



LARIMER COUNTY POLICIES AND PROCEDURES

BOARD OF COUNTY COMMISSIONERS POLICY #12152015P001 **ADMINISTRATIVE POLICY AND PROCEDURE 700.2B**

SUBJECT: RESPONSES TO COLORADO OPEN RECORDS REQUESTS (CORA)

DATE: December 15, 2015

EFFECTIVE PERIOD: Until Superseded

REVIEW SCHEDULE: Every three years in November, or as needed

CANCELLATION: Board of County Commissioners Policy #09112012P001 and Administrative Policy and Procedure 700.2A (09/11/2012)

ENCLOSURE:

1. [Public Records Request Form LCFITD-16](#)

REFERENCES:

- A. Administrative Policy and Procedure 351.4 – Records Retention Program
- B. C.R.S. Colorado Laws concerning Open or Public Records §24-72-101 through 24-72.5-106
- C. Governing Policies Manual; [4.7 – Statutory General Government Services](#)
- D. *Citizens Progressive Alliance v. Southwestern Water Conservation District*, 97 P.3d 308 (2004).
- E. *Martinelli v. District Court*, 612 P.2d 1083 (1980).
- F. Legislative Policies Related to Public Records and Emails, April 2010

PURPOSE: The purpose of this Policy and Procedure is ensure that public records shall be open for inspection by any person at reasonable times, except as provided by the Public Records Act or by other laws (reference C). This Policy is intended to be a guide in handling public records requests and to maintain consistency. This Policy is subject to modifications to the Colorado Open Records Acts, or other State Statutes, which shall supersede any conflicting provision in this Policy. Adoption of local rules and regulations are authorized pursuant to C.R.S. §24-72-101 *et. seq.* and *Citizens Progressive Alliance v. Southwestern Water Conservation District*, 97 P.3d 308 (2004). (reference D)

SCOPE: This Policy and Procedure applies to all Offices, Divisions, Departments, and employees of Larimer County.

DEFINITIONS: The definitions found in C.R.S. 24-72-202 (reference B), as amended from time to time, shall apply unless the context clearly requires a different meaning. Two definitions of particular importance are listed below:

- A. Public Records: All writings made, maintained, or kept by... any political subdivision... for use in the exercise of functions required or authorized by law... or involving receipt or expenditure of public funds. (Criminal justice records are not included.)
- B. Repeated Requests: When the same individual or organization makes an Open Records request more than twice during a thirty (30) day period.
- C. Writings: All books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form of characteristics. Writing includes digitally stored data, including without limitation email messages, but does not include computer software.
 - 1. Electronic mail addresses provided by a person to an agency, institution, or political subdivision of the state for the purposes of future electronic communications to the person from the agency, institution, or political subdivision; shall not be part of a “writing.”
 - 2. Records/Writings do not include data that is automatically created, stored, or retained on an individual computer or on network equipment or servers, such as email metadata that is not otherwise imprinted or stored as part of the visible content of an email message, logs, web traffic statistics, browser cookies, browser cache, server logs, browser history or firewall logs (reference F). Such information may also be protected as deliberative or work product. Such information shall not be released under an Open Records Request.

RESPONSIBILITY: All Larimer County employees are responsible to abide by this Policy and Procedure. Appointed Officials shall ensure compliance with this Policy and any procedures within the organization. Appointing Authorities may adopt additional policies to supplement this policy for their Department or Division.

REVISION LOCATOR:

- 1. Definitions
- 2. Section I, B, 6 (added)
- 3. Section I, D-F (added)
- 4. Section II
- 5. Section IV, C (added)
- 6. Section V, B, 7 (added)

POLICY AND PROCEDURE

I. PROCEDURE

- A. The County has determined that the use of an official request form to be used by members of the public is necessary for the efficient handling of such public records requests. The Public Records Request Form (enclosure 1) should be given to any individual who makes a request. The citizen should be told that County Policy requires requests be made on this form and the employee should make every effort to ensure that the citizen is given enough information so that they can access the form without delay. Requests not made on the official form may be rejected.

Requests on the official County Public Records Request Form should be forwarded to the particular Department's custodian of records immediately. The County has a limited amount of time within which to respond to Public Records requests and employees receiving such request should be familiar with these deadlines. See Section III "*Time for Accessing Public Records*", in this Policy for more information.

