

MESA COUNTY OPEN RECORDS POLICY GUIDANCE DOCUMENT

November, 2014

I. PURPOSE

It is the policy of the Mesa County Board of County Commissioners (“Board of County Commissioners”) that all public records, as those are defined in Colorado statute, shall be open to inspection. In all cases where a person has the right to inspect a public record, the person may also request a copy, printout or photograph of the record. All terms of this policy and all actions by Mesa County will be governed by and in compliance with the Colorado Open Records Act (also known as “CORA”). For a complete copy of CORA, see C.R.S. §24-72-200.1 *et seq.*

Although public records are typically open to inspection, the Colorado Open Records Act authorizes 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 their office. Consequently, it is important that all requests be carefully evaluated to determine what records can be provided to the requesting party in compliance with Colorado law.

The purpose of this Mesa County Open Records Policy (“Policy”) is to set forth a general guideline for use by citizens or entities requesting public records, and for use by Mesa County staff in responding to such requests. In addition to this Policy, the Board of County Commissioners have passed an Open Records Resolution that can be found on the Mesa County website at <http://www.mesacounty.us/cora/>.

Also, the department head of a county department may, following approval by the County Manager, establish a more specific policy as may be allowed under law and necessary under certain circumstances for the protection of particular records and for the prevention of unnecessary interference with the regular discharge of the duties of the custodian. Also, county elected officials may also develop their own policies and procedures regarding public records in their custody. For example, the Mesa County Clerk and Recorder’s office and the Mesa County Sheriff’s Office have their own specific policies dealing with records requests.

If your request involves a specific department, please check on that department’s website for a specific policy or see Section III. 5, on Page 3 of this document for a list of the departments or elected officials who have specific policies or statutes which pertain to their records. If in doubt, feel free to use the Mesa County general Open Records portal found at <http://www.mesacounty.us/cora/>.

The fees set forth herein shall apply to all requests for public records except where a county department or an elected official has established a specific policy for the protection of particular records and which modifies or eliminates the established fees. In the event of a conflict between the fees herein and the specific policy of a county department or an elected official, the specific policy of the department with custody of the records will apply.

To the extent there is a request for records of an elected official, the County will, in consultation with that elected official, meet any requirements of the Colorado Open Records Act.

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 clearly requires a different meaning. Two definitions of particular relevance are set forth below:

- “Public Records” means and includes “all writings made, maintained, or kept by . . . any political subdivision . . . for use in the exercise of functions required or authorized by law . . . or involving the receipt or expenditure of public funds.” §24-72-202(6) et seq., C.R.S.
- “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.” §24-72-202(7) et seq., C.R.S.

III. PROCEDURE

The following procedure shall apply to all open records requests, except where a more specific policy of a County department or an elected official controls. Please review this Policy in its entirety before submitting an open records request.

A. REQUESTS

1. Form. An open records request must be in writing and contain at least the following information:

- the requestor’s name;
- name of organization, if any;
- mailing address or email address, and a phone number for the requestor.

If a request is made verbally, the requestor will be asked to put his/her request in writing. As a general rule, the more specific the request, the more likely the custodian will be able to locate available records that respond to the request, and the more likely fees will be reduced. For any request that is broad or vague, the custodian may require the requestor to provide a more specific request. Also note that large requests fall into the category where the statute allows up to ten days to comply.

The County has available an official [Records Request Form](#) for use by persons making open records requests. Although not required, the Records Request Form should be used whenever possible to ensure all required information is provided and to assist in the efficient and timely handling of records requests. A copy of the Form is located at <http://www.mesacounty.us/cora/>.

2. Submission. Open records requests may be submitted via the website or in person, or via regular mail or via facsimile to the Mesa County Attorney’s Office (970-255-7196, fax).

Regardless of where the request is submitted, county employees will forward the request to the Mesa County Attorney's Office.

Even though the Mesa County Attorney's Office reviews all records requests, the individual department heads are the official custodians of all records maintained within their departments.

3. Transmission to County Attorney. Upon receipt of a written request for records, County staff shall make a notation on the request stating the date it was received. If a request is given directly to a department, a copy will be forwarded to staff in the County Attorney's Office. The request will be assigned to an attorney for review and determination as to whether the requested records are (a) not subject to disclosure; (b) subject to disclosure which requires protection of certain information; or (c) subject to full disclosure. The County Attorney's Office will work with the official custodian as to the appropriate response, and the custodian of records, or his or her designee, will compile the available records and respond to the request and transmit them first to the County Attorney's Office for compliance with CORA. The County Attorney's Office will then respond to the requestor in compliance with the CORA and the Mesa County Resolution.

4. Location of Records. If the public records requested are not in the custody or control of the department or person to whom the request is made, such person or department shall immediately notify the requestor of this fact, as well as the County Attorney office, and the request will be forwarded to the department that has custody or control of the requested records. § 24-72-203(2)(a), C.R.S. If the custodian is an elected official, the elected official will be consulted prior to allowing inspection of the correspondence for purposes of determining whether the correspondence is a public record. § 24-72-203(2)(b), C.R.S.

