

**TOWN OF DE BEQUE, COLORADO
RESOLUTION NO. 2014-11**

**A RESOLUTION OF THE DE BEQUE TOWN BOARD APPROVING AN
OPEN RECORDS ACT POLICY.**

WHEREAS, the Town is committed to open and transparent government; and

WHEREAS, recent legislative changes to the Colorado Open Records Act ("CORA") require the adoption of a specific policy by the Town in order for the Town to charge research and retrieval fees; and

WHEREAS, while the vast majority of CORA requests do not involve extensive staff time or resources, some more complex and extensive requests can be cumbersome and impact Town operations; and

WHEREAS, the Town Board desires to formally adopt a policy outlining the process and procedures for responding to an open records act request, including the imposition of research and retrieval fees.

NOW, THEREFORE, BE IT RESOLVED BY THE DE BEQUE TOWN BOARD AS FOLLOWS:

1. Recitals. The foregoing recitals are incorporated by reference as findings and determinations of the Board.
2. Adoption of Policy. The CORA policy attached hereto is hereby adopted and made a policy of the Town of De Beque.
3. Effective Date. This Resolution shall be effective upon passage.

THIS RESOLUTION 2014-11 was adopted by the Town of De Beque Town Board by a vote of ____ to ____ on the 18th day of August, 2014.

DE BEQUE TOWN BOARD

By: _____
Mayor Pro Tem

ATTEST:

Town Clerk Shirley Nichols

TOWN OF DE BEQUE OPEN RECORDS ACT POLICY

The Town of De Beque ("Town") is committed to transparency and open government. The following policy specifies how the Town will respond to requests under the Colorado Open Records Act ("CORA") codified at C.R.S. § 24-72-201 *et seq.* This policy will help ensure the Town complies in all respects with CORA and meets all of its constitutional and statutory duties in an orderly and expeditious manner. This policy is not intended to be duplicative of CORA or supersede state law.

State law requires:

- All public records shall be open to inspection by any person at reasonable times.
- If the Town does not have time or space to accommodate the request at the moment, the Town may set another time. However, absent unusual or extraordinary circumstances, the Town will respond within three (3) working days.
- If the Town denies the request, the denial of the request must be in writing if requested.

All requests processed by the Town must be in writing and should be delivered to the Town Clerk for processing. Any questions regarding the applicability or interpretation of this policy should be directed to the Town Administrator or the Town Attorney.

All Town records must remain at all times in the custody of the Town. Originals or file copies shall not be released to anyone not employed by the Town.

Definitions

"Public Records" include, unless exempted:

- All writings made, maintained or kept by the Town, any Town Department, or any Town employee. Criminal justice records as defined in Grounds for Denial; Appeal Process, Section (2)(a), below, are not public records.
- Correspondence of elected officials (including e-mail) is a public record unless it is work product, is unrelated to the elected official's function, is a communication from a constituent who expects it to be confidential by its content, or is otherwise subject to non-disclosure under the CORA § 24-72-203.

"Writings" means all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. Writings include digitally stored data and electronic mail, but does not include computer software.

"Work product" means materials which are deliberative or advisory in nature, prepared to help elected officials, and communicated to assist elected officials in reaching a decision within the scope of their authority.

Inspection, Copying or Photographing of Public Records

CORA states:

- (1) All public records shall be open for inspection by any person at reasonable times, unless otherwise provided by CORA or other law.
- (2) If the public record requested is not in the custody or control of the person to whom application is made, such person shall notify the applicant of this fact. In such notification he shall state the reason for the absence of the records from his custody, their location, and what person then has custody of the record.
- (3) If the public record requested is in the custody or control of the person to whom application is made but is in active use or in storage and unavailable at the time an applicant asks to examine them, such person shall notify the applicant of this fact. If requested by the applicant, the custodian shall set a date and hour within three (3) working days at which time the records will be available. The time period may be extended up to seven (7) days if there are extenuating circumstances. However, responding to records requests does not take priority over previously scheduled Town work.

Procedure

1. Open records requests are initiated with the Town Clerk for all Departments.
2. The Applicant shall fill out a Request for Inspection/Copying of Record (see attached Exhibit A).
3. Personnel in the Town Clerk's Office determine:
 - a. Who is the custodian of the requested document(s);
 - b. The status of the record (availability, etc.);
 - c. Cost estimate from the appropriate Department.
4. Applicant receives the cost estimate and either confirms or cancels the Request. If the Applicant confirms the Request, the Applicant pays the cost estimate before the Town proceeds with making the records available.
 - a. The Town Clerk's Office sends a copy of the Request to the responsible Department.
 - b. The responsible Department either makes the documents available for inspection, or if requested makes the copies and returns them to the Town Clerk's Office (within 2 working days of the request day and time).
 - c. Town Clerk's Office makes appointment with the Applicant to make the records available. Town Clerk's Office completes the Town Clerk Log (see attached Exhibit B).
5. The original Request is maintained in the Town Clerk's Office.

