

**OFFICE OF THE CITY CLERK  
EMERGENCY RULE**

**CITY OF LAFAYETTE ADMINISTRATIVE RULE  
GOVERNING COLORADO OPEN RECORDS ACT  
(CORA) REQUESTS DUE TO CYBERATTACK  
ON CITY'S COMPUTER INFRASTRUCTURE**

WHEREAS, on August 3, 2020, the City Administrator for the City of Lafayette issued a "Declaration of Local Disaster Emergency in and for the City of Lafayette, Colorado, Regarding Cyberattack on City Computer Infrastructure" ("Declaration") due to a malware cyberattack that disabled the City's computer, email, and phone systems and encrypted electronic data on the City's servers, rendering the vast majority of the City electronic records inaccessible; and

WHEREAS, on August 4, 2020, the City Council extended the Declaration indefinitely because it is unknown when the City's computer, email, and phone systems will be operational again and it is unknown when the City's affected electronic records will be decrypted and accessible to City staff; and

WHEREAS, as of the date of this Emergency Rule, the vast majority of the City's electronic data remains encrypted or inaccessible to City staff, and it remains unknown when the City's electronic records will be decrypted and accessible to City staff; and

WHEREAS, the Colorado Open Records Act, C.R.S. section 24-72-200.1, et seq. ("CORA"), requires that public records within the custody and control of the official custodian be made available for inspection within three working days or, if extenuating circumstances exist, seven working days; and

WHEREAS, under CORA, the City Clerk, as the "official custodian" ("Custodian") of the City's public records, may make rules with reference to the inspection of such records that 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 or the Custodian's office; and

WHEREAS, the Colorado courts have recognized that CORA strikes a balance between the public's right to inspect public records and the administrative burdens that may be placed on government agencies responding to such requests;<sup>1</sup> and

WHEREAS, as a result of the current emergency caused by the cyberattack, including the inaccessibility of the City's computer, email, and phone systems, and the encryption and inaccessibility of the City's electronic records, it is physically impossible for the Custodian to fulfill all duties required by CORA and, as such, the City Clerk, as the official Custodian, cannot as a matter of law be sanctioned for failure to comply with a records request within CORA's time limits.<sup>2</sup>

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<sup>1</sup> *Pruitt v. Rockwell*, 886 P.2d 315, 317 (Colo. App. 1994).

<sup>2</sup> *Citizens Progressive All. v. Sw. Water Conservation Dist.*, 97 P.3d 308, 313-14 (Colo. App. 2004)

THEREFORE, EFFECTIVE IMMEDIATELY AND UNTIL TERMINATED BY THE CITY CLERK OF THE CITY OF LAFAYETTE, THE FOLLOWING EMERGENCY RULE SHALL BE IN PLACE:

1. Due to the cyberattack, the City's phone, email, and computer systems have been disabled since July 27, 2020, and the Custodian has been unable to receive CORA requests, if any, made via those systems since that date. Therefore, the timelines for the Custodian to respond to a CORA request shall run from the date the Custodian receives a CORA request, not from the date the requestor transmitted or attempted to transmit the request to the Custodian.
2. Within three working days after the Custodian's receipt of a CORA request, the Custodian shall, to the extent feasible, timely respond to the request, and provide those public records within the Custodian's custody and control to the requestor.
3. With respect to public records that, due to the cyberattack emergency, the Custodian lacks access, custody, or control because it is physically impossible for the Custodian to access, search for, or retrieve such records, or to render such records in readable format, the Custodian shall, within three working days after the Custodian's receipt of a CORA request, notify the requestor that such records are not readily available due to the cyberattack, and that such records will be made available to the requestor within a reasonable time, not to exceed seven working days, after the requested records are rendered searchable, accessible, and in a readable format.

DECLARED AND ISSUED THIS 11<sup>th</sup> DAY OF AUGUST, 2020.

CITY OF LAFAYETTE, COLORADO

BY:   
Lynette Beck, CMC  
City Clerk