

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 24-0110.01 Megan McCall x4215

HOUSE BILL 24-1296

HOUSE SPONSORSHIP

Kipp and Soper, Boesenecker

SENATE SPONSORSHIP

Marchman,

House Committees

State, Civic, Military, & Veterans Affairs
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO LESSEN THE BURDENS OF**
102 **RESPONDING TO RECORDS REQUESTS FOR CUSTODIANS OF**
103 **RECORDS UNDER THE "COLORADO OPEN RECORDS ACT".**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes the following changes to the "Colorado Open Records Act" (CORA):

- Requires a custodian to evaluate a request for public records promptly and for no longer than 2 days. Within the 2-day period the custodian shall notify the requester

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

HOUSE
3rd Reading Unamended
April 20, 2024

HOUSE
Amended 2nd Reading
April 19, 2024

whether or not any costs or fees that may apply to the request and if extenuating circumstances exist that allow for an extension of the reasonable time to respond to a CORA request (response period). If there are costs or fees that may apply, the response period does not begin until the custodian receives a response from the requester acknowledging acceptance of the costs or fees. Alternatively, a requester may revise their request and the custodian shall evaluate the revised request within the 2-day evaluation period. Otherwise, the response period begins after the custodian has provided notice to the requester.

- Adds an extenuating circumstance that allows for an extension of the response period when the custodian is not scheduled to work within the response period;
- If public records are in the custody and control of someone who is not scheduled to work within the response period, a custodian shall notify the requester of the date the person is scheduled to return to work and make best efforts to make responsive records available for inspection within the response period or extended response period, as applicable. The requester may make a subsequent request for additional responsive records, if any, on or after the date the person who is authorized to have custody and control of the records is scheduled to return to work.
- Allows a custodian to determine that a requester is a vexatious requester, requires the custodian to make a sworn statement in support of the determination to provide to the requester, allows the custodian a 30-day response period when a requester is a vexatious requester, and permits the requester to appeal the determination that the requester is a vexatious requester to the district court;
- Excludes a mass medium or newsperson from being a vexatious requester;
- Allows a custodian to determine that a request is made for the direct solicitation of business for pecuniary gain, requires the custodian to make a sworn statement in support of the determination to provide to the requester, allows the custodian a 30-day response period for such a request, permits the requester to appeal the determination that the request is made for the direct solicitation of business for pecuniary gain to the district court, and allows a custodian to charge the requester for the full cost of responding to the request notwithstanding the allowance for the first hour of research and retrieval to otherwise be free of charge and

notwithstanding the statutory cap on fees, which otherwise would apply;

- Prohibits disclosure of any other contact information of students in any public elementary or secondary school in addition to the prohibition of disclosure of addresses and telephone numbers that is in current law;
- Allows a custodian to deny the right of inspection of public records that are an employee's calendar, unless the public record is an elected official's calendar or the calendar of an employee who is in a leadership position or the request is made by a mass medium or newsperson; and
- Allows a custodian to treat a CORA request made within 14 calendar days of another CORA request made by the same person as one request for purposes of calculating the fee that the custodian may charge to the requester for research and retrieval of responsive public records.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-202, **amend**
3 **(6)(b)(XVI) and (6)(b)(XVII); add (6)(b)(XVIII)** as follows:

4 **24-72-202. Definitions.** As used in this part 2, unless the context
5 otherwise requires:

6 (6) (b) "Public records" does not include:

7 (XVI) Records related to complaints received by the office of the
8 judicial discipline ombudsman pursuant to section 13-3-120, including
9 any record that names or otherwise identifies a specific complainant or
10 other person involved in the complaint; ~~or~~

11 (XVII) A complaint of harassment or discrimination, as described
12 in section 22-1-143, that is unsubstantiated and all records related to the
13 unsubstantiated complaint, including records of an investigation into the
14 complaint; ~~OR~~

15 (XVIII) A WRITTEN DOCUMENT OR ELECTRONIC RECORD THAT IS
16 PRODUCED BY A DEVICE OR APPLICATION THAT IS USED TO ASSIST AN

1 INDIVIDUAL WITH A DISABILITY TO FACILITATE COMMUNICATION IF THE
2 WRITTEN DOCUMENT OR ELECTRONIC RECORD HAS BEEN PRODUCED TO
3 FACILITATE COMMUNICATION IN LIEU OF VERBAL COMMUNICATION.

