

# BOARD OF PROPERTY ASSESSMENT APPEALS AND REVIEW

345 County Office Building 542 Forbes Avenue Pittsburgh, PA 15219  
(412) 350-4603

## **2023 Board of Property Assessment Appeals and Review**

Wade Fargotstein, Chair  
Richard Snipe, Vice Chair  
William Ondek, Secretary  
E.H Sperling  
LeSans Montgomery

# RULES AND REGULATIONS

Amended April 2023

The Board of Property Assessment Appeals and Review has adopted the following rules pursuant to its authority under the Administrative Code of Allegheny County for the purpose of conducting tax assessment appeal hearings in an equitable and efficient manner. These Rules and Regulations shall be interpreted to achieve that end and in light of the following Preamble.

## **PREAMBLE**

The purpose of the Board of Property Assessment Appeals and Review is to provide a timely, affordable and effective forum for resolving questions of real estate assessed value. Pursuant to the Administrative Code of Allegheny County, the Second Class County Assessment Law and the General County Assessment Law, the Board of Property Assessment Appeals and Review is empowered to oversee appeals and certify its decisions regarding the following:

- a. Assessment appeals of the County certified valuation of real property.
- b. Appeals regarding the tax-exempt status of real property based upon applicable laws.
- c. Appeals of catastrophic loss values set by the Office of Property Assessment.
- d. Appeals of preferential assessments made by the Office of Property Assessment pursuant to the Pennsylvania Farmland and Forest Land Assessment Act ("Clean and Green" Law).
- e. Appeals from reassessments and exemptions under Local Economic Revitalization Tax Assistance Act.\*
- f. Appeals from reassessments and exemptions under the New Home Construction Local Tax Abatement Act.
- g. Appeals from assessments of property under Public Utility Realty Tax Act.
- h. Appeals of such other assessment and exemption matters as may be provided by applicable laws or the Administrative Code.

\*Note: Board Rules apply to Exemption and Abatement appeals unless otherwise noted.

Any person with a direct pecuniary interest in a property shall have the opportunity to be heard. An Appellant as defined in these Rules may prepare and present his or her own case; may obtain the professional assistance of an expert in real estate valuation to provide testimony or written opinion; or may engage an authorized representative as defined in these Rules to act as his or her personal representative. Any representative must be authorized by the property owner to act in this capacity. An individual who attends a hearing as a witness or real estate valuation expert shall not be considered to be acting in a representative capacity unless that individual is authorized by the requisite party to do so.

The Board does not intend by these rules to condone or encourage the unauthorized practice of law and activities prohibited by the Real Estate Appraisers Certification Act or the Real Estate Licensing and Registration Act or the rules and regulations under those acts.

Decisions of the Board will be based on valuation methodology consistent with the standards of nationally recognized assessment and appraisal industry organizations and all applicable laws.

## **DEFINITIONS**

The following words and phrases shall, for the purposes of these Rules, have the meanings respectively ascribed to them in this section.

- A. "Appeal" shall mean an appeal of assessed value for a property as that value is certified by Allegheny County.
- B. "Appellant" shall mean any of the following who files an appeal: property owner(s), taxing jurisdiction(s), or other persons (including both individuals and legal entities) whose direct pecuniary interests in the real estate would be affected by the assessment. This includes but is not limited to mortgagees (in foreclosure) and purchasers (with a signed agreement of sale).
- C. "Authorized Representative" shall mean an attorney-at-law or an agent, either by contract or as defined by Pennsylvania law, or other individual authorized by the Appellant to act on Appellant's behalf. Authorized Representatives may only act within the limits of their legal authority.
- D. "Board" shall mean the Board of Property Assessment Appeals and Review.
- E. "Interim Assessment(s)" shall mean any assessment of new or improved property made after the general certification of countywide assessed values for a particular calendar year.
- F. "Interested Parties" shall mean property owner(s), taxing jurisdiction(s), or other persons with a direct pecuniary interest in the property.

