

DELTA COUNTY OPEN RECORDS POLICY

I. PURPOSE:

The Colorado Open Records Act (CORA), found at *C.R.S. §24-72-201 et seq.*, is a series of laws designed to guarantee that the public has access to public records of government bodies at all levels in Colorado. CORA requires disclosure of “public records” which are defined as records used in performing public functions or involving the receipt of public funds.

This policy sets forth general guidelines for use by citizens or entities requesting public records, and for use by Delta County staff in responding to such requests. Delta County is committed to the principle of open and accessible government. As such, Delta County is committed to fulfill every request for public records as efficiently and expeditiously as possible that is within the requirements established by CORA.

Although “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. *C.R.S. § 24-72-203(1)(a)*. These rules and regulations are authorized if they are reasonably necessary to protect such records and for the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his/her office/department. *C.R.S. § 24-72-203(1) (a)*.

This policy is subject to interpretation by the Delta County Attorney’s Office, and exceptions may be made in individual circumstances in its sole discretion. As Colorado law changes, this policy and procedure will be amended accordingly.

II. DEFINITIONS:

The definitions contained in *§24-72-201 et seq.*, C.R.S., as amended from time to time, shall apply to this policy unless the context requires a different meaning. Four definitions of particular relevance are set forth below:

1. Custodian – includes the official custodian or any authorized person having personal custody and control of that public *records*. (*C.R.S. § 24-72-202(1.1)*).
2. Public Records – includes all writings made, maintained, or kept by . . . any political subdivision of the state . . . for the exercise of functions required or authorized by law or administrative rule . . . or involving receipt or expenditure of public funds. *See C.R.S. § 24-72-202 (6) (a) (I)*.
3. “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.” *See §24-72-202(7) et seq., C.R.S.*

III. RESPONSIBILITY:

All Delta County employees are responsible to familiarize themselves with and abide by this Policy. Department Heads shall ensure compliance with this Policy. Violation of this Policy may result in disciplinary action up to and including termination of employment. If you believe this Policy has been violated, contact the Department Head or the County Attorney's Office.

IV. PROCEDURE:

The following procedure shall apply to ALL open records requests with the exception of those Departments listed in Section VI of this policy:

A. REQUESTS

1. Form. Citizens' use of an official Records Request Form is necessary for the efficient handling of open records requests. The Records Request Form (Attachment "A") SHALL be given to any individual who makes a request. The Records Request Form must be delivered in person or by U.S. Mail or facsimile to the official records custodian. Requests submitted via e-mail are discouraged because the County cannot guarantee that a particular custodian has received an electronic e-mail request due to spam filters, and/or inactive or incorrect e-mail accounts. An open records request must be in writing and shall contain at least the following information:

- a) Specifically identifying the request as a public records request.
- b) The name of the organization or person making the request.
- c) The mailing address or e-mail address of the requestor.
- d) Identification of the specific records being requested.

CORA requests that do not contain the information above shall not be accepted. If a request is made verbally, the requestor will be asked to submit the request in writing. If a request is too broad or vague, the custodian may require that the requestor provide more specific information.

2. Transmission to County Attorney. Upon receipt of a written request for records, the County staff member who received such request shall make a notation on the Records Request Form that reflects the date/time it was received by the particular office, and shall **immediately** deliver the request to the County Attorney's Office. Upon receipt of the CORA request a review will take place and a determination will be made as to whether the requested records are (a) subject to full disclosure; (b) subject to disclosure with redaction of certain information; or (c) not subject to disclosure. The County Attorney's Office will notify the custodian of the response, and the custodian of records, or his or her designee, will compile the records and respond to the request.

3. Location of Records. The Clerk to the Board of County Commissioners of Delta County (BoCC) is the official custodian of all recorded records maintained by Delta County. Department heads are the official custodians of all records maintained within their departments. The head of the IT Department is the official custodian of e-mails. “If the public records requested are not in the custody or control of the department or person identified in the request, the requestor shall be notified of this, in writing. In such notification, the person shall state 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.” See § 24-72-203 (2) (a), C.R.S.