5. Additional Rules Affecting other Departments. Please be advised that the following offices and departments handle open records requests directed to their particular departments, and additional laws and regulations may pertain to their records.

- Mesa County Sheriff's Office.
<http://sheriff.mesacounty.us/support/template.aspx?id=3105>
- Mesa County District Attorney's Office.
<http://da.mesacounty.us/contact-us.aspx>
- Mesa County Coroner's Office.
<http://coroner.mesacounty.us/contact-us.aspx>
- Mesa County Department of Health
Contact by email: healthinfo@mesacounty.us
- Mesa County Department of Human Services
<http://humanservices.mesacounty.us/contactus/>

- Mesa County Clerk and Records Office
<http://clerk.mesacounty.us/cora/>
- Mesa County Clerk to the Board
<http://clerk.mesacounty.us/cora/>

B. TIMING FOR ACCESS TO OR PRODUCTION OF PUBLIC RECORDS

In all cases in which a person has the right to inspect a public record, the person may request a copy, printout or photograph of the record OR the person may choose simply to physically inspect the records. To assist County staff in responding to a request, a requestor should state in their request whether they want to schedule an inspection of available records, or whether they want copies of available records in lieu of inspection. The custodian shall furnish a copy, printout or photograph if requested and shall charge a fee if applicable as set forth in this Policy in accordance with the Board of County Commissioners current Open Records Resolution.

1. Time for Inspection or Production of Records – Three (3) Working Days. The typical time for inspection or production of available records shall be three (3) working days beginning on the first working day after a request which complies with the requirements of Section III.A.1 above is received. If the requested records are in the custody and control of the person to whom the request is made but are in active use, in storage, or otherwise are not readily available at the time the requestor asks to examine them or requests copies of them, the custodian shall immediately notify the requestor of this fact in writing. If requested by the requestor, the custodian shall set a date and time at which the records will be available for inspection or production. § 24-72-203(3)(a)-(b), C.R.S.

2. Seven Working Day Extension of Time. The three-day period of time for inspection or production of records may be extended for an additional seven (7) working days if the County Attorney’s Office determines that extenuating circumstances exist which prevent the inspection or production of available records within the initial three-day period described. The requestor shall be notified in writing of the basis for the extenuating circumstances and the resulting extension within the initial three-day period. An extension of time is not available for a request that relates to a single, specifically identified document. § 24-72-203(3)(b), C.R.S.

Extenuating circumstances shall be found to exist when:

- 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
- 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 the agency needs to devote all or substantially all of its resources to meeting an independent deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

- A 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 obligations to perform his or her other public service responsibilities.

If a request is too broad, speculative or voluminous to respond to within ten (10) working days (initial three days plus seven-day extension), the County will first attempt to work with the Requestor on narrowing the request in some fashion that meets the Requestor's needs. If a solution cannot be reached, the custodian may request relief from the Court as provided by law.

C. INSPECTION AND COPYING OF RECORDS

1. Inspection. If the requestor wishes to inspect available records in advance of or in lieu of receiving copies of such records, such inspection shall be by appointment only during normal business hours (Monday – Friday, 8:00 a.m. – 5:00 p.m.) at the office of the custodian of records, unless the County Attorney's Office deems it appropriate for the inspection to take place in another County department. The original records shall not be removed from the custodian's office. Inspection of records must always be supervised by staff and thus staff time spent for requestor's inspecting the records will be charged at the regular hourly rate.

2. Copies of Records. Upon receiving a request for records which complies with the requirements of Section III.A.1 above and upon gathering the records, the custodian or the County Attorney's office (as applicable) shall immediately transmit the records to the requestor if there is no charge. If there will be a charge, the custodian/County Attorney's Office shall notify the requestor that the requested information will be given to the requestor upon payment for all costs associated with records retrieval and an estimate of the fees shall be given. If there is a fee, then upon receiving payment in full and upon gathering of the records in the allotted time frame, then the custodian shall send the record(s) to the requestor.

In the event the requestor has conducted an inspection, and then requests copies of available records, the requestor must mark with tabs or clips the pages that 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 available records may be also be transmitted as set forth herein upon request.

3. Outside Copiers or other Devices. If the custodian determines that it does not have the facilities for making a copy, printout or photograph of a record that a person has a right to inspect, the person shall be granted access to the record for the purpose of making a copy, printout or photograph. The copy, printout or photograph shall be made while the record is in the possession, custody and control of the custodian thereof and shall be subject to the supervision of the custodian. The custodian may establish a reasonable schedule of times for making a copy, printout or photograph, and may charge the same fee for the services rendered in supervising the copying, printing out or photographing as the custodian may charge for furnishing a copy, printout or photograph.