## **RULE I RECORDS AND DOCKETS; FORMS OF APPEAL; FILING DEADLINES**

### **SECTION 1.**

All appeals shall be filed through the Allegheny County Assessment website, by mail or at the following address:

Room 334

Attention: Appeals Manager  
County Office Building  
542 Forbes Avenue  
Pittsburgh, PA 15219

## **SECTION 2.**

Appeals shall be filed on forms furnished by the Board for that purpose. A copy of the form dated and marked as received by the Board shall be retained by the Appellant as evidence that the Appeal has been filed. Appeal forms may be filed (a) electronically through the County Assessment website, (b) by regular mail, or (c) by hand-delivery. If the Appellant chooses to mail the appeal form, the appellant should retain proof of mailing. There are two appeal forms that may be used depending on the nature of the appeal. The ASSESSMENT APPEAL FORM is to be used to appeal the County's certified assessed value for a particular year.

The SPECIAL APPEAL FORM is to be used to appeal an Interim Assessment, a Notice of Assessment Change issued as a result of an administrative change or an abatement or exemption determination issued by the Office of Property Assessments. NOTE: See the Instructions for each particular form to determine which form is the appropriate form to use.

## **SECTION 3.**

THE ASSESSMENT APPEAL FORM must be filed with the Board no later than the close of business on the date set forth in the Administrative Code of Allegheny County for the tax year for which the appeal is being filed.

The SPECIAL APPEAL FORM, used for appeals of Interim Assessments, Assessment Change Notices issued as a result of an administrative change or abatement or exemption determinations, must be filed with the Board no later than thirty (30) days of the mailing date of the notice issued by the Office of Property Assessments. A copy of that notice or determination letter must accompany the appeal.

Appeals submitted after the filing deadlines as noted above are considered untimely, will not be accepted by the Board, and the assessment in question will not be subject to challenge.

## **SECTION 4.**

The Appeal form should be completed in its entirety. Failure to submit a properly completed form by the due date shall be considered as untimely filed and will not be accepted. No evidence is to be included with the form. All documents and evidence should be must be submitted to the County at least ten days prior to the hearing date.

## **SECTION 5.**

Appeals may be filed by Appellants or by Authorized Representatives on behalf of the Appellant. Appeals filed by taxing jurisdictions who use their solicitors as authorized representatives do not require the Appellant's signature. Failure to comply with these requirements will result in the Appeal being rejected.

Appellants who engage the services of an Authorized Representative after the filing of the appeal must complete an Authorization form, a properly executed Power of Attorney or other written documentation signed by the Appellant appointing the Authorized Representative to appear on behalf of the Appellant at the hearing. The hearing will not

be conducted unless the Authorization form has been submitted to the Office of Property Assessment prior to the hearing.

## **SECTION 6.**

Once an appeal is filed with the Board and remains pending, the appeal will also constitute an appeal for any assessment made by the Office of Property Assessment subsequent to the tax year at issue and prior to the determination of the appeal by the Board. If an appeal extends into successive years, the Board shall determine the value for each tax year in question.

## **RULE II PARTIES WHO MAY APPEAL**

### **SECTION 1.**

Appellants, as defined above, may file assessment appeals.

### **SECTION 2.**

Appellants who are neither the property owner(s) nor taxing jurisdictions must submit written documentation establishing a direct pecuniary interest in the property at the time of filing the appeal (i.e., triple-net lease, signed sales agreement, etc.).

### **SECTION 3.**

Appeals may be filed independently by any or all of the interested parties. If more than one appeal is filed on the same parcel, only one hearing will be scheduled for all appellants.

## **RULE III NOTICE**

### **SECTION 1.**

For appeals filed by Appellants other than taxing jurisdictions, the Appeals Manager shall serve timely notice of the filing of the appeal on the appropriate taxing jurisdictions in an appropriate form and manner.

### **SECTION 2.**

For appeals filed by taxing jurisdictions, the taxing jurisdiction shall serve timely notice of the filing of the appeal on the property owner with copies to the Board and other taxing jurisdictions.

