



OPEN RECORDS POLICY

1. BASIC PRINCIPLE.

It is the policy of the Board of County Commissioners (BOCC) that all public records shall be open for inspection by any person at reasonable times, except as provided by the Colorado Open Records Act § 24-72-201, *et seq.*, C.R.S. (the Act) or by other laws. In the event the Act is amended, this policy will be deemed amended to be consistent with the amended Act.

Though “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 or the custodian. These rules and regulations are authorized as being 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 cannot change the Act, and in the event this policy conflicts with the Act, the Act always controls. For example, such rules and regulations cannot limit who is entitled to records or limit what records are open for inspection. Depending upon the circumstances of a request, Garfield County reserves the right to allow a 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 or her or his office or department. This policy is subject to interpretation by the Garfield County Attorney’s Office, and exceptions may be made in individual cases at their discretion. For the complete Act, see § 24-72-201, *et seq.*, C.R.S.

2. 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.” *See* § 24-72-202(6), C.R.S.
- B. 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 without limitation email messages, but does not include computer software. *See* § 24-72-202(7), C.R.S.

3. PROCEDURE.

- A. Garfield County has determined that the use of an official Records Request Form by citizens is necessary for the efficient handling of such open records requests. The Records Request Form will be given to any individual who makes a request that is not on the form, or the individual will be directed to www.garfield-county.com or the Garfield County Attorney's Office to receive a Records Request Form. The Records Request will be delivered to the Garfield County Attorney's Office. The Garfield County Attorney's Office will transmit the Records Request Form to the appropriate department(s) immediately. Garfield County has a limited amount of time within which to respond to open records requests. See Section 4 below (Time for Accessing Public Records) for more information.
- B. The Clerk to the Board of County Commissioners is the official custodian of all recorded records maintained by Garfield County. Department heads are the official custodians of all records maintained within their departments. The Manager of IT is the official custodian of emails.

Elected Officials may develop their own policies and procedure regarding public records in their custody. To the extent that Garfield County has custody of any public records of an Elected Official, however, Garfield County shall, in consultation with the Elected Official, meet any requirement of the Open Records Act as it may apply to documents in Garfield County's possession.

If the public records requested are not in the custody or control of the department or person to which the application identifies, the requestor shall be forthwith notified of this fact, in writing, if requested by the requestor. Such 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 records. See § 24-72-203(2)(a), C.R.S.

- C. Please be advised that the following offices and departments handle their own Open Records Requests and additional laws and regulations may pertain to their records:
- (1) **Garfield County Sheriff's Office:** Information regarding records requests from the Garfield County Sheriff's Office is available at www.garcosheriff.com. Requests for Sheriff's Office records should be made in writing and mailed or delivered to the Records Manager, 107 8th St., Glenwood Springs, CO 81601; (970) 945-0453. Criminal Justice Records are governed by the Criminal Justice Records Act, § 24-72-301, C.R.S., *et seq.*
 - (2) **Garfield County District Attorney's Office:** Make all records requests to the District Attorney's Office, 109 8th Street, Suite 308, Glenwood Springs, CO 81601; (970) 945-8635.
 - (3) **Garfield County Coroner's Office:** Make all record requests to the Garfield County Coroner, 405 West 7th Street, Glenwood Springs, Co 81601; (970) 945-5815.

- (4) **Department of Human Services:** Make all records requests to the Administrative Clerk/Records Coordinator, Garfield County Department of Human Services, 195 West 14th Street, Rifle, CO 81650. Human Services records are subject to additional legal protections under state and federal law.
- (5) **Department of Public Health:** Make all records requests to the Department of Public Health, 2014 Blake Avenue, Glenwood Springs, CO 81601; (970) 945-6614. Public Health records are subject to additional legal protections under state and federal law.

4. TIME FOR ACCESSING PUBLIC RECORDS.

- A. Time for inspection of records – three working days.

The Garfield County Attorney’s Office shall set a date and hour within three working days when the records will be available for inspection. If the requested records are in active use or are in storage and, therefore, are not available right away, this fact shall be communicated to the requestor forthwith, in writing, if requested. *See* § 24-72-203(3)(a), C.R.S.

- B. Seven-day extension of time.

The period of providing requested documents for review may be extended for an additional seven working days if the Garfield County Attorney’s Office determines that one of the following conditions exists (“extenuating circumstances”), and states such condition in writing, to the requestor, within the first three working days of receipt of the request (§ 24-72-203(3)(b), C.R.S.):

- (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 Garfield County Attorney’s Office reasonably to prepare or gather the records within the three-day period, § 24-72-203(3)(b)(I), C.R.S., or
- (2) 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:
 - a. The custodian 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 recur more frequently than once a month; or
 - b. 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. *See* § 24-72-203(3)(b)(II), C.R.S.
- (3) In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document. *See* § 24-72-203(3)(b)(III)(c), C.R.S.

- (4) If the request is too broad, speculative or voluminous to prepare in ten working days (three days plus seven-day extension), Garfield County may request relief from the Court, including attorney's fees, as provided by law.

C. When Time Period for Response Begins:

The time period for response does not begin to run until Garfield County receives the request on its official Records Request Form. If the form is sent by:

- (1) E-mail, it is deemed received when it is viewed by the recipient.
- (2) U.S. Mail, it is deemed received when its seal is broken.
- (3) Fax, it is deemed received when it is printed during regular business hours.
- (4) 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.

D. The Garfield County Attorney's Office shall notify the BOCC of receipt of records requests and action taken thereon. The Garfield County Attorney's Office shall also maintain a master log of all records requests.