B. TIME FOR ACCESSING OR THE PRODUCTION OF PUBLIC RECORDS

Where a person may inspect a public record, the person may request a copy or printout of the record. Physical inspection of records is not required, and a requestor may decide an inspection is unnecessary when he/she knows with certainty what records he/she wants produced and copied. However, there may be other situations in which a requestor wants to inspect records before or in lieu of receiving copies. To assist County staff in responding to a request, a requestor shall state on the Records Request Form whether he/she wants to schedule an inspection of records, or whether he/she just wants copies of records in lieu of inspection.

1. Time for inspection of records - three working days. The official records custodian will set a date and hour within three working days from receipt of the request when the records will be available for inspection. If the requested records are inactive or are in storage and, therefore, are not available right away, this shall be communicated to the requestor, in writing, if requested. See § 24-72-203 (3) (a) (b), C.R.S.

2. Seven-day extension of time. The period of providing the requested documents for review may be extended for an additional seven working days if the Delta County Attorney's office determines that extenuating circumstances exist which would prevent the inspection or production of records within the initial three-day period. The requestor shall be notified in writing of the basis for the extenuating circumstances and the resulting extension within the initial three-day period. See § 24-72-203(3)(b), C.R.S. Extenuating circumstances are described as:

- a) A broadly-stated request that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the official records custodian to reasonably prepare or gather the records within the three-day period. § 24-72-203(3)(b)(1), C.R.S., or
- b) A broadly-stated request that encompasses all or substantially all of a large category of records, and the department cannot prepare or gather the records within the three-day period because: (1) The custodian must 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 (2) 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. § 24-72-203(3)(b)(II), C.R.S.

- c) Extenuating circumstances cannot apply to a request that relates to a single, specifically identified document. § 24-72-203(3)(b)(III) (c), C.R.S.
- d) If the request is too broad, speculative or voluminous to prepare in ten working days (three days plus seven-day extension), Delta County may request relief from the District Court as provided by law.

3. When time period for response begins. The time for response does not run until Delta County receives the request on its official Records Request Form. If the form is sent by:

- a) U.S. Mail, it is deemed received when its seal is broken.
- b) Fax, it is deemed received when printed during regular business hours.
- c) Notwithstanding the foregoing, requests received outside of normal business hours, on holidays, and over weekends will be deemed received no earlier than 8:00 a.m. on the next business day.

C. INSPECTION AND COPYING OF RECORDS:

1. Inspection. If the requestor wishes to inspect records before or in lieu of receiving copies of such records, such inspection shall be by appointment only during normal business hours which may vary from Department to Department at a location determined by the official records custodian, unless the Delta County Attorney's Office deems it appropriate for the inspection to take place in another County department. In certain circumstances, and depending on the request, an inspection may need to be supervised by a County employee; if such is the case, the requestor may be charged for employee time associated with such supervision as set forth in Section IV.D., below. The original records shall not be removed from the custodian's office.

2. Copies of Records. In the event the requestor requests copies of available records in lieu of an inspection, such records will be provided within the timeframe set forth in Section IV.B., of this policy. In the event the requestor conducts an inspection and requests copies of records at the time of such inspection, the requestor must mark with tabs or clips the pages he or she wants copied. Copies may be made at a later date and time, based on volume and staff availability. In such case, the requestor will be notified when the copies are available for pick-up. Copies of records may be mailed upon request at an additional fee.

3. No outside Copiers or other Devices. The requestor may take notes and may bring a laptop or portable computer device to take notes while inspecting/reviewing documents.

However, the requestor shall not bring and shall not use outside photocopiers, scanners, fax machines, smart phones, cameras or other copy, scanning or reproduction devices to copy Delta County records.