### **SECTION 3.**

If the property owner either enters into a sales agreement or transfers title to his or her interest in the property prior to the hearing, it is the responsibility of the property owner to give notice of the pending appeal to the transferee. If a hearing on an owner appeal is scheduled after an agreement of sale has been entered into, the property owner must provide proof that it has notified the transferee of the hearing (or that the transferee has entered its appearance) or the hearing will be postponed until notice is given. Consistent with Pennsylvania law, the seller is obligated to disclose the existence of pending tax appeals to the transferee. Moreover, the transferee is responsible for checking the appeal status of the property on the County Real Estate website as part of its due diligence in purchasing the property and must enter its appearance with the Board if it wishes to participate in, and receive notice of, an appeal brought by a taxing body.

#### **SECTION 4.**

When the hearing is scheduled the Appeals Manager will notify the Appellant and all interested parties of the date, time and place of the hearing.

#### **SECTION 5.**

Notice of hearings will be given to all parties in sufficient time to allow for adequate preparation. Hearings for residential properties will be scheduled with at least twenty-one days notice and commercial properties will be scheduled with at least thirty (30) days notice. If the hearing notice is given in less time than the rules require, except as provided under Rule V, Section 2, and no party requests a postponement, the hearing will proceed and the failure of the parties to request a postponement will constitute a waiver of the timeliness of the notice.

Hearings that have been rescheduled do not require the minimum days notice as indicated above but will be conducted with at least seven (7) days notice.

#### **SECTION 6.**

Hearings will be conducted within the calendar year of the year in which the appeal is filed unless administrative circumstances prevent such, in which case the hearing will be held as soon thereafter as is possible.

### **RULE IV HEARING PROCEDURES**

**The policies and procedures set forth in the *BPAAR Telephone Hearing Tip Sheet for 2023*, attached hereto as Addendum A to these Rules and Regulations, shall apply to all assessment appeal hearings to be conducted in 2023. The policies and procedures in the *BPAAR Telephone Hearing Tip Sheet for 2023* shall prevail in the event of a conflict with the Rules and Regulations.**

#### **SECTION 1.**

An Appellant may appear at a hearing on his or her own behalf to present evidence in support of his or her appeal. Authorized Representatives may act on behalf of an Appellant at a hearing only upon submission of the appropriate authorization in accordance with Section 5 of Rule I.

#### **SECTION 2.**

Hearings of appeals shall be conducted by hearing officers designated by the Board. Hearing officers shall have the qualifications set forth in Section 207.07 (B) of the Administrative Code of Allegheny County and as determined by the Board.

Exemption and Abatement appeal hearings shall be conducted by the Board Solicitor and/or a member of the Board.

#### **SECTION 3.**

A. The hearing officer will first accept into the record the official assessment. The Appellant may then present any relevant evidence the Appellant deems appropriate to support Appellant's opinion of value. Any other interested parties may then present such relevant evidence as they deem appropriate to support their opinions of value.

The determination of value will be based on the prevailing base year as established by the County or, at the election of the Appellant, as the fair market value for the tax year at issue, in accordance with Pennsylvania law.

For Exemption and Abatement appeals, the Solicitor will accept into record the decision of the Office of Property Assessments. A representative from the Office of Property Assessments will then explain how the decision was reached. The Appellant may then present any evidence that the Appellant deems relevant. Any other interested parties may then present evidence as they deem appropriate.

- B. All documents submitted as evidence will be retained as part of the official record. Failure on the part of any party to provide a copy of their evidence to the hearing officer or Solicitor may result in that evidence not being considered. All parties to the appeal are entitled to copies of all evidence submitted at the hearing.. The submission and exchange of evidence shall be governed by the ***BPAAR Telephone Hearing Tip Sheet for 2023***,
- C. The hearing officer or Solicitor may, during the proceeding, ask any relevant questions of any of the parties that will aid in a determination of the case. The hearing officer or Solicitor shall not be bound by any strict rules of evidence but shall have the discretion and authority to weigh the credibility of any statements and determine the relevance and weight of any testimony or evidence presented. Any report, appraisal, etc. which is not presented prior to or at the time of the hearing, will not be accepted into evidence or made a part of the record.

This shall not preclude the hearing officer or Solicitor from requesting that the parties prepare proposed findings of fact, conclusions of law or legal memoranda so long as same are appropriately exchanged between the parties.

