Faculty of Federal Advocates CLE Program: Transitioning to/from Government Service

Additional Resources

May 24, 2022

Transitions from Private Practice to Public Service

- Andrew Chapin, Mid-Career Transitions: Moving from Private Practice to the Public Sector, *available at* https://www.americanbar.org/groups/government_public/resources/public_lawyer_career_center/Career_Articles/chapin-article-mid-career-transitions/

- Harvard Law School, The Great Firm Escape, *available at* https://hls.harvard.edu/dept/opia/the-great-firm-escape/

- David Lat, 8 Tips for Getting Into – and out of – a Job as a Federal Government Lawyer, *available at* https://abovethelaw.com/2015/11/8-tips-for-getting-into-and-out-of-a-job-as-a-federal-government-lawyer/

Transitions from Public Service to Private Practice

- Lateral Link, Making The Jump From Government Practice To Law Firm Partnership, *available at* https://abovethelaw.com/2021/08/making-the-jump-from-government-practice-to-law-firm-partnership/

- Jon Lindsey, 6 Key Considerations When Moving from Government to Private Practice, *available at* https://news.bloomberglaw.com/business-and-practice/6-key-considerations-when-moving-from-government-to-private-practice/

- David Edelstein, From Government to Firm, Happily: Changing Careers Midstream, *available at* https://www.vorys.com/publications-1710.html

- Jessie K. Liu, Opting In: Making the Move from Government to Private Practice, *available at* https://jenner.com/system/assets/assets/1485/original/Opting_In_-_JKLiu.pdf?1317929165

In addition to the prohibitions discussed herein, federal employees in the following agencies, divisions, or positions are "further-restricted" under the Hatch Act and cannot take an active part in political management or political campaigns (i.e., engage in political activity in concert with a political party, candidate for partisan political office, or partisan political group):

- Election Assistance Commission
- Federal Election Commission
- Office of the Director of National Intelligence
- Central Intelligence Agency
- Defense Intelligence Agency
- National Geospatial Intelligence Agency
- National Security Agency
- National Security Council
- National Security Division (DOJ)
- Criminal Division (DOJ)
- Federal Bureau of Investigation
- Secret Service
- Office of Criminal Investigation (IRS)
- Office of Investigative Programs (Customs)
- Office of Law Enforcement (ATF)
- Merit Systems Protection Board
- U.S. Office of Special Counsel
- Career members of the Senior Executive Service
- Administrative law judges, administrative appeals judges, and contract appeals board members.

For further examples, sample advisory opinions, and frequently asked questions, please visit our website at www.osc.gov.

Who We Are…

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA).

OSC promotes compliance with the Hatch Act by providing advisory opinions about the law. Every year, OSC's Hatch Act Unit provides over a thousand advisory opinions, enabling individuals to determine whether their contemplated political activities are permitted under the Act. The Hatch Act Unit also enforces compliance with the Act by investigating alleged Hatch Act violations. Depending on the nature and severity of the violation, OSC may seek disciplinary action against an employee. OSC prosecutes Hatch Act violations before the Merit Systems Protection Board.

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U.S. OFFICE OF SPECIAL COUNSEL

A Guide to the Hatch Act for Federal Employees

September 2014

Understanding How the Hatch Act Applies to You

The Hatch Act generally applies to employees working in the executive branch of the federal government. The purpose of the Act is to maintain a federal workforce that is free from partisan political influence or coercion.

A Covered Employee:

- **May not** be a candidate for nomination or election to public office in a partisan election.
- **May not** use his or her official authority or influence to interfere with or affect the result of an election. For example:
  - > **May not** use his or her official title or position while engaged in political activity.
  - > **May not** invite subordinate employees to political events or otherwise suggest to subordinates that they attend political events or undertake any partisan political activity.
- **May not** knowingly solicit or discourage the participation in any political activity of anyone who has business before their employing office.
- **May not** solicit, accept, or receive a donation or contribution for a partisan political party, candidate for partisan political office, or partisan political group. For example:
  - > **May not** host a political fundraiser;
  - > **May not** invite others to a political fundraiser;
  - > **May not** sell tickets to a political fundraiser;
  - > **May not** use any e-mail account or social media to distribute, send, or forward content that solicits political contributions.
- **May not** engage in political activity — i.e., activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group — while the employee is on duty, in any federal room or building, while wearing a uniform or official insignia, or using any federally owned or leased vehicle. For example:
  - > **May not** distribute campaign materials;
  - > **May not** display campaign materials or items;
  - > **May not** perform campaign related chores;
  - > **May not** wear or display partisan political buttons, t-shirts, signs, or other items;
  - > **May not** make political contributions to a partisan political party, candidate for partisan political office, or partisan political group;
  - > **May not** post a comment to a blog or a social media site that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group;
  - > **May not** use any e-mail account or social media to distribute, send, or forward content that advocates for or against a partisan political party, candidate for partisan political office, or partisan political group.

A Covered Employee:

- **May** be a candidate in a nonpartisan election.
- **May** register and vote as they choose.
- **May** assist in voter registration drives.
- **May** participate in nonpartisan campaigns.
- **May** contribute money to political campaigns, political parties, or partisan political groups.
- **May** attend political fundraising functions.
- **May** attend political rallies and meetings.
- **May** join political clubs or parties.
- **May** campaign for or against referendum questions, constitutional amendments, or municipal ordinances.
- **May** sign nominating petitions
- **May** circulate nominating petitions.*
- **May** campaign for or against candidates in partisan elections.*
- **May** make campaign speeches for candidates in partisan elections.*
- **May** distribute campaign literature in partisan elections.*
- **May** volunteer to work on a partisan political campaign.*
- **May** express opinions about candidates and issues. If the expression is political activity, however — i.e., activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group — then the expression is not permitted while the employee is on duty, in any federal room or building, while wearing a uniform or official insignia, or using any federally owned or leased vehicle.

* Further restricted employees, as described herein, may not engage in these activities.

What Happens if I Violate the Hatch Act?

An employee who violates the Hatch Act is subject to a range of disciplinary actions, including removal from federal service, reduction in grade, debarment from federal service for a period not to exceed 5 years, suspension, letter of reprimand, or a civil penalty not to exceed $1000.

Previou Next

C.R.S. 24-72-201

Statute current through Chapter 122 of the 2022 Regular Se ion and effective on or before April 22, 2022. The inclu ion of the 2022 legi lation i not final. It will be final later in 2022 after reconciliation with the official tatute , produced by the Colorado Office of Legi lative Legal Service .

Colorado Revised Statutes Annotated Title 24 . Government State (§§ 24 1 101 24 115 118) Public (Open) Records (Arts. 72 72.4) Article 72 .Public Records (Pts. 1 — 7) Part 2. Inspection, Copying, or Photographing (§§ 24-72-200.1 — 24-72-206)

24-72-201. Legislative declaration.

It i declared to be the public policy of thi tate that all public record hall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

History

Source: L. 68:P. 201, § 1.**C.R.S. 1963:**§ 113 2 1.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 24

C.R.S. Title 24, Art. 72, Pt. 2

tate Notes

ANNOTATION

Open records act creates a general presumption in favor of public access to government documents,

exceptions to the act must be narrowly construed, and an agreement by a governmental entity that information in public record will remain confidential i in ufficient to tran form a public record into a private one. Daniel v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

While the statute favors access to records, CORA does not require public disclosure of all documents in the custody of state employees or agencies. Mountain-Plains Inv. v. Parker Jordan Metro. Dist., 2013 COA 123, 312 P.3d 260.

Nothing in the expressions of public policy in the law

concerning the operation of school boards and in the open records act conclusively directs that the terms of a settlement agreement between an outgoing school superintendent and a school district, which allude to unadjudicated allegations of sexual hara ment again t the uperintendent, mu t categorically be ubject to public in pection. Pierce v. St. Vrain Valley Sch. Di t., 981 P.2d 600 (Colo. 1999).

Courts guided by legislative intent in construing provisions.

In construing the open records provisions, the courts are guided by the clear legislative intent manifested in the declaration of policy and the language of the provisions themselves. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Court considers and weighs public interest.

The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public intere t. Martinelli v. Di trict Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Construction of open records law.

Open records law is a general act and will not be interpreted to repeal a conflicting special provision unless the intent to do so is clear and unmistakable. Uberoi v. Univ. of

Colo., 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of § 24-72-202 (1.5)).

Section clearly eliminates any requirement that a person must show a special interest

in order to be permitted access to particular public records. Denver Publ'g Co. v. Dreyfu , 184 Colo. 288, 520 P.2d 104 (1974); Ander on v. Home In . Co., 924 P.2d 1123 (Colo. App. 1996).

The open records act does not expressly limit access

to any records merely because a person is engaged in litigation with the public agency from which access to records is requested. People v. Interest of A.A.T., 759 P.2d 853 (Colo. App. 1988).

Official is unauthorized to deny access in absence of specific statutory provision.

This section establishes the basic premise that in the absence of a specific statute permitting the withholding of information, a public official has no authority to deny any per on acce to public record . Denver Publ'g Co. v. Dreyfu , 184 Colo. 288, 520 P.2d 104 (1974).

Vital statistics records held confidential and exempt from right to inspect.

Eugene Cervi & Co. v. Russell, 31 Colo. App. 525, 506 P.2d 748 (1972), aff'd, 184 Colo. 282, 519 P.2d 1189 (1974).

Police personnel files and staff investigation reports not exempt from discovery.

The open records provisions do not, ipso facto, exempt the personnel files and the staff investigation bureau reports of the Denver police department from discovery in civil litigation. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Applied

in City & County of Denver v. Di trict Court, 199 Colo. 303, 607 P.2d 985 (1980).

‹ Previous Next ›

C.R.S. 24-72-202

Statute current through Chapter 122 of the 2022 Regular Se ion and effective on or before April 22, 2022. The inclu ion of the 2022 legi lation i not final. It will be final later in 2022 after reconciliation with the official tatute , produced by the Colorado Office of Legi lative Legal Service .

24-72-202. Definitions.

A u ed in thi part 2, unle the context otherwi e require :

(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 per onal cu tody and control of the public record in que tion.

(1.2) "Electronic mail" mean an electronic me age that i tran mitted between two or more computer or electronic terminal , whether or not the me age i 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 e tabli hed by the tate con titution or by law, and every governing board thereof. In particular, the term include the univer ity of Colorado, the regent 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.

(1.6) "In titutionally related foundation" mean a nonprofit corporation, foundation, in titute, or imilar entity that i organized for the benefit of one or more in titution and that ha a its principal purpose receiving or using private donations to be held or used for the benefit of an institution. An institutionally related foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.7) "Institutionally related health-care foundation" means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for medical or health-care-related programs or services at an institution. An in titutionally related health care foundation hall be deemed not to be a governmental body, agency, or other public body for any purpo e.

(1.8) "In titutionally related real e tate foundation" mean a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the acquisition, development, financing, leasing, or disposition of real property for the benefit of an institution. An institutionally related real estate foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.9) "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, in titution, or political ubdivi ion of the tate, of any in titutionally related foundation, of any in titutionally related health care foundation, of any in titutionally related real estate foundation, 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 di ability, "per on in intere t" mean and include hi parent or duly appointed legal repre entative.

(4.5) "Personnel files" means and includes home addresses, telephone numbers, financial information, a disclosure of an intimate relationship filed in accordance with the policies of the general assembly, 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, or any compensation, including expense allowances and benefits, paid to employee by the tate, it agencie , in titution , or political ubdivi ion .

(5) "Political ubdivi ion" mean and include every county, city and county, city, town, chool di trict, pecial di trict, public highway authority, regional tran portation 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 ubdivi ion of the tate, or that are de cribed in ection 29 1 902, C.R.S., and held by any local government financed entity for u e in the exerci e of function 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 con tituent to an elected official that clearly implie by it nature or content that the con tituent expect that it i confidential or that i communicated for the purpo e of reque ting that the elected official render a i tance or information relating to a personal and private matter that is not publicly known affecting the constituent 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".

(IV) "Public records" means, except as provided in subparagraphs (VIII) and (IX) of paragraph (b) of thi ub ection (6), for an in titutionally related foundation, an in titutionally related health care foundation, or an in titutionally related real e tate foundation, all writings relating to the requests for disbursement or expenditure of funds, the approval or denial of requests for disbursement or expenditure of funds, or the disbursement or expenditure of funds, by the institutionally related foundation, the institutionally related health-care foundation, or the institutionally related real estate foundation, to, on behalf of, or for the benefit of the institution or any employee of the institution. For purposes of this subparagraph (IV), "expenditure" shall be defined in accordance with generally accepted accounting principles.

(b) "Public records" does not include:

(I) Criminal ju tice record that are ubject to the provi ion of part 3 of thi article;

(II) Work product prepared for elected official . However, elected official may relea e, 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, including medical records, relating to designated beneficiarie of and individual contributor to an individual tru t account or aving account

under the aving program e tabli hed pur uant to part 3 of article 3.1 of title 23, C.R.S., including any record that reveal per onally identifiable information about uch individual ;

(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 po ible nonaccidental fire lo or fraudulent in urance act given to an authorized agency pur uant to ection 10 4 1003 (1), C.R.S.

(VI) For purposes of an institutionally related foundation, any documents, agreements, or other records or information other than the writings relating to the financial expenditure records specified in subparagraph (IV) of paragraph (a) of this subsection (6).

(VII) For purposes of an institution or an institutionally related foundation:

(A) The identity of, or records or information identifying or leading to the identification of, any donor or prospective donor to an institution or an institutionally related foundation;

(B) The amount of any actual or prospective gift or donation from a donor or prospective donor to an in titutionally related foundation;

(C) Proprietary fundrai ing information of an in titution or an in titutionally related foundation; or

(D) Agreements or other documents relating to gifts or donations or prospective gifts or donations to an institution or an institutionally related foundation from a donor or prospective donor.

(VIII) For purposes of an institutionally related health-care foundation, expenditures by an institutionally related health-care foundation to an institution for medical or health-care-related programs or services;

(IX) For purposes of an institutionally related real estate foundation, prior to the completion of any transaction for the acquisition, development, financing, leasing, or disposition of real property, all writing relating to uch tran action;

(X) The information ecurity plan of a public agency developed pur uant to ection 24 37.5 404 or of an institution of higher education developed pursuant to section 24-37.5-404.5;

(XI) Information security incident reports prepared pursuant to section 24-37.5-404 (2)(e) or 24-37.5-404.5 (2)(e);

(XII) Information security audit and assessment reports prepared pursuant to section 24-37.5-403 (2)(d) or 24-37.5-404.5 (2)(d);

(XIII) The information provided to the state medical marijuana licensing authority pursuant to section 25-1.5-106 (7)(e), C.R.S.;

(XIV) Pursuant to the "Colorado Partnership for Quality Jobs and Services Act", part 11 of article 50 of thi title 24, record created in compliance with the requirement of a tate employee partner hip agreement a pecified in ection 24 50 1111 (3)(d) and document created in connection with the dispute resolution process for an employee partnership agreement as specified in section 24-50-1113 (2)(e); or

(XV) Granular coverage data, as defined in and submitted to the office of information technology pursuant to section 24-37.5-119 (9)(m).

(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 official in reaching a deci ion within the cope of their authority. Such material include, but

are not limited to:

(I) Note and memoranda that relate to or erve a background information for uch decisions;

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

(b) "Work product" also includes:

(I) All document relating to the drafting of bill or amendment , pur uant to ection 2 3 304 (1) or 2 3 505 (2)(b), C.R.S., but it doe not include the final ver ion of document prepared or assembled pursuant to section 2-3-505 (2)(c), C.R.S.;

(II) All documents prepared or assembled by a member of the general assembly relating to the drafting of bills or amendments;

(III) All documents prepared by or submitted to any legislative staff in connection with assisting a member of the general assembly in responding to the correspondence from a constituent when such correspondence is not a public record of an elected official as provided for in subsection (6) of this section;

(IV) All document and all re earch project conducted by taff of legi lative council pur uant to ection 2 3 304 (1), C.R.S., if the re earch i reque ted by a member of the general a embly and identified by the member a 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 i to inve tigate, track, or account for the operation or management of a public entity or the expenditure of public money, together with the final ver ion of any upporting 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 a embled for an elected official that con i t olely of factual information compiled from public ource . The final ver ion of uch a document hall be a public record. The e 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) Compilation of exi ting public information, tati tic , or data;

(C) Compilation or explanation of general area or bodie of law, ordinance , rule , or regulation , legi lative hi tory, or legi lative 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.

"Writing " include digitally tored data, including without limitation electronic mail me age , but doe not include computer oftware.

(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 independent congressional redistricting commission and the independent legislative redistricting commission are considered elected officials.

History

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 Augu t 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. **L. 2005:**(1.6), (1.8), (1.9), (6)(a)(IV), (6)(b)(VI), (6)(b)(VII), (6)(b)(VIII), and (6)(b)(IX) added and (2) amended, pp. 530, 531, §§ 1, 2, 3, effective May 24; (5) amended, p. 1068, § 15, effective January 1, 2006. **L. 2006:**(1.7), (1.8), and (1.9) amended, p. 1503, § 43, effective June 1; (6)(b)(X), (6)(b)(XI), and (6)(b)(XII) added, p. 1719, § 2, effective June 6. **L. 2007:**(6)(b)(X), (6)(b)(XI), and (6)(b)(XII) amended, p. 917, § 16, effective May 17. **L. 2009:**(6)(a)(II)(C) and (6.5)(b) amended,(HB 09 1348), ch. 358, p. 1864, § 3, effective June 1. **L. 2010:**(6)(b)(XI) and (6)(b)(XII) amended and (6)(b)(XIII) added,(HB 10 1284), ch. 355, p. 1687, § 13, effective July 1. **L. 2011:**(6)(b)(X) amended,(SB 11-062), ch. 128, p. 435, § 18, effective April 22; (6)(b)(XIII) amended,(HB 11-1043), ch. 266, p. 1211, § 18, effective July 1. **L. 2015:**(6)(b)(III)(B) amended,(HB 15-1359), ch. 269, p. 1055, § 15, effective June 3. **L. 2019:**(4.5) amended, (SB 19-244), ch. 243, p. 2377, § 4, effective May 20. **L. 2020:**(6)(b)(XIV) added,(HB 20-1153), ch. 109, p. 440, § 5, effective June 16; (8) amended,(SB 20-186), ch. 272, p. 1329, § 16, effective July 11. **L. 2021:**(6)(b)(XV) added,(HB 21-1109), ch. 489, p. 3526, § 3, effective July 7.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 24

C.R.S. Title 24, Art. 72, Pt. 2

State Notes

Notes

Editor's note:

(1) Amendment to ub ection (6) by Hou e Bill 96 1029 and Senate Bill 96 212 were harmonized.

