

**RESOLUTION NO. 19**  
**Series of 2014**

**A RESOLUTION AMENDING THE TOWN OF VAIL PUBLIC RECORDS POLICY; AND  
SETTING FORTH DETAILS IN REGARD THERETO.**

WHEREAS, the Town of Vail (the "Town"), in the County of Eagle and State of Colorado is a home rule municipal corporation duly organized and existing under the laws of the State of Colorado and the Town Charter (the "Charter");

WHEREAS, the members of the Town Council of the Town (the "Council") have been duly elected and qualified;

WHEREAS, the Town adopted a policy concerning the public's right to access public records pursuant to the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.*, ("CORA") in 2013;

WHEREAS, House Bill 14-1193 ("HB1193") was recently signed by the Governor affecting the imposition of fees for the research and retrieval of public records under CORA; and

WHEREAS, the Council wishes to reconcile the Town's open records policy with the new requirements of HB1193.

NOW THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF VAIL, COLORADO THAT:

Section 1. The Council hereby approves the Town of Vail Public Records Policy in the form as attached hereto as **Exhibit A**.

Section 2. This Resolution shall take effect immediately upon its passage.

INTRODUCED, PASSED AND ADOPTED at a regular meeting of the Town Council of the Town of Vail held this 17th day of June, 2014.

\_\_\_\_\_  
Andrew P. Daly  
Town Mayor

ATTEST:

\_\_\_\_\_  
Patty McKenny  
Town Clerk

## TOWN OF VAIL PUBLIC RECORDS POLICY

### **I. PURPOSE**

The policy of the Town of Vail (the "Town") is that the decision-making process is a matter of public business and may not be conducted in secret. All public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law. However, computer-generated communication systems are frequently used by employees for the purposes of documenting and sending personal or private messages, or messages not intended to be viewed by the public. The Town desires to implement a policy that will serve the public's right to access public records, while identifying to employees the inherent difficulties in ensuring privacy in the use of the Town's computer system for personal use.

### **II. AUTHORITY**

The Town enacts this Policy under the following authority: the Colorado Open Records Act, C.R.S. § 24-72-200.1, *et seq.*, as amended (the "CORA"); the Colorado Sunshine Law, C.R.S. § 24-6-401, *et seq.*, as amended; *Black v. Southwestern Water Conservation District*, 74 P.3d 462 (Colo. App. 2003); *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1986); and *Mountain Plains Investment Corp. v. Parker Jordan Metro. Dist.*, 12CA1034 (Colo. App., August 15, 2013).

### **III. DEFINITIONS**

For purposes of this Policy, the following terms shall have the following meanings:

*Correspondence*: A communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including, without limitation, communications sent via electronic mail, private courier, U.S. mail, modem or computer.

*Custodian of Records*: The individual who shall be responsible for compiling documents, scheduling appointments for inspection, and for responding to any public records request. The Town Council hereby designates the Vail Town Clerk as the Custodian of Records.

*Electronic Mail ("E-mail")*: An electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. E-mail includes electronic messages that are transmitted through a local, regional or global computer network.

*Work Product*: All 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. Such materials include, but are not limited to: notes and memoranda that relate to or serve as background information for such decisions; and preliminary drafts and discussion copies of documents that express a decision by an elected official. "Work product" also includes a request by a Town official for the preparation of such opinion or deliberative materials. For

example, if the Town Manager requests in writing that staff prepare material to assist the Town Council in a decision-making process, the written request shall also be considered work product.

#### **IV. PROTECTED RECORDS**

A. Certain records are protected by law from public inspection under the CORA, including the following:

- Personnel files
- Ongoing investigations by law enforcement authorities
- Victim/witness information
- Social security numbers
- Juvenile criminal records
- Work product
- Deliberative process records
- Attorney-client privileged records
- Individual medical, mental health, sociological and scholastic achievement data
- Letters of reference
- Trade secrets
- Confidential commercial or financial data
- Personal information of past or present users of public utilities, facilities, or recreational or cultural services
- Records of sexual harassment complaints and investigations
- Library records and contributions
- Addresses and telephone numbers of public school students

B. Records that are exempt from the CORA might still be accessible via other forms of inspection, such as subpoena.

#### **V. PRIVACY**

Employees should have no expectation of privacy when using any equipment owned, leased or operated by the Town. Information stored on such equipment is subject to audit and review by the Town at any time, for any reason. Such information may also constitute a public record under the CORA.

#### **VI. E-MAIL**

A. The Town's e-mail system is provided by the Town to facilitate Town work and is intended for business-related communications, including uses related to Town-sponsored events and activities. The Town recognizes that occasional personal use will occur, and such use is

permitted as long as it does not interrupt the normal flow of Town business. However, any improper use, as determined by the Town, is prohibited and may result in: suspension or loss of e-mail access; disciplinary action up to and including termination of employment; and/or legal action.

B. E-mail correspondence of Town employees and elected officials may be a public record under the CORA and therefore may be subject to public inspection. Exceptions to inspection may include e-mail which is covered by the attorney-client privilege, work product privilege or other privilege recognized by Colorado law. Most routine e-mail, however, will likely be considered public information. Employees and elected officials should have no expectation of privacy when using the Town's e-mail system. All electronic communications sent or received on the Town's e-mail system, regardless of the subject matter or e-mail address used, are Town property and may be subject to disclosure under the CORA. The Town reserves the right at any time, to monitor, access, view, use, copy and/or disclose all such e-mail messages.

C. E-mail users are responsible for safeguarding their passwords and may not disclose their passwords to others. However, the use of a password does not prevent the Town from monitoring, accessing, viewing, using, copying or disclosing any e-mail messages sent or received on the Town's e-mail system.

