CITY OF BOULDER
POLICIES AND PROCEDURES

ACCESS TO PUBLIC RECORDS

EFFECTIVE DATE: December 3, 2001
AMENDED DATE: September 25, 2006

Frank Bruno, City Manager

I. POLICY

It shall be the policy of the City of Boulder to make public records available for public inspection at reasonable times in accordance with the provisions of the Colorado Open Records Act, as reflected in §24-72-201, C.R.S. , *et seq.* ("the Act").

"Public records" means records that exist on paper or on other recorded media and includes records in the form of electronic mail communication (e-mail).

II. PURPOSE

2.1 The purposes of this policy are to:

- Set forth a general procedure for providing City-wide, consistent, prompt and equitable service to members of the public requesting access to public records in accordance with the requirements of the Act;
- Foster open and accessible government;
- Allow members of the public to have access to information regarding the manner in which taxes and other City resources are allocated;
- Facilitate appropriate access to public records while also recognizing the need to avoid unwarranted interference with the discharge of critical City business and ensuring that the process of responding to requests for records does not inordinately interfere with the completion of previously scheduled or critical City work;
- Establish reasonable charges for copying records (as authorized by the Act) and allow recovery of the value of a portion of staff time required to respond to complex records requests; and
- Establish reasonable charges for research and retrieval of records and allow recovery of the value of a portion of staff time required to respond to complex records requests.

2.2 This policy is intended to be consistent with, and implement provisions of, the Act. In that regard, it recognizes the existence of documents to which the City *shall allow* public access, documents to which the City *shall deny* access, and documents to which the City *may deny* access. See § 24-72-204, C.R.S.

III. SCOPE

This policy shall apply to all City records and, more generally, to all records requested pursuant to the Act, 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 when interpreting this policy, unless the context clearly requires a different interpretation.

V. PROCEDURES

5.1 It is the responsibility of each department head to become familiar with, and to educate affected employees about, the standards and requirements of this policy.

5.2 Official custodians for City records are as follows:

- The City Clerk is the official custodian of all records which are centrally maintained by the City;
- Department heads are the official custodians of all records maintained within their departments; and
- The Director of Information Technology is the official custodian of e-mail.

5.3 Members of the public may make informal requests to the official custodian for copies of public records. The custodian will make reasonable efforts to fill such requests immediately.

5.4 If a request is made for voluminous documents, extensive information, or if it requires significant research or redaction of records, it shall be made in writing to the official custodian maintaining the records being requested. Such a formal written request should describe the requested information with as much specificity as possible in order to allow a custodian to locate the requested records.

5.5 If an applicant is uncertain about the identity of the official custodian of requested records, the request shall be made in writing to the Office of the City Attorney.

5.6 The City Attorney's Office and Central Records shall be notified immediately of all written records requests and may assist in processing such requests. The City Attorney's Office may advise staff about the need to review records with regard to confidentiality, official privilege, and related matters prior to their release.

5.7 If immediate production of requested records is not feasible, the custodian will set a date and time for inspection of the records within three working days of the date on which the request was made. This time period may be extended by seven additional working days in the event of extenuating circumstances as described in §24-72-203(3)(b), C.R.S. Production of records within these time limits shall be excused if such production is a physical impossibility or when such production would significantly and adversely impact critically important or previously scheduled City work.

5.8 The City is not obligated to provide records in electronic form. However, the City will endeavor to provide information in that form which is most convenient and practical. Toward that end, a request for information in electronic form will be forwarded to the City Manager's Office Communications staff for determination about whether or not such information can or will be generated and released in electronic form. The Information Technology Department will determine feasibility of recovery.

5.9 When a request for electronic records is received, it shall be the responsibility of the department in possession of such records, after consulting with the City Attorney's Office, to determine whether or not the records should be released in view of the deliberative process and work product exemptions that are set forth and defined in the Act[1].

5.10 Records requests from the news media shall be directed to the City Manager's Office Communications staff with a copy to Central Records. Staff will make reasonable efforts to comply promptly with such requests. If staff is unable to do so, media representatives will be directed to submit a written request to the City Attorney's Office. Thereafter, the request will be governed by the provisions of this policy and the Act.

VI. CHARGES

6.1 The City may charge reasonable fees for research, retrieval, and necessary redaction in connection with producing public records.[2]

6.2 Each department having custody of requested records shall charge for any copies, printouts, or photographs requested. Charges for reproduction of records will be standard throughout the City for similar items.

6.3 Department heads have the authority to waive charges for good cause.

6.4 The cost for a standard size photocopy shall be $0.25 per page. No sales tax will be charged.

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[1] The Act defines work product as advisory 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. Work product documents do not include materials distributed to elected officials for use at a public meeting and/or that express a final decision by an elected official.

[2] See *Black v. Southwestern Water Conservation District*, 74 P.3d 462 (Colo. App. 2003)

6.5 When a commercial copy service is utilized to produce copies, the person or party requesting the records will be responsible for paying the actual charges for that commercial copy service. The decision about when outside commercial copy services will be used shall be made by the Director of the department that maintains the requested public records. In making this determination, a department Director may consider, without limitation, the logistical impact upon the department of using internal or external resources, and the security of documents and other City resources that might be implicated by such a decision. Such a decision by a department Director is final and is not reviewable.

