



BOARD OF COUNTY COMMISSIONERS

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208 East Lincoln Ave. | PO Box 68

www.SummitCountyCO.gov

Breckenridge, CO 80424

**SUMMIT COUNTY BOARD OF COUNTY COMMISSIONERS
1ST AMENDED SPECIAL MEETING AGENDA
Tuesday, September 4, 2018, 2:00 p.m.
County Commissioners' Meeting Room; Summit County Courthouse
208 Lincoln Avenue, Breckenridge, Colorado**

*For assistance or questions regarding special accommodations, accessibility,
or available audio/visual equipment, please contact 970-453-3429 as soon as possible,
or no later than noon the Friday before the meeting.*

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. APPROVAL OF AGENDA**
- IV. CITIZEN COMMENT**
- V. CONSENT**
- VI. NEW BUSINESS**
 - A.** Proposed Revisions to the Summit County Government Public Records Policy (Attorney)
 - B.** Consideration of a Resolution to Repeal the Fire Hazard Emergency and Ban on Open Fires in Summit County (Attorney)
- VII. PUBLIC HEARING**
- VIII. ADJOURNMENT**
and reconvene into Work Session for the following:
Possible Open Space/Real Property Matters and potential legal issues related thereto
(Open Space & Trails) *(Executive Session Recommended)*

**This agenda is subject to change at any time. Please contact the Manager's Office or visit our website to obtain updates at:
<http://www.summitcountyco.gov>*



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STAFF REPORT

TO: Board of County Commissioners
FROM: Jeffrey L. Huntley
DATE: September 4, 2018
FOR: New Business Item A for Special Meeting of September 4 2018
REQUEST: Approval of Revisions to the Summit County Government Public Records Policy

STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners approve the attached revisions to the Summit County Government Public Records Policy in substantially the same form presented before you, subject to final legal review. The changes are intended to clarify the County's Records Policy and ensure that the fees charged by the County for generating records and manipulating data are equivalent to the actual cost of such services. The proposed changes expressly authorize the fees for these activities to exceed the maximum per hour research and retrieval fee otherwise set by the Records Policy (currently set at \$30.00/hour) as authorized by the Colorado Open Records Act.

SUMMIT COUNTY GOVERNMENT

PUBLIC RECORDS POLICY

Proposed - August 2018

It is the policy of the Board of County Commissioners (BOCC), the County Assessor, County Clerk and Recorder, County Coroner, County Surveyor, County Treasurer and Public Trustee that public records shall be open for inspection at reasonable times as required by the Public Records Act unless otherwise provided by law. This policy is intended to provide a guideline for employees handling public records requests and will be deemed modified by future amendments to the Colorado Public Records Act C.R.S. 24-72-201 et seq. ("Act"). The records of the Sheriff's Office are typically governed by specific provisions of the Act and caselaw pertaining to criminal justice records and are generally not subject to this policy.

The Act provides that "all public records are to be open for inspection by any person at reasonable times," subject to rules and regulations made by the official custodian or the custodian. These rules and regulations are reasonably necessary for the protection of such records and for the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his/her office/department. These rules and regulations cannot change the minimum requirements of the Act; for example, they cannot limit who is entitled to records or limit what records are open for inspection.

This policy is intended as a general guideline to assist employees in handling public records requests. However, depending upon the circumstances of a request, the County reserves the right to allow a department or records custodian to establish specific rules and regulations necessary for the protection of such records and for the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his/her office/department. This policy and the Act are subject to interpretation by the County Attorney's Office and case-specific administrative determinations may be made with the approval of the County Attorney's Office.

A. Definitions

The definitions found in 24-72-202.C.R.S., as amended from time to time, shall apply unless the context clearly requires a different meaning. Two definitions of particular importance are listed below:

1. Public Records: All writings made, maintained, or kept by... any political subdivision... for use in the exercise of functions required or authorized by law... or involving receipt or expenditure of public funds (C.R.S. 24-72-202(6)). Criminal justice records are not included by the provisions of Part 2, but rather are covered by Part 3 of the Act.
2. Writings: All books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form of characteristics. Writing includes digitally stored data, including without limitation email messages, but does not include computer software (C.R.S. 24-72-202(7)).

Importantly, these definitions only require the County to provide records in its possession and do not require the County to create new records, compile or organize records, or otherwise manipulate data in records request.

