

ADMINISTRATIVE REGULATION ACCESS TO PUBLIC RECORDS

Purpose: The Open Records Act, C.R.S. 24-72-201, et. seq., provides that all public records are open to public inspection except as may be separated by law. There are some records that the custodian may deny release and there are some records that the custodian shall deny release. The purpose of this policy is to assure prompt and equitable service to citizens requesting access to public records, including those records created by electronic mail, in accordance with the requirements of C.R.S. 24-72-205. This policy does not apply to criminal justice records. Our goal is to assure prompt and equitable service to reasonable requests for access to public records. It is our policy to make public records available for public inspection at reasonable times unless such records are protected from disclosure by law. There are fees associated with requests for copies or requests that require significant resources to provide. Redundant, frequent, arbitrary, or irrational requests perceived to intentionally disrupt the conduct of routine municipal business shall be denied.

Background: It shall be the policy of the Town of Limon that all records of the Town shall be open for inspection at reasonable times, except as otherwise provided by Colorado statute. (14.6) C.R.S. 24-72-202(6)(a) defines public record as "all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds." Public record also includes the correspondence of elected officials, except to the extent that (1) such correspondence is a work product, (2) without a demonstrable connection to the exercise of functions required by law or administrative rule, or (3) a communication from a constituent to an elected official that clearly implies by its content that the constituent expects that it is confidential in nature or subject to nondisclosure under C.R.S. 24-72-204(1). Additionally, C.R.S. 24-72-202(7) defines writings to include "all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. Writings include digitally stored data, including without limitation electronic mail messages, but does not include computer software."

Those records which the Custodian may deny release are (1) records of the prosecuting attorney and police departments which relate to investigations conducted, intelligence information or security procedures, or investigatory files compiled for any other law enforcement purpose; (2) records concerning licensing, employment, and academic examinations; and (3) real estate appraisals.

Those records which the Custodian shall deny release are (1) medical, psychological, sociological, and scholastic achievement data; (2) personnel files (except for some specifically defined records); (3) letters of reference; (4)

privileged and confidential information; (5) deliberative process privileged materials; (6) sexual harassment investigation records; (7) libraries and museum materials that are donated with conditions; (8) users of public utilities and facilities; and (9) materials submitted by certain applicants for executive positions.

Under "privileged and confidential information", the statute includes such information to include trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, furnished by or obtained from any person. C.R.S. 24-72-204(3)(a)IV.

The Act allows the official custodian of public records, the Town Clerk, to make such rules with reference to the inspection of such records and to the prevention of unnecessary interference with the regular duties of the clerk.

Policy: It shall be the policy of the Town of Limon to make all records available for public inspection unless such records are protected from disclosure by state or federal statute, by court order, or unless disclosure of such records would be contrary to the public interest. Thus, records, including work products and those of the elected officials, those kept only in miniaturized or digital form, whether magnetic or optical disks, tapes, microfilm, microfiche, or electronic mail, are potentially subject to public disclosure.

All requests for public records shall be made in writing with the official Custodian of public records, which is the Town Clerk. Requests made to any person other than the proper Custodian will not automatically be accepted.

All requests for records must be specific as to the records sought and the relevant dates. Requests for correspondence must identify the parties to the correspondence. For any request that is vague or broadly stated the Custodian may require the requestor to provide a more specific request. If a requestor is unable to identify the specific documents sought, the requestor is encouraged to contact the Town of Limon at 719-775-2346 and ask for the Town Clerk, in advance of submitting a request for assistance in providing the requisite specificity.

Requests made via electronic mail will not automatically be accepted. Electronic mail requests may be required to be in the format of the official Town of Limon's Public Records Request form and include all required information. If a formal written request is not completed as required, it will be at the discretion of the Town Clerk whether or not to accept the request as valid. If an email request is submitted, the statutory time for response to requests will not begin until the Town Clerk has returned an acknowledgement of receipt.

Note: The reason for this rule is, due to spam filters and inactive or incorrect e-mail accounts, the Town of Limon cannot guarantee that the Custodian has received an electronic mail request.

Obviously, the Custodian is not required by the Open Records Act and cannot construct or create a record that does not exist.

Many of these requests can be filled immediately; however, if the public records requested are in active use, in storage, or otherwise not readily available at the time the request is made, the custodian shall set a date at which time the records can be inspected that is within three (3) working days of the date the request was made. Such period may be extended if extenuating circumstances exist (per C.R.S. 24-72-203(3)(b)), but the extension period shall not exceed seven (7) days from the date the request is made.

If the requestor wishes to inspect available records in advance of receiving copies, such inspection shall be by appointment only during ordinary working hours. Such inspection must be supervised by a Town of Limon representative and the requestor may be charged for employee time associated with such inspection. At no time shall any original document be removed from the premises of the Town of Limon. Any such act shall be deemed theft and appropriate measures will be taken by the Town of Limon in accordance with applicable law.

Any request for copies of public records may require a deposit prior to completion of such copies being made at the discretion of the Town Clerk. If the requestor requests that the copied documents be mailed or delivered, the requestor shall be responsible for all delivery charges incurred, including travel expenses and hourly wages, to and from the delivery location prior to shipment.

Electronic records and electronic communications:

Electronic Media Access

Purpose: The purpose of this policy is ensure that users of e-mail, Internet, voice mail, electronic facsimile (FAX), bulletin boards, and electronic subscription services are aware of privacy/security, application, and legal issues related to their usage, and to ensure that requests for information stored in the aforementioned formats are complied with in the same manner as requests for information stored in non-electronic formats.