#### **SECTION 4.**

For value appeals, promptly after the conclusion of the hearing, the hearing officer shall prepare a report to the Board. The report shall contain the original assessment of the property, the Appellant's opinion of the property's value, opinions of value submitted by other interested parties and the hearing officer's recommendation as to the value of the property. The hearing officer will indicate whether the recommendation of value is based on base year or current fair market value. If the appeal covers multiple years, the Hearing Officer will make separate recommendations for each year under appeal. Recommendations shall be based on valuation methodology consistent with the standards of nationally recognized assessment and appraisal industry organizations and all applicable laws. The hearing officer's report shall contain a brief summary of the evidence and testimony presented to the hearing officer and a brief statement of the reasons for the hearing officer's recommendation. The hearing officer shall also deliver to the Board's office any evidence submitted by the parties at the hearing. Any transcript or recording made of the hearing will be available to the Board at its request.

For exemption and abatement appeals, the Solicitor and/or presiding Board member will review the evidence presented and then make a recommendation to the Board at a regularly scheduled Board meeting.

#### **SECTION 5.**

- A. For value appeals, if a majority of the Board accepts the hearing officer's recommendation then that recommendation shall be the decision of the Board and notice of such decision will be mailed to the Appellant, all interested parties, all appropriate taxing jurisdictions and the Chief Assessor of Allegheny County.

If the hearing officer's recommendation is not accepted by a majority of the Board, the Board shall review any recordings, if deemed necessary, and all evidence supplied at the hearing or by post-hearing submissions as provided in Section 3 of this Rule to reach its own determination.

The Board's decision shall be based on valuation methodology consistent with the standards of nationally recognized assessment and appraisal industry organizations and all applicable laws. Following a decision by the majority of the Board, notice of such decision will be mailed to the Appellant, all interested parties, all appropriate taxing jurisdictions and the Chief Assessor of Allegheny County. For purposes of this section, "majority of the Board" shall mean the affirmative vote of a quorum of the appointed Board Members.

The decision notice will include the County's certified value of the property and the new value as certified by the Board. The notification will be sent timely to all interested parties and will include notice of the right to appeal the decision to the Court of Common Pleas of Allegheny County.

- B. For exemption and abatement appeals, the Board will review the Solicitor's report (or report of the presiding Board member) and recommendation at a regularly scheduled Board meeting. Based on this review, the Board will vote to either sustain or overturn the determination made by the Office of Property Assessments. The Board shall mail a timely notice of its decision to the Appellant, all interested parties, all appropriate taxing jurisdictions and the Office of Property Assessments. The notification will include notice of the right to appeal the decision to the Court of Common Pleas of Allegheny County.

#### **SECTION 6.**

Unless the hearing is postponed pursuant to Rule V, below, failure of Appellant to appear at the hearing after due notice thereof shall be considered a withdrawal of the appeal as defined herein in Rule VI. The certified assessed value will remain unchanged. If the appeal is for an exemption or an abatement, the decision of the Office of Property Assessments will remain unchanged. The Board will take no action as a result of the withdrawal and will not send notice of the withdrawal to the Appellant.

#### **SECTION 7.**

Unless the hearing is delayed or Appellant is unable to appear at the time set for the hearing due to extraordinary circumstances, the Appellant's failure to answer the telephone call from the hearing officer at the appointed time for the hearing (after two attempts) will result in the appeal being considered as withdrawn.

### **RULE V POSTPONEMENTS**

#### **SECTION 1.**

A hearing may be postponed by request of any party; however, only one postponement per party is allowed. The request shall be made in writing to the Board and must be submitted at least seven (7) calendar days before the hearing date. Emergency requests must also be made in writing and must be faxed, emailed, or hand-delivered to the Board's office with contemporaneous notice to all parties and a request for their consent. A hearing will not be postponed unless the Board receives a written request and assurance that the other parties have received notice of the request for an emergency postponement. Qualified "emergencies" include, but are not limited to, personal or family health emergencies that prevent participation in the scheduled hearing. The Board will also consider unanticipated professional or work obligations to be an emergency, if they actually preclude the ability to participate in the telephone hearing. The failure to retain an authorized representative in time to prepare for a hearing is not an emergency

justifying a postponement. The first recourse will be to adjust the hearing time to allow the hearing to proceed on the scheduled date. The Board reserves the right to request proof of the asserted emergency.

