

## RESOLUTION NO. 23 - 15

### THE BOARD OF COUNTY COMMISSIONERS OF HUERFANO COUNTY, COLORADO

#### A RESOLUTION TO ADOPT A POLICY FOR COLORADO OPEN RECORDS ACT COMPLIANCE

WHEREAS, pursuant to C.R.S. §§ 30-11-101(1)(e) and 30-11-107(1)(e), the Board of County Commissioners of the County of Huerfano, State of Colorado (hereinafter “Board” or “County”), has legislative authority to represent the County and manage the business and concerns thereof; and

WHEREAS, the Colorado Open Records Act (“CORA”), C.R.S. §§ 24-72-200.1 et seq., has been declared to be the public policy of the State of Colorado, and that all applicable public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law; and,

WHEREAS, the Board is authorized to make such rules and regulations with reference to the inspection and copying of such public records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the official and actual custodians of such records; and

WHEREAS, in order to balance the public interests in having reasonable access to public records, and the Board’s interest in otherwise serving the general public and in preserving its public records, the Board deems it prudent and necessary to establish reasonable rules and regulations governing the production, inspection and copying of such public records; and

WHEREAS, each elected official is the official custodian of the records of their office and may adopt their own policies and procedures regarding public records in their custody as they may have to comply with certain statutory and/or regulatory requirements.

NOW, THEREFORE, BE IT RESOLVED by the Board of County Commissioners of Huerfano County, Colorado that the following are hereby adopted:

#### **Section 1. Title.**

This resolution shall be known and referred to as the “Huerfano County Open Records Policy”

#### **Section 2. Policy, Purpose, and Scope**

1. It is the policy of Huerfano County to make public records available for public inspection as set forth in the Colorado Open Records Act, C.R.S. § 24-72-201, et seq. (“CORA”).
2. 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 the Colorado Open Records Act, C.R.S. § 24-72-201, et seq.
3. This policy does not apply to criminal justice records or public records maintained by appointed or elected officials unless adopted by said appointed or elected official.
4. This policy applies to all requests for public records made to all offices and departments reporting to the Board of County Commissioner. It shall apply to records requests made

to any other elected official if, and only if, adopted by said official. A list of such officials will be published on the County's website.

### **Section 3. Definitions.**

The definitions found in C.R.S. § 24-72-202, as amended from time to time, shall apply herein.

Three definitions of particular relevance are included below:

1. "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.
2. "Public records" means "all writings made, maintained, or kept by the state or any agency, institution, ... or political subdivision ... for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds." C.R.S. § 24-72-202(6). Criminal justice records are not included in this definition.
3. "Writings" 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." C.R.S. § 24-72-202(7).

### **Section 4. Procedures for Making and Responding to Requests for Public Records.**

The following procedures apply to all formal requests for public records:

1. Unless otherwise named by the Board of County Commissioners, the County Attorney, or their designee, is the official custodian of all records maintained by all offices and departments reporting to the Board of County Commissioners, unless otherwise prescribed by law. Department heads are the actual, physical custodians of all records maintained within their departments. It is the responsibility of each department head to become familiar with and to educate their employees about the standards and requirements of this policy.
2. Huerfano County has determined that the use of an official request form to be used by persons is necessary for the efficient handling of such public record requests. Any request to Huerfano County for public records must be made on the official request form. Any request not submitted on the official request form will not be processed.
  - a. The County Administrator is hereby instructed to create and maintain an official request form both in an online form and a printable or paper form. The County Attorney will review and approve the form before submission to the Board of County Commissioners for final approval.
  - b. The official request form should be provided to any person submitting a public records request that is not on this form and the person should be informed that Huerfano County requires the use of the official request form in order to process their public records request.
3. Requests on the paper form may be delivered in person or mailed to the Custodian of Records. All requestors with access to the internet are encouraged to use the online form. Because of spam filters as well as incorrect or inactive email accounts, requests made via electronic mail will not automatically be accepted. The custodian, at the custodian's sole prerogative, may accept requests sent via e-mail upon request. If a request is sent via e-mail to anyone other than the custodian, it will not be considered as received by the County and the statutory time for response to the requests will not begin until a confirmation has been sent by the custodian.
4. 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.

