

RESOLUTION NO. \_\_\_\_\_  
CROWLEY COUNTY, COLORADO  
OPERATIONAL POLICIES AND PROCEDURES

TO: All Employees  
FROM: Crowley County Commissioners  
SUBJECT: Public Records

I. POLICY

It is the policy of Crowley County (County) to have its public records open for inspection at reasonable times as required by the Public Records Act unless otherwise provided by law. This policy is intended to provide a guideline for employees handling public records requests and will be deemed modified by future amendments to the Colorado Public Records Act found at C.R.S. 24-72201, *et seq.* ("Act").

The Act provides that "all public records are to be open for inspection by any person at reasonable times", subject to rules and regulations made by the official custodian or the designated custodian. Although public records are typically open to inspection, the 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 the custodian's 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.

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 the 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. This policy and the Act are subject to interpretation by the County's legal counsel and case-specific administrative determinations may be made with the approval of the County's legal counsel.

H. 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:

A. 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.

B. Writings. 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 messages, but does not include computer software (C.R.S. 24-72-202(7)).

Importantly, these definitions only require the County to provide records in its possession and do not require the County to create new records, compile or organize records, or otherwise manipulate data in records request.

### III. PROCEDURE

The following procedure shall apply to all open records requests. Please review this policy in its entirety before submitting an open records request.

#### A. Requests

1. Custodian. The official custodian of the County's public records shall be the County Administrator. The official custodian is responsible for the maintenance, care, and keeping of public records, regardless of whether those records are in his/her actual personal custody and control.

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

- (a) the requestor's name;
- (b) name of organization, if any;
- (c) mailing address or email address; and
- (d) be clearly identified as a Colorado Open Records Request or "CORA" request;

Requests that do not contain this information will not be accepted. 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.

3. Submission. Open records requests may be submitted in person, via regular mail, or via facsimile to the official custodian. Requests submitted via email are discouraged. The reason for this is, due to Spam filters, inactive or incorrect email accounts, the County cannot guarantee that the custodian has received an electronic email request.

4. Transmission to County's legal counsel. Upon receipt of a written request for records, County staff shall make a notation on the request stating the date it was received, and shall immediately deliver or email a copy of the request to the County's legal counsel. The County's legal counsel will review and determine whether the requested records are (a) not subject to disclosure; (b) subject to disclosure which requires redaction of certain information; or (c) subject to full disclosure. The County's legal counsel will notify the 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.

5. Location of Records. If the public records requested are not in the custody or control of the person to whom the request is made, such person shall immediately notify the requestor of this fact, in writing if so requested by the requestor. The notification 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 requested records. See §24-72-203(2)(a), C.R.S.

#### IV. 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 or printout of the record. Physical inspection of available records is not required, and a requestor may decide an inspection is not necessary when it knows with certainty what records it wants produced and copied. However, there may be other situations in which a requestor wants to inspect available records in advance of or in lieu of receiving copies. To assist County staff in responding to a request, a requestor should state in its request whether it wants to schedule an inspection of available records, or whether it wants copies of available records in lieu of inspection.

##### A. Time for Inspection or Production of Records — Three (3) Working Days

If records are available pursuant to §24-72-201, C.R.S., the custodian of records shall set a date and time when the requested records will be available for inspection or production. 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 M.A.2 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. If requested by the requestor, the custodian shall set a date and time at which the records will be available for inspection or production. See §24-72-203(3)(b), C.R.S.

##### B. 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's legal counsel 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. See §24-72-203(3)(b), C.R.S.

Extenuating circumstances shall be found to exist when:

1. 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
2. A broadly stated request is made that encompasses all or substantially all of a large category of records and the custodian is unable to prepare or gather the records within the three-day period because the custodian 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
3. 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/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 may request relief from the Court, including attorney's fees, as provided for 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 County's legal counsel deems it appropriate for the inspection to take place in another location. In certain circumstances, and depending on the nature of the request, inspection may be supervised by a County employee and the requestor may be charged for employee time associated with such supervision, as set forth below in Section IV.D. 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 made available within the

timeframe set forth in Section IV, above. In the event the requestor conducts an inspection and requests copies of available records at the time of such inspection, 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 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 available 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 County records.

