

**USING THE COLORADO
OPEN RECORDS ACT**

By

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TAB 1

Colorado Revised Statues

TITLE 24 GOVERNMENT - STATE

ARTICLE 72 PUBLIC RECORDS

PART 2 INSPECTION, COPYING, OR PHOTOGRAPHING

24-72-201. Legislative declaration.

It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

Source: L. 68: p. 201, § 1. C.R.S. 1963: § 113-2-1.

24-72-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Correspondence" means 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, without limitation:

- (a) Communications sent via U.S. mail;
- (b) Communications sent via private courier;
- (c) Communications sent via electronic mail.

(1.1) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(1.2) "Electronic mail" means an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. "Electronic mail" includes electronic messages that are transmitted through a local, regional, or global computer network.

(1.3) "Executive position" means any nonelective employment position with a state agency, institution, or political subdivision, except employment positions in the state personnel system or employment positions in a classified system or civil service system of an institution or political subdivision.

(1.5) "Institution" includes but is not limited to every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. In particular, the term includes the university of Colorado, the regents thereof, and any other state institution of higher education or governing board referred to by the provisions of section 5 of article VIII of the state constitution.

(1.7) "Local government-financed entity" shall have the same meaning as provided in section 29-1-901 (1), C.R.S.

(2) "Official custodian" means and includes any officer or employee of the state, of any agency, institution, or political subdivision of the state, or of any local government-financed entity who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control.

(3) "Person" means and includes any natural person, including any public employee and any elected or appointed public official acting in an official or personal capacity, and any corporation, limited liability company, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(4.5) "Personnel files" means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure under this part 2 or any other provision of law. "Personnel files" does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under section 23-5-123, C.R.S., or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, special district, public highway authority, rural transportation authority, and housing authority within this state.

(6) (a) (I) "Public records" means and includes all writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121 (2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(II) "Public records" includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) Work product;

(B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent; or

(D) Subject to nondisclosure as required in section 24-72-204 (1).

(III) The acceptance by a public official or employee of compensation for services rendered, or the use by such official or employee of publicly owned equipment or supplies, shall not be construed to convert a writing that is not otherwise a "public record" into a "public record".

(b) "Public records" does not include:

(I) Criminal justice records that are subject to the provisions of part 3 of this article;

(II) Work product prepared for elected officials. However, elected officials may release, or authorize the release of, all or any part of work product prepared for them.

(III) Data, information, and records relating to collegeinvest programs pursuant to sections 23-3.1-225 and 23-3.1-307.5, C.R.S., as follows:

(A) Data, information, and records relating to individual purchasers and qualified beneficiaries of advance payment contracts under the prepaid expense trust fund and the prepaid expense program, including any records that reveal personally identifiable information about such individuals;

(B) Data, information, and records relating to designated beneficiaries of and individual contributors to an individual trust account or savings account under the college savings program, including any records that reveal personally identifiable information about such individuals;

(C) Trade secrets and proprietary information regarding software, including programs and source codes, utilized or owned by collegeinvest; and

(D) Marketing plans and the results of market surveys conducted by collegeinvest.

(IV) Materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of section 24-4.1-107.5.

(V) Notification of a possible nonaccidental fire loss or fraudulent insurance act given to an authorized agency pursuant to section 10-4-1003 (1), C.R.S.

(6.5) (a) "Work product" means and includes all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to:

(I) Notes and memoranda that relate to or serve as background information for such decisions;

(II) Preliminary drafts and discussion copies of documents that express a decision by an elected official.

(b) "Work product" also includes all documents relating to the drafting of bills or amendments, pursuant to section 2-3-505 (2) (b), C.R.S., but it does not include the final version of documents prepared or assembled pursuant to section 2-3-505 (2) (c), C.R.S. "Work product" also includes all research projects conducted by staff of legislative council pursuant to section 2-3-304 (1), C.R.S., if the research is requested by a member of the general assembly and identified by the member as being in connection with pending or proposed legislation or amendments thereto. However, the final product of any such research project shall become a public record unless the member specifically requests that it remain work product. In addition, if such a research project is requested by a member of the general assembly and the project is not identified as being in connection with pending or proposed legislation or amendments thereto, the final product shall become a public record.

(c) "Work product" does not include:

(I) Any final version of a document that expresses a final decision by an elected official;

(II) Any final version of a fiscal or performance audit report or similar document the purpose of which is to investigate, track, or account for the operation or management of a public entity or the expenditure of public money, together with the final version of any supporting material attached to such final report or document;

(III) Any final accounting or final financial record or report;

(IV) Any materials that would otherwise constitute work product if such materials are produced and distributed to the members of a public body for their use or consideration in a public meeting or cited and identified in the text of the final version of a document that expresses a decision by an elected official.