B. Procedure

1. The County has determined that the use of an official request form to be used by members of the public is necessary for the efficient handling of such public records requests. The requesting individual should first be directed to the appropriate department/employee that is custodian of the records to discuss the request. Upon

speaking to the appropriate department or custodian of the records, the requestor shall be given the Public Records Request Form to formally submit a written request. The citizen should be informed that County policy requires that requests be made on this form and the employee should make every effort to ensure that the citizen is given enough information so that they can access the form without delay. Once a request is received on the official County Public Records Request Form, a copy should be transmitted to the County Attorney's Office immediately. The County has a limited amount of time within which to respond to Public Records requests and employees receiving such requests should be familiar with these statutory deadlines. See Section D, Time for Accessing Public Records, in this policy for more information.

2. The Clerk to the Board of County Commissioners is the official custodian of all records centrally maintained by the County. Department Heads are the official custodians of all records maintained within their departments, including email correspondence. Email requests should be copied to the Director of Information Systems to assist with and coordinate retrieval and retention following receipt of the request. It is the responsibility of each department head to become familiar with and to educate his/her affected employees about the standards and requirements of this policy.

Elected officials may develop their own specific policies and procedures regarding public records in their custody (i.e. the Sheriff's Office has a separate fee schedule and form to request records); however, to the extent that the County has custody of any public records of an Elected Official, the County shall, in consultation with the Elected Official, meet any requirement of the Open Records Act as it may apply to documents in the county's possession.

If the public records requested are not in the custody or control of the person to whom application is made, such person shall "forthwith" notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of the records from the person's custody or control, the location of the records, and what person then has custody or control of the records. C.R.S. 24-72-203(2)(a).

C. Fees

1. Requests for records which fit the following criteria may, in the judgment of the official custodian, be provided free of charge:

- a. Per request, documents which do not exceed ten pages and which are retrievable within a one-hour period of the requests; or
- b. Agenda materials which have been prepared in advance and which are in support of items scheduled for consideration by the BOCC at a future date, unless the request exceeds fifty pages of material; or
- c. Records which are normally produced for public information, such as the current year budget document, BOCC agendas/materials, brochures on County services, or procedures, etc. Most of these records can be found on the County website, www.summitcountyco.gov, and will not be provided in hard copy format.

2. In all cases where a person has the right to inspect any public record, s/he may request copies, printouts or photographs of such record.

- a. The fee for copies shall be \$.25 per page. Actual costs may be charged and may include staff time if the records created are in a format other than word processing or if the records are larger than the customary letter-size page.

- b. In the case of a request for a computer printout other than word processing, the fee may be based on the 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. The first hour of any staff time spent on a request of this type shall be free of charge.
- c. Research and Retrieval Fee. Departments may charge for time spent responding to requests, including without limitation, requests that require the searching of voluminous files for specific information, The charge for these kinds of research and retrieval services shall be \$30 per hour; provided, however, that the first hour of staff time shall be free of charge. When staff time in excess of three hours is required to respond to a records request, a time log should be maintained describing the time spent in responding to the request. For large requests, a deposit of the estimated cost of work shall be collected before work begins. If actual charges are less than the deposit, the balance will be refunded. The \$30.00 per hour fee shall periodically increase, commencing in 2019, in accordance with the CPI increase posted on the General Assembly website, as provided by the Act.
- d. Records Generation and Data Manipulation Fee. The County is not required to manipulate data or create records in response to a records request and will typically deny any such requests. In extraordinary situations such requests may be approved (or may be required) subject to the following. If in response to a specific request, the manipulation of data or generation of records is performed in order to produce a record in a form that is not used by Summit County, which production efforts shall include but is not limited to the generation of privilege logs and the generation of documents omitting privileged information from such documents, the County shall charge a fee that shall not exceed the actual cost of generating such records and manipulating such data. The fees charged for the actual cost of generating records and manipulating data may exceed the maximum per hour research and retrieval fee otherwise set by this policy (currently set at \$30.00/hour) as authorized by the Act.
- e. All payments for copies etc. must be received in advance of releasing the requested records.
- f. Checks for copies shall be made payable to Summit County Government.

D. Time for Accessing Public Records

1. Time for Inspection of Records – Three Working Days

If the requested records are in active use or are in storage and, therefore, are not available right away or for copying, this fact shall be communicated to the applicant “forthwith” in writing if requested. The custodian shall set a date and hour within three working days when the records will be available for inspection.

2. Extension of Time to Ten Working Days

The period of time to provide requested documents for review may be extended for up to ten days if the custodian determines that one of the following conditions exists, and, states such condition in writing to the requestor within the first three days that the request was received:

- a. 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 custodian reasonably to prepare or gather the records within the three-day period; or

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

1) the agency 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

2) A request involves such a large volume of records that the custodian cannot reasonably prepare or gather records within the three-day period without substantially interfering with the custodian's obligation to perform his or her other public service responsibilities.