5. If a requestor is unable to identify the specific documents sought, the requestor is encouraged to contact the County in advance of submitting a request for assistance in providing the requisite specificity.
6. The custodian is not required by the Open Records Act to construct or create a record that does not exist.
  - a. Any records custodian may set a fee for reports, maps, or products that are produced through the manipulation of data for the benefit of the requestor.
  - b. Any records custodian may refuse any request requiring data manipulation on the basis that CORA does not require manipulation.
7. Time for response to records requests shall be as follows:
  - a. The normal time for production shall be three working days, beginning on the first business day after the request is received.
  - b. Such period may be extended upon determination by the custodian that extenuating circumstances exist. Such period of extension shall not normally exceed seven working days. The requestor shall be notified of the extension within the three-day period.
  - c. Time periods will be calculated without including the date on which the custodian receives any request.
8. Requests to inspect records documents will not take priority over the regular work activities of County employees.

#### **Section 5. Inspection of Public Records**

1. In order to safeguard the integrity of the County's records, the custodian of the records to be inspected shall retain control of the records at all times. Inspection of all public records is subject to the supervision of the records custodian. Inspection of public records will generally be scheduled during regular business hours.
2. The requestor may take notes and may bring a laptop or portable computer device to take notes while inspecting/reviewing documents. However, the requestor shall not bring and shall not use outside photocopiers, scanners, fax machines, smart phones, cameras or other copy, scanning or reproduction devices to copy Huerfano County records.
3. Please note the County may require that members of the public be allowed to inspect only copies of documents when the custodian of records determines that allowing access to originals could interfere with the regular discharge of duties of the County or its staff or production of original records could jeopardize the condition of the requested records.
4. Requestors who have not come in to view the requested information within ten (10) working days of being notified that the records are available for review will be required to submit a new public records request.
5. If fees are charged pursuant to Section 9 of this policy, then inspection of the requested records shall occur only after payment, or an acceptable payment arrangement, is made.

#### **Section 6. Production of Public Records**

1. In the event the requestor requests copies of available records in lieu of an inspection, such records will be provided within the timeframe set forth in Section 4, of this policy.
2. In the event the requestor conducts an inspection and requests copies of records at the time of such inspection, the requestor must mark with tabs or clips the pages he or she wants copied. Copies may be made at a later date and time, based on volume and staff availability. In such case, the requestor will be notified when the copies are available for pick-up. Copies of records may be mailed upon request at an additional fee.

3. If the public record requested is stored in "sortable" or "searchable" formats, the County will provide the record in this format if requested unless producing the record in native format would violate the terms of any copyright or licensing agreement between the County and a third party or result in a release of a third party's proprietary information, or where the native format renders it technologically or practicably infeasible to redact information the County is required or allowed to withhold.
4. Responses to requests will be made via email of attached documents if possible in order to reduce expenditure of County resources and reduce costs to citizens. If records requested exceed 10MB of data, requestors will be provided the records on a USB Thumb Drive or an alternative method provided by the County at the cost indicated herein.
5. In order to preserve the security of the County data network, under no circumstances shall a memory device or other media not authorized by the County IT Department be used to transfer data to a requester nor shall requesters be allowed to provide their own USB Thumb Drive or other storage device to receive copies of the requested records.
6. Huerfano County has no obligation to upload requested public records to a "cloud" service to allow for their access by a requestor. Such requests will be denied except in extenuating circumstances. Under no circumstances will a "cloud" service owned, controlled, or paid for by Huerfano County be used to transmit such records.

