

TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY

ACCESS TO AGENCY RECORDS POLICY

SECTION 1. PURPOSE AND SCOPE. Article 6 of the Public Officers Law (the “Freedom of Information Law”) contains various provisions providing that, with certain exceptions, records maintained by state and local governmental entities are available for public inspection. The purpose of this Part is to set forth procedures to implement the Freedom of Information Law as it applies to records maintained by Town of Montgomery Industrial Development Agency (the “Agency”).

SECTION 2. DEFINITIONS. All words and terms used herein and defined in the Freedom of Information Law shall have the meanings assigned to them in the Act, unless otherwise defined herein or unless the context or use indicates another meaning or intent. The following words and terms used herein shall have the respective meanings set forth below, unless the context or use indicates another meaning or intent:

“Privacy Law” shall mean the personal privacy protection act, being Article 6-A of the Public Officers Law.

SECTION 3. GENERAL RULE. (A) Maintenance of Records. The Agency shall maintain:

- (1) a record of the final vote of each member in every Agency proceeding;
- (2) a record setting forth the name, public office address, and title of every officer or employee of the Agency;
- (3) a current list, by subject matter, of all records in the possession of the Agency, sufficiently detailed to permit identification of the category of the record sought, whether or not available pursuant to the Freedom of Information Law. This list shall be updated not less than twice per year.

(B) Access to Records. The Agency shall, in accordance with this Part and the regulations of the Committee on Public Access to Records (21 NYCRR Part 1401), furnish to the public the records required by the Freedom of Information Law.

(C) No Requirement to Prepare Records. Except as otherwise provided in subsection (A) of this section, nothing in this Part shall be construed to require the Agency to prepare any record not possessed or maintained by the Agency.

SECTION 4. RECORDS ACCESS OFFICER. (A) Designation of Records Access Officer. The Chief Executive Officer of the Agency shall be the records access officer of the Agency. The business address of the records access officer of the Agency is the Town Supervisor’s Office, Town Hall, Montgomery, New York. The designation of the records access officer shall not be construed to prohibit Agency personnel who have in the past been authorized to make records or information available to the public from continuing to do so.

(B) Duties of Records Access Officer. It shall be the duty of the records access officer to respond to public requests for access to records. The records access officer will assure that Agency personnel:

- (1) maintain the up-to-date subject matter list required by Section 87(3)(c) of the Public Officers Law;
- (2) assist a person inquiring in identifying requested records, if necessary;
- (3) upon locating the requested records, take one of the following actions pursuant to the procedures set forth herein:
 - (a) make records available for inspection; or
 - (b) deny access to the records in whole or in part and explain in writing the reasons for such action pursuant to Section 6 herein;
- (4) upon payment or offer to pay the fees set forth in Section 8 herein:
 - (a) make a copy available; or
 - (b) permit the person inquiring to copy such records; and
 - (c) upon request, certify that a record is a true copy;
- (5) upon failure to locate records, certify that:
 - (a) the Agency is not the custodian for such records; or
 - (b) the records of which the Agency is a custodian cannot be found after diligent search.

SECTION 5. INSPECTION OF PUBLIC RECORDS. (A) Location. The location where records shall be available for public inspection and copying is: the Town Supervisor's Office, Town Hall, Montgomery, New York.

(B) Requests for Public Access to Records. Requests for public access to records of the Agency shall be accepted by the Town Supervisor's Office during all hours that the Town Supervisor's Office is regularly open for business. Except for State holidays, or during weather or other emergencies. Unless such requirement is waived by the Agency, each request for access to records of the Agency shall be in writing. Such request shall reasonably describe the record or records sought. Whenever possible, a person requesting records should supply information regarding dates, file designations or other information that may help to describe the records sought. The records access officer, in his discretion, may waive compliance with any formality required herein.

(C) Response to Requests. The Agency shall respond to any written request reasonably describing the record or records sought within five (5) business days after receipt. If the Agency does not provide or deny access to the record sought within five (5) business days after receipt of a written request, it shall furnish a written acknowledgment of receipt of the request and a statement of the approximate date when the request will be granted or denied, including, where appropriate, a statement that access to the record will be determined in accordance with Section 89(5) of the Public Officers Law relative to trade secrets. Failure of the Agency to grant or deny access to records within ten (10) business days after the date of acknowledgment of receipt of a request may be construed as a denial of access and may be appealed as provided in Section 6 herein.

(D) Hours for Public Inspection. Once the Agency has located the requested records, such records shall be open to public inspection at the offices of the Agency during all hours that the Agency is regularly open for business.

(E) Hours for Copying. Records may be copied during regular business hours on all business days to the extent possible in view of priority copying requirements involving regular Agency responsibilities.

