

BOARD OF COUNTY COMMISSIONERS HINSDALE COUNTY, COLORADO

POLICY AND PROCEDURES

Policy Number: 02

Hinsdale County Public Records Policy

I. PURPOSE.

The purpose of this Public Records Policy is to provide guidelines for the identification of public records, including how public records are to be released and charges involved in the collection and production of public records in accordance with Colorado law.

II. BACKGROUND.

Hinsdale County is committed to ensuring public access to the County's public records within a reasonable time and at a reasonable cost in accordance with the Colorado Open Records Act (CORA), C.R.S. § 24-72-200, *et seq.*

III. CUSTODIAN OF PUBLIC RECORDS.

The "custodian" means and includes the "official custodian" or any authorized person having personal custody and control of the public records in question. The "official custodian" of Hinsdale County is the Hinsdale County Administrator. It is the responsibility of each County Department and Office to know which records produced by or received by that Department or Office are considered public record pursuant to this Policy and Colorado law and may consult with the County Attorney to make such a determination. C.R.S. § 24-72-202 specifies what communications and writings are public record.

IV. DEFINITION OF PUBLIC RECORDS.¹

(1) "Public records" means and includes all writings made, maintained, or kept by the County that are described in C.R.S. § 29-1-902, C.R.S. for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. "Writings" means and includes 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 mail messages, but does not include computer software. "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) Work product;

(B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

¹ See C.R.S. §§ 24-72-202(6) & (7).

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or that is communicated for the purpose of requesting that the elected official render assistance or information relating to a personal and private matter that is not publicly known affecting the constituent or a communication from the elected official in response to such a communication from a constituent; or

(D) Subject to nondisclosure as required in C.R.S. § 24-72-204.

The acceptance by a public official or employee of compensation for services rendered, or the use by such official or employee of publicly owned equipment or supplies, shall not be construed to convert a writing that is not otherwise a "public record" into a "public record".

(2) "Public records" do not include:

(A) Criminal justice records that are subject to the provisions of C.R.S. § 24-72-301, *et seq.*;

(B) Work product prepared for elected officials. However, elected officials may release, or authorize the release of, all or any part of work product prepared for them;

(C) Materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of C.R.S. § 24-4.1-107.5;

(D) Notification of a possible nonaccidental fire loss or fraudulent insurance act given to an authorized agency pursuant to C.R.S. § 10-4-1003(1);

(E) Information provided to the state medical marijuana licensing authority pursuant to C.R.S. § 25-1.5-106(7)(e); and

(F) Records related to complaints received by the office of the judicial discipline ombudsman pursuant to C.R.S. § 13-3-120, including any record that names or otherwise identifies a specific complainant or other person involved in the complaint.

(3) "Work product" means and includes all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to:

(A) Notes and memoranda that relate to or serve as background information for such decisions; and

(B) Preliminary drafts and discussion copies of documents that express a decision by an elected official.

(4) "Work product" does not include:

(A) Any final version of a document that expresses a final decision by an elected official;

(B) Any final version of a fiscal or performance audit report or similar document the

purpose of which is to investigate, track, or account for the operation or management of the County or the expenditure of public money, together with the final version of any supporting material attached to such final report or document;

(C) Any final accounting or final financial record or report;

(D) Any materials that would otherwise constitute work product if such materials are produced and distributed to the members of a public body for their use or consideration in a public meeting or cited and identified in the text of the final version of a document that expresses a decision by an elected official; and

(E) Any final version of a document prepared or assembled for an elected official that consists solely of factual information compiled from public sources. The final version of such a document shall be a public record. These documents include, but are not limited to:

- (i) Comparisons of existing laws, ordinances, rules, or regulations with the provisions of any bill, amendment, or proposed law, ordinance, rule, or regulation; comparisons of any bills, amendments, or proposed laws, ordinances, rules, or regulations with other bills, amendments, or proposed laws, ordinances, rules, or regulations; comparisons of different versions of bills, amendments, or proposed laws, ordinances, rules, or regulations; and comparisons of the laws, ordinances, rules, or regulations of the jurisdiction of the elected official with the laws, ordinances, rules, or regulations of other jurisdictions;
- (ii) Compilations of existing public information, statistics, or data; and
- (iii) Compilations or explanations of general areas or bodies of law, ordinances, rules, or regulations, legislative history, or legislative policy.

V. REQUESTS FOR INFORMATION AND INSPECTION.

(1) Request In Writing. A request for a public record shall be made in writing and submitted to the custodian of such record. Any employee who receives a public records request shall immediately notify the custodian of such records, the Department Head or Elected Official, and the County Attorney.