(2) Section 11 of chapter 489 (HB 21-1109), Session Laws of Colorado 2021, provides that the act changing this section applies to applications filed on or after July 7, 2021.

ANNOTATION

Law reviews.

For article, "E mail, Open Meeting , and Public Record ", ee 25 Colo. Law. 99 (Oct. 1996).

The courts are not agencies for all purposes of this act.

Office of State Court Adm'r v. Background Info. Servs., Inc., 994 P.2d 420 (Colo. 1999).

Records of the supreme court regulation counsel and office of attorney regulation counsel are not public records.

Supreme court regulation counsel and the office of attorney regulation counsel are part of the judicial branch of state government. Because the judicial branch is not the state or an agency of the state for purposes of the open records act, judicial records, including regulation counsel records, are not public records as defined in subsection (6). Gleason v. Judicial Watch, Inc., 2012 COA 76, 292 P.3d 1044.

Scope of term "personnel files".

A public entity may not re trict acce to information by merely placing a record in a personnel file; a legitimate expectation of privacy must exist. Denver Publ'g Co. v. Univ.

of Colo., 812 P.2d 682 (Colo. App. 1990).

Information "maintained because of the employer-employee relationship" so as to be exempt from disclosure under the personnel files exemption must be of the same general nature as an employee's home address and telephone number or personal financial information; it does not include records relating to complaints of sexual harassment, gender discrimination, and retaliation. Such records must be produced,

ubject to redaction of name of individual again t whom complaint could not be ub tantiated. Daniel v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

A record that documents a teacher's request for sick leave is not part of the teacher's personnel file.

Such records are not of the same general nature as a teacher's personal demographic information and they should not be kept confidential as personnel files pursuant to the first sentence in subsection (4.5) because a teacher's absence is directly related to the teacher's job as a public employee. The fact of a teacher's absence from the workplace is neither personal nor demographic. Jefferson County Educ. v. Jefferson Sch. Dist., 2016 COA 10, 378 P.3d 835.

A record that documents a teacher's request for sick leave pertains to "any compensation" and the benefit of sick leave.

Therefore, these records fall under the second sentence of subsection (4.5), and the school district and the custodian of the records are obligated to release them when requested pursuant to this act. Jefferson County Educ. v. Jefferson Sch. Dist., 2016 COA 10, 378 P.3d 835.

Whether a private entity is a "political subdivision"

for purposes of the Colorado Open Records Act is determined by considering a nonexclusive list of nine factors examining the level of a public agency's involvement with the private entity. The factors include: (1) The level of public funding; (2) whether fund were commingled; (3) whether the activity wa conducted on publicly owned property; (4) whether ervice contracted for were an integral part of the public agency's chosen decision-making process; (5) whether the private entity was performing a governmental function or a function the public agency would otherwise perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity was functioning. Denver Post Corp. v. Stapleton Dev. Corp., 19 P.3d 36 (Colo. App. 2000).

Autopsy reports are "public records", as defined in this section.

Denver Publ'g Co. v. Dreyfu , 184 Colo. 288, 520 P.2d 104 (1974).

Records of state compensation authority included.

State compensation authority is a statutorily created "political subdivision", which is indistinguishable from any other "political subdivision" specified in subsection (5) of this section and is, therefore, subject to the state open records law. Dawson v. State Comp.

Ins. Auth., 811 P.2d 408 (Colo. App. 1990).

Documents were public records in custody of stadium district under subsections (1) and (2)

where documents, while never in actual personal control or custody of any employee or officer of district, were maintained by general contractor of stadium in manner that gave

di trict full acce to document . Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Police records are not "public records".

Police department files and records showing arrests, convictions, and other information are not public records. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

Portions of draft legislation prepared by the office of legislative legal services and excerpted in a memorandum prepared by a private citizen were work product and were not public records subject to disclosure.

Draft legislation prepared by the office of legislative legal services and never introduced in the general a embly i work product under ub ection (6.5)(b) and § 2 3 505 (2)(b), doe not automatically lo e it work product tatu when incorporated into a memorandum that i otherwi e a public record, and may be redacted from the memorandum when the memorandum is produced. Ritter v. Jones, 207 P.3d 954 (Colo. App. 2009).

And the work product disclosure exemption was not waived

when the legislator who had requested the draft legislation voluntarily disclosed it only to persons with whom the legislator had a common legal interest. To hold otherwise would contravene the purpose of the general assembly's work product exemption by limiting the legislators' ability to consult in confidence regarding draft legislation with private parties possessing expertise in a particular area. Ritter v. Jones, 207 P.3d 954 (Colo. App. 2009).

Draft emails prepared for an unelected appointee are not the type of work product excluded from definition of "public records".

Only work product that is in the correspondence of elected officials or prepared for elected officials is excluded from the definition of public records. Although the draft emails prepared for an appointed official were work product, they were not prepared for an elected official and therefore were subject to inspection as public records. Bjornsen v. Bd. of County Comm'rs, 2019 COA 59, __ P.3d __.

Where custodian redacted work product from emails between elected officials,

the district court should have considered whether the redactions were also proper under the open meeting law, § 24 6 402. Bjorn en v. Bd. of County Comm'r , 2019 COA 59, P.3d .

Any record made, maintained, or kept by a criminal justice entity is not a public record.

Materials seized by sheriff's department pursuant to a valid search warrant and held by the department were not open to inspection as public records. Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005).

Such records may be subject to inspection as criminal justice records. Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005)..

Any record not received, possessed, or maintained by a metropolitan district, through a custodian, is not a public record.

Records concerning the project at issue in the CORA request are required to be produced if those records were sent to or received by the district, including those received by a third party. Mountain-Plains Inv. v. Parker Jordan Metro. Dist., 2013 COA 123, 312 P.3d 260.

Records of university not included.

Reference to "institution" in definition of "public records" is not specific enough to demonstrate legislative intent to make open records law applicable to the university of Colorado. Uberoi v. Univ. of Colo., 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of ub ection (1.5)).

A county retirement plan operates as an agency or instrumentality of the county

when the plan has availed itself of public entity tax and health benefits, has used county purchasing accounts, facilities, and the county seal, is authorized to levy a retirement tax, and has a budget that is factored into the county budget. Such plan is thereby subject to the open meetings law and the open records law. Zubeck v. El Paso County Ret. Plan, 961 P.2d 597 (Colo. App. 1998).

Severance payments received pursuant to the city of Colorado Springs transitional employment program were subject to disclosure

becau e they were not part of employee ' "per onnel file ". Statutory definition of "per onnel file " pecifically exclude uch amount . Freedom New paper , Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

To be a "public record" as defined by subsection (6)(a)(II), an e-mail message must be for use in the performance of public functions

or involve the receipt of public funds. A message sent in furtherance of a personal relationship does not fall within the definition. The fact that a public employee or public official sent or received a message while compensated by public funds or using publicly owned computer equipment is insufficient to make the message a "public record". Denver Publ'g Co. v. Bd. of County Comm'rs, 121 P.3d 190 (Colo. 2005).

Certain documents prepared by city council in connection with performance evaluation of city administrator constituted "work product" and are therefore exempt from disclosure requirements.

Because preliminary review forms prepared by individual city council members, and

spreadsheet based on those forms, were advisory in nature and did not express a final decision by any council member, city was not required to disclose them as public records when requested by local newspaper. Ft. Morgan v. E. Colo. Publ'g Co., 240 P.3d 481 (Colo. App. 2010).

A mixed message that addresses both the performance of public functions and private matters must be redacted

to exclude from di clo ure the information that doe not addre the performance of public function . The open record law doe not mandate that e mail record be disclosed in complete form or not at all. Denver Publ'g Co. v. Bd. of County Comm'rs, 121 P.3d 190 (Colo. 2005).

Billing statements generated by a phone company and kept in the possession of the governor are not public records

when they logged calls made from a personal phone that the governor used to discuss both public and private business and the parties stipulated that the governor kept and used the statements only for payment of the bills, did not obtain any reimbursement from the tate for payment of the bill , and did not turn the bill over to any other tate agency or official for their u e. Denver Po t Corp. v. Ritter, 255 P.3d 1083 (Colo. 2011).

The independent ethics commission (IEC) is not subject to CORA.

Subsection (6) lists the entities subject to CORA. The IEC is not the state or a political subdivision of the state; therefore it must be an "agency" or "institution" to be subject to CORA. The IEC is not an agency. Nor is it an institution. Thus, the IEC is not subject to CORA and the district court lacked subject matter jurisdiction to review appellant's records request to the IEC under CORA. Dunafon v. Krupa, 2020 COA 149, 477 P.3d 785.

Research References & Practice Aids

Cross references:

(1) For the legislative declaration contained in the 1996 act amending subsections (1), (6), and (7) and enacting subsections (1.1), (1.2), and (6.5), see section 1 of chapter 271, Session Laws of Colorado 1996.

(2) For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 187, Session Laws of Colorado 2002.

(3) For the legislative declaration contained in the 2005 act amending subsection (5), see section 1 of chapter 269, Session Laws of Colorado 2005.

(4) For the legi lative declaration in HB 20 1153, ee ection 1 of chapter 109, Se ion Law of Colorado 2020.

Previous Next

C.R.S. 24-72-203

Statute current through Chapter 122 of the 2022 Regular Se ion and effective on or before April 22, 2022. The inclu ion of the 2022 legi lation i not final. It will be final later in 2022 after reconciliation with the official tatute , produced by the Colorado Office of Legi lative Legal Service .

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 de truction of uch record ; and

(II) Take uch mea ure a are nece ary to a i t the public in locating any pecific public record ought and to en ure public acce to the public record without unrea onable 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 online 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 per on' cu tody or control, the location of the record , and what per on then ha cu tody or control of the record .

(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 corre pondence for the purpo e of determining whether the corre pondence i 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 reque t hall be within a rea onable time after the reque t. A u ed in thi ub ection (3), a "rea onable time" hall be pre umed to be three working day or le . Such period may be extended if extenuating circum tance exi t. However, uch period of exten ion hall 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 becau e:

(A) The agency need to devote all or ub tantially all of it re ource 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, pecifically identified document.

(3.5)

(a) Except as otherwise required by subsection (3.5)(b) of this section:

(I) If a public record is stored in a digital format that is neither searchable nor sortable, the custodian shall provide a copy of the public record in a digital format.

(II) If a public record is stored in a digital format that is searchable but not sortable, the custodian shall provide a copy of the public record in a searchable format.

(III) If a public record is stored in a digital format that is sortable, the custodian shall provide a copy of the public record in a sortable format.

(b) A custodian is not required to produce a public record in a searchable or sortable format in accordance with ub ection (3.5)(a) of thi ection if:

(I) Producing the record in the reque ted format would violate the term of any copyright or licen ing agreement between the cu todian and a third party or re ult in the relea e of a third party's proprietary information; or

(II) After making reasonable inquiries, it is not technologically or practically feasible to permanently remove information that the custodian is required or allowed to withhold within the requested format, it is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format, or if the custodian would be required to purchase oftware or create additional programming or functionality in it exi ting oftware to remove the information.

(c) If a custodian is not able to comply with a request to produce a public record that is subject to disclosure in a requested format specified in subsection (3.5)(a) of this section, the custodian shall produce the record in an alternate format or issue a denial under section 24-72-204 and shall provide a written declaration attesting to the reasons the custodian is not able to produce the record in the requested format. If a court subsequently rules the custodian should have provided the record in the requested format, attorney fees may be awarded only if the custodian's action was arbitrary or capricious.

(d) Altering an exi ting public record, or exci ing field of information pur uant to thi ub ection (3.5) to remove information that the cu todian i either required or permitted to withhold, doe not con titute the creation of a new public record.

(e) Nothing in this subsection (3.5) relieves or mitigates the obligations of a custodian to produce a public record in a format accessible to individuals with disabilities in accordance with Title II of the federal "Americans with Disabilities Act of 1990", 42 U.S.C. sec. 12131 et. seq., and other federal or state laws.

(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 thi authorization hall not re trict public acce to or fair u e of copyrighted material and hall not apply to writing which are merely li t or other compilations.

History

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. **L. 2017:**(3.5) added,(SB 17 040), ch. 286, p. 1582, § 1, effective Augu t 9. **L. 2018:**IP(3.5)(b) and (3.5)(c) amended,(HB 18 1375), ch. 274, p. 1711, § 53, effective May 29.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 24

C.R.S. Title 24, Art. 72, Pt. 2

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ANNOTATION

Law reviews.

For article, "E-mail, Open Meetings, and Public Records", see 25 Colo. Law. 99 (Oct. 1996). For article, "Privacy Rights and Public Records in Colorado: Hiding in Plain Sight", ee 33 Colo. Law. 111 (Oct. 2004). For article, "Copyright, Privacy, and Open Record Act Web ite Policie for Governmental Entitie ", ee 41 Colo. Law. 41 (Jan. 2012).

First amendment does not guarantee the press a constitutional right of special access

to information not available to the public generally. This is true where the information sought is personal in nature and is to be published primarily for commercial purposes. Eugene Cervi & Co. v. Russell, 184 Colo. 282, 519 P.2d 1189 (1974).

Court considers and weighs public interest in determining disclosure question.

The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legi lative intent that a court hould con ider and weigh whether di clo ure would be contrary to the public intere t. Martinelli v. Di trict Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Statutory scheme strikes a balance

between the statutory right of the public to inspect and copy public records and the administrative burdens that may be placed upon government agencies in responding to open records requests. Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994); Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

By requiring specificity in records requests, spelling out reasonable procedures, and providing that records requests will not take priority over the entity's previously cheduled work activitie , the entity' policy i con i tent with the tatutory authorization for "rea onably nece ary" rule and the juri prudential recognition of the need for balance between the public' right to in pect public record and the administrative burdens that may be placed on government agencies responding to such requests. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

Regulations that reasonably restrict the manner of access

and do not deny access to public records do not violate the public records law. Tax Data Corp. v. Hutt, 826 P.2d 353 (Colo. App. 1991).

Regulations which limit access to records to minimize the dangers of record alteration and obliteration are reasonably necessary within the meaning of

subsection (1).

Tax Data Corp. v. Hutt, 826 P.2d 353 (Colo. App. 1991).

A computer print-out

provides the reader with the same information as would a visual examination of the same information on a computer screen. Oral communications and microfiche copies are also readily accessible and meet the statutory requirements concerning reasonable accessibility. Tax Data Corp. v. Hutt, 826 P.2d 353 (Colo. App. 1991).

Nominal research and retrieval fee permitted

under subsection (1)(a). Although the opens records law does not expressly require the payment of a fee to exerci e the right of in pection, legi lative hi tory reflect that thi omi ion wa intentional. Black v. S.W. Water Con erv. Di t., 74 P.3d 462 (Colo. App. 2003).

Charging an advance deposit in a reasonable amount is not in violation of CORA.

A custodian may charge a reasonable fee for retrieving and researching records, including the time it takes to identify and segregate records that need not be disclosed. Mountain-Plains Inv. v. Parker Jordan Metro. Dist., 2013 COA 123, 312 P.3d 260.

Subsection (2) does not impose an unreasonable burden on a state agency.

There is no obligation to investigate outside the department for the requested documents or to undertake a special search to locate requested documents. The agency need only to notify the reque ting party that it ha no knowledge of the location of reque ted record , or to refer uch party to the agency it believe might maintain the records. Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

Construction of open records law.

Open records law is a general act and will not be interpreted to repeal a conflicting special provision unless the intent to do so is clear and unmistakable. Uberoi v. Univ. of Colo., 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of § 24-72-202 (1.5)).

The courts do not have an implied duty to manipulate computer generated data

under the public record act in order to create a new document olely for purpo e of di clo ure. Office of State Court Adm'r v. Background Info. Serv ., Inc., 994 P.2d 420 (Colo. 1999).

Access to court-maintained files involves a fragile balance

between the interests of the public and the protection of individuals who are parties to cases in court. Office of State Court Adm'r v. Background Info. Servs., Inc., 994 P.2d 420 (Colo. 1999).

No implied duty to delete exempt information.

The fact that data which i exempt under the open record law could be altered uch that it would qualify a group chola tic achievement data not ubject to an exemption does not create a duty on the part of the school district to do such alteration. The exceptions to the open records law are unambiguous and do not support a judicial interpretation of an implied duty. Sargent Sch. Dist. v. Western Servs., 751 P.2d 56 (Colo. 1988).

Records not available to the requesting party at the time of the request because of his incarceration, must be open to his inspection at a reasonable time when he is no longer confined.

Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

Was reasonable for court to conclude that a request for written approval or certification of an institution as an accredited law school was not an existing document or "writing".

Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

Vital statistics records held confidential and exempt from right to inspect.

Eugene Cervi & Co. v. Russell, 31 Colo. App. 525, 506 P.2d 748 (1972), aff'd, 184 Colo. 282, 519 P.2d 1189 (1974).

Claim that transportation contracts entered into between city department of public utilities and railroad were confidential

commercial matters did not preclude disclosure of contracts under open records act, where governmental body i involved. Freedom New v. Denver & Rio Grande R. Co., 731 P.2d 740 (Colo. App. 1986).

