

## Town of Windsor, Colorado

### **POLICY AND PROCEDURES REGARDING ACCESS TO PUBLIC RECORDS PURSUANT TO THE COLORADO OPEN RECORDS ACT**

Adopted: November 11, 2002 – Resolution No. 2002-60  
Amended: September 10, 2007 – Resolution No. 2007-54  
Amended: November 14, 2011 – Resolution No. 2011-46  
Amended: August 26, 2014 – Resolution No. 2014-46  
Amended: June 1, 2021

#### I. POLICY

It shall be the policy of the Town of Windsor to make all public records available for public inspection at reasonable times in accordance with the Colorado Open Records Act (“the Act”), § 24-72-201, *et seq.*, C.R.S.

#### II. PURPOSE

2.1 The primary purpose of this policy is to set forth general procedures for providing town-wide, consistent, prompt and equitable service to citizens requesting access to public records in accordance with the requirements of the Colorado Open Records Act.

The purpose of the Act is to facilitate an open and accessible government. The public has a right to know how its taxes are spent, and most documents in municipal government address the spending of taxpayers’ funds in some way. The Act sets forth categories of documents to which the official custodian of records *shall allow* public access, documents to which the official custodian *shall deny* access, and documents to which the official custodian *may deny* access. If a court finds that denial of access to the document was arbitrary and capricious, the court may order that the Town pay the applicant’s court costs and attorney fees in an amount to be determined by the court.

2.2 The secondary purpose of this policy is to establish reasonable and consistent fees for providing copies as authorized by the Act and to recover a portion of the cost of staff time for responding to public records requests.

#### III. SCOPE

This policy shall apply to all Town records and copies of information requested or released with the exception of records covered under the Criminal Justice Records Act.

#### IV. 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.

## V. PROCEDURES

- 5.1 The Town Clerk is the official custodian of all records which are centrally maintained by the Town. 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/her affected employees about the standards and requirements of this policy.
- 5.2 Citizens may make formal requests to the official custodian for copies of public records. Open records requests are required to be in writing and made on the form provided by the Town Clerk. The custodian will make reasonable efforts to fill such requests immediately, at most, within the time required by state statute (three days which can be extended by seven additional working days in extenuating circumstances per § 24-72-203(3)(b), C.R.S.). Any extensive request and any request requiring research or redaction of records shall be made in writing to the official custodian maintaining such records. If the applicant is uncertain who the official custodian is, the request shall be made in writing to the Town Clerk.
- 5.3 If the written request cannot be filled immediately, or if the records are otherwise not readily available at the time the request is made, the custodian will set a date and time for records inspection that is within three working days of the date on which the request was made. Such period may be extended if extenuating circumstances exist (per § 24-72-203(3)(b), C.R.S.), but the total time, including the extension period, will not exceed ten working days from the date on which the request was made.
- 5.4 The records custodian is not under a duty to create any new public record in response to a request. Data and/or records need to be provided only in the format in which they currently exist. Requests in advance for "future" records, i.e. request for information on a subsequent continuing or periodic basis are not allowed. A separate request must be made each time existing data and/or records are requested. Data will not be manipulated and provided in custom formats.

## VI. CHARGES

- 6.1 Reasonable charges shall be made for any copies requested. Such charges shall be reflective of the actual costs of reproduction. The reproduction fee shall not exceed twenty-five cents per standard page for a copy of a public record, or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a public record in a format other than a standard page. The Town may also include nominal charges for staff time in locating requested documents and in returning them to their proper location after reproduction. Cost may vary from department to department and shall be set by department heads, subject to approval by the Town Manager and the Town Clerk. Department heads shall have authority to waive fees and charges in particular instances when such a waiver is deemed appropriate in the public interest.)

- 6.2 On occasion, a request for public records will require more extensive research to locate a particular document or documents and/or to manipulate or redact documents to allow their release. While the Town has a clear obligation to provide public records and information, it cannot effectively serve as a research service for citizens without affecting its ability to provide normal and usual services. Therefore, departments may charge for time spent to respond to extraordinary requests, including, without limitation, searching voluminous files for specific information, manipulating data, and redacting documents to excise confidential information. After one hour of time has been expended on the request, the charge for research shall be \$33.58 per hour. A time-log, describing the time spent responding to a request, shall be maintained for staff time in excess of one hour.
- 6.3 The Town does not charge for:
- 6.3.1 Requests from members of the Town Board, Town boards and commissions, or other staff performing Town business. Exception: The Town will charge for election materials requested by incumbent officials who are running for office to ensure equal treatment of all candidates.
  - 6.3.2 Election materials requested by any citizen except for reimbursement of costs incurred by the Town in obtaining such materials when such records are maintained by other governmental entities.
  - 6.3.3 Requests from other towns, cities or states or from professional organizations to which the Town as a whole pays membership dues, such as the Colorado Municipal League.
- 6.4 Advance deposit of one-half of the estimated cost of researching, retrieving, producing, and reproducing such record(s) is required if the estimated total cost exceeds \$50.00. A requestor may choose to receive an estimate of charges when making their requests; however, the Town's failure to provide an estimate of charges shall not excuse a requesting party from paying all charges in full as a condition of records production/inspection. Prior to the release of the requested information, the requestor shall pay the difference, if any, between the estimate and actual cost. The requestor shall be refunded any excess amount collected. Full payment on initial request will be required before any subsequent requests will be fulfilled.
- 6.5 Any person who fails to pay charges for a completed public records response shall be required to pay such unpaid charges in full as a condition of any later records request.
- 6.6 At the discretion of the Town Clerk, courtesy copies may be provided free of charge for infrequent requests with an insignificant impact on resources, i.e. fulfilling a request that does not require more than 15 minutes of cumulative staff time.

