

RESOLUTION 20-11-001
BOARD OF DIRECTORS OF THE
CLIFTON FIRE PROTECTION DISTRICT

**A RESOLUTION ESTABLISHING A POLICY FOR REQUESTS FOR PUBLIC RECORDS
AND ASSESSING CHARGES FOR THE PRODUCTION OF PUBLIC RECORDS**

WHEREAS, the Clifton Fire Protection District ("*District*") is a political subdivision of the State of Colorado, organized pursuant to C.R.S. § 32-1-101 *et seq.* ("*Special Districts Act*"), to provide fire and emergency services to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction;

WHEREAS, pursuant to the Special Districts Act, C.R.S. § 32-1-1001(1)(h) and (m), the District's Board of Directors ("*Board*") is vested with the management, control, and supervision of all the business and affairs of the District, and is authorized to adopt, amend, and enforce rules and regulations for carrying out the District's business and affairs;

WHEREAS, the Board is authorized by statute to charge a reasonable fee for copies, printouts, and photographs made at the request of an individual or entity pursuant to the Colorado Public (Open) Records Act, C.R.S. § 24-72-205 ("*Open Records Act*"), and the Regulations promulgated by the U.S. Department of Health and Human Services interpreting and implementing the Health Insurance Portability and Accountability Act of 1996, 45 CFR 164.524(c) (collectively, "*HIPAA*");

WHEREAS, the District's current policy for responding to requests for public records and assessing charges for the production of public records is set forth in Board Resolution 17-08-0001. As a result of subsequent revisions to the Regulations promulgated by the Colorado Department of Public Health and Environment ("*CDPHE Regulations*"), U.S. Department of Health and Human Services guidance concerning requests for protected health information, and legislative amendments to the Open Records Act, the Board desires to amend its policy;

WHEREAS, the Board intends for this Resolution to supersede and replace Resolution 17-08-0001 with respect to responding to requests for public records and assessing charges for the production of public records, and for Resolution 17-08-0001 to be rescinded for all purposes; and

WHEREAS, the Board determines that the fees it establishes by this Resolution are reasonable, cost-based fees, as required by the regulations and guidance implementing HIPAA, and in compliance with the requirements and restrictions of the Open Records Act.

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE
CLIFTON FIRE PROTECTION DISTRICT THAT:**

1. The term "*public records*" shall have the same meaning as set forth in the Open Records Act.
2. All requests for public records shall be in writing and shall comply with the requirements of the Open Records Act, HIPAA, and any other applicable federal or state laws, rules, or regulations (collectively, "*Applicable Law*"). Anyone making a verbal request will be asked to submit the request in writing, and no action related to the request will be taken until a written request has been submitted.

3. The District will comply with the requirements of Applicable Law with respect to whether it must, may, or cannot produce public records, or other documents or information requested, and the fees it charges for producing such public records, or other documents or information.

4. Where the fee for a certified copy or other copy, printout, or photograph of a public record is specifically prescribed by Applicable Law, the specific fee shall be charged. If a fee is not specifically prescribed by Applicable Law, the District will furnish copies, printouts, or photographs of a public record for a fee of \$0.25 per standard page. The District shall charge a fee not to exceed the actual cost of providing a copy, photograph, or printout in a form other than a standard page. The District shall charge the actual costs it incurs in having the copies made off-site by an outside copying facility.

5. Medical or Mental Health Records.

(a) If an individual or entity requests medical or mental health records pursuant to C.R.S. § 24-72-204(3)(a)(1) that **do not** contain protected health information (as defined under HIPAA, 45 CFR § 160.103) (“**PHI**”), and such records can be produced under Applicable Law, the District will charge fees in accordance with the other paragraphs of this Resolution;

(b) If a third-party requests medical or mental health records pursuant to C.R.S. § 24-72-204(3)(a)(1) that contain an individual’s PHI **and** submits a written HIPAA authorization from that individual (or relies on another permission in HIPAA) for the disclosure, and such records can be produced under Applicable Law, the District will charge fees in accordance with the other paragraphs of this Resolution;

