

CITY OF GREELEY

Initiating Department: City Clerk's Office

Number: 2014-4

Effective Date: September 1, 2014

Review and Revision History: Supersedes Administrative Rule 2005-01, Revised 2009.

Revisions reviewed and approved by Records Management Policy Team 07-17-14 and approved by City Manager 08-07-14.

ADMINISTRATIVE DIRECTIVE

CATEGORY: REC - Records and Information Management

SUBJECT: **ACCESS TO PUBLIC RECORDS**

PURPOSE: The primary purposes for this revision to the administrative directive are:

- 1) To set forth a general policy and procedures for providing access to public records maintained by the City to assure prompt and equitable service to customers requesting access to public records in compliance with the standards and requirements of the Colorado Open Records Act (the Act), C.R.S. 24-72-101, *et seq.*
- 2) To provide a framework for establishment by the City Manager of reasonable and standardized fees for searching, retrieving, producing, reproducing, and transmitting public records maintained by the City, as authorized by the Act.
- 3) To incorporate recent changes to the Act.

SCOPE: The administrative directive shall apply to all public records maintained by the City with the exception of those records listed below, regardless of the physical format of the record (i.e. paper, microfilm, and electronic). This administrative directive shall not apply to the following:

- 1) Criminal justice records.
- 2) Records maintained by the Fire Department.
- 3) Work product prepared for elected officials unless disclosure is authorized by the elected officials.
- 4) Records requested or subpoenaed during any formal discovery process. All such requests and subpoenas are to be referred to the City Attorney's Office for coordination and handling.

DISCUSSION: An organization as large and multi-faceted as the City of Greeley requires a certain set of rules and guidelines in order to most effectively conduct its business. The main discussion with regard to revising administrative rule 2005-01 (as revised 2009) was to update the copying fee schedule and to make it consistent with current statutory requirements.

AUTHORITY: Colorado Open Records Act (The Act), C.R.S. 24-72-101, *et seq.*

DEFINITIONS: *Custodian* is defined as the official custodian or any authorized person having personal custody and control of the public records in question.

Legal size page is defined as one side of one page that is 8½" x 14" in size.

Oversize document is defined as one that is larger than 11" x 14" in size.

Public records is defined as all writings, regardless of form, 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 or expenditure of public funds.

Standard GIS product is defined as one that was produced within the previous 12 months.

Standard letter size page is defined as one side of one page no larger than 8½" x 11" in size.

Work product is defined as all intra- or inter-agency 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.

DIRECTIVE:

1.0 No Waiver of Privilege.

- 1.1 Privilege not waived. Nothing in this administrative directive is deemed to be a waiver by the City of Greeley of any privilege, attorney-client or otherwise, concerning its official records.

2.0 Policy.

- 2.1 General policy statement. It is the policy of the City to make public records available for public inspection at reasonable times unless such records are protected from disclosure by law.

3.0 Roles and Responsibilities.

- 3.1 Custodians. Department Heads are “custodians” of all records maintained within their departments and are responsible for the implementation of this administrative directive.
- 3.2 Official Custodian. The City Clerk is the City’s “official custodian” and is responsible for coordinating the maintenance, care, and keeping of public records. The City Clerk is also responsible for providing certified copies of City public records as requested.

4.0 Procedures and Policies for Inspection of Records.

- 4.1 On-Site. All public records as defined in the Act are to be open for inspection in the office of the records custodian where the records physically reside during normal office hours.
- 4.2 Requests Involving Multiple Departments. For the convenience of the requestor and the City, nothing in this administrative directive would prevent coordination between departments when a records request involves multiple departments.
- 4.3 Security Precautions. Except as ordered by any court of competent jurisdiction, the original public records to be inspected shall not be removed from the office of the custodian without advance permission from the custodian, and the custodian shall take precautions to ensure the security of public records made available for inspection and copying.
- 4.4 Inspection of Non-Paper Records. Where public records are kept only in miniaturized or digital form, the custodian shall take necessary measures to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations, the provision of portable disk copies of computer files, or direct electronic access via on-line bulletin boards or other means.
- 4.5 Records Not Open to Inspection and Copying. Inspection and copying of the following public records shall not be permitted:
 - 4.5.1 Contrary to Law, Regulation, or Court Order. If upon consultation with the City Attorney, it is determined that inspection and copying would be contrary to any state statute, federal statute, or regulation issued thereunder, or is prohibited by rules promulgated by the order of any court.
 - 4.5.2 Communications with Legal Counsel. If the record is a communication from attorneys in the City Attorney’s Office or other special counsel of the City, until there has been consultation between the recipient of the

communication and the attorney or special counsel who wrote the communication, or the City Attorney.

