

CUSTER COUNTY POLICY AND PROCEDURES FOR COMPLIANCE WITH THE COLORADO OPEN RECORDS ACT

and

ELECTRONIC MAIL POLICY

The Colorado Open Records Act (CORA) contains this legislative declaration: **“It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 [of Title 24, Article 72 of the Colorado Revised Statutes] or as otherwise specifically provided by law.”** §24-72-201, C.R.S.

This Policy and Procedures Manual is adopted by the Board of County Commissioners for Custer County to comply with the policy stated above and to set forth the procedures to be followed by county officials, department heads, supervisors and employees in response to a CORA request.

DEFINITIONS

The definitions set forth in §24-72-202, C.R.S., are incorporated into this manual. Some of the more common definitions are as follows (*note: some of these definitions are edited for purposes of brevity and relevance to Custer County*):

- (1) “Correspondence” means a communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including, without limitation:
 - (a) Communications sent by U.S. mail;
 - (b) Communications sent via private courier;
 - (c) Communications sent via electronic mail.

- (2) “Official custodian” means and includes any officer or employee of the state, or of any agency, institution or political subdivision of the state, who is responsible for the maintenance, care and keeping of public records, regardless of whether the records are in his or her actual personal custody and control.

- (3) “Electronic mail” means an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy

format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval.

- (4) "Person" means and includes any natural person, including any public employee and any elected or appointed public official acting in an official or personal capacity.

- (5) "Public records" means and includes all writings made, maintained, or kept by the county for use in the exercise of functions required or authorized by law or administrative rule involving the receipt or expenditure of public funds.

- (6) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:
 - (a) Work product (*work product is defined in greater detail in the statute referenced above, and that definition is incorporated herein; if there is any question as to whether or not requested documents are work product then the County Attorney should be consulted*); OR
 - (b) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds; or
 - (c) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects is confidential or that is communicated for the purpose of requesting that the elected official render assistance or information relating to a personal and private matter that is not publicly known affecting the constituent or a communication from the elected official in response to such a communication from a constituent.

- (7) "Writings" means and includes all books, papers, maps, photographs, cards tapes, recordings, or other documentary materials, regardless of physical form or characteristics. "Writings" includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

- (8) "Custer County" or "County" means the elected officials, department heads, supervisors and employees who constitute and comprise the government of said county.

PART ONE: PROCEDURES

- I. The Colorado Open Records Act provides that all public records shall be open for inspection by any person at reasonable times, but the official custodian of any public records may 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. Therefore, it is important that all requests to inspect public records be carefully evaluated to determine what records can be provided to the requested party in compliance with Colorado law.
- II. This policy manual is intended to be a general guide to assist the elected officers of Custer County, the department heads, the supervisors, and the county employees in handling public records requests. The elected county officials and the appointed department heads are the official custodians of all records maintained within their respective offices or departments, **except** that the County Clerk and Recorder is the official custodian of records for the Board of County Commissioners.
- III. A distinction is made between routine requests and requests that may implicate issues of privacy and confidentiality. Routine requests are those typically made in the course of regular, everyday county business for access to information that is non-controversial and for which there is no potential expectation of privacy or confidentiality. Such requests may be handled informally by the individual elected officer, department head, supervisor and employee without following the procedure set forth herein. The procedure set forth below shall apply only to those instances where there is a concern that the records requested may contain personal information or financial information about citizens who have engaged in business with Custer County and who may have made disclosures that said citizens reasonably believed would not be released to or shared with any other persons. No specific guidelines can be set forth as to where the line should be drawn; the determination will have to be made on a case-by-case basis.
- IV. 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 requestor of this fact in writing. In such written notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of records from the person's custody or control, the location of the records, and what person then has custody of the records. When feasible, the records request shall be transferred to the proper custodian by the person receiving the request.

