

RESOLUTION 2019-11-1

**LAKEHURST WATER AND SANITATION DISTRICT
DENVER AND JEFFERSON COUNTIES, COLORADO**

**A RESOLUTION RESTATING AND AMENDING RESOLUTION 2014-7-1
WHICH DESIGNATED THE DISTRICT'S OFFICIAL CUSTODIAN
OF RECORDS AND ADOPTED A POLICY ON RESPONDING TO
OPEN RECORDS REQUESTS**

WHEREAS, pursuant to §32-1-1001(1)(h), C.R.S., the Board of Directors of the Lakehurst Water and Sanitation District ("District") is responsible for the management, control and supervision of all of the business and affairs of the District; and

WHEREAS, pursuant to §32-1-1001(1)(i), C.R.S., the Board of Directors of the District has the authority to appoint an agent; and

WHEREAS, pursuant to Resolution 2014-7-1 ("Original Resolution") dated July 28, 2014, the District's Board of Directors designated an official custodian of the District's records for the protection of such records and to permit their inspection by persons entitled to examine and copy such records in an orderly fashion; and

WHEREAS, subsequent legislation allows the District to adjust its research and retrieval fee as set forth in said Resolution for inflation; and

WHEREAS, the Board of Directors of the District has determined that it is appropriate to adjust its research and retrieval fee as permitted by law and to reaffirm and amend as appropriate its policy on responding to open records requests; and

WHEREAS, the Board of Directors fully supports, and complies with, all Federal and State laws relating to the retention, protection and disclosure of District records including, but not limited to, the Colorado Open Records Act, Title 24, Article 72, Part 2, C.R.S. ("CORA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and the Privacy Rule promulgated by the U.S. Department of Health and Human Services which interprets and implements HIPAA; and

WHEREAS, it is the policy of the District that all public records shall be open for inspection by any person at reasonable times, except as otherwise provided by law; and

WHEREAS, public records are defined by CORA as all writings made or maintained by the District, regardless of the format or medium of the records, subject to certain exceptions and public records expressly include e-mail communications; and

WHEREAS, the District maintains an archive of all e-mail messages for emergency backup purposes only; such archived e-mail communications are not individually retrievable and are specifically not intended to create a public record.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Lakehurst Water and Sanitation District that:

1. Official Custodians.

(a) The District's Manager is hereby designated as the Official Custodian responsible for the maintenance, care and keeping of all records of the District, except as provided herein.

(b) The Official Custodian shall have the authority to designate such agents as he/she shall determine appropriate to perform any and all acts necessary to enforce and execute the provisions of this Resolution.

2. Policy on Responding to Open Records Request. The following are general policies concerning the release of records:

(a) All public records of the District shall be open for inspection at the times designated herein, unless prohibited by the provisions of CORA or policies adopted by the Board of Directors in conformance with CORA.

(b) Upon receipt, requests by a citizen, entity, Federal or State agency, District member, subpoena, Administrative or Court Order, or other legal process, to inspect and/or copy any District record (collectively referred to as a "Records Request") should be immediately sent to the Official Custodian.

(c) Every Records Request shall be submitted to the District's Official Custodian in writing and be specific as to the information desired.

(d) If any question arises as to the propriety of fully complying with a Records Request, the Official Custodian shall immediately forward it to the District's legal counsel.

(e) The District's legal counsel shall determine the District's obligations under the applicable Federal and/or State law(s). If the District is permitted to comply with the Records Request in whole or in part, the District's legal counsel will so notify the District's Official Custodian, who will assemble the disclosable requested documents for inspection and/or copying in accordance with applicable Federal or State law.

(f) If the District's legal counsel determines the District is not permitted by Federal or State law to comply with the Records Request in whole or in part, legal counsel shall provide a written response to the party submitting the Records Request

stating the legal basis upon which the Records Request in whole or in part is being denied.