## **SECTION 2.**

Upon approval by the Board for the postponement, the Appeals Manager will notify all parties either in writing or by telephone that the postponement has been granted and will advise in writing of the new date and time set for the hearing. Timeliness requirements for postponed hearings as noted in Rule III, Section 5, may be reduced at the discretion of the Appeals Manager but will be conducted with at least seven (7) days notice.

## **RULE VI WITHDRAWALS**

### **SECTION 1.**

Appellants may withdraw their appeals at any time prior to the introduction of evidence at the hearing. A withdrawal will be treated as if no appeal was filed. Appellants may withdraw their appeal in writing prior to the hearing or in person at the time of the hearing. Once an appeal has been withdrawn, that Appellant may not file another appeal for the year for which the appeal was initially taken even if the filing period has not closed.

### **SECTION 2.**

An appeal will be considered withdrawn if the Appellant fails to appear for the hearing even if the other parties to the appeal are present.

Note: If there is more than one Appellant, a withdrawal by one party does not constitute a withdrawal by the other, and the hearing will proceed.

### **SECTION 3.**

Once an appeal is withdrawn, the Board will take no action on the appeal; nor will it issue a determination notice.

## **RULE VII RECUSAL OF BOARD MEMBERS OR HEARING OFFICERS**

### **SECTION 1.**

A Board Member or hearing officer shall disqualify himself or herself from conducting a hearing, reviewing the appeal file or taking any official action in any Appeal in which his or her impartiality might reasonably be questioned, including, but not limited to, instances where:

- (a) the Board Member or hearing officer has a personal bias or prejudice concerning the case, or has personal knowledge of disputed evidentiary facts concerning the property in question;
- (b) the Board Member or hearing officer or any partner or employee of the Board Member or hearing officer is representing or has represented at any time during the preceding two years either in a legal or business relationship, the interests of any party to the appeal;



(c) the Board Member or hearing officer knows that he or she, individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a substantial financial interest in the subject matter in controversy or in a party to the Appeal, or any other interest that could be substantially affected by the outcome of the proceeding.

## **SECTION 2.**

A Board Member's or hearing officer's decision to recuse himself or herself from any Appeal may be made a part of the record of the Appeal but no reason for such a decision need be given.

## **SECTION 3.**

A Board Member or hearing officer, during the term of the contract for which he or she is engaged to provide services to the Board, shall not personally represent any party at a hearing who has a direct pecuniary interest in the subject of the appeal, other than him or herself, or present evidence during a hearing on behalf of that party.

## **RULE VIII RIGHT TO KNOW PROCEDURES**

The following rules and procedures are adopted to comply with the Right-to-Know Law, Act of June 21, 1957, P.L. 390, No. 212, as amended.

### **SECTION 1. Definitions**

"Public Record" shall mean a record, including a financial record, of the Board that is not exempt under Section 708 of the Right-To-Know Law, as amended, is not exempt from disclosure under any other Federal or State law or regulation or judicial order or decree; and is not protected by a privilege.

"Record" shall mean information, regardless of physical form or characteristics, that documents a transaction or activity of the Board and that is created, received or retained pursuant to law or in connection with a transaction, business or activity of the Board. The term includes a document, paper, letter, map, book, tap photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

"Requester" shall mean a person that is a legal resident of the United States and requests a record pursuant to this act. The term includes an agency.

### **SECTION 2. Requests**

The Board will not fulfill oral requests for access to Records and anonymous requests for access to Records. In the event that the Requester wishes to pursue the relief and remedies provided for in the Right-to-Know Law, the Requester must initiate such relief with a written request. All requests for Records must be in writing, on the uniform form provided by the Commonwealth of Pennsylvania's Office of Open Records. A copy of this form is appended hereto and is also available online at <http://openrecords.state.pa.us>.