D. Fees for Inspection and Copying of Records

A substantial amount of public records related to Mesa County are available for review free of charge on the County website. These records include, but are not limited to budgets, agendas, minutes of the meetings of the Board of County Commissioners, parcel maps, and other information.

Where the records are not available online, and a person or entity wants to inspect and/or request copies of available records, the following fee schedule shall apply. (Please note that Mesa County is not obligated to provide copies of records in electronic format if the information is not originally in that format; however, if the requested information is available in electronic format, the requestor will not be charged for copies of the material if the material did not need to be copied and scanned – but hourly labor charges to gather the information, if any, will still apply. If the material did need to first be copied and scanned then the requestor must pay the per-page fees in addition to the labor charges, if any.)

1. Copy, printout or photograph.

- The fee for a copy, printout or photograph shall be **\$.25 per standard page** (8 ½ x 11). For documents in non-standard format (larger than 8 ½ x 11), the actual cost of providing a copy, printout or photograph of the record will be charged. Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, the specific fee shall apply.
- In addition to the \$.25 per page fee, the requestor may be charged a reasonable research and retrieval fee based on the actual cost of responding to the request, including staff time of gathering, preparing, reviewing, redacting to excise privileged material, and copying available documents. No fee will be imposed for the first hour of time expended in connection with the research and retrieval. After the first hour, a fee of **\$30.00 per hour** will be charged for each additional hour expended in connection with the research and retrieval.
- In the case of a request for a computer printout (other than a document which can be printed via word processing) the fee may be based on 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.

2. Manipulation of Data. Please note that Mesa County is not obligated to manipulate data in response to a request in order to generate a record in a form not used by the County. However, if the County elects to do so in response to a specific request, the custodian may charge the requestor a reasonable hourly fee associated with the request. The fee shall not exceed the actual cost of manipulating the data and generating the record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

3. Transmission of Records. Upon request, and after receipt of payment in full for the requested records, the custodian may deliver, or mail via U.S. Mail, or email if that is preferred,

copies of the available records to the requestor. If the information is on a CD, the cost for a CD is \$5.00 per CD.

4. Notice of Fees. Where there will be staff time over an hour, the requestor will be notified in advance of the types of fees outlined above and informed of the charges.

The County will not commence work to assemble a response to a request for requests that will involve more than one hour without prior approval from the requestor. For such requests, prepayment in full may be collected by the custodian before work will start.

The County cannot invoice for fees relating to open records requests.

5. Reduction or Waiver of Fees. In certain circumstances, and depending on the nature of the request, the fees set forth in this Section III.D. may be reduced or waived with prior approval of the County Attorney. For example, if a response to the request requires minimal staff time and less than four pages, or the requested public records are to be used for nonprofit activities, journalism or academic research, a fee reduction or waiver may be allowed. To request consideration of a fee waiver or reduction, please contact the specific custodian of the County department to whom you are directing your open records request or the Board of County Commissioners or the County Attorney. *Fee reductions and waivers shall be uniformly applied among persons similarly situated. A fee reduction or waiver for one request does not guarantee future reductions or waivers.*

E. DENIAL OF INSPECTION OF RECORDS

A denial of inspection must be specific and can only be based on reasons set forth in the Colorado Open Records Act. Some examples include the following (this list is not exhaustive):

1. Contrary to Statute or Court Order. A requestor may be denied the right of inspection if:

- Inspection would be contrary to any state statute;
- Inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or
- Inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court.

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 or contrary to any state or federal statute or regulation. C.R.S. 24-72-204(1) and (6).

3. Personal Information. Some example where inspection of the following records *shall* be denied, unless otherwise provided by law, or unless requested by the person in interest, are as follows (this list is not exhaustive):

- Medical, mental health, sociological, or scholastic achievement data on individuals. § 24-72-204(3)(a)(I), C.R.S.

- Personnel files, except that such files are available to the person in interest and to the elected and appointed officials who supervise that person's work. § 24-72-204(3)(a)(II), C.R.S.
- Letters of reference (not available to the person in interest if they concern employment, licensing or the issuance of permits). § 24-72-204(3)(a)(III), C.R.S.
- Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number, furnished by or obtained from any person. § 24-72-204(3)(a)(IV), 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 many other types of records. C.R.S. 24-72-202 and -204

4. 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.

F. CLOSED REQUEST

An open records request will be deemed closed under any of the following circumstances:

1. Following Inspection. After records made available for inspection have been inspected by the requestor and no copies of the records are requested.

2. Copies Provided. After records made available for inspection have been inspected by the requestor and copies of the records have been provided consistent with this Policy.

3. Failure to Inspect or Pay. In the event a requestor does not make arrangements for review of documents within ten (10) days after being contacted by Mesa County for such purpose, fails to appear for a scheduled review, fails to prepay a deposit for the cost of research or records or fails to pay the total of all costs within ten (10) working days of notification of the availability of records.

4. Request Closed. A person whose request has been closed under this Section F and who still wishes to inspect the same records must submit a new request.