



## Town of Mountain View Records Policy

### I. Purpose

The policy of the Town of Mountain View (the "Town") is that the decision-making process is a matter of public business and may not be conducted in secret. All public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law. However, computer-generated communication systems are frequently used by employees for the purposes of documenting and/or sending personal or private messages, or messages not intended to be viewed by the public. The Town desires to implement a policy that will serve the public's right to access public records, while identifying to employees the inherent difficulties in ensuring privacy in the use of the Town's computer system for personal use.

### II. Authority

The Town enacts this Policy under the following authority: the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq., as amended ("CORA"); the Colorado Sunshine Law, C.R.S. § 24-6-401, et seq., as amended; and *Black v. Southwestern Water Conservation District*, 74 P.3d 462 (Colo. App. 2003); *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1986); and *Mountain Plains Investment Corp. v. Parker Jordan Metro. Dist.*, 12CA1034 (Colo. App., August 15, 2013).

### III. Definitions

For purposes of this Policy, the following terms shall have the following meanings:

- A. **Correspondence:** A communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including, without limitation, communications sent via electronic mail, private courier, U.S. mail, modem or computer.
- B. **Custodian of Records:** The individual who shall be responsible for compiling documents, scheduling appointments for inspection, and for responding to any such public records request. The Town Council hereby designates the Mountain View Town Clerk as the Custodian of Records.
- C. **Electronic Mail ("E-mail"):** An electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. E-mail includes electronic messages that are transmitted through a local, regional or global computer network.

- D. **Work Product:** All 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. "Work product" also includes a request by a Town official for the preparation of such opinion or deliberative materials.

#### **IV. Protected Records**

Certain records are protected under law from public inspection under the CORA. These records fall into the following categories:

- Personnel files
- Ongoing investigations by law enforcement authorities
- Victim/witness information
- Social security numbers
- Juvenile criminal records
- Work product
- Correspondence sent to or received from the Town's legal counsel
- Individual medical, mental health, sociological and scholastic achievement data
- Letters of reference
- Trade secrets
- Confidential commercial or financial data
- Names, addresses, telephone numbers, and personal financial information of past or present users of public utilities, facilities, or recreational or cultural services
- Records of sexual harassment complaints and investigations
- Library records and contributions
- Addresses and telephone numbers of public school students

Records that are exempt from the CORA might still be accessible to other forms of inspection, such as subpoena.

#### **V. E-Mail**

The Town shall make all e-mail which constitutes a public record and is not protected from disclosure under the CORA available for public inspection for a reasonable fee established by this Policy.

#### **VI. Retention of Documents**

All documents which constitute public records other than e-mail shall be retained in accordance with the guidelines established by the Colorado State Archives. At the

request of the Town Attorney, the Custodian of Records may retain certain records after the retention period expires, if those records are relevant to pending or imminent litigation involving the Town.

## VII. Inspection

- A. **General.** Public records shall be open for inspection by any person at reasonable times, subject to the exceptions found in the CORA. All public records shall be inspected at Town Hall or at the offices of the Town Attorney.
- B. **Request Required.** A request to inspect public records must be written and sufficiently specific in scope to enable the Custodian of Records to identify the information desired. Requests for inspection of e-mail shall include the sender's name, the recipient's name and the approximate date and time of the transmission. If the Custodian of Records receives a request to inspect public records that is ambiguous or lacks sufficient specificity to enable the Custodian of Records to locate the records, the Custodian of Records shall, within three (3) working days, notify the requesting party in writing of the deficiencies in the request. Any clarified request shall be considered a new request for purposes of this Policy and the CORA.
- C. **Review and Response.** Upon receipt of a request for inspection of public records, the Custodian of Records shall review the request and determine whether the requested records are voluminous, in active use, or otherwise not readily available. If so determined, the Custodian of Records, within three (3) business days, shall notify the requesting party in writing that the documents will be produced for inspection within seven (7) additional business days, pursuant to C.R.S. § 24-72-203(3). Notwithstanding the foregoing, based on the case of *Citizens Progressive Alliance v. Southwestern Water Conservation District*, 97 P.3d 308 (Colo. App. 2004), if it is physically impossible for the Custodian of Records to comply with a request for public records within the time periods established by CORA, the Custodian of Records shall comply with the request as soon as physically possible. If the records are readily available, the Custodian of Records shall so notify the requesting party. Each notice shall include the required deposit, if applicable, and the total amount of fees that must be paid prior to production or transmission of the records.
- D. **Transmission or Production.** As directed in the written request for records, the Custodian of Records will transmit the requested records by e-mail, regular mail, courier service or facsimile. If no direction is provided in the request, the Custodian of Records will make the records available for inspection at Town Hall by appointment. In no case shall records be transmitted or produced until all fees under Section VIII have been received by the Town. Once all fees are paid, the Custodian shall transmit or produce the records within three (3) business days, unless a longer time is provided by Section C above.
- E. **Town Attorney.** Any of the notices required herein may be issued by the Town Attorney in lieu of the Custodian of Records. By written notice, the Town Attorney may further require that any requesting party contact the Town Attorney rather than the Custodian of Records.

## VIII. Fees

- A. **Copies, Printouts or Photographs.** Pursuant to C.R.S. § 24-72-205(5)(a), the Town shall charge a fee not to exceed twenty-five cents (\$0.25) per standard page for any 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 which is in a format other than a standard page. For purposes of this Policy, a black and white copy made on a single sheet of letter or legal sized white paper shall constitute a "standard page."
- B. **Research and Retrieval Time.** Pursuant to C.R.S. § 24-72-205(6)(a), the first hour of research and retrieval time shall be free of charge; however, the Town reserves the right to charge a fee of thirty dollars (\$30.00) for any additional staff time devoted to researching and retrieving the requested information. A deposit of equal to 50% of the estimated costs of responding to a records request shall be submitted to the Town prior to any search being commenced.
- C. **Postage/Courier Fees.** If the Custodian of Records transmits records by regular mail or courier service, the requesting party shall be responsible for the cost of postage or courier fees.
- D. **Electronic Transmission Fees.** The Custodian of Records may not charge transmission fees to the requesting party for transmitting public records via e-mail, provided that the requesting party may be charged for staff time associated with research and retrieval of the requested records as provided herein.