5. FEES.

A. A substantial amount of public records related to Garfield County are available free of charge at the county website, www.garfield-county.com. These include but are not limited to budgets, agendas and minutes of the meetings of the Board of County Commissioners, parcel maps, oil and gas reports, and other information. See § 24-72-205, C.R.S.

B. Requests for records which do not exceed ten pages are provided free of charge.

C. In all cases where a person has the right to inspect any public record, he or she may request copies, printouts or photographs of such record.

- (1) Copies of documents are 25¢ per page. Documents delivered electronically are 25¢ per page plus \$5 per CD if a CD is requested. We do not accept credit cards and cannot bill for services. Although inspection of documents is free of charge, payment in the form of cash or check made payable to the Garfield County Treasurer must be made in advance.
- (2) If actual costs exceed 25¢ per page, actual costs, including staff time, may be charged.
- (3) Any fees charged in this policy will include the cost of redacting documents to excise privileged material.
- (4) 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 cost of providing the

electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Each department may also charge a reasonable hourly fee for the manipulation of data in order to generate a record in a form not used by Garfield County, if it elects to provide information in this manner.

- (5) You will be notified in advance of any such fee. We will commence no work of this type on your behalf without your prior approval and advance payment.

6. INSPECTION OF RECORDS.

Inspection of records will take place during regular business hours (Monday - Friday, 8:00 to noon and 1:00 to 5:00 p.m.) in the Garfield County Attorney's Office, 108 8th Street, Suite 219, Glenwood Springs, CO 81601, unless the Garfield County Attorney's Office deems it appropriate that the inspection take place in a different Garfield County department. 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 or any other copy, scanning or reproduction device to copy Garfield County records. Upon completion of the review, the requestor must mark with tabs the pages she or he wishes to have copied. Copies will be made at a later time, depending upon volume. The requestor will be notified when the copies are available for pick-up. Garfield County is under no obligation to allow citizens access to Garfield County computers nor is Garfield County obligated to provide records in electronic format.

7. CLOSURE OF REQUEST.

A records request is deemed closed under any of the following cases:

- A. After records made available for inspection have been inspected by the requestor and no copies of these records are requested;
- B. After records made available for inspection have been inspected by the requestor and 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 make arrangements for inspection; (ii) failed actually 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 7 and who still wishes to inspect the same records must submit a new request.

8. DENIAL OF INSPECTION OF RECORDS.

- A. Denial of inspection must be specific and can only be based on reasons specified in the Colorado Open Records Act. The Act provides that documents may be withheld from disclosure:

- (1) If inspection would be contrary to any state statute. *See* § 24-72-204(1)(a),

C.R.S.

- (2) If inspection would be contrary to federal statute or regulation. *See* § 24-72-204(1)(b), C.R.S.
- (3) If inspection is prohibited by a rule of the Supreme Court or by order of any Court. *See* § 24-72-204(1)(c), C.R.S.

B. Denial is permitted in the following situations, if disclosure would be contrary to the public interest, but if such one news agency is allowed inspection of records, all news agencies shall have the same right to inspection:

- (1) Any records of the investigation conducted by any sheriff or prosecuting attorney; any records of intelligence information or security procedures of any sheriff or prosecuting attorney; or any investigatory files compiled for any other law enforcement purpose. *See* § 24-72-204(2)(a)(I), C.R.S.
- (2) Test-related data listed in § 24-72-204(2)(a)(II) C.R.S.
- (3) Contents of real estate appraisals relative to acquisition (not sale) of property for public use until title passes to Garfield County. *See* § 24-72-204(2)(a)(IV), C.R.S.
- (4) 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.
- (5) 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.
- (6) E-mail addresses provided to Garfield County. *See* § 24-72-204(2)(a)(VII) C.R.S.
- (7) Specialized details of security arrangements or investigations. *See* § 24-72-204(2)(a)(VIII), C.R.S.

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

- (1) Medical, mental health, sociological, or scholastic achievement data on individuals. *See* § 24-72-204(3)(a)(I), C.R.S.
- (2) Personnel files, except for application and performance ratings. *See* § 24-72-204(a)(II), C.R.S.
- (3) Letters of reference (which are not disclosable to the person in interest, if they concern employment, licensing, or issuance of permits). *See* § 24-72-

204(3)(a)(III), C.R.S.

- (4) Trade secrets, privileged information, and confidential commercial, geological, or geophysical data furnished by or obtained from any person. *See* § 24-72-204(3)(a)(IV), C.R.S.
- (5) Home addresses, telephone numbers, and financial information of Garfield County employees. *See* § 24-72-204(3)(a)(IX), C.R.S.
- (6) In addition to the above-described documents, the Act provides specific and detailed circumstances for the denial of, or limited release of:
 - a. Records concerning sexual harassment complaints and investigations;
 - b. Records of applicants for an executive position at Garfield County;
 - c. Records protected by common law privileges such as the governmental 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; and
 - d. Records triggering the constitutional right of privacy may, in very limited circumstances, be a basis for resisting disclosure, particularly for the person in interest.

See § 24-72-204(3)(a)(X), C.R.S.

D. Denial on the basis that release would do substantial injury to the public interest.

- (1) The official custodian may petition the District Court for an order restricting disclosure of records otherwise subject to inspection, if disclosure would do substantial injury to the public interest. *See* § 24-72-204(6), C.R.S.
- (2) If inspection is denied, the requestor may request a written statement of the grounds for denial and that statement shall cite the law or regulation which is the basis for denial. *See* § 24-72-204(4), C.R.S.
- (3) Even records which must be kept confidential are subject to subpoena, discovery requests, etc., but such requests can be resisted under the balancing tests set up in *Martinelli vs. District Court*, 612 P.2d 1083 (Colo. 1980).