Grounds for Review; Appeal Process

Section 204 of CORA provides:

- (1) The custodian of any public record shall allow any person the right of inspection of such records EXCEPT on one or more of the following grounds:
 - (a) Such inspection would be contrary to any state statute.
 - (b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.
 - (c) Such inspection is prohibited by rules promulgated by the Supreme Court or by the order of any court.
 - (d) Such inspection would be contrary to the requirements of any joint rule of senate and houses pertaining to lobbying actions.
- (2) Generally, the Town will not divulge the following records:
 - (a) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, or any records of the intelligence information or security procedures of said individuals, or files compiled for any other law enforcement purpose.
 - (b) Test questions, scoring keys and other examination data pertaining to administration of a licensing examination, employment examination or academic examination. Written promotional examinations and the scores and results shall be available for inspection, but not copying, by the person in interest after the examination is graded.
 - (c) The contents of real estate appraisals relative to the acquisition of property or any interest in property for public use, until such time as title to the property has been transferred to the Town.
- (3) The custodian of any record SHALL NOT give out or show the following records to anyone except for the person in interest:
 - (a) Medical, psychological, sociological and scholastic achievement data.
 - (b) Personnel files, except that such files are available to the person in interest as well as the person's supervisor. Employment contracts, applications, performance ratings, salary amounts and benefits received are generally available to the general public.
 - (c) Letters of reference, except that a letter of reference concerning employment, licensing, or issuance of permits may not even be disclosed to the person in interest.

- (d) Trade secrets, privileged information and confidential commercial, financial, geological or geophysical data.
 - (e) Library and museum material contributed by private persons who have requested such material not be disclosed.
 - (f) Addresses and phone numbers of students.
 - (g) Library users records.
 - (h) Addresses, telephone numbers and personal financial information of users of public utilities, public facilities or municipal recreational or cultural services, except that such information may be released to a peace officer when related to the peace officer's authority and duties.
 - (i) Sexual harassment complaints or investigations.
 - (j) Applications for an executive position, unless the person is a finalist for the position.
- (4) If the custodian denies access, the applicant may:
- (a) Request a written statement of the grounds for the denial;
 - (b) Apply to District Court for a hearing where the custodian must show cause for denying inspection. If the applicant obtains the records through the court proceedings, the court can award attorney's fees to the applicant.

Fees

All charges must be paid at the time of service, the Town will not bill or invoice for copies or other services in conjunction with CORA requests.

CORA allows up to \$0.25 charge per page when copies are requested and provided, or the actual cost of preparation if the cost is greater. The actual cost may include, but is not limited to, the hourly rate for research and retrieval set forth below and the cost of the physical medium of the document (e.g., tape, disk, USB flash drive, or other physical form of electronic data storage). The Town will not charge for the first hour of time expended in connection with the research and retrieval of public records.

Photocopies of Town Documents

Black and white copies per page plus Research and Retrieval Costs	\$0.25
Color copies per page plus	\$0.50

Research and Retrieval Costs

Research & Retrieval Costs

Department Heads \$30.00 per hour

Non-Supervisory Personnel \$25.00 per hour

Copies of Town Records in Other Formats

Photographs Actual cost of photo reproduction plus \$15.00 for cost of employee time and other incidentals (includes postage, but not certified mail)

Video and audio tapes Actual cost of tape plus \$25.00 (postage not included)

Computer output other than word processing \$15.00 for 1st 5 pages

The Department responsible for the record shall provide it to the Town Clerk so that the Clerk's office may make an appointment with the Applicant for inspection within the time frame required.

Exhibit A

TOWN OF DE BEQUE REQUEST FOR INSPECTION/COPYING OF RECORD

Date of request: _____ Time of request: _____

Applicant name: _____ Daytime Phone: _____

Address: _____

Description of document: _____

☐ Court Case ☐ Purpose of request Personal information ☐ Other (please specify): _____

Certified Copy? ☐ Yes ☐ No

FOR TOWN CLERK USE ONLY

Responsible Department: _____

Availability: ☐ Paper Copy ☐ Electronic Format

Location: ☐ In Storage ☐ Readily Available (on-site)

Cost Estimate:

_____ pages @ \$0.25 = \$ _____

_____ pages @ \$0.50 = \$ _____

_____ hours @ \$ _____ hourly rate = \$ _____

Total Cost Estimate: \$ _____

Having received the foregoing cost estimate I choose to confirm my request for the records described and agree to pay the charges.

☐ Yes ☐ No - Cancel request

Signature _____ Date _____

Exhibit B

Town Clerk Log						
Description of Document Requested	Purpose	Date Requested	Responsible Department	# of Pages	Cost Estimate	Date Provided