D. FEES FOR INSPECTION AND COPYING OF RECORDS:

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

- a) Documents which do not exceed four (4) pages and which are retrievable within a one (1) hour period of the request; or
- b) Agenda materials prepared in advance and which are to support items scheduled for consideration by the Board of County Commissioners at a future date, unless the request exceeds copies over twenty-five (25) pages of materials; and or takes more than a hour to retrieve; or
- c) Records normally produced for public information, such as the current year budget document, brochures on County services, or policies and procedures, etc., unless the request exceeds copies over twenty-five (25) pages of materials and or takes more than an hour to retrieve.

2. When a person inspects any public record, they may request copies or printouts of such record.

- a) The fee shall be \$.25 per page, \$5 per CD if a CD is requested. Actual costs may be charged and may include staff time for the research, retrieval, review, redaction, copying or processing of records as outlined below.
- b) With a request for electronic records, such records may require redacting of information. Electronic records shall be printed and redacted at the regular charges/rates described herein. If a request is made for the documents to be copied or printed and provided in electronic format, it is at the custodian's discretion whether to do so. If the custodian determines it is reasonable to provide records in electronic format, they may be provided in pdf format only.
- c) If portions of records may be denied inspection as outlined Section IV. E. of this policy, but other portions may not be denied; the custodian shall advise the requestor of the approximate cost 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.
- d) Requests that require the manipulation of data are not covered by the Open Records Act and may be denied.
- e) Departments may charge for time spent responding to large requests, including without limitation, requests that require the searching of voluminous files for information and or redacting of information if such is required under IV.E. of this

policy. The custodian shall not impose a charge for the first hour of time expended with the research and retrieval of public records. After the first hour of time has been expended, the custodian may charge a fee for the research and retrieval of public records of thirty dollars (\$30.00) per hour. *See 24-72-205 (6) (a).*

- f) In the event a requestor wishes to inspect records in lieu of or before receiving copies of such records, an inspection will be scheduled as set forth in Section IV.C. of this policy. In certain circumstances, and depending on the request, the inspection may be supervised by County staff and the requestor may be charged for staff time associated with such supervision at thirty dollars (\$30.00) per hour.
- g) All payments for copies, research time, etc. must be received before releasing the requested records. Checks shall be made payable to "Delta County." The County cannot bill for fees relating to open records requests. Full payment for the fees outlined above, including shipping/postage, must be remitted to the County before copies of the records will be released to the requestor.
- h) Upon request, and after receipt of payment in full for the requested records, the custodian may ship or mail copies of the records to the requestor. In such case, the requestor shall be required to prepay the cost of the shipping or mailing and any associated staff time incurred in preparing the records for shipping.
- i) If a request involves voluminous research or records, the requestor may want to get an estimate of the cost to produce the records. The County will not commence work to assemble a response to a request without prior written approval from the requestor. For requests involving voluminous research or records, a deposit of 50% of the estimated cost of the work may be collected by the custodian before work will start.

E. DENIAL OF INSPECTION OF RECORDS:

In Martinelli v. Dist. Ct., 612 P.2d 1083 (Colo. 1980), the Colorado courts have established a three-part test to be used to determine whether disclosure is appropriate. In assessing such a claim, the trial court is to engage in a "tripartite balancing inquiry" that determines (1) whether the claimant has a legitimate expectation that the materials or information will not be disclosed; (2) whether disclosure must serve a compelling state interest; and (3) if so, whether the disclosure will occur in the least intrusive manner.

A denial of inspection of records requested shall be specific and can only be based upon reasons that fall within the Colorado open Records Act, as set forth below:

1. Contrary to Statute or Court Order. A requestor may be denied the right of inspection if:
 - a) Such inspection would be contrary to any state statute.

- b) Such inspection would be contrary to any federal statute or regulation issued having the force and effect of law.
- c) Such inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court.
- d) Such inspection would be contrary to the requirements of any joint rule of the senate and the House of Representatives pertaining to lobbying practices.