(d) (I) In addition, "work product" does not include any final version of a document prepared or assembled for an elected official that consists solely of factual information compiled from public sources. The final version of such a document shall be a public record. These documents include, but are not limited to:

(A) Comparisons of existing laws, ordinances, rules, or regulations with the provisions of any bill, amendment, or proposed law, ordinance, rule, or regulation; comparisons of any bills, amendments, or proposed laws, ordinances, rules, or regulations with other bills, amendments, or proposed laws, ordinances, rules, or regulations; comparisons of different versions of bills, amendments, or proposed laws, ordinances, rules, or regulations; and comparisons of the laws, ordinances, rules, or regulations of the jurisdiction of the elected official with the laws, ordinances, rules, or regulations of other jurisdictions;

(B) Compilations of existing public information, statistics, or data;

(C) Compilations or explanations of general areas or bodies of law, ordinances, rules, or regulations, legislative history, or legislative policy.

(II) This paragraph (d) shall not apply to documents prepared or assembled for members of the general assembly pursuant to paragraph (b) of this subsection (6.5).

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. "Writings" includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

(8) For purposes of subsections (6) and (6.5) of this section and sections 24-72-203 (2) (b) and 24-6-402 (2) (d) (III), the members of the Colorado reapportionment commission shall be considered elected officials.

Source: L. 68: p. 201, § 2. C.R.S. 1963: § 113-2-2. L. 77: (6) amended, p. 1250, § 2, effective December 31. L. 85: (1.5) added, p. 867, § 1, effective June 6. L. 90: (3) amended, p. 449, § 21, effective April 18. L. 91: (5) amended, p. 726, § 3, effective April 20. L. 92: (4.5) added and (7) amended, p. 1103, § 2, effective July 1. L. 94: (1.3) added, p. 936, § 1, effective April 28; (4.5) amended, p. 832, § 2, effective April 28. L. 96: (1.7) added and (2) and (6) amended, p. 141, § 2, effective April 8; (1), (6), and (7) amended and (1.1), (1.2), and (6.5) added, p. 1480, § 4, effective June 1. L. 97: (6)(b)(II) and (6.5)(b) amended and (6.5)(d) added, p. 1104, §§ 2, 3, effective August 6. L. 98: (6)(b)(III) added, p. 213, § 3, effective August 5. L. 99: (6.5)(c)(IV) amended, p. 205, § 2, effective March 31. L. 2000: (6)(b)(III) amended, p. 223, § 4, effective March 29; (6)(b)(IV) added, p. 243, § 8, effective March 29; (6)(a)(I) amended, p. 415, § 6, effective April 13; (6)(b)(V) added, p. 1736, § 4, effective June 1. L. 2001: (8) added, p. 1075, § 4, effective August 8. L. 2002: (3) amended, p. 643, § 2, effective May 24; (5)

amended, p. 402, § 3, effective August 7. **L. 2004:** (6)(b)(III) amended, p. 575, § 33, effective July 1.

24-72-203. Public records open to inspection.

(1) (a) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as 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.

(b) Where public records are kept only in miniaturized or digital form, whether on magnetic or optical disks, tapes, microfilm, microfiche, or otherwise, the official custodian shall:

(I) Adopt a policy regarding the retention, archiving, and destruction of such records; and

(II) Take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via on-line bulletin boards or other means.

(2) (a) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of the records from the person's custody or control, the location of the records, and what person then has custody or control of the records.

(b) If an official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of the correspondence for the purpose of determining whether the correspondence is a public record.

(3) (a) If the public records requested are in the custody and control of the person to whom application is made but are in active use, in storage, or otherwise not readily available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection.

(b) The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven working days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the three-day period. Extenuating circumstances shall apply only when:

(I) A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three-day period; or

(II) A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three-day period because:

(A) The agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

(B) In the case of the general assembly or its staff or service agencies, the general assembly is in session; or

(III) A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian's obligation to perform his or her other public service responsibilities.

(c) In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

(4) Nothing in this article shall preclude the state or any of its agencies, institutions, or political subdivisions from obtaining and enforcing trademark or copyright protection for any public record, and the state and its agencies, institutions, and political subdivisions are hereby specifically authorized to obtain and enforce such protection in accordance with the applicable federal law; except that this authorization shall not restrict public access to or fair use of copyrighted materials and shall not apply to writings which are merely lists or other compilations.

Source: L. 68: p. 202, § 3. C.R.S. 1963: § 113-2-3. L. 92: (4) added, p. 1104, § 3, effective July 1. L. 96: (1) to (3) amended, p. 1483, § 5, effective June 1. L. 99: IP(3)(b) amended and (3)(b)(III) added, p. 207, § 1, effective March 31.

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(d) Such inspection would be contrary to the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff,