4

5 **SECTION 2.** In Colorado Revised Statutes, 24-72-203, **amend**
6 (3)(b) introductory portion, (3)(b)(I), (3)(b)(II) introductory portion,
7 (3)(b)(II)(B), and (3)(b)(III); and **add** (1)(c), (3)(b)(IV), (3)(b.5), (3)(d),
8 and (3)(e) as follows:

9 **24-72-203. Public records open to inspection.** (1) (c) A PUBLIC
10 ENTITY THAT HAS PUBLIC RECORDS THAT MAY BE SUBJECT TO DISCLOSURE
11 PURSUANT TO THIS PART 2 SHALL POST ON ITS WEBSITE ANY RULES OR
12 POLICIES ADOPTED IN ACCORDANCE WITH THIS PART 2, INCLUDING RULES
13 CONCERNING THE INSPECTION OF PUBLIC RECORDS AND WHAT THE PUBLIC
14 ENTITY'S RECORDS RETENTION POLICY IS. THE PUBLIC ENTITY SHALL ALSO
15 POST INFORMATION ON ITS WEBSITE INFORMING MEMBERS OF THE PUBLIC
16 HOW TO REQUEST INSPECTION OF PUBLIC RECORDS FROM A CUSTODIAN OF
17 THE PUBLIC ENTITY. IF THE PUBLIC ENTITY DOES NOT HAVE A PUBLICLY
18 ACCESSIBLE WEBSITE, THEN THE INFORMATION REQUIRED TO BE POSTED
19 PURSUANT TO THIS SUBSECTION (1)(c) MUST BE PHYSICALLY POSTED IN
20 THE LOCATION DESIGNATED BY THE PUBLIC ENTITY FOR POSTING NOTICES.

21 (3) (b) The date and hour set for the inspection of
22 records not readily available at the time of the request ~~shall~~ MUST be
23 within a reasonable time after the request. As used in this subsection (3),
24 a "reasonable time" ~~shall be~~ IS presumed to be ~~three~~ FIVE working days or
25 less. Such period may be extended if extenuating circumstances exist.
26 However, such period of extension shall not exceed ~~seven~~ TEN working
27 days. A finding that extenuating circumstances exist ~~shall~~ MUST be made

1 in writing by the custodian and ~~shall~~ MUST be provided to the person
2 making the request within the ~~three-day~~ FIVE-DAY period. Extenuating
3 circumstances ~~shall~~ apply only when:

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

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

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

14 (III) A request involves such a large volume of records that the
15 custodian cannot reasonably prepare or gather the records within the
16 ~~three-day~~ FIVE-DAY period without substantially interfering with the
17 custodian's obligation to perform his or her other public service
18 responsibilities; OR

19 (IV) THE CUSTODIAN, OR A PERSON WHO IS ESSENTIAL TO THE
20 PROCESS OF RESPONDING TO REQUESTS, IS NOT SCHEDULED TO WORK
21 WITHIN ALL OR PART OF THE FIVE-DAY PERIOD.

22 (b.5) NOTWITHSTANDING THE PERIODS SET FORTH IN SUBSECTION
23 (3)(b) OF THIS SECTION, A "REASONABLE TIME" TO RESPOND TO A REQUEST
24 MADE BY A MASS MEDIUM, AS DEFINED IN SECTION 13-90-119 (1)(a), OR
25 A NEWSPERSON, AS DEFINED IN SECTION 13-90-119 (1)(c), IS PRESUMED TO
26 BE THREE WORKING DAYS OR LESS, AND SUCH PERIOD MAY BE EXTENDED
27 UP TO AN ADDITIONAL SEVEN WORKING DAYS IF EXTENUATING