Federal law, i.e. the Staggers Act of 1980, which provides that certain information in contracts filed with Interstate Commerce Commission is available only where requested by certain specified parties does not prohib t public disclosure under open records act of transportation contracts entered into between city and railroad. Freedom News v. Denver & Rio Grande R. Co., 731 P.2d 740 (Colo. App. 1986).

Privileges for attorney-client communication and attorney work product

established by common law, though incorporated into open records law, are waived by any voluntary disclosure by privilege holder to a third person. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Class record sheet qualifies as "scholastic achievement data on individual persons".

Because the class record sheets with the "Comprehensive Test of Basic Skills" test results provide individual student scores which directly correspond to individual student names, these sheets are protected under the open records law as "scholastic achievement data on individual persons". Sargent Sch. Dist. v. Western Servs., 751 P.2d 56 (Colo. 1988).

Trial court was presented with insufficient evidence to conclude that records were not "public records".

The court's decision was based only on evidence demonstrating that the records were not maintained by the department of corrections; no evidence was presented concerning the records of any other agency. Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

The names of transitional employment program participants and the amounts paid to them were not exempt from disclosure under the Colorado Open Records Act.

Releasing the total amount paid to employees under the program is inconsistent with the plain language of the tatute. Freedom New paper , Inc. v. Tollef on, 961 P.2d 1150 (Colo. App. 1998).

Records custodian cannot be sanctioned for failure to comply with time limits in subsection (3)(b)

in situations where compliance with a request within those time limits is found to be a physical impossibility. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

Research References & Practice Aids

Cross references:

For the legi lative declaration contained in the 1996 act amending ub ection (1) to (3), ee ection 1 of chapter 271, Se ion Law of Colorado 1996.

‹ Previou Next ›

C.R.S. 24-72-204

Statute current through Chapter 122 of the 2022 Regular Se ion and effective on or before April 22, 2022. The inclu ion of the 2022 legi lation i not final. It will be final later in 2022 after reconciliation with the official tatute , produced by the Colorado Office of Legi lative Legal Service .

Colorado Revised Statutes Annotated Title 24 . Government State (§§ 24 1 101 24 115 118) Public (Open) Records (Arts. 72 72.4) Article 72 .Public Records (Pts. 1 — 7) Part 2. Inspection, Copying, or Photographing (§§ 24-72-200.1 — 24-72-206)

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

(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 in pection would be contrary to any federal tatute or regulation i ued 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 record of the inve tigation conducted by any heriff, pro ecuting attorney, or police department, any record of the intelligence information or ecurity procedure of any heriff, pro ecuting attorney, or police department, or any inve tigatory file compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the tate per onnel y tem or any imilar y tem hall be available for in pection, but not copying or reproduction, by the per on in intere t after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation;

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until uch time a title to the property or property intere t ha pa ed to the tate or political ubdivi ion; except that the content of uch apprai al hall be available to the owner of the property, if a condemning authority determine that it intend to acquire aid property a provided in section 38-1-121, C.R.S., relating to eminent domain proceedings, but, in any case, the contents of such appraisal shall be available to the owner under this section no later than one year after the condemning authority receives said appraisal; and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner of such property who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which the owner has obtained relative to the proposed acquisition of the property.

(V) Any market analy i data generated by the department of tran portation' bid analy i and management y tem for the confidential u e of the department of tran portation in awarding contracts for construction or for the purchase of goods or services and any records, documents, and automated systems prepared for the bid analysis and management system;

(VI) Records and information relating to the identification of persons filed with, maintained by, or prepared by the department of revenue pursuant to section 42-2-121, C.R.S.;

(VII) Electronic mail addresses provided by a person to an agency, institution, or political subdivision of the state for the purposes of future electronic communications to the person from the agency, institution, or political subdivision; and

(VIII)

(A) Specialized detail of either ecurity arrangement or inve tigation or the phy ical and cyber a et of critical infra tructure, including the pecific engineering, vulnerability, detailed design information, protective measures, emergency response plans, or system operational data of such assets that would be useful to a person in planning an attack on critical infrastructure but that does not simply provide the general location of such infrastructure. Nothing in this subsection (2)(a)(VIII) prohibits the custodian from transferring records containing specialized details of either security arrangements or investigations or the physical and cyber assets of critical infrastructure to the division of homeland security and emergency management in the department of public safety, the governing body of any city, county, city and county, or other political subdivision of the state, or any federal, state, or local law enforcement agency; except that the cu todian hall not tran fer any record received from a

nongovernmental entity without the prior written con ent of the entity unle uch information i already publicly available.

(B) Records of the expenditure of public moneys on security arrangements or investigations, including contracts for security arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, shall be open for inspection, except to the extent that they contain specialized details of security arrangements or investigations. A custodian may deny the right of inspection of only the portions of a record described in this ub ubparagraph (B) that contain pecialized detail of ecurity arrangement or inve tigation and hall allow in pection of the remaining portion of the record.

(C) If an official custodian has custody of a public record provided by another public entity, including the state or a political subdivision, that contains specialized details of security arrangements or investigations, the official custodian shall refer a request to inspect that public record to the official custodian of the public entity that provided the record and shall disclose to the person making the request the names of the public entity and its official custodian to which the request is referred.

(IX)

(A) Any record of ongoing civil or admini trative inve tigation conducted by the tate or an agency of the tate in furtherance of their tatutory authority to protect the public health, welfare, or afety unle the inve tigation focu e on a per on or per on in ide of the investigative agency.

(B) 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) Notwithstanding any other provision of this subparagraph (IX), a record is not subject to withholding on the grounds that it is maintained or kept in a civil or administrative inve tigative file except pur uant to paragraph (a) of ub ection (6) of thi ection if the record wa publicly di clo ed; wa filed with an agency of the tate by a regulated entity under a statutory, regulatory, or permit requirement; or was received from a governmental entity and would be available if requested directly from the transmitting entity.

(D) Nothing in this subparagraph (IX) prohibits an agency from disclosing information or materials during an open investigation if it is in the interest of public health, welfare, or safety.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current event , it hall be allowed to all uch new media.

(c) Notwith tanding any provi ion to the contrary in ubparagraph (I) of paragraph (a) of thi subsection (2), the custodian shall deny the right of inspection of any 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.

(d) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by a witness protection board, the department of public safety, or a prosecuting attorney that are confidential pursuant to section 24-33.5-106.5.

(e) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of thi ub ection (2), the cu todian hall deny the right of in pection of any material received,

made, or kept by the afe2tell program, a de cribed in ection 24 31 606.

(3)

(a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that the custodian shall make any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, available to the person in interest in accordance with this subsection (3):

(I) Medical, mental health, ociological, and chola tic achievement data, and electronic health record , on individual per on , other than chola tic achievement data ubmitted a part of finalists' records as set forth in subsection (3)(a)(XI) of this section and exclusive of coroners' autopsy reports and group scholastic achievement data from which individuals cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II)

(A) Personnel files; but such files shall be available to the person in interest and to the duly elected and appointed public official who upervi e uch per on' work.

(B) The provi ion of thi ubparagraph (II) hall not be interpreted to prevent the public in pection or copying of any employment contract or any information regarding amount paid or benefits provided under any settlement agreement pursuant to the provisions of article 19 of this title.

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number unless disclosure of the number is required, permitted, or authorized by state or federal law, furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitation placed thereon a condition of uch contribution ;

(VI) Except a provided in ection 1 2 227, addre e and telephone number of tudent in any public elementary or secondary school;

(VII) Library records disclosing the identity of a user as prohibited by section 24-90-119;

(VIII) Repealed.

(IX) Names, addresses, telephone numbers, and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services that are owned and operated by the state, its agencies, institutions, or political subdivisions; except that nothing in this subparagraph (IX) shall prohibit the custodian of records from transmitting such data to any agent of an investigative branch of a federal agency or any criminal ju tice agency a defined in ection 24 72 302 (3) that make a reque t to the cu todian to in pect uch record and who a ert that the reque t for information i reasonably related to an investigation within the scope of the agency's authority and duties. Nothing in this subparagraph (IX) shall be construed to prohibit the publication of such information in an aggregate or statistical form so classified as to prevent the identification, location, or habits of individuals.

(X)

(A) Any records of sexual harassment complaints and investigations, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain acce to information nece ary to the inve tigation of uch a complaint. Thi ub

ubparagraph (A) hall not apply to record of exual hara ment complaint and inve tigation that are included in court file and record of court proceeding . Di clo ure of all or a part of any records of sexual harassment complaints and investigations to the person in interest is permissible to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved. This sub-subparagraph (A) shall not prec ude disclosure of all or part of the results of an investigation of the general employment policies and procedures of an agency, office, department, or division, to the extent that the di clo ure can be made without permitting the identification, a a re ult of the di clo ure, of any individual involved.

(B) A person in interest under this subparagraph (X) includes the person making a complaint and the person whose conduct is the subject of such a complaint.

(C) A person in interest may make a record maintained pursuant to this subparagraph (X) available for public inspection when such record supports the contention that a publicly reported, written, printed, or spoken allegation of sexual harassment against such person is false.

(D) Repealed.

(X.5) Record created, maintained, or provided to a cu todian by the office of legi lative workplace relation created in ection 2 3 511 that are related to a workplace hara ment complaint or inve tigation, a complaint under the workplace expectation policy, or an inquiry or request concerning workplace harassment or conduct, whether or not the records are part of a formal or informal complaint or resolution process;

(XI)

(A) Except as provided in subsection (3)(a)(XI)(D) of this section, records submitted by or on behalf of an applicant or candidate for any employment position, including an applicant for an executive position as defined in section 24-72-202 (1.3) who is not a finalist. For purposes of this subsection (3)(a)(XI), "finalist" means an applicant or candidate for an executive position as the chief executive officer of a state agency, institution, or political subdivision or agency thereof who i named a a finali t pur uant to ection 24 6 402 (3.5).

(B) Thi ub ection (3)(a)(XI) hall not be con trued to prohibit the public in pection or copying of any records submitted by or on behalf of a finalist or the applications of past or current employees; except that letters of reference or medical, psychological, and sociological data concerning finalists or past or current employees shall not be made available for public inspection or copying.

(C) This subsection (3)(a)(XI) applies to employment selection processes for all employment and executive positions, including, but not limited to, selection processes conducted or assisted by private persons or firms at the request of a state agency, institution, or political subdivision.

(D) Notwith tanding ub ection (3)(a)(XI)(A) of thi ection, a cu todian hall allow public in pection of the demographic data of a candidate who wa interviewed by the tate public body, local public body, or search committee for an executive position as defined in section 24-72-202 (1.3), but is not named as a finalist pursuant to subsection 24-6-402 (3.5). For purposes of this subsection (3)(a)(XI)(D), "demographic data" means information on a candidate's race and gender that has been legally requested and voluntarily provided on the candidate's application and does not include the candidate's name or other information.

(XII) Any record indicating that a person has obtained an identifying license plate or placard for persons with disabilities under section 42-3-204, C.R.S., or any other motor vehicle record that would reveal the presence of a disability;

(XIII) Record protected under the common law governmental or "deliberative proce "

privilege, if the material i o candid or per onal that public di clo ure i likely to tifle hone t and frank di cu ion within the government, unle the privilege ha been waived. The general assembly hereby finds and declares that in some circumstances, public disclosure of such records may cause substantial injury to the public interest. If any public record is withheld pursuant to this subparagraph (XIII), the custodian shall provide the applicant with a sworn statement specifically describing each document withheld, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public intere t. If the applicant o reque t , the cu todian hall apply to the di trict court for an order permitting him or her to re trict di clo ure. The application hall be ubject to the procedures and burden of proof provided for in subsection (6) of this section. All persons entitled to claim the privilege with respect to the records in issue shall be given notice of the proceedings and shall have the right to appear and be heard. In determining whether disclosure of the records would cause substantial injury to the public interest, the court shall weigh, based on the circumstances presented in the particular case, the public interest in honest and frank discussion within government and the beneficial effects of public scrutiny upon the quality of governmental decision-making and public confidence therein.

(XIV) Veterinary medical data, information, and record on individual animal that are owned by private individual or bu ine entitie , but are in the cu tody of a veterinary medical practice or ho pital, including the veterinary teaching ho pital at Colorado tate university, that provides veterinary medical care and treatment to animals. A veterinary-patient-client privilege exists with respect to such data, information, and records only when a person in interest and a veterinarian enter into a mutual agreement to provide medical treatment for an individual animal and such person in interest maintains an ownership interest in such animal undergoing treatment. For purposes of this subsection (3)(a)(XIV), "person in interest" means the owner of an animal undergoing veterinary medical treatment or such owner's designated representative. Nothing in this subsection (3)(a)(XIV) shall prevent the state agricultural commission, the state agricultural commissioner, or the state board of veterinary medicine from exerci ing their inve tigatory and enforcement power and dutie granted pur uant to ection 35 1 106 (1)(h), article 50 of title 35, and ection 12 315 106 (5)(e), respectively. The veterinary-patient-client privilege described in this subsection (3)(a)(XIV), pursuant to section 12-315-120 (5), may not be asserted for the purpose of excluding or refusing evidence or testimony in a prosecution for an act of animal cruelty under section 18-9-202 or for an act of animal fighting under section 18-9-204.

(XV) Nominations submitted to a state institution of higher education for the awarding of honorary degrees, medals, and other honorary awards by the institution, proposals submitted to a state institution of higher education for the naming of a building or a portion of a building for a person or persons, and records submitted to a state institution of higher education in upport of uch nomination and propo al ;

(XVI) (Deleted by amendment, L. 2003, p. 1636, § 1, effective May 2, 2003.)

(XVII) Repealed.

(XVIII)

(A) Military records filed with a county clerk and recorder's office concerning a member of the military's separation from military service, including the form DD214 issued to a member of the military upon separation from service, that are restricted from public access pursuant to 5 U.S.C. sec. 552 (b)(6) and the requirements established by the national archives and records administration. Notwithstanding any other provision of this section, if the member of the military about whom the record concerns is deceased, the custodian shall allow the right of in pection to the member' parent , ibling , widow or widower, and children.

(B) On and after July 1, 2002, any county clerk and recorder that accept for filing any military record de cribed in ub ubparagraph (A) of thi ubparagraph (XVIII) hall maintain such military records in a manner that ensures that such records will not be available to the public for inspection except as provided in sub-subparagraph (A) of this subparagraph (XVIII).

(C) Nothing in this subparagraph (XVIII) shall prohibit a county clerk and recorder from taking appropriate protective actions with regard to records that were filed with or placed in torage by the county clerk and recorder prior to July 1, 2002, in accordance with any limitation determined nece ary by the county clerk and recorder.

(D) The county clerk and recorder and any individual employed by the county clerk and recorder shall not be liable for any damages that may result from good faith compliance with the provisions of this part 2.

(XIX)

(A) Except as provided in subsection (3)(a)(XIX)(C) of this section, applications for a marriage license submitted pursuant to part 1 of article 2 of title 14 and, except as provided in subsection (3)(a)(XIX)(C) of this section, applications for a civil union license submitted pur uant to article 15 of title 14. A per on in intere t under thi ub ection (3)(a)(XIX) include an immediate family member of either party to the marriage application. A u ed in thi ub ection (3)(a)(XIX), "immediate family member" mean a per on who i related by blood, marriage, or adoption. Nothing in this subsection (3)(a)(XIX) is construed to prohibit the inspection of marriage licenses or marriage certificates or of civil union certificates or to otherwise change the status of those licenses or certificates as public records.

(B) Repealed.

(C) Upon application by any person to the district court in the district wherein a record of an application for a marriage license or a civil union license is found, the district court may, in its discretion and upon good cause shown, order the custodian to permit the inspection of such record.

(XX) Repealed.

(XXI) All record , including, but not limited to, analy e and map , compiled or maintained pursuant to statute or rule by the department of natural resources or its divisions that are based on information related to private lands and identify or allow to be identified any specific Colorado landowners or lands; except that summary or aggregated data that do not specifically identify individual landowners or specific parcels of land shall not be subject to this subparagraph (XXI);

(XXII) Personal information, as defined in section 18-9-313 (1)(l), in a record for which the custodian has received a request under section 18-9-313;

(XXIII) Records, including analyses and maps, compiled or maintained in accordance with article 73 of title 35 that are ba ed on information related to private land and identify or allow to be identified any pecific Colorado landowner , land manager , agricultural producers, or parcels of land; except that the custodian may release or authorize inspection of summary or aggregated data that do not specifically identify individual landowners, land managers, agricultural producers, or parcels of land.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or ociological information of any tudent to any law enforcement agency of thi tate, of any

other tate, or of the United State where uch tudent i under inve tigation by uch agency and the agency how that uch data i nece ary for the inve tigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, disciplinary information involving a student, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, tran fer , or make application for tran fer, and the written permi ion of uch tudent or hi or her parent or guardian hall not be required therefor. No tate educational in titution hall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his or her parent or guardian shall not be required therefor.

(d) This subsection (3)(d) applies to all public schools and school districts that receive funding under article 54 of title 22. Notwithstanding subsection (3)(a)(VI) of this section, under policies adopted by the local board of education, the names, addresses, and home telephone number of tudent in any econdary chool mu t be relea ed to a recruiting officer for any branch of the United State armed force who reque t uch information, ubject to the following:

(I) Each local board of education shall adopt a policy to govern the release of the names, addresses, and home telephone numbers of secondary school students to military recruiting officers that provides that such information shall be released to recruiting officers unless a student submits a request, in writing, that such information not be released.

(II) The directory information requested by a recruiting officer shall be released by the local board of education within ninety days of the date of the request.

(III) The local board of education shall comply with any applicable provisions of the federal "Family Educational Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and the federal regulation cited thereunder relating to the relea e of tudent information by educational in titution that receive federal fund .

(IV) Actual direct expenses incurred in furnishing this information shall be paid for by the requesting service and shall be reasonable and customary.