- 6.7 If a deposit is required prior to processing an open records request, the deposit must be received by the office of the Town Clerk within seven (7) days of notification of said deposit. If the deposit is not received as required in this Section, the request will be considered as abandoned and not processed.
- 6.8 In the event a requestor has at any time presented a check or draft dishonored or returned due to insufficient funds or stop payment, the Town Clerk's Office may/shall require the payment of any records fees required hereunder to be paid with cash or certified funds.

## VII. ACCESS DENIED

- 7.1 Access to public records may be denied or contents redacted in accordance with the provisions of the Act. Inspection of the following public records may not be permitted:

7.1.1 Items Protected by Law: If, upon consultation with the Town Attorney, it is determined that the document is privileged or prohibited from disclosure under any ordinance, state statute, federal statute, or regulation issued thereunder or is prohibited by rules promulgated by the order of any court. This includes items such as:

- Personnel files, including social security numbers, home address and telephone numbers, and medical, psychological, and sociological data;
- Scholastic achievement data;
- Test questions and scoring keys;
- Sexual harassment investigations;
- Work product and drafts;
- Deliberative process materials;<sup>1</sup>
- Letters of reference;
- Identities of applicants, except finalists, for positions of Town Manager, Town Attorney, Municipal Judge and department and division heads;
- Investigatory files compiled for any law enforcement purpose;

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<sup>1</sup> *Deliberative process material is defined as material so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government.*

- Addresses, telephone numbers, or financial data of past or present users of public utilities, public facilities or recreational or cultural services;
- Real estate appraisals until the time that title passes to the Town; and
- Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data obtained by the Town from any person.
- Correspondence between the Town Board and constituents where it is clear that there was an expectation of confidentiality.

7.1.2 Attorney/client and work product communications that convey legal advice: Communications to or from the Town Attorney's Office or other special counsel representing the Town and anyone within the Town organization, should not be released without the consent of the client, that is the Town Board or the Town Manager, to any individuals other than those to whom the communication was directed.

7.1.3 Public Interest: If, in the opinion of the records custodian, disclosure of the contents of any public records would do substantial injury to the public interest, even though such record is otherwise available for public inspection under the provisions of this policy, the records custodian may deny access to such public records. If any public records are withheld pursuant to deliberative process privilege, the custodian shall provide the applicant with a sworn statement specifically describing each document withheld, explaining each document withheld, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public interest.

7.1.4 Release decision: All of the above-mentioned categories of documents that are privileged or prohibited from disclosure may be released when there is a waiver submitted by the person of interest and after consultation and approval of the Town Attorney's office.

## VIII. CONSTRUCTION AND INTERPRETATION

Employees who have questions concerning the interpretation or application of this policy should be directed to the Town Attorney's Office.

## IX. EXCEPTIONS/CHANGE

This policy supersedes all previous policies covering the same or similar topics. Exceptions to this policy may be granted only by the Town Manager or the Town Attorney. This policy may be reviewed and changed at any time.

TOWN OF WINDSOR, COLORADO

Request for Information Pursuant to the Town of Windsor Policy and Procedures Regarding Access to Public Records Pursuant to the Colorado Open Records Act

Date of Request \_\_\_\_\_ Time \_\_\_\_\_

Name of Requesting Party \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

Telephone Number (during business hours) \_\_\_\_\_ FAX #: \_\_\_\_\_

Please select the format in which you would like to receive materials:

View only, no copies requested.

**Appropriate personnel will be scheduled to accompany you during viewing.**

Hard copies/printouts

CD\*

email\*

\*not all documents are available electronically. Data manipulation fees may apply.

DESCRIPTION OF RECORDS REQUESTED: \_\_\_\_\_

By signing this request, the requesting party acknowledges that, pursuant to Article VI of the Town's Policy and Procedures Regarding Access to Public Records Pursuant to the Colorado Open Records Act, the requesting party understands that reasonable charges may be made for copies requested and that additional charges may be made for staff time when extensive research is necessary to locate a particular document or documents and/or to prepare a document for release. Research and retrieval fees are chargeable after the first hour.

Do you want the Town to provide you an estimate of these costs prior to incurring such costs as a precondition to processing your request? \_\_\_\_ Yes \_\_\_\_ No

I understand that failure of the Town to present an estimate does not excuse payment in full for completed requests.

Signature of requesting party \_\_\_\_\_

(Following to be completed by a Town Representative)

Response date \_\_\_\_\_ Response time \_\_\_\_\_ Method of Delivery \_\_\_\_\_

Number of Copies (if any) \_\_\_\_\_ Charge for copies \_\_\_\_\_ Research charge \_\_\_\_\_

Deposit required \_\_\_\_\_ Date deposit received \_\_\_\_\_ TOTAL AMOUNT PAID \_\_\_\_\_

In the event the Town denies any request, evidence of such denial and the basis therefore will be provided in writing to the requesting party.

Town of Windsor Staff Signature \_\_\_\_\_