

RESOLUTION BY THE BOARD OF DIRECTORS  
OF THE FALLBROOK VILLAS METROPOLITAN DISTRICT

RESOLUTION ADOPTING THE COLORADO SPECIAL DISTRICT RECORDS  
RETENTION SCHEDULE, APPOINTING AN OFFICIAL CUSTODIAN, AND ADOPTING  
POLICIES AND FEE SCHEDULE FOR THE HANDLING OF RECORD REQUESTS  
UNDER THE COLORADO OPEN RECORDS ACT (“CORA”)

WHEREAS, Fallbrook Villas Metropolitan District of the City of Thornton, Adams County, State of Colorado (the “District”) is a quasi-municipal corporation and political subdivision of the State of Colorado; and

WHEREAS, pursuant to Sections 32-1-1001(1)(h-i), C.R.S., the Board of Directors of the District (the “Board”) is responsible for the management, control and supervision of all business and affairs of the District and has the authority to appoint, hire, and retain agents; and the District is authorized pursuant to C.R.S. § 32-1-1001(1)(j)(I) to fix and from time to time to increase or decrease fees, rates, tolls, penalties, or charges for services, programs, or facilities furnished by the District; and

WHEREAS, the Board recognizes a need for a comprehensive records retention schedule for the District’s non-permanent records and the retention of those records that have long-term administrative, fiscal and historical value; and

WHEREAS, the Board has determined that it is appropriate to designate an official custodian of the District’s records for the purpose of storing, maintaining, and protecting such records in accordance with state statute and to permit their inspection in an orderly and timely fashion; and

WHEREAS, pursuant to C.R.S. § 24-80-101 et seq., the Colorado State Archives has developed a statewide records retention schedule in cooperation with the Special District Association, the Colorado Attorney General’s Office and the State Auditor’s Office for special districts and other governmental entities to use and follow; and

WHEREAS, the Board has determined that it is appropriate to adopt the model special district retention schedule, unless modified by Section 4 below; and

WHEREAS, C.R.S. § 24-72-200.1 et seq., (Colorado Open Records Act or CORA) requires that public documents and records be made available upon request to members of the public unless protected by an exception and allows for public entities such as special districts to charge a reasonable fee for copying such documents and for any extra work that is required to research and retrieve requested documents; and

WHEREAS, the Board has determined that it is appropriate to adopt policies regarding CORA requests for documents and a fee schedule for the copying and retrieval of such documents.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE FALLBROOK VILLAS METROPOLITAN DISTRICT OF THE CITY OF THORNTON, ADAMS, COUNTY OF STATE OF COLORADO AS FOLLOWS:

Section 1. The Board designates the Board Secretary as the Official Custodian of public records as such term is used in C.R.S. § 24-72-202. The Official Custodian is authorized to develop such procedures as may be reasonably required for the protection of such records. On behalf of the District, the Official Custodian may charge the maximum fees allowed by law for the development of a privilege log, copies, a printout or photograph, and such other services as are authorized by law.

The Board hereby sets a charge of \$33.58 per hour for research and retrieval of documents. The first hour of time spent for research and retrieval will be without charge.

Unless otherwise determined by the Board, all such fees and charges shall be increased or decreased for changes in the maximum rates allowed by law.

Section 2. The Official Custodian shall have the authority to designate such persons and/or organizations as it shall determine appropriate to perform any and all acts necessary to the maintenance, care, and keeping of the District's records. This may include, and shall not be limited to, the temporary, off-site storage of such records.

Section 3. The Board hereby adopts the 2008 Colorado Special District Records Retention Schedule ("Schedule") and all subsequent amendment, modification, and revisions.

Section 4. Unless otherwise prescribed by Statute, all District records shall be retained in accordance with the Schedule and the Board authorizes the District Secretary or the Official Custodian to submit a request to the Colorado State Archivist to adopt the Schedule. Approval from the State Archivist is legal authority for the destruction and preservation of District records. This Schedule may be amended from time to time as required by the Official Custodian or by the State Archivist.

Section 5. All District records are public records and shall be available for public inspection, unless prohibited by the exceptions of Part 2 of Title 24, Article 72, C.R.S. Inspection shall be permitted during normal hours, Monday through Friday, except on holidays, at a time set by the official custodian.

Section 6. No person shall be permitted to inspect or copy any records of the District, if, in the opinion of the Official Custodian after consultation with the District's general counsel, such inspection or copying would be prohibited by one or more exceptions set forth in the Colorado Open Records Act.

Section 7. Unless otherwise directed by the Board, by July 1 of every five-year period after July 1, 2019, the Official Custodian shall adjust the maximum hourly fee specified in this Resolution in accordance with the percentage change over the period of the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Aurora-

Lakewood, All Items, All Urban Consumers, or its successor index as posted by the Director of Research of the Legislative Council on the website of the General Assembly.

