

**CITY OF SALIDA, COLORADO  
RESOLUTION NO. 19  
(SERIES OF 2019)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,  
AMENDING THE POLICIES REGARDING ACCESS TO PUBLIC RECORDS.**

WHEREAS, as the official custodian of City records, the City Clerk has promulgated amended policies regarding access to public records, as authorized by § C.R.S. 24-72-203(1)(a); and,

WHEREAS, the City Council wishes to formally adopt said amended policies as the City of Salida Open Records Policies.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO THAT:

1. The Salida City Council incorporates the foregoing recitals as its conclusions, facts, determinations, and findings.
2. The Salida City Council hereby adopts the amended City of Salida Open Records Policies attached hereto as Exhibit A and Exhibit B.
3. This Resolution shall take effect immediately upon adoption.

**RESOLVED, APPROVED and ADOPTED this 7<sup>th</sup> day of May, 2019.**



CITY OF SALIDA, COLORADO

By:   
PT Wood, Mayor

Attest:

  
City Clerk/Deputy City Clerk



## **City of Salida**

### **Internal Administrative CORA Policy**

#### **PURPOSE**

The following policy establishes internal expectations and provides guidance for employees responding to requests for public records (not criminal justice records) pursuant to the Colorado Open Records Act, C.R.S. 24-72-201 *et seq.* (“CORA”). This policy incorporates the City’s external Rules Governing Access to Public Records (“External Rules”) that establish standards and expectations for the public. This policy does not apply to criminal justice records.

#### **SCOPE**

This policy applies to all City employees.

#### **POLICY, PROCESS, PROCEDURE, OR STANDARD**

##### **A. Receiving a Request:**

Every employee receiving a CORA request (or other request styled as a request for public records) must *immediately*:

1. Notify the City Clerk and the employee’s immediate supervisor, unless the City Clerk has directed a request to the employee for a response. The City Clerk is the City’s official custodian of records but may direct requests to one or more departments. The City Clerk must determine who is responsible for responding to the request.
2. Contact the City Clerk if the employee does not understand the requirements or needs assistance. The Clerk will contact the City Attorney’s office if the request warrants it. The City Attorney’s Office is not responsible for responding to the CORA requests on the City’s behalf but will provide assistance with reviewing documents, determining the scope of the request, and preparing a response.
3. Preserve any records subject to the request until the request has been fulfilled. Upon satisfaction or abandonment of the request, the City’s regular retention schedule applies.

##### **B. Responding to a Request from the City Clerk:**

The employee must:

1. At the direction of the City Clerk, review the request to determine if the department to which the request has been directed has records that fall within the scope of the request. The employee and/or their department is required to provide records if they are in the employee’s or department’s possession and must provide a response to a request (or portion of a request).
2. At the City Clerk’s direction, collect records for disclosure. CORA does not require - and sometimes prohibits – the disclosure of certain records. The City Attorney’s Office can assist the City Clerk with reviewing records and the applicable disclosure requirements.

##### **C. The City Clerk must respond within the time required by law. That response can be any combination of the following:**

- a. Making the records available;
- b. Denying the request and stating the reason and legal basis for the denial;
- c. Requesting additional information if the request is not reasonably specific;
- d. Requesting a deposit of funds with an explanation of the estimate;

- e. Providing an estimated timeframe for the records to be made available (within three (3) days if the request is specific and deposit is not required). If additional time is required, the City Clerk must communicate that to the requestor and ask for the additional seven (7) days which are allowed by C.R.S. 24-72-203(b).
  - 1. The City Clerk must confer with the requestor in good faith at all times to facilitate the request and find opportunities to resolve the request.
  - 2. Close the request when a complete response is provided or if the request is abandoned.
- D. Making Records Physically Available
- Options for making records physically available (after all actual applicable charges are paid, if warranted) are as follows:
- a. In-person inspections, by appointment, during regular business hours during which;
    - i. The City Clerk shall retain control of the records at all times.
    - ii. The City Clerk must be present and supervise the review.
    - iii. With City Clerk permission, the requestor may take photographs or may bring a duplicating machine, so records are not damaged and business operations are not disrupted.
  - b. Offering paper copies by mail or pick-up;
  - c. Offering electronic copies by e-mail or external hard drive provided by the requestor. When records are already in electronic form, they must be provided in proper electronic format;
  - d. Offering to fax copies.
  - e. Fees apply for copy costs, media costs, mailing and employee time.
- E. Other Options for Fulfilling Requests may include:
- a. If the digital format of the public record is searchable, but not sortable, then the City Clerk shall provide a copy in a searchable format (such as Word or a searchable Portable Document Format (aka "PDF")).
  - b. If the digital format of the public record is sortable, then the City Clerk shall provide a copy in a sortable format (such as Excel or a comma-separated values format, (aka "CSV")).
  - c. If a record is stored by the City Clerk or a City employee in a digital format that is not searchable or sortable (such as scanned or saved document in non-searchable PDF format), the City Clerk is not required to convert it to a searchable or sortable format. The City Clerk may provide it in the digital format in which it is stored.
  - d. If the record is neither searchable or sortable, the City Clerk does not have to provide records in those formats if:
    - i. It is not technologically or practically feasible after making reasonable inquires to permanently remove information permitted to be withheld, or;
    - ii. It is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format, or;
    - iii. The City Clerk would be required to purchase software or create additional programming or functionality of existing software to remove information.
  - e. If the City Clerk is not able to comply with a request for a public record in a requested format, the City Clerk shall produce the record in an alternative format and shall provide a written declaration as to the reason(s) for not being able to provide the information in the requested format.

