CHAPTER ONE. ORGANIZATION, FUNCTIONS AND GENERAL PROVISIONS

Subchapter Four. Guidelines for Responding to Requests for Inspection or Copying of Public Records

1.04.010 Purpose.

(a) The City Council adopts these guidelines for responding to requests for inspection or copying of public records of the Town of Colma (Town) in accordance with the California Public Records Act and Proposition 59.

(b) A copy of these guidelines shall be posted conspicuously in a public place at City Hall, and shall be made available to the public free of charge.

[*Authority*: GOV'T CODE § 6253; *Bruce v. Gregory* (1967) 65 Cal.2d 666]

1.04.020 Definitions.

As used in this subchapter, the following terms shall have the respective meanings shown.

"Custodian" means the person who has physical custody of the requested record.

"Public record" means any writing or record relating to the conduct of the public's business that was prepared, owned, used, or retained by the Town, regardless of form or physical characteristics. Email and tape recordings are considered public records.

"Records Coordinator" means the person assigned by the City Manager to coordinate the processing of all requests for public records.

[*Authority*: GOV'T CODE § 6252(d)]

1.04.030 General Principles.

(a) All records of a public agency, including those maintained by the police department, shall be open for public inspection and copying unless the records are exempt under specific provisions of the Public Records Act or by the California Constitution.

(b) When a document contains items of information that should be released along with items of information that should not be released, the city should mask or black out the exempt information to allow for the release of those items which should be released. This process is referred to as "redacting".

(c) A reporter has the same right of access to public records as a private citizen.

(d) The California Constitution guarantees the right of privacy to all citizens. Employees, licensees, and other persons may, depending on the circumstances, have a constitutional right that is paramount to the duty to disclose. Each request for personal information must be determined on a case-by-case basis.

(e) A request for public records must identify the record with reasonable particularity. The Town is not required to create documents or compile information in response to a request. The Town has a duty to assist the requesting party in properly identifying the record. When staff receives a request that is vague, staff should engage in an interactive process with the requesting party to determine which particular records will contain the information that the requesting party is seeking.

(f) The Town is not required to and will not compile lists, prepare summaries, or create documents that do not exist. The Town will provide duplication of existing Town records which are public records under the California Public Records Act.

(g) The Town recognizes its obligation to make public records available to any citizen requesting such information, regardless of motive, if the record is otherwise subject to disclosure. The Town will not require any person to disclose his or her intended use or purpose in requesting access to a public record, except

where the intended use or purpose is required by law as a condition of disclosure.

(h) The Town also recognizes that, under Proposition 59, the Brown Act and the Public Records Act must be "broadly construed" to further the people's right of access (and "narrowly construed" if it limits the right of access). The Town will lean toward disclosure and openness when there is no clear-cut exemption that applies.

[*Authority*: GOV'T CODE § 6253; GOV'T CODE § 6257; GOV'T CODE § 6257.5]

1.04.040 Summary of Exemptions.

The following is a partial list, by title, of records that are specific exempt from disclosure. This list is published for convenience only. Whether an exemption applies may depend on additional language in the statute or court interpretations. The Custodian should not rely on this list alone to grant or deny a request, but should consult with the City Attorney regarding the specifics of any request that may fall within any of these exemptions.

(a) Preliminary drafts, notes or inter-agency memoranda;

(b) Litigation records, other than records filed with the court;

(c) Personnel, medical or similar records;

(d) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures gathered by the Police Department, including records that assess vulnerability of Town facilities, operations or property to terrorist attack or other criminal acts intended to disrupt the Town's operations or the disclosure of which would compromise the security of the Town's facilities, operations, workplaces or personnel;

(e) Test scores and examination data required in license examinations;

(f) Appraisals, engineering data, etc, compiled in contemplation of the sale or acquisition of property;

(g) Information received from a taxpayer in connection with collection of taxes for the Town;

(h) Library circulation records;

