

## **City of Fort Collins Public Records Requests Policy**

### **1. Purpose.**

This policy sets forth the City's rules regarding the inspection of public records as required by the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.* ("CORA"). These rules are reasonably necessary for the protection of the public records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office. This policy is not applicable to criminal justice records.<sup>1</sup> Those records are governed by separate statutes and policies.

*Public record* means all writings made, maintained, or kept by the City of Fort Collins, Colorado (City) and related entities for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.<sup>2</sup>

*Custodian* means and includes any City of Fort Collins employee 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.<sup>3</sup>

*Records Coordinator* means the City Clerk or their designee. The Records Coordinator is responsible for processing and responding to CORA requests submitted to the City.

The custodian will apply the provisions of CORA to determine what records are public and subject to public disclosure pursuant to a request. Not all records are subject to disclosure and the records coordinator will notify the requestor when and why requested records will not be disclosed as required by CORA.

Many City records are available on its website at [Public Records](#) such as financial documents, City Council agendas, minutes, and the Municipal Code and City Charter. If the records that are the subject of a request are available publicly (i.e., on the City website), the City Clerk may direct the requestor to such source for inspection of the records.

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<sup>1</sup> Records qualifying as criminal justice records under the Colorado Criminal Justice Records Act, CRS § 24-72- 301, *et seq.*, are not subject to this policy and must be submitted directly to the Police Department.

<sup>2</sup> C.R.S. § 24-72-202(6)

<sup>3</sup> C.R.S. § 24-72-202(2)

## **2. Form of Requests.**

Requests for inspection of records that can be quickly identified and are readily available by the custodian for immediate inspection may be made orally, however, the Custodian reserves the right to require that a request be submitted in writing.

All requests must specifically identify the records requested. Written requests may be made in email format or submitted to the City Clerk's office via the Public Records Portal/JustFOIA: <https://fortcollinsco.justfoia.com/publicportal/home/track>

The requestor of the records should provide valid contact information, including a telephone number and e-mail address. This contact information may be used to provide information and if the custodian needs to confer with a requesting party.

## **3. Notice about email retention.**

Pursuant to the City's Electronic Records Retention policy, [2.02], messages are automatically deleted from the City's email system after 90 days for messages in Deleted or Junk/Spam folders and after 730 days (two years) for inboxes and all other email folders. Upon receipt of a request for email communications, the Records Coordinator will work with the City's Information Technology ("IT") department on the request.

## **4. Timeframe for Responding to Requests.**

Upon receipt of a complete request and payment of any applicable fees to the Records Coordinator as described in Section 7, the City will make public records available for inspection and copying within a reasonable time. Subject to Section 6, unless the requesting party agrees to a longer time, a reasonable time will be within three working days of either the date of the written request or the payment of the estimated fees if advance payment is required.

Review period for physical records. The Records Coordinator will inform the requester about the availability of original physical copies that need to be examined or retrieved at the designated City Department and cannot be generated electronically. This also applies to cases where the requester has specifically asked for physical copies. If these records are located in the City Clerk's office, they will be accessible for ten business days following the notice provided by the Records Coordinator. For other departments, specific timelines for review will be determined upon consultation.

If the requester does not review the physical records provided for inspection or retrieval within ten business days, the request will be considered abandoned. At this point, any original records will be returned to their usual location, and any copies will be destroyed.

Closing Abandoned Requests. The City will deem an open records request abandoned if,

after three business days:

- The requester did not provide a clarifying response to questions from the Records Coordinator, or
- Did not submit payment for the applicable fees outlined in Section 7 below.

At such time, the request will be closed, and the requestor must submit a new request if they wish to continue their request at a later date.

## **5. Limitations on Requests.**

The following are limitations on the form and frequency of requests necessary to manage the burden on taxpayer resources and to limit substantial interference in the regular discharge of the duties of the Records Coordinator and the responding City departments.

A. The City will not allow the inspection of any records if such inspection would be contrary to state or federal law or regulation, would violate a court order, or as permissible under CORA.

B. In compliance with CORA, the City will not allow inspection of any privileged, confidential legal records and will not log or identify individual records of this type, except as required by CORA.

C. Requests for inspection from attorneys related to pending legal matters involving the City must be directed to the City Attorney's Office.

D. All requests must include enough information so the record(s) being requested can be identified, including a date or date range. Without sufficient information to search and identify the records being requested, the request may be deemed incomplete until requested clarification has been provided. As stated above, the request will be deemed abandoned and closed if the requestor does not provide clarification within three business days of the Records Coordinator requesting clarification.

