

Town of Wellington, Colorado

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

I. POLICY

It shall be the policy of the Town of Wellington 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 or their designated personal as noted in the Town's Records Management Policy are responsible for 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 in writing to the Town Clerk for copies of public records. The Town Clerk 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.).

The Town Clerk shall provide a form on the Town website for open records requests. Requests received after 3:00 p.m. or after regular business hours will be considered received the following regular business day.

- 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 and Town Clerk 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 In order to prevent unnecessary interference with the regular operational duties of the Town, requests. The Town reserves the right to treat multiple requests as one when received by one requestor within a three-day period. The Town reserves the right not to respond to that portion of any communication that contains demeaning, harassing, or threatening language, or consists of interrogatories, editorials, or other such comments.
- 5.5 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.
- 5.6 If the requestor of the record(s) requests that copies of the record(s) be provided in digital format, the Town Clerk shall arrange for transmission of the record(s) via email or a cloud-based file sharing service. Alternatively, the requestor may purchase a USB thumb drive from the Town for digital copies at the time the deposit is paid.

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 printed 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.

- 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, scanning paper records into digital formats, and redacting documents to excise confidential information. After one hour of time has been expended on the request, the Town shall impose an hourly charge for research, at an hourly rate to be established by the Board of Trustees and published in the Town's Fee Schedule and on the Town website. Such hourly rate shall not exceed the maximum hourly fee as defined by the Director of Research of the Legislative Council, pursuant to C.R.S. § 24-72-205(6)(b). 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, its 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 Reasonable 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 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.
- 6.5 Upon receipt of a request for information, the custodian and Town Clerk shall create a time and cost estimate for researching, retrieving, producing, and reproducing such record(s).
 - 6.5.1 Advance payment of a deposit by the requestor of one-half of the estimated cost is required if the estimated total cost exceeds \$50.00.
 - 6.5.2 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.

- 6.5.3 If during completion of the request the time and cost estimate increases significantly, the Town Clerk shall attempt to gain approval from the requestor for the increased cost estimate and may require an additional deposit for completion of the request. Failure to gain approval for increased costs shall not diminish the requirement that the requestor pay in full prior to release of the requested documents.
- 6.6 Prior to the release of the requested information, the requestor shall pay the total cost of the request, less any amount deposited. The requestor shall be refunded any excess amount collected.
- 6.7 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 shall require any records fees or deposit required hereunder to be paid with cash or certified funds.

VII. ACCESS DENIED

- 7.1 Access to public records may be denied 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;
 - Sexual harassment investigations;
 - Work product and drafts;
 - Deliberative process materials, defined as material so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government;
 - 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;
 - 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;
- 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 Withheld documents: If any public records are withheld, the custodian shall provide the applicant with a statement describing each withheld document and explaining why such document is not being released.

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.