

## **POLICY AND PROCEDURES CONCERNING PUBLIC RECORDS OF LINCOLN COUNTY, COLORADO**

### **A. PUBLIC RECORDS POLICY.**

It is the policy of the Board of County Commissioners (BOCC), of Lincoln County, Colorado, that all public records shall be open for inspection by any person at reasonable times, except as provided by the Colorado Open Records Act (CORA) or other applicable Colorado law. This policy is intended to provide a guideline for persons requesting public records and for county employees handling public records requests. The policy will be deemed modified by additional or new language added to the Colorado Public Records Act, C.R.S. 24-72-201, et. seq., by the Colorado legislature, or rule of Court, subsequent to the adoption of these policies and procedures by the BOCC. The policy and procedures may also be amended by the BOCC at any time the BOCC ascertains that amendment is appropriate.

Though “all public records are to be open for inspection by any person at reasonable times”, CORA allows for procedures for such disclosure to be subject to rules and regulations made by the official custodian. These rules and regulations are authorized by CORA 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 or her office or department. Such rules and regulations do not change the Act but are intended as a general guideline to assist the custodian, elected county officers, and county employees in handling public records requests. Depending upon the circumstances of any particular request, the County reserves the right to allow the custodian to establish specific rules and regulations necessary for the protection of such records and for prevention of unnecessary interference with the regular discharge of the duties of the custodian or his or her office or department and to protect those records excepted from disclosure by CORA. This policy is subject to interpretation by the County Attorney and exceptions may be made in individual cases at the discretion of the County Attorney. Except for requests that the custodian considers to be matter of course, the custodian shall convey all requests for public records to the County Attorney for discussion and assessment.

### **B. DEFINITIONS.**

The definitions found in C.R.S. 24-72-202, as amended from time to time, shall apply unless the context clearly requires a different meaning. General, but primary, definitions are as follows:

1. Public Records: All writings made, maintained, or kept by the County 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 in the provisions of this policy, but rather are covered by Part 3 of CORA. The County is not required to create public records.

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 e-mail messages, but does not include computer software.

**C. PROCEDURE**

1. Any request for a public record shall be made in writing, on a form provided by the County Clerk and Recorder, or the County Department head, as the case may be. The County Attorney and Lincoln County Administrator shall be responsible for the preparation of the Request Form, and amendments as made. Lincoln County has determined that the use of the official Request Form is necessary for the efficient handling of such public records requests. Those requesting a Request Form should be told to complete the form with as much specificity as possible. Once a request is received on the 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 officers and employees receiving such requests should be familiar with these statutory deadlines.
2. The County Administrator 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. It is the responsibility of each Department Head to become familiar with and to educate his or her affected employees about the standards and requirements of this policy. Elected officials may develop their own policies and procedures 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.

**D. FEES INCURRED BY CUSTODIAN AND / OR DEPARTMENT HEADS.**

1. Fees shall be assessed as set forth in this Section D, unless the Custodian or Department Head waives costs for valid reasons:
  - a. The fee shall be twenty five cents per page, unless actual costs exceed that amount, in which case actual costs may be charged. Actual costs shall include staff time of up to Thirty Dollars (\$30.00) per hour. 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 or at the direction of the Custodian. There shall be no charge for research or services for the first hour.

- 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, not to exceed Thirty Dollars (\$30.00) per hour for the manipulation of data in order to generate a record in a form not used by the County, if the County elects to provide information in such a manner.
- d. All payments for copies, etc., must be received in advance of releasing the requested records.

**E. TIME FOR ACCESSING PUBLIC RECORDS.**

- 1. Three Working Days. If the requested records are in active use, are in storage, County personnel are not immediately available to locate the records, or the County Attorney must be consulted as to the legal availability of the records, and therefore, the records are not available right away, this fact shall be communicated to the applicant. The custodian shall then set a date and hour within three working days of the public records request when the records will be available for inspection. The request is deemed to have been made when the County receives the request on the official Request Form. If the form is sent by e-mail, the request is deemed to have been received when it is viewed by the recipient; if received by U.S. Mail, it is deemed received when the seal is broken; and if sent by 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.
- 2. Extension of Time to Ten Working Days. The period of providing requested documents for review may be extended up to ten days if the custodian determines that one or more 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: (1) 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 occur 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.

- c. If the request is too broad, speculative, or voluminous to prepare in ten days and the County Attorney cannot come to an agreement with the requestor either as to narrowing the scope, etc., the County may request relief from the Lincoln County District Court, including attorney fees, as provided by law.

## **F. 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 requestor remove documents or add documents to those provided for review. The requestor shall not bring and shall not use photocopiers, fax machines, cell phones, or any other copy, scanning, or reproduction device to copy County records. Upon completion of the review, the requestor must mark the pages he or she wishes to have copied with adhesive tabs furnished by the requestor. 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 he or she shall do so at the rates set forth herein. 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.