(V) The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(e)

(I) This subsection (3)(e) applies to all public schools and school districts. Notwithstanding ub ection (3)(a)(I) of thi ection, under policie adopted by each local board of education, con i tent with applicable provi ion of the federal "Family Educational Right and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and all federal regulations and applicable guidelines adopted thereto, information directly related to a student and maintained by a public school or by a person acting for the public school must be available for release if the disclosure meets one or more of the following conditions:

(A) The disclosure is to other school officials, including teachers, working in the school at which the student is enrolled who have specific and legitimate educational interests in the information for use in furthering the student's academic achievement or maintaining a safe and orderly learning environment;

(B) The di clo ure i to official of a chool at which the tudent eek or intend to enroll or

the di clo ure i to official at a chool at which the tudent i currently enrolled or receiving ervice , after making a rea onable attempt to notify the tudent' parent or legal guardian or the student if he or she is at least eighteen years of age or attending an institution of postsecondary education, as prescribed by federal regulation;

(C) The disclosure is to state or local officials or authorities if the disclosure concerns the juvenile justice system and the system's ability to serve effectively, prior to adjudication, the student whose records are disclosed and if the officials and authorities to whom the records are di clo ed certify in writing that the information hall not be di clo ed to any other party, except a otherwi e provided by law, without the prior written con ent of the tudent' parent or legal guardian or of the student if he or she is at least eighteen years of age or is attending an institution of postsecondary education;

(D) The disclosure is to comply with a judicial order or a lawfully issued subpoena, if a reasonable effort is made to notify the student's parent or legal guardian or the student if he or she is at least eighteen years of age or is attending a postsecondary institution about the order or subpoena in advance of compliance, so that such parent, legal guardian, or student is provided an opportunity to seek protective action, unless the disclosure is in compliance with a federal grand jury ubpoena or any other ubpoena i ued for a law enforcement purpo e and the court or the i uing agency ha ordered that the exi tence or content of the ubpoena or the information furni hed in re pon e to the ubpoena not be di clo ed;

(E) The disclosure is in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals, as specifically prescribed by federal regulation.

(II) Nothing in this paragraph (e) shall prevent public school administrators, teachers, or staff from disclosing information derived from personal knowledge or observation and not derived from a student's record maintained by a public school or a person acting for the public school.

(3.5)

(a) Effective January 1, 1992, any individual who meet the requirement of thi ub ection (3.5) may reque t that the addre of uch individual included in any public record concerning that individual which are required to be made, maintained, or kept pursuant to the following sections be kept confidential:

(I) Sections 1-2-227 and 1-2-301, C.R.S.;

(II) (Deleted by amendment, L. 2000, p. 1337, § 1, effective May 30, 2000.)

(III) Section 24-6-202.

(b)

(I) An individual may make the request of confidentiality allowed by this subsection (3.5) if such individual has reason to believe that such individual, or any member of such individual's immediate family who re ide in the ame hou ehold a uch individual, will be expo ed to criminal hara ment a prohibited in ect on 18 9 111, C.R.S., or otherwi e be in danger of bodily harm, if such individual's address is not kept confidential in accordance with this subsection (3.5).

(II) A request of confidentiality with respect to records described in subparagraph (I) of paragraph (a) of this subsection (3.5) shall be made in person in the office of the county clerk and recorder of the county where the individual making the request resides. Requests shall be made on application forms approved by the secretary of state, after consultation with county clerk and recorders. The application form shall provide space for the applicant to provide his or her name and address, date of birth, and any other identifying information determined by the ecretary of tate to be nece ary to carry out the provi ion of thi

ub ection (3.5). In addition, an affirmation hall be printed on the form, in the area immediately above a line for the applicant' ignature and the date, tating the following: "I swear or affirm, under penalty of perjury, that I have reason to believe that I, or a member of my immediate family who resides in my household, will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential." Immediately below the signature line, there shall be printed a notice, in a type that is larger than the other information contained on the form, that the applicant may be prosecuted for perjury in the econd degree under ection 18 8 503, C.R.S., if the applicant ign uch affirmation and doe not believe uch affirmation to be true.

(III) The county clerk and recorder of each county shall provide an opportunity for any individual to make the request of confidentiality allowed by this subsection (3.5) in person at the time such individual makes application to the county clerk and recorder to register to vote or to make any change in such individual's registration, and at any other time during normal business hours of the office of the county clerk and recorder. The county clerk and recorder shall forward a copy of each completed application to the secretary of state for purposes of the records maintained by him or her pursuant to subparagraph (I) of paragraph (a) of this ub ection (3.5). The county clerk and recorder hall collect a proce ing fee in the amount of five dollar of which amount two dollar and fifty cent hall be tran mitted to the ecretary of tate for the purpo e of off etting the ecretary of tate' co t of proce ing applications forwarded to the secretary of state pursuant to this subparagraph (III). All processing fees received by the secretary of state pursuant to this subparagraph (III) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(IV) The secretary of state shall provide an opportunity for any individual to make the request of confidentiality allowed by paragraph (a) of this subsection (3.5), with respect to the records described in subparagraph (III) of paragraph (a) of this subsection (3.5). The secretary of state may charge a processing fee, not to exceed five dollars, for each such reque t. All proce ing fee collected by the ecretary of tate pur uant to thi ubparagraph (IV) or ubparagraph (III) of thi paragraph (b) hall be tran mitted to the tate trea urer, who shall credit the same to the department of state cash fund.

(V) Notwithstanding the amount specified for any fee in subparagraph (III) or (IV) of this paragraph (b), the secretary of state by rule or as otherwise provided by law may reduce the amount of one or more of the fees credited to the department of state cash fund if necessary pursuant to section 24-75-402 (3), to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402 (4).

(c) The cu todian of any record de cribed in ub ection (3.5)(a) of thi ection that concern an individual who has made a request of confidentiality pursuant to this subsection (3.5) and paid any required processing fee shall deny the right of inspection of the individual's address contained in such records on the ground that disclosure would be contrary to the public interest; except that the custodian shall allow the inspection of the records by the individual, by any person authorized in writing by that individual, and by any individual employed by one of the following entities who makes a request to the custodian to inspect the records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to the authorized purpose of the employing entity:

(I) A criminal ju tice agency, a defined by ection 24 72 302 (3);

(II) An agency of the United State , the tate of Colorado, or of any political ubdivi ion or authority thereof;

(III) A person required to obtain such individual's address in order to comply with federal or state law or regulations adopted pursuant thereto;

(IV) An insurance company which has a valid certificate of authority to transact insurance business in Colorado as required in section 10-3-105 (1), C.R.S.;

(V) A collection agency which has a valid license as required by section 5-16-115 (1);

(VI) A upervi ed lender licen ed pur uant to ection 5 1 301 (46), C.R.S.;

(VII) A bank a defined in ection 11 101 401 (5), C.R.S., a tru t company a defined in section 11-109-101 (11), C.R.S., a credit union as defined in section 11-30-101 (1), C.R.S., a domestic savings and loan association as defined in section 11-40-102 (5), C.R.S., a foreign savings and loan association as defined in section 11-40-102 (8), C.R.S., or a broker-dealer as defined in section 11-51-201 (2), C.R.S.;

(VIII) An attorney licensed to practice law in Colorado or his representative authorized in writing to inspect such records on behalf of the attorney;

(IX) A manufacturer of any vehicle required to be registered pursuant to the provisions of article 3 of title 42, C.R.S., or a de ignated agent of uch manufacturer. Such in pection hall be allowed only for the purpo e of identifying, locating, and notifying the regi tered owner of uch vehicle in the event of a product recall or product advi ory and may al o be allowed for statistical purposes where such address is not disclosed by such manufacturer or designated agent. No person who obtains the address of an individual pursuant to this subparagraph (IX) shall disclose such information, except as necessary to accomplish said purposes.

(d) Notwithstanding any provisions of this subsection (3.5) to the contrary, any person who appears in person in the office of any custodian of records described in paragraph (a) of this subsection (3.5) and who presents documentary evidence satisfactory to the custodian that such person is a duly accredited representative of the news media may verify the address of an individual whose address is otherwise protected from inspection in accordance with this ub ection (3.5). Such verification hall be limited to the cu todian confirming or denying that the addre of an individual a known to the repre entative of the new media i the addre of the individual as shown by the records of the custodian.

(e) No person shall make any false statement in requesting any information pursuant to paragraph (a) or (b) of this subsection (3.5).

(f) Any request of confidentiality made pursuant to this subsection (3.5) shall be kept confidential and shall not be open to inspection as a public record unless a written release s executed by the person who made the request.

(g) Prior to the release of any information required to be kept confidential pursuant to this subsection (3.5), the custodian shall require the person requesting the information to produce a valid Colorado driver' licen e or identification card and written authorization from any entity authorized to receive information under thi ub ection (3.5). The cu todian hall keep a record of the requesting person's name, address, and date of birth and shall make such information available to the individual requesting confidentiality under this subsection (3.5) or any person authorized by such individual.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5)

(a) Except as provided in subsection (5.5) of this section, any person denied the right to in pect any record covered by thi part 2 or who allege a violation of ection 24 72 203

(3.5) may apply to the di trict court of the di trict wherein the record i found for an order directing the cu todian of uch record to how cau e why the cu todian hould not permit the inspection of such record; except that, at least fourteen days prior to filing an application with the district court, the person who has been denied the right to inspect the record shall file a written notice with the custodian who has denied the right to inspect the record informing the custodian that the person intends to file an application with the district court. During the fourteen-day period before the person may file an application with the district court under thi ub ection (5)(a), the cu todian who ha denied the right to in pect the record hall either meet in per on or communicate on the telephone with the per on who ha been denied access to the record to determine if the dispute may be resolved without filing an application with the district court. The meeting may include recourse to any method of dispute resolution that is agreeable to both parties. Any common expense necessary to resolve the dispute must be apportioned equally between or among the parties unless the parties have agreed to a different method of allocating the costs between or among them. If the person who has been denied access to inspect a record states in the required written notice to the custodian that the person needs to pursue access to the record on an expedited basis, the person must provide uch written notice, including a factual ba i of the expedited need for the record, to the cu todian at lea t three bu ine day prior to the date on which the per on file the application with the di trict court and, in uch circum tance , no meeting to determine if the dispute may be resolved without filing an application with the district court is required.

(b) Hearing on the application described in subsection (5)(a) of this section must be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court; except that no court costs and attorney fees shall be awarded to a person who has filed a lawsuit against a state public body or local public body and who applies to the court for an order pursuant to subsection (5)(a) of this section for access to records of the state public body or local public body being ued if the court find that the record being ought are related to the pending litigation and are di coverable pur uant to chapter 4 of the Colorado rules of civil procedure. In the event the court finds that the denial of the right of inspection was proper, the court shall award court costs and reasonable attorney fees to the custodian if the court finds that the action was frivolous, vexatious, or groundless.

(5.5)

(a) Any person seeking access to the record of an executive session meeting of a state public body or a local public body recorded pursuant to section 24-6-402 (2)(d.5) shall, upon application to the district court for the district wherein the records are found, show grounds sufficient to support a reasonable belief that the state public body or local public body engaged in ub tantial di cu ion of any matter not enumerated in ection 24 6 402 (3) or (4) or that the tate public body or local public body adopted a propo ed policy, po ition, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402 (3)(a) or (4). If the applicant fails to show grounds sufficient to support such reasonable belief, the court shall deny the application and, if the court finds that the application was frivolous, vexatious, or groundless, the court shall award court costs and attorney fees to the prevailing party. If an applicant shows grounds sufficient to support such reasonable belief, the applicant cannot be found to have brought a frivolous, vexatious, or groundless action, regardless of the outcome of the in camera review.

(b)

(I) Upon finding that ufficient ground exi t to upport a rea onable belief that the tate

public body or local public body engaged in ub tantial di cu ion of any matter not enumerated in ection 24 6 402 (3) or (4) or that the tate public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402 (3)(a) or (4), the court shall conduct an in camera review of the record of the executive session to determine whether the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402 (3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive e ion in contravention of ection 24 6 402 (3)(a) or (4).

(II) If the court determines, based on the in camera review, that violations of the open meetings law occurred, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in section 24-6-402 (3) or (4) or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection.

(6)

(a) If, in the opinion of the official custodian of any public record, disclosure of the contents of aid record would do ub tantial injury to the public intere t, notwith tanding the fact that aid record might otherwi e be available to public in pection or if the official cu todian i unable, in good faith, after exerci ing rea onable diligence, and after rea onable inquiry, to determine if disclosure of the public record is prohibited pursuant to this part 2, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure or for the court to determine if disclosure is prohibited. Hearing on such application shall be held at the earliest practical time. In the case of a record that is otherwise available to public inspection pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure would cause substantial injury to the public interest, issue an order authorizing the official custodian to restrict disclosure. In the case of a record that may be prohibited from disclosure pursuant to this part 2, after a hearing, the court may, upon a finding that di clo ure of the record i prohibited, i ue an order directing the official cu todian not to di clo e the record to the public. In an action brought pursuant to this paragraph (a), the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard. The attorney fees provision of subsection (5) of this section shall not apply in cases brought pursuant to this paragraph (a) by an official custodian who is unable to determine if disclosure of a public record is prohibited under this part 2 if the official custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making rea onable inquiry, wa unable to determine if di clo ure of the public record wa prohibited without a ruling by the court.

(b) In defense against an application for an order under subsection (5) of this section, the custodian may raise any issue that could have been raised by the custodian in an application under paragraph (a) of this subsection (6).

(7)

(a) Except as permitted in subsection (7)(b) of this section, the department of revenue or an authorized agent of the department shall not allow a person, other than the person in interest, to inspect information contained in a driver's license application under section 42-2-107, a driver's license renewal application under sect on 42-2-118, a duplicate driver's license application under ection 42 2 117, a commercial driver' licen e application under ection

42 2 403, an identification card application under ection 42 2 302, a motor vehicle title application under ection 42 6 116, a motor vehicle regi tration application under ection 42 3-113, an identification document under section 42-2-505, or other official record or document maintained by the department under section 42-2-121.

(b) Notwithstanding subsection (7)(a) of this section, only upon obtaining a completed requester release form under section 42-1-206 (1)(b), the department may allow inspection of the information referred to in subsection (7)(a) of this section for the following uses:

(I) For u e by any government agency, including any court or law enforcement agency, in carrying out it function , or any private per on or entity acting on behalf of a federal, tate, or local agency in carrying out its functions; except that this subsection (7)(b)(I) does not apply to a request made for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws, 8 U.S.C. sec. 1325, and 8 U.S.C. sec. 1326, except as required by federal or state law or as required to comply with a court-issued subpoena, warrant, or order;

(II) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicle , motor vehicle part and dealer ; motor vehicle market re earch activitie , including urvey re earch; and removal of non owner record from the original owner record of motor vehicle manufacturer ;

(III) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(A) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(IV) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, tate, or local court or agency or before any elf regulatory body, including the ervice of proce , inve tigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court; except that this subsection (7)(b)(IV) does not apply to a request made for the purpose of investigating for, participating in, cooperating with, or assisting in federal immigration enforcement, including enforcement of civil immigration laws, 8 U.S.C. sec. 1325, and 8 U.S.C. sec. 1326, except as required by federal or state law or as required to comply with a court-issued subpoena, warrant, or order;

(V) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact the parties in interest;

(VI) For u e by any in urer or in urance upport organization, or by a elf in ured entity, or it agent , employee , or contractor , in connection with claim inve tigation activitie , anti fraud activities, rating or underwriting;

(VII) For use in providing notice to the owners of towed or impounded vehicles;

(VIII) For use by any private investigator licensed pursuant to section 12-160-107, licensed private investigative agency, or licensed security service for any purpose permitted under this subsection (7)(b);

(IX) For use by an employer or its agent or insurer to obtain or verify information relating to a party in interest who is a holder of a commercial driver’s license;

(X) For use in connection with the operation of private toll transportation facilities;

(XI) For any other u e in re pon e to reque t for individual motor vehicle record if the

department ha obtained the expre con ent of the party in intere t pur uant to ection 42 2 121 (4), C.R.S.;

(XII) For bulk distribution for surveys, marketing or solicitations if the department has obtained the express consent of the party in interest pursuant to section 42-2-121 (4), C.R.S.;

(XIII) For use by any requester, if the requester demonstrates he or she has obtained the written consent of the party in interest;

(XIV) For any other u e pecifically authorized under the law of the tate, if uch u e i related to the operation of a motor vehicle or public afety; or

(XV) For use by the federally designated organ procurement organization for the purposes of creating and maintaining the organ and tissue donor registry authorized in section 15-19-220.

(c)

(I) For purposes of this paragraph (c), "law" shall mean the federal "Driver's Privacy Protection Act of 1994", 18 U.S.C. sec. 2721 et seq., the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq., section 42-1-206, C.R.S., and this part 2.

(II) If the reque ter relea e form indicate that the reque ter will, in any manner, u e, obtain, re ell, or tran fer the information contained in record , reque ted individually or in bulk, for any purpo e prohibited by law, the department or agent hall deny in pection of any motor vehicle or driver record.

(III) In addition to completing the requester release form under section 42-1-206 (1)(b), C.R.S., and subject to the provisions of section 42-1-206 (3.7), C.R.S., the requester shall sign an affidavit of intended use under penalty of perjury that states that the requester shall not obtain, resell, transfer, or use the information in any manner prohibited by law. The department or the department's authorized agent shall deny inspection of any motor vehicle or driver record to any person, other than a person in interest as defined in section 24-72-202 (4), or a federal, state, or local government agency carrying out its official functions, who ha not igned and returned the affidavit of intended u e.

(d) Notwith tanding paragraph (b) of thi ub ection (7), the department of revenue or an authorized agent of the department shall allow inspection of records maintained by the department pursuant to section 42-2-121.5, C.R.S., only by the person in interest or by an officer of a law enforcement or public safety agency in accordance with section 42-2-121.5 (3), C.R.S.

