

TOWN OF SILVERTHORNE
OPEN RECORDS POLICY

I. PURPOSE

The policy of the Town of Silverthorne (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. The Town desires to implement a policy that will serve the public's right to access public records.

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 (the "CORA"); the Colorado Sunshine Law, C.R.S. § 24-6-401, et seq., as amended; *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 C01p. v. Parker Jordan Metro. Dist.*, 312 P.3d 260 (Colo. App 2013).

III. DEFINITIONS

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

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.

Custodian of Records:

The individual who shall be responsible for compiling documents, scheduling appointments for inspection, and for responding to any public records request. The Town Council hereby designates the Town Clerk as the Custodian of Records.

Electronic Mail ("E-mail"):

An electronic message that is transmitted between two or more computers or electronic terminals, whether the message is converted to hard copy format after receipt and whether 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.

Passive Surveillance:

The use by the Town of a digital video camera, video tape camera, closed circuit television camera, film camera, photo radar recorder, or other image recording device positioned to

TOWN OF SILVERTHORNE
OPEN RECORDS POLICY

capture moving or still pictures or images of human activity on a routine basis or for security or other purposes, including monitoring or recording traffic, weather conditions, office activities, transit facilities, parking garages, sports venues, schools, day care centers, hospitals or other medical facilities, recreational facilities, playgrounds, swimming pools, or utility facilities. "Passive surveillance" does not include surveillance triggered by a certain event or activity and that does not monitor at regular intervals. "Passive surveillance" does not include the use of toll collection cameras.

Personal Identifying Information ("PII"):

the following shall be considered PII:

- a social security number
- a personal identification number
- a password
- a pass code
- an official state or government-issued driver's license or identification card number
- a government passport number
- biometric data (measurements or analysis of human body characteristics for the purpose of authenticating an individual when he or she accesses an online account)
- employer, student, or military identification number or
- a financial transaction device (i.e. credit card, banking card, debit card, electronic fund transfer card, guaranteed check card, financial account number, but not "check", a "negotiable order of withdrawal", or a "share draft").

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 notes and memoranda that relate to or serve as background information for such decisions; and 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. For example, if the Town Manager requests in writing that staff prepare material to assist the Town Council in the decision-making process, the written request shall also be considered a work product.

IV. PROTECTED RECORDS

- A. Pursuant to C.R.S. § 24-72-204, certain records may or shall be withheld from public inspection.

TOWN OF SILVERTHORNE
OPEN RECORDS POLICY

1. Public inspection of the following types of records may be denied if it is determined to be contrary to the public interest:
 - a. Ongoing investigations by law enforcement authorities
 - b. Test, questions, scoring, keys, and other examination data
 - c. Contents of a real estate appraisal made for the Town relating to the acquisition of an interest in property, until title has passed to the Town
 - d. E-mail addresses provided by a person to the Town for the purposes of future communications
 - e. Specialized details of either security arrangements or investigations or the physical and cyber assets of critical infrastructure, subject to C.R.S. § 24-72-204(2)(VIII)
 - f. Ongoing civil or administrative investigations subject to C.R.S. § 24-72-204(2)(IX)

2. Public inspection of the following types of records shall be denied unless requested by the person in interest or otherwise provided by law:
 - a. Personnel files
 - b. Victim/witness information
 - c. Social security numbers
 - d. Juvenile criminal records
 - e. Work product/Deliberative process records
 - f. Attorney-client privileged records
 - g. Individual medical, mental health, sociological, scholastic achievement data, and electronic health records
 - h. Letters of reference
 - i. Trade secrets
 - j. Confidential commercial or financial data
 - k. Personal information of past or present users of public utilities, facilities, or recreational or cultural services
 - l. Records of sexual harassment complaints and investigations
 - m. Library records and contributions
 - n. Addresses and telephone numbers of public-school students

- B. Records created by Passive Surveillance shall be made available subject to the above limitations for a period of one year. After one year and before a three-year anniversary of the creation of the Passive Surveillance record, the Custodian shall access the record only if there has been a notice of claim filed, or an accident or other specific incident that may cause the Passive Surveillance record to become evidence in any civil, labor, administrative, or felony criminal proceeding. Barring any Passive Surveillance records requests prior to the third anniversary of the creation of the record, the Custodian shall ensure that all Passive Surveillance records are destroyed.