- V. A request for public records made by any person to an elected officer, a department head, supervisor, or a county employee must be made in writing to be valid. When a written request for public records is received, a notation shall be made on the written request setting forth the date and time the request was received, and a copy of such written request shall then be forthwith delivered to the County Attorney. The County Attorney shall review the written request and determine whether the requested records are (a) not subject to disclosure; (b) subject to disclosure which requires that certain information be redacted; or (c) subject to full disclosure. The County Attorney will then notify the person to whom the request was directed as to the appropriate response.
- VI. If the official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of such correspondence for the purpose of determining whether the correspondence is, in fact, a public record. The County Attorney shall also be consulted with respect to such correspondence.
- VII. If public records are not readily available at the time of the request, the official custodian shall set a date and hour for the inspection of such records within a reasonable time after the request is made. A "reasonable time" shall be presumed to be within three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven working days.
- VIII. "Extenuating circumstances" are defined as set forth in §24-72-203 (a) through (c), C.R.S. The official custodian may extend the period of time to provide requested documents for inspection to ten days if the custodian determines that one or more of the following conditions exist and states such condition(s) in writing to the requestor within the first three days from the receipt of the request:
- (a) The request is broadly stated and encompasses all or substantially all of a large category of records and the request lacks sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three-day period;
 - (b) The request would require the office or department to devote all or substantially all of its resources to comply with the request when an impending deadline exists or a period of peak demand exists that is either unique or not predicted to recur more frequently than once a month;

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

With the consent of the requesting person, the time period for complying with the request for public records may be further extended. If the requestor refuses to agree to additional time and the official custodian reasonably believes that the request is too broad, speculative or voluminous for compliance within the ten-day period, then the county may request relief from the court, including attorney fees as provided by law. In such a case, the County Attorney should be contacted immediately.

There is a special rule regarding a request for public records during an election. If an unduly broad or voluminous request for access to public records is received by the County 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 the election results, whichever occurs first. In such a case, the requestor should be furnished a copy of this special rule. This rule is necessary because of the limited staff and the amount of statutorily-mandated duties in proximity to an election. This special rule is authorized pursuant to §24-72-203, C.R.S., which allows the official custodian to make such rules with respect 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 official custodian or his/her office.

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

- IX. If requested records are in active use or storage or otherwise not available immediately, this fact shall be communicated to the requestor promptly in writing. The official custodian shall set a date and time within three days when the requested records will be available for **inspection**. The official custodian is not required to produce copies within three days. A reasonable additional amount of time shall be allowed for copying and production, if physical copies are requested.
- X. The official custodian of public records shall allow any person the right to inspect such records or any portion thereof except on one or more of the grounds set forth in §24-72-204, C.R.S. The official custodian may also deny the right of inspection if, based on the legal advice of the County Attorney, disclosure to the applicant would be contrary to the public interest. If access to certain documents that would otherwise

be a matter of public record is denied based on legal advice that disclosure would be contrary to the public interest, the official custodian shall notify the applicant in writing and shall specifically describe the document(s) withheld, explaining why such document(s) is/are privileged, and why disclosure would cause substantial injury to the public interest. The official custodian shall further notify the applicant in writing of his/her right to pursue judicial relief pursuant to §24-72-204 (a)(XIII), C.R.S.

- XI. In all cases in which a person has the right to inspect a public record, the person may request a copy or print-out of the record. Physical inspection of records is not required, and a requestor may decide an inspection is not necessary when the requestor knows with certainty what records are to be produced and copied. However, there may also be occasions when the requestor wants to inspect available records in advance of or in lieu of receiving copies. To assist the official custodian in responding to a request, a requestor must state in the written request whether an inspection of the records is required or whether copies of the records in lieu of inspection are acceptable.
- XII. Inspection of public records shall be by appointment only during normal business hours. Inspections shall take place at the office of the official custodian unless another location is mutually agreed upon by the requestor and the official custodian. In certain circumstances, and depending upon the nature of the request, an inspection may be supervised by a county employee and the requestor may be charged for employee time associated with such supervision. The original records shall not be removed from the official custodian's office. If supervised inspection is required by a county employee, there shall be a fee of \$30 per hour charged for the county employee's time.

FEES

- I. In all cases in which a person has the right to inspect a public record, the person may request a copy, print-out or photograph of the record. The official custodian shall furnish a copy, print-out or photograph and may charge a fee for such copies, print-outs or photographs in accordance with the provisions of §24-72-205, C.R.S. Specifically, the official custodian may charge a fee not to exceed twenty-five cents per standard page (8 ½ inches by 11 inches) for a copy of a public record, or a fee not to exceed the actual cost of providing a copy, print-out or photograph of a public record in a format other than a standard page. Where the fee for a certified copy, or other copy, print-out or photograph is specifically prescribed law, the specific fee shall apply.

