

# Town of Milliken

## Colorado Open Records Act Policy

### Purpose

The Town Clerk is the primary custodian of records of the Town of Milliken, Colorado ("Town"). This policy is adopted by the Town Clerk pursuant to authority granted by section 24-72-203(1)(a) of the Colorado Open Records Act, C.R.S. § 24-72-200.1, et seq. (the "Act"). The primary purpose of this policy is to set forth general procedures for providing town-wide, consistent, prompt and equitable service to citizens requesting access to public records in accordance with the requirements of the Act.

Under the Act, certain records made, maintained, or kept by the Town, regardless of the format or medium, are open for inspection by the public at reasonable times. This policy shall apply to all Town records and copies of information requested or released with the exception of records covered under the Criminal Justice Records Act.

The secondary purpose of this policy is to establish reasonable and consistent fees for providing copies as authorized by the Act and to recover a portion of the cost of staff time for responding to public records requests.

### Definitions

The definitions found in section 24-72-202 and elsewhere in the Act as amended from time to time and as interpreted by the courts shall apply to the interpretation and application of this policy unless the context clearly requires a different meaning. The following definitions taken from the Act, which are current as of the date of this policy, are included for convenience:

- "Public records" means and includes all writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local-government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.
- "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:
  - (A) Work product;
  - (B) Without demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;
  - (C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or that is communicated for the purpose of requesting that the elected official render assistance or information relating to a personal and private matter that is not publicly known affecting the constituent or a communication from

the elected official in response to such a communication from a constituent;  
or

(D) Subject to nondisclosure as required in section 24-72-204(1).

Among other things, “public records” does not include:

- Criminal justice records that are subject to the provisions of part 3 of title 24, article 72, of the Colorado Revised Statutes per section 24-72-202(6)(b)(I) of the Act
- Work product prepared for elected officials per section 24-72-202(6)(b)(II) of the Act.

References to the “Town Clerk” mean the Town Clerk or his or her designee.

### **Procedural Rules**

All records are subject to the following rules adopted by the Town Clerk to promote open and accessible government while maintaining the integrity of the Town’s records, accounting for costs to the Town of complying with requests and preventing unnecessary interference with Town operations. Certain records are specifically exempted from inspection by the Act or other Colorado law. 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. The Town Clerk may update these rules from time to time.

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

1. **Custodian of Records.** Requests must be submitted to the Town Clerk, who is the official custodian of Town records (other than criminal justice records). The Town may contact the requestor to clarify and understand the request. The requestor may confer with the Town in filling out the submission form to develop the clearest possible request. The Town Clerk may direct records requests to Town Department(s) or Staff Members for a response.
2. **Form of Request.** As part of this policy, the Town Clerk has adopted and approved a form for submission of requests under the Act. Requests must be submitted in writing on the form provided by the Town, filled out, and provided to the Town Clerk by e-mail, U.S. mail, or hand delivery at Town Hall located at 1101 Broad Street, Milliken, CO 80543.
3. **Drafting Your Request.**
  - a. **Specificity.** Requests must be made with sufficient specificity to permit the efficient identification, collection, and evaluation of identifiable existing records. Specificity on the nature of documents and necessary details enable the request to be filled more expediently and in a manner which may produce cost savings to the requestor. 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, and category of records. The Town may contact the requestor to attempt to clarify and understand the request. Requests that are not sufficiently specific may be denied or deemed abandoned.

- b. **Records Not Yet in Existence.** Requests (or portions of requests) that seek records that are not yet in existence, that seek disclosure on a continuing or periodic basis, or that consist of interrogatories, editorials, or other similar comments will not be fulfilled.
- c. **Voluminous, Broad or Ongoing Requests.** The production of requests for voluminous documents, broad or extensive information may not be immediately feasible. If production of requested records is not feasible within this policy's time limit, the custodian is excused from producing the request within the time limits if production would significantly and adversely impact critically important or previously scheduled Town work. If the Town cannot respond to the request within three business days, the requestor will be notified and provided with an estimated timeframe for when a response will be provided.
- d. **Civility.** The Town may reject any request where the request or any communication relating to the request includes demeaning, harassing, or threatening language or abusive conduct. The Town may prohibit an individual or entity from submitting requests where that person or entity has previously submitted requests that have included such language or conduct or that have been deemed abandoned as provided in this policy.
- e. **Multiple or Modified Requests.** Multiple requests and requests submitted by the same person or entity within five business days will be treated as one request for purposes of allocating fees and costs and for the purpose of determining time limits, i.e., the time for responding will be measured from the last such request.
- f. **Responsibility for Valid Request.** Even though the Town Clerk may confer with the requestor in order to assist with drafting or clarifying a request, the responsibility for submitting a valid request lies with the requestor. Assistance from the Town Clerk does not ensure that any records will be provided.

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

1. **Nature of Response.** The Town 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) directing requester to proper custodian of the record; (g) providing a cost estimate to respond to the request and request a deposit in accordance with this policy; (h) stating a reasonable interpretation of the request and providing a response tailored to that interpretation; (i) any combination of these; or (j) any other appropriate response.
  - a. If the Town makes records available for inspection, the requestor may mark the pages she or he wishes to have copied with adhesive tabs and copies will be made at a later time.
  - b. In no event shall any records leave the custody and possession of a Town employee during inspection. The Town will not allow requestors

to access Town computers that are connected to internal Town computer systems not ordinarily available for general public use.

2. **Timeline for Response.** Upon receipt of a complete and properly submitted records request and payment for estimated fees related to such request, the Town will strive to provide a response within three (3) business days, excluding holidays and weekends. Record requests shall not take priority over the previously scheduled work activities of the Town.

