

**FREMONT COUNTY, COLORADO
PUBLIC RECORDS GENERAL POLICY
CURRENT AS OF MARCH 10, 2015**

WHEREAS, the Colorado General Assembly has declared that it is the policy of this state that public records shall be open for inspection by the public pursuant to C.R.S. §24-72-201; and

WHEREAS, pursuant to C.R.S. §24-72-201 et seq., the Board of Commissioners has authority to implement a policy containing rules and regulations with regard to the inspection and copying of such public records reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the official and actual custodians of such records; and

WHEREAS, the Board of County Commissioners has reviewed such policy, discussed it with department heads and other elected officials, and has determined that it is in the County's best interest to adopt such policy.

OVERVIEW

Generally, records that constitute "public records" as defined by the Public Records Act or by other laws should be open for inspection by any person at reasonable times. This policy is intended to provide a guideline for employees handling public records requests and will be deemed modified by additional or new language added to the Colorado Public Records Act C.R.S. 24-72-201 et seq. (the "Act")

This Policy only extends to "public records" as the same are defined under the Act. Questions regarding whether a particular request constitutes a public record that may be disclosed to the public should be forwarded to the County Attorney's Office. This Policy only applies to public records under Part 2 of the Act and does not extend to Criminal justice records which are covered by Part 3 of the Act.

PROCEDURE

The County Manager shall act in the role as the official custodian of all records centrally maintained by County Administrative Offices. Department Heads and Elected Officials (other than the County Commissioners) are the official custodians of all records maintained within their departments. It is the responsibility of each Department Head/Elected Official to become familiar with and to educate his/her affected employees about the standards and requirements of this policy.

If the public records requested are not in the custody or control of the person to whom application is made, such person shall promptly notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of the records from the person's custody or

control, the location of the records, and what person then has custody or control of the records. C.R.S. 24-72-203(2)(a). When feasible, the records request shall be transferred to the proper custodian by the person receiving the request.

With respect to public meeting agendas, the Clerk and Recorder shall maintain a list of persons who, within the previous two years, have requested notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting.

FEEES

In all cases where a person has the right to inspect any public record, s/he may request a copy, printout or photograph of such record.

Each official custodian of records may develop their own policies and procedure regarding the fee for providing copies, printouts or photographs (including a faxed or emailed image) of a public record, but such fee shall not exceed \$.25 per standard page (8 ½ " x 11"). For requests for public records in a format other than a standard page, including without limitation copies of tapes, cds, and maps, the fee may not exceed the actual cost of providing the copy, printout or photograph. Where the fee for a certified copy or other copy, printout or photograph of a record is specifically prescribed by law, the specific fee shall apply.

A reasonable fee that reflects actual costs may be charged for research and retrieval time in responding to an open records request after the first hour (which is free). Generally, staff time may be charged at \$30/hour. Any fees charged shall include the cost of redacting documents to excise privileged material. Fees may be waived or reduced with prior approval of the official custodian.

In the case of a request for a computer printout other than word processing, the fee may be based on the recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system.

Each official custodian of records may also charge a reasonable hourly fee for the manipulation of data in order to generate a record in a form not used by County, if the County elects to provide information in this manner. The County is not required to manipulate any data or create any record, including formatting existing data, that is not regularly maintained in the normal course of business

All payments for copies etc. must be received in advance of releasing the requested records. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

Special rules/policy apply to Geographic Information Systems (GIS) requests.

TIME FOR ACCESSING PUBLIC RECORDS

Time for inspection of records – Three Working Days. If the requested records are in active use or are in storage and, therefore, are not available right away, this fact shall be communicated to the requestor promptly, in writing if requested. The custodian shall set a date and hour within three working days when the records will be available for **inspection**. The records are not required to be copied and produced within three days. A reasonable amount of additional time shall be allowed for copying and production, if requested.

Extension of time to 10 working days. The custodian may extend the period of providing requested documents for inspection for up to ten days if the custodian determines that one of the following conditions exists, and, states such condition in writing to the requestor within the first three days that the request was received:

The request is broadly-stated and encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three day period;

The request is broadly-stated and encompasses all or substantially all of a large category of records and the department is unable to prepare or gather the records within the three day period because:

The department needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

A request involves such a large volume of records that the custodian cannot reasonably prepare or gather records within the three-day period without substantially interfering with the custodian's obligation to perform his or her other public service responsibilities.

If the request is too broad, speculative or voluminous to prepare in ten days the County may request relief from the court, including attorney's fees, as provided by law. In such a case, the County Attorney's Office should be contacted immediately.

Special rule regarding open records demands during an election. If an unduly broad or voluminous demand for access to public records is received by the Clerk and Recorder within 20 days of an upcoming election, such request will not be processed until 20 days after the election or until final certification of results, whichever occurs first. In such a case, the requestor should be supplied a copy of this special rule. This rule is necessary because of the limited staff and amount of statutorily-mandated duties in proximity to an election. This special rule is authorized pursuant to C.R.S. 24-72-203 which allows the custodian to make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

An extension of time shall not apply to a request that relates to a single, specifically-identified document.

