



OPEN RECORDS POLICY

I. AUTHORITY:

The public policy of the state and the City of Edgewater (“City”) requires all public records to be open for inspection at reasonable times unless specifically excepted by law. Colorado Public (Open) Records Law, C.R.S. § 24-72-201, *et seq.* as may be amended from time to time (“CORA”). CORA further allows the official custodian of public records to formulate rules and regulations with reference to the inspection of these records which:

- A. Protect the integrity of the records; and
- B. Limit operational disruption caused by access to the records.

II. PURPOSE OF POLICY:

- A. To set forth a policy providing the public with timely, orderly, efficient and appropriate access to public records maintained by the City in compliance with the standards and requirements of CORA; and
- B. To establish general procedures and reasonable and standardized fees for producing copies of and information from City-maintained records as authorized by CORA (CORA does not require the City to create a record in response to a request for information); and
- C. To protect public records from alteration, abuse, wear and tear, defacement or permanent loss and misuse and to ensure that other activities of the office of the Records Custodian not be disrupted or interrupted.

The public is encouraged to visit www.edgewaterco.com to see if the records they wish to request are already available for inspection online.

III. SCOPE:

This policy shall apply to all public records maintained by the City with the exception of those records listed below:

This policy shall not apply to the following:

- A. Records requested under the Criminal Justice Records Act (“CCJRA”), C.R.S. § 24-72-201, *et seq.* as may be amended from time to time. Requests for records under CCJRA should be directed to the Edgewater Police Department and/or Edgewater Municipal Court; and
- B. Work product prepared for elected officials unless disclosure is authorized by the elected officials; and

- C. The office of the City Attorney shall be consulted when requests for public records under this policy are made from members of the media, attorneys or private investigators or when legal interpretation is required.

IV. DEFINITIONS:

Definitions found in C.R.S. § 24-72-202, as amended from time to time, shall apply unless the context clearly requires a different meaning in accordance with customary usage. In the event of any conflict between a definition set forth herein and in C.R.S. § 24-72-202, the definition set forth in C.R.S. § 24-72-202 shall prevail. Other terms used in this policy shall have the following definition:

- A. **Non-Public Record** shall mean any writing made or kept by the City which does not constitute a Public Record under this policy and/or under the provisions of CORA.
- B. **Non-Routine Record** shall mean any Public Record that is not a “Routine Record” or any request where the legality of compiling or releasing the record may be in question.
- C. **Public Records** shall mean all writings made, maintained or kept by the City for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt of expenditures of public funds. “Public Records” does not include Work Product.
- D. **Public Records Request Form** is the form attached hereto as **Exhibit 1** which shall be utilized for all records requests and as may be amended from time to time by the Records Custodian.
- E. **Records Custodian** shall mean the City Clerk, or his/her designee
- F. **Research/Retrieval/Review/Production Time** shall mean all time expended by City staff in processing requests for Public Records in excess of one (1) hour as applied to the calculation of the fee associated with any request for public records.
- G. **Routine Record(s)** shall mean Public Records that are commonly requested and maintained on-site at the City offices and do not involve any significant staff time for research, compilation or tabulation of any data. Voluminous requests for records which are otherwise Routine Records may be treated as Non-Routine Records request in the discretion of the Records Custodian.
- H. **Work Product** shall mean 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.
- I. **Writings** shall mean all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics, including digitally stored data (including, without limitation, electronic mail messages) but do not include computer software.

V. RESPONSIBILITIES:

- A. It is the responsibility of the Records Custodian for the City to implement and oversee compliance with this policy.
- B. It is the responsibility of each City employee and contractor to become familiar with the standards and requirements of this policy.