Section 8. If any provision of this Resolution is adjudged to be unenforceable or invalid, such judgment shall not affect, impair or invalidate the remaining provisions of this Resolution, it being the Board's intension the various provisions hereof are severable.

Section 9. All acts, orders, and resolutions or parts thereof of the District's Board which are inconsistent with or in conflict with this Resolution, are hereby repealed to the extent only of such consistency or conflict.

Section 10. The provisions of this Resolution shall take effect as of the date set forth below.

Approved and adopted this 19<sup>th</sup> day of November, 2019.

FALLBROOK VILLAS METROPOLITAN  
DISTRICT

By Kent Pedem  
President

ATTEST:

Angela Elliott  
Secretary

# LAW SUMMARY

*Office of Legislative Legal Services*



## ***Colorado Open Records Act - "CORA"<sup>1</sup>***

### ***What is a public record?***

The definition of "public records" found in CORA is quite expansive and applies to virtually all levels and types of governments in Colorado, except for the federal government and tribal governments. It includes all writings, books, papers, photographs, tape recordings, and electronic mail made, maintained, or kept by the state, any agency, institution, or political subdivision of the state, and any elected or appointed public official for use in the exercise of functions required or authorized by law. There are some exceptions, including communications that are personal in nature, confidential messages from constituents about a matter relating to that constituent, and work product, including documents relating to the drafting of bills by attorneys. However, as a general rule, any person who may be subject to the open records law should err on the side of considering all communications to be potentially releasable, including records kept on a personally owned, private device.

### ***Who may request inspection of a public record?***

CORA says that "any person" may inspect public records. "Person" includes any natural person, as well as corporations, limited liability companies, partnerships, and associations.

### ***Who is a "custodian" of a public record?***

CORA broadly defines a "custodian" as the official custodian or any authorized person who has personal custody and control of a public record. Depending on the record in question, the custodian may be a defined person or a government agency or department. For the General Assembly, each legislator is the custodian of his or her own records. Each legislative staff member is the custodian of his or her own records, except for the nonpartisan staff of the following legislative branch agencies: the Joint Budget Committee, Legislative Council, Office of Legislative Legal Services, Office of the State Auditor, Colorado House of Representatives, and Colorado Senate.

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<sup>1</sup> This summary contains information commonly requested from the Office of Legislative Legal Services. It does not represent an official legal opinion of the General Assembly or the state of Colorado and does not bind the members of the General Assembly. It is intended to provide a general overview of Colorado law as of the date of its preparation. Any person needing legal advice should consult his or her own lawyer and should not rely on the information in this memorandum.

***How long does a custodian of a public record have to make it available for inspection?***

CORA mandates a quick turnaround time for records requests. The law says that records must be made available for inspection within three business days of receipt of the request. This three-day period can be extended for an additional seven days in cases of extenuating circumstances, such as when a request to a legislator arrives during the legislative session.

***When may inspection of a public record be denied?***

A custodian of a public record must allow the inspection of the record unless a specific ground for denial set out in CORA exists. These include cases where the inspection would be contrary to state or federal statute or federal regulation or is prohibited by court order. Certain records may be kept from inspection on the ground that disclosure would be contrary to the public interest. These include records of investigative files kept by law enforcement and others, licensing examinations scores, and electronic mail addresses provided by a person to a state agency or political subdivision. Please see the attached table reflecting CORA's exceptions, exemptions, and extensions.

***May a custodian of a public record charge a fee for inspection of the record?***

A custodian may charge a fee of not more than \$0.25 per standard page for a printed copy of a public record or a fee of not more than the actual cost of providing a copy, printout, or photograph of a the record in a format other than a standard page. If a fee for a certified copy or other copy of a record is specifically established in law, the specific fee applies. No transmission fee may be charged for transmitting public records via electronic mail.

If the custodian has posted on his or her website, or otherwise published, a written policy that specifies the conditions related to the research and retrieval of public records by the custodian, including the amount of any fees, the custodian may charge an hourly fee of \$33.58 per hour for research and retrieval time after the first hour. Before completing a request that will take more than one hour of research and retrieval time, the custodian may require the requestor to pay a deposit equal to the estimated fees for the staff time needed to comply with the request. If the actual time spent turns out to be more or less than the initial estimate, the custodian may require an additional payment or make a partial refund of the deposit, respectively.

***How long must a custodian maintain a public record, including electronic mail?***

CORA does not contain a specific requirement regarding the length of time a custodian must maintain a public record. Custodians and agencies can make their own determination of the appropriate length of time a record must be kept or archived. For example, the policy adopted by the Colorado General Assembly recommends the deletion of electronic mail messages within 30 days in most circumstances.

