

OPEN RECORDS POLICY

1. BASIC PRINCIPLE.

It is the policy of the Board of County Commissioners of Rio Blanco County, Colorado (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. (CORA) or by other laws. In the event CORA is amended, this policy will be deemed amended to be consistent with the amended CORA.

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 of those records. 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 CORA, and in the event this policy conflicts with CORA, CORA 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, BOCC 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 Rio Blanco County Attorney’s Office, and exceptions may be made in individual cases at his discretion. For the complete CORA, see § 24-72-201, et seq., C.R.S.

2. DEFINITIONS.

The definitions found in § 24-72-202, C.R.S., 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.” § 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. § 24-72- 202(7), C.R.S.

3. PROCEDURE.

A. BOCC 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, or the individual will be directed to <http://rbc.us> or the Rio Blanco County Attorney's Office to receive a Records Request Form. The Records Request must be delivered in person, or by U.S. Mail or facsimile to the appropriate official records custodian or the Rio Blanco County Attorney's Office except as directed. The Rio Blanco County Attorney's Office will transmit the Records Request Form to the appropriate record custodian as soon as possible.

B. The Clerk to the BOCC is the official custodian of all recorded records maintained by Rio Blanco County. Department heads are the official custodians of all records maintained within their departments. The head of the IT Department is the official custodian of emails. Elected Officials may develop their own policies and procedures regarding public records in their custody.

If the public records requested are not in the custody or control of the department or person identified in the request, 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 the name of the person who has custody or control of the records. § 24-72-203(2)(a), C.R.S.

C. The following offices and departments handle their own Open Records Requests and may have additional regulations, procedures, and fees that pertain to their records:

(1) Rio Blanco County Sheriff's Office: Requests for Sheriff's Office records should be made in writing and mailed or delivered to Erin Musser, Office Manager, P.O. Box 1460, 355 4th Street, Meeker, CO 81641; (970) 878-9600. Criminal Justice Records are governed by the Criminal Justice Records Act, § 24-72-301, C.R.S., et seq.

(2) Rio Blanco County District Attorney's Office: All records requests should be made to the District Attorney's Office, P.O. 1012, Meeker, CO 81641; (970) 878-9480.

(3) Rio Blanco County Coroner's Office: All record requests should be made to the Rio Blanco County Coroner, P.O. Box i, Meeker, CO 81641; (970) 878-9420.

(4) Department of Human Services: All records requests should be made to, Rio Blanco County Department of Human Services, Attn: Director, 200 Main St., Suite 200, Meeker, CO 81641; (970) 878-9652. Human Services records are subject to additional legal protections under state and federal law. Employee personnel records are subject to legal protection under federal law.

(5) Department of Public Health: All records requests should be made to the Department of Public Health, 200 Main Street, Suite 200, Meeker, CO 81641; (970) 878-9528. Public Health records are subject to additional legal protections under state and federal law.

(6) Rio Blanco County HR Department: All records requests should be made to: HR Director, Rio Blanco County, P.O. i, Meeker, CO 81641. (970) 878-9572.

(7) Rio Blanco County Clerk and Recorder: All records requests should be made to: Rio Blanco County Clerk and Recorder, P.O. Box 1067, 555 Main St., Meeker, CO 81641; (970)878-9460. The County Clerk is the Designated Election Official (Official) for Rio Blanco County. This policy prohibits the Official from fulfilling a request under CORA for public inspection of either ballots or ballot images arising out of any election in the State during the period commencing with the sixtieth day preceding election day and concluding seventeen days after the election day. The stay required by this policy does not apply to a recount undertaken as provided by law. 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. Ballot styles of ten or fewer ballots shall not be made available for inspection. The BOCC intends by this policy to protect the integrity of the election process while protecting voter privacy and preserving secrecy in voting in accordance with the provisions of Section 8 of Article VII of the State Constitution.

4. TIME FOR ACCESSING PUBLIC RECORDS.

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

The official records custodian will set a date and hour within three working days from receipt of the request 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. § 24-72-203(3)(a), C.R.S.

