

## **804.1 PURPOSE AND SCOPE**

**i**. This policy provides guidance on the maintenance, access and release of office records. Protected information is separately covered in the Protected Information Policy.

## **804.2 POLICY**

The Conejos County Sheriff's Office is committed to providing public access to records in a manner that is consistent with the Colorado Criminal Justice Records Act (CCJRA) (CRS § 24-72-301 et seq.).

## **804.3 CUSTODIAN OF RECORDS RESPONSIBILITIES**

The Sheriff shall designate a Custodian of Records. The responsibilities of the Custodian of Records include but are not limited to (CRS § 24-72-301 et seq.):

- a. Managing the records management system for the Office, including the retention, archiving, release, and destruction of office records.
- b. Maintaining and updating the office records retention schedule including:
  1. Identifying the minimum length of time the Office must keep records.
  2. Identifying the office section responsible for the original record.
- c. Establishing rules regarding the inspection and copying of office records as reasonably necessary for the protection of such records.
- d. Identifying records or portions of records that are confidential under state or federal law and not open for inspection or copying.
- e. Establishing rules regarding the processing of subpoenas for the production of records.
- f. Ensuring the availability of a current schedule of fees for public records as allowed by law (CRS § 24-72-306).

## **804.4 PROCESSING REQUESTS FOR RECORDS**

**i**. Any office member who receives a request for any record shall route the request to the Custodian of Records or the authorized designee.

### **804.4.1 REQUESTS FOR RECORDS**

The processing of requests for any record is subject to the following:

- a. The Office is not required to create records that do not exist.
- b. When a record contains material with release restrictions and material that is not subject to release restrictions, the restricted material shall be redacted and the unrestricted material released.
  1. A copy of the redacted release should be maintained in the case file for proof of what was actually released and as a place to document the reasons for the redactions. If the record is audio or video, a copy of the redacted audio/video release should be maintained in the office-approved media storage system and a notation should be made in the case file to document the release and the reasons for the redacted portions.

- c. The payment of any authorized fees required for the copying or mailing of the records requested as authorized by CRS § 24-72-306.
- d. Records related to arrests (i.e., official action) shall, and all other records may, be made available for inspection at reasonable times except as otherwise provided by law (CRS § 24-72-303; CRS § 24-72-304).
  - 1. The Custodian of Records shall deny access to a requester seeking access to records unless the requester signs a statement which affirms that the records shall not be used for the direct solicitation of business for pecuniary gain (CRS § 24-72-305.5).
- e. If the records requested are related to an arrest and are in active use, in storage, or otherwise not readily available, the Custodian of Records shall notify the requester of the status. This notice shall be in writing if requested by the requester. If requested, the Custodian of Records shall set a date and hour, within three working days, at which the records will be available to the requester (CRS § 24-72-303):
  - 1. If the Office does not have the records related to an arrest, the Custodian of Records shall include in the notice, in detail to the best of his/her knowledge and belief, the agency which has custody or control of the requested record.
- f. For all other records requested (i.e., not related to an arrest) that are not in the custody or control of the Office, the Custodian of Records shall notify the requester of the status. The notice shall be in writing if requested by the requester. The notice shall include the reason for the absence of the records from the Office's custody or control, their location, and what person has custody or control of the records (CRS § 24-72-304).
  - 1. If the Custodian of Records has knowledge that the records requested are in the custody and control of the central repository for criminal justice records, the request shall be forwarded to the central repository.
- g. If the Custodian of Records denies access to a record and the applicant has requested a written statement of the grounds for the denial, the Custodian of Records shall prepare the written statement and provide it to the applicant within 72 hours, citing to the law or regulation under which access is denied or the general nature of the interest to be protected by the denial (CRS § 24-72-305).
- h. Records related to completed internal investigations (including any appeals) into the alleged misconduct of an in-uniform or on-duty deputy, when involving a member of the public, shall be made available for inspection as required by CRS § 24-72-303.



## **804.5 RELEASE RESTRICTIONS**

Examples of release restrictions include but are not limited to:

- a. Personal identifying information, including an individual's photograph; Social Security and driver identification numbers; name, address, and telephone number; and medical or disability information that is contained in any driver's license record, motor vehicle record, or any office record, including traffic accident reports, are restricted except as authorized by the Office, and only when such use or disclosure is permitted or required by law to carry out a legitimate law enforcement purpose (18 USC § 2721; 18 USC § 2722).
- b. Victim information that may be protected by statutes (CRS § 24-4.1-303; CRS § 24-72-304).
- c. Juvenile-related information that may be protected by statutes (CRS § 19-1-304).
- d. Certain types of reports involving, but not limited to, child abuse or neglect (CRS § 19-1-307) and at-risk adult abuse (CRS § 26-3.1-102).

