



MEMORANDUM

TO: City and County of Denver

FROM: Office of the Mayor
City Attorney's Office

DATE: July 27, 2021

SUBJECT: Guidelines for agency compliance with CORA

The City and County of Denver is committed to making city government open, accountable and accessible to the public. The City's approach to the Colorado Open Records Act ("CORA") is an important part of the City's pledge for transparency, which contributes to building trust between the City and its residents. These Guidelines are intended to help City agencies, departments, and units ("agencies") provide the public with efficient access to documents and records pursuant to CORA.

CORA applies to all City agencies. CORA requires that agencies make available for public inspection "public records" in their custody and control.¹ This memorandum provides some basic procedural guidelines and best practices for agencies to help them comply with CORA. However, given the wide variety in size and scope of City agencies, agencies may develop their own policies or protocols for responding to CORA requests. Please consult with your agency's lawyer in the City Attorney's Office if your agency would like to develop a separate policy or protocol.

The City has created a CORA web page that provides resources to the public regarding making a request, costs, and document format. It also contains a link to the City Directory online, so the public can more easily locate the appropriate department or agency to make the request. Each department or agency should have clear instructions on its Contact Us page or on a CORA page so the public can locate contact information. The web page is located at: <https://www.denvergov.org/content/denvergov/en/city-of-denver-home/cora.html>.

¹ The Colorado Criminal Justice Records Act ("CCJRA") applies to criminal justice records, primarily in the custody of the Denver Police Department, Denver Sheriff Department, City Attorney's Office's Prosecution and Code Enforcement Section, and other similar City agencies.

AGENCY CORA REPRESENTATIVES

Each agency must have a CORA representative (“ACR”) to serve as the agency’s document custodian for CORA purposes and to work directly with agency leadership and staff on CORA responses. Each agency must notify the City Attorney of the name and title of the ACR and provide updates as necessary so that the ACRs and designees can be included in any trainings or legal updates from CAO. The ACR should report directly to an executive level employee in the agency department regarding CORAs.

The ACR may designate other employees to process requests on a routine basis but should be prepared to handle requests or address non-routine requests. Each agency must designate division and group leaders responsible for working with and providing all responsive records located within their divisions and groups to the ACR.

The ACR or designee receives requests sent to the agency and is responsible for processing and tracking requests and responses. The ACR or designee is also responsible for tracking high-level records request data including the number of open records requests an agency receives, an estimate of how many hours of staff are spent on open records requests, and how much the agency charged in fees on an annual basis. The City’s General Records Retention Schedule for documents requires that agencies keep CORA requests and documents related to the response, including the response, responsive records provided and responsive records withheld as privileged, for one (1) year from the date of the response.

Staff should be instructed that any CORA request received by someone in the agency other than the ACR or other designated recipient must be immediately forwarded to the ACR or designee so that it can be processed for a timely response.

REQUESTS

Almost any request for documents is a CORA request.² The statute does not require a specific form or format except that the agency may require a request to be in writing. Agencies may provide a form, e-mail address, or other method to simplify requests for the requestor and to help the agency efficiently receive and process the request. Agencies may also make certain documents available for purchase directly from their website in lieu of requiring a CORA request, such as those recorded documents available from the Clerk and Recorder’s website. Agencies may specify one or more people to receive CORA requests directly or may create an e-mail address for requests (*e.g.*, cao.corarequest@denvergov.org, used by the City Attorney’s Office). Agencies should ensure that the request recipients have backup or requests are sent to more than one individual so that responses are not delayed when the recipient is on vacation or otherwise out of the office.

² The definition of records subject to CORA includes all “books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics,” including “digitally stored data including without limitation electronic mail messages” that are “made, maintained or kept” by the agency. C.R.S. § 24-72-202(6)(a)(I).

CORA does not require a government agency to answer questions or compile information, though the agency may do that outside of CORA. CORA only requires that the agency provide any responsive, non-protected or non-privileged documents in its custody.

RECEIPT AND PROCESSING

Upon receipt of a request – whether it is emailed, mailed, hand delivered, or faxed – the ACR or designee must first determine whether CORA applies: *i.e.*, that it is a request for records for which CORA requires a response, rather than questions requiring a narrative response or requests for information or records to which CORA does not apply.

Once confirmed as a CORA request, the ACR logs the request and determines the presumptive date on which a response is due. CORA requires responses to be provided within three business days after receipt, not including the date of receipt. The City has established a policy that CORA requests received after 3:00 p.m. on a day the City is open shall be considered received on the next business day. This is reflected on the CORA request page.