(8)

(a) A designated election official shall not allow a person, other than the person in interest, to inspect the election records of any person that contain the original signature, social security number, month of birth, day of the month of birth, or identification of that person, including electronic, digital, or canned image of a per on' original ignature, ocial ecurity number, month of birth, day of the month of birth, or identification.

(b) Nothing in paragraph (a) of this subsection (8) shall be construed to prohibit a designated election official from:

(I) Making such election records available to any law enforcement agency or district attorney of this state in connection with the investigation or prosecution of an election offense specified in article 13 of title 1, C.R.S.;

(II) Making such election records available to employees of or election judges appointed by the designated election official as necessary for those employees or election judges to carry out the duties and responsibilities connected with the conduct of any election; and

(III) Preparing a regi tration li t and making the li t available for di tribution or ale to or

in pection by any per on.

(c) For purpo e of thi ub ection (8):

(I) "Designated election official" shall have the same meaning as set forth in section 1-1-104 (8), C.R.S.

(II) "Election records" shall have the same meaning as set forth in section 1-1-104 (11), C.R.S., and shall include a voter registration application.

(III) "Identification" hall have the ame meaning a et forth in ection 1 1 104 (19.5), C.R.S.

(IV) "Registration list" shall have the same meaning as set forth in section 1-1-104 (37), C.R.S.

History

SOURCE:

Source: L. 68:P. 202, § 4. **L. 69:**Pp. 925, 926, §§ 1, 1.**C.R.S. 1963:**§ 113 2 4. **L. 77:**(2)(a)(I) repealed, p. 1250, § 4, effective December 31. **L. 81:**(3)(d) added, p. 1237, § 1, effective May 18; (3)(a)(I) amended, p. 1236, § 1, effective May 26. **L. 83:**(3)(a)(V) and (3)(a)(VI) amended and (3)(a)(VII) added, p. 1023, § 2, effective March 22. **L. 85:**(3)(a)(VI) and (3)(a)(VII) amended and (3)(a)(VIII) added, p. 933, § 3, effective July 1. **L. 88:**(2)(a)(I) RC&RE, p. 979, § 1, effective April 20. **L. 91:**(3.5) added, p. 828, § 1, effective July 1. **L. 92:**(2)(a)(IV) and (3)(a)(II) amended and (3)(a)(IX) added, p. 1104, § 4, effective July 1. **L. 93:**(3)(d) amended, p. 64, § 1, effective March 22; (3)(a)(IX) amended, p. 293, § 1, effective April 7; (2)(a)(III) and (2)(a)(IV) amended and (2)(a)(V) added, p. 1763, § 1, effective June 6; (3)(a)(II) amended, p. 667, § 2, effective July 1. **L. 94:**(3)(a)(I) amended and (3)(a)(XI) added, p. 936, § 2, effective April 28; (3.5)(a)(I) amended, p. 1638, § 53, effective May 31; (3)(a)(X) added, p. 680, § 1, effective July 1; (2)(a)(IV), (2)(a)(V), (3.5)(a)(II), and (3.5)(b)(II) amended and (2)(a)(VI) added, pp. 2557, 2558, § 59, 60, effective January 1, 1995. **L. 96:**(3)(c) amended, p. 431, § 1, effective April 22; (2)(a)(II) and (6) amended and (3)(a)(VIII) repealed, pp. 1484, 1470, §§ 16, 6, effective June 1. **L. 97:**(3)(a)(I) amended, p. 350, § 5, effective April 19; (2)(a)(VI) amended, p. 1178, § 1, effective July 1; (3)(a)(XII) added, p. 354, § 1, effective August 6; (7) added, p. 1050, § 2, effective September 1. **L. 98:**(3)(d) amended, p. 974, § 21, effective May 27; (3.5)(b)(V) added, p. 1332, § 43, effective June 1. **L. 99:**(3)(a)(X)(A) amended and (3)(a)(XIII) added, p. 207, § 2, effective March 31; (2)(a)(VI) amended and (3.5)(g) added, p. 344, §§ 1, 2, effective April 16; (2)(a)(VI) amended, p. 1241, § 3, effective Augu t 4; (3)(a)(XIV) added, p. 370, § 1, effective Augu t 4. **L. 2000:**(2)(c) added, p. 243, § 9, effective March 29; (2)(a)(VI), (3.5)(a)(II), (3.5)(b)(II), (3.5)(b)(III), (3.5)(b)(V), and (7) amended, p. 1337, § 1, effective May 30; (3)(e) added, p. 1963, § 5, effective June 2; (7)(b)(XV) added, p. 732, § 13, effective July 1; (3.5)(c)(VI) amended, p. 1873, § 111, effective August 2. **L. 2001:**(7)(a) amended, p. 1274, § 35, effective June 5; (1)(d) added, p. 151, § 6, effective July 1; (3)(a)(XI)(A), (5), and (6)(a) amended and (5.5) added, p. 1073, § 3, effective August 8; (7)(a) and (7)(c) amended, p. 586, § 1, effective August 8. **L. 2002:**(3.5)(c)(VII) amended, p. 113, § 7, effective March 26; (3)(a)(XVI) added, p. 239, § 8, effective April 12; (3)(a)(XVII) added, p. 1213, § 10, effective June 3; (3)(a)(XVIII) added, p. 935, § 1, effective July 1; (3)(a)(XV)

added, p. 86, § 2, effective Augu t 7. **L. 2003:**(3)(a)(XVI) and (3)(a)(XVII) amended, p. 1636, § 1, effective May 2; (3.5)(c)(VII) amended, p. 1211, § 23, effective July 1; (3)(a)(IX) amended, p. 1619, § 30, effective August 6. **L. 2004:**(2)(a)(VII) added, p. 1959, § 3, effective August 4. **L. 2005:**(2)(a)(VIII) added, (3)(a)(IX) amended, and (3)(a)(XVII) repealed, pp. 502, 503, 504, §§ 1, 2, 5, effective July 1; (3)(a)(XII) and (7)(a) amended, p. 1182, § 29, effective August 8; (3)(a)(XIV) amended, p. 462, § 3, effective December 1. **L. 2006:**(8) added, p. 44, § 1, effective March 17; (3)(a)(XIX) added, p. 564, § 1, effective

April 24; (3)(a)(IV) amended, p. 276, § 2, effective January 1, 2007. **L. 2007:**(2)(d) added, p. 34, § 2, effective March 5; (3)(a)(XIV) amended, p. 1590, § 7, effective July 1; (7)(b)(XV) amended, p. 798, § 8, effective July 1. **L. 2008:**(7)(a) amended and (7)(d) added, p. 1520, § 2, effective May 28; (3)(a)(XX) added, p. 1703, § 2, effective June 2. **L. 2009:**(3)(a)(XXI) added,(SB 09-158), ch. 387, p. 2094, § 3, effective August 5. **L. 2010:**(3)(a)(XII) amended, (HB 10-1019), ch. 400, p. 1930, § 6, effective January 1, 2011. **L. 2012:**(2)(e) added,(SB 12-079), ch. 58, p. 214, § 7, effective March 24; (2)(a)(IX) added,(HB 12-1036), ch. 269, p. 1419, § 1, effective June 7; (2)(a)(VIII)(A) amended,(HB12- 1283), ch. 240, p. 1134, § 48, effective July 1; IP(7)(b) and (7)(b)(VIII) amended,(HB12-1231), ch. 22, p. 58, § 1, effective Augu t 8. **L. 2013:**(3)(a)(XIX)(A) and (3)(a)(XIX)(B) amended,(SB 13 011), ch. 49, p. 168, § 28, effective May 1; IP(3.5)(c) and (3.5)(c)(VII) amended,(SB 13 154), ch. 282, p. 1487, § 67, effective July 1; (3)(a)(XX) repealed,(HB 13 1300), ch. 316, p. 1685, § 64, effective August 7. **L. 2014:**(7)(b)(VIII) amended,(SB 14-133), ch. 389, p. 1957, § 3, effective June 6; (3)(a)(XIX)(A) amended and (3)(a)(XIX)(B) repealed,(HB 14-1073), ch. 30, p. 175, § 2, effective July 1; (2)(e) amended,(SB 14-002), ch. 241, p. 893, § 5, effective August 6. **L. 2016:**(3)(a)(XIX)(C) amended,(SB 16-189), ch. 210, p. 769, § 56, June 6. **L. 2017:**IP(3)(d), (3)(d)(III), and IP(3)(e)(I) amended,(SB 17-294), ch. 264, p. 1405, § 76, effective May 25; (2)(a)(VII)(A), (3)(a)(I), and (5) amended,(SB17-040), ch. 286, p. 1583, § 2, effective August 9; IP(3.5)(c) and (3.5)(c)(V) amended,(HB 17-1238), ch. 260, p. 1175, § 22, effective August 9; (5) amended,(HB 17-1177), ch. 197, p. 718, § 1, effective August 9; IP(7)(b) and (7)(b)(XV) amended,(SB 17 223), ch. 158, p. 563, § 17, effective Augu t 9. **L. 2018:**IP(3)(a) amended and (3)(a)(X)(D) added,(HB 18 1152), ch. 281, p. 1759, § 2, effective August 8. **L. 2019:**(3)(a)(XXII) added,(HB 19-1197), ch. 95, p. 350, § 2, effective April 11; (3)(a)(X.5) added,(SB 19-244), ch. 243, p. 2377, § 3, effective May 20; (3)(a)(VI) amended,(HB 19-1278), ch. 326, p. 3036, § 50, effective August 2; (3)(a)(XIV) and (7)(b)(VIII) amended,(HB 19-1172), ch. 136, p. 1693, § 135, effective October 1. **L. 2021:**IP(3)(a) and (3)(a)(XIX)(A) amended,(HB 21-1287), ch. 264, p. 1539, § 3, effective June 18; (7)(a), (7)(b)(I), and (7)(b)(IV) amended,(SB 21-131), ch. 353, p. 2298, § 2, effective June 25; IP(3)(a) amended and (3)(a)(XXIII) added,(HB 21-1181), ch. 279, p. 1614, § 4, effective September 7; (3)(a)(XI) amended,(HB 21-1051), ch. 183, p. 986, § 3, September 7.; **L. 2022:** (HB1041), ch. 39, § 2, effective March 24, 2022.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 24

C.R.S. Title 24, Art. 72, Pt. 2

tate Notes

Notes

Editor's note:

(1) Subsection (3)(a)(IX) was numbered as (3)(a)(X) in House Bill 92-1195 but has been renumbered on revision for ease of location.

(2) Amendments to subsection (2)(a)(VI) by House Bill 99-1293 and Senate Bill 99-174 were harmonized.

(3) Amendments to subsection (7)(a) by House Bill 01-1025 and Senate Bill 01-138 were harmonized.

(4) Subparagraph (3)(a)(XVIII) wa originally numbered a (3)(a)(XV) in Hou e Bill 02 1395 but ha been renumbered on revi ion for ea e of location.

(5) Amendments to subsection (5) by SB 17-040 and HB 17-1177 were harmonized.

(6) Subsection IP(3)(a) was amended in HB 21-1287. Those amendments were superseded by the amendment of subsection IP(3)(a) in HB 21-1181.

(7) Subsection (3)(a)(X)(D) provided for the repeal of subsection (3)(a)(X)(D), effective May 1, 2021. (See L. 2018, p. 1759.)

ANNOTATION

Law reviews.

For article, "E-mail, Open Meetings, and Public Records", see 25 Colo. Law. 99 (Oct. 1996). For article, "Protecting Confidential Information Submitted in Procurements to Colorado State Agencies", see 34 Colo. Law. 67 (Jan. 2005).

Three-part test to show that the Colorado Open Records Act (CORA) applies to a record.

A plaintiff must show that a public entity: (1) improperly; (2) withheld; (3) a public record in order for CORA to apply. Wick Commc'ns Co. v. Montrose County Bd. of County Comm'rs, 81 P.3d 360 (Colo. 2003).

The requesting party must make a threshold showing that the document is likely a public record,

in ca e where it i not clear whether the cu todian hold a record in an individual or

official capacity, and thus whether the record is private or public. Wick Commc'ns Co. v. Montrose County Bd. of County Comm'rs, 81 P.3d 360 (Colo. 2003).

And because the requesting party failed to make such a showing with respect to the personal cell phone billing statements of the governor, even though the governor regularly used the phone to conduct state business, the billing statements were not public records subject to disclosure and dismissal for failure to state a claim was

appropriate. Denver Po t Corp. v. Ritter, 230 P.3d 1238 (Colo. App. 2009), aff'd, 255 P.3d 1083 (Colo. 2011).

Court considers and weighs public interest in determining disclosure question.

The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

The investigatory files exemption provided for in subsection (2)(a)(I) must be construed narrowly to apply only to investigatory files compiled for criminal law enforcement purposes

and not to inve tigatory file compiled in civil law enforcement proceeding . Land Owners United, LLC v. Waters, 293 P.3d 86 (Colo. App. 2011).

Subsection (3)(a)(I) prohibits the disclosure of medical records "unless otherwise provided by law".

Section 30-10-606 (6)(a) expressly provides otherwise, granting coroners access to medical information from health care providers. Bodelson v. City of Littleton, 36 P.3d 214 (Colo. App. 2001).

A person need not show a special interest

in order to be permitted access to particular public records. Denver Publ'g Co. v. Dreyfu , 184 Colo. 288, 520 P.2d 104 (1974).

Official is unauthorized to deny access in absence of specific statutory provision.

In the absence of a specific statute permitting the withholding of information, a public official has no authority to deny any person access to public records. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974); Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Because waiver is not included as one of the statutory grounds for denying the right of access, public policy prohibits enforcing a waiver of the right to inspect psychological test results. Carpenter v. Civil Serv. Comm'n, 813 P.2d 773 (Colo. App. 1990).

The exception made in subsection (3)(a)(IV) for "privileged information" incorporates the common law deliberative process privilege.

The purpose of the privilege is to protect the frank exchange of ideas and opinions

critical to the government's decision-making process where disclosure would discourage such discussion in the future. Thus, material prepared by a governmental employee is not subject to disclosure if the court finds that the material is both predecisional and deliberative and that disclosure would be likely to adversely affect the purposes of the privilege and stifle frank communication within an agency. City of Colo. Springs v. White, 967 P.2d 1042 (Colo. 1998).

Documents containing legal advice

on how to proceed with lobbying effort and how to re pond to a taxpayer' open records law requests are protected by the attorney-client privilege. Such documents were not lobbying because they were not communications made to a public official for the purpose of influencing legislation. Black v. S.W. Water Conserv. Dist., 74 P.3d 462 (Colo. App. 2003).

Privilege log was not required to establish that records were protected from disclosure by attorney-client privilege and had not been shared in a way that would waive the privilege.

Te timony by attorney wa ufficient in the ab ence of evidence to the contrary. Bjorn en v. Bd. of County Comm'r , 2019 COA 59, P.3d .

In enacting exception to discovery rule for personnel files in subsection (3)(a)(II),

the general assembly intended a blanket protection for all personnel files, except applications and performance ratings, and did not grant custodian discretion to balance interest in disclosure with individual's right to privacy. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Although subsection (3)(a)(II) does not authorize any balancing of the public interest and the right of privacy, the protection for personnel files is based on a concern for the individual's right to privacy, and it remains the duty of the courts to ensure that document a to which thi protection i claimed actually do implicate thi right. The applicant mu t bear the burden of proving that the cu todian' denial of in pection wa arbitrary and capricious. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

A legitimate expectation of privacy must exist

for the exception to discovery rule for personnel files to apply and a public entity may not restrict access to information by merely placing a record in a personnel file. Denver Publ'g Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990); Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

The disclosure of names of public employees receiving severance payments pursuant to the city of Colorado Springs transitional employment program would not cause substantial injury to the public interest.

Such exemption applies only to extraordinary situations that the general assembly could not identify in advance. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

Documents subject to disclosure under CORA are exempt if disclosure would cause substantial injury to the public interest by invading a constitutionally protected liberty interest.

The release of employees' names and amounts paid pursuant to the city of Colorado Springs transitional employment program does not unduly interfere with the employees'

liberty intere t. Freedom New paper , Inc. v. Tollef on, 961 P.2d 1150 (Colo. App. 1998).

This section authorizes the release of public records for inspection absent a constitutional or statutory exception.

"Secrecy in voting" as used in article VII, section 8, of the constitution does not exempt digital copies of ballots from release under CORA because that constitutional provision protects only the identity of an individual voter and any content of the voter's ballot that could identify the voter. Section 31-10-616 does not exempt digital copies of ballots from release under CORA because the copies are not ballots. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

Digital copies of ballots are eligible for release under CORA,

with the narrow exception of any copy containing content that could identify an individual voter and thereby contravene the intent of article VII, section 8(1), of the constitution. Marks v. Koch, 284 P.3d 118 (Colo. App. 2011).

The public's right to know how public funds are spent is paramount

in weighing whether disclosure may chill Colorado state university's ability to use the transitional employment program to remain competitive. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

A county officer and a county employee who exchanged sexually explicit e-mail messages had a reasonable expectation

that the di clo ure of uch highly per onal and en itive information would be limited, even though they were on notice that the me age were not private. In re Bd. of County Comm'rs, 95 P.3d 593 (Colo. App. 2003).

Disclosure of sexually explicit e-mails between a county officer and a county employee may serve a compelling state interest

to the extent they help explain why the officer promoted the employee, why the employee received increases in salary and overtime pay, and why the employee was not terminated despite allegations of embezzlement. In re Bd. of County Comm'rs, 95 P.3d 593 (Colo. App. 2003).

The sexual harassment exception

in ub ection (3)(a)(X)(A) doe not prohibit the di clo ure of e mail unrelated to official bu ine and of portion of an inve tigative report that do not refer to other employee by name. In re Bd. of County Comm'rs, 95 P.3d 593 (Colo. App. 2003).

Public interest in ensuring that public entities conduct internal reviews effectively and efficiently

outweighs interest of public entity employer in maintaining confidentiality. Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

Police personnel files and staff investigation reports are not exempt from discovery.