(2) Correspondence of Elected Officials. No correspondence to or from an Elected Official may be released without first consulting with the Elected Official and, if necessary, the County Attorney for the purpose of determining whether the correspondence is a public record.

(3) Timeframe to Release Public Records. If the public records requested are in the custody and control of the person to whom application is made but are in active use, in storage, or otherwise not readily available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection. The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. A "reasonable time" shall be presumed to be three (3) working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven (7) working days, subject to subsection V.4 below regarding election related records. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the

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three-day period. Extenuating circumstances shall apply only when:

(A) 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

(B) A broadly stated request is made that encompasses all or substantially all of a large category of records and the County is unable to prepare or gather the records within the three-day period because:

(i) The County 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

(ii) 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 obligation to perform his or her other public service responsibilities.

In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

(4) Election-Related Records.² Notwithstanding any other provision in this Policy, if the public records requested are election-related and are in the custody and control of the County Clerk and Recorder, but are in active use, in storage, or otherwise not readily available at the time a requester asks to examine them, and the request is made during an election for which the County Clerk and Recorder is the designated election official, the County Clerk and Recorder may, at the County Clerk and Recorder's discretion, take additional time to fulfill the request; except that the provisions of this subsection V(4) do not apply if the requester of the public records is a mass medium organization as defined in C.R.S. § 13-90-119(1)(a), or a newsperson, as defined in C.R.S. § 13-90-119(1)(c). The County Clerk and Recorder may take additional time to fulfill the request as follows:

(A) During the period beginning on the sixtieth (60th) day before election day and concluding with the date by which the County Clerk and Recorder certifies the final official abstract of votes cast for the applicable election, the County Clerk and Recorder may extend the period for production of records up to an additional ten (10) working days past the seven-day extension contemplated by subsection V(3) above;

(B) The County Clerk and Recorder shall provide written notice of the extension to the requester within three (3) working days from the date of the request;

(C) The County Clerk and Recorder may not extend the period for production of any record that:

(i) Is a list of voters, a list of voters who have returned their ballots, or a list of voters who have ballots that need to be cured; or

(ii) Is necessary for an interested party, as defined in C.R.S. § 1-10.5-106(1), to

² See Section VII below for rules on inspecting ballots.

determine whether or not to request a recount under C.R.S. § 1-10.5-106, or to facilitate the conduct of a recount.

(5) Digital Records.

(A) Except as otherwise required by subsection V(5)(B) below:

(i) If a public record is stored in a digital format that is neither searchable nor sortable, the custodian shall provide a copy of the public record in a digital format.

(ii) If a public record is stored in a digital format that is searchable, the custodian shall provide a digital copy of the public record in a searchable format unless otherwise requested by the requester.

(iii) If a public record is stored in a digital format that is sortable, the custodian shall provide a copy of the public record in a sortable format.

(iv) If a public record is available in a digital format, the custodian shall transmit a digital copy of the public record in a digital format by electronic mail, or by another mutually agreed upon transmission method if the size of the record prevents transmission by electronic communication.

(iv) A custodian shall not convert a digital public record into a non-searchable format before transmission.

(B) A custodian is not required to produce a digital public record in a searchable or sortable format in accordance with subsection V(5)(A) above if:

(i) Producing the record in the requested format would violate the terms of any copyright or licensing agreement between the custodian and a third party or result in the release of a third party's proprietary information; or

(ii) After making reasonable inquiries, it is not technologically or practically feasible to permanently remove information that the custodian is required or allowed to withhold within the requested format, it is not technologically or practically feasible to provide a copy of the record in a digital searchable or sortable format, or if the custodian would be required to purchase software or create additional programming or functionality in its existing software to remove the information.

(C) If a custodian is not able to comply with a request to produce a public record that is subject to disclosure in a requested format specified in subsection V(5)(A) above, the custodian shall produce the record in an alternate format or issue a denial under C.R.S. § 24-72-204 and shall provide a written declaration attesting to the reasons the custodian is not able to produce the record in the requested format.

(D) Altering an existing public record, or excising fields of information pursuant to this subsection V(5) to remove information that the custodian is either required or permitted to withhold, does not constitute the creation of a new public record.

(E) Nothing in this subsection V(5) relieves or mitigates the obligations of a custodian to produce a public record in a format accessible to individuals with disabilities in accordance with Title II of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. § 12101, *et seq.*, and other federal or state laws.

