

## **E-470 PUBLIC HIGHWAY AUTHORITY**

### **RULES**

#### **RELATED TO REQUESTS FOR INSPECTION OF PUBLIC RECORDS PURSUANT TO**

**THE COLORADO OPEN RECORDS ACT, SECTIONS 24-72-200.1 *et seq.*, C.R.S.**

**WHEREAS**, the E-470 Public Highway Authority (the “Authority”) is a public highway authority operating pursuant to Sections 43-4-501 *et seq.*, C.R.S.; and

**WHEREAS**, the Authority is a political subdivision for purposes of the Colorado Open Records Act, Sections 24-72-200.1 *et seq.*, C.R.S., as may be amended from time to time, (“CORA”), as defined in Section 24-72-202(5), C.R.S., and it thus subject to CORA; and

**WHEREAS**, the Authority has designated an “Official Custodian,” as that term is defined in Section 24-72-202(2), C.R.S., who is responsible for the maintenance, care, and keeping of the Authority’s public records, regardless of whether the records are in his or her actual personal custody and control; and

**WHEREAS**, pursuant to Section 24-72-203(1)(a), C.R.S., the Official Custodian may make such rules with reference to the inspection of public records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian and the custodian’s office; and

**WHEREAS**, the Official Custodian finds it is necessary and in the best interests of the Authority to adopt certain rules with reference to the inspection of its public records.

#### **NOW, THEREFORE, THE OFFICIAL CUSTODIAN MAKES AND ADOPTS THE FOLLOWING RULES WITH REFERENCE TO THE INSPECTION OF THE E-470 PUBLIC HIGHWAY AUTHORITY’S PUBLIC RECORDS:**

1. Inspection of Public Records. All “Public Records” of the Authority, as such term is defined in Section 24-72-202(6), C.R.S., shall be available for public inspection by any person at reasonable times as provided in CORA, except as otherwise provided in CORA or as otherwise provided by law. All requests to inspect Public Records shall be in writing and delivered to the Official Custodian or his or her designee. Upon the receipt of a written request to inspect Public Records, the Official Custodian or his or her designee shall set a date and hour at which time the requested Public Records will be available for inspection, which date and hour of inspection shall be between the hours of 8:00 A.M. and 5:00 P.M., Mountain Time, three (3) working days or less from the date such Public Records were requested for inspection unless extenuating circumstances exist as provided in Section 24-72-203(3)(b), C.R.S. The day the request is received, weekends, legally recognized holidays, and days the Authority’s Administrative Headquarters Facility is otherwise closed shall not count as a working day for the purposes of computing the date set for inspection of Public Records. A modification to a request for Public Records is considered a new request.

- a. Active Procurements. To preserve the integrity of the Authority's public solicitations and to prevent jeopardizing the public's interest in the Authority's procurement processes, the Authority may not disclose bidding information during an active procurement. The Authority deems documents and materials submitted to it in response to a procurement to be confidential financial information until such time as the Authority or its Board of Directors awards a contract related thereto or the procurement is otherwise terminated.
  - b. Manipulation of Data and Creation of New Public Records. Notwithstanding Sections 6(d) and 8 below, in order to preserve Authority resources, including staff time and public funds, the Authority and its Official Custodian will not manipulate data to create a new Public Record not in existence at the time of the Public Records request in response to any request. The Authority will provide Public Records, in accordance with CORA and these rules, in the format in which the Authority stores them.
2. Notification for Inspecting Public Records Not Under Control of the Official Custodian. If the Public Records requested are not in the custody or control of the Official Custodian, the Official Custodian or his or her designee shall notify the person requesting to inspect such records that said records are not in the custody or control of the Official Custodian. The notification shall state in detail to the best of the Official Custodian's knowledge and belief, the reason for the absence of the records, the location of the records, and what person has custody or controls the records.
3. Notification for Inspecting Public Records in Use or Otherwise Unavailable. If the Public Records requested are in active use, in storage, or otherwise not readily available at the time requested, the Official Custodian or his or her designee shall notify the person requesting to inspect the Public Records of the status of the Public Records. Such notification shall be made in writing if desired by the person requesting to inspect the Public Records.
4. Requests from Law Enforcement. Law enforcement officials may from time to time make requests for electronic toll collection records and related Public Records which the Official Custodian is prohibited from disclosing under Section 24-72-204, C.R.S, unless the request meets specific statutory criteria (some examples would include names, addresses, telephone numbers, and personal financial information of past or present users of E-470). Pursuant to Section 24-72-204(3)(a)(IX), C.R.S. and Section 24-72-302, C.R.S., the Official Custodian shall not disclose names, addresses, telephone numbers, or personal financial information of past or present users of E-470 unless the following criteria are met:
  - a. A law enforcement official requests the information who is either: (i) an agent of an investigative branch of a federal agency, or (ii) with any "criminal justice agency." The term "criminal justice agency" is defined in Section 24-72-302(3), C.R.S. as: any court with criminal jurisdiction and any agency of the state, including but not limited to the department of education, or any agency of any

county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority that performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

- b. The law enforcement official makes the following written assertion with the request for records: "I hereby assert that I am [a trooper, officer or other official law enforcement title] with the [fill in criminal justice agency or federal agency investigative branch] and the information requested is reasonably related to an investigation within the scope of [fill in criminal just agency or federal agency investigative branch] legal authority and duties in accordance with Section 24-72-204(3)(a)(IX), C.R.S."