The open record provi ion do not, ip o facto, exempt the per onnel file and the taff inve tigation bureau report of the Denver police department from di covery in civil litigation. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Subsections (5) and (6) provide the exclusive procedures for persons requesting records and record custodians to resolve disputes concerning record accessibility.

People in Interest of A.A.T., 759 P.2d 853 (Colo. App. 1988).

However, the procedure under subsection (6) is inapplicable

where a custodian of records is not claiming that disclosure would do substantial injury to the public intere t and doe not eek to have di clo ure prohibited if an open record reque t i made in compliance with the entity' open record policy. Citizen Progre ive Alliance v. S.W. Water Con ervation Di t., 97 P.3d 308 (Colo. App. 2004).

Where the government entity has a legitimate basis for concluding that compliance with an open records request within the statutory time limits is physically impossible, a trial court may properly entertain a complaint for declaratory relief even if doing so could result in delay in the production of documents. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

Provisions of subsection (5) and § 24-72-206 are the sole remedies

under this part. Bd. of County Comm'rs v. HAD Enterp., Inc., 35 Colo. App. 162, 533 P.2d 45 (1974).

The procedure et forth in ub ection (5) i the exclu ive remedy et forth in the tatute when a cu todian fail to allow in pection of record . Pope v. Town of Georgetown, 648 P.2d 672 (Colo. App. 1982).

A court's review under subsection (5) of a claim under CORA does not end when parties have stipulated to in camera review of disputed documents.

Once submitted for review, court must determine whether a document is subject to a CORA exception. If a document was withheld that was not subject to an exception, the prevailing applicant may be entitled to court costs and reasonable attorney fees as determined by the court. Sierra Club v. Billingsley, 166 P.3d 309 (Colo. App. 2007).

Even assuming withholding by county land use official of copy of e-mail was in violation of CORA, neither CORA nor C.R.C.P. 106(a)(4) contains any provision that would authorize

remand for reconsideration of determination by county board of adjustment that lapse provision contained in county land use code did not apply to special use permit in light

of withholding copy of e-mail. Remedies for wrongful withholding of documents under CORA are limited to an order to produce the documents for inspection and an award of attorney fees and court costs. Any other remedy for such a violation would need to be enacted by general assembly, and in the absence of such legislation, court of appeals not at liberty to craft such remedy. Sierra Club v. Billingsley, 166 P.3d 309 (Colo. App. 2007).

Where custodian denies access to any public record, applicant may request written statement

of the grounds for the denial, which statement shall cite the law or regulation under which access is denied. The written statement must be furnished forthwith. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Any action filed

by the custodian or the party requesting the record must be separate, independent action in the appropriate district court and the action cannot be filed as part of any ongoing proceeding. People in Interest of A.A.T., 759 P.2d 853 (Colo. App. 1988).

Subsection (6) specifically places the burden of proof upon the custodian.

Denver Publ'g Co. v. Dreyfu , 184 Colo. 288, 520 P.2d 104 (1974).

A to document which involve privacy right , cu todian of document bear burden of proving that disclosure would do substantial injury to public interest by invading right to privacy of individuals involved. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Arbitrary and capricious refusal was not shown, hence attorney fees would not be awarded,

where city's denial of request for records reflected a conscientious effort to reasonably apply legislative standards. Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

Applicant does not bear burden of proof

that denial of in pection by cu todian of record i arbitrary and capriciou . Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Presumption in favor of disclosure suggests that burden of establishing confidential financial information exemption ought to rest with the party opposing disclosure

to overcome that presumption and not on citizen to show that disclosure is warranted. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Under subsection (3)(a)(II),

an employee is entitled to access to his leave records in his own personnel files. Ornelas v. Dept. of In t ., 804 P.2d 235 (Colo. App. 1990).

Trial court does not have discretion to determine whether requestor is a

prevailing applicant.

Subsection (5) provides only one criterion on which to deny applicant attorney fees. The award of costs and attorney fees is mandatory unless the court finds that the denial of the right of inspection was proper. Colo. Republican Party v. Benefield, 337 P.3d 1199 (Colo. 2011), aff'd, 2014 CO 57, 329 P.3d 262.

Appellate attorney fees.

Reque tor al o entitled to rea onable appellate attorney fee under CORA. Mark v. Koch, 284 P.3d 118 (Colo. App. 2011).

Limiting "applicant" to "prevailing applicant" under subsection (5) not only clarifies, or makes express what would otherwise be merely implicit

--that an applicant who achieves the right of inspection is a prevailing applicant--but actually provides direction concerning the costs and fees to which the applicant is entitled. While the statutory provision mandates an award, it leaves to the district court the determination of the amount of that award. The award to the "prevailing applicant" should include no more than the costs and attorney fees incurred with regard to the record a to which the applicant ha actually ucceeded in gaining acce , rather than the co t and attorney fee in pro ecuting the action a a whole. Benefield v. Colo. Republican Party, 2014 CO 57, 329 P.3d 262.

In an action brought under subsection (5) for the recovery of attorney fees and costs on the grounds that the public records custodian improperly withheld inspection of a public record,

a party who brings an action against a public records custodian and obtains any improperly withheld public record as a result of such action is a prevailing applicant who must be awarded court costs and reasonable attorney fees unless a statutory provision precludes the award of such amount. Because the petitioner succeeded in obtaining the right to inspect documents it sought from the custodians, it is a prevailing party within the term of thi tatutory provi ion. Colo. Republican Party v. Benefield, 337 P.3d 1199 (Colo. 2011), aff'd, 2014 CO 57, 329 P.3d 262.

Custodians not sheltered by safe harbor provision of subsection (6)(a).

Custodians' belief that survey responses giving rise to the CORA action clearly implied an expectation of confidentiality on their part is incompatible with the statutory requirement for applicability of the safe harbor provision, which is an inability to make a determination as to the requirement to disclose. Because custodians are unable to meet the requirements to successfully avoid an award of attorney fees under subsection (6)(a), they are unable to come within the protections from the imposition of attorney fees under subsection (6)(b). Colo. Republican Party v. Benefield, 337 P.3d 1199 (Colo. 2011), aff'd, 2014 CO 57, 329 P.3d 262.

Subsection (6)(a) describes the rights and obligations of the custodian, as opposed to the records requestor.

If a custodian believes that disclosure of a requested record would injure the public interest, subsection (6)(a) allows the custodian to petition the district court for an order permitting him or her to restrict disclosure. Alternatively, if the custodian is unable, in

good faith, to determine whether disclosure of the record is prohibited, subsection (6)(a) permits the custodian to ask the district court to make that determination. Reno v. Marks, 2015 CO 33, 349 P.3d 248.

Where an official custodian seeks an order prohibiting or restricting disclosure under subsection (6)(a), a prevailing records requestor is entitled to costs and attorney fees in accordance with subsection (5).

Under ub ection (5), a prevailing record reque tor i entitled to co t and attorney fee unle the di trict court find that the denial of the right of in pection wa proper. Reno v. Marks, 2015 CO 33, 349 P.3d 248.

Subsection (6)(a) provides a limited safe harbor from an attorney fee award if the custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence and making reasonable inquiry, was unable to determine if disclosure of the record was prohibited without a ruling by the court.

Reno v. Marks, 2015 CO 33, 349 P.3d 248.

The existence of the safe harbor logically implies that the attorney fees provision of subsection (5) otherwise does apply to actions under subsection (6)(a).

By establishing an exception to fee shifting in subsection (6)(a), the safe harbor language compels the conclusion that the attorney fees provision in subsection (5) generally applies to custodian actions under subsection (6)(a), including actions where the custodian seeks an order restricting disclosure. If the general assembly intended the safe harbor to apply only to subsection (5) actions, it logically would have placed the safe harbor in subsection (5) instead of in subsection (6)(a). Reno v. Marks, 2015 CO 33, 349 P.3d 248.

The safe harbor provision of subsection (6)(a) specifically refers to "the attorney fees provi ion of ub ection (5)". By logical implication, the afe harbor language incorporate the attorney fee provi ion of ub ection (5) into ub ection (6)(a), making the fee-shifting provision otherwise applicable outside the safe harbor, provided that the applicant meets the other requirements of subsection (5). Reno v. Marks, 2015 CO 33, 349 P.3d 248.

By importing subsection (5)'s fee-shifting provision into subsection (6)(a), the general assembly ensured that the custodian's incentives remain the same regardless of whether the requestor or the custodian commences the court action.

Under subsection (5), the custodian is encouraged not to force the applicant to file a court action becau e the cu todian ri k having to pay a prevailing applicant' co t and attorney fee unle the court find that the denial of in pection wa proper. Under subsection (6)(a), the custodian is similarly deterred from taking the applicant to court to seek an order restricting disclosure unless the custodian is reasonably sure that he or she will win -- again because the custodian risks incurring a fee award unless the court finds that the denial of inspection was proper. Given these consistent disincentives to litigate these issues, the safe harbor provision of subsection (6)(a) makes sense: A

custodian who, in good faith, is unable to determine whether disclosure of a record is prohibited can seek court guidance without incurring potential liability for the requestor's attorney fees. Reno v. Marks, 2015 CO 33, 349 P.3d 248.

To hold that ub ection (5)' fee hifting provi ion doe not apply to cu todian initiated action likely would promote litigation in tead of encouraging the partie to re olve the matter out of court. Becau e ub ection (5) require a record reque tor to give the

cu todian written notice at lea t three bu ine day before filing an application in di trict court to challenge the cu todian' denial of in pection, a cu todian could immunize himself or herself from any potential liability for attorney fees simply by filing an action under subsection (6)(a) first. Thus, such an interpretation could create a race to the courthouse that the custodian would always win. This result would render CORA's fee-shifting scheme meaningless. Reno v. Marks, 2015 CO 33, 349 P.3d 248.

Subsection (6) allows a court to restrict access to public records,

although they might be accessible under another provision, where it finds that substantial injury to the public interest would occur. Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991); Bodel on v. Denver Publ'g Co., 5 P.3d 373 (Colo. App. 2000).

The construction and interpretation that will render subsection (6) effective

in accompli hing the purpo e for which it wa enacted i to allow the di trict court to restrict access to public records where substantial injury to the public interest would result, notwithstanding the fact that said record might otherwise be available for inspection by a party in interest or by the general public. Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991); Bodelson v. Denver Publ'g Co., 5 P.3d 373 (Colo. App. 2000).

Public interest exception to discovery rule in subsection (6)

requires consideration of (1) whether individual has a legitimate expectation of nondisclosure, (2) whether there is a compelling public interest in access to information, and (3), if public intere t compel di clo ure, how di clo ure may occur in a manner lea t intru ive with re pect to individual' right of privacy. Martinelli v. Di trict Court, 199 Colo. 163, 612 P.2d 1083 (1980); Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Privacy protections for letters of reference under subsection (3)(a)(III) apply to handwritten notes made on questionnaire forms used in contacting references.

The general assembly intended to protect from disclosure the documentary materials obtained from references in confidence. This intent applies equally to the notes taken by the hiring agency when calling references. City of Westminster v. Dogan Constr., 930 P.2d 585 (Colo. 1997).

The phrase, "letters of reference concerning employment", used in subsection (3)(a)(III),

includes handwritten notes from references for a private contractor. As with hiring any prospective employee, the hiring entity is justifiably concerned about a contractor's past

performance and ability to complete jobs on time and in budget. City of Westminster v. Dogan Constr., 930 P.2d 585 (Colo. 1997).

Civil service commission was entitled to judgment restricting access to examination results

where per on reque ting acce pre ented no evidence di puting the factual i ue of whether ub tantial injury to the public intere t would re ult if the information were not restricted under subsection (6). Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991).

Privacy rights of employees of university were not sufficient

to preclude disclosure of university documents pertaining to said employees, considering important public interest in disclosing circumstances under which those individuals received payments from a foreign government in connection with university contracts to establish a hospital and a medical school in a foreign country. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Public policy of CORA violated by grant of authority to university's custodian of records to place any document in personnel files

in which cu todian determine a faculty member would have a legitimate expectation of privacy and, therefore, precluding its disclosure under CORA. Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Access to terms of employment between institution of higher education and its employees

cannot be restricted merely by placing documents in personnel file. Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Documents in personnel file of former university chancellor

which did not involve a privacy right or which contained information routinely disclosed to other were not entitled to protection pur uant to nondi clo ure exception of ub ection (3). Denver Pub. Co., v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Public interest exception in subsection (6) did not prevent release of terms of final settlement agreement between former chancellor and university

as public's right to know how public funds are spent outweighed any potential damage to university's ability to resolve internal matters of dispute by releasing information contrary to parties' expectations. Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

District court erred in prohibiting access to a governmental entity's own financial statements by exempting them under subsection (6)

becau e the governmental entity did not demon trate an extraordinary ituation or that ub tantial injury to the public would re ult if the tatement were di clo ed. Zubeck v. El Paso County Retirement Plan, 961 P.2d 597 (Colo. App. 1998).

A record may be "public" for one purpose and not for another,

because whether a record is to be regarded as a public record in a particular instance will depend upon the purposes of the law which will be served by so classifying it. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

Pursuant to strong presumption favoring public disclosure

of all document defined a public record , trial court properly concluded that in balancing commercial harm that could be cau ed by di clo ure again t perceived benefits, transportation contracts entered into between city department of public utilities and railroad were subject to disclosure under CORA. Freedom News v. Denver & Rio Grande R. Co., 731 P.2d 740 (Colo. App. 1986).

Open records statutes do not necessarily provide for release of information merely because it is in the possession of the government.

Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Financial information generated by a governmental entity is not confidential under subsection (3)(a)(IV)

becau e di clo ure would not impair the governmental entity' ability to gain future information nor cau e ub tantial harm to any per on providing the information a mo t of the information was generated by the governmental entity itself. Zubeck v. El Paso County Ret. Plan, 961 P.2d 597 (Colo. App. 1998).

Confidential financial information contained in bid related documents are not per se unprotected if bid is successful.

Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Under subsection (3)(a)(IV), district court had discretion to order redaction of specific confidential financial information

from documents otherwise subject to inspection as public records. Land Owners United, LLC v. Water , 293 P.3d 86 (Colo. App. 2011).

Confidential financial information exemption under subsection (3)(a)(IV) may apply

to redacted material in successful subcontractor's bid proposal and prequalification documents where material may have contained information that was ultimately incorporated into subcontract and where disclosure may pose substantial risk to subcontractor's competitive position. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

However, evidence presented at hearing was inadequate to establish that redacted material was protected by confidential financial information exemption which was based olely upon opinion of witne that information wa confidential. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Legislative intent to classify autopsy reports as public records.

The phrase "exclusive of coroners' autopsy reports" in subsection (3)(a)(I) is convincing evidence of the legislative intent to classify autopsy reports as public records open to inspection, rather than directing the denial of a right of inspection by any person, as is the case with other medical, psychological, sociological, and scholastic data. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Coroners' autopsy reports are "public records" and not "criminal justice records",

so that autopsy report on homicide victim may be withheld from public inspection by custodian thereof only pursuant to procedure under the open records law requiring establishment that disclosure would do "substantial injury to the public interest". Freedom Newspapers, Inc. v. Bowerman, 739 P.2d 881 (Colo. App. 1987).

The controlling standard in subsection (6)(a) regarding the release of the complete autopsy report is public, not private, injury. Blesch v. Denver Publ'g Co., 62 P.3d 1060 (Colo. App. 2002).

Trial court properly denied the release of autopsy reports of victims of the Columbine high school massacre.

Te timony by family member of the victim and the coroner upported the court' finding that release of the reports would do substantial injury to the public interest. Furthermore, CORA did not require the trial court to conduct an in camera hearing on the report. Bodelson v. Denver Publ'g Co., 5 P.3d 373 (Colo. App. 2000). But see Blesch v. Denver Publ'g Co., 62 P.3d 1060 (Colo. App. 2002).

Records of state compensation insurance authority do not fall within any of the exemptions enumerated in this section

and are, therefore, subject to the state opens records law as a "political subdivision". Dawson v. State Comp. Ins. Auth., 811 P.2d 408 (Colo. App. 1990).

Police records showing arrests, convictions, and other information about individuals are not public

and should not be open to the scrutiny of the public at large. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

Except when given to prosecution.

When lists of the conviction records of prospective jurors are given to the prosecution, they can no longer be classified as internal matters affecting only the internal operations of the police department. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

In which case, defense entitled to obtain information.

Police records are not public records open to inspection by the general public but where the di trict attorney' office regularly receive information from uch record , the defen e attorney , including the public defender' office, are entitled to obtain uch information in the possession of the prosecution. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

District court abused its discretion when it found that a county attorney was a "prosecuting attorney" within the meaning of the investigatory records exception.

Nothing in the record suggested that the county attorney investigated the requesting party's land use code violation for the purpose of a criminal prosecution. Shook v. Pitkin County Bd. of County Comm'r , 2015 COA 84, 411 P.3d 158.

Nor were the records compiled for a criminal law enforcement purpose.

Because there was no evidence that the county attorney investigated the requesting party's land use code violation for the purpose of a criminal prosecution, the district court also abused its discretion in finding that the records were contained in investigatory files "compiled for criminal law enforcement purposes" pursuant to subsection (2)(a)(I). Shook v. Pitkin County Bd. of County Comm'rs, 2015 COA 84, 411 P.3d 158.

The investigatory files exception in subsection (2)(a)(I) did not permit the custodian to withhold the requested public records.

The di trict court erred in finding that the record were of inve tigation conducted by a "pro ecuting attorney" and that they were inve tigatory file compiled "for a criminal law enforcement purpose". Because neither of these requirements of the investigatory records exception was satisfied, the exception did not permit the custodian to withhold the records. Shook v. Pitkin County Bd. of County Comm'rs, 2015 COA 84, 411 P.3d 158.

Applied

in Laubach v. Bradley, 194 Colo. 362, 572 P.2d 824 (1977); In re W.D.A. v. City & County of Denver, 632 P.2d 582 (Colo. 1981); Marks v. Koch, 284 P.3d 118 (Colo. App. 2011); Ark. Valley Publ'g v. Lake County Bd. of County Comm'rs, 2015 COA 100, 369 P.3d 725.

