

<p>JEFFERSON COUNTY PUBLIC HEALTH Originator: Administrative Services Division Applicable to: All JCPH Workforce Members</p>	<p>TITLE: Subpoena and Open Records Policy</p>
<p>SUBJECT: This Policy defines subpoena types, open records requests, the internal notification process for responding to subpoenas, and guidelines for open records requests.</p>	<p>ADOPTION / REVISION DATES: December 21, 2021</p> <p>EFFECTIVE DATE: December 22, 2021</p>

References (Statutes/Resolutions/Policies): C.R.S. §24-72-201 et seq.

Purpose: This policy and procedure outlines general information about subpoenas and the steps that should be taken to respond to subpoenas and open records requests.

Scope:

1. This policy applies to all JCPH workforce members who are involved in subpoenas or open record requests.
2. This policy applies to all requests for public JCPH records, including those made pursuant to the Colorado Open Records Act.

Subpoenas:

Definitions:

Subpoena: Legal document or order requiring an individual to appear, and usually to testify, in court on a certain date and/or to produce documents.

Subpoena duces tecum: Latin for “bring it with you.” A subpoena duces tecum is an order for a witness to bring specific documents, tapes, or other records to a certain place at a certain time.

Procedure

Internal Notification:

1. Upon receipt of a subpoena, JCPH workforce members should notify their supervisor, their division director, and the Deputy Director. If the information requested by the subpoena is protected pursuant to HIPAA according to the [Designated Record Set](#), the workforce member will also notify the HIPAA Security and Privacy Officers of such request. Notify the County Attorney’s Office immediately for assistance.

Communicable Disease, Sexually Transmitted Disease, HIV Diagnosis and Testing Records:

Communicable Disease and Sexually Transmitted Diseases: Reports of communicable diseases, sexually transmitted diseases and HIV/AIDS, which are required to be given to the Colorado Department of Public Health and Environment are confidential. This information is not subject to a subpoena unless it is de-identified (C.R.S. §25-1-122).

Open Records Requests:

Definitions:

Public Records: All writings made, maintained, or kept by JCPH and held for use in the exercise of functions required or authorized by law or administrative rule. Includes correspondence.

Correspondence: A communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including: communications sent via U.S. mail; communications sent via private courier; communications sent via electronic mail.

Writings: All books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials regardless of physical form or characteristics. Writings includes digitally stored data, including email messages.

Colorado Open Records Act (CORA): Requires that most public records be available to the public. Anyone can request information that is in the possession of a government office, including Jefferson County Public Health.

Exemptions:

Medical, mental health, sociological, and scholastic achievement data, and electronic health records, on individual persons. (C.R.S. §24-72-204(3)(a)(I))

The home address, home telephone number, personal mobile phone number, pager number, personal email address, or personal photograph of a law enforcement official, participant in the address confidentiality program, or protected person. A protected person includes a human services or public health worker. (C.R.S. §24-72-204(3)(a)(XXII))

Vital statistics records are confidential and exempt from right to inspect. (C.R.S. §25-2-117)

JCPH may, but is not required to, withhold:

1. Any records **of ongoing civil or administrative investigations** conducted by the state or an agency of the state in furtherance of their statutory authority to protect the public health, welfare, or safety unless the investigation focuses on a person or persons inside of the investigative agency.

2. Upon conclusion of a civil or administrative investigation that is closed because no further investigation, discipline, or other agency response is warranted, all records not exempt pursuant to any other law are open to inspection; except that the custodian may remove the name or other personal identifying or financial information of witnesses or targets of such closed investigations from investigative records prior to inspection. (C.R.S. § 24-72-204(2)(a)(IX))

Restrictions on disclosure of certain types of investigations, including epidemics:

1. Reports and records resulting from the investigation of epidemic and communicable diseases, environmental and chronic diseases, reports of morbidity and mortality, reports of cancer in connection with the statewide cancer registry, and reports and records resulting from the investigation of sexually transmitted infections, tuberculosis, and rabies and mammal bites held by the state department of public health and environment or county, district, or municipal public health agencies shall be strictly confidential. **Such reports and records shall not be released, shared with any agency or institution, or made public, upon subpoena, search warrant, discovery proceedings, or otherwise, except under any of the following circumstances:**
 - a. Release may be made of medical and epidemiological information in a manner such that **no individual person can be identified.**
 - b. Release may be made of medical and epidemiological information to the extent necessary for the treatment, control, investigation, and prevention of diseases and conditions dangerous to the public health; except that every effort shall be made to limit disclosure of personal identifying information to the minimal amount necessary to accomplish the public health purpose.
 - c. Release may be made to the person who is the subject of a medical record or report with written authorization from such person.
 - d. An officer or employee of the county, district, or municipal public health agency or the state department of public health and environment may make a report of child abuse to agencies responsible for receiving or investigating reports of child abuse or neglect in accordance with the applicable provisions of the “Child Protection Act of 1987” set forth in part 3 of article 3 of title 19, C.R.S. However, in the event a report is made by the state department of public health and environment, only the following information shall be included in the report:
 - i. The name, address, and sex of the child;
 - ii. The name and address of the person responsible for the child;
 - iii. The name and address of the person who is alleged to be responsible for the suspected abuse or neglect, if known; and
 - iv. The general nature of the child's injury.

