sealed by the court or unless the release of such information is contrary to existing law or court rule;
  - (e) information as to the identity of the investigating and arresting personnel and agency and the length of the investigation;
  - (f) information of the circumstances immediately surrounding the arrest, including but not limited to the time and place of the arrest, resistance, if any, pursuit, possession and nature and use of weapons and ammunition by the suspect and by the police; and
  - (g) information as to circumstances surrounding bail, whether it was posted and the amount thereof.
- (4) Notwithstanding any other provision of this subsection, where it shall appear that the information requested or to be examined will jeopardize the safety of any person or jeopardize any investigation in progress or may be

otherwise inappropriate to release, such information may be withheld. This exception shall be narrowly construed to prevent disclosure of information that would be harmful to a bona fide law enforcement purpose or the public safety. Whenever a law enforcement official determines that it is necessary to withhold information, the official shall issue a brief statement explaining the decision;

V. A record the disclosure of which: (i) would result in the loss of Federal or State funds by the Authority, the Commonwealth or Pennsylvania or the State of New Jersey; or (ii) would be reasonably likely to result in a substantial and demonstrable risk of physical harm to or the personal security of an individual;

W. A record of an individual's medical, psychiatric or psychological history or disability status, including an evaluation, consultation, prescription, diagnosis or treatment; results of tests, including drug tests; enrollment in a health care program or program designed for participation by persons with disabilities, including vocation rehabilitation, workers' compensation and unemployment compensation; or related information that would disclose individually identifiable health information;

X. The following records relating to an Authority employee:

- (1) A letter of reference or recommendation pertaining to the character or qualifications of an identifiable individual, unless it was prepared in relation to the appointment of an individual to fill a vacancy in an elected office or an appointed office requiring Senate confirmation.
- (2) A performance rating or review.
- (3) The result of a civil service or similar test administered by a state agency, legislative agency or judicial agency. The result of a civil service or similar test administered by a local agency shall not be disclosed if restricted by a collective bargaining agreement. Only test scores of individuals who obtained a passing score on a test administered by a local agency may be disclosed.
- (4) The employment application of an individual who is not hired by the Authority.
- (5) Workplace support services program information (such as Employee Assistance Program information).
- (6) Written criticisms of an employee.

- (7) Internal personnel investigations, including documents related to discrimination or sexual harassment and disciplinary matters.
- (8) Information regarding discipline, demotion or discharge contained in a personnel file. This subparagraph shall not apply to the final action of the Authority that results in demotion or discharge.
- (9) An academic transcript;

Y. A record pertaining to strategy or negotiations relating to labor relations or collective bargaining and related arbitration or grievance proceedings. This subparagraph shall not apply to a final or executed contract or agreement between the parties in a collective bargaining procedure. In the case of the arbitration of a dispute or grievance under a collective bargaining agreement, an exhibit entered into evidence at an arbitration proceeding, a transcript of the arbitration or the opinion in support of the final award or order of the arbitrator. This subparagraph shall not apply to the final award or order of the arbitrator in a dispute or grievance procedure;

Z. Records or parts of records, except time response logs, pertaining to audio recordings, telephone or radio transmissions received by emergency dispatch personnel, including 911 recordings. This paragraph shall not apply to a 911 recording, or a transcript of a 911 recording, if the Authority or a court of competent jurisdiction determines that the public interest in disclosure outweighs the interest in nondisclosure;

AA. The contents of real estate appraisals, engineering or feasibility estimates, environmental reviews, audits or evaluations made for or by the Authority relative to the following (i) the leasing, acquiring or disposing of real property or an interest in real property, (ii) the purchase of public supplies or equipment included in the real estate transaction; and (iii) construction projects. This paragraph shall not apply once the decision is made to proceed with the lease, acquisition or disposal of real property or an interest in real property or the purchase of public supply or construction project.

BB. Political Disclosure forms created by the Authority and required by Board Resolution.

## VII. RECORDS REQUESTS AND INSPECTIONS

A. The form attached hereto as Exhibit "A" shall be used by any person or entity who requests access to an Authority record held or controlled by the Authority. The Open Records Officer may require a deposit against

costs for reproducing documents sought by a requester whenever the Open Records Officer anticipates that the information thus requested will cost in excess of \$100 to reproduce. The Authority shall notify requester of cost to be provided in advance of receipt of documentation.

B. A request for access to an Authority record shall be in writing and hand-delivered, mailed, or transmitted electronically to the Open Records Officer. A written request should identify or describe the records sought with sufficient specificity to enable the Authority to ascertain which records are being requested and should include the name and address to which the Authority should address in its response.

C. The Open Records Officer may deny a requester access to a record if the requester has made more than two requests for that same record within a six month period, the record has been provided to the requester, and the repeated requests have placed an unreasonable burden on the Authority. Any such denial shall not restrict the ability of the requester to request additional different records. The Open Records Officer may also deny a request based on any exemption set forth in this policy or as required by law.

## VIII. AUTHORITY RESPONSE

A. Upon receipt of a written request for access to a record, the Authority will make a good faith effort to determine if the record is an Authority record and whether it has possession, custody and control of the identified record, and to respond in accordance with this policy.

B. The Open Records Officer shall respond to a request for access to an Authority record as soon as possible, but not later than five business days after the day receiving the request, provided that the record is currently available and not in storage or archived. The Open Records Officer's response may be in the form of a grant of access, where the record(s) are immediately accessible; a denial of access, where DRPA does not have care, custody or control or the record does not exist, or the record is exempt from production as provided in this policy or by law; a partial grant and partial denial, or some other appropriate response including, but not limited to, an explanation that further time is required in order to respond. The Authority shall have an automatic extension of 30 days to respond if additional time is required and may have additional time beyond that date if required to provide a complete response. In the case of an explanation of necessary additional time, the Open Records Officer will explain why additional time is required and will estimate the date on which a further response will be sent.