Research References & Practice Aids

Cross references:

(1) For the legislative declaration contained in the 1996 act amending subsections (2)(a)(II) and (6), see section 1 of chapter 271, Session Laws of Co orado 1996; for service of process, see C.R.C.P. 4.

(2) For the legislative declaration in HB 18-1152, see section 1 of chapter 281, Session Law of Colorado 2018.

(3) For the hort title ("Colorado Vote Act") in HB 19 1278, ee ection 1 of chapter 326, Se ion Law of Colorado 2019.

(4) For the legislative declaration in HB 21-1051, see section 1 of chapter 183, Session Laws of Colorado 2021. For the legislative declaration in HB 21-1181, see section 1 of

chapter 279, Session Laws of Colorado 2021.

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C.R.S. 24-72-204.5

Statute current through Chapter 122 of the 2022 Regular Se ion and effective on or before April 22, 2022. The inclu ion of the 2022 legi lation i not final. It will be final later in 2022 after reconciliation with the official tatute , produced by the Colorado Office of Legi lative Legal Service .

Colorado Revised Statutes Annotated Title 24 . Government State (§§ 24 1 101 24 115 118) Public (Open) Records (Arts. 72 72.4) Article 72 .Public Records (Pts. 1 — 7) Part 2. Inspection, Copying, or Photographing (§§ 24-72-200.1 — 24-72-206)

24-72-204.5. Adoption of electronic mail policy.

(1) On or before July 1, 1997, the tate or any agency, in titution, or political ubdivi ion thereof that operates or maintains an electronic mail communications system shall adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted.

(2) The policy shall include a statement that correspondence of the employee in the form of electronic mail may be a public record under the public records law and may be subject to public inspection under section 24-72-203.

History

Source: L. 96: Entire section added, p. 1485, § 7, effective June 1.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 24

C.R.S. Title 24, Art. 72, Pt. 2

Previou Next

C.R.S. 24-72-205

Statute current through Chapter 122 of the 2022 Regular Se ion and effective on or before April 22, 2022. The inclu ion of the 2022 legi lation i not final. It will be final later in 2022 after reconciliation with the official tatute , produced by the Colorado Office of Legi lative Legal Service .

24-72-205. Copy, printout, or photograph of a public record - imposition of research and retrieval fee.

(1)

(a) In all cases in which a person has the right to inspect a public record, the person may request a copy, printout, or photograph of the record. The custodian shall furnish a copy, printout, or photograph and may charge a fee determined in accordance with subsection (5) of this section; except that, when the custodian is the secretary of state, fees shall be determined and collected pur uant to ection 24 21 104 (3), and when the cu todian i the executive director of the department of per onnel, fee hall be determined and collected pursuant to section 24-80-102 (10). Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, the specific fee shall apply.

(b) Upon request for records transmission by a person seeking a copy of any public record, the custodian shall transmit a copy of the record by United States mail, other delivery service, facsimile, or electronic mail. No transmission fees may be charged to the record requester for transmitting public records via electronic mail. Within the period specified in section 24-72-203 (3)(a), the custodian shall notify the record requester that a copy of the

record i available but will only be ent to the reque ter once the cu todian either receive payment or make arrangement for receiving payment for all co t a ociated with record tran mi ion and for all other fee lawfully allowed, unle recovery of all or any portion of such costs or fees has been waived by the custodian. Upon either receiving such payment or making arrangements to receive such payment at a later date, the custodian shall send the record to the requester as soon as practicable but no more than three business days after receipt of, or making arrangements to receive, such payment.

(2) If the cu todian doe not have facilitie for making a copy, printout, or photograph of a record that a per on ha the right to in pect, the per on hall be granted acce to the record for the purpose of making a copy, printout, or photograph. The copy, printout, or photograph shall be made while the record is in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of the custodian. When practical, the copy, printout, or photograph shall be made in the place where the record is kept, but if it is impractical to do so, the custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the record. The cu todian may e tabli h a rea onable chedule of time for making a copy, printout, or photograph and may charge the ame fee for the ervice rendered in upervi ing the copying, printing out, or photographing a the cu todian may charge for furnishing a copy, printout, or photograph under subsection (5) of this section.

(3) If, in response to a specific request, the state or any of its agencies, institutions, or political subdivisions has performed a manipulation of data so as to generate a record in a form not used by the state or by said agency, institution, or political subdivision, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

(4) If the public record i a re ult of computer output other than word proce ing, the fee for a copy, printout, or photograph thereof may be ba ed on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(5)

(a) A custodian may charge a fee not to exceed twenty-five cents per standard page for a copy of a public record or a fee not to exceed the actual co t of providing a copy, printout, or photograph of a public record in a format other than a tandard page.

(b) Notwithstanding paragraph (a) of this subsection (5), an institution, as defined in section 24-72-202 (1.5), that is the custodian of scholastic achievement data on an individual person may charge a reasonable fee for a certified transcript of the data.

(6)

(a) A custodian may impose a fee in response to a request for the research and retrieval of public records only if the custodian has, prior to the date of receiving the request, either posted on the custodian’s website or otherwise published a written policy that specifies the applicable conditions concerning the research and retrieval of public records by the custodian, including the amount of any current fee. Under any uch policy, the cu todian hall not

impo e a charge for the fir t hour of time expended in connection with the re earch and retrieval of public record . After the fir t hour of time ha been expended, the cu todian may charge a fee for the research and retrieval of public records that shall not exceed thirty dollars per hour.

(b) On July 1, 2019, and by July 1 of every five-year period thereafter, the director of research of the legislative council appointed pursuant to section 2-3-304 (1) shall adjust the maximum hourly fee specified in subsection (6)(a) of this section in accordance with the percentage change over the period in the United State department of labor, bureau of labor tati tic , con umer price index for Denver Aurora Lakewood for all item and all urban consumers, or its successor index. The director of research shall post the adjusted maximum hourly fee on the website of the general assembly.

History

Source: L. 68:P. 204, § 5.**C.R.S. 1963:**§ 113 2 5. **L. 83:**(1) amended, p. 863, § 4, effective July 1. **L. 92:**(3) and (4) added, p. 1105, § 5, effective July 1. **L. 2007:**(1) and (2) amended and (5) added, p. 578, § 1, effective Augu t 3. **L. 2013:**(1) amended,(HB 13 1041), ch. 9, p. 23, § 1, effective March 8. **L. 2014:**(6) added,(HB 14-1193), ch. 142, p. 487, § 1, effective July 1. **L. 2018:**(6)(b) amended,(HB 18-1375), ch. 274, p. 1712, § 54, effective May 29.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 24

C.R.S. Title 24, Art. 72, Pt. 2

State Notes

Research References & Practice Aids

Cross references:

For distribution of copies of reports made to the general assembly, see § 24-1-136 (9).

Colorado Revised Statutes Annotated

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Freedom of Information Act Statute

Below is the full text of the Freedom of Information Act in a form showing all amendments to the statute made by the "FOIA Improvement Act of 2016." All newly enacted provisions in boldface type replace the strikethrough text.

Full Text of the FOIA Improvement Act of 2016 (Public Law No. 114-185)

§ 552. Public information; agency rules, opinions, orders, records, and proceedings

(a) Each agency shall make available to the public information as follows:

(1) Each agency shall separately state and currently publish in the Federal Register for the guidance of the public—

(A) descriptions of its central and field organization and the established places at which, the employees (and in the case of a uniformed service, the members) from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(B) statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(C) rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(D) substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and

adopted by the agency; and

(E) each amendment, revision, or repeal of the foregoing.

Except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published in the Federal Register and not so published. For the purpose of this paragraph, matter reasonably available to the class of persons affected thereby is deemed published in the Federal Register when incorporated by reference therein with the approval of the Director of the Federal Register.

(2) Each agency, in accordance with published rules, shall make available ~~for public inspection and copying~~ **for public inspection in an electronic format**

(A) final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(B) those statements of policy and interpretations which have been adopted by the agency and are not published in the Federal Register;

(C) administrative staff manuals and instructions to staff that affect a member of the public;

(D) ~~copies of all records, regardless of form or format, which have been released to any person under paragraph (3) and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; and~~ **copies of all records, regardless of form or format** –

(i) that have been released to any person under paragraph (3); and

(ii)(I) that because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records; or

(II) that have been requested 3 or more times; and

(E) a general index of the records referred to under subparagraph (D);

unless the materials are promptly published and copies offered for sale. For records created on or after November 1, 1996, within one year after such date, each agency shall make such records available, including by computer telecommunications or, if computer telecommunications means have not been established by the agency, by other electronic means. To the extent

required to prevent a clearly unwarranted invasion of personal privacy, an agency may delete identifying details when it makes available or publishes an opinion, statement of policy, interpretation, staff manual, instruction, or copies of records referred to in subparagraph (D). However, in each case the justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in subsection (b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made. Each agency shall also maintain and make available for ~~public inspection and copying current~~ **public inspection in an electronic format** current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 4, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the Federal Register that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of an index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) available by computer telecommunications by December 31, 1999. A final order, opinion, statement of policy, interpretation, or staff manual or instruction that affects a member of the public may be relied on, used, or cited as precedent by an agency against a party other than an agency only if—

(i) it has been indexed and either made available or published as provided by this paragraph; or

(ii) the party has actual and timely notice of the terms thereof.

(3)(A) Except with respect to the records made available under paragraphs (1) and (2) of this subsection, and except as provided in subparagraph (E), each agency, upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed, shall make the records promptly available to any person.

(B) In making any record available to a person under this paragraph, an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format. Each agency shall make reasonable efforts to maintain its records in forms or formats that are reproducible for purposes of this section.

(C) In responding under this paragraph to a request for records, an agency shall make reasonable efforts to search for the records in electronic form or format, except when

such efforts would significantly interfere with the operation of the agency's automated information system.

(D) For purposes of this paragraph, the term "search" means to review, manually or by automated means, agency records for the purpose of locating those records which are responsive to a request.

(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

(ii) a representative of a government entity described in clause (i).

(4)(A)(i) In order to carry out the provisions of this section, each agency shall promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests under this section and establishing procedures and guidelines for determining when such fees should be waived or reduced. Such schedule shall conform to the guidelines which shall be promulgated, pursuant to notice and receipt of public comment, by the Director of the Office of Management and Budget and which shall provide for a uniform schedule of fees for all agencies.

(ii) Such agency regulations shall provide that—

(I) fees shall be limited to reasonable standard charges for document search, duplication, and review, when records are requested for commercial use;

(II) fees shall be limited to reasonable standard charges for document duplication when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media; and

(III) for any request not described in (I) or (II), fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, the term ‘a representative of the news media’ means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term ‘news’ means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ‘news’) who make their products available for purchase by or subscription by or free distribution to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(iv) Fee schedules shall provide for the recovery of only the direct costs of search, duplication, or review. Review costs shall include only the direct costs incurred during the initial examination of a document for the purposes of determining whether the documents must be disclosed under this section and for the purposes of withholding any portions exempt from disclosure under this section. Review costs may not include any costs incurred in resolving issues of law or policy that may be raised in the course of processing a request under this section. No fee may be charged by any agency under this section—

(I) if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee; or

(II) for any request described in clause (ii)(II) or (III) of this subparagraph for the first two hours of search time or for the first one hundred pages of duplication.

(v) No agency may require advance payment of any fee unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.

(vi) Nothing in this subparagraph shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records.

(vii) In any action by a requester regarding the waiver of fees under this section, the court shall determine the matter de novo: Provided, That the court's review of the matter shall be limited to the record before the agency.

(viii) ~~An agency shall not assess search fees (or in the case of a requester described under clause (ii)(II), duplication fees) under this subparagraph if the agency fails to comply with any time limit under paragraph (6), if no unusual or exceptional circumstances (as those terms are defined for purposes of paragraphs (6)(B) and (C), respectively) apply to the processing of the request.~~ **(I) Except as provided in subclause (II), an agency shall not assess any search fees (or in the case of a requester described under clause (ii)(II) of this subparagraph, duplication fees) under this subparagraph if the agency has failed to comply with any time limit under paragraph (6).**

(II)(aa) If an agency has determined that unusual circumstances apply (as the term is defined in paragraph (6)(B)) and the agency provided a timely written notice to the requester in accordance with paragraph (6)(B), a failure described in subclause (I) is excused for an additional 10 days. If the agency fails to comply

with the extended time limit, the agency may not assess any search fees (or in the case of a requester is described under clause (ii)(II) of this subparagraph, duplication fees).

(bb) If an agency has determined that unusual circumstances apply and more than 5,000 pages are necessary to respond to the request, an agency may charge search fees (or in the case of a requester described under clause (ii) (II) of this subparagraph, duplication fees) if the agency has provided a timely written notice to the requester in accordance with paragraph 6(B) and the agency has discussed with the requester via written mail, electronic mail, or telephone (or made not less than 3 good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with paragraph (6)(B)(ii).

(cc) If a court has determined that exceptional circumstances exist (as that term is defined in paragraph (6)(C)), a failure described in subclause (I) shall be excused for the length of time provided by the court order.

(B) On complaint, the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency records are situated, or in the District of Columbia, has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant. In such a case the court shall determine the matter de novo, and may examine the contents of such agency records in camera to determine whether such records or any part thereof shall be withheld under any of the exemptions set forth in subsection (b) of this section, and the burden is on the agency to sustain its action. In addition to any other matters to which a court accords substantial weight, a court shall accord substantial weight to an affidavit of an agency concerning the agency's determination as to technical feasibility under paragraph (2)(C) and subsection (b) and reproducibility under paragraph (3)(B).

(C) Notwithstanding any other provision of law, the defendant shall serve an answer or otherwise plead to any complaint made under this subsection within thirty days after service upon the defendant of the pleading in which such complaint is made, unless the court otherwise directs for good cause is shown.

[(D) Repealed. Pub. L. 98-620, title IV, Sec. 402(2), Nov. 8, 1984, 98 Stat. 3357.]

(E)(i) The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantially prevailed.

(ii) For purposes of this subparagraph, a complainant has substantially prevailed if the complainant has obtained relief through either—

(I) a judicial order, or an enforceable written agreement or consent decree; or

(II) a voluntary or unilateral change in position by the agency, if the complainant's claim is not insubstantial.

(F)(i) Whenever the court orders the production of any agency records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously with respect to the withholding, the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding. The Special Counsel, after investigation and consideration of the evidence submitted, shall submit his findings and recommendations to the administrative authority of the agency concerned and shall send copies of the findings and recommendations to the officer or employee or his representative. The administrative authority shall take the corrective action that the Special Counsel recommends.

(ii) The Attorney General shall—

(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).

(G) In the event of noncompliance with the order of the court, the district court may punish for contempt the responsible employee, and in the case of a uniformed service, the responsible member.

(5) Each agency having more than one member shall maintain and make available for public inspection a record of the final votes of each member in every agency proceeding.

(6)(A) Each agency, upon any request for records made under paragraph (1), (2), or (3) of this subsection, shall—

(i) determine within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of any such request whether to comply with such request and shall immediately notify the person ~~making such request of such determination and the reasons therefor, and of the right of such person to appeal to the head of the agency any adverse determination;~~ **making such a request of –**

(I) such determination and the reasons therefor;

(II) the right of such person to seek assistance from the FOIA Public Liaison of the agency; and

(III) in the case of an adverse determination –

(aa) the right of such person to appeal to the head of the agency, within a period determined by the head of the agency that is not less than 90 days after the date of such adverse determination; and

(bb) the right of such person to seek dispute resolution services from the FOIA Public Liaison of the agency or the Office of Government Information Services; and

(ii) make a determination with respect to any appeal within twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of such appeal. If on appeal the denial of the request for records is in whole or in part upheld, the agency shall notify the person making

such request of the provisions for judicial review of that determination under paragraph (4) of this subsection.

The 20-day period under clause (i) shall commence on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests under this section. The 20-day period shall not be tolled by the agency except—

(I) that the agency may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester under this section; or

(II) if necessary to clarify with the requester issues regarding fee assessment. In either case, the agency's receipt of the requester's response to the agency's request for information or clarification ends the tolling period.

(B)(i) In unusual circumstances as specified in this subparagraph, the time limits prescribed in either clause (i) or clause (ii) of subparagraph (A) may be extended by written notice to the person making such request setting forth the unusual circumstances for such extension and the date on which a determination is expected to be dispatched. No such notice shall specify a date that would result in an extension for more than ten working days, except as provided in clause (ii) of this subparagraph.

(ii) With respect to a request for which a written notice under clause (i) extends the time limits prescribed under clause (i) of subparagraph (A), the agency shall notify the person making the request if the request cannot be processed within the time limit specified in that clause and shall provide the person an opportunity to limit the scope of the request so that it may be processed within that time limit or an opportunity to arrange with the agency an alternative time frame for processing the request or a modified request. To aid the requester, each agency shall make available its FOIA Public Liaison, who shall assist in the resolution of any disputes between the requester and ~~the agency~~ **the agency, and notify the requester of the right of the requester to**

seek dispute resolution services from the Office of Government Information Services. Refusal by the person to reasonably modify the request or arrange such an alternative time frame shall be considered as a factor in determining whether exceptional circumstances exist for purposes of subparagraph (C).

(iii) As used in this subparagraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests—

(I) the need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(II) the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(III) the need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

(iv) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for the aggregation of certain requests by the same requestor, or by a group of requestors acting in concert, if the agency reasonably believes that such requests actually constitute a single request, which would otherwise satisfy the unusual circumstances specified in this subparagraph, and the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(C)(i) Any person making a request to any agency for records under paragraph (1), (2), or (3) of this subsection shall be deemed to have exhausted his administrative remedies with respect to such request if the agency fails to comply with the applicable time limit provisions of this paragraph. If the Government can show exceptional circumstances exist and that the agency is exercising due diligence in responding to

the request, the court may retain jurisdiction and allow the agency additional time to complete its review of the records. Upon any determination by an agency to comply with a request for records, the records shall be made promptly available to such person making such request. Any notification of denial of any request for records under this subsection shall set forth the names and titles or positions of each person responsible for the denial of such request.

