



Barbara J. Kelley
Executive Director

PUBLIC RECORDS POLICY

Policy Number: 2014-DORA-GEN-004

Effective Date: 07/01/2014

Reference: Colorado Revised Statutes, sections 24-72-200 to 502

I. PURPOSE OF POLICY

The Department encourages prompt and accurate responses to all requests for public information, with due regard for those matters required to be kept confidential by law. This policy provides direction to staff on the procedures for adhering to the public records laws and clarifies the procedure for inspection of public records and fees for copying public records at the Department of Regulatory Agencies.

II. DEFINITIONS

"Custodian" is defined as the official or authorized person having personal custody and control of the public records in question. The Custodian is not responsible for coordinating or responding to Colorado Open Records Act ("CORA") requests directly unless he or she is the Division Custodian or Department Custodian. A Custodian must make the Division Custodian aware of any records he or she possesses which are responsive to any request.

"Department Custodian" is the person(s) designated by the Executive Director of DORA who is responsible for the maintenance and keeping of public records and who coordinates the Department's response to CORA requests.

"Division Custodian" is the person(s) designated by each Division Director who is responsible for the maintenance and keeping of public records for his or her respective division/board/program/office and who coordinates the division's response to CORA requests with the Department Custodian. The names and complete contact information for each Division Custodian shall be communicated to the Department Custodian.

III. POLICY

The Department of Regulatory Agencies (DORA) maintains many records that fall within the purview of Colorado's public records laws, found in §§ 24-72-200 to 502, C.R.S. This procedure outlines when and how such records may be inspected and summarizes key confidentiality restrictions on the right to inspect these documents.

- A. **Document Delivery:** When responding to a records request, the Division Custodian shall make every reasonable effort to respond within three working days. If requested, the Custodian shall set a date and hour at which time the records will be available for inspection within a reasonable time after the request. A "reasonable time" is presumed to be not more than three working days subject to payment of any applicable fees or costs. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven working days. A finding that extenuating circumstances exist shall be made in writing by the Division Custodian and shall be provided to the person making the

request within the three-day period with a copy to the Department Custodian. For a list of possible extenuating circumstances, please see §24-72-203(3)(b), C.R.S. Pursuant to § 24-72-203(3)(c) C.R.S., in no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

- B. Hours Available for Inspection of Records: DORA is open on weekdays during normal business hours (8:00 a.m. – 5:00 p.m.). Whenever possible, arrangements to inspect open public records should be made in advance. All requests shall be made in writing.

DORA personnel will generally make copies of documents for the public. However, pursuant to § 24-72-205(2), C.R.S., parties seeking to review public documents will be granted access to DORA records for the purpose of reading, taking notes, photographing, or making their own copies at a DORA copy machine. The copy, printout or photograph shall be made while the record is under the supervision of DORA personnel. Fees established below shall apply.

- C. Confidential Documents: The public records laws require DORA to make certain of its records available for public inspection and copying. The public records laws also require DORA to deny the right of inspection of certain records such as "trade secrets, privileged information, [and] confidential commercial and financial . . . data."

Regardless of the requirements of CORA, the statutes which pertain specifically to DORA's regulatory programs sometimes require the maintenance of confidentiality of certain records under specific circumstances. Moreover, some of these statutes require the exercise of agency discretion.

Colorado also recognizes certain statutory and common law privileges such as the executive privilege, which may cause certain types of DORA correspondence to be confidential. See § 13-90-107(1)(e), C.R.S. and Martinelli v. District Court, 612 P.2d 1083 (Colo. 1980).

Email addresses of the public that have opted in to receive DORA notifications are also considered confidential. See §24-72-204(2)(a)(vii), C.R.S.

Members of DORA's boards and commissions will have access to confidential documents necessary to fulfill their duties.

- D. Notification of Open Records Requests: The Division Custodian shall notify the Department Custodian via email of any request for documents or records the day the request is received. The email should contain the division contacted, the person who will respond to the request, a copy of the request and, if determined, the estimated costs to respond. A telephone call to the Department Custodian from a Division Custodian shall be necessary if the request for open records could result in a significant impact on any area of the Department or may require a public response.
- E. Maintaining a log of all CORA requests: In all instances, the Department Custodian and each Division Custodian shall maintain a log of all CORA requests received and responded to. Included in the log will be the name of the requestor, the date the request was received, the date the request was responded to, who responded to the request and a copy of the response or a summary of the response, as well as any costs charged, reduced or waived.
- F. Each Division of DORA shall develop internal procedures for complying with this policy.

IV. DORA WEBSITE

Many types of information can be found on the DORA website (www.dora.colorado.gov) such as:

- A. DORA regulations, bulletins, and other publications,
- B. Public hearing announcements,
- C. Licensee information,
- D. Statistical reports,
- E. Sunrise/Sunset reports, and
- F. News releases.