1 CIRCUMSTANCES EXIST AS SET FORTH IN SUBSECTION (3)(b) OF THIS
2 SECTION.

3 (d) (I) (A) IF A CUSTODIAN, DESPITE EXPENDING REASONABLE
4 EFFORT, IS UNABLE TO DETERMINE OR ACCESS PUBLIC RECORDS THAT MAY
5 BE RESPONSIVE TO A REQUEST BECAUSE THE PUBLIC RECORDS MAY BE IN
6 THE SOLE AND EXCLUSIVE CUSTODY AND CONTROL OF ANOTHER
7 EMPLOYEE, VOLUNTEER, DIRECTOR, AGENT, ELECTED OFFICIAL, OR OTHER
8 PERSON AUTHORIZED TO HAVE CUSTODY AND CONTROL OF THE PUBLIC
9 RECORDS WHO IS ON LEAVE, NOT ON CONTRACT, OR OTHERWISE NOT
10 SCHEDULED TO WORK WITHIN THE THREE-DAY OR FIVE-DAY PERIOD, AS
11 APPLICABLE, THE CUSTODIAN SHALL PROVIDE WITHIN THE APPLICABLE
12 PERIODS SET FORTH IN THIS SUBSECTION (3) ALL OTHER AVAILABLE
13 RESPONSIVE PUBLIC RECORDS IN ACCORDANCE WITH THIS PART 2. THE
14 CUSTODIAN SHALL NOTIFY THE REQUESTER OF THE EARLIEST DATE ON
15 WHICH THE OTHER PERSON WHO MAY HAVE ANY ADDITIONAL
16 POTENTIALLY RESPONSIVE PUBLIC RECORDS IS EXPECTED TO BE
17 AVAILABLE AND IF THE PERSON'S RETURN DATE IS UNABLE TO BE
18 DETERMINED AT THE TIME OF THE REQUEST, THE CUSTODIAN SHALL
19 NOTIFY THE REQUESTER OF THE DATE OF THE PERSON'S RETURN AS SOON
20 AS IT IS ABLE TO BE DETERMINED OR, IF THE PERSON IS NOT EXPECTED TO
21 RETURN TO WORK, THE CUSTODIAN SHALL PROVIDE NOTICE TO THE
22 REQUESTER OF THAT. THE REQUESTER MAY SUBMIT A NEW REQUEST FOR
23 ANY ADDITIONAL POTENTIALLY RESPONSIVE PUBLIC RECORDS ON OR
24 AFTER THE DATE THAT THE CUSTODIAN PROVIDES.

25 (B) THIS SUBSECTION (3)(d) IS NOT INTENDED TO BE UTILIZED TO
26 INTENTIONALLY DELAY OR CIRCUMVENT THE RELEASE OF PUBLIC RECORDS
27 AND IT DOES NOT EXEMPT A CUSTODIAN'S RESPONSIBILITY TO MAINTAIN

1 REASONABLE ACCESS TO PUBLIC RECORDS.

2 (II) THE PROVISIONS SET FORTH IN THIS SUBSECTION (3)(d) DO NOT
3 MODIFY THE PROVISIONS SET FORTH IN SUBSECTION (2)(a) OF THIS
4 SECTION. ■ ■

5 (e) (I) IF A CUSTODIAN DETERMINES THAT REQUESTED PUBLIC
6 RECORDS WILL BE USED FOR THE DIRECT SOLICITATION OF BUSINESS FOR
7 PECUNIARY GAIN, THE CUSTODIAN SHALL PROVIDE THE REQUESTER WITH
8 WRITTEN NOTIFICATION OF THE DETERMINATION WITHIN THE ■
9 THREE-DAY OR FIVE-DAY PERIOD, AS APPLICABLE, AND,
10 NOTWITHSTANDING SUBSECTION (3)(b) OF THIS SECTION, IN SETTING A
11 DATE AND HOUR FOR RECORDS TO BE AVAILABLE FOR INSPECTION, THE
12 CUSTODIAN SHALL HAVE THIRTY WORKING DAYS FROM PROVIDING THE
13 NOTICE. A REQUESTER MAY SUBMIT WITH A REQUEST A SIGNED
14 STATEMENT AFFIRMING THAT THE REQUESTED PUBLIC RECORDS WILL NOT
15 BE USED FOR THE DIRECT SOLICITATION OF BUSINESS FOR PECUNIARY GAIN,
16 WHICH THE CUSTODIAN MUST CONSIDER IN MAKING THE CUSTODIAN'S
17 DETERMINATION PURSUANT TO THIS SUBSECTION (3)(e)(I). THE
18 CUSTODIAN SHALL NOT CONSIDER IF THE REQUESTER MAY RECEIVE ANY
19 MONETARY OR EQUITABLE AWARD PURSUANT TO LITIGATION IN MAKING
20 THE DETERMINATION OF WHETHER A REQUEST IS FOR THE DIRECT
21 SOLICITATION OF BUSINESS FOR PECUNIARY GAIN.

