

1-4. OPEN RECORDS AND INFORMATION REQUESTS POLICY (November 4, 2020)

PURPOSE

To ensure prompt and equitable service to citizens requesting access to public records covered under the Colorado Open Records Act (“CORA”) and that reasonable fees will be assessed, when applicable, by San Miguel County (“the County”) pursuant to C.R.S. §24-72-205.

POLICY

San Miguel County is committed to ensuring public records are open for inspection by any person, at reasonable times, except as otherwise provided by law. As a public entity, its business documents and records are generally public in nature and are available to the public for inspection. However, in order to maintain the integrity of public records and the effective functioning of a county office or department, and for security reasons, certain conditions for reviewing or obtaining copies of records may apply.

This policy is subject to modifications of CORA or other federal or state statutes, which may supersede any conflicting provisions of this policy, and to the interpretation by the County Attorney’s Office. Exceptions may be made in individual circumstances in its sole discretion.

Records Available on County Website. A substantial number of the County’s public records are available free of charge on the County’s website (www.sanmiguelcountyco.gov). Those records include but are not limited to, the County’s budget, agendas and minutes of meetings of the Board of County Commissioners and Planning Commission, property records, recorded documents, press releases, and other information. Instead of completing a CORA request for information available on the County’s website, County staff may direct persons to the on-line location of responsive documents without assessing a fee.

Records Subject to the Colorado Criminal Justice Records Act. The inspection of some public records, including certain records maintained by the San Miguel County Sheriff’s Office or Coroner, may be governed by the Colorado Criminal Justice Records Act (“CCJRA”) rather than by CORA. Production of criminal justice records pursuant to CCJRA is governed by a separate policy issued by the Sheriff’s Office. Information regarding requests for records from the Sheriff’s Office can be found on their webpage (www.sanmiguelcountyco.gov/265/Open-Records-Request).

Phone: 970.728.4442 **Email:** records@sanmiguelsheriff.org

Address: 684 CR 63L, Telluride, CO 81435

Custodian of these general records: Criminal Justice Records, Criminal Reports, Traffic Tickets, Sex Offender List

DEFINITIONS

“**Custodian**” means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

“**Public Records**” means and includes “all writings made, maintained, or kept by...a political subdivision...for use in exercise of functions required or authorized by law...or involving the receipt or expenditure of public funds.” C.R.S. §24-72-202(6) et. seq.

“Writings” means and includes “all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics. ‘Writings’ includes digitally stored data, including without limitation email messages, but does not include computer software.” C.R.S. §24-72-202(7) et. seq.

“Work Product” has the same definition as that set forth in C.R.S. §24-72-202(6.5).

APPLICABILITY

This policy applies to all department heads and elected officials who adopt this policy. In addition to this policy, elected officials may have their own policies and procedures regarding public records in their custody, if required to do so by statute. Each elected official and department head is responsible for ensuring compliance with this policy.

PROCEDURE

1. Requesting Public Records.

- 1.1. To request public records, please complete the form that is provided online on the County’s website at: <https://www.sanmiguelcountyco.gov/FormCenter/Open-Records-Request-21/Open-Records-Requests-76>. If you do not have access to a computer, requests must be made, in writing, to:

County Attorney
attn: CORA Request
PO Box 1170
Telluride, CO 81435.

- 1.2. The written request must contain the following information or it will not be processed:

- the requestor’s first and last name;
- name of organization, if any;
- email address and phone number;
- mailing address (if wanting the records sent via mail); and
- documents requested – being as specific as possible to include pertinent names, and date ranges;
- whether requestor wants to schedule an inspection of available records, or whether it wants copies of available records in lieu of inspection.

- 1.3. Requests received will be directed to the County Attorney’s Office for forwarding to the appropriate department(s) for processing. You may also contact the County Attorney’s Office with any questions: 970.728.3879; POB 1170, 333 W. Colorado Ave., Telluride CO 81435; attorney@sanmiguelcountyco.gov.

- 2. Timing for Inspection/Production of Public Records.** If records are available pursuant to C.R.S. § 24-72-201, the County will produce the public records requested for inspection, or copies of records, within three business days of the official request form's submittal, or within seven business days where extenuating circumstances exist as provided in C.R.S. § 24-72-203(3)(b). The County will notify the requesting party in writing via email or post if extenuating circumstances prevent the County from fulfilling the request within three business days.

Extenuating circumstances include:

- Where a broadly stated request encompasses 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 three-day period;
- Where the custodian must devote all or substantially all of its resources to meet an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or
- Where a request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian's obligations to perform his or her other public service responsibilities.