V. FEES FOR DOCUMENT RETRIEVAL, COPIES, PRINTOUTS AND MANIPULATION OF DORA RECORDS

- A. Fees for copies: Colorado's open records laws permit the custodian of public records to charge a reasonable fee for copies of documents, not to exceed twenty-five cents per standard page (\$0.25) or fifty cents per double-sided page (\$0.50) or a fee not to exceed the actual cost of providing a copy, printout, fax, email or photograph of a public record in a format other than a standard page. A fee of twenty five cents (\$0.25) per standard page and fifty cents (\$0.50) per double-sided page will be charged except as otherwise specifically provided by law, as is the case of the Public Utilities Commission which will charge twenty cents (\$0.20) per standard page for copies of records pursuant to §40-6-105, C.R.S. Additional fees for archival records stored off premises may apply(see (E) below.) Printing fees may still apply when records are transmitted electronically if it is necessary for the custodian to print documents in order to redact exempt information and/or scan the record to create an electronic file.
- B. Fees for Microfiche/Microfilm/Electronic Records: DORA uses several methods to store its records. These methods include, but are not limited to, microfiche, microfilm, and electronic data. In addition, certain archived records are housed in storage facilities off premises.

DORA has limited equipment for viewing microfilm. Accordingly, parties seeking to inspect microfilm records should make arrangements in advance to review such records. The cost of such records is \$.25 per page. Please note that microfiche, microfilm, and digital records are subject to the same confidentiality restrictions as those records discussed in III (C) above.

- C. Fees for Research and Retrieval: When researching, retrieving, reviewing or producing records consumes more than one hour of staff time, a fee of \$25.00 per hour will be charged for all staff time after the first hour associated with researching, retrieving, reviewing and producing records for a requestor. This rate will be charged in quarter hour increments after the first hour. This fee will also apply to the time DORA personnel must spend in attendance while a third party is reviewing documents. Any costs charged to a requestor shall not exceed the actual cost of producing the records, in accordance with §24-72-205(5)(a), C.R.S., and applicable law.
- D. Fees for Records Manipulation: If the Department or any division of DORA, in its discretion, manipulates data in order to respond to a specific request, and in so doing generates a record in a form not used by DORA or any DORA division, the actual costs of manipulating such data and generating such records will be assessed.
- E. Fees for records stored off premises: There is a \$28.00 per box charge to retrieve archived records stored off premises. The costs for reviewing and copying records and documents outlined elsewhere in this policy shall apply to all such retrieved files and documents. (See (A) and (C) above.)
- F. Fees for transmission: The Department or any division of DORA may charge the actual fee for

transmission of records by United States mail, other delivery service, or facsimile. No transmission fee will apply when transmission is by electronic mail.

- G. Estimation and Payment of Fees: Prior to responding to a CORA request, the Division Custodian or Department Custodian will estimate the costs associated with responding to the request, including estimated legal fees, if any, and provide an estimate of costs to the requestor. Unless the fees are waived, the information will not be copied, retrieved, redacted or manipulated until payment is received. Upon receipt of payment, unless extenuating circumstances exist (see (III) (A), above) the records will be transmitted no more than three business days after such payment.
- H. Waiver or reduction of fee: DORA waives any fee if the number of pages to be copied is 20 pages or less and it takes less than an hour to compile the documents. The Department Custodian or Division Custodian may waive or reduce the fee where the information to be provided will be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

VI. PROCEDURES FOR INSPECTION AND PHOTOCOPYING

- A. Requestors seeking public information from DORA must submit their request in writing to either the appropriate Division Custodian or the Department Custodian. The request, to be retained in division or department records for two years, may be emailed, faxed, or delivered in person to the division or department.
- B. The Department encourages prompt and accurate responses to all requests for public information, with due regard for those matters required to be kept confidential by law. A response should be made as soon as possible and feasible and must be made within three business days, including a response taking an extension based upon extenuating circumstances. The Division Custodian or Department Custodian shall determine the public nature of any document under the Public Records Act.
- C. Requests for public records received by or delegated to a division will be coordinated by a Division Custodian.

VII. APPLICABILITY

This policy is applicable to all Divisions, Boards, Commissions and offices of the Department of Regulatory Agencies.

VIII. RESPONSIBILITY

It is the responsibility of each person to whom policies or procedures are applicable to become familiar with, and to understand and adhere to departmental policies and procedures. During new employee orientation employees will be instructed on where to find the departmental policies and procedures.

Approved by: Barbara J. Kelley July 1, 2014
Barbara J. Kelley, Executive Director **Date**