## F. Reasons for Denial

Requests can be denied in whole or in part where the City Clerk, with the advisement of the City Attorney, deems the disclosure to do substantial injury to the public interest or if disclosure is prohibited by CORA or other law. Consultation with the City Attorney is required before denying requests – there are exceptions or additional requirements for some of the following. Redaction of some information (as opposed to denial of a request) may be appropriate.

- a. The request is not reasonably specific or narrow to allow you to identify records;
- b. The request is demeaning, harassing, threatening, or abusive;
- c. The requestor is prohibited from submitting requests;
- d. The request does not seek “public records”, such as requests for documents that do not exist, commentary or editorials, requests for information or explanation, or requests seeking disclosure on a continuing or periodic basis;
- e. The request is outside the disclosure requirement of CORA;
- f. Records for which, upon consultation with the City Attorney’s office, inspection would be contrary to any state or federal statute or regulation or is prohibited by court order;
- g. Communications from attorneys in the City Attorney’s Office or other special counsel to any individuals other than those to whom the communication was directed without the consent of the authoring attorney or City Attorney;
- h. If disclosure 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 City Clerk may deny access to such public record. When a public record is withheld pursuant to this provision, the City Clerk shall provide the person requesting the record a sworn statement generally describing the document or documents withheld and explaining why disclosure would cause substantial injury to the public interest;
- i. The content of personnel files, specifically including but limited to, social security numbers, home addresses, home telephone numbers, and personal medical, psychological, sociological and scholastic achievement data;
- j. Letters of reference;
- k. Correspondence between City Council and constituents where it is clear that there was an expectation of confidentiality;
- l. Trade secrets, privileged information, or confidential commercial or financial information furnished or obtained from a person that cannot be accessed by the general public;
- m. Sexual harassment investigations;
- n. Work product and drafts;
- o. Deliberative process materials;
- p. Real estate appraisals;
- q. Investigatory files compiled for any law enforcement purpose; and
- r. Any other disclosure exception found within C.R.S 24-72-204.



## **CITY OF SALIDA RULES GOVERNING ACCESS TO PUBLIC RECORDS**

Under the Colorado Open Records Act, CRS § 24-72-201 (the "Act"), public records made, maintained or kept by the City, regardless of the format or medium, are open for inspection by the public at reasonable times.<sup>1</sup> Certain records are specifically exempted from inspection by the Act or other Colorado law and all records are subject to the following rules adopted by the City to maintain the integrity of the City's records, account for costs to the City of complying with requests, and prevent unnecessary interference with City operations. Reasonable requirements, consistent with these rules and the Act, may be established by the custodian of records with respect to requests as necessary and appropriate.

### **A. Submission of Records Requests**

1. Requests must be submitted in writing on the form provided by the City or on a separate writing clearly indicating that the request seeks public records under the Act.
2. Requests must be submitted to the City Clerk, who is the official custodian of City records (other than criminal justice records).
3. Requests must be made with sufficient specificity to permit the efficient identification, collection, and evaluation of records. For example, to the extent available, specific requests should include information such as the record's name or title, location(s), date(s), author(s), recipient(s), specific subject matter, or category of records. Requests that are not sufficiently specific may be denied or deemed invalid. The City may deem a request abandoned if requests are not clarified to include such information.
4. Requests (or portions of requests) that seek records that are not yet in existence, that seek disclosure on a continuing or periodic basis, that are not City records, or that consist of interrogatories, editorials, or other similar comments will not be fulfilled and will not receive a response.
5. The City may reject any request where the request or any communication relating to the request includes demeaning, harassing, or threatening language or abusive conduct.
6. The City will deem a request as abandoned if, after ten business days, the requestor has not reviewed records made available for inspection, retrieved records copied by the City in response to the request, or submitted payment for the identification, collection, evaluation, and copying of records. At such time, any original record will be returned to its normal place and any copies will be destroyed.