(g) Pursuant to CORA, all records must be made available for inspection within three (3) working days, unless extenuating circumstances exist. The deadline may be extended by seven (7) working days if extenuating circumstances exist and the requesting party is notified of the delay within the statutory period. The Official Custodian may set the time during normal office hours and the place for records to be inspected and require that the Official Custodian or a delegated employee be present while the records are examined. Inspection of the District's public records shall be made, where permitted by law, during normal business hours, Monday through Friday, except on holidays, at an hour specifically set by the appropriate Official Custodian for each particular request for inspection.

(h) A public record stored in a digital format that is neither searchable nor sortable will be provided in such digital format. A public record stored in a digital format that is searchable and/or sortable will be provided in such digital format, unless (1) the public record is in a searchable or sortable format and producing the record in the requested format would violate the terms of any copyright or licensing agreement between the District and a third party; (2) producing the record would result in the release of a third party's proprietary information; (3) after making reasonable inquiries, it is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format; or (4) if the Official Custodian would be required to purchase software or create additional programming functionality in its existing software to remove the proprietary or protected information. Altering an existing digital public record, or excising fields of information that the Official Custodian is either required or permitted to withhold under this subsection, does not constitute the creation of a new public record under Section (i) of this Resolution.

(i) The Custodian may charge the following fees (collectively, the "Fees") for responding to a Records Request:

(i) Printouts, photographs, and copies, when requested, will be provided at a cost of twenty-five cents (\$0.25) per standard page, and at the actual costs of production for any non-standard page (the "Copying Fee"). A standard page shall mean an 8.5-inch by 11-inch black and white copy.

(ii) When it is impractical to make the copy, printout, or photograph of the requested record at the place where the record is kept, the Official Custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities and the cost of providing the requested records will be paid by the person making the request (the "Outside Copying Fee").

(iii) If a copy, printout or photograph of a public record is necessary or requested to be provided in a format other than a standard page, the costs will be assessed at the actual cost of production (the "Production Fee").

(iv) If data must be manipulated in order to generate a record in a form not otherwise used by the District, such data manipulation will be assessed at the actual costs to the District (the "Manipulation Fee"); however, the District is in no way obligated to generate a record that is not otherwise kept, made, or maintained by the District.

(v) The cost for transmitting the requested records will be charged at the actual cost of such delivery (the "Transmission Fee"). Transmission Fees will not be charged for transmitting any record via electronic mail, when requested.

(vi) When the location or existence of specific documents must be researched and the documents must be retrieved, sorted or reviewed for applicability to the request, and such process requires more than one (1) hour of staff time, the Custodian may charge a research and retrieval fee not to exceed thirty-three dollars and fifty-eight cents (\$33.58) per hour, or the maximum amount allowed by the Executive Committee of the State Legislative Council, whichever is greater (the "Research and Retrieval Fee").

(vii) If any requested records are protected by a privilege (for example, but not limited to, the work product or attorney-client privileges) the District may charge the actual costs of creating a privilege log identifying the privileged records (the "Privilege Fee"). If legal assistance or review is necessary to create the privilege log, the Privilege Fee may include the actual costs for such legal assistance.

(j) If the estimated Fees to produce to produce the records will exceed three hundred dollars (\$300.00), the District may require a thirty percent (30%) deposit of the estimated Fees prior to commencing work to produce the records. Payment of the remainder of the Fees, including all actual costs exceeding the estimated amount, must be made prior to the time of inspection or release of the final work product or copies.


(k) No person shall be permitted to inspect or copy any records of the District if, in the opinion of the Official Custodian after consultation with the District's general counsel, such inspection or copying would come within the prohibition of one or more exemptions set forth in CORA.

3. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Resolution is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining provisions.

4. **Effective Date.** This Resolution shall take effect and be enforced immediately upon its approval by the Board of Directors of the District.

The foregoing Resolution was approved and adopted this 18th day of November, 2019.

LAKEHURST WATER AND SANITATION DISTRICT

By: 
David G. Bane, President

Attest:


Steven Posavec, Secretary