E. Due to the extraordinary number of email communications generated by City business, all requests for email records should include a date range and keywords that the City may use to search and locate requested records. When possible, the sending and receiving party to the email should be listed in the request. As stated above, the request will be deemed abandoned and closed if the requestor does not provide clarification within three business days of the Records Coordinator requesting clarification.

F. A general request for information rather than a request for specific documents may be deemed incomplete until requested clarification has been provided. As stated above, the request will be deemed abandoned and closed if the requestor does not provide clarification within three business days of the Records Coordinator requesting clarification. If a record does not already exist, there is no requirement under CORA for an agency to create a new record to fulfill a public records request.

G. Upon the third request for the same or substantially the same records, with the sameness of the request being determined in the Records Coordinator's reasonable discretion, the Records Coordinator may require the requesting party to state in writing the reason(s) for any additional request and/or how an additional request is not the same or similar to prior requests. Absent such written clarification, the Records Coordinator may close the request as previously completed.

H. Multiple records requests within a week may be answered in the order that they were received.

I. In certain circumstances a single point of contact may be designated for specified individuals or organizations making records requests. In such circumstances, the individual or organization shall be notified that future records requests must be sent to the single point of contact. Once notified, records requests from the individual or organization are not deemed received by the City until received by the single point of contact. The designation of a single point of contact will not modify other provisions of this policy and the single point of contact will act as the Records Coordinator's designee. The circumstances for designation of a single point of contact include, but are not limited to:

- (i) If an individual or organization has been harassing, threatening, or demonstrated otherwise inappropriate conduct to City employees, or is presenting a safety risk to City employees; or
- (ii) If the request requires specialized technical knowledge or expertise.

## **6. Extended Time Frame for Responses.**

A. While a reasonable time to respond is presumed to be three business days, some requests or combinations of requests may trigger an extended period for the City to respond. If a request falls within the circumstances described in Section 24-72-203(3), C.R.S., the City may require additional time to respond (up to seven days).

B. It may not be possible to provide the requested records for inspection or copying within the period specified above because:

- (i) the records were not clearly identified by the requesting party;
- (ii) the request was very broad, and/or
- (iii) earlier compliance would substantially interfere with the regular discharge of the duties of the custodian or the custodian's department.

Within the initial three business days of receipt of a complete request, the Records Coordinator will inform the requesting party in writing of the expected time frame for the response and the reasons for the delay.

C. The City will make reasonable efforts to comply with all records requests and time

frames articulated in CORA, in light of the specific circumstances, in the event of a declared local emergency or other significant unforeseen event.

**7. Fees.**

A. Making Records Available for Inspection. There is no charge to inspect public records at the City department that maintains the records unless:

- (i) in the judgment of the custodian, the nature of the request makes it necessary to spend more than 60 minutes of staff time to (a) research and retrieve the requested records to ensure that the records are properly identified as being responsive to the request and are made available for inspection, and (b) review the requested records for withholding or redaction because of privilege as required or permitted by CORA.

B. Fee Amounts. The following hourly fees will be charged for the time necessary to accomplish those tasks:

- (i) **\$33.58 per hour after the first 60 minutes** of combined time spent on research and retrieval, identification, segregation, and/or redaction of records associated with a privilege review to determine whether a record may or may not need to be disclosed or redacted -- [pursuant to C.R.S. Section 24-72-204(6)(a)];

**8. Copying Costs.**

A. Copying. If physical copies of public records are requested or copying is necessary, the following copying fees will be charged in addition to any other applicable fees:

- (i) up to 11" x 14" - \$.25 per copy;
- (ii) 11" x 17" - \$.50 per copy.

For copies of other sizes, fee amounts will be set by the department making the copies but shall not exceed actual cost.

At its discretion, the City may send copying to an outside vendor, in which case the requesting party will be charged the vendor's charge, not to exceed the actual cost or the above noted applicable fees.

B. Placement on Electronic Storage Devices. The following fees will be charged for providing records on storage devices if the custodian department has the ability to copy the records to the device:

- (i) CD/DVD-Rom – actual cost of acquiring the CD/DVD

USB flash drive - actual cost of acquiring the USB flash drive

- (ii) other portable digital storage devices - actual cost of acquiring the device

C. Digital or Electronic Format. No per-page fee will be charged for providing records in a digital or electronic format.

D. Email Transmission of Records. No fee will be charged for the transmission of records by electronic mail, although the other fees described in this policy may be applicable if the services for which those fees are charged are necessary in order to place the records into a format that can be transmitted electronically.