### **Section 7. Denial of Request.**

In accordance with CORA, certain County records are either prohibited from disclosure or may be withheld from public inspection. Reasons for denial may include but are not limited to that disclosure is contrary to statute, court order or the public interest. Any denial of inspection or copies of records will be specific and the justification for such denial, as authorized by CORA, will be provided in writing upon request.

### **Section 8. Closure of Request.**

An open records request will be considered closed and a new request must be submitted under any of the following circumstances:

1. The records have been made available for inspection, the records have been inspected and no copies of the records were requested;
2. After the records have been made available for inspection, have been inspected by the requestor and copies of the records have been provided consistent with this Policy;
3. If the requestor fails to appear for the scheduled review of the records; or
4. If the requestor fails within ten business days to:
  - a. make arrangements for review of the records after request;
  - b. pre-pay a deposit required; or
  - c. does not pay the total actual costs after receiving notice of such costs.

### **Section 9. Fees and Charges.**

Charges for copies of requested records shall be as follows:

1. The fee for a paper copy of any public county record, including copies requested pursuant to CORA, shall be as follows:
  - a. \$0.25 per page for black and white printing up to 11" by 17"
  - b. \$0.50 per page for color printing up to 11" by 17"
  - c. \$1.00 per document for certified copies
  - d. The fee for pages larger than 11" by 17" or documents in non-standard formats will not exceed the actual costs of reproduction. Non-standard formats shall include, but are not limited to documents that are either (1) historically

significant; (2) of fragile nature; or (3) bound and held together in such a manner that makes it particularly difficult for a member of the public to copy without damage

2. The fee for an electronic copy of any public county record, including copies requested pursuant to CORA shall be the actual cost of the delivery medium. If the record has to be printed and then scanned the fee will also include the appropriate paper copy fee.
3. If the request will take more than two hours to fulfill, the fee for researching, retrieving, reviewing, and, if necessary, redacting requested information, shall be \$30 per hour after the first two hours.
4. Should a requestor desire to inspect records, with or without further production of said records, the fee for staff time required for supervision of such inspection, if required by the official custodian, shall be \$30 per hour.
5. Any records custodian may require and collect a 50% advance deposit of estimated research, retrieval and copy fees for public records requests that will require significant staff time and resources to complete. A records custodian may require and collect 100% advance deposit of estimated research, retrieval, and copy fees for public records requests from any person who has made a previous request and not paid or not come in to view the requested information.
  - a. In the event advanced payment is requested and the request is voluminous requiring several hours of staff time, the County may refrain from researching and retrieving such a request until an advance deposit is received.
  - b. All requestors should expect to be charged for requests which take longer than two hours to fulfill. Fees may only be waived in extreme, compelling, and rare circumstances after consultation with the County Attorney.

#### **Section 10. Annual Training.**

1. The County Attorney and County Administrator will conduct or arrange an annual training session on this resolution and the Colorado Open Records Act generally.
2. Each department head and supervisor is required to participate and will be given the opportunity to ask questions.
3. The County Attorney and County Administrator will certify the completion of this training to Board of County Commissioners.

#### **Section 11. Elected Official Adoption of this Policy.**

1. Any Elected Official may adopt this policy by submitting a letter to the Board of County Commissioners. Such adoption shall expire at the conclusion of that Elected Official's term of office and must be renewed for up to another term.
2. The letter adopting this policy should specify the official custodian for their office. The Elected Official may serve as the official custodian or may appoint one of their employees to that role.
3. The letter may also specify any procedures or legal requirements specific to the Elected Official's office.

INTRODUCED, READ, APPROVED AND ADOPTED ON THIS 4<sup>th</sup> day of APRIL 2023.



ATTEST:

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County Clerk and Recorder and  
Ex-Officio Clerk to said Board

BOARD OF COUNTY COMMISSIONERS  
OF HUERFANO COUNTY, COLORADO

BY \_\_\_\_\_

John Galusha, Chairman

\_\_\_\_\_  
Arica Andreatta, Commissioner

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Karl Sporleder, Commissioner