3. In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

4. If the request is too broad, speculative or voluminous to prepare in ten days, the County may request relief in court, and if successful may be granted its attorney's fees, as provided by law.

5. When Time Period for Response Begins:

The time period for response does not begin to run until the County receives the request on the County's official Public Records Request Form. If the form is sent by:

a. Email, it is deemed received when it is viewed by the recipient.

b. U.S. Mail, it is deemed received when its seal is broken.

E. Reviewing Records

The custodian of the records may set the location where the records may be viewed by the requestor. The requestor shall be supervised by County staff to ensure proper handling of County records. In no event may a requestor remove documents or add documents to those provided for review. The requestor shall not bring and shall not use photocopiers, fax machines or any other copy, scanning or reproduction device to copy County records. Upon completion of the review, the requestor must mark the pages s/he wishes to have copies with adhesive tabs. Copies will be made at a later time, depending upon volume. The requestor will be notified when the copies are available for pick-up.

If the custodian has the capability to make reproductions s/he shall do so at the rates set in the section entitled Fees, above. If the custodian does not have the facilities for making copies, printouts, or photographs of the records, the custodian may make arrangements for the services to be rendered at another facility. If other facilities are necessary, the person desiring a copy, printout or photograph of the record shall pay the cost of providing them. In no event shall the records leave the custody and possession of a County employee during this process (other than providing the items to the third party facility for reproduction). The County is under no obligation to allow members of the public access to County.

If records are stored in a digital format, requests may be made for documents in such a format. However, the custodian is not required to produce a public record in a searchable or sortable format if:

- a. Producing the record would violate the terms of a copyright or licensing agreement between the records custodian and a third party; or
- b. Producing the record would result in the release of a third party's proprietary information; or
- c. After making reasonable inquiries, it is not technologically or practically feasible to provide a copy of the document in the requested format; or
- d. After making reasonable inquiries, it is not technologically or practically feasible to permanently remove information that a records custodian is required or allowed to withhold (such as confidential or protected information) in the requested format; or
- e. There would be a cost to the records custodian to purchase software or create additional programming or functionality in existing software to remove this confidential protect information.

If a request for a document in a digital format is denied for one of the aforementioned reasons, the Custodian shall produce the document in an alternative format or issue a denial under C.R.S. 24-72-204 and provide a written declaration attesting to the reasons the custodian is not able to provide the record in the requested format.

F. Denial of Inspection of Records

1. Denial of inspection must be specific and can only be based on reasons provided in the Public Records Act. The Act provides that documents may be withheld from disclosure:

- a. If inspection would be contrary to any state statute.
- b. If inspection would be contrary to federal statute or regulation.
- c. If inspection is prohibited by a rule of the Supreme Court or by order of any court.

2. As a general rule, inspection of the following shall be denied, unless otherwise provided by law or unless requested by the person in interest; however, in all cases, a request should be referred to the County Attorney's Office so that a legal analysis of the grounds for denial or release can be made:

- a. Medical, mental health, sociological, or scholastic achievement data on individuals.
- b. Personnel files, except for application and performance ratings.
- c. Letters of reference (which are not disclosable to the person in interest, if they concern employment, licensing, or issuance of permits).
- d. Trade secrets, privileged information, and confidential commercial, geological, or geophysical data furnished by or obtained from any person.
- e. Certain material contributed to libraries or museums.
- f. Addresses and phone numbers of school children.

- g. Library records identifying users, as prohibited by C.R.S. 24-90-119.
- h. Home addresses, telephone numbers and financial information of County employees.
- i. In addition to the above-described documents, the Act provides specific and detailed circumstances for the denial of, or limited release of, records related to:

- 1) Sexual harassment complaints and investigations, and,

- 2) Applicants for an executive position at the county.

- 3) Records protected by common law privileges such as the governmental 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 applicant 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.

- 4) The constitutional right of privacy may, in very limited circumstances, be a basis for resisting disclosure, particularly for the person in interest.

3. Denial is also permitted in a number of other situations, including but not limited to where disclosure would be contrary to the public interest, including pending or ongoing investigations by the Sheriff's Office or other records compiled for law enforcement purposes. Again, all requests should be immediately referred to the Office of the County Attorney so that a legal analysis of the grounds for denial or release can be made.

4. Denial on Bases That Release would do Substantial Injury to the Public Interest

- a. The official custodian may petition the District Court for an order restricting disclosure of records otherwise subject to inspection if disclosure would do substantial injury to the public interest (C.R.S. 24-72-204(6)).