The Official Custodian recognizes that qualifying law enforcement officials may present to the Official Custodian situations in which the Authority's data is critical to blunting an immediate and eminent threat to individual or community safety or life such that written notice is impracticable and would jeopardize the public health, safety, or welfare ("Exigent Circumstances"). If Exigent Circumstances exist, the Official Custodian will provide the requested records based on oral assertions from law enforcement officials as necessary based upon the exigency of the situation.

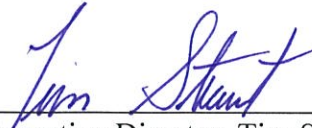
5. Copies of Public Records. Within the period specified in Section 24-72-203(3), C.R.S., the Official Custodian shall notify the person requesting a copy of the Public Records that a copy of the Public Records is available but will only be sent to the requester once the Official Custodian either receives payment or makes arrangements for receiving payment for all costs associated with records transmission and for all other fees lawfully allowed, unless recovery of all or any portion of such costs or fees has been waived by the Official Custodian. Upon either receiving such payment or making arrangements to receive such payment at a later date, the Official Custodian shall send a copy of the Public Records to the requester as soon as practicable but no more than three (3) working days after receipt of, or making arrangements to receive, such payment.
6. Fees for Copies of Public Records. The Official Custodian or his or her designee shall furnish, for a fee as set forth herein, a copy, printout, or photograph of the Authority's Public Records requested by the person requesting said Public Records. The fee shall be twenty-five cents (\$0.25) per standard page, or such other maximum amount as authorized by Section 24-72-205(5), C.R.S., for a copy of the Public Records except as follows:
  - a. When the format is other than a standard page, the fee shall not exceed the actual cost of providing the copy;

- b. If other facilities are necessary to make a copy of the Public Record, the cost of providing the copy at the other facilities shall be paid by the person requesting the copy;
  - c. If the Public Record is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof may be based on 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;
  - d. If, in response to a specific request, the Authority has performed a manipulation of data so as to generate a record in a form not used by the Authority, a reasonable fee may be charged to the person making the request, which fee shall not exceed the actual costs of manipulating the data and generating the record in accordance with the request; and
  - e. Where the fee for a certified copy or other copy, printout, or photograph of a Public Record is specifically prescribed by law, that specific fee shall apply in lieu of the fee(s) set forth herein.
7. Transmission Fees. In addition to the fees set forth above, where transmission of a certified copy or other copy, printout, or photograph of a Public Record is requested by the person requesting the Public Records by United States mail or other non-electronic delivery service, the Official Custodian or his or her designee may charge the costs associated with such transmission, except that no transmission fees may be charged to the record requester for transmitting Public Records via electronic mail.
8. Research and Retrieval Fees. In addition to the fees set forth above, in accordance with Section 24-72-205(6), C.R.S., the Official Custodian or his or her designee may charge a nominal research and retrieval fee of \$33.58 per hour, or such other maximum hourly fee as may be adjusted from time to time pursuant to Section 24-72-205(6)(b), C.R.S., for time spent by the Authority's directors, employees, agents, and consultants researching, retrieving, gathering, collecting, compiling, preparing, redacting, and/or otherwise manipulating records in order to respond to a request for Public Records. Provided, however, that such research and retrieval fee may not be imposed for the first hour of time expended in connection with such research and retrieval activities related to a request for Public Records, but may be imposed for each subsequent hour.
- a. Multiple requests for records submitted by the same person or entity within a period of five (5) business days will be treated as one (1) request for the purposes of allocating fees and costs.
  - b. Requests for records on the same topic that are submitted to more than one Board Member or Authority staff member or consultant will be treated as one request for the purpose of assessing fees and costs.

9. Payment of Fees. All fees associated with production of the Authority's Public Records requested by the person inspecting said Public Records, as set forth above, shall be paid by the person inspecting said Public Records before or contemporaneously with the delivery or inspection of said Public Records. To ensure payment of all costs and fees prior to expending Authority resources to respond to a Public Records request, the Official Custodian may require a deposit in an amount the Official Custodian estimates will be sufficient to cover all fees associated with such request. The Official Custodian will adjust any difference between the deposit amount and the actual time spent and either return to the requester the amount of the deposit not incurred or seek such additional amounts from the requester as were incurred by the Authority in responding to the request.
  
10. In Force Until Amended or Repealed. These rules shall supersede and replace in their entirety all previous rules regarding this topic including, but not limited to, the rules adopted by the Official Custodian on May 10, 2016. These rules of the Official Custodian shall remain in full force and effect unless and until such time as they are amended or repealed regardless of any change in the designation of the Official Custodian.

**[Remainder of page intentionally left blank.]**

ADOPTED, APPROVED AND MADE EFFECTIVE this 8<sup>th</sup> day of August, 2019.



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Executive Director, Tim Stewart  
Official Custodian of Public Records  
E-470 Public Highway Authority