22 (II) A REQUESTER THAT MAKES A REQUEST THAT HAS BEEN
23 DETERMINED BY A CUSTODIAN TO BE FOR THE DIRECT SOLICITATION OF
24 BUSINESS FOR PECUNIARY GAIN MAY APPLY TO THE DISTRICT COURT OF
25 THE DISTRICT IN WHICH THE REQUESTED PUBLIC RECORDS ARE LOCATED
26 FOR A DETERMINATION THAT THE REQUEST IS NOT FOR THE DIRECT
27 SOLICITATION OF BUSINESS FOR PECUNIARY GAIN. THE COURT SHALL

1 REVIEW THE MATTER AT THE EARLIEST PRACTICAL TIME AND HAS
2 DISCRETION TO LIMIT ITS REVIEW TO SUBMISSION OF PLEADINGS,
3 AFFIDAVITS, AND OTHER MATERIAL AS DEEMED APPROPRIATE BY THE
4 COURT, OR THE COURT MAY SCHEDULE A HEARING. IN ITS REVIEW, THE
5 COURT SHALL APPLY AN ABUSE OF DISCRETION STANDARD TO THE
6 CUSTODIAN'S DETERMINATION.

7 (III) NOTWITHSTANDING SECTION 24-72-205 (6)(a), A CUSTODIAN
8 IS ENTITLED TO RECOVER THE FULL COST ASSOCIATED WITH RESPONDING
9 TO A REQUEST FOR RECORDS THAT HAS BEEN DETERMINED BY THE
10 CUSTODIAN TO BE FOR THE DIRECT SOLICITATION OF BUSINESS FOR
11 PECUNIARY GAIN.

12 (IV) A REQUEST FOR PUBLIC RECORDS FOR PURPOSES RELATED TO
13 COLLECTIVE BARGAINING, ORGANIZING, OR OTHER RIGHTS AND ACTIVITIES
14 PROTECTED BY ARTICLE 33 OF TITLE 29 BY AN ENTITY ENGAGED IN
15 COLLECTIVE BARGAINING, ORGANIZING, OR OTHER RIGHTS AND ACTIVITIES
16 PROTECTED BY ARTICLE 33 OF TITLE 29 IS NOT A REQUEST FOR THE DIRECT
17 SOLICITATION OF BUSINESS FOR PECUNIARY GAIN.

18 (V) THIS SUBSECTION (3)(f) DOES NOT APPLY TO A CONTRACT OR
19 OTHER INFORMATION DELIVERED ROUTINELY USING COMPUTER DATA
20 EXTRACTION METHODS THAT REQUIRE MINIMAL HUMAN INTERVENTION
21 FOR RETRIEVAL.

22 **SECTION 3.** In Colorado Revised Statutes, 24-72-204, **amend**
23 (3)(a)(VI) and (3)(a)(XXIII); and **add** (3)(a)(XXIV) as follows:

24 **24-72-204. Allowance or denial of inspection - grounds -**
25 **procedure - appeal - definitions - repeal.** (3) (a) The custodian
26 shall deny the right of inspection of the following records, unless
27 otherwise provided by law; except that the custodian shall make any of

1 the following records, other than letters of reference concerning
2 employment, licensing, or issuance of permits, available to the person in
3 interest in accordance with this subsection (3):