If the written request cannot be filled immediately, or if the records are otherwise not readily available at the time the request is made, the custodian will set a date and time for records inspection that is within three working days of the date on which the request was made. Such period may be extended if extenuating circumstances exist (per section 24-72-203(3)(b) of the Act), but the total time, including the extension period, will not exceed ten working days from the date on which the request was made.

- a. **10 Days to Review.** The Town 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 Town in response to the request, responded to requests for clarification of the request, or submitted payment for the identification, collection, evaluation, and copying of records. At such a time, any original record will be returned to its normal place and any copies will be destroyed.
3. **Conferral.** Conferral between the requestor and the Town Clerk is encouraged throughout the entirety of the process, and in some instances may be required.
4. **Deleted Documents.** Unless the requestor can provide a sufficient factual basis to establish bad faith, the Town shall have no duty to recreate or reconstruct any mailbox or hard drive in order to respond to a request for documents.
5. **Creation of Records NOT Required.** The Town is not required to create a new document in order to respond to a request for information.
6. **Manipulation of Record NOT Required.** The Town will endeavor to provide information in the form which is most convenient and practical, in its discretion, but will not manipulate or customize the format of record. The Town may respond to requests for access to public records stored electronically and in computer databases by providing, upon written request, a copy, disk or printout, but shall not allow access to a computer terminal connected to internal Town computer systems not ordinarily available for general public use.
7. **Format of Electronic Record.** If a record is stored in digital format, the Town will produce such record in digital format. If a digital record is stored in a searchable format, it shall be provided in searchable format; if stored in a sortable format, it will be provided in sortable format. Notwithstanding the foregoing, a digital record shall not be produced in searchable or sortable format if production would violate a copyright or licensing agreement, would result in the release of proprietary information, or it would not be technologically or practically feasible to permanently remove information that is required to be withheld in such format. It shall not be considered technologically or practically feasible to produce a record in such a manner if the custodian would be

required to purchase software or create additional programming to remove information required to be withheld. If the Custodian cannot comply with requested format, the custodian shall provide an alternative format and provide requester with a written explanation as to why.

8. **Certain Records Withheld or Redacted.** Although most Town documents are open to public inspection, certain information is specifically protected by State and/or Federal law, such as confidential personal information and attorney-client privileged information. When a request for records is received, it shall be the responsibility of the Town Clerk, in consultation with the Town Attorney's office, to determine whether or not the requested records should be released. If any portion of the requested records are only partially available for public inspection under State and/or Federal law, such records shall be redacted to protect such information and made available for inspection in such format. Time spent on redaction shall be subject to the fees set forth in Section C.3. below.
9. **Failure to Pay for Prior Request.** The Town will not proceed with a new request for a requestor who has not paid all costs associated with a previous request.
10. **Records Available Elsewhere.** Many Town records are available in means that are readily accessible to the public such certain Town Board agendas and minutes, and the Municipal Code. If the records that are the subject of a request are available publicly (e.g., on the Town website), the Town Clerk may direct the requestor to such source for inspection of the records.

**C. Inspection and Copying of Records/Fees**

1. The Town shall retain control of the records at all times. All 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 Town or according to different hours of operation established by respective Town departments.
3. **Fees & Costs.** The Town may charge reasonable fees for the production of record(s), including without limitation the cost of copying or reproduction and time spent by Town (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. When the response to a request, in the aggregate, takes longer than one hour, the Town 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. Such hourly rate may be revised by the Town Board of Trustees from time to time by resolution adopting or amending the Town of Milliken Fee Schedule.
  - b. Fees for copies, both standard (8.5"x 11"; 11"x14" and 11"x 17") and oversized (anything larger than 11"x17") will be charged at a rate as defined by the Town of Milliken Fee Schedule. Total copy charges of

\$5.00 and under will be waived. Electronic Records that require an hour or less of research time will be provided at no cost to the requestor.

- c. The requestor will be responsible for paying the actual charges for such a service.
- d. The requestor must pay the actual cost of any media, any third-party service required to manipulate data so as to generate any record in a form not used by the Town per section 24-72-205(3) of the Act, and any other facilities needed to create or duplicate any copy, printout, or photograph per section 24-72-205(2) of the Act. No external hard drive or other media provided by the requestor will be accepted). Media provided by the Town will be charged at cost or at such other rate as defined by the Town of Milliken Fee Schedule.
- e. Nothing in this Policy requires the Town to take action beyond what is required by the Act or other law.
- f. The requestor must pay the actual costs of transmission of any records, except when transmitted by e-mail.

**4. Payment of Fees & Costs:**

- a. The Town will accept payment in the form of cash, card, or check at the Finance Counter only or over the phone as authorized.
- b. Where fees and costs may apply, the Town 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 Town to respond to a request will be tolled pending such payment.
- c. Before processing a request, the Town may require an advance deposit of (in any combination, as appropriate): (a) up to 50% of the estimated fees and cost where that the Town anticipates more than two hours of time will be required; or (b) 100% of the estimated costs of media and third-party services required to respond to requests for electronically stored information.
- d. The actual costs, as calculated in this policy, must be paid before the inspector is provided access to records or copies under this policy.

**5. Creation of Logs.** When staff time in excess of one hour is required to respond to a records request, a time-log may be maintained on request describing the time spent in responding to the request.

**6. Publication.** The Town Clerk, on behalf of all custodians for the Town of Milliken records, shall publish this Policy by posting and maintaining it on the Town of Milliken's website.