(i) Records exempt by federal or state laws, such as building plans (Health & Saf. Code § 19851), copyrighted documents, confidential communications with the City Attorney, and information received from a person in confidence if disclosure of that information would cause an unfair competitive disadvantage to the person supplying the information;

(j) Records that reveal the Town's deliberative process;

(k) Records of Native American graves, cemeteries, and sacred places;

(l) Information contained in applications for licenses to carry firearms;

(m) Calendars and schedules of public officials;

(n) Applications of candidates seeking appointment to a vacant public office;

(o) Telephone records made and received by council members;

(p) Initiative, referendum and recall petitions and all memoranda prepared by elections officials in the examination of such petitions;

(q) Records that, on the facts of the particular case, the public interest served by not disclosing the record clearly outweighs the public interest in disclosure of the record;

[Authority: Gov't Code § 6255; Gov't Code § 6254(a); Gov't Code § 6254(b); Gov't Code § 6254(c); Gov't Code § 6254(f); Gov't Code § 6254(g); Gov't Code § 6254(h); Gov't Code § 6254(i); Gov't Code § 6254(j); Gov't Code §

6254(k); Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325; Gov't Code § 6254(r); Gov't Code § 6254(u); Times Mirror Co. v. Superior Court (1991) 53 Cal.3d 1325; Wilson v. Superior Court (2000) 51 Cal.App.4th 1136; *Rogers v. Superior Court* (1993) 19 Cal.App.4th 469]

1.04.050 Minutes of Public Meetings.

(a) Minutes of open session of public meetings must be produced after they have been approved by the City Council. Draft minutes of open sessions must be produced after they have been submitted as part of an agenda packet.

(b) Minutes of closed sessions should not be produced except that if the city council has reported any action out of the closed session, that report should be produced, or if the City Attorney has signed Closed Session Minutes for release, then the minutes may be released.

(c) Tape or film recordings of public meetings must be produced, except that tapes may be destroyed 90 days after the meeting if the minutes have been approved.

1.04.060 Submission Of Request.

(a) All requests to inspect or for copies of public records of the Town shall be presented to:

City Clerk, Town of Colma
1198 El Camino Real
Colma, CA 94014

(b) Requests may be made in person at the Town offices during normal business hours (Monday through Friday from 8:00 a.m. until 5:00 p.m.); by mail to the above address, or by fax to (650) 997-8308.

(c) A request for inspection or copying of public records may not be denied merely because of the form in which it is presented. The Town has prepared a form that should be completed to assist in processing all requests. This form is available at the Town offices.

(d) Each request for inspection or duplication of public records must provide sufficient and specific information to allow Town staff to identify the requested records. The following information is the minimum necessary to enable the Town staff to identify the public records sought:

(1) Description of record, e.g. ordinance, resolution, meeting minutes, permit, zoning hearing, Commission decision, etc.

(2) Date or estimated date of record; and

(3) If applicable, subject matter of record, e.g. drainage plan ordinance, zoning hearing decision concerning a specifically identified property, building permit for specific property, etc.

(e) Each request for inspection or duplication of public records must provide the name and address to which the Town should address its response.

1.04.070 Processing Requests for Public Records.

(a) *Form of Request.* To avoid disputes about what was requested and produced, when a person makes an oral request or uses a document other than the form approved by the Town, staff should ask the person to use the Town's form. If the requestor refuses to fill out the form, staff should fill out the form, show it to the requester to confirm that the description of the documents requested is correct, and ask the requester to sign or initial the form. If the requester refuses to sign or initial the form, staff should initial the Form and attach it to any documents submitted by the requester.

(b) *Receipt of Request.* Any employee receiving what appears to be a request for records shall immediately forward the request, or refer the requestor, to the Records Coordinator. Upon receipt of a request for public

records, the Records Coordinator shall date-stamp the original request with the date of receipt and shall place it in a file for all requests. A copy should be directed to the Custodian of the record.