4.5.3 Contrary to Public Interest. If, in the opinion of the records custodian, disclosure of the contents of any public record would be contrary to the public interest in accordance with the guidelines set forth in the Act. Notwithstanding the fact that said record might otherwise be available for public inspection under the provisions of this administrative directive, the records custodian may deny access to such public record, and at the direction of the City Council, the City Attorney's Office may apply to the Weld County District Court for an order permitting the records custodian to restrict such disclosure.

4.6 Explanation of Absent Records. If the public records requested are not in the custody or control of the records custodian, the requestor may request a written statement explaining the reason for the absence of the records from such custodian's custody or control, their location and what person or entity has custody or control of the records.

4.7 Extenuating Circumstances. If the public records requested are in the custody and control of the records custodian, but are in active use or in storage and are, therefore, not immediately available at the time a requestor asks to examine them, the requestor may request a written statement to that effect. Upon written request of the requestor specifying exactly which documents are being requested, the custodian shall set a date and hour, within the following three full working days, at which time the records will be available for inspection. In the event extenuating circumstances exist as defined in the Act, the custodian shall have an additional seven full working days to make the requested records available for inspection. Extenuating circumstances do not apply to any request that relates to a single, specifically identified document. Extenuating circumstances may include the following circumstances:

4.7.1 Insufficient Specificity. 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 preparation or gathering of the records within the three-day period; or

4.7.2 Unique Circumstances. A broadly stated request is made that encompasses all or substantially all of a large category of records and staff is unable to prepare or gather the records within the three-day period because the staff 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

4.7.3 Interference with Other Obligations. A request involves such a large volume of records that staff cannot reasonably prepare or gather the records within the three-day period without substantially interfering with its obligation to perform other public service responsibilities.

- 4.8 No Duty to Create New Record. 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.
- 4.9 Questions Referred to City Attorney. Questions concerning requests for information should be directed immediately to the Office of the City Attorney.
- 4.10 Copying Fees and Charges.
- 4.10.1 Payment of Fees and Charges Required. In all cases in which a person has the right to inspect any public record pursuant to this administrative directive, such person has a right to request copies, printouts, or photographs of such records upon payment of the fees and charges established by this administrative directive.
- 4.10.2 Advance Payment. Advance payment is due for the estimated cost of searching, retrieving, producing and reproducing such record(s) if the estimated total cost exceeds \$50.00. Prior to release of the requested information, the requestor shall pay the difference, if any, between the estimate and actual cost. The requestor shall be refunded any excess amount collected.
- 4.10.3 Determination of Costs. The costs of reproduction as stated in this section have been determined to be the cost of the City in producing such documents. Charges for inspection and copying of records shall be set annually by the City Manager.
- 4.10.4 Departmental Discretion. Periodically situations will arise concerning the charging of fees that will require flexibility and common sense. To provide that flexibility, Department Heads are authorized to make decisions on situations not specifically covered by this administrative directive. All decisions must be made within the general intent of this administrative directive and in the best interest of the City. At the Department Head’s discretion and after prior consultation with the City Attorney and City Clerk, courtesy copies may be provided free of charge for infrequent requests with an insignificant impact on resources i.e. if fulfilling the request does not require more than one hour of cumulative staff time.
- 4.10.5 Brochures and Pamphlets. Brochures and pamphlets produced specifically for assistance and convenience of residents and businesses in complying with municipal regulations are not affected by this administrative directive and may be distributed free of charge.