2. Contrary to Public Interest. Inspection of the following records may be denied on the grounds that disclosure would be contrary to the public interest:

- a) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose; *See § 24-72-204(2)(a)(I), C.R.S.*
- b) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination. *See § 24-72-204 (2) (a) (II), C.R.S.*
- c) The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation. *See § 24-72- 204 (2) (a) (III), C.R.S.*
- d) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to Delta County. *See § 24-72-204 (2) (a) (IV), C.R.S.*
- e) Market analysis 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. *See § 24-72 204 (2) (a) (V), C.R.S.*
- f) Records and information relating to the identification of persons filed with, maintained by, or prepared by the department of revenue pursuant to section 42-2-121 , C.R.S.; *See § 24-72-204 (2)(a)(VI), C.R.S.*

- g) Electronic email addresses provided by a person to Delta County for purposes of future electronic communications to the person from the agency, institution, or political subdivision. See § 24-72-204 (2) (a) (VII), C.R.S.
- h) Details of security arrangements or investigations. See § 24-72-204 (2) (a) (VIII), C.R.S.

If the right of inspection of any records set forth above is granted to any news agency, it shall be allowed to all such news agencies.

3. Personal Information. Inspection of the following records shall be denied, unless otherwise provided by law, or unless requested by the person in interest:

- a) Medical, mental health, sociological, and scholastic achievement data on individual persons, other than scholastic achievement data submitted as part of finalists' records. See § 24-72-204 (3) (a) (I), C.R.S.
- b) Personnel files; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise such person's work. See § 24-72-204 (3) (a) (II), C.R.S.
- c) Letters of reference (not available to the person in interest if they concern employment, licensing or the issuance of permits). See § 24-72-204(3) (a) (III), C.R.S.
- d) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number, furnished by or obtained from any person. See § 24-72-204 (3) (a) (IV), C.R.S.
- e) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions. See § 24-72-204 (3) (a) (V), C.R.S.
- f) Addresses and telephone numbers of students in any public elementary or secondary school. See § 24-72-204 (3) (a) (VI), C.R.S.
- g) Library records identifying users. See § 24-72-204 (3) (a) (VII), C.R.S.

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) Records concerning sexual harassment complaints and investigations.
- b) Records submitted by or on behalf of an applicant or candidate for an executive position.

- c) Any record indicating that a person has obtained an identifying license plate or placard for persons with disabilities under section § 42-3-204 , C.R.S, or any other motor vehicle record that would reveal the presence of a disability;
- d) Records protected by common law privileges such as the governmental or “deliberative 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 requestor 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. *See* § 24-72-204 (3) (a) (X) (XI) (XII) and (XIII), C.R.S.
- e) Veterinary medical data, information, and records on individual animals that are owned by private individuals or business entities, but are in the custody of a veterinary medical practice or hospital, including the veterinary teaching hospital at Colorado State University, that provides veterinary medical care and treatment to animals. *See* § 24-72-204 (3) (a) (XIV), C.R.S.
- f) Nominations submitted to a state institution of higher education for the awarding of honorary degrees, medals, and other honorary awards by the institution, proposals submitted to a state institution of higher education for the naming of a building or a portion of a building for a person or persons, and records submitted to a state institution of higher education in support of such nominations and proposals. *See* § 24-72-204 (3) (a) (XV), C.R.S.
- g) Military records filed with a county clerk and recorder's office concerning a member of the military's separation from military service, including the form DD214 issued to a member of the military upon separation from service, that are restricted from public access pursuant to 5 U.S.C. sec. 552(b) (6) and the requirements established by the national archives and records administration. *See* § 24-72-204 (3) (a) (XVIII), C.R.S.
- h) Applications for a marriage license submitted pursuant to § 14-2-106, C.R.S., and, applications for a civil union license submitted pursuant to § 14-15-110, C.R.S. *See* § 24-72-204 (3) (a) (XIX), C.R.S.
- i) All records, including, but not limited to, analyses and maps, compiled or maintained pursuant to statute or rule by the department of natural resources or its divisions that are based on information related to private lands and identify or allow to be identified any specific Colorado landowners or lands; except that summary or aggregated data that do not specifically identify individual landowners or specific parcels of land. *See* § 24-72-204 (3) (a) (XXI), C.R.S.