SECTION 6. DENIAL OF ACCESS TO RECORDS. (A) General Rule. If the records access officer shall decide to deny access to any particular records such denial of access shall be in writing, stating the reason for denial and advising of the right to appeal to the counsel. Failure of the Agency to respond to a request within five (5) business days after receipt, as required by Section 5 herein, shall be deemed a denial of access to the records. The records access officer may deny access to records or portions thereof that:

- (1) are exempted from disclosure by the Privacy Law or any other State or Federal statute or judicial decision;
- (2) if disclosed, would constitute an unwarranted invasion of personal privacy pursuant to Section 89(2) of the Freedom of Information Law;
- (3) if disclosed, would impair present or imminent contract awards or collective bargaining negotiations;
- (4) are trade secrets or are maintained for the regulation of commercial enterprise which if disclosed would cause substantial injury to the competitive position of the subject enterprise;
- (5) are compiled for law enforcement purposes and which, if disclosed, would interfere with law enforcement investigations or otherwise come within the exemptions of Section 87(2)(e) of the Freedom of Information Law;
- (6) are interagency or intra-agency materials which are not:
 - (a) statistical or factual tabulations or data;
 - (b) instructions to staff that affect the public; or
 - (c) final agency policy or determinations; or
 - (d) external audits; or
- (7) are computer access codes; or
- (8) are otherwise exempt pursuant to Section 87(2) of the Freedom of Information Law.

(B) Right to Appeal Denial. Except as provided in Section 89(5) of the Public Officers Law relative to trade secrets, any person denied access to records may appeal within thirty (30) days after receipt of notice of the denial. If the denial is by mail, the 30-day period shall commence to run on the fifth day following the mailing of notice of denial. The Counsel to the Agency shall act as appeals officer (the "Agency Appeals Officer") to determine appeals regarding denial of access to records under the Freedom of Information Law.

(C) Time for Decision of Appeal. The Agency Appeals Officer shall within ten (10) business days of the receipt of an appeal, decide such appeal in the manner described in subsection (D) below. The time for deciding an appeal shall commence upon receipt of a written appeal, identifying:

- (1) the date and identification of a request for records, together with a copy of such request;
- (2) the date of denial of access, together with a copy of such denial;
- (3) the records that were denied; and
- (4) the name and return address of the appellant.

(D) Decision on Appeal. The Agency Appeals Officer shall inform the appellant and the Committee on Public Access to Records of his determination, in writing, within ten (10) business days after receipt of an appeal. The appeals officer shall either:

- (1) fully explain the reasons for further denial and inform the person inquiring that the denial is subject to court review as provided for in article 78 of the Civil Practice Law and Rules; or
- (2) provide access to the record sought.

SECTION 7. TRADE SECRETS. (A) Requests for Exception from Disclosure. A person who submits any information to the Agency may, at the time of submission, request that the Agency except such information from disclosure under section 87(2)(d) of the Freedom of Information Law. Where the request itself contains information which if disclosed would defeat the purpose for which the exception is sought, such information shall also be excepted from disclosure. The request for an exception shall be in writing and state the reasons why the information should be excepted from disclosure. The person requesting an exception from disclosure herein shall in all proceedings have the burden of proving that the record falls within the provisions of such exception.

(B) Treatment of Records Pending Decision. Information submitted pursuant to paragraph (A) of this section shall be excepted from disclosure and be maintained by the Agency in a locked drawer, apart from all other records, until fifteen (15) days after the entitlement to such exception has been finally adversely determined or such further time as ordered by a court of competent jurisdiction.

(C) Determination on Request for Exception. On the initiative of the Agency at any time, or upon the request of any person for a record excepted from disclosure herein, the Agency shall:

- (1) inform the person who requested the exception of the Agency's intention to determine whether such exception should be granted or continued;
- (2) permit the person who requested the exception, within ten (10) business days after receipt of notification from the Agency, to submit a written statement of the necessity for the granting or continuation of such exception;
- (3) within seven (7) business days after receipt of such written statement, or within seven (7) business days after the expiration of the period prescribed for submission of such statement, issue a written determination granting, continuing or terminating such exception and stating the reasons therefor. Copies of such determination shall be served upon the person, if any, requesting the record, the person who requested the exception, and the Committee on Public Access to Records.

(D) Appeal. A denial of an exception from disclosure under subsection (C) of this section may be appealed by the person submitting the information and a denial of access to the record may be appealed by the person requesting this record in accordance with the following:

- (1) within seven (7) business days after receipt of written notice denying the request, the person may file with the Agency Appeals Officer a written appeal from the determination.
- (2) The Agency Appeals Officer shall determine the appeal within ten (10) business days after receipt of the appeal. Written notice of the determination containing the reasons therefor shall be served upon the person, if any, requesting the record, the person who requested the exception and the Committee on Public Access to Records.

(E) Article 78. A proceeding to review an adverse determination pursuant to subsection (D) of this section may be commenced pursuant to Article 78 of the Civil Practice Law and Rules, and must be commenced within fifteen (15) days after the service of the written notice containing the adverse determination.

(F) Consent. Nothing in this section shall be construed to deny any person access, pursuant to this section or the Freedom of Information Law, to the record or part excepted from disclosure upon the written consent of the person who had requested the exception.

SECTION 8. FEES. (A) Inspection. There shall be no fee charged for an inspection of records or a search for records pursuant to this section.

(B) Copies. The Consultant and the Chairman of the Agency may provide copies of records without charging a fee. However, as a general rule, the Agency will charge a fee of 25 cents per page for copies of records. In the case of records not capable of being copied on regular Agency facilities, the Agency may, at the option of the person inquiring:

- (1) prepare a transcript, in which case there will be a charge for the clerical time involved, in addition to the fee set forth herein; or
- (2) reproduce the records using available commercial facilities, in which case the fee will be the actual cost to the Agency.

All such fees must be paid in cash to the Records Access Officer prior to the preparation of any copies.