- 4.10.6 Books. Copies of any books the City has printed, i.e. the budget book, are available at the City's cost to have them printed. Copies of the code of ordinances and code supplement subscriptions are to be purchased through the City's code publisher, Colorado Code Company, Inc.
- 4.10.7 On-Site Inspection. There shall be no charge to inspect public records on-site, unless the nature of a request makes it necessary to expend one hour or more of staff time. Independent research by the requester is allowed provided that the records to be researched do not include privileged documents or documents not otherwise subject to public disclosure, that the research is supervised by City staff to avoid loss or damage to records, and that the research does not unduly disrupt the day-to-day activities of the organization.
- 4.10.8 Staff Time in Excess of One Hour. A fee shall be established by the City Manager to be charged on cumulative staff time required in excess of one hour to search, retrieve, produce, reproduce and distribute the requested information. As provided by the Act, such fee shall not exceed \$30.00 per hour after the first hour.
- 4.10.9 Transmission by E-mail. As provided by the Act, there shall be no fee for transmitting requested records by e-mail.
- 4.10.10 Mailing Charge. The charge for mailing information to the requestor shall be the actual cost of postage and packaging.
- 4.10.11 Copies on Electronic Media. Copies of electronic records available and provided on computer media in native format, such as databases, spreadsheets, or word processing documents, will be produced by the custodian for a fee established annually by the City Manager.

5.0 Advisement.

- 5.1 Exceptions. The City of Greeley organization strives to make government as open as possible including its process for access to open records. While this administrative directive covers most open record situations, exceptions may exist for large or complicated requests. Additionally please note that the law mandates certain information be protected by the City and grants discretion for the City to protect other information under certain circumstances. Some requested information may not be available due to those legal restrictions.

6.0 Privacy Policy.

- 6.1 Appropriate Restrictions for Personal Information. The policy of the City of Greeley is to place appropriate restrictions on the collection, use, dissemination, disclosure, and retention of personal information.

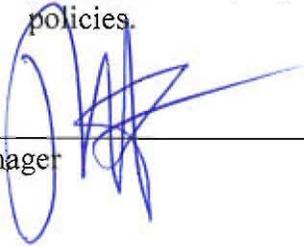
6.2 Use and Handling of Personal Information. No unauthorized use shall be made of such personal information in any way that conflicts with this administrative directive. Any breach of the City's privacy policies shall be a disciplinary offense. Deliberate breaches shall be considered to be gross misconduct, with appropriate remedies. All records containing personal identifying information shall be properly destroyed in accordance with the City's policy and State law regarding such destruction.

7.0 Violations and Discipline.

7.1 Disciplinary Action/Penalties. Employment with the City requires compliance with all City rules, regulations and policies. Violations of this administrative directive may result in a reprimand or disciplinary action pursuant to the City's personnel rules and regulations, up to and including termination from employment, a police investigation, and/or legal action in the form of criminal or civil penalties.

7.2 Compliance with Other City Policies. City employees shall comply with all other City policies that may apply to the use of City records and information or recordkeeping systems, including but not limited to the City's internet and information security policies, the City's policies regarding protected records, and the City's personnel policies.

City Manager



Date

8-8-14

Request for Public Records



Our goal is to assure prompt and equitable service to customers requesting access to public records. It is our policy to make public records available for public inspection at reasonable times unless such records are protected from disclosure by law. There are fees associated with requests for copies or requests that require significant resources.

Requester Name: _____ **Date:** _____

Mailing Address:

Signature: _____ **Phone:** _____

Email: _____

Detailed description of records requested:

Fee Schedule:

Black & white printed copy (per standard 8 ½" x 11" page)	\$.10 each
Color copy (per standard 8 ½" x 11" page)	\$.40 each
Black and white or color printed copy (per legal size 8 ½" x 14" page)	\$.40 each
Black and white or color printed copy (per standard legal size 11" x 17" page)	\$.40 each
Black and white or color printed copy (per oversized page larger than 11" x 17" not including GIS products)	Actual City cost
Cumulative staff time to search, retrieve, produce, reproduce and distribute records	First cumulative one hour: no charge After first cumulative one hour, \$30.00 per hour or portion thereof in 15-minute increments
Information provided on electronic media	CD, DVD, audiotape, videotape or other electronic media - actual City cost
Mailing	Actual City cost
E-mail transmission	No charge
Budget book or other large publication	Actual City cost to produce the publication
Greeley Charter, Code of Ordinances and periodic supplementation	Available through publisher, Colorado Code Company, Inc.
Postage and packaging	Actual City cost
Standard GIS products	11" x 17" or less - \$6.00 18" x 24" - \$12.00 24" x 36" - \$14.00 36" x 48" - \$16.00 36" x 60" - \$18.00 42" x 84" - \$20.00

For Internal Office Use:

Date request completed: _____ Amount prepaid: \$ _____

Approved: _____ Denied: _____ Balance due before release: \$ _____

If denied, provide reason(s): _____ Total Amount paid: \$ _____