



# Town of Erie Public Records Policy

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| Effective Date:<br><b>October 9, 2018</b> | Revision Date:<br><b>October 9, 2018 v.1</b> | Prepared By:<br><b>Kendra Carberry, Town Attorney</b> |
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1. **POLICY PURPOSE:** The policy of the Town of Erie (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.
2. **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 Glenwood Post v. City of Glenwood Springs, 731 P.2d 761 (Colo. App. 1986).
3. **DEFINITIONS:**
  - 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 Board of Trustees hereby designates the Erie Town Clerk as the Custodian of Records.
  - C. **Electronic 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 without limitation: (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. For example, if the Town Administrator requests in writing that staff prepare material to assist the Board of Trustees in a decision-making process, the written request shall also be considered "work product."
4. **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 students in any public elementary or secondary school

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

5. **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. E-mail correspondence of Town staff may be a public record under the CORA and therefore may be subject to public inspection. Exceptions to inspection may include e-mail which is covered by the attorney-client privilege, work product privilege or other privilege recognized by Colorado law. All Town employees and officials shall refer to Section X(H) of the Town of the Town of Erie Administrative Policies and Procedures Handbook entitled "Computer & Information Technology Usage Policy" regarding all use, privacy, security and retention procedures.
6. **RETENTION OF DOCUMENTS:** All documents which constitute public records other than e-mail shall be retained in accordance with the Municipal Records Retention Schedule 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.
7. **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 submitted on the Town of Erie Open Records Request Form (attached hereto as Exhibit A), 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 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, the Custodian of Records, within 3 business days, shall notify the requesting party in writing that the documents will be produced for inspection within 7 additional business days, pursuant to C.R.S. § 24-72-203(3). The notice shall state the reason(s) why the requested records are not readily available. Notwithstanding the foregoing, pursuant to *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 the CORA, the Custodian of Records shall comply with the request as soon as physically possible.

**D. Making Records Available.** Public records subject to disclosure may be available for inspection as follows:

- In-person inspection may be requested by appointment, during regular business hours. If the requesting party seeks in-person inspection, the Town shall retain control of the records at all times and a Town employee shall be present and supervise the review. With permission, photographs may be taken and the requesting party can bring a duplicating machine, so records are not damaged and business operations are not disrupted;
- Paper copies by mail or pick-up
- Faxed copies; or
- Electronic copies by e-mail or an external hard drive provided by the Town. If a requesting party seeks documents in a digital format, the Town will comply with the following guidelines:
  - If the digital format of the record is searchable, but not sortable, the Custodian of Records shall provide a copy in a searchable format.
  - If the digital format of the public record is sortable, then the Custodian of Records shall provide a copy in a sortable format (such as Excel or a comma-separated values ("CSV") format).
  - If a record is stored by a Custodian of Records in a digital format that is not searchable or sortable (such as a scanned or saved pdf), the Custodian of Records is not required to convert the record to a searchable or sortable format, but may provide the record in the digital format in which it is stored.
  - If the record is searchable or sortable the Custodian of Records does not have to provide records in these formats if: (a) it is not technically or practically feasible after making reasonable inquiries to permanently remove information permitted to be withheld; (b) it is not technologically or practically feasible to provide a copy of the record in searchable or sortable format; or (c) the Custodian of Records would be required to purchase software or create additional programming or functionality of its existing software to remove information.
  - If the Custodian of Records is not able to comply with a request for a public record in a requested format, the Custodian of Records 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.

**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.

**8. 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 \$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 \$30 per hour for any additional staff time devoted to researching and retrieving the requested information. Anyone submitting a request for electronically stored public records shall remit a deposit equal to 50% of the estimated costs before the Custodian of Records commences the requested search.
- 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. If the requesting party can be provided with documents in electronic format that cannot be altered, such as a pdf, documents may be provided to the requesting party on a flash drive or disc furnished by the Town, with the actual cost thereof to be reimbursed by the requesting party. The requesting party may be charged for staff time associated with research and retrieval of the requested records as provided herein.