VI. COUNTY RESEARCH AND PREPARATION COSTS.

(1) Fee. In all cases in which a person has the right to inspect a public record, the person may request a copy, printout, or photograph of the record. The custodian shall furnish a copy, printout, or photograph and may charge a fee determined in accordance with C.R.S. § 24-72-205(5). 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.

(2) Transmission of Record. Upon request for records transmission by a person seeking a copy of any public record, the custodian shall transmit a copy of the record by United States mail, other delivery service, facsimile, or electronic mail. The requestor shall be responsible for the cost to transmit the public record. However, no transmission fees may be charged to the record requester for transmitting public records via electronic mail. Within the applicable time periods required of the custodian to respond, the custodian shall notify the record requester that a copy of the record is available, but will only be sent to the requester once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records transmission and for all other fees lawfully allowed, unless recovery of all or any portion of such costs or fees has been waived by the custodian. Upon either receiving such payment or making arrangements to receive such payment at a later date, the custodian shall send the record to the requester as soon as practicable but no more than three (3) business days after receipt of, or making arrangements to receive, such payment, unless the extension provisions of this Policy apply.

(3) Access to Records. If the custodian does not have facilities for making a copy, printout, or photograph of a record that a person has the right to inspect, the person shall be granted access to the record for the purpose of making a copy, printout, or photograph. The copy, printout, or photograph shall be made while the record is in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of the custodian. When practical, the copy, printout, or photograph shall be made in the place where the record is kept, but if it is impractical to do so, the custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the record. The custodian may establish a reasonable schedule of times for making a copy, printout, or photograph and may charge the same fee for the services rendered in supervising the copying, printing out, or photographing as the custodian may charge for furnishing a copy, printout, or photograph under subsection VI(6) below.

(4) Fee for Manipulation of Record. If, in response to a specific request, the County has performed a manipulation of data so as to generate a record in a form not used by the County, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

(5) Computer Output Record Fee. If the public record is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof 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. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among

persons who are similarly situated.

(6) Document Fee. The custodian may charge a fee not to 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; except that a custodian shall not charge a per-page fee for providing records in a digital or electronic format.

(7) Research & Retrieval Fee.

(A) The custodian may impose a fee in response to a request for the research and retrieval of public records, as provided for herein. The custodian shall not impose a charge for the first hour of time expended in connection with the research and retrieval of public records. After the first hour of time has been expended, the custodian may charge a fee for the research and retrieval of public records that shall not exceed \$33.58 per hour for staff time. Prior to performing any services necessary to respond to a request, the custodian or the custodian's designee may require the applicant to pay a deposit equal to the estimated fees that will be charged by the custodian for such staff time. In circumstances in which a deposit is required for the estimated fees, the records requested shall be made available within three (3) business days from the date of receipt of the deposit, or within ten (10) business days from the date of the receipt of the deposit if extenuating circumstances exist, as described in subsection V(3) above.

(B) If a custodian of a public record requested allows members of the public to pay for any other service or product provided by the custodian with a credit card or electronic payment, the custodian must allow the requester of the public record to pay any fee or deposit associated with the request with a credit card or via an electronic payment. The custodian may require a requester to pay any service charge or fee imposed by the processor of a credit card or electronic payment.

VII. PUBLIC INSPECTION OF BALLOTS.

(1) Definitions. As used in this Section, unless the context otherwise requires:

(A) "Ballot" means a ballot voted by any acceptable, applicable, or legal method that is in the custody of an election official. "Ballot" includes any digital image or electronic representation of votes cast.

(B) "Designated election official" means the member of a governing board, secretary of the board, county clerk and recorder, or other person designated by the governing body as the person who is responsible for the running of an election.

(C) "Interested party" means:

(i) Any candidate who was in an election contest that is the subject of a recount or the political party or political organization as defined in C.R.S. § 1-1-104(24) of such candidate;

(ii) Any petition representative identified pursuant to C.R.S. §§ 1-40-113 or 31-11-106(2), as applicable, in connection with a ballot issue or ballot question that is the subject of a recount;

(iii) The governing body that referred a ballot question or ballot issue to the electorate that is the subject of a recount; or

(iv) The agent of an issue committee that is required to report contributions pursuant to the "Fair Campaign Practices Act", article 45 of title 1, C.R.S., that either supported or opposed a ballot question or ballot issue that is the subject of the recount.

(2) Inspection Timeframe - Ballots.