## **What is the penalty for violating CORA?**

If a court determines that a custodian of a public record has improperly denied the right of inspection of a public record under CORA, the court must award court costs and reasonable attorney fees to the prevailing party.

Section 24-72-206, C.R.S., formerly specified a misdemeanor penalty - punishable by a fine of not more than \$100, imprisonment in county jail for not more than 90 days, or both - for willfully and knowingly violating CORA. But that statutory provision was repealed in 2017.

## **How can the General Assembly's CORA policies be accessed?**

The General Assembly's policies related to public records and email can be found at:

[http://www.leg.state.co.us/clics/cslFrontPages.nsf/FileAttachVw/CORA/\\$File/CORAPolicyGA.pdf](http://www.leg.state.co.us/clics/cslFrontPages.nsf/FileAttachVw/CORA/$File/CORAPolicyGA.pdf)

# CORA - Exclusions, Exclusions, & Extensions

<p><b>Correspondence:</b> CORA excludes the correspondence of elected officials from the definition of "public records" to the extent that such correspondence is:</p>	<p><b>Exclusions from the definition of "public records":</b> CORA specifically excludes the following [Section <u>24-72-202</u> (6)(b), C.R.S.]:</p> <ul style="list-style-type: none"> <li>● Criminal justice records covered by section <u>24-72-301</u>, et seq., C.R.S.;</li> <li>● Work product prepared for elected officials, except for work product released by elected officials;</li> <li>● Data, information, and records relating to CollegeInvest programs;</li> <li>● Confidential materials received, made, or kept by a crime victim compensation board or a district attorney;</li> <li>● Notification of a possible nonaccidental fire loss or fraudulent insurance act;</li> <li>● Certain records of institutions, institutionally related foundations, institutionally related health care foundations, and institutionally related real estate foundations;</li> <li>● The information security plan of a public agency, the department of higher education, or an institution of higher education;</li> <li>● Information security incident reports; or</li> <li>● Information security audit and assessment reports.</li> </ul>	<p><b>Exceptions to Inspection - Custodian's Discretion:</b> The custodian of records may deny inspection of the following public records, on the ground that disclosure would be contrary to the public interest [Section <u>24-72-204</u> (2)(a), C.R.S.]:</p> <ul style="list-style-type: none"> <li>● Law enforcement investigations, intelligence information, or security procedures;</li> <li>● Test questions and examination data related to licensing, employment, or academic examinations;</li> <li>● Specific details of bona fide research projects by state institutions and legislative staff;</li> <li>● Real estate appraisals for the state or a political subdivision until title to the property passes.</li> <li>● Records related to the Colorado department of transportation's bid analysis and management system;</li> <li>● State department of revenue records identifying persons;</li> <li>● E-mail addresses provided by persons for the purpose of future electronic communications to the person from the agency, institution, or political subdivision;</li> <li>● Certain records relating to security arrangements or investigations; and</li> <li>● Records of civil or administrative investigations.</li> </ul>	<p><b>Exceptions to Inspection - Mandatory:</b> CORA requires the custodian to deny inspection of several categories of public records, other than to the person in interest, including [Section <u>24-72-204</u> (3)(a), C.R.S.]:</p> <ul style="list-style-type: none"> <li>● Personnel files, except "applications and performance ratings". "Personnel files" means and includes home addresses, telephone numbers, financial information, the specific date of an educator's absence from work, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure by law.</li> <li>● Letters of reference;</li> <li>● Trade secrets, privileged information, and other confidential commercial or financial data, including public records covered by attorney-client or work product privileges.</li> <li>● Records of sexual harassment complaints and investigations, with certain exceptions;</li> <li>● Records protected under the common law governmental or "deliberative process" privilege if public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived;</li> <li>● All proprietary information submitted by a provider of broadband service; and</li> <li>● Public inspection of ballots under certain circumstances. [Section <u>24-72-205.5</u>, C.R.S.]</li> </ul>	<p><b>Records must be available for inspection within 3 working days</b> or less unless 7-day extension applies for extenuating circumstances, which includes the following:</p> <ul style="list-style-type: none"> <li>● A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the 3-day period; or</li> <li>● A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to provide the records within the 3-day period because: <ul style="list-style-type: none"> <li>- 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</li> <li>- In the case of the general assembly or its staff or service agencies, the general assembly is in session; or</li> </ul> </li> <li>● A request involves such a large volume of records that the custodian cannot reasonably provide the records within the 3-day period without substantially interfering with the custodian's obligation to perform other public service responsibilities.</li> </ul>
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