REVIEWING RECORDS

The custodian of the records may set the location where the records may be viewed by the requestor. In no event may a requester remove documents, make markings or notes on documents, or add documents to those provided for review. The requestor shall not bring and shall not use photocopiers, fax machines, cameras or any other copy, scanning or reproduction device to copy County records. Upon completion of the review, the requestor must mark the pages s/he wishes to have copied with adhesive tabs. Copies will be made at a later time, depending upon volume. The requestor will be notified when the copies are available for pick-up.

If the custodian has the capability to make reproduction she/he shall do so at the rates set in the section entitled FEES, above. If the custodian does not have the facilities for making copies, printouts, or photographs of the records, the custodian may make arrangements for the services to be rendered at another facility. If other facilities are necessary, the person desiring a copy, printout or photograph of the record shall pay the cost of providing them. In no event shall the records leave the custody and possession of a County employee during this process (other than providing the items to the third party facility for reproduction.) The County is under no obligation to allow citizens access to County computers nor is the County obligated to provide records in electronic format.

The custodian must not allow copies to be made of public records subject to trademark and copyright protections, except that this prohibition should not restrict public access to or fair use of copyrighted materials and does not apply to writings which are merely lists or other compilations. C.R.S. 24-72-203(4).

DENIAL OF INSPECTION OF RECORDS

Denial of inspection must be specific and can only be based on justification as provided in the Act. The Act provides that documents may be withheld from disclosure:

If inspection would be contrary to any state statute.

If inspection would be contrary to federal statute or regulation.

If inspection is prohibited by a rule of the Supreme Court or by order of any court.

If inspection is denied, the requestor may request a written statement of the grounds of denial and that statement shall cite the law or regulation which is the basis for denial. C.R.S. 24-72-204(4).

Basic rules regarding grounds for denial are set out below. Denial of access to a public record is PERMITTED (but not required) in the following situations, if disclosure would be contrary to the public interest:

1. Any records of the investigation conducted by any sheriff, prosecuting attorney, or police department, any records of intelligence information or security procedures of any sheriff, prosecuting attorney, or police department or any investigatory files compiled for any other law enforcement purpose. C.R.S. 24-72- 204(2)(a)(I).
2. Test related data listed in C.R.S. 24-72-204(2)(a)(II).
3. Contents of real estate appraisals relative to acquisition of property for public use until title passes to the County. C.R.S. 24-72-204(2)(a)(IV).
4. Records and information relating to the identification of persons filed with, maintained by or prepared by the Department of Revenue pursuant to 42-2-121 C.R.S. C.R.S. 24-72-204(2)(a)(VI).
5. Electronic mail addresses provided by a person for the purposes of future electronic communications to the person from the County. C.R.S. 24-72-204(2)(a)(VII).
6. Specialized details of security arrangements or investigations as provided in C.R.S. 24-72-204(2)(a)(VIII).
7. If such records are given to one news agency, they shall be available to all news agencies.

Inspection of the following public records shall be denied, unless otherwise provided by law or unless requested by the person in interest (C.R.S. 24-72-204(3)(a)):

1. Medical, mental health, sociological, or scholastic achievement data on individuals. If such information is requested by the person in interest, a release should be obtained.
2. Personnel files (except for applications, employment agreements, benefits, performance ratings, salaries and expense allowances are public). C.R.S. 24-72-204(3)(a)(II) & C.R.S. 24-72- 202(4.5).
3. Letters of reference (which are also not disclosable to the person in interest, if they concern employment, licensing, or issuance of permits).
4. Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person.
5. Certain material contributed to libraries or museums.
6. Addresses and phone numbers of school children.
7. Names, addresses, telephone numbers, and personal financial information of past or present users of public facilities or recreational or cultural services that are owned and operated by the County (subject to exceptions).
8. Records indicating that a person has obtained distinguishing license plates or an identifying placard for persons with disabilities or any other motor vehicle record that would reveal the presence of a disability.
9. Home addresses, telephone numbers and financial information of County employees.

In addition to the above described documents, the Act provides specific and detailed circumstances for the denial of, or limited release, of records related to:

1. Sexual harassment complaints and investigations.
2. Applicants for an executive position at the County.
3. Records protected by common law privileges such as the deliberative process privilege, work product privilege, or attorney–client privilege.

4. Military records filed with a county clerk and recorder's office concerning a member of the military's separation from military service.
5. The constitutional right of privacy may, in very limited circumstances, be a basis for resisting disclosure, particularly for the person in interest.
6. In certain circumstances, an individual may request his/her address in any public record be kept confidential.
7. The official custodian may petition the District Court for an order restricting disclosure of records otherwise subject to inspection, if disclosure would do substantial injury to the public interest. C.R.S. 24-72-204(6).
7. Even records which must be kept confidential are subject to subpoena, discovery requests, etc., but such requests can be resisted under the balancing tests set up in Martinelli vs. District Court 612 P.2d 1083 (1980).