(c) If an individual requests medical or mental health records pursuant to C.R.S. § 24-72-204(3)(a)(1) that contain that individual’s PHI **and** directs that the records be delivered to the individual, their representative or a third-party, the District, in its discretion, shall charge either:

i. A flat fee of \$6.50 for electronic copies of medical or mental health records that the District maintains electronically; or

ii. The actual labor costs incurred by the District to produce the medical or mental health records, which may include:

A. Labor for copying the medical or mental health records, whether in paper or electronic form;

B. Supplies for creating the paper copy or electronic media if the individual requests that the electronic copy be provided on portable media;

C. Postage, when the individual has requested the copy, or a summary or explanation of such information, be mailed; and,

D. Preparing an explanation or summary of the medical or mental health records, if the individual agrees to such an explanation or summary, and the associated fees, in advance.

If the District receives a request to produce medical or mental health records in paper form, or the District is unable to produce the requested medical or mental health records in an electronic format, the District will provide paper copies of the records and will charge the actual labor costs incurred by

the District to produce the records, as set forth in paragraph 5(c)(ii) above. The District will provide an estimate of the approximate fee that may be charged for a copy of the requested medical or mental health records.

6. If, in response to a specific request, the District's custodian of records performs a manipulation of data so as to generate a record in a form not used by the District (including a privilege log), an hourly administrative fee equal to the hourly research and retrieval fee discussed below in Section 7 shall be charged to the person or entity making the request; provided, however, that the fee shall not exceed the actual cost of manipulating the data and generating the record in accordance with the request. An individual or entity making a subsequent request for the same or similar records shall be charged the same fee.

7. If the amount of time required by the District to research and retrieve the documents necessary to fulfill a specific request exceeds 1 hour, including the time required to identify and segregate records that must or may not be produced, the person or entity making the request shall be charged a research and retrieval fee of \$33.58 per hour, or such maximum hourly research and retrieval fee as may be established by the Colorado Legislative Council from time to time. Such fee will include discussing strategy for getting documents collected (including time to agree on search terms and searchable time frame for email searches), redactions, and attorney time to review documents. The District will not impose a charge for the first hour of time expended in connection with the research and retrieval of public records.

8. Upon request for transmission of the public record, the District will transmit the public record by United States mail, other delivery service, facsimile, or electronic mail. If transmitting the public record pursuant to this paragraph, the District may notify the record requester that a copy of the public record is available, but will be sent only when the District receives payment or makes satisfactory arrangements for payment of all costs associated with transmitting the public record and for all other fees lawfully allowed; provided, however, that no transmission fees will be charged for transmitting the public record via electronic mail. The District will transmit the public record within three business days following its receipt of, or making satisfactory arrangements to receive, such payment.

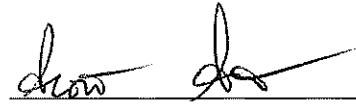
9. If an individual or entity requests that public records be provided by fax or email, and not by U.S. mail or delivery service, the individual shall be required to provide a written statement that the individual or entity understands the public records will be sent through unencrypted fax/email that is not secure and there is a risk that the records could be seen by a third party during electronic transmission, while in electronic storage, and/or upon completed delivery. The District is not responsible for unauthorized access of the PHI resulting from the faxed or emailed transmission, or for safeguarding the PHI upon delivery.

10. This Resolution shall supersede and replace Resolution 17-08-0001, and conflicting portions of all other Resolutions and motions previously adopted by the Board with respect to responding to requests for public records and assessing charges for the production of public records, which Resolutions or motions are hereby rescinded and null and void, in whole or in part, to the extent such Resolutions and motions conflict with this Resolution.


ADOPTED this 17th day of November, 2020 by the Board of Directors of the Clifton Fire Protection District.



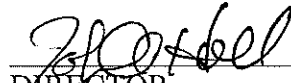
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