- B. It is the responsibility of each Department Head to become familiar with and to educate his/her affected employees about the standards and requirements of this Policy.
1. All records are identified and classified using the Records Retention Program Policy (reference A), to identify the definition and length of time the record is to be kept. Many records are maintained in the Facilities and Information Technology Division Records Center, managed by the Records System Coordinator, for their specified length of time. However, the request for record inspection of these records are still processed through the associated custodian of record.
 2. The Clerk to the Board of County Commissioners is the official custodian of all records centrally maintained by the County Commissioners.
 3. Department Heads are the official custodians of all records maintained within their departments.
 4. The Infrastructure Group Manager is the official custodian of emails.
 5. The Director of Finance is the custodian of accounting records, except for Human Services transactions.
 6. Any County employee that receives a request for records in their custody that pertains to another Division/Department/Office shall notify the appropriate Division/Department Head or Elected Official. Such notification shall not delay or modify the response time.
- C. If the public records requested are not in the custody or control of the person to whom application is made, such person shall "forthwith" 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 persons' 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.

- D. In certain circumstances a single point of contact for specific individuals or organizations to submit Open Records requests may be designated. In such circumstances the individual or organization shall be notified that future Open Records requests shall be sent to a single point of contact and provided contact information for the single point of contact. Once notified, Open Records requests are not deemed received until received by the single point of contact. The designation of a single point of contact shall not modify other provisions of this policy and the single point of contact shall act as the Custodian's designee. The circumstances for designation of a single point of contact include, but are not limited to:
 - a. If an organization or individual's repeated requests are interfering with County operations or services,
 - b. If an organization or individual has been harassing, threatening or demonstrated otherwise inappropriate conduct to County employees,
 - c. If an organization or individual's repeated requests can be more efficiently responded to using a single point of contact, or
 - d. If a Custodian of Records determines an organization or individual may present a safety risk to County employees.
- E. If a single point of contact is designated, such requirement shall continue for twelve (12) months from the date of notification to the individual or organization.
- F. All County employees who respond to Public Records Requests that are not routine for the Department/Division/Office, shall complete the Non-Standard CORA Application upon final response.
- G. Each Department Head or Elected Official may adopt additional policies not in conflict with this Policy, which they deem necessary and reasonable for the orderly response to Open Records Act requests. If additional policies are adopted, they shall be made available to the public.
- H. If the custodian has any question regarding the interpretation or implementation of this Policy or the Open Records Act, they should contact the County Attorney's Office.

II. FEES

- A. COPY COSTS: In all cases where a person has the right to inspect any public record, they may request copies or printouts of such record.

1. The fee shall be \$.25 per page. Actual costs may be charged and may include staff time for the research, retrieval, review, redaction, copying or processing of records. Fees may be waived or reduced with prior approval of the Elected Official or Department Head.
2. If portions of records may be denied inspection as outlined Section V of this policy, but other portions may not be denied, the custodian should advise the requestor of the approximate cost necessary for the custodian to produce redacted versions of the record for inspection. If the requester accepts the costs, the custodian shall produce redacted versions for inspection.
3. All payments for copies, research time, etc. must be received in advance of releasing the requested records. Checks shall be made payable to "Larimer County".

B. RESEARCH, RETREIVAL AND SYSTEM CHARGES:

1. Departments may charge for time spent for the research and retrieval of public records. The charge for these kinds of services shall be thirty dollars (\$30.00) per hour, unless the Elected Official or Department Head sets a lower hourly rate in their Policy. When staff time in excess of five hours is required to respond to a records request, a time log should be maintained describing the time spent in responding to the request. For large requests, a deposit of the estimated cost of work shall be collected before work begins. If actual charges are less than the deposit, the balance will be refunded.
2. In the case of a request for records that are the result of computer output other than word processing, the fee for a copy/printout may be based on recovery fo 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. Fees may be waived or reduced by the Elected Official or Department Head if the requested documents 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.

C. FREE RECORDS: Notwithstanding any provision above, requests for records which fit the following criteria shall be provided free of charge:

1. Documents which do not exceed four (4) pages; or
2. Documents which are retrievable within one (1) hour; or
3. Agenda materials which have been prepared in advance and which are in support of items scheduled for consideration by the Board of County Commissioners at a future date, unless the request is for multiple copies that exceed a total of twenty-five (25)

pages of materials; or

4. Records which are normally produced for public information, such as the current year budget document, brochures on County services, or policies and procedures, etc., unless the request is for multiple copies that exceed a total of twenty-five (25) pages of materials.

III. TIMEFRAME FOR ACCESSING PUBLIC RECORDS

- A. The County shall have three (3) working days to make public records available for inspection. 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 applicant “forthwith” in writing if requested. The custodian shall set a date and hour within three (3) working days when the records will be available for inspection.
- B. The period of providing requested documents for review may be extended up to an additional seven (7) working 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 (3) working days that the request was received:
 1. A broadly stated request is made that 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; or
 2. A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three day period because:
 - a. The agency 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
 - b. 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 their other public service responsibilities.
- C. In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.
- D. If the request is too broad, speculative or voluminous to prepare in ten (10) days, the County may request relief from the court, including attorney’s fees, as provided by law.
- E. The time period for response does not begin to run until the County receives the request on the County’s official Public Records Request Form. If the form is sent by:

1. Email, it is deemed received when it is viewed by the recipient.
2. U.S. Mail, it is deemed received when its seal is broken.
3. Fax, it is deemed receive when it is printed during regular business hours, or if received after hours, at 8:00 a.m. on the following business day.