TOWN OF SILVERTHORNE
OPEN RECORDS POLICY

V. PRIVACY

Employees should have no expectation of privacy when using any equipment owned, leased or operated by the Town. Information stored on such equipment is subject to audit and review by the Town at any time, for any reason. Such information may also constitute a public record under the CORA.

VI. 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. Town will redact e-mail addresses of private parties.

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 the 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 working days, notify the requesting party in writing of the deficiencies in the request. Any clarified request shall be considered a new request for the 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 3 business days, shall notify the requesting party in writing that the documents will be produced for inspection within seven additional business days, pursuant to C.R.S. § 24-72-203(3). Notwithstanding the foregoing, if it is physically impossible for the Custodian of Records to comply with a request for public records within the time periods established by the CORA, the Custodian of

TOWN OF SILVERTHORNE
OPEN RECORDS POLICY

Records shall comply with the request as soon as physically possible. If the records are readily available, the Custodian of Records shall 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 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 25 cents 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 Fees.

Pursuant to C.R.S. § 24-72-205(6)(a), the first hour of research and retrieval shall be free. After the first hour, the Town charges a maximum research and retrieval fee of up to \$41.37 per hour for any staff time devoted to searching for the requested information. A deposit equal to 50% of the estimated costs of responding to a records request must 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.

TOWN OF SILVERTHORNE
OPEN RECORDS POLICY

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.

IX. ORIGINAL RECORDS/RETENTION

- A. All Town records must always remain in the custody of the Town, except as otherwise provided by this section. Originals or file copies shall not be released to anyone not in the employ of the Town.
- B. Subject to the limitations of subsection IV.B of this policy, any records created by Passive Surveillance shall be destroyed on the third anniversary of its creation.
- C. Paper and electronic records containing Personal Identifying Information (PII) shall be maintained for a period of three years after the creation of the record containing the PII. On the third anniversary of the creation of a record containing PII, the Custodian shall cause the record's destruction by shredding, erasure, overwriting or some other means that causes its contents to become indecipherable, unless there has been a notice of claim filed, or an accident or other specific incident that may cause the record containing PII to become evidence in any civil, labor, administrative, or felony criminal proceeding.

X. TRANSCRIPTS/VIDEO

- A. Transcripts (verbatim) will be provided by court order only.
- B. A requestor has the option of obtaining a copy of any audio recording of a public meeting by arranging for duplication and paying the actual cost.
- C. Video recordings may also be copied at the requestor's expense.

OPEN RECORD PROCEDURE:

1. All Open Records Requests are initiated with the Town Clerk.
2. If the request is under the CORA (as opposed to a copy of a readily available document) the requestor needs to complete an application.

TOWN OF SILVERTHORNE
OPEN RECORDS POLICY

3. Town Clerk personnel determine:
 - a. Who is the physical custodian of the requested document(s).
 - b. The status of the record (availability, protected status, etc.); and
 - c. Cost estimate from the appropriate department.

4. Requestor gets cost estimate and signs request.
 - a. A copy is sent to the responsible Department.
 - b. The responsible Department makes the copies and returns them to the Town Clerk's office (within 2 working days of the request, day and time unless extenuating circumstances exist under C.R.S. § 24-72- 203(3)(b)); and
 - c. The Town Clerk makes an appointment and collects the fee before documents are released.
 - d. When responding to requests, regardless of whether the record(s) is inspected or copied, the Open Record Log must be completed. Log entries should describe what was inspected or copied. The log should be maintained for a period of 2 years plus the current year.

5. A copy of the request is maintained in the Town Clerk's office.

The Department responsible for the records must provide them to the Town Clerk so the Clerk's office can set an appointment with the requestor for inspection within the required timeframe.

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