- b. If inspection is denied, the applicant may request a written statement of the grounds of denial and that statement shall cite the law or regulation which is the basis for denial (C.R.S. 24-72-204(4)).

- c. Even records which must be kept confidential are subject to subpoena, discovery requests, etc., but such requests can be resisted under certain balancing tests articulated by the Colorado Supreme Court (*Martinelli vs. District Court* 612 P.2d 1083 (1980)).



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STAFF REPORT

TO: The Board of County Commissioners

FROM: Frank Celico, Assistant County Attorney

FOR: Special Meeting of September 4, 2018

SUBJECT: Repeal of Fire Restrictions

REQUEST: Repeal of fire restrictions enacted for unincorporated Summit County pursuant to BOCC Resolution No. 2018-46 adopted on August 7, 2018, and ratified August 14, 2018, as amended pursuant to BOCC Resolution 2018-49 on August 14, 2018.

At an emergency meeting of the BOCC held on August 7, 2018 the BOCC pursuant to Resolution No. 2018-46 enacted Stage 1 fire restrictions for unincorporated Summit County due to then existing wildfires in the region and weather related conditions that necessitated the ban for the protection of persons residing in and visiting Summit County and to avoid property damage. Resolution No. 2018-46 was ratified by the BOCC at its regular meeting held on August 14, 2018 and amended pursuant to BOCC Resolution 2018-49 on August 14, 2018.

Due to recent weather conditions including frequent rain and cool temperatures, the Summit County Sheriff in consultation with the local fire district chiefs and the District Ranger for the White River National Forest has determined that the danger of wildfires within Summit County has greatly diminished. The USFS rescinded its Stage 1 fire ban for the White River National Forest effective on or about September 4, 2018. The consensus among the Sheriff and local jurisdictional authorities including local fire chiefs is that repealing the fire-ban at this time would be reasonable. The “burn index” is currently set at “moderate” according to Lake Dillon Fire Protection District.

Therefore, staff recommends that the BOCC approve the attached proposed resolution repealing the existing fire restrictions effective immediately.

RESOLUTION NO. 2018 - ____

**BOARD OF COUNTY COMMISSIONERS
OF THE
COUNTY OF SUMMIT
STATE OF COLORADO**

**A RESOLUTION TO REPEAL THE BAN ON OPEN FIRES IN SUMMIT COUNTY,
COLORADO**

WHEREAS, pursuant to the authority stated in §30-15-401(1)(n.5), C.R.S. and Summit County Ordinance No. 14, the Board of County Commissioners enacted a Stage 1 fire ban for unincorporated Summit County on August 7, 2018 through adoption of Summit County Resolution No. 2018-46 as amended pursuant to BOCC Resolution 2018-49 on August 14, 2018; and

WHEREAS, the Summit County Sheriff is designated as the fire warden of Summit County under the provisions of § 30-10-512, C.R.S.; and

WHEREAS, the Summit County Sheriff, with the support of local fire chiefs, has requested that the Board of County Commissioners repeal the current ban on open burning enacted pursuant to Summit County Resolution No. 2018-46, as amended, due to the recent weather conditions and the current conditions of the forests and grasslands in Summit County; and

WHEREAS, the Board of County Commissioners finds, based upon competent evidence including the recent weather conditions, that the danger of wildfires within Summit County has greatly diminished, is currently moderate and expected to be rated low in the near future and no longer poses a dangerous threat of widespread or severe damage, harm or injury to life or property, and that a ban on open fires is no longer necessary to avoid such damage or injury and protect the health, safety and welfare of the citizens of Summit County; and

WHEREAS, the Board of County Commissioners desires to repeal the ban on open fires in unincorporated Summit County, Colorado, enacted pursuant to Summit County Resolutions No. 2018-46, as subsequently ratified and amended; and

WHEREAS, the Board of County Commissioners further finds that it is in the public interest it repeal the ban on open fires in unincorporated Summit County, Colorado immediately.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF SUMMIT, STATE OF COLORADO that the Board of County Commissioners of Summit County, Colorado hereby repeals the ban on open fires in unincorporated Summit County, Colorado (Resolution Nos. 2018-46, 2018-46A and 2018-49), which repeal is effective immediately.

DATED THIS 4th DAY OF SEPTEMBER, 2018.

**COUNTY OF SUMMIT
STATE OF COLORADO
BY AND THROUGH ITS
BOARD OF COUNTY COMMISSIONERS**

Dan Gibbs, Chair

ATTEST:

Kathleen Neel, Clerk & Recorder