- II. Upon a request for records transmission by a person seeking a copy of any public record, the official custodian shall transmit a copy of the record by United States mail, other delivery service, facsimile, or electronic mail. No transmission fees may be charged to the person who has requested public records if the records are transmitted via electronic mail.
- III. A person who is inspecting public records pursuant to a written request may take handwritten notes or may bring a laptop or portable computer to take notes while conducting his/her inspection of the records provided. The requestor shall not be allowed to use outside photocopiers, scanners, fax machines, smart phones, cameras or other document-reproduction devices to copy county records.
- IV. A reasonable fee that reflects actual costs may be charged for research and retrieval time in responding to a public records request after the first hour (which is free). Generally, staff time may be charged at \$30 per hour. Any fee charged shall include the cost of redacting documents to excise confidential or privileged material.
- V. Every official custodian of records may also charge a reasonable hourly fee for the manipulation of data in order to generate a record not used by the county, if the county elects to provide information in this matter. 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.
- VI. All payments for copies and other public records covered by this policy must be received in advance of releasing the requested records. Fees may be waived or reduced with prior approval of the official custodian.

CRIMINAL JUSTICE RECORDS

- I. The policy and procedures set forth in this manual do not apply to criminal justice records. §24-72-301, C.R.S., declares such records to be a matter of statewide concern, and only statewide standards defining and regulating access to such records are applicable. Custer County does not have any independent authority to establish policies and procedures in this particular area.

HUMAN SERVICES RECORDS

- I. The policy and procedures set forth in this manual do not apply to Department of Human Services records. §26-1-114, C.R.S., declares such records to be confidential and grants sole authority to the State Department of Human Services to establish rules regulating the disclosure of information for both the state and county departments. The Board of County Commissioners does not have any independent authority to establish policies and procedures in this particular area.

PART TWO: ELECTRONIC MAIL POLICY

- I. Custer County provides an electronic mail communications system for the use of its officials and employees. §24-72-204.5 (1), C.R.S., mandates that Custer County shall adopt a written policy with respect to any monitoring of electronic mail communications sent by or received by its officials and employees by means of the system so provided.
- II. §24-72-204.5 (2), C.R.S., further requires that the written policy so adopted shall inform the officials and employees of Custer County that their correspondence in the form of electronic mail (e-mails) may be a public record under the public records law and may be subject to public inspection under §24-72-203, C.R.S.
- III. It is the policy of Custer County that its e-mail system is provided primarily for the use of county officials, department heads and employees to perform the duties of the position for which they were elected or hired, and that personal and private communications using the county's e-mail system should be kept to a minimum. Friends and family members should be informed that they are discouraged from using the county e-mail system to correspond or communicate with the county officials and employees while they are at work, and they should further be informed that any private and personal messages they *do* send to the county e-mail system are not confidential and that such messages could be subject to public inspection and could also be reviewed by elected officials, department heads, and supervisors.
- IV. Custer County understands that, notwithstanding the fact that its officials and employees are discouraged from using the county e-mail system for correspondence not related to county business, there will be occasions when private communications will be sent by and received by its officials and employees via the county e-mail system. The county respects the privacy of the people who work for the county government and assures all county employees that their county e-mail accounts will not be randomly accessed or reviewed. If an elected official, department head or

supervisor has reason to believe that an employee is abusing his or her use of a county e-mail account for personal matters then appropriate disciplinary action may be taken pursuant to the relevant provisions of the Custer County Comprehensive Personnel Policy.

- V. Any elected official, department head, supervisor or employee who sends or receives private and personal e-mail correspondence via his or her county e-mail account shall promptly delete such messages as soon as practicable after transmission or receipt of such correspondence. All work-related e-mails addressing legitimate county business shall be maintained and saved for a period of no less than ninety (90) days from the date of transmission or receipt. After the expiration of this mandatory ninety-day period it shall be the discretion of the primary user of the e-mail account as to whether the correspondence should continue to be saved or deleted. If a request is made for public records relating to e-mails that are being maintained or saved during the ninety-day period then the primary user of the e-mail account shall not delete such correspondence but rather shall continue to maintain and save such correspondence until otherwise directed by the County Attorney.

MOTION by Commissioner Attebery, seconded by Commissioner Kattnig:

To adopt the CORA Policy as presented. The motion carried unanimously.

April 30, 2015