



## TOWN OF GYPSUM

### POLICY ON RESPONDING TO OPEN RECORDS REQUESTS

The Town of Gypsum fully supports, and complies with, all Federal and State laws relating to the retention, protection and disclosure of Town records including, but not limited to, the Colorado Open Records Act, Title 24, Article 72, Part 2, C.R.S. (“CORA”), the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the Privacy Rule promulgated by the U.S. Department of Health and Human Services which interprets and implements HIPAA.

It is the policy of the Town that all public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law. Public records are defined by CORA as all writings made or maintained by the Town, regardless of the format or medium of the records, subject to certain exceptions, and public records expressly include email communications.

The Town maintains an archive of all e-mail messages for emergency backup purposes only; such archived e-mail communications are not individually retrievable and are specifically not intended to create a public record.

By action of the Town Council, the Town Clerk is hereby designated as the official Custodian of Records responsible for the maintenance, care and keeping of all records of the Town. The Official Custodian of Records shall have the authority to designate such agents as he/she shall determine appropriate to perform any and all acts necessary to enforce and execute the provisions of this Policy.

The following are general policies concerning the release of records:

1. All public records of the Town shall be open for inspection at the times designated herein, unless prohibited by the provisions of CORA or policies adopted by the Town Council in conformance with CORA.
2. Every request to inspect and/or copy any Town record (a “Records Request”) shall be submitted to the Town’s Official Custodian in writing and be specific as to the information desired. If not submitted to the Official Custodian, any Town employee or Council Member that receives the Records Request shall immediately send the Records Request to the Official Custodian. To assist the Official Custodian in responding to requests in a timely and complete manner, the Official Custodian may require records requests to be submitted on a form developed by the Official Custodian.
3. If any question arises as to the propriety of fully complying with a Records Request, the Official Custodian shall immediately forward it to the Town’s legal counsel.

4. The Town's legal counsel shall determine the Town's obligations under the applicable Federal and/or State law(s). If the Town is permitted to make records available for inspection in whole or in part, the Town's legal counsel will so notify the Town's Official Custodian, who will assemble the disclosable requested documents for inspection and/or copying in accordance with applicable Federal or State law.

5. If the Town's legal counsel determines the Town is not permitted by Federal or State law to make records available for inspection in whole or in part, legal counsel shall provide a written response to the party submitting the Records Request stating the legal basis upon which the Records Request in whole or in part is being denied.

6. Following the denial of a request for record, upon receipt of the required written notice from the requesting individual that he or she will seek relief from the Town Court, the Official Custodian will attempt to meet in-person or speak by telephone with the requesting individual. Town personnel are encouraged to utilize all possible means to attempt to resolve the dispute during this time period and will provide a written summary of the Town's position at the end of that period to the requestor and to the Town Council. No phone or in-person conference is required if the written notice indicates that the requestor needs access to the record on an expedited basis.

7. Pursuant to CORA, all records must be made available for inspection within three (3) working days from the Official Custodian's receipt of the request, unless extenuating circumstances exist. The deadline may be extended by seven (7) working days if extenuating circumstances exist and the requesting party is notified of the delay within three (3) working days of the Official Custodian's receipt of the request. The Official Custodian may set the time during normal office hours and the place for records to be inspected and require that the Official Custodian or a delegated employee be present while the records are examined.

8. A public record stored in a digital format that is neither searchable nor sortable will be provided in a digital format. A public record stored in a digital format that is searchable and/or sortable will be provided in such digital format, unless (1) the public record is in a searchable or sortable format and producing the record in the requested format would violate the terms of any copyright or licensing agreement between the Town and a third party; (2) producing the record would result in the release of a third party's proprietary information; (3) after making reasonable inquiries, it is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format; or (4) if the Official Custodian would be required to purchase software or create additional programming functionality in its existing software to remove the information. Altering an existing digital public record, or excising fields of information that the Official Custodian is either required or permitted to withhold under this subsection, does not constitute the creation of a new public record under Section (2)(i)(iv) of this Resolution.

9. The Custodian may charge the following fees (collectively, the “Fees”) for responding to a Records Request:

(a) Printouts, photographs, and copies, when requested, will be provided at a cost of twenty-five cents (\$0.25) per standard page, and at the actual costs of production for any non-standard page (the “Copying Fee”). A standard page shall mean an 8.5-inch by 11-inch black and white copy.

(b) When it is impractical to make the copy, printout, or photograph of the requested record at the place where the record is kept, the Official Custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities and the cost of providing the requested records will be paid by the person making the request (the “Outside Copying Fee”).

(c) If a copy, printout or photograph of a public record is necessary or requested to be provided in a format other than a standard page, the costs will be assessed at the actual cost of production (the “Production Fee”).

(d) If data must be manipulated in order to generate a record in a form not otherwise used by the Town, such data manipulation will be assessed at the actual costs to the Town (the “Manipulation Fee”); however, the Town is in no way obligated to generate a record that is not otherwise kept, made, or maintained by the Town.

(e) The cost for transmitting the requested records will be charged at the actual cost of such delivery (the “Transmission Fee”). Transmission Fees will not be charged for transmitting any record via electronic mail, when requested.

(f) When the location or existence of specific documents must be researched and the documents must be retrieved, sorted or reviewed for applicability to the request, and such process requires more than one (1) hour of staff time, the Custodian may charge a research and retrieval fee not to exceed forty-one dollars and thirty-seven cents (\$41.37) per hour, or the maximum amount allowed by the Executive Committee of the State Legislative Council, whichever is greater (the “Research and Retrieval Fee”).

(g) If any requested records are protected by a privilege (for example, but not limited to, the work product or attorney-client privileges) the Town may charge the actual costs of creating a privilege log identifying the privileged records (the “Privilege Fee”). If legal assistance or review is necessary to create the privilege log, the Privilege Fee may include the actual costs for such legal assistance.

10. The Town may require a deposit to cover the estimated cost to produce the records, including the cost of the copies and the research and retrieval fee, prior to commencing work to produce such records. Payment of the remainder of the Fees,

including all actual costs exceeding the estimated amount, must be made prior to the time of inspection or release of the final work product or copies.

11. No person shall be permitted to inspect or copy any records of the Town if, in the opinion of the Official Custodian after consultation with the Town's legal counsel, such inspection or copying would come within the prohibition of one or more exemptions set forth in CORA.

This policy shall supersede any previous policy related to records requests.

ADOPTED by the Town of Gypsum Custodian of Records.

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Becky Close,  
Town Clerk / Custodian of Records

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Date