### **SECTION 3. Written Requests**

A written request for access to Records may be received in person, by mail, by facsimile or by email. A written request shall be submitted to the Open Records Officer, as appointed by the Board. Each written request should identify or describe the Records sought with sufficient specificity to enable the Board to ascertain which Records are being requested and shall include the name and address to which the Board should address its response. A written request need not include any explanation of the Requester's reason for requesting or intended use of the Records.

#### **SECTION 4. Appeals - Office of Open Records**

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the Office of Open Records within fifteen (15) business days of the mailing date of the Board's response or within fifteen (15) 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 Board for delaying or denying the request.

#### **SECTION 5. Fees and Charges**

Section 1307 of the Act requires the Commonwealth's Office of Open Records to establish a fee structure for Commonwealth Agencies and Local Agencies. BPAAR is a local agency under the Act. The fee structure established by the Commonwealth's Office of Open Records for Local Agencies can be reviewed at <http://openrecords.state.pa.us> and is attached hereto as Attachment A.

##### **A. Payment of All Applicable Fees**

Payment of all applicable fees shall be a condition to receiving access to the record requested.

##### **B. Prepayment of Estimated Fees**

In the event the estimated cost of fulfilling a request to duplicate records submitted under this Policy is expected to exceed \$100.00, the Board's Open Records Officer or his designate shall obtain fifty percent (50%) of the expected cost in advance of fulfilling the request to avoid unwarranted expense of Board resources.

#### **SECTION 6. Appointment of Open Records Officer**

The Board hereby appoints its Solicitor as its Open Records Officer. The Board Administrator shall assist the Solicitor in processing and responding to requests.

#### **SECTION 7. Duties of the Open Records Officer**

- A. Receive all requests for public records, as defined by the Act.
- B. Issue interim and final responses to a requester regarding the grant or denial of access to a record.

#### **SECTION 8. Posting**

The following items shall be posted at the Board Offices: A.

##### **A. Contact Information for Open Records Officer.**

Solicitor  
Allegheny Board of Property Assessment, Appeals and Review  
542 Forbes Avenue, County Office Building  
Pittsburgh, PA 15219  
412-350-4603

##### **B. Contact Information for the Office of Open Records:**

Commonwealth of Pennsylvania  
Office of Open Records  
Commonwealth Keystone Building  
400 North Street, Plaza Level  
Harrisburg, PA 17120-0225  
717-346-9903  
Email: [openrecords@state.pa.us](mailto:openrecords@state.pa.us)

Website: <http://openrecords.state.pa.us>.

- C. Uniform Form as provided by the Commonwealth of Pennsylvania Office of Open Records.
- D. A copy of the Board's Right-To-Know Policy, together with any amendments thereof.

## **SECTION 9: Response to Requests for Access to a Record**

### A. General Rules

1. Upon receipt of a written request for access to a record, the Open Records Officer shall make a good faith effort to determine: (a) if the material requested is a record and, if it is a record, whether it is exempted under the Act; and (b) whether the Board has possession, custody or control of the identified record; and to respond as promptly as possible under the circumstances existing at the time of the request.
2. Payment of all applicable fees shall be a condition to receiving access to the record requested.

### B. Time Period for Response to Request

The Board Open Records Officer shall respond in writing to the requester within five (5) business days from the date of receipt of the written request. If the Open Records Officer does not respond within five (5) business days of receipt of the written request for access to a public record(s), the request for access to the record(s) shall be deemed to be denied.

### C. Possible Responses to Request

The Open Records Officer may respond to a request for access to a public record within five (5) business days of receipt of the written request for access as follows: (1) written notice that the request for access to the public record is granted; or (2) written notice that the request is under review for the reasons set forth in Section 902 (a) of the Act; or (3) written notice that the request to inspect the public record has been granted in part and denied in part; or (4) written notice that the request to inspect the public record has been denied.