(C.R.S. § 25-1-122(4))

Open Records Requests:

Custodian of Records

The Executive Director delegates their authority as the official custodian of records for Jefferson County Public Health to the Director of Administrative Services.

Overview

1. Requests for public records made pursuant to CORA must be submitted in writing and must be specific as to the records sought. Requests must be submitted through the Jefferson County Public Records Request Form, available at <https://www.jeffco.us/FormCenter/Public-Affairs-17/Jefferson-County-Open-Records-Request-208> .
2. Employees receiving records requests should direct such requests to the Administrative Services Division Director with the Public Affairs Manager, their Division Director, and the Deputy Director cc'd. The Administrative Services Division Director will delegate the task of responding to the request to the appropriate person.
3. Employees should contact the County Attorney's Office as needed with questions about the request or if the request is for information that may be subject to an exception to the disclosure requirements.

Open records requests should be directed to the Administrative Services Division Director within one business day of receipt of the request whenever possible.

Response

1. JCPH will respond to requests made pursuant to CORA within 3 working days whenever possible. The initial response may be a request for advance payment if it is anticipated that the response will take over one hour to complete. If the request is voluminous or extenuating circumstances apply, the custodian of the records will notify the requester within three working days in writing that delivery may be delayed. Delivery should occur 7 working days after payment.
2. If a public record is not immediately or readily available for inspection, the Administrative Services Division Director or designee shall make an appointment or other arrangements with the applicant concerning the time at which the requested record will be available.
3. Public records shall be made available for inspection in as timely a manner as possible. However, responding to applications for inspection of public records shall not take priority over the previously scheduled work activities of the Jefferson County Public Health Department.
4. In accordance with section 24-21-111, C.R.S, for any record accessible to the public on the Jefferson County's web site, Jefferson County may make such access the sole means of inspection of the record.

Fees

1. Copies

- a. The fee for a paper copy of any public JCPH record, including copies requested pursuant to CORA shall be as follows:

8.5” by 11”	First five pages free \$0.25 for each page after the first five pages
11” by 17”	\$0.25 for each page
Greater than 11” by 17”	Fee not to exceed the actual cost of reproduction

- b. The fee for an electronic copy of any public county record, including copies requested pursuant to CORA shall be as follows:

If the record exists in electronic format	\$1 for a CD (if required) + Data Compilation time
If the record must be scanned	\$1 for a CD (if required) + Data Compilation time
If the record must be printed and then scanned	\$1 for a CD (if required) + Data Compilation time + paper copy fee

2. Data Manipulation

- a. Any Division may set a fee for reports, maps, or products that are produced through the manipulation of data for the benefit of the requester.
- b. JCPH may refuse any request requiring data manipulation on the basis that the Colorado Open Records Act does not require manipulation.

3. Data Compilation

- a. If the request will take more than an hour to fulfill, the fee for compiling requested information, including information requested pursuant to CORA shall be as follows:

One hour or less per request; no more than one request per month per subject	\$0
More than one hour per request or more than one request per month per subject	\$30 per hour

- b. The Public Affairs staff time may not be included in the Data Compilation cost.
- c. The requester must be provided a cost estimate, and may be requested to pay all or a portion, prior to compiling the information. The requester must be notified that the cost estimate provided may not be sufficient as full accounting of the cost is not available until after completion of the CORA request. Thus, the requester may be required to pay an additional cost to reflect the actual time required to fill the request prior to receiving the responsive documents.

4. Research by Requester

- a. Independent research by the requesting party is allowed provided that:
 - i. The records sets to be researched do not include privileged documents or documents not otherwise subject to public disclosure;
 - ii. The research is supervised to avoid loss or damage to records. Staff time spent on supervision shall apply as listed in the Data Compilation section of this Policy;
 - iii. The research does not unduly disrupt the day-to-day activities of the organization; and
 - iv. The records/documents being researched are returned to the files in the same order as when they were removed.

5. Data Format

- a. Upon request, digital records kept in a sortable digital format must be provided in a sortable digital format of the custodian's choosing, and searchable digital records must be provided in a searchable digital format of the custodian's choosing, unless one of the following is true:
 - i. It is not technologically or practically feasible to provide a copy of the record in the requested format.
 - ii. It is not technologically or practically feasible to permanently remove information that the custodian is required or allowed to withhold from the record.
 - iii. Producing or redacting the record would require JCPH to purchase software or create additional programming or functionality in its existing software.
 - iv. Producing the record would violate the terms of any copyright or licensing agreement between JCPH and a third party or result in the release of a third-party's proprietary information.
- b. If JCPH is not able to provide (a) a sortable digital record in a sortable format or (b) a searchable digital record in a searchable format, the custodian will produce the record in an alternative format if the record is subject to disclosure. The custodian will provide a written declaration attesting to the reason(s) the record cannot be produced in a sortable or searchable format, when such request is denied.

6. Deposits

- a. If the request will require the expenditure of a significant amount of staff time or the production of voluminous documents, JCPH may require a deposit to be paid in advance of the custodian of records compiling the responsive documents.

7. Compliance with Jefferson County CORA Policy.

- a. JCPH complies with the Jefferson County Open Records Policy. To the extent this Policy conflicts with the Jefferson County Policy, this Policy will control. The Jefferson County Open Records Policy is available here:
<https://www.jeffco.us/DocumentCenter/View/275/Open-Records-Policy-PDF>