B. Seven-day extension of time.

The period of providing the requested documents for review may be extended for an additional seven working days if the official records custodian 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. Extenuating circumstances are described as follows:

(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 official records custodian 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 department 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. § 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), Rio Blanco 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 Rio Blanco County receives the request on its official Records Request Form. If the form is sent by:

(1) U.S. Mail, it is deemed received when its seal is broken.

(2) Fax, it is deemed received when it is printed during regular business hours.

(3) 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.

5. FEES.

A. A substantial amount of public records related to Rio Blanco County are available free of charge on the County website, <http://rbc.us>. These include but are not limited to budgets, financial statements, agendas and minutes of the meetings of the Board of County Commissioners, parcel maps, oil and gas reports, and other information. § 24-72-205, C.R.S.

B. Requests for records which do not exceed ten pages are provided free of charge unless fees are otherwise required by Colorado statutes.

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.

(D) Copies of documents are 25¢ per page. Documents delivered electronically are 25¢ per page plus \$5 per CD if a CD is requested. The County does not accept credit cards and cannot bill for services. Although inspection of documents in most cases is free of charge, when applicable, payment in the form of cash or check made payable to Rio Blanco County must be made in advance.

(E) If actual costs exceed 25¢ per page, actual costs, including staff time at the rate of thirty dollars (\$30.00) per hour after the first hour of time has been expended, may be charged.

(F) Any fees charged in this policy will include the cost of redacting documents to excise privileged material.

(G) 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 Rio Blanco County, if it elects to provide information in this manner.

(H) The requestor will be notified in advance of any such fee. No work in response to the request will commence until the fee is received. Fees advanced in excess of the actual costs incurred will be promptly refunded.

6. INSPECTION OF RECORDS.

Inspection of records will take place during regular business hours which may vary from Department to Department at a location determined by the official records custodian. In no event may a requestor remove documents or add documents to those provided for review. The requestor shall not bring and/or shall not use photocopiers, fax machines or any other copy, scanning or reproduction device to copy Rio Blanco 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. Rio Blanco County is under no obligation to allow citizens access to Rio Blanco County computers nor is Rio Blanco County obligated to provide records in electronic format.

7. CLOSURE OF REQUEST.

A records request is deemed closed in any of the following situations:

A. After records are made available for inspection have been inspected by the requestor and no copies of these records are requested; or

B. After records are made available for inspection have been inspected by the requestor

and any 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 § 24-72-204 C.R.S. including but not limited to the following:

- (1) If inspection would be contrary to any state statute. § 24-72-204(1)(a), C.R.S.
- (2) If inspection would be contrary to federal statute or regulation. § 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. § 24-72-204(1)(c), C.R.S.
- (4) If disclosure would be contrary to the public interest. § 24-72-204(2)(a), C.R.S.
- (5) 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. § 24-72-204(2)(a)(I), C.R.S.
- (6) Test-related data listed in § 24-72-204(2)(a)(II) C.R.S.
- (7) Contents of real estate appraisals relative to acquisition (not sale) of property for public use until title passes to Rio Blanco County. See § 24-72-204(2)(a)(IV), C.R.S.
- (8) 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.
- (9) 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., § 24-72-204(2)(a)(VI), C.R.S.
- (10) E-mail addresses provided to Rio Blanco County. § 24-72-204(2)(a)(VII) C.R.S.
- (11) Specialized details of security arrangements or investigations. § 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. § 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) In addition to the above-described documents, CORA 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 Rio Blanco 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. § 24-72-204(3)(a)(X), C.R.S.

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

If, in the opinion, of the official custodian, of any public record, disclosure of said record would do substantial injury to the public interest notwithstanding the fact that such record might otherwise be available to public inspection or if the official custodian is unable, in good faith, after exercising reasonable diligence and after reasonable inquiry to determine if disclosure of the public record is prohibited by state or federal law, 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. § 24-72-204(6), C.R.S.

E. 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. § 24-72-204(4), C.R.S.

F. 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).