C. The Open Records Officer shall promptly comply with a request to inspect, examine, copy, or provide a copy of an Authority record in

accordance with this policy. If the Open Records Officer is unable to comply with a request for access, the Open Records Officer shall indicate the specific basis therefor on the request form and promptly return it to the Requester. The Open Records Officer shall sign and date the form and provide the Requester with a copy thereof. If the response is sent via electronic format, no Open Records Officer signature is required.

D. If the Open Records Officer asserts that part of a particular record is exempt from public access pursuant to this policy, the Open Records Officer shall delete or excise from a copy of the record that portion which the Open Records Officer asserts is exempt from access and shall promptly permit access to the remainder of the record.

F. If the Authority record requested is temporarily unavailable because it is in use or in storage, the Open Records Officer shall so advise the Requester and shall make arrangements to promptly make available a copy of the record. If the Authority 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 (3) the extent and nature of the request precludes a response within the required time period, the Open Records Officer shall so advise the Requester and shall provide a reasonable date that the response is expected to be provided.

G. If the Requester has elected not to provide a name, address, or telephone number, or other means of contacting the Requester, the Open Records Officer shall not be required to respond until the Requester reappears before the Open Records Officer seeking a response to the original request.

## IX. DENIAL

A. If the Authority denies a written request for access, whether in whole or in part, the denial shall be in writing and shall include: (1) a description of the record requested, (2) the specific reasons for the denial, (3) the date of the response and (4) the procedure to appeal the denial of access pursuant to this policy.

B. In the event the Open Records Officer fails to respond within five business days after the day receiving a request, the failure to respond shall be deemed a denial of the request, unless the Requester has elected not to provide a name, address or telephone number, or other means of contacting the Requester and the Open Records Officer is not required to respond pursuant to Section VIII above. If the Open Records Officer states that additional time is required to respond to the Requester pursuant to VIII.B. the Requester shall be advised by the Open Records Officer when

the record can be made available. If the record is not made available by that time, access shall be deemed denied.

C. If a request for access to an Authority record would substantially disrupt Authority operations, or the Requester refuses to pay the applicable fees required under this policy, the Open Records Officer may deny access to the record after attempting to reach a reasonable solution with the Requester that accommodates the interests of the Requester and the Authority.

D. The DRPA shall post prominently in public view in the part or parts of the office or offices of the Open Records Officer that are open to or frequented by the public a statement that sets forth in clear, concise and specific terms the right to appeal a denial of, or failure to provide, access to a Authority record by any person for inspection, examination, or copying or for purchase of copies thereof and the procedure by which an appeal may be filed.

## X. FEES

A. A copy or copies of a Authority record may be purchased upon payment of the fees specified in this policy. The fee assessed for the duplication of an Authority record embodied in the form of printed matter shall not exceed \$0.05 per letter-sized page and \$.07 per legal-sized page. If the Authority can demonstrate that its actual costs for duplication of an Authority record exceed the foregoing rates, the Authority shall charge the actual cost of duplicating the record. The actual cost of duplicating the record shall be the cost of materials and supplies used to make a copy of the record, but shall not include the cost of labor or other overhead expenses associated with making the copy except as provided for in subsection C. of this section.

B. Whenever the nature, format, manner of collation, or volume of a Authority record embodied in the form of printed matter to be inspected, examined, or copied pursuant to this section is such that the record cannot be reproduced by ordinary document copying equipment in ordinary business size or involves an extraordinary expenditure of time and effort to accommodate the request, the Authority may charge, in addition to the actual cost of duplicating the record, a special service charge that shall be reasonable and shall be based upon the actual direct cost of providing the copy or copies. The Requester shall have the opportunity to review and object to the charge prior to it being incurred.

C. If a request is for a record: (1) in a medium not routinely used by the Authority; (2) not routinely developed or maintained by the Authority; or (3) requiring a substantial amount of manipulation or programming of information technology, the Authority may charge, in addition to the

actual cost of duplication, a special charge that shall be reasonable and shall be based on the cost for any extensive use of information technology, or for the labor cost of personnel providing the service, that is actually incurred by the Authority or attributable to the Authority for the programming, clerical, and supervisory assistance required, or both.

## XI. APPEALS PROCEDURE

A. There is hereby established a Records Review Committee. The Committee shall consist of the Authority Chief Administrative Officer or his/her designee, the Authority General Counsel or his/her designee and Authority Chief Financial Officer.

B. The Records Review Committee shall receive, hear, review and adjudicate a complaint filed by any person concerning a denial of access to an Authority record by the Open Records Officer.

C. Upon receipt of a written complaint signed by any person alleging that the Open Records Officer has improperly denied that person access to an Authority record, the Records Review Committee shall conduct a hearing on the matter. The Records Review Committee shall, by a majority vote, render a decision as to whether the record which is the subject of the complaint is an Authority record which must be made available for public access pursuant to this policy. If the Records Review Committee is split as to whether the record requested was properly denied, the decision of the Open Records Officer shall prevail. A decision of the Records Review Committee may be appealed to any federal or state court of competent jurisdiction within the Authority's Port district. All proceedings of the Records Review Committee pursuant to this subsection shall be conducted as expeditiously as possible.

D. The right to institute any proceeding under this section shall be solely that of the Requester. Any such proceeding shall proceed in a summary or expedited manner. The Authority shall have the burden of proving that the denial of access is authorized by policy or law. If it is determined that access has been improperly denied, the court or Records Review Committee shall order that access be allowed.

E. The Authority shall keep copies of documents it provides in response to requests for public records for a period of five (5) years.