(ii) For purposes of this subparagraph, the term "exceptional circumstances" does not include a delay that results from a predictable agency workload of requests under this section, unless the agency demonstrates reasonable progress in reducing its backlog of pending requests.

(iii) Refusal by a person to reasonably modify the scope of a request or arrange an alternative time frame for processing a request (or a modified request) under clause (ii) after being given an opportunity to do so by the agency to whom the person made the request shall be considered as a factor in determining whether exceptional circumstances exist for purposes of this subparagraph.

(D)(i) Each agency may promulgate regulations, pursuant to notice and receipt of public comment, providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.

(ii) Regulations under this subparagraph may provide a person making a request that does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing.

(iii) This subparagraph shall not be considered to affect the requirement under subparagraph (C) to exercise due diligence.

(E)(i) Each agency shall promulgate regulations, pursuant to notice and receipt of public comment, providing for expedited processing of requests for records—

(I) in cases in which the person requesting the records demonstrates a compelling need; and

(II) in other cases determined by the agency.

(ii) Notwithstanding clause (i), regulations under this subparagraph must ensure—

(I) that a determination of whether to provide expedited processing shall be made, and notice of the determination shall be provided to the person making the request, within 10 days after the date of the request; and

(II) expeditious consideration of administrative appeals of such determinations of whether to provide expedited processing.

(iii) An agency shall process as soon as practicable any request for records to which the agency has granted expedited processing under this subparagraph. Agency action to deny or affirm denial of a request for expedited processing pursuant to this subparagraph, and failure by an agency to respond in a timely manner to such a request shall be subject to judicial review under paragraph (4), except that the judicial review shall be based on the record before the agency at the time of the determination.

(iv) A district court of the United States shall not have jurisdiction to review an agency denial of expedited processing of a request for records after the agency has provided a complete response to the request.

(v) For purposes of this subparagraph, the term "compelling need" means—

(I) that a failure to obtain requested records on an expedited basis under this paragraph could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(II) with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity.

(vi) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by such person to be true and correct to the best of such person's knowledge and belief.

(F) In denying a request for records, in whole or in part, an agency shall make a reasonable effort to estimate the volume of any requested matter the provision of which is denied, and shall provide any such estimate to the person making the request, unless providing such estimate would harm an interest protected by the exemption in subsection (b) pursuant to which the denial is made.

(7) Each agency shall—

(A) establish a system to assign an individualized tracking number for each request received that will take longer than ten days to process and provide to each person making a request the tracking number assigned to the request; and

(B) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

(i) the date on which the agency originally received the request; and

(ii) an estimated date on which the agency will complete action on the request.

(8)(A) An agency shall –

(i) withhold information under this section only if –

(I) the agency reasonably foresees that disclosure would harm an interest protected by an exemption described in subsection (b); or

(II) disclosure is prohibited by law; and

(ii)(I) consider whether partial disclosure of information is possible whenever the agency determines that a full disclosure of a requested record is not possible; and

(II) take reasonable steps necessary to segregate and release nonexempt information; and

(B) Nothing in this paragraph requires disclosure of information that is otherwise prohibited from disclosure by law, or otherwise exempted from disclosure under subsection (b)(3).

(b) This section does not apply to matters that are—

(1)(A) specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (B) are in fact properly classified pursuant to such Executive order;

(2) related solely to the internal personnel rules and practices of an agency;

(3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute--

> (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
>
> > (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and
>
> (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009, specifically cites to this paragraph.

(4) trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) inter-agency or intra-agency memorandums or letters ~~which~~ **that** would not be available by law to a party other than an agency in litigation with the agency**, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested;**

(6) personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(7) records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information (A) could reasonably be expected to interfere with enforcement proceedings, (B) would deprive a person of a right to a fair trial or an impartial adjudication, (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy, (D) could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source, (E) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law, or (F) could reasonably be expected to endanger the life or physical safety of any individual;

(8) contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) geological and geophysical information and data, including maps, concerning wells.

Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection. The amount of information deleted, and the exemption under which the deletion is made, shall be indicated on the released portion of the record, unless including that indication would harm an interest protected by the exemption in this subsection under which the deletion is made. If technically feasible, the amount of the information deleted, and the exemption under which the deletion is made, shall be indicated at the place in the record where such deletion is made.

(c)(1) Whenever a request is made which involves access to records described in subsection (b)(7)(A) and—

(A) the investigation or proceeding involves a possible violation of criminal law; and

(B) there is reason to believe that (i) the subject of the investigation or proceeding is not aware of its pendency, and (ii) disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the agency may, during only such time as that circumstance continues, treat the records as not subject to the requirements of this section.

(2) Whenever informant records maintained by a criminal law enforcement agency under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the agency may treat the records as not subject to the requirements of this section unless the informant's status as an informant has been officially confirmed.

(3) Whenever a request is made which involves access to records maintained by the Federal Bureau of Investigation pertaining to foreign intelligence or counterintelligence, or international terrorism, and the existence of the records is classified information as provided in subsection (b)(1), the Bureau may, as long as the existence of the records remains classified information, treat the records as not subject to the requirements of this section.

(d) This section does not authorize the withholding of information or limit the availability of records to the public, except as specifically stated in this section. This section is not authority to withhold information from Congress.

(e)(1) On or before February 1 of each year, each agency shall submit to the Attorney General of the United States **and to the Director of the Office of Government Information Services** a report which shall cover the preceding fiscal year and which shall include—

(A) the number of determinations made by the agency not to comply with requests for records made to such agency under subsection (a) and the reasons for each such determination;

(B)(i) the number of appeals made by persons under subsection (a)(6), the result of such appeals, and the reason for the action upon each appeal that results in a denial of information; and

(ii) a complete list of all statutes that the agency relies upon to authorize the agency to withhold information under subsection (b)(3), the number of occasions on which each statute was relied upon, a description of whether a court has upheld the decision of the agency to withhold information under each such statute, and a concise description of the scope of any information withheld;

(C) the number of requests for records pending before the agency as of September 30 of the preceding year, and the median and average number of days that such requests had been pending before the agency as of that date;

(D) the number of requests for records received by the agency and the number of requests which the agency processed;

(E) the median number of days taken by the agency to process different types of requests, based on the date on which the requests were received by the agency;

(F) the average number of days for the agency to respond to a request beginning on the date on which the request was received by the agency, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests;

(G) based on the number of business days that have elapsed since each request was originally received by the agency—

(i) the number of requests for records to which the agency has responded with a determination within a period up to and including 20 days, and in 20-day increments up to and including 200 days;

(ii) the number of requests for records to which the agency has responded with a determination within a period greater than 200 days and less than 301 days;

(iii) the number of requests for records to which the agency has responded with a determination within a period greater than 300 days and less than 401 days; and

(iv) the number of requests for records to which the agency has responded with a determination within a period greater than 400 days;

(H) the average number of days for the agency to provide the granted information beginning on the date on which the request was originally filed, the median number of days for the agency to provide the granted information, and the range in number of days for the agency to provide the granted information;

(I) the median and average number of days for the agency to respond to administrative appeals based on the date on which the appeals originally were received by the agency, the highest number of business days taken by the agency to respond to an administrative appeal, and the lowest number of business days taken by the agency to respond to an administrative appeal;

(J) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally received by the agency;

(K) data on the 10 active administrative appeals with the earliest filing dates pending before the agency as of September 30 of the preceding year, including the number of business days that have elapsed since the requests were originally received by the agency;

(L) the number of expedited review requests that are granted and denied, the average and median number of days for adjudicating expedited review requests, and the number adjudicated within the required 10 days;

(M) the number of fee waiver requests that are granted and denied, and the average and median number of days for adjudicating fee waiver determinations;

(N) the total amount of fees collected by the agency for processing requests; ~~and~~

(O) the number of full-time staff of the agency devoted to processing requests for records under this section, and the total amount expended by the agency for processing such requests;

(P) the number of times the agency denied a request for records under subsection (c); and

(Q) the number of records that were made available for public inspection in an electronic format under subsection (a)(2).

(2) Information in each report submitted under paragraph (1) shall be expressed in terms of each principal component of the agency and for the agency overall.

(3) ~~Each agency shall make each such report available to the public including by computer telecommunications, or if computer telecommunications means have not been established by the agency, by other electronic means. In addition, each agency shall make the raw statistical data used in its reports available electronically to the public upon request.~~ **Each agency shall make each such report available for public inspection in an electronic format. In addition, each agency shall make the raw statistical data used in each report available in a timely manner for public inspection in an electronic format, which shall be available –**

(A) without charge, license, or registration requirement;

(B) in an aggregated, searchable format; and

(C) in a format that may be downloaded in bulk.

(4) The Attorney General of the United States shall make each report which has been made available by electronic means available at a single electronic access point. The Attorney General of the United States shall notify the Chairman and ranking minority member of the Committee on ~~Government Reform and Oversight~~ **Oversight and Government Reform** of the House of Representatives and the Chairman and ranking minority member of the Committees on **Homeland Security and** Governmental Affairs and the Judiciary of the Senate, no later than ~~April~~ **March** 1 of the year in which each such report is issued, that such reports are available by electronic means.

(5) The Attorney General of the United States, in consultation with the Director of the Office of Management and Budget, shall develop reporting and performance guidelines in connection with reports required by this subsection by October 1, 1997, and may establish additional requirements for such reports as the Attorney General determines may be useful.

(6) ~~The Attorney General of the United States shall submit an annual report on or before April 1 of each calendar year which shall include for the prior calendar year a listing of the number of cases arising under this section, the exemption involved in each case, the disposition of such case, and the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4). Such report shall also include a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.~~ **(A) The Attorney**

General of the United States shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President a report on or before March 1 of each calendar year, which shall include for the prior calendar year –

(i) a listing of the number of cases arising under this section;

(ii) a listing of –

(I) each subsection, and any exemption, if applicable, involved in each case arising under this section;

(II) the disposition of each case arising under this section; and

(III) the cost, fees, and penalties assessed under subparagraphs (E), (F), and (G) of subsection (a)(4); and

(iii) a description of the efforts undertaken by the Department of Justice to encourage agency compliance with this section.

(B) The Attorney General of the United States shall make –

(i) each report submitted under subparagraph (A) available for public inspection in an electronic format; and

(ii) the raw statistical data used in each report submitted under subparagraph (A) available for public inspection in an electronic format, which shall be made available –

(I) without charge, license, or registration requirement;

(II) in an aggregated, searchable format; and

(III) in a format that may be downloaded in bulk;

(f) For purposes of this section, the term—

(1) "agency" as defined in section 551(1) of this title includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency; and

(2) 'record' and any other term used in this section in reference to information includes—

(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

(B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management.

(g) The head of each agency shall prepare and make ~~publicly available upon request~~ **available for public inspection in an electronic format**, reference material or a guide for requesting records or information from the agency, subject to the exemptions in subsection (b), including—

(1) an index of all major information systems of the agency;

(2) a description of major information and record locator systems maintained by the agency; and

(3) a handbook for obtaining various types and categories of public information from the agency pursuant to chapter 35 of title 44, and under this section.

(h)(1) There is established the Office of Government Information Services within the National Archives and Records Administration. **The head of the Office shall be the Director of the Office of Government Information Services.**

(2) The Office of Government Information Services shall—

(A) review policies and procedures of administrative agencies under this section;

(B) review compliance with this section by administrative agencies; and

(C) ~~recommend policy changes to Congress and the President to improve the administration of this section.~~ **identify procedures and methods for improving compliance under this section.**

(3) ~~The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, may issue advisory opinions if mediation has not resolved the dispute.~~ **The Office of Government Information Services shall offer mediation services to resolve disputes between persons making requests under this section and administrative agencies as a nonexclusive alternative to**

litigation and may issue advisory opinions at the discretion of the Office or upon request of any party to a dispute.

(4)(A) Not less frequently than annually, the Director of the Office of Government Information Services shall submit to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on the Judiciary of the Senate, and the President –

(i) A report on the findings of the information reviewed and identified under paragraph (2);

(ii) A summary of the activities of the Office of Government Information Services under paragraph (3), including –

(I) any advisory opinions issued; and

(II) the number of times each agency engaged in dispute resolution with the assistance of the Office of Government Information Services or the FOIA Public Liaison; and

(iii) Legislative and regulatory recommendations, if any, to improve the administration of this section.

(B) The Director of the Office of Government Information Services shall make each report submitted under subparagraph (A) available for public inspection in an electronic format.

(C) The Director of the Office of Government Information Services shall not be required to obtain the prior approval, comment, or review of any officer or agency of the United States, including the Department of Justice, the Archivist of the United States, or the Office of Management and Budget before submitting to Congress, or any committee or subcommittee thereof, any reports, recommendations, testimony, or comments, if such submissions include a statement indicating that the views expressed therein are those of the Director and do not necessarily represent the views of the President.

(5) The Director of the Office of Government Information Services may directly submit additional information to Congress and the President as the Director determines to be appropriate.

(6) Not less frequently than annually, the Office of Government Information Services shall conduct a meeting that is open to the public on the review and reports by the Office and

shall allow interested persons to appear and present oral or written statements at the meeting.

(i) The Government Accountability Office shall conduct audits of administrative agencies on the implementation of this section and issue reports detailing the results of such audits.

~~(j) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).~~

~~(k) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency—~~

~~(1) have agency-wide responsibility for efficient and appropriate compliance with this section; (2) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section; (3) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section; (4) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section; (5) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply; and (6) designate one or more FOIA Public Liaisons.~~

(j)(1) Each agency shall designate a Chief FOIA Officer who shall be a senior official of such agency (at the Assistant Secretary or equivalent level).

(2) The Chief FOIA Officer of each agency shall, subject to the authority of the head of the agency –

(A) have agency-wide responsibility for efficient and appropriate compliance with this section;

(B) monitor implementation of this section throughout the agency and keep the head of the agency, the chief legal officer of the agency, and the Attorney General appropriately informed of the agency's performance in implementing this section;

(C) recommend to the head of the agency such adjustments to agency practices, policies, personnel, and funding as may be necessary to improve its implementation of this section;

(D) review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing this section;

(E) facilitate public understanding of the purposes of the statutory exemptions of this section by including concise descriptions of the exemptions in both the agency's handbook issued under subsection (g), and the agency's annual report on this section, and by providing an overview, where appropriate, of certain general categories of agency records to which those exemptions apply;

(F) offer training to agency staff regarding their responsibilities under this section;

(G) serve as the primary agency liaison with the Office of Government Information Services and the Office of Information Policy; and

(H) designate 1 or more FOIA Public Liaisons.

(3) The Chief FOIA Officer of each agency shall review, not less frequently than annually, all aspects of the administration of this section by the agency to ensure compliance with the requirements of this section, including –

(A) agency regulations;

(B) disclosure of records required under paragraphs (2) and (8) of subsection (a);

(C) assessment of fees and determination of eligibility for fee waivers;

(D) the timely processing of requests for information under this section;

(E) the use of exemptions under subsection (b); and

(F) dispute resolution services with the assistance of the Office of Government Information Services or the FOIA Public Liaison.

(k)(1) There is established in the executive branch the Chief FOIA Officers Council (referred to in this subsection as the 'Council').

(2) The Council shall be comprised of the following members:

(A) The Deputy Director for Management of the Office of Management and Budget.

(B) The Director of the Office of Information Policy at the Department of Justice.

(C) The Director of the Office of Government Information Services.

(D) The Chief FOIA Officer of each agency.

(E) Any other officer or employee of the United States as designated by the Co-Chairs.

(3) The Director of the Office of Information Policy at the Department of Justice and the Director of the Office of Government Information Services shall be the Co-Chairs of the Council.

(4) The Administrator of General Services shall provide administrative and other support for the Council.

(5)(A) The duties of the Council shall include the following:

(i) Develop recommendations for increasing compliance and efficiency under this section.

(ii) Disseminate information about agency experiences, ideas, best practices, and innovative approaches related to this section.

(iii) Identify, develop, and coordinate initiatives to increase transparency and compliance with this section.

(iv) Promote the development and use of common performance measures for agency compliance with this section.

(B) In performing the duties described in subparagraph (A), the Council shall consult on a regular basis with members of the public who make requests under this section.

(6)(A) The Council shall meet regularly and such meetings shall be open to the public unless the Council determines to close the meeting for reasons of national security or to discuss information exempt under subsection (b).

(B) Not less frequently than annually, the Council shall hold a meeting that shall be open to the public and permit interested persons to appear and present oral and written statements to the Council.

(C) Not later than 10 business days before a meeting of the Council, notice of such meeting shall be published in the Federal Register.

(D) Except as provided in subsection (b), the records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by the Council shall be made publicly available.

(E) Detailed minutes of each meeting of the Council shall be kept and shall contain a record of the persons present, a complete and accurate description of matters discussed and conclusions reached, and copies of all reports received, issued, or approved by the Council. The minutes shall be redacted as necessary and made publicly available.

(l) FOIA Public Liaisons shall report to the agency Chief FOIA Officer and shall serve as supervisory officials to whom a requester under this section can raise concerns about the service the requester has received from the FOIA Requester Center, following an initial response from the FOIA Requester Center Staff. FOIA Public Liaisons shall be responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(m)(1) The Director of the Office of Management and Budget, in consultation with the Attorney General shall ensure the operation of a consolidated online request portal that allows a member of the public to submit a request for records under subsection (a) to any agency from a single website. The portal may include any additional tools the Director of the Office of Management and Budget finds will improve the implementation of this section.

(2) This subsection shall not be construed to alter the power of any other agency to create or maintain an independent online portal for the submission of a request for records under this section. The Director of the Office of Management and Budget shall establish standards for interoperability between the portal required under paragraph (1) and other request processing software used by agencies subject to this section.

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