(c) *Preliminary Determination.* Within seven days after receipt of the request, the Custodian should make a preliminary determination whether to comply and should transmit the preliminary determination to the Records Coordinator.

[Exception: see § 1.04.080 for rules regarding requests for Form 700]

(d) *Notification within Ten Days.* Within ten days after receipt of the request, the Records Coordinator shall notify the requestor, in writing, that:

(1) The records will be produced, the conditions, if any, for production, and if the records are not produced at the time of the response, the estimated date and time when the record will be made available; or

(2) The Town's time to respond has been extended and a brief statement of the reasons therefore; or

(3) The request is denied, in which case the notice shall set forth the information described in the section entitled, "Notice of Denial."

[Exception: see § 1.04.080 for rules regarding requests for Form 700]

(e) *Extension.* In unusual circumstances, the City Manager may extend the time for responding by an additional fourteen days by giving written notice of the extension to the requester. "Unusual circumstances" mean the following, but only to the extent necessary to the proper processing of the particular request and only if conducted with all practicable speed:

(1) The need to search for and collect the requested records from field facilities, storage facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct documents that are demanded in a single request;

(3) The need for consultation with another agency having a substantial interest in the determination of the request, or among two or more components of the agency having substantial subject matter interest therein, or with Legal Counsel to determine whether the requested record is a public record or exempt from disclosure under the California Public Records Act;

(4) The need to compile data, to write programming language or a computer program, or to construct a computer report to extract data; and

(5) The need to redact exempt portions of the record.

[*Authority:* GOV'T CODE § 6253]

(f) *Time to Produce Records.* Whenever a determination is made to grant the request, every reasonable effort will be made to produce the records at the same time that the Town notifies the requestor of its response. Additional time to produce the records may be needed if the request requires production of a large volume of records or requires retrieval of records from the Town's storage facility for inactive records. In these circumstances, the Town will produce the records with all practicable speed.

(g) *Electronic Records.* If requested, the Town shall provide a copy of an electronic record in the same form that is maintained by the Town, if that format has been used by the Town to create copies for its own use or for provision to other agencies. The cost of duplication shall be limited to the direct cost of producing a copy of a record in an electronic format.

1.04.080 FPPC Form 700.

FPPC Form 700 (Statement of Economic Interests) are governed by the following special rules:

(1) Form 700 Statements must be provided within two business days of a request;

(2) No conditions whatsoever shall be imposed on persons desiring to inspect or reproduce the records, nor shall any information or identification be required from the person making the request;

(3) The Town may charge a copying fee not to exceed 10 cents per page; and

(4) The Town may also charge a retrieval fee of $5 per request for copies of reports and statements that are more than five years old.

[*Authority.* GOV'T CODE § 81008]

1.04.090 Conditions.

(a) If the request is to *inspect* public records, the Town may require that the inspection occur during normal business hours, in a secure area, with a staff person present.

(b) If the request is for a *copy* of a public record, the request must be accompanied by payment of a fee or deposit to the Town. The fee, however, may not exceed the actual cost of providing the copy.

(c) If the request is for a large volume of records that will take time to locate or gather, the Town may produce the records on a schedule that allows staff sufficient time to tend to the every day needs of the public. The response to the request will notify the requestor that searching and copying will not begin until the requestor has delivered the required deposit to the Town, the schedule for copying and delivering documents, and a statement that after the copying is completed and an accurate cost is determined, the Town will either invoice the requestor for, or refund the difference between the actual cost and the deposit.

[*Authority:* as *Rosenthall v. Hansen*, 34 CA3d 754 (1973)]

1.04.100 Notice of Denial.

A notice denying a request, in whole or in part, shall state, in writing, the name, title, business address, and business telephone number of each person responsible for the denial and the date of the denial. The response letter should cite the authority for the denial, such as the statutory exemption, the legislative analysis, any applicable court rulings and Attorney General Opinions.

1.04.110 Consultation with City Attorney.

City staff should promptly contact the City Attorney with questions so that a timely determination can be made.