- e. The name and any other identifying information of a child victim or child witness except as permitted by CRS § 24-72-304.
  - 1. When notified by a court that the name of a child victim or child witness has been disclosed during a court proceeding, or when requested by a child victim, child witness, or the child's legal guardian, the record and file containing the record should be marked with the notation "CHILD VICTIM" or "CHILD WITNESS" (CRS § 24-72-304).
- f. Records that contain the notation "SEXUAL ASSAULT" shall have identifying information deleted as required by CRS § 24-72-304.
- g. Records that contain information concerning an application for victim's compensation (CRS § 24-4.1-107.5).
- h. Information received, made, or kept by the Safe2Tell® program (CRS § 24-31-607).
- i. Records of the investigations conducted by the Office, records of the intelligence information or security procedures of the Office, or any investigatory files compiled for any other law enforcement purpose (CRS § 24-72-305).
- j. The result of chemical biological substance testing (CRS § 24-72-305).
- k. The address of an individual who has requested and been approved for address confidentiality (CRS § 24-30-2108).
- l. Personnel records, medical records, and similar records which would involve personal privacy.
- m. Information regarding the immigration status of any victim who is requesting certification for a U visa or T visa, or any documents submitted for U visa or T visa certification and any written responses to a certification request except where allowed by law (CRS § 24-4.1-404).
- n. Any other record subject to inspection where such inspection would be or is (CRS § 24-72-305):
  - 1. Contrary to any state statute.
  - 2. Prohibited by rules promulgated by the state supreme court or by order of any court.

## **804.6 SUBPOENAS AND DISCOVERY REQUESTS**

  Any member who receives a subpoena duces tecum or discovery request for records should promptly contact a supervisor and the Custodian of Records for review and processing. While a subpoena duces tecum may ultimately be subject to compliance, it is not an order from the court that will automatically require the release of the requested information.

Generally, discovery requests and subpoenas from criminal defendants and their authorized representatives (including attorneys) should be referred to the District Attorney, County Attorney or the courts.

All questions regarding compliance with any subpoena duces tecum or discovery request should be promptly referred to legal counsel for the Office so that a timely response can be prepared.

## **804.7 RELEASED RECORDS TO BE MARKED**

Each page of any written record released pursuant to this policy should be stamped in a colored ink or otherwise marked to indicate the office name and to whom the record was released.

Each audio/video recording released should include the office name and to whom the record was released.

## **804.8 SECURITY BREACHES**

Members who become aware that any Conejos County Sheriff's Office system containing personal information may have been breached should notify the Custodian of Records as soon as practicable.

The Custodian of Records shall ensure the required notice is given to any resident of this state whose unsecured personal information is reasonably believed to have been acquired by an unauthorized person. If the security breach is reasonably believed to affect 500 or more Colorado residents, the Custodian of Records shall also notify the Colorado attorney general. Notice may not be required if the Custodian of Records, after a reasonable investigation, makes a determination that misuse of the individual's information has not occurred and is not reasonably likely to occur. Additional notices to consumer reporting agencies may be required if the security breach requires notification to more than 1,000 Colorado residents (CRS § 24-73-103).

Notice shall be given in the most expedient time possible and without unreasonable delay, and not later than 30 days from the discovery of the breach, consistent with the needs of the office and any measures necessary to determine the scope of the breach, prevent further disclosures, and restore the reasonable integrity of the data system. Notice may be delayed if notification will impede a criminal investigation. In such cases, notice shall be made not later than 30 days after a determination is made that notification will no longer impede the investigation (CRS § 24-73-103).

For the purposes of the notice requirement, personal information includes an individual's first name or first initial and last name in combination with any one or more of the following when not encrypted, redacted, or secured by any other method that renders the information unreadable or unusable (CRS § 24-73-103):

- a. Social Security number
- b. Driver's license number or identification card number
- c. Student, military, passport, or health insurance identification number
- d. Medical information
- e. Biometric data
- f. Username or email address, in combination with a password or security questions and answers, that would permit access to an online account
- g. Full account number or credit or debit card number, in combination with any required security code, access code, or password that would permit access to the individual's account

If the breach reasonably appears to have been made to protected information covered in the Protected Information Policy, the Custodian of Records should promptly notify the appropriate member designated to oversee the security of protected information (see the Protected Information Policy).

## **804.9 EXPUNGEMENT OR SEALED RECORDS**

Expungement orders or orders to seal criminal records received by the Office shall be reviewed for appropriate action by the Custodian of Records. The Custodian of Records shall expunge or seal such records as ordered by the court. Records may include but are not limited to a record of arrest, investigation, detention, or conviction. Once the record is expunged or sealed, members shall respond to any inquiry as though the record did not exist (CRS § 24-72-702; CRS § 24-72-703).