VI. GENERAL PROCEDURES:

- A. Responding to requests under CORA is expedited by the requestor providing appropriate contact information. The identification of the requestor is also relevant to whether certain information can be disclosed to that requestor under CORA. If the requestor is asking for information to be faxed or sent via mail, appropriate information must be provided. Likewise, if the requestor is paying by method other than cash for the cost of research, copying, etc., appropriate information must be provided. Notwithstanding the foregoing, access to and inspection of most public records shall not be conditioned upon the requestor providing a name, address, phone number or reason for the request.
- B. All requests for records must be specific as to the records sought and the relevant dates covered by the request. Requests for correspondence must identify the parties to the correspondence. For any request that is vague or broadly stated, the Records Custodian may require the requestor to provide a more specific request before incurring any more time or expense in preparing a formal response or making the Public Records available for inspection. If a requestor is unable to identify the specific document(s) sought and the relevant dates, the requestor is encouraged to contact the Records Custodian in advance of submitting a request for assistance in providing the requisite specificity.
- C. Requests may be submitted by mail, fax, email or hand-delivery. For the requestor's convenience, the Records Custodian has a records request form that should be completed in order to facilitate and expedite records requests. Said form is attached hereto as **Exhibit 1**. The form can also be found at www.edgewaterco.com.
- D. Access Times: Public Records shall be made available for inspection in the office of the Records Custodian (City Clerk's Office) during regular business hours which shall be deemed to be from 8:00 am to 5:00 pm, Monday through Friday, except on City observed holidays. The Records Custodian may abbreviate the hours on any given day if the Records Custodian deems that the request to inspect unduly interferes with the operational duties of the City's employees or for any emergency. If the requested records are in the custody and control of the Records Custodian, but are in active use or not immediately and readily available for inspection, the Records Custodian shall set a date and hour when the records will be available for inspection. Failure by the requestor to inspect the public records at the agreed upon time and place will be deemed an abandoned request. The City may return the records to their proper locations within two (2) business days, or a shorter period if needed by the City for any use. If the records are returned to another location as a result of an abandoned request, a new request must be made to inspect those records.

- E. Except as ordered by any court of competent jurisdiction, no original Public Records shall ever leave the possession or control of the Records Custodian. Inspection of all public records is subject to the supervision of the Records Custodian. The City reserves the right to require supervision of the inspection and will charge a fee for staff time as set forth in the fee schedule adopted by the City Council from time to time. The City reserves the right to withdraw records being inspected, or sought to be inspected by the public, for operational purposes. The City reserves the right to charge and prosecute anyone who intentionally destroys, defaces, removes from the designated inspection site or alters public records or property.
- F. The City will fulfill all Public Records requests within three (3) business days if the records are readily available. The day the request is received does not count as a day in this computation neither do weekends nor City observed holidays. An additional seven (7) business days may be added if the records are in active use, in storage or otherwise not readily available. If the additional days are necessary, the Records Custodian shall notify the requestor in writing of the extenuating circumstances within the initial three (3) day period.
- G. The Records Custodian is not under a duty to create any new public record in response to a request. Data and/or records need to be provided only in the format in which they currently exist. Requests in advance for “future” records i.e. requests for information on a subsequent continuing or periodic basis are not allowed. A separate request must be made each time existing data and/or records are requested. Data will not be manipulated and provided in custom formats. A modification of an initial request is considered a new request.
- H. The Records Custodian shall follow the requirements, protections and exemptions of CORA and Colorado case law, which include, but are not limited to: inspection would be contrary to state or federal law or regulation, would violate a court order, is involved in litigation or would do substantial injury to the public interest. The Custodian of Record’s decision shall be final for purposes of appeal under Colorado law.
- I. The Records Custodian may redact any non-public record or matters that require non-disclosure under any exemption in CORA or in Colorado case law.
- J. Any denial of access to public records and for records not in control or custody of the Records Custodian shall be noted in writing.
- K. In all cases in which a person has the right to inspect any Public Record pursuant to this policy, copies, printouts or photographs of such records may be provided to the requestor if, prior to reproduction, requestors pay the applicable fee as set forth in the fee schedule adopted by the City Council from time to time.
- L. Whenever fees or costs are assessed pursuant to this policy, the City will accept payment in the forms that are accepted at that time by the City.
- M. The Custodian of Records may authorize the requestor to copy oversize public records using their own equipment (e.g. cell phone camera), but such authorization must be made prior to any copying. The necessary manual or electronic functions necessary to extract, collate, organize, retrieve, copy or otherwise manipulate the

- records and data necessary to produce the record or allow for its inspection shall be performed by the Records Custodian.
- N. All fees collected hereunder shall be deposited into the general fund of the City.

VII. REQUESTS FOR ROUTINE RECORDS

- A. The Records Custodian may allow inspection and/or copying and release of Routine Records. These requests should be made in writing and shall be handled in timely and responsive manner and shall not be subject to the procedures for Requests for Non-Routine and Non-Public Records.
- B. The Records Custodian will strive to handle Routine Records requests promptly and within the same day of request but, in no event, will such requests take longer than three (3) business days to process.
- C. The cost for copying and providing the Routine Record shall be set forth in the fee schedule adopted by the City Council from time to time. Advance payment is due if the cost is estimated to exceed twenty dollars (\$20.00). After fulfilling the request and prior to releasing any documents or information, the Records Custodian shall return to the requestor any excess funds or charge the requestor for any deficiencies in funds. The City will not proceed with a new Open Records Request from any person unless full payment has been received for all previous Open Records Requests. The City will require and collect one hundred percent (100%) advanced deposit from any person who has made a previous request and did not come in to view the requested information after being notified of a date and time when the records were available for inspection.