4. Substantial Injury to Public Interest. The official custodian of any public record may petition the Delta County District Court for an order permitting him or her to restrict disclosure of

records otherwise available to public inspection if disclosure would do substantial injury to the public interest. See § 24-72-204 (6) (a), C.R.S.

5. Denial of Request. If inspection of public records is denied, the requestor may request a written statement of the grounds for the denial. The statement shall cite the law or regulation which is the basis for the denial and shall be furnished forthwith to the requestor.

V. CLOSURE OF RECORDS REQUEST:

A records request is deemed closed in any of the following situations:

- a) After records are made available for inspection have been inspected by the requestor and no copies of these records are requested; or
- b) After records are made available for inspection have been inspected by the requestor and any requested copies have been provided consistent with this Policy; or
- c) After records have been made available for inspection for ten business days and the requestor has:
 - (i) Failed to arrange for inspection;
 - (ii) Failed to inspect the records after arrangements have been made; or
 - (iii) Failed to provide advance payment as required.
- d) A requestor whose request has been closed under this Section V and who still wishes to inspect the same records must submit a new request.

VI. ADDITIONAL RULES AFFECTING OTHER DEPARTMENTS:

The following offices and departments may handle their own Open Records Requests and may have additional regulations and procedures that pertain to their records:

1. Delta County Sheriff's Office. Requests for Sheriff's Office records should be made in writing and mailed or delivered to 555 Palmer St., Delta, CO 81416. Fax 970-874-2027. Criminal Justice Records are governed by the Criminal Justice Act, Section 24-72-301, C.R.S., as amended.

2. Delta County District Attorney's Office. Requests for records maintained by the District Attorneys' Office shall be submitted in writing and mailed or delivered to 550 Columbia Street, Delta, CO 81416. Fax 970-874-5530.

3. Delta County Coroner's Office. Requests for records maintained by the Coroner's Office shall be submitted in writing and mailed or delivered to _____ . Fax 970-874-9990.

4. Delta County Health and Human Services Department. Requests for records maintained by the Health and Human Services Department shall be submitted in writing and mailed or

delivered to 225 West 6th Street, Delta, CO 81416. Fax 970-874-2175. Health and Human Services records are subject to additional legal protections under both state and federal statutes.

5. Delta County Clerk and Recorder. Requests for records maintained by the Clerk and Recorder shall be submitted in writing and mailed or delivered to 501 Palmer Street, Suite 211, Delta, CO 81416. Fax 970-874-2161. The County Clerk is the Designated Election Official (Official) for Delta County. The Delta County Clerk and Recorder's Office shall not fulfill an open records request for public inspection of ballots during the period commencing forty-five (45) days preceding a primary or general election day and concluding with the date either by which: an election or a ballot issue or ballot question is certified under § 1-10-102 or § 31-10-1205, C.R.S. OR any recount conducted under Article 10.5 of Title 1, C.R.S., or §31-10-1207, C.R.S., is completed, whichever date is later. See § 24-72-205.5(3) (a), C.R.S. During the stay period the Clerk and Recorder shall also deny the public inspection of internal batch reports generated by the Clerk and Recorder for the specific purpose of auditing ballots received in the course of conducting an election. See § 24-72-205.5(3) (a), C.R.S.

The stay required by this policy does not apply to a recount undertaken as provided by law. To protect the privacy of particular electors, any ballots cast by electors within groups of discrete individuals who are more susceptible of being identified such as military and overseas electors, shall be provided for public inspection only to the extent such ballots may be duplicated without identifying elector information. It is the intent of this policy to protect the integrity of the election process while protecting voter privacy and preserving secrecy in voting under Section 8 of Article VII of the State Constitution.