Policy: To ensure that appropriate use of any of the aforementioned electronic media, all users shall utilize Town of Limon's hardware and software for approved purposes only. Additionally, it shall be the policy of the Town of Limon to make all records available for public inspection according to timeframes

described in C.R.S. 24-72-203, unless such records are specifically exempted from disclosure by state or federal statute, by court order, or unless disclosure of such records would be contrary to the public interest. Thus, records, including those of elected officials are potentially subject to public disclosure. All employees of the Town of Limon are required to comply with the provisions contained in this policy. Failure to abide by these policies shall result in the appropriate disciplinary actions, up to and including dismissal from employment Private/Security (Confidentiality Issues): Employees should have no expectation of privacy regarding the electronic media. Any information or data contained in any computer owned by the Town of Limon is available to the Town of Limon at all times and may be subject to audit. Correspondence of any employee in the form of electronic mail may be a public record under the public records law, and may be subject to public inspection under C.R.S. 24-72-203 and the policies of the Town of Limon.

Electronic media are not necessarily a secure communication form, and information sent via this media could potentially be read by others. Employees using these media will respect the privacy of others and will not intentionally seek information on, obtain copies of, or modify files, data or passwords belonging to other users, and will not represent themselves as another user unless expressly authorized to do so. Data and programs residing on computer devices and peripherals must be secured whenever such device is left unattended in order to prevent unauthorized access and theft.

Recognizing that confidential information may be stored on electronic media, employees must follow Town of Limon policies and procedures regarding the distribution of such records.

DOCUMENTS IN DIGITAL FORMAT

If any person makes a request for a public record, which record, or records, are subject to disclosure, to receive the requested documents in a digital and searchable format, and if the document, or documents, are stored in a digital and sortable format, the document, or documents, will be provided to the requestor in the requested format, subject to the other provisions of this policy and the applicable Colorado statute. The custodian may deny a request for digital records in searchable or sortable formats under the following conditions:

- a. If producing the record would violate the terms of a copyright or licensing agreement between the records custodian and a third party; or
- b. If producing the record would result in the release of a third party's proprietary information; or

- c. If, the custodian after making reasonable inquiries, determines that it is not technologically or practically feasible to provide a copy of the document in a digital format; or
- d. If, the custodian after making reasonable inquiries, determines that it is not technologically or practically feasible to permanently remove information that a records custodian is required or allowed to withhold (such as confidential or protected information) in the digital format; or
- e. There would be a cost to the records custodian to purchase software or create additional programming or functionality in existing software to remove this confidential or protected information; or
- f. If the request would divulge information that would assist in a terrorist attack on critical utility infrastructure such as pipelines or water infrastructure, or would divulge physical and cyber assets of critical infrastructure, including specific engineering, vulnerability, detailed design information, protective measures, emergency response plans, or system operational data of such critical infrastructural assets that would be useful to a person in planning an attack on critical infrastructure.

If the custodian denies a request for a document in a digital format for one of the above reasons, the custodian will produce the document in an alternative format and will provide a written declaration attesting to the reason the custodian is not able to provide the record in the requested format.

Fees and Charges:

Each department having custody of the requested records will charge for any copies, printouts, or photographs requested. Each department will also charge a fee for the manipulation of data in order to generate a record in a form not used by Limon and this fee shall not exceed the actual cost of manipulating said data and generating the record. Persons making a subsequent request for the same record will be charged the same fee. Redundant requests for the same record may be denied.

The town will 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 not by allowing access to a computer terminal or the use of a private terminal connected to the Town's computer system. Any public information provided by the Town on the Internet will not be subject to retrieval by the Town Clerk as it is available to anyone at all times.

Fees and charges for reproduction of records shall be standard throughout the Town departments for similar items. Appointing Authorities and the Town Clerk have the authority to waive certain fees and charges. However, no department shall charge higher fees than the standard ones listed in this administrative regulation as adjusted annually as provided below. Fees will be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the cost associated with building and maintaining the information system. The Town Clerk may waive such fee if the electronic services and products are to be used for a public purpose.

**TOWN OF LIMON PUBLIC RECORDS
STANDARD FEE AND CHARGES**

Photocopies	\$0.25 per page
FAX copies	\$0.25 per page
Duplication of electronic recordings	Actual cost of media
Verbatim transcripts of proceedings.	
Non-refundable deposit (Payable in advance)	\$125.00
Transcription	Actual fee for service
Certification	\$30.00 per hour
Document certification	\$5.00 per document
Document notarization	\$5.00 per document
Research and retrieval	The Town shall charge for actual time spent, in excess of one hour, based on the hourly rate of the least technically trained person capable of performing the search.

Annually, in January, the cost for providing specific requests shall be adjusted in accordance with current Colorado Statute and the current list of those fees will be available in the Town Clerk's office.

Occasionally, a request for public records will involve the need to perform research. While the Town has a clear obligation to provide public record 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 research, which takes more than one hour to perform. The charge for this research will be the hourly rate of the least-technically-trained person required to accomplish the task up to a maximum of \$30.00 per hour.

The Town of Limon does not charge for:

1. The first hour of time taken to research or retrieve documentation for a single record request.
2. Requests from members of the Town Board, the Town's boards and commissions and other staff members. Exception: The Town will charge for election materials requested by incumbent officials who are running for office. The Town Clerk shall have the authority to waive fees in certain instances.
3. Requests from students for documents needed in connection with a specific class project and as approved by the Town Clerk.
4. Faxing agendas, and special meeting notices to individuals who have requested notice as provided for in the "sunshine law".
5. The Town Clerk may waive the fee if the electronic services and products are to be used for a public purpose.

Denial of inspection: Access to public records may be denied in accordance with the provisions of the Colorado Open Records Act. Reasons for denial of access to public records should be noted in writing on the public records request form.