### D. Response: Notice of Access Granted

1. Time and Manner of Access - If access to a public record requested is granted, the record shall be made available for inspection during the Board's regular business hours. The Open Records Officer or his/her designee shall cooperate fully with the requester, while also taking reasonable measures to protect records from the possibility of theft and/or modification. All records made available for inspection shall be examined or inspected by a requester under the supervision of a Board employee or person designated by the Open Records Officer. Such supervision may include a requirement that the record shall be inspected or examined in the physical presence of the designated employee.
2. Medium for Providing Access - A record being provided to a requester shall be provided in the medium requested if it exists in that medium; otherwise, the record shall be provided in the medium in which it exists.
3. Electronic Access – In addition to providing access to a record by personal inspection of the record, the Open Record Officer may respond to a request by notifying the requester that the record is available through publicly accessible electronic means or that the Board will provide access to inspect the record by electronic means. If the requester is unwilling or unable to access the record by electronic means, the requester may, within 30 days following receipt of notification by the Open Records Officer that the record is available for inspection by electronic means, submit a written request to the Open Records Officer to have the record converted to paper. The Open Records Officer shall provide access to the record by causing the record to be

printed onto paper within 5 days of the receipt of the written request for conversion of the record from an electronic form to paper; provided however, that the requester pays the applicable fee for the printing (copying) of the record.

4. No Obligation to Create a Record - In no case shall the Board be required to create a record which does not exist or to compile, maintain, format or organize a record in a manner in which the board does not currently compile, maintain, format or organize the record.

#### E. Response Notice of Request under Review

1. Upon receipt of a written request for access to a public record, the Open Record Officer shall determine if one of the following conditions applies:
  - a. The request for access requires redaction of a record in accordance with Section 706 of the Act; or
  - b. The request for access requires retrieval of a record from a remote location; or
  - c. A timely response cannot be accomplished due to staffing limitations; or
  - d. A legal review by the Solicitor is necessary to determine whether the record requested is subject to access; or
  - e. The requester has failed to comply with the Board's policy and procedure requirements; or
  - f. The requester refuses to pay the applicable fees; or
  - g. The extent or nature of the request precludes a response within the required time period.
2. Upon a determination that one of the factors listed in Paragraph (1) above applies, the Open Records Officer shall send written notice to the requester within five business days of the request for access. The written notice shall set forth the following: (a) a statement notifying the requester that the request for access is being reviewed; (b) the reason for the review; (c) a reasonable date that a response is expected to be provided; and (d) an estimate of the applicable fees owed when the record becomes available. If the date that a response is expected to be provided is in excess of 30 days, following the five business days allowed for in Section 901 of the Act and Paragraph B of this Policy, the request for access shall be deemed denied unless the requester has agreed in writing to an extension to the date specified in the notice stating that the request is under review. If the requester agrees to the extension, then the request shall be deemed denied on the day following the date specified in the notice if there is no other response provided by the Board Records Officer by that date.

#### F. Response Notice of Request Denied in Whole or Denied in Part

1. Denial in Writing - If the Open Records Officer's response is a denial of a written request for access to a record, whether the denial is in whole or in part, the denial shall be in writing.
2. Content of Written Denial - The written notice denying the request shall set forth the following: (a) a description of the record(s) requested; (b) the specific reason(s) for the denial, including a citation of supporting legal authority; (c) the typed or printed name, title, business address, business telephone of the Open Records Officer on whose

authority the denial is issued; and (d) the date of the notice of the response denying in whole or in part the request for access.

3. Denial in Whole – Disruptive Requests – As authorized by Section 506 (a) (1) of the Act, a written request for access to a record can be denied if the requester had made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the Board.
4. Denial in Whole – Disaster or Damage - As authorized by Section 506 (b) (1) of the Act, a written request for access to a record can be denied (i) when timely access is not possible due to fire, flood or other disaster; or (ii) when access may, in the professional judgment of the curator or custodian, cause physical damage or irreparable harm to records consisting of historical, ancient or rare documents, records, archives and manuscripts.
5. Denial in Part due to Redactions – As authorized by Section 706 of the Act, the Board reserves the right to redact any and all information from a record that is not subject to access. Information which the Board redacts in accordance with the Act shall be deemed a denial of access to the redacted information.
6. Denial in Whole or in Part – Exemptions – The Board reserves the right to deny access to a record in whole or in part where the record or any part is exempt from access under Section 708 (b) of the Act; provided however, that the Board shall bear the burden of proving that the record or part thereof is exempt from access.