D. Town employees may not access the computer account of another unless granted permission to do so by that user. This restriction does not apply to system administrators and others who are authorized to access the systems for legitimate business purposes.

E. Improper use of e-mail includes, but is not limited to:

1. Language which is offensive, obscene, or in poor taste, including jokes or messages which create an intimidating, hostile or offensive work environment;

2. Messages or information which conflict with the Town's policies against discrimination or harassment in the workplace;

3. Messages or information which advertise or promote a business, political candidate, political or religious cause;

4. References or messages which give offense on the basis of race, color, religion, national origin, citizenship, ancestry, marital status, sex, disability, age, veteran's status or sexual orientation;

5. Frivolous use which interrupts the normal flow of Town business, such as playing games, conducting betting pools, and chain letters;

6. Messages which violate any law; and

7. Messages urging electors to vote in favor of any statewide ballot issue, local ballot issue, referred measure, or recall, pursuant to C.R.S. § 1-45-117.

F. Town employees and elected officials are expected to use common sense and good judgment in all official communications and to avoid any communication that is disrespectful, offensive, or threatening to others. Violation of this policy may result in any or all of the following: suspension or loss of e-mail access; disciplinary action up to and including termination of employment; and legal action.

G. E-mail is retained on the Town's server for a designated period of time, so employees and elected officials should not assume that any e-mail that they personally delete is thereby deleted from the Town's server. The Town will retain, archive, or purge, as the Town deems appropriate, any incoming or outgoing e-mail to or from any Town employee.

H. Pursuant to the Colorado Sunshine Law, a meeting of three or more members of the Town Council at which any public business is discussed or at which any formal action may be taken is a public meeting. The term "discussion" as used in the Colorado Sunshine Law implies live, responsive communication between elected officials. Therefore, it is the Town's policy that the mere receipt or transmission of e-mail in other than a live, communicative discussion format shall not constitute a public meeting and shall not be subject to the requirements of the Colorado Sunshine Law. For example, the receipt by one or more elected officials of e-mail sent earlier in the day or week by another elected official concerning public business shall not constitute a "public meeting." The e-mail may, however, constitute a public record otherwise subject to disclosure pursuant to the CORA and this Policy.

## **VII. RETENTION OF DOCUMENTS**

All public records other than e-mail shall be retained in accordance with the guidelines established by the Colorado State Archives. At the request of the Town Attorney, the Custodian of Records may retain certain records after the retention period expires.

## **VIII. INSPECTION**

A. General. Public records shall be open for inspection by any person at reasonable times, subject to the exceptions found in the CORA. All public records shall be inspected at Town Hall or at the offices of the Town Attorney.

B. Request Required. A request to inspect public records must be written, and sufficiently specific in scope to enable the Custodian of Records to identify the information desired. Requests for inspection of e-mail shall include the sender's name, the recipient's name and the approximate date and time of the transmission. If the Custodian of Records receives a request to inspect public records that is ambiguous or lacks sufficient specificity to enable the Custodian of Records to locate the records, the Custodian of Records shall, within three working days, notify the requesting party in writing of the deficiencies in the request. Any clarified request shall be considered a new request for purposes of this Policy and the CORA.

C. Review and Response. Upon receipt of a request for inspection of public records, the Custodian of Records shall review the request and determine whether the requested records are voluminous, in active use, or otherwise not readily available. If so determined, the Custodian of Records, within three business days, shall notify the requesting party in writing that the documents will be produced for inspection within seven additional business days, pursuant to

C.R.S. § 24-72-203(3). Notwithstanding the foregoing, if it is physically impossible for the Custodian of Records to comply with a request for public records within the time periods established by CORA, the Custodian of Records shall comply with the request as soon as physically possible. If the records are readily available, the Custodian of Records shall so notify the requesting party. Each notice shall include the required deposit, if applicable, and the total amount of fees that must be paid prior to production or transmission of the records.

D. Transmission or Production. As directed in the written request for records, the Custodian of Records will transmit the requested records by e-mail, regular mail, courier service or facsimile. If no direction is provided in the request, the Custodian of Records will make the records available for inspection at Town Hall by appointment. In no case shall records be transmitted or produced until all fees under Section IX have been received by the Town. Once all fees are paid, the Custodian shall transmit or produce the records within three business days, unless a longer time is provided by Section C above.

E. Town Attorney. Any of the notices required herein may be issued by the Town Attorney in lieu of the Custodian of Records. By written notice, the Town Attorney may further require that any requesting party contact the Town Attorney rather than the Custodian of Records.

## **IX. FEES**

A. Copies, Printouts or Photographs. Pursuant to C.R.S. § 24-72-205(5)(a), the Town shall charge a fee not to exceed 25 cents per standard page for any copy of a public record or a fee not to exceed the actual cost of providing a copy, printout or photograph of a public record which is in a format other than a standard page. For purposes of this Policy, a black and white copy made on a single sheet of letter or legal sized white paper shall constitute a "standard page."

B. Research and Retrieval Fees. Pursuant to C.R.S. § 24-72-205(6)(a), the first hour of research and retrieval shall be free. After the first hour, the Town shall charge a research and retrieval fee of \$30.00 per hour for any staff time devoted to searching for the requested information. A deposit of equal to 50% of the estimated costs of responding to a records request shall be submitted to the Town prior to any search being commenced.

C. Postage/Courier Fees. If the Custodian of Records transmits records by regular mail or courier service, the requesting party shall be responsible for the cost of postage or courier fees.

D. Electronic Transmission Fees. The Custodian of Records may not charge transmission fees to the requesting party for transmitting public records via e-mail, provided that the requesting party may be charged for staff time associated with research and retrieval of the requested records as provided herein.