6.6 Departments may charge for time spent responding to large requests, including, without limitation, requests that require the searching of voluminous files for specific information, manipulating data, or redacting documents to excise confidential information. The charge for these kinds of services shall be $35 per hour. A charge of $35 per hour may also apply where manipulation of data is required in order to generate a record in a form not ordinarily used by the City (including redaction of documents to excise privileged material) or when production requires use of computer technology other than word processing. Specific additional departmental fees may apply.

When staff time in excess of one hour is required to respond to a records request, a time-log should be maintained describing the time spent in responding to the request.

6.7 All persons making a subsequent request for the same record or records shall be charged the same fee as was the initial requestor.

6.8 The City, at its discretion, may respond to requests for access to public records stored electronically and in computer databases by providing, upon written request, a copy, disk or printout, but shall not allow access to a computer terminal connected to internal City computer systems that is not ordinarily available for general public use. The exception to this restriction is public information provided by the City on the Internet. The fee charged for providing records in electronic form will be based on recovery of the actual incremental costs associated with building and maintaining the relevant database in providing the responsive electronic records, as determined by the Information Technology Department.

6.9 The City Manager's Office Communications staff should be notified on all requests relating to media stories. The City Manager's Office Communications staff will determine if the media will be charged on a case-by-case basis.

6.10 At its discretion, the department head may waive charges for the following:

- Requests from other cities or states or from professional organizations to which the City as a whole pays membership dues to or participates in, such as the Colorado Municipal League; or

- Requests from students for documents needed in conjunction with specific

educational projects. However, if compliance with such requests requires extensive staff time, research charges may be imposed at the discretion of the affected department head.

6.11 Questions about producing records at the request of representatives of the news media should be referred to the City Manager's Office Communications staff for evaluation.

VII. ACCESS DENIED

7.1 Access to public records may be denied in accordance with the provisions of the Act.

7.2 No records shall be produced when, after consultation with the City Attorney, a custodian determines that the records are privileged or otherwise inappropriate for disclosure based upon the application of a City ordinance, state statute, federal statute, or pursuant to any regulation issued pursuant to any such provision of law or where production of documents is prohibited by a court order, court decision, or court directive.

7.3 The following records shall not be produced pursuant to an open records request:

- The contents of personnel files, specifically including but not limited to, social security numbers, home addresses, home telephone numbers, and personal medical, psychological, and sociological data;
- Scholastic achievement data;
- Letters of reference;
- Identities of applicants, except finalists, for the positions of City Manager, City Attorney, Municipal Judge, and department and divisions heads;
- Criminal justice records;
- Names, addresses, telephone numbers, or financial data of past or present users of public utilities, public facilities or recreational or cultural services;
- Correspondence between City Council and constituents where it is clear that there was an expectation of confidentiality;
- Trade secrets, privileged information, or confidential commercial or financial information furnished or obtained from a person that cannot be accessed by the general public;
- Correspondence sent or received by an elected official without consent of that elected official; and
- Sexual harassment investigations.

7.4 The following records may not be produced pursuant to an open records request:

- Test questions and scoring keys;
- Work product and drafts;
- Deliberative process materials;[3]
- Investigatory files compiled for any law enforcement purpose;
- Real estate appraisal documents relating to land the title of which has not yet passed to the City; and
- Disclosure of documents that would do substantial injury to the public interest, i.e. when release would serve to inhibit free and frank discussion in future documents.

7.5 Attorney/client and attorney work product communications which convey legal advice shall not be produced for inspection. Such records include all confidential communications to or from the City Attorney's Office or to or from other special counsel representing the City. Confidential material of this type may include records of electronic communications. However, copies of such records may be released to those to whom the communications were initially directed.

In order to facilitate the protection of attorney/client and attorney work product material, it is recommended such material be kept in segregated and clearly marked portions of files or otherwise stored in a manner that makes them easily identifiable. Electronic communication that falls within these categories should not be maintained longer than necessary and, when maintained, should be placed in appropriately segregated locations.

7.6 If, in the opinion of a records custodian, disclosure of the contents of any public record 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 custodian may deny access to such public record. When a public record is withheld pursuant to this provision, the custodian shall provide the person requesting that record a sworn statement generally describing the document or documents withheld and explaining why disclosure would cause substantial injury to the public interest.

[3] 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.

7.7 Birth dates will not be released. However, birth dates may be released to representatives of the news media if names are not associated with those birth dates. Birth dates may be otherwise provided to representatives of the news media upon the execution of agreements acceptable in format to the City Manager in which news media representatives agree that they will not publish individual names with associated birth dates based upon the material provided.

7.8 Notwithstanding the above, documents that are privileged or that would otherwise be withheld from production pursuant to this policy may be produced when a waiver is obtained from the person whose privacy interest would be protected by the refusal to produce the documents. However, production pursuant to this provision shall occur only after consultation with, and approval by, the City Attorney.

VIII. SPAM IDENTIFICATION

All City employees' inbound email traffic will be routed through an electronic system prior to delivery to the City network. Each message will be scanned for viruses and worms, content and attachment block lists, email service attacks, member of domain level or deny lists, and spam. When focusing on the spam identification, the system analyzes the likelihood of spam from each message. If the aggregate score from the multilevel review is 90% or greater; the system identifies the message as spam, blocks it and delivers the message to a safe, external quarantine. The quarantine is accessible by the City Email Administrator to review if needed. Once quarantined, the email is considered undeliverable and left to be automatically deleted after seven calendar days.

IX. CONSTRUCTION AND INTERPRETATION

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

X. EXCEPTIONS/CHANGE

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