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<sup>1</sup> Records qualifying as criminal justice records under the Colorado Criminal Justice Records Act, C.R.S. § 24-72-301, *et seq.*, are not subject to this policy and requests must be submitted to the Police Department Records Division.

## **B. Responses to Records Requests**

1. Upon receipt of a complete and properly submitted records request, the City will strive to provide a response within three (3) business days, excluding holidays. Record requests shall not take priority over the previously scheduled work activities of the City. If the City cannot respond to the request within three (3) business days, the requestor will be notified and provided with an estimated timeframe for when the response will be provided.
  - a. The City may respond to a records request by: (a) providing the requested records; (b) making the requested records available for inspection; (c) denying the request; (d) responding that there are no records responsive to the request; (e) requesting clarification or narrowing the request; (f) providing a cost estimate to respond to the request and requesting a deposit in accordance with this policy; (g) any combination of these; (h) if the requests cannot be satisfied in that time, an estimated time frame of no more than seven (7) days must be given within the first three (3) days; (i) any other appropriate response.
2. Conferral between the requestor and the City is encouraged throughout the entirety of the process.
3. Unless the requestor can provide a sufficient factual basis to establish bad faith, the City shall have no duty to recreate or reconstruct any mailbox or hard drive in order to respond to a request for documents.
4. The City is not required to create a document or collect documents from other entities in order to respond to a request for information. For example, a person denied access to certain records because of the attorney client privilege requests a "log", listing all such privileged records. Such a log is not a record the City maintains, and the City has no obligation to create such a record. Nonetheless, the City may choose to create such a record and may charge the requestor associated actual costs.
5. Multiple requests and requests submitted by the same person or entity within five (5) business days will be treated as one request for purposes of allocating fees and costs.

## **C. Inspection and Copying of Records**

1. The City shall retain control of the records at all times. Inspection is subject to the supervision of the appropriate records custodian.
2. Records are generally available for inspection by appointment from 9:00 a.m. until 12:00 p.m. and 1:00 p.m. until 4:00 p.m., Monday through Friday, except during any holiday observed by the City or according to different hours of operation established by respective City departments.



3. The City will not allow requestors to access City computers that are not ordinarily available for use by the general public.
4. The City may charge reasonable fees for the production of record(s), including without limitation the cost of copying or reproduction and time spent by the City (through its employees or any third-parties) to identify, collect, evaluate, redact, format, and reproduce records, prepare responses and privilege logs, or otherwise respond to the request.
  - a. A fee of twenty-five cents per standard page (8x10 or 8.5x11) will be charged for the reproduction of paper records. The fee for a non-standard page shall be as stated in the City's Fee Directory. If a commercial copy service is necessary to produce copies in the City's discretion, the requestor is responsible for paying the actual cost for such service.
  - b. When the response to a request, in the aggregate, takes longer than one hour, the City will charge \$30 per hour (excluding the first hour) spent by any employee or third-party to review, evaluate, identify, collect, evaluate, redact, format, and reproduce records, to prepare responses, or to otherwise respond to a request (except for third-parties retained to assist with responding to requests for electronically stored information).
  - c. Unless waived by the City, the requestor must pay the actual cost of any media and third-party service required to respond to requests (including the identification, collection, duplication, and evaluation of records as well as production) for electronically stored information and hard copy records (no external hard drive, compact disc, thumb drive or other media provided by the requestor will be accepted, unless approved by City Clerk ). Nothing in this Policy requires the City to take action beyond what is required by the Act or other law.
  - d. The requestor must pay the actual costs of transmission of any records (except when transmitted by e-mail).
5. Payment of Fees & Costs:
  - a. The City will accept payment in the form of cash or check. Credit cards or other electronic payments may be accepted by the custodian's discretion.
  - b. Where fees and costs may apply, the City will not take further steps after notifying the requestor of the estimate of fees and costs until the payment of such fees and costs has been agreed to and, where appropriate, paid as provided in this policy. Any timeline for the City to respond to a request will be held pending such payment.
  - c. The City will not proceed with a new request for a requestor who has not paid all costs associated with a previous request.

- d. Before processing a request, the City may require an advance deposit of (in any combination, as appropriate): (a) up to 50% of the estimated fees and cost where that the City anticipates more than two hours of time will be required; (b) 100% of the estimated fees and cost where the requestor previously failed to pay fees and costs associated with a request or abandoned a request; or (c) 100% of the estimated costs of media and third-party services required to respond to requests for electronically stored information.
  - e. The actual costs, as calculated in this policy, must be paid before the requestor is provided access to records or copies under this policy.
6. Exceptions. No fees or costs will apply to requests from the following persons or entities, except as provided: (a) members of the City Council, the City's boards and commissions, and City staff (excluding election materials requested by incumbent officials running for office) and (b) other governmental entities. Standard fees and costs will apply to media required for requests and if the request requires more than one hour of time or more than 25 copies.