CORA permits an extension of this time up to seven additional business days in the following extenuating circumstances: (1) when the request is so broad that it cannot be gathered within three days or (2) the agency would need to devote all or substantially all of its resources to meeting the deadline, thereby interfering with the custodian's ability to perform his or her other public duties. Exceptional circumstances are just that, exceptional, and this should not be relied upon to extend deadlines regularly. Under CORA, a request for a single document can never be an exceptional circumstance. ACRs can consult with their agency's attorney as necessary to determine whether such an extension is appropriate. A finding that extenuating circumstances exist must be made in writing by the ACR or designee(s) and provided to the requestor within the initial three-day period.

If a CORA request is overly broad or vague about what records are being requested so that the exceptional circumstances might apply, the ACR can respond to the requestor asking for a more specific request. The ACR also can respond with a time and cost estimate to ensure that the requestor is prepared to pay for and wait for the documents requested. If the requestor submits a revised request, the response process and deadline start over again upon receipt of the revised request.

The ACR or designee will coordinate with the specific staff, divisions, or groups within the agency that could reasonably be expected to have records within the scope of the request. The ACR coordinates with the leadership of the divisions and groups to obtain all records they have within the scope of the request.³ The division or group leaders are responsible for ensuring that the employees are searching and producing records of their division or group within the scope of the request and:

³ CORA does not specify how a search for records must be conducted or set a standard for what constitutes an adequate search. An agency search for its records should be reasonably calculated to uncover all records in the custody and control of the agency within the scope of the request.

- notifying the ACR that their division or group has not located any records and notifying the ACR where records are or might be located; or
- providing all responsive records to the ACR and providing any information about the confidentiality/privileged nature of the records; or
- providing an estimate of time to research and retrieve the responsive records (only if it will take more than one hour to research and retrieve the responsive records), review them for privilege, and if necessary redact privileged information from such records; or
- a combination of the above responses itemized to correspond to the specific requests in the CORA request at issue.

RESPONSE FORMATS AND COSTS

CORA requires the City to produce documents in their native format, if possible. A document that must be redacted can be converted to a pdf or other redactable format. Documents like databases or spreadsheets that can be sorted or searched must be produced in a form that can be sorted or searched, if possible. A custodian does not need to produce the documents in a sortable or searchable format if doing so requires providing software or would violate the terms of any agreement or rights held by a third party, such as licensing agreements or copyrights.

CORA permits the City to recover the cost of researching, retrieving, and reviewing documents after the first hour. CORA permits the City to, and the City's policy is to, charge \$33 per hour after the first hour for research, retrieval, and review. The City has a CORA Fee Policy, which is on the City's CORA page. Agencies generally should follow this policy. CORA also permits the City to charge \$0.25 per page for regular paper copies or up to the actual cost of unusual paper sizes. The City cannot charge a transmission fee to send documents by e-mail.

Agencies can provide the requester with a time and cost estimate as their three-day response and should do so if necessary. In addition, the agency does not need to begin collecting and producing documents until the charges are paid. If the agency sends a time/cost estimate and receives pre-payment, it should track the time to respond and refund any amount not expended. Once payment is received, a new three-day response period commences.

RESPONSE

The ACR or designee should respond in writing to a CORA request. As discussed above, the response should be one or a combination of:

- deny the request by stating that the request is not a CORA and no documents will be provided;
- provide the requested records or make them available for inspection;
- provide the requested records with portions redacted;
- state that all responsive documents are privileged;
- advise the requestor that the requested records are not in the agency's custody or control and, if the agency CORA representative has reason to believe other Denver agencies may

have such records, indicate what other Denver agency or agencies may have the records and indicate the requestor can submit a request directly to the other agency or agencies; or

- explain why not all requested documents could be provided if the agency cannot completely fulfill all aspects of a request
- some combination of the above responses, depending on the request and records in question.

Agencies may use form responses as appropriate.

The CAO serves as the legal advisor for all City agencies. The ACR can consult with the agency's CAO attorney(s) as necessary to determine if any records must or may be withheld or redacted in response to the CORA request. What records must or may be withheld or redacted is beyond the scope of this memorandum. Assigned CAO attorneys can provide guidance and CAO will provide trainings periodically on CORA issues to which ACRs and their designees will be invited.