(A) Except as otherwise provided in subsection VI(2)(B) below, the designated election official shall not fulfill a request for the public inspection of ballots during the period commencing with the forty-fifth (45th) day preceding election day and concluding with the date either by which the designated election official is required to certify an official abstract of votes cast for the applicable candidate contest or ballot issue or ballot question pursuant to C.R.S. §§ 1-10-102 or 31-10-1205(1), as applicable, or by which any recount conducted in accordance with article 10.5 of title 1, C.R.S., or C.R.S. § 31-10-1207 is completed, as applicable, whichever date is later. The denial of public inspection of ballots shall also apply to any internal batch reports generated by a designated election official for the specific purpose of auditing ballots received in the course of conducting an election.

(B) Notwithstanding any other provision of this subsection VII(2), the denial of public inspection of ballots shall apply to a recount that is conducted in accordance with the provisions of article 10.5 of title 1, C.R.S., or C.R.S. § 31-10-1207, C.R.S., as applicable; except that, during the period described in subsection VII(2)(A) above, an interested party may inspect and request copies of ballots in connection with such recount without having to obtain a court order granting such inspection. In connection with an inspection by an interested party as authorized by this subsection VII(2)(B), an interested party may witness the handling of ballots involved in the recount to verify that the recount is being conducted in a fair, impartial, and uniform manner so as to determine that all ballots that have been cast are accurately interpreted and counted; except that an interested party is not permitted to handle the original ballots. Except as specified in this subsection VII(2)(B), nothing in this subsection shall be construed to prohibit an interested party from requesting copies of ballots in connection with a recount, to affect the conduct of a recount, or to affect the rights of the interested party in connection with a recount.

(C) Notwithstanding any other provision of this subsection VII(2), nothing in this subsection shall be construed to restrict the public inspection of election records as defined in C.R.S. § 1-1-104(11); except that, for purposes of this subsection, election records shall not include ballots.

(3) Ballot Inspection.

(A) In accordance with the provisions of C.R.S. § 24-72-203(1)(a) and in addition to any other requirements that are applicable to a person requesting the inspection of public records under this subsection, prior to and later than the stay period described in subsection VII(2)(A) above, ballots shall be available for inspection by the public in accordance with the requirements herein.

(B) In connection with the public inspection of the ballots to which this Section pertains:

(i) The original ballots shall at all times remain in the custody of the designated election official or his or her designee. In the discretion of the designated election official or his or her designee, and subject to the provisions of subsection VII(3)(A) above and the other applicable rules, the designated election official or his or her designee shall determine

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the manner in which such ballots may be viewed by the public.

(ii) The designated election official or his or her designee shall cover or redact, based upon the most practical means available, any markings or message on a ballot that may identify the particular elector who cast the ballot before the ballot may be made available for public inspection;

(iii) To protect the privacy of particular electors, any ballots cast by electors within groups of discrete individuals who are more susceptible of being personally identified, such as military and overseas electors, shall be made available for public inspection only to the extent such ballots may be duplicated without identifying elector information. Insofar as such ballots are not able to be duplicated without identifying elector information, they are not available for public inspection. Notwithstanding any other provision of this subsection, no ballot, or any portion thereof, may be made available for inspection where the ballot, or any requested portion thereof, is identical in printed form, considering a combination of the election contests at issue and precinct coding, to only nine (9) or fewer ballots, or comparable portions thereof, among all ballots used in the same election. However, any such ballot, or any requested portion thereof, that is identical in printed form to ten (10) or more ballots, or comparable portions thereof, used in the same election may be inspected;

(iv) To protect the privacy of particular electors, ballots made available for inspection may be presented in random order selected by the designated election official or his or her designee;

(v) For the purpose of minimizing the costs of making ballots available for public inspection, the person seeking the inspection may indicate the candidate contest, ballot issue, or ballot question for which the person seeks to inspect the ballots; and

(vi) Any actual costs incurred by the office of the designated election official in making the ballots available for inspection in accordance with the requirements of this subsection VII(3) may be charged to the person requesting inspection of the ballots. If the designated election official selects a person other than an employee of his or her office to conduct the duties required by this subsection VII(3), the actual costs to be charged the person seeking inspection shall not exceed the actual costs that would have been incurred if the work involved in complying with the requirements of this subsection was completed by an employee of the designated election official.

(4) Election Watcher & Canvass Board. Notwithstanding any other provision of this Section VII, nothing in this Section VII affects either the rights of a watcher set forth in the provisions of titles 1 and 31, C.R.S., or the operation of a canvass board in accordance with the provisions of articles 1 to 13 of title 1, C.R.S.

VIII. APPLICABILITY: This policy shall apply to all Hinsdale County Elected Officials, appointed officials and employees.