This policy is hereby approved and adopted on this 9<sup>th</sup> day of **October, 2018**.

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Jennifer Carroll, Mayor

# Town Of Erie Request for Records

Name: \_\_\_\_\_ Date \_\_\_\_\_

Address: \_\_\_\_\_ Phone Number \_\_\_\_\_

City/ST: \_\_\_\_\_ Email: \_\_\_\_\_

Document Requested \_\_\_\_\_

(Additional room on back)

Reason for Request \_\_\_\_\_

Special Instructions \_\_\_\_\_

Reason for Denial of Inspection: ☐ Contrary to State Statute ☐ Contrary to public interest  
☐ Prohibited by rules of the court ☐ \_\_\_\_\_

## Fee Schedule

Note: A single-sided piece of paper (up to 8.5" x 11") constitutes one page. A double-sided piece of paper (up to 8.5" x 11") constitutes two pages.

| Type of Service  | Minimum Charge   |        | Additional Charges/Notes   |
|--|--|--------|--|
| 1) Open Records Request – on-site paper  | \$ .25 per page  |        | · If a request takes more than one hour to complete, the Town will also charge \$30.00 for each additional hour spent.   |
| 2) Open Records Request – on-site photographs  | \$15.00 per request, plus the per photograph charge                              |        | · \$.50 per photograph<br>· If a request takes more than fifteen minutes to complete, the Town will also charge \$3.75 for each additional 15 minutes spent researching request. |
| 3) Open Records Request – Off-site Records (covers the cost of delivery and pickup only) | \$30.00 <i>PRE-PAID</i> for off-site box, plus the standard fees as listed above |        | • All other copying costs pertain to request.<br>• If a request takes more than 15 minutes to complete, the Town will also charge \$3.75 for each additional 15 minutes spent    |
| 4) Video/Audio Cassettes or DVD's  | \$15.00 pre paid   |        | · Tapes are copied in real time and require a minimum of 3 days notice.  |
| 5) Open Records Request – Manipulation of data in order to create a requested record     | Actual Cost of Manipulating data. CRS 24-72-205 (3)(4)                           |        | · All other copying costs pertaining to request.<br>· Direct costs to the Town i.e. attorney's fees, outsource copying, courier, etc., shall be also assessed.                   |
| 6) Copy only – internal or external (includes any size copy paper up to 11" x 17")       | 8.5" x 11" or 14"  | \$ .25 | Colored Maps and Colored Printed Materials:<br>a. 8.5 x 11 \$10.00 d. 24x36 \$20.00<br>b. 11x 17 \$13.00 e. 36x58 \$25.00<br>c. 18x 24 \$16.00                                   |
|  | 11" x 17"  | \$ .50 |  |
|  | Maps B & W 24"x 36"  | \$3.50 |  |

### Response time pursuant to the Colorado Open Records Law:

**24-72-203** – The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the three-day period. \*\* Extenuating circumstances may be identified as: a broadly stated request that encompasses all or substantially all of a large category of records the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three-day period; or, A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three-day period because the agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month or so.

### Access to and Denial of Records pursuant to the Colorado Open Records Law:

**24-72-305.5** – Records of official actions and criminal justice records and the names, addresses, telephone numbers, and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The official custodian shall deny any person access to records of official actions and criminal justice records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

### PAYMENT: THE TOWN OF ERIE ACCEPTS CASH, CHECK AND CREDIT CARD

By signing this form, I acknowledge that I have read and understand the above Colorado revised state statutes. I am not requesting official actions or criminal justice records for the purpose of solicitation of business or for pecuniary gain.

Applicant Signature \_\_\_\_\_ Date \_\_\_\_\_

**Please complete form and email to [townclerk@erieco.gov](mailto:townclerk@erieco.gov)**  
**or mail to Town Clerk P.O. Box 750, Erie, CO 80516.**

Internal use only:

|                  |             |                             |
|------------------|-------------|-----------------------------|
| Amount pre-paid: | Amount due: | Identification Verified by: |
|------------------|-------------|-----------------------------|