## 804.9.1 EXPUNGEMENT OF ARREST RECORDS RESULTING FROM MISTAKEN IDENTITY

If the Investigation Unit supervisor determines that a person was arrested based on mistaken identity and no charges were filed following the arrest, the Custodian of Records shall file a petition for an order to expunge any arrest or criminal records resulting from the mistaken identity. The petition must be filed no later than 90 days after the investigation determines the mistaken identity, in the judicial district where the arrest occurred (CRS § 24-72-702).

## 804.9.2 EXPUNGEMENT OF CERTAIN JUVENILE RECORDS WITHOUT COURT ORDER

The Custodian of Records shall acknowledge receipt of a notice issued by the district attorney or other diversion provider that a juvenile has successfully completed a prefiling diversion. Upon receipt of the notice, the Custodian of Records shall treat the records as expunged within 35 days and without need of a court order (CRS § 19-1-306).

## **804.10 RELEASE OF AUDIO OR VIDEO RECORDINGS RELATED TO ALLEGED MISCONDUCT**

Unedited video and audio recordings related to an incident where a peace officer, civilian, or nonprofit organization has made a complaint of deputy misconduct shall be released upon a proper public record request within 21 days of the request (CRS § 24-31-902).

The Custodian of Records should work as appropriate with the Sheriff or the Undersheriff supervisor in determining what recordings may qualify for disclosure when a request for a recording is received.

### 804.10.1 DELAY OF RELEASE

Disclosure of recordings related to alleged misconduct during active criminal or administrative investigations may be delayed up to 45 days from the date the Office knew or reasonably should have known about the incident if disclosure would substantially interfere with or jeopardize the investigation. The Sheriff or the authorized designee should work as appropriate with the prosecuting attorney so that the prosecuting attorney may produce the required notice (CRS § 24-31-902).

The length of time needed to respond to requests for criminal justice records governed by CCJRA will often take longer and will depend upon the nature of the request. The Conejos County Sheriff's Office is a small rural office. Some requests require time-consuming review and most require redactions. For these reasons, and depending upon the amount of records requested, criminal justice records requests may take weeks and even months to process.

A request received after noon or any day the Office is officially closed will be considered received as of the following working day. For CORA requests, the Office may add up to a seven-working-day extension if extenuating circumstances apply as described in section 24-72-203(3)(b), C.R.S. Broad, general requests will likely be more costly to the requestor because of the staff time required to fulfill these requests. The Office may contact the requestor in an attempt to clarify or narrow a request.

### 804.10.2 RELEASE OF AUDIO OR VIDEO RECORDINGS DEPICTING A DEATH

Upon request, the Custodian of Records shall release unedited video and audio recordings depicting a death to the victim's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative, and inform the requesting party of the requesting party's right to receive and review the recording at least 72 hours prior to public release (CRS § 24-31-902).

### 804.10.3 RESTRICTIONS RELATED TO PRIVACY

If the Custodian of Records, in consultation with the Sheriff or the authorized designee, determines that specific portions of a recording may raise substantial privacy concerns for a person depicted in the recording, the Office should use technology to blur portions of a recording made available for release. In such cases, unblurred footage shall not be released without the written authorization of the victim or the victim's next of kin (CRS § 24-31-902).

If blurring is insufficient to protect the substantial privacy interest of a person, the Custodian of Records should, within 20 days of receipt of the complaint of alleged misconduct (CRS § 24-31-902):

- a. Provide a copy of the recording upon request to the victim or the victim's next of kin.
- b. Inform the person whose privacy interest is implicated of the right to waive the interest in writing and allow release of the unedited recording.

### 804.11 FEES

The Conejos County Sheriff's Office will charge the requestor for all copying expenses and for staff time in accordance with section 24-72-205(5)(a),(6) C.R.S., section 24-72-306(1), C.R.S., and other applicable law. In extraordinary circumstances, the use of a third-party contractor may be necessary and will be discussed with the requestor in advance.

SERVICE	FEE
Hard copies of documents	\$.02 per page
Staff time	\$30 per hour
Specialized document production or specialized skills required to fully comply with request	\$30 per hour

The Office will require an advance deposit of the expected cost before it will begin completing the request. Costs associated with a request must be paid in full before the Office will produce the records. Payment must be made by check or money order made out to the Conejos County Sheriff's Office. The Office does not accept cash, credit cards or any other forms of electronic payment. Payment of fees are required before records/data will be released. We will notify you when your request is complete and what the total amount due is. There is no charge to victims or to their families for requests related to their case.

**I understand that it is my responsibility to review, become familiar with and comply with all the provisions of this new or updated policy. I further understand that, if I have questions about or do not fully understand any portion of this policy, it is my responsibility to seek clarification from my supervisor. I hereby acknowledge that I have received, read and understand this policy.**