## **G. DOCUMENTS IN DIGITAL FORMAT**

If any person makes a request for a public record, which record, or records, are subject to disclosure, to receive the requested documents in a digital and searchable format, and if the document, or documents, are stored in a digital and sortable format, the document, or documents, will be provided to the requestor in the requested format, subject to the other provisions of this policy and the applicable Colorado statute. The custodian may deny a request for digital records in searchable or sortable formats under the following conditions:

- a. If producing the record would violate the terms of a copyright or licensing agreement between the records custodian and a third party; or
- b. If producing the record would result in the release of a third party's proprietary information; or

- c. If the custodian, after making reasonable inquiries, determines that it is not technologically or practically feasible to provide a copy of the document in a digital format; or
- d. If the custodian, after making reasonable inquiries, determines that it is not technologically or practically feasible to permanently remove information that a records custodian is required or allowed to withhold (such as confidential or protected information) in the digital format; or
- e. There would be a cost to the records custodian to purchase software or create additional programming or functionality in existing software to remove this confidential or protected information; or
- f. If the request would divulge information that would assist in a terrorist attack on critical utility infrastructure such as pipelines or water infrastructure, or would divulge physical and cyber assets of critical infrastructure, including specific engineering, vulnerability, detailed design information, protective measures, emergency response plans, or system operational data of such critical infrastructural assets that would be useful to a person in planning an attack on critical infrastructure.

If the custodian denies a request for a document in a digital format for one of the above reasons, the custodian will produce the document in an alternative format and will provide a written declaration attesting to the reason the custodian is not able to provide the record in the requested format.

#### **H. DENIAL OF INSPECTION OF RECORDS.**

Denial of inspection may occur if based on reasons provided in CORA. Documents may be withheld from disclosure if inspection would be contrary to any state statute, be contrary to federal statute or regulation, or if prohibited by a rule of the Supreme Court or by Order of any Colorado Court.

- 1. The custodian is permitted to deny disclosure in the following situations 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.
  - b. Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination, as described 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 C.R.S.42-2-121.

The above list is not inclusive and may be supplemented by the County pending review of any particular request by the County Attorney.

- 2. The custodian shall deny disclosure of requested records in the following situations:
  - a. Medical, mental health, sociological, or scholastic achievement data on individuals.
  - b. Personnel files, except for application and performance ratings.
  - c. Letters of reference (except to the person in interest for a particular purpose).
  - 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.
  - h. Home addresses, telephone numbers, and financial information of County employees, social security numbers listed in voter records, birth and death dates, recorded chattel mortgages, and recorded military records.
  - i. Sexual harassment complaints and investigations.

- j. Names and applications submitted for an executive position with the County.
- k. Records protected by common law privileges such as the governmental privilege, the deliberative process privilege, work product privilege, or attorney client privilege.

3. The County reserves the right to petition the Lincoln County District Court for denial of a requested record or records if the County is concerned that disclosure would do substantial injury to the public interest as defined in CORA.

#### **I. REQUESTS RECEIVED IN PROXIMITY TO ELECTIONS**

The County acknowledges that pursuant to CORA public records are typically open to inspection. However, the law does authorize a custodian of records to make rules and regulations regarding the disclosure and inspection of public records as are reasonably necessary for the protection of the records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office. Particularly, due to the number of employees working in the County Clerk's Office and the large volume of work that must be done to prepare for and operate elections, this provision shall apply to open records requested in close proximity to an election.

1. Public Inspection of Ballots. The Lincoln County Clerk and Recorder's Office shall not fulfill an open records request for public inspection of ballots during the period coming thirty (30) 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 pursuant to C.R.S. 1-10-102 or C.R.S. 31-10-1205, as applicable, or any recount conducted in accordance with C.R.S. Article 10.5 of Title 1, or C.R.S. 31-10-1207, whichever date is later. During the stay period described herein, 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.

2, Public Inspection of Records other than Ballots. During the period commencing twenty (20) 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 or any recount conducted, the Clerk and Recorder's Office must devote all of its resources to meeting the impending deadline of the election and the numerous statutorily mandated duties that must take place before, during, and after each election. As a result, during the twenty (20) days open records request will not take priority over previously schedule work activities and duties of the Clerk and Recorder's Office such that a request would interfere with the ability of the Clerk and Recorder's Office to perform its public service responsibilities.

3. The Clerk and Recorder, in his or her discretion, and after considering the breadth or volume of the request, the time necessary for responding to the request, and the schedule work activities or duties of the Clerk and Recorder's Office, may entertain requests made during the time frames set forth in this Section H, if the Clerk and Recorder determines under the circumstances will not unnecessarily interfere with the duties of the Clerk and Recorder's Office.