VIII. REQUESTS FOR NON-ROUTINE INFORMATION OR NON-PUBLIC RECORDS

- A. All requests for Non-Routine Records and for any Non-Public Records must be received in writing through the office of the Records Custodian on the Public Records Request Form. If a Non-Routine Record or a Non-Public Record is requested via the telephone, the requestor will be notified to submit the request in writing.
- B. The Records Custodian will notify the City Manager and the City Attorney of each Non-Routine or Non-Public Records request.
- C. The Records Custodian, in consultation with other City personnel and the City Attorney's Office, shall determine if the Non-Routine Record requested should be open for inspection within the guidelines of CORA or whether the requested record is a Non-Public Record. In addition, if, in the opinion of the Records Custodian in consultation with the relevant City personnel and City Attorney's Office, disclosure of the contents of any Non-Routine Record would do substantial injury to the public interest, be contrary to state statute, federal statute, or any regulation issued thereunder or is prohibited by rules promulgated by the order of any court, notwithstanding the fact that said record would otherwise be available for public

inspection under the provisions of CORA and this policy, the Records Custodian shall notify the requestor that access to such Public Record is denied and state the grounds for the denial within three (3) business days of the date of receipt of the request.

1. If a determination is made that the record is either a Non-Public Record or otherwise a Public Record not subject to public inspection within the guidelines of CORA, the Records Custodian shall issue a written statement to the requestor within three (3) business days of the date of receipt of the request.
2. If the requested record is determined to be a Public Record within the guidelines of CORA, but the records are not available (i.e. lost, non-existent, etc.), the Records Custodian shall notify the requestor in writing within three (3) business days of the date of receipt of the request.
3. If the request is determined to be within the guidelines of CORA and the requested Public Records are in the custody and control of the Records Custodian but are in active use or in storage and not available at the time a requestor asks to examine them, the Records Custodian shall inform the requestor in writing of this fact and, except when extenuating circumstances exist which require the date and time be extended to a date and time not to exceed seven (7) business days, set a date and hour when the records will be available for inspection or for production and copying within three (3) business days of the date of the request. The finding of extenuating circumstances forming the basis for the extension of time shall also be documented and provided to the requestor in writing by the Records Custodian.
4. If the request is determined to be within the guidelines of CORA, the Records Custodian shall generate a cost estimate to complete the request. Time spent inspecting documents and redacting exempt information will be included in this cost estimate.
 - a. If the cost estimate is in excess of twenty dollars (\$20.00), the total estimated amount shall be collected by the Records Custodian in advance of proceeding with the request. The requestor shall be advised that this is only a deposit and that necessary adjustments to such amount must be made at the time the request is ready for pickup. If the requestor wishes to proceed once receiving an estimate, he or she must acknowledge his or her agreement to pay the costs and deposit in writing. By responding in writing, the requestor agrees to pay all fees associated with responding to the request. The time between the date of the Records Custodian's estimate and the receipt by the Records Custodian of a written request to proceed will not be counted against the time period for responding as set forth herein.
 - b. The Records Custodian shall fulfill the request, accounting for all costs incurred in processing the request.
 - c. The requestor shall be contacted by the Records Custodian and informed as to any adjustments to the original estimated deposit. If paid in advance, the

requestor shall pay or be refunded any adjustment based on the actual costs incurred.

- d. The City will not proceed with a new Open Records Request from any person unless full payment has been received for all previous Open Records Requests. The City will require and collect one hundred percent (100%) advanced deposit from any person who has made a previous request and did not come in to view the requested information after being notified of a date and time when the records were available for inspection.

IX. EXCEPTIONS

- A. The City does not charge for Public Records Requests from the following groups:
 - Members of the City Council, the City's boards and commissions and other City staff for City Business. Notwithstanding the foregoing, the City will charge for election materials requested by incumbent officials who are running for office.
 - Other governmental officials for governmental purposes.

X. RETENTION SCHEDULE

All Public Records of the City, regardless of storage format, have retention schedules approved by the state archivist in accordance with state law.