

CORA Policies for Special Districts

Presented by: Jeffrey Erb
Colin Mielke

Presentation Overview

- Overview of Colorado Open Records Act (CORA)
- Research & Retrieval Fees under CORA and Impact of HB 14-1193.
- How to Adopt and Publish a CORA Policy (including reasons to adopt a CORA Policy and consequences for failing to adopt and publish a CORA Policy).
- Discussion of CORA Requirements not affected by HB 14-1193.

What is CORA?

- The Colorado Open Records Act is a law that applies to numerous state and local governmental entities within Colorado, including special districts and library districts.
- CORA's purpose is to facilitate transparency in government by allowing the public access to most governmental records.
- Public records can be obtained by any person through submittal of a CORA request to the governmental entity.
- Unless there is an exception that allows a governmental entity to withhold a record, the governmental entity must provide the record within a certain amount of time.

What does CORA Require?

- CORA requires that all public records must be open for inspection by any person at reasonable times, unless specifically excepted by law.
- “Public Records” are all writings made, maintained, or kept by a District for (1) use in the exercise of functions that are required or authorized by law, or (2) that involve the receipt or expenditure of public funds.
- Examples: financial records, district maps, construction and service contracts, and e-mails related to District business.

Research & Retrieval Fees under CORA and the Impact of HB 14-1193

What Constitutes Research & Retrieval?

- It is the time spent by personnel gathering and reviewing the documents to be provided pursuant to a CORA request.
- Includes the time spent identifying and segregating the records that do not need to be disclosed under CORA.
- It is not the hard costs of supplying paper for copying, or postage for transmitting the public records.

Prior Law (Pre- July 1, 2014)

- Research & retrieval fees previously allowed by case law, but not referenced in CORA.
- Courts ruled that state and local governments could charge “nominal” fees, which usually ranged from \$15-25/hour.
- Governments did not need to have an existing CORA Policy to charge research & retrieval fees.
- Amounts charged by public entities for research & retrieval were non-uniform.

Research & Retrieval Fees Under HB 14-1193

- Effective July 1, 2014
- Two main requirements of HB 14-1193:
 - (1) Creates prerequisites for charging research & retrieval fees.
 - (2) Creates limitations on the amount of research & retrieval fees.
- Note: HB 14-1193 does not affect fees related to copying or transmitting public records.

Research & Retrieval Fees Under HB 14-1193

- To charge research & retrieval fees, a District must first:
 - Adopt a written CORA Policy stating the amount of the fees; and
 - Publish the written CORA Policy.
- Research & retrieval fees are limited as follows:
 - Cannot charge for first hour of research & retrieval.
 - Can charge maximum of \$30/hour after first hour (unless lower amount set forth in CORA Policy).

Creating a CORA Policy

What is a Policy?

- Policy is not a mere restatement of the statutes.
- It is a statement regarding the District's overall plan to respond to open record requests based on the existing law and the goals of the District.
- Policy should reflect goals of the District (there's no one-size-fits-all)

Why Adopt a CORA Policy?

- Promotes District transparency.
- Allows District to recoup expenses incurred from research and retrieval of public records (HB 14-1193).
- Promotes efficiency by reducing public's confusion regarding CORA request procedures and reducing District's time coordinating with public on CORA requests.

Effect of Not Adopting a CORA Policy

- Districts are not required to adopt a CORA Policy.
- Districts must comply with CORA whether they adopt a CORA Policy or not.
- Absent a CORA Policy specifying research & retrieval fees, Districts cannot charge fees for research and retrieval of public records.

Step 1: Adoption of Policy

- Policy must be in writing and specify the amount of research & retrieval fees.
- Fees cannot be charged for first hour of research & retrieval, and after first hour a maximum amount of \$30/hour may be charged.
 - If a CORA Policy sets fees lower than \$30/hour, the District must adhere to the lower fee schedule.
- Policy must be adopted by District's Board of Directors at District public meeting.

Policy Suggestions

- Include Contact Person (not necessarily the Official Records Custodian).
- Include statement that CORA request must be submitted in the manner set forth in District's Policy.
- Ask requestor to provide preferred method of delivery.

Policy Suggestions

- Include disclaimer that District will release only those documents permitted by CORA.
- If using CORA's \$30/hour maximum fee, include statement that maximum fee will automatically adjust for inflation pursuant to statute.
 - Statute provides that Director of Legislative Council will adjust maximum fee for inflation every five years starting in 2019.

Step 2: Publication of Policy

- Policy must be “published” in order to charge research & retrieval fees.
- HB 14-1193 does not require a particular manner of publication.
- Possible ways to Publish CORA Policy:
 - Via Custodian’s website
 - Via Special District Association website

CORA Requirements Not Affected by HB 14-1193

Certain CORA Fees are Not Affected by HB 14-1193

- Copying Fees
- Transmission Fees

Copying Fees under CORA

- Districts are required to copy records or allow for copying of records if requested by person seeking to inspect records.
- Districts can charge up to 25 cents for copying a standard page.
- Districts can charge up to the actual cost for copying non-standard public records.
 - E.g. large maps, duplication of CDs and audio recordings
 - “Actual cost” charges are for the materials used to copy; it does not include personnel time/compensation in copying costs.

Transmission Fees under CORA

- If a person is entitled to a record, the District is required to transmit that record to the person upon request.
- CORA does not elaborate on whether District must transmit records in the format requested by requestor.

Transmission Fees under CORA

- Districts can charge fees to cover cost of transmission (e.g. postage, courier service).
 - Exception: District cannot charge transmission fees for records transmitted by e-mail.
- Districts can refuse to transmit public records until they receive or have arranged to receive transmission costs and all other lawfully allowed fees from a records requester.
- Upon receipt of payment or arrangement to receive payment, Districts must transmit public records within 3 business days.

CORA Time Limits Not Affected by HB 14-1193

- If documents are not immediately available, custodian must provide documents requested within 3 working days.
- If an extenuating circumstance exists, an extension may be allowed for up to 7 working days. Extenuating circumstances exist if:
 - The request is overly broad, or
 - The request is for a large volume of records.
- CORA language could be interpreted to either:
 - (1) allow for a 7-day extension in addition to original 3 days, or
 - (2) allow for a total of 7 days.

CORA Time Limits Not Affected by HB 14-1193

- When does the clock start ticking? Upon receipt of CORA request? Upon receipt of fees?
 - CORA doesn't expressly allow a District to refuse to produce records subject to payment of a deposit.
 - *Metro Plains Investment Corp. v. Parker Jordan Metro. District*, 312 P.3d 260, 267 (Colo. App. 2013). Court stated that a district can refuse to produce documents until payment of a deposit, and implied that the time to respond does not run until receipt of the deposit.
 - Under the “transmission” section of CORA, it states that a District can refuse to send records until payment of transmission and other lawful fees.

Summary of Important Points

- Districts cannot charge research & retrieval fees until a CORA Policy setting those fees is adopted and published.
- The CORA Policy is required only if a District wants to charge research & retrieval fees.
- Carefully consider inclusion of additional language outside of research and retrieval fees.
- HB 14-1193 applies only to research & retrieval fees – a District can charge copying and transmission fees even if those fees are not set forth in the District's CORA Policy.

Thank You

Contact Information:

Jeffrey Erb – jerb@svwpc.com

Colin Mielke – cmielke@svwpc.com

Seter & Vander Wall, P.C.

7400 E. Orchard Road, #3300

Greenwood Village, CO 80111

Phone: (303) 770-2700

Website: www.svwpc.com

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