IV. REVIEWING RECORDS

- A. The custodian of the records may set the location where the records may be viewed by the requestor. In no event may a requestor remove documents or add documents to those provided for review. The requestor shall not bring and shall not use photocopiers, fax machines or any other copy, scanning or reproduction device to copy County records. Upon completion of the review, the requestor must mark the pages they wish 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.
- B. If the custodian has the capability to make reproductions they shall do so at the rates set in Section II (Fees), above. If the custodian does not have the facilities for making copies or printouts 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 or printout 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, if an in-county facility is not used). The County is under no obligation to allow members of the public access to County computers.
- C. Records in electronic format are at a higher risk of manipulation or distortion, which presents a risk to the public. Additionally electronic records may be in a proprietary format or format that is not widely accessible. Accordingly, records in electronic format should be released in a format that reduces the risk to the public and is in a format that is generally accessible, such as a non-editable .pdf or similar format.

V. DENIAL OF INSPECTION OF RECORDS

- A. Denial of inspection of public records must be specific and can only be based on reasons provided in the Public Records Act (reference B). The Act provides that documents may be withheld from disclosure:
 1. If inspection would be contrary to any State Statute.
 2. If inspection would be contrary to Federal Statute or Regulation.
 3. If inspection is prohibited by a rule of the Supreme Court or by order of any court.
- B. Denial is permitted in the following situations, if disclosure would be contrary to the

public interest; but if such records are given to one news agency, they shall be available to all news agencies:

1. Any records of investigation conducted by a sheriff deputy, 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. (In the event law enforcement records are requested, such records are controlled by the Colorado Criminal Justice Records Act and should be reviewed under the standards in that law.)
 2. Test related data listed in C.R.S. 24-72-204(2)(a)(II).
 3. Details of bona fide research projects of State institutions.
 4. Contents of real estate appraisals relative to acquisition (not sale) of property for public use until title passes to the County.
 5. Market analysis data generated by the Department of Transportation's bid analysis and management system for the confidential use of the department for awarding contracts or for the purchase of goods or services and any documents prepared for the bid analysis and management system.
 6. Records and information relating to the identification of persons filed with, maintained by, or prepared by the Department of Revenue pursuant to C.R.S. 42-2-121.
 7. Requests that require the manipulation of data, are not covered by the Open Records Act and may be denied. Manipulation of data is distinct and different from reports/data maintained on a computer system that can be arranged or requested as part of the ordinary capabilities of that computer system; these requests fall under Section II(B)(2).
- C. Inspection of the following shall be denied, unless otherwise provided by law or unless requested by the person in interest:
1. Medical, mental health, sociological, or scholastic achievement data on individuals.
 2. Personnel files, except for application and performance ratings
 3. Letters of reference (which are 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. Library records identifying users, as prohibited by C.R.S. 24-90-119.
 8. Home addresses, telephone numbers and financial information of County employees.
 9. 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:
 - a. Sexual harassment complaints and investigations, and
 - b. Applicants for an executive position at the County, and
 - c. Records protected by common law privileges such as the governmental privilege, the deliberative process privilege, work product privilege, or attorney-client privilege. If a record is withheld pursuant to the deliberative process privilege, the custodian shall provide the applicant with a sworn statement specifically describing each document withheld, explaining why each document is privileged and why disclosure would cause substantial injury to the public interest.
 - d. The constitutional right of privacy may, in very limited circumstances, be a basis for resisting disclosure, particularly for the person in interest.
 10. Electronic mail addresses provided by a person to an agency, institution, or political subdivision of the state for the purposes of future electronic communications to the person from the agency, institution, or political subdivision.
- D. Inspection may be denied on the basis that release would do substantial injury to the public interest.
1. 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).
 2. If inspection is denied, the applicant 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).
 3. 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 v. District Court*, 612 P.2d 1083 (1980) (reference E).

The custodian of the records may set the location where the records may be viewed by the requestor. In no event may a requestor remove documents or add documents.

- VI. VIOLATION OF PROCEDURE:** *Violation of this Policy and Procedure may result in disciplinary action up to and including termination of employment, and/or legal action. If you believe this Policy has been violated, contact the Department Head or the County Attorney's Office.*

Lew Gaiter III, Chair
Larimer County Board of County Commissioners
(Approved by BOCC – Consent Agenda – 12/15/2015)
(Signature on original filed in Records Management)

Distribution:
All County Departments and Elected Officials
Records Management SOP Manual (original)
Larimer County Virtual Courthouse
Signed Original/BCC