

Public Records Policy

It is the policy of the Board of County Commissioners (BOCC) that all 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. 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.

Though "all public records are to be open for inspection by any person at reasonable times," procedures for such disclosure can be subject to rules and regulations made by the official custodian or the custodian. These rules and regulations are authorized, if they are reasonably necessary for the protection of such records and for the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his/her office/department. Such rules and regulations cannot change the Act; for example, such rules and regulations cannot limit who is entitled to records or limit what records are open for inspection. This Policy is intended as a general guideline to assist employees in handling public records requests. However, depending upon the circumstances of a request, the County reserves the right to allow a custodian to establish specific rules and regulations necessary for the protection of such records and for the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his/her office/department. This Policy is subject to interpretation by the County Attorney's Office and exceptions may be made in individual cases at the discretion of the County Attorney's Office.

A. Definitions

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

- 1) 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 (C.R.S. 24-72-202(6)). Criminal justice records are not included by the provisions of Part 2, but rather are covered by Part 3 of the Act.
- 2) Writings: All books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. Writing includes digitally stored data, including without limitation e-mail messages, but does not include computer software (C.R.S. 24-72-202(7)).

B. Procedure

- 1) The County has determined that the use of an official Request Form to be used by citizens is necessary for the efficient handling of such public records requests. The Public Records Request Form should be given to any individual who makes a request

that is not on the form, or the individual should be directed to www.co.grand.co.us or to the Grand County Clerk and Recorder to receive a Public Records Request Form. The citizen should be told that County Policy requires that 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. Once a request is received on the official County Public Records Request Form, a copy should be transmitted to the County Attorney's Office immediately. The County has a limited amount of time within which to respond to Public Records requests and employees receiving such requests should be familiar with these statutory deadlines. See D.Time for Accessing Public Records in this Policy for more information.

- 2) The Clerk to the Board of County Commissioners is the official custodian of all records centrally maintained by the County. Department Heads are the official custodians of all records maintained within their departments. The Manager of IT is the official custodian of e-mails. 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.

Elected Officials may develop their own policies and procedure regarding public records in their custody; however, to the extent that the County has custody of any public records of an Elected Official the County shall, in consultation with the Elected Official, meet any requirement of the Open Records Act as it may apply to documents in the County's possession.

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 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)

C. Fees

- 1) Requests for records which fit the following criteria may, in the judgment of the official custodian, be provided free of charge:

Per request, documents which do not exceed ten pages and which are retrievable within a two-hour period of the requests.

- a) Agenda materials which have been prepared in advance and which are in support of items scheduled for consideration by the BOCC at a future date, unless the request exceeds copies in excess of fifty pages of material.
 - b) Records which are normally produced for public information, such as the current year budget document, brochures on County services, or procedures, etc.
- 2) In all cases where a person has the right to inspect any public record, s/he may request copies, printouts or photographs of such record.

- a) The fee shall be \$0.25 per page, unless actual costs exceed that amount, in which case actual costs may be charged. Actual costs shall include staff time. Any fees charged in this policy shall include the cost of redacting documents to excise privileged material. Fees may be waived or reduced with prior approval of the BOCC.
- b) 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.
- c) Each department 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.
- d) All payments for copies etc. must be received in advance of releasing the requested records.

D. Time for accessing Public Records

1) 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 applicant "forthwith" in writing if requested. The custodian shall set a date and hour within three working days when the records will be available for inspection.

2) Extension of time to 10 working days

The period of providing requested documents for review may be extended 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:

- a) 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
- b) 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:
 - i) 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
 - ii) 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.

- 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 days the County may request relief from the court, including attorney's fees, as provided by law.

3) When Time Period for Response Begins:

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:

- a) E-mail, it is deemed received when it is viewed by the recipient.
- b) U.S. Mail, it is deemed received when its seal is broken.
- c) Fax, it is deemed received when it is printed during regular business hours, or if received after hours, at 8:00 AM on the following business day.

E. 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 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 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.

F. Denial Of Inspection Of Records

- 1) Denial of inspection must be specific and can only be based on reasons provided in the Public Records Act. The Act provides that documents may be withheld from disclosure:
 - a) If inspection would be contrary to any state statute.
 - b) If inspection would be contrary to federal statute or regulation.
 - c) If inspection is prohibited by a rule of the Supreme Court or by order of any court.

- 2) 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:
 - a) 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.
 - b) Test related data listed in C.R.S. 24-72-204(2)(a)(II).
 - c) Details of bona fide research projects of state institutions.
 - d) Contents of real estate appraisals relative to acquisition (not sale) of property for public use until title passes to the County.
 - e) 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;
 - f) 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.

- 3) Inspection of the following shall be denied, unless otherwise provided by law or unless requested by the person in interest:
 - a) Medical, mental health, sociological, or scholastic achievement data on individuals.
 - b) Personnel files, except for application and performance ratings.
 - c) Letters of reference (which are not disclosable to the person in interest, if they concern employment, licensing, or issuance of permits).
 - d) Trade secrets, privileged information, and confidential commercial, geological, or geophysical data furnished by or obtained from any person.
 - e) Certain material contributed to libraries or museums.
 - f) Addresses and phone numbers of school children.
 - g) Library records identifying users, as prohibited by C.R.S. 24-90-119.
 - h) Home addresses, telephone numbers and financial information of County employees.
 - i) 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:
 - i) sexual harassment complaints and investigations, and,
 - ii) applicants for an executive position at the County
 - iii) 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.

iv) The constitutional right of privacy may, in very limited circumstances, be a basis for resisting disclosure, particularly for the person in interest.

4) Denial on Basis That Release Would do Substantial Injury to the Public Interest

- a) 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)).
- b) 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)).
- c) 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).