#### D. Fees for Inspection and Copying of Records

Where a person or entity wants to inspect and/or request copies of available records, the following fee schedule shall apply. Please note that the County is not obligated to provide copies of records in electronic format.

##### 1. Copy, printout or photograph.

- (a) The fee for a copy, printout or photograph shall be \$0.25 per standard page (8 1/2" x 11"). For documents in non-standard format (larger than 8 1/2" 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.
- (b) In addition to the \$0.25 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. In such event, staff time will be charged at the rate of \$30.00 per hour after the first hour of time has been expended.
- (c) 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 the 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.

3. Supervision. In the event a requestor wishes to inspect available records in lieu of or in advance of receiving copies of such records, an inspection will be scheduled as set forth in Section IV.C., above. In certain circumstances, and depending on the nature of the request, the inspection may be supervised by County staff and the requestor may be charged for staff time associated with such supervision at the rate of \$30.00 per hour.

4. Shipping/Postage. Upon request, and after receipt of payment in full for the requested records, the custodian may ship or mail copies of the available records to the requestor. In such case, the requestor will be required to prepay the cost of the shipping or mailing and any associated staff time incurred in preparing the records for shipping.

5. Notice of Fees. The requestor will be notified in advance of the types of fees outlined above. If a request involves voluminous research or records, the requestor may want to request an estimate of the full 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.

6. Reduction or Waiver of Fees. In certain circumstances, and depending on the nature of the request, the fees set forth in this Section IV.D. may be reduced or waived with prior approval of the County's legal counsel. For example, if a response to the request requires minimal staff time and the requested public records are to be used for a public purpose, including public agency program support, nonprofit activities, journalism or academic research, a fee reduction or waiver may be appropriate. To request consideration of a fee waiver or reduction, please contact the custodian. The custodian will forward the request to the County's legal counsel for review. 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.

7. Payment. The County cannot bill for fees relating to open records requests. Full payment for the applicable fees outlined above, including shipping/postage, must be remitted to the County before copies of the available records will be released to the requestor.

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.

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

- (a) Inspection would be contrary to any State statute;
- (b) Inspection would be contrary to any Federal statute or regulations issued thereunder having the force and effect of law; or
- (c) 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:

- (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 law enforcement purpose. See §24-72-204(2)(a)(1), C.R.S.
- (b) Test-related data pertaining to administration of a licensing exam, exam for employment, or academic exam. See §24-72-204(2)(a)(10), C.R.S.
- (c) Details of bona fide research projects of State institutions. See §24-72-204(2)(a)(III), C.R.S.
- (d) Contents of real estate appraisals relative to acquisition (not sale) of property for public use until title passes to the County. See §24-72-204(2)(a)(IV), C.R.S.
- (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. See §24-72-204(2)(a)(V), C.R.S.

(t) 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. See §24-72-204(2)(a)(VI), C.R.S.

(g) Electronic mail addresses provided by a person to the 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 or scholastic achievement data on individuals. See §24-72-204(3)(a)(1), C.R.S.

(b) 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. See §24-72-204(3)(a)(11), 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)(W), 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 of applicants for an executive position at the County;

(c) Records protected by common law privileges such as the governmental or "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;

Sec §24-72-204(3)(a)(X)(XI) and (XIII), C.R.S.

4. Substantial Injury to Public Interest. The official custodian of any public record may petition the 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), 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.

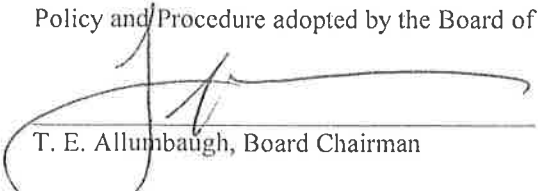
F. Closed Request

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 these Policies and Procedures.
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 the 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.

New Request. 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.

Policy and Procedure adopted by the Board of County Commissioners on the 31<sup>st</sup> day of August, 2018.

  
T. E. Allumbaugh, Board Chairman

ATTEST:

  
Lucile Nichols, Crowley County Clerk and Recorder