E. Payment of Estimated Fees Required Prior to Identification, Retrieval, Review and Copying of Records as follows:

- (i) If the custodian estimates that the fees for researching, retrieving, reviewing, manipulating, segregating, redacting, and copying the requested records will be \$50 or more, the custodian will notify the requestor of the estimated amount and may not begin those tasks until the estimated fees are paid.
- (ii) The custodian will provide the fee estimate notice to the requester as soon as it becomes apparent to the custodian that payment of the estimated fees will be necessary pursuant to this Section.
- (iii) The date of payment of the estimated fees will begin the period of time within which the records must be made available for inspection under the applicable timeframe as explained in Section 4, above.
- (iv) If in the course of the retrieval or review process, the custodian discovers a circumstance that results in a significantly greater estimate of the amount of fees, the custodian will provide the new estimate to the requesting party and the process will be paused until the new fee estimate amount is paid.
- (v) Once the actual amount of the fees is known, the requesting party will be refunded any excess amount collected or will be required to pay any additional amount owed prior to obtaining access to the records, as applicable.

F. The City will not proceed with a new request from a requestor who has not paid all costs associated with a previous request until those prior fees are paid.

G. Fees may, at the discretion of the City Manager or their designee, be reduced or waived if the records and services are to be used for a public purpose. The specific public purpose must be identified in the request.

## **9. Security of Record.**

The original public record to be inspected shall not be released to the requestor. The record custodian may take precautions to ensure the security of the record and the Records Coordinator will notify the requestor of those precautions.

## **10. Digital Records.**

Records that the City keeps in digital format are subject to specific requirements as to how those records should be provided to a requesting party. The City is not required to create a new document to respond to a request for information. When a public record is available in a digital format, the City will transmit a digital copy to the requester by either e-mail or via the City's records request application JustFOIA. The City's default method of transmission is through the JustFOIA records request system.

In addition, the custodian does not have to produce the file in a digital searchable or sortable format if the custodian has determined after a reasonable inquiry that it is not technologically or practically feasible to do so because:

- (i) It would be too difficult to remove information that must be legally withheld, such as medical information;
- (ii) Providing a copy of the record in a digital searchable or sortable format of the record is simply not feasible; or
- (iii) In order to provide a digital copy of the searchable or sortable file, additional software would need to be purchased or additional programming or functionality in existing software would need to be created in order to remove information the custodian is legally required or allowed to withhold.

## **11. Dispute Resolution.**

If a custodian denies a records request and the requester objects, the requester must give notice to the Records Coordinator in writing they plan to apply for judicial review. Before the requester can file a lawsuit, the request must wait fourteen days from the date of the notice. During that time, the Records Coordinator must either meet with the requester in person or speak to them over the phone to attempt to resolve the dispute without the need for judicial review. The Records Coordinator will make reasonable efforts to contact the requesting party to discuss the matter.

## **12. Documents Subject to Copyright – Proprietary Information**

If producing a file for the requester in a searchable or sortable format would violate the terms of any copyright or licensing agreement between the City and a third party or cause a third party's proprietary information to be released, the custodian is not required to provide the record in a searchable or sortable format.

Certain documents requested pursuant to the Colorado Open Records Act are also governed by 17 U.S.C. 107. This federal law requires that prior to releasing any copyrighted information, the City verify that the purpose for which the request is made is considered a "Fair Use." "Fair Use" is defined as reproduction in copies or

phonorecords or by any other means specified by that section, for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case is a fair use the factors to be considered shall include—

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
- (2) the nature of the copyrighted work;
- (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
- (4) the effect of the use upon the potential market for or value of the copyrighted work.

To ensure compliance with 17 USC 107, the City will ask requestors of copyrighted information to fill out a separate form attesting to the above. (Form attached).

DocuSigned by:

Kelly DiMartino

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Kelly DiMartino, City Manager

November 22, 2023

Date Approved



## REQUEST FOR COPIES OF COPYRIGHT & PROTECTED MATERIALS

(Please Print or Type)

I, \_\_\_\_\_, representing (ORGANIZATION  
Or INDIVIDUAL),\_\_\_\_\_, pursuant to § 24-72-205,  
C.R.S. hereby request a copy(ies) of the public record(s) in the custody of the City of Fort  
Collins identified as follows:

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I understand that the above materials may be proprietary and/or protected by federal  
copyright law; and, that obtaining copy(ies) of such materials is for personal information  
only and is in no way construed as authorization to infringe upon any copyright or  
otherwise use such materials without express permission from the copyright holder or  
owner/author of such materials. Further, I hereby release the City of Fort Collins from  
assuming any responsibility for my use of such copy(ies).

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SIGNATURE

DATE