- 3. Inspection of Records.** If the requestor wishes to inspect available records in advance of or in lieu of receiving copies of such records, such inspection shall be by appointment only during the normal business hours at the office of the custodian of records, unless the County Attorney's Office deems it appropriate for the inspection to take place in another County department. The original records shall not be removed from the custodian's office.
- 4. Manipulation of Data.** San Miguel County is not obligated to manipulate data in response to a request in order to generate a record in a form not used by the County. However, if the County elects to do so in response to a specific request, the custodian may charge the requestor a reasonable hourly fee associated with the request. The fee shall not exceed the actual cost of manipulating the data and generating the record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.
- 5. Format for Electronic Records.** CORA requires the County to produce electronic records in their native format (e.g., doc, .xls, or .tif) unless producing the record in native format would violate the terms of any copyright or licensing agreement between the County and a third party or result in a release of a third party's proprietary information, or where the native format render it technologically or practicably infeasible to redact information the County is required or allowed to withhold. If such redaction is infeasible, then the requesting party may direct the County to either withhold the entire record or to produce it in a format which allows redaction.
- 6. Fees.**
- 6.1 San Miguel County charges a \$33.38 per hour fee for the actual time the custodian and/or staff spends responding to a CORA request, including staff time of gathering, preparing, reviewing, redacting to excise confidential or privileged material and copying available documents. C.R.S. § 24-72-205(6)(a) and (b). There is no charge for the first hour of custodian/staff time. If a requesting party's research and retrieval

of records must be supervised by another employee, or the request is large and requires multiple staff to respond, the supervisor's and other staff's time will also be charged at \$33.38 per hour.

- 6.2 There is no charge for delivering public records by electronic mail. Costs for standard black and white photocopies will not exceed the limit set by state statute of \$.25 per page. C.R.S. § 24-72-205(5)(a). For color or other non-standard format copies (e.g., media on CD, DVD or flash drive), the County charges a fee not to exceed its actual cost for producing those copies. The per-page cost for producing the hard copies, and/or the actual cost of producing non-standard format copies, is in addition to the \$33.38 /hour rate for staff time devoted to gathering, preparing, reviewing, redacting to excise confidential or privileged material and copying available documents. San Miguel County seeks to meet public information requests in the most economical method possible.
- 6.3 In the case of a request for a computer printout (other than a document which can be printed via word processing), the fee may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system.
- 6.4 Whenever the cost of staff time and/or the production of documents is anticipated to exceed \$60, the County may require a deposit of 50% of the anticipated total cost to fulfill the request. Whenever the cost of staff time and/or the production of documents is anticipated to exceed \$500, the County may require a deposit of 100% of the anticipated total cost to fulfill the request. Payment of the deposit shall be required prior to staff time is devoted to the request.
- 6.5 Payment of the total, actual cost of staff time and/or production of documents is required before the requestor may inspect or receive copies of the records requested. Only actual costs will be charged, and if a required deposit exceeded the actual expense of fulfilling the request, the excess will be refunded to the requestor.

7. Denial of Records.

- 7.1. In accordance with CORA, certain public records are either prohibited from disclosure or may be withheld from public inspection. Reasons for denial may include that disclosure is contrary to statute, court order or the public interest. Any denial of inspection or copies of records will be specific and the justification for such denial, as authorized under CORA, will be provided in writing upon request. Where practicable, the County will redact portions of responsive documents rather than withholding the entire document.
- 7.2. Inspection and copies of the following records shall be denied or have limited release unless otherwise provided by law or unless requested by the person in interest:
 - Medical, mental health, sociological, or scholastic achievement data on individuals. § 24-72-204(3)(a)(I), C.R.S.;
 - Personnel files, except that such files are available to the person in interest and to the elected and appointed officials who supervise that person's work. § 24-72-204(3)(a)(II), C.R.S.;

- Letters of reference (not available to the person in interest if they concern employment, licensing or the issuance of permits). § 24-72-204(3)(a)(III), C.R.S.;
- Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number, furnished by or obtained from any person. § 24-72-204(3)(a)(IV), C.R.S.;
- Addresses and telephone numbers of students in any public elementary or secondary school. § 24-72-204(3)(a)(VI), C.R.S.;
- Library records identifying users. § 24-72-204(3)(a)(VII), C.R.S.;
- Records concerning sexual harassment complaints and investigations;
- Records of applicants for an executive position at San Miguel County; and
- Records protected by common law privileges such as the governmental or “deliberative privilege”, the deliberative process privilege, work product privilege, or attorney-client privilege. If a record is withheld pursuant to the deliberative process privilege, the custodian shall provide the requestor with a sworn statement specifically describing each document withheld, explaining why each document is privileged and why disclosure would cause substantial injury to the public interest. See § 24-72-204(3)(a)(X)(XI) and (XIII), C.R.S.

8. Retention and Archiving of Public Records. The custodian of records is responsible to retain, archive, and/or purge records in accordance with the retention schedule established by the State Archivist or County Retention Policy.

9. Closed Requests. An open records request will be considered closed and a new request must be submitted under any of the following circumstances:

- The records have been made available for inspection, the records have been inspected and no copies of the records were requested;
- After the records have been made available for inspection have been inspected by the requestor and copies of the records have been provided consistent with this Policy;
- If the requestor fails to appear for the scheduled review of the records; or
- If the requestor fails within ten business days to a) make arrangements for review of the records after request; b) pre-pay a deposit required; or c) does not pay the total of actual costs.