4 (VI) Except as provided in section 1-2-227, addresses, ~~and~~
5 telephone numbers, AND ANY OTHER CONTACT INFORMATION of students
6 in any public elementary or secondary school;

7 (XXIII) Records, including analyses and maps, compiled or
8 maintained in accordance with article 73 of title 35 that are based on
9 information related to private lands and identify or allow to be identified
10 any specific Colorado landowners, land managers, agricultural producers,
11 or parcels of land; except that the custodian may release or authorize
12 inspection of summary or aggregated data that do not specifically identify
13 individual landowners, land managers, agricultural producers, or parcels
14 of land; AND

15 (XXIV) AN EMPLOYEE'S CALENDAR THAT IS KEPT AND
16 MAINTAINED PRIMARILY PURSUANT TO THE EMPLOYEE'S EMPLOYMENT;
17 EXCEPT THAT CALENDARS OF ELECTED OFFICIALS OR EMPLOYEES IN
18 LEADERSHIP POSITIONS ARE NOT SUBJECT TO THIS SUBSECTION
19 (3)(a)(XXIV). NOTHING IN THIS SUBSECTION (3)(a)(XXIV) PROHIBITS THE
20 CUSTODIAN FROM ALLOWING A MASS MEDIUM, AS DEFINED IN SECTION
21 13-90-119 (1)(a), OR A NEWSPERSON, AS DEFINED IN SECTION 13-90-119
22 (1)(c), THE RIGHT OF INSPECTION OF THESE RECORDS.

23 **SECTION 4.** In Colorado Revised Statutes, 24-72-205, **add**
24 (6)(c) and (8) as follows:

25 **24-72-205. Copy, printout, or photograph of a public record**
26 **- imposition of research and retrieval fee.** (6) (c) FOR PURPOSES OF THE
27 FEE CHARGED PURSUANT TO THIS SUBSECTION (6), A CUSTODIAN MAY

1 TREAT A REQUEST FOR PUBLIC RECORDS MADE WITHIN FOURTEEN
2 CALENDAR DAYS OF ANOTHER REQUEST MADE BY THE SAME PERSON AS
3 ONE REQUEST AND NOT AS MULTIPLE INDIVIDUAL REQUESTS; EXCEPT THAT
4 THIS SUBSECTION (6)(c) DOES NOT APPLY TO REQUESTS MADE BY A MASS
5 MEDIUM, AS DEFINED IN SECTION 13-90-119 (1)(a), OR A NEWSPERSON, AS
6 DEFINED IN SECTION 13-90-119 (1)(c).

7 (8) IF A CUSTODIAN IMPOSES ANY REQUIREMENTS CONCERNING
8 THE PRE-PAYMENT OF FEES OR THE PAYMENT OF FEES IN CONNECTION
9 WITH A REQUEST FOR INSPECTION OF PUBLIC RECORDS, THE REQUIREMENTS
10 MUST BE IN ACCORDANCE WITH THE CUSTODIAN'S ADOPTED RULES OR
11 WRITTEN POLICIES PURSUANT TO THIS PART 2 AND MUST NOT BE
12 INCONSISTENT WITH THE PROVISIONS SET FORTH IN THIS SECTION.

13 **SECTION 5.** In Colorado Revised Statutes, add 2-2-328 as
14 follows:

15 **2-2-328. Retention of records.** MEMBERS OF THE GENERAL
16 ASSEMBLY SHALL RETAIN PUBLIC RECORDS, AS DEFINED IN SECTION
17 24-72-202 (6), FOR A MINIMUM OF SIXTY DAYS.

18 **SECTION 6. Act subject to petition - effective date -**
19 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
20 the expiration of the ninety-day period after final adjournment of the
21 general assembly; except that, if a referendum petition is filed pursuant
22 to section 1 (3) of article V of the state constitution against this act or an
23 item, section, or part of this act within such period, then the act, item,
24 section, or part will not take effect unless approved by the people at the
25 general election to be held in November 2024 and, in such case, will take
26 effect on the date of the official declaration of the vote thereon by the
27 governor.

1 (2) (a) Sections 1, 2, 3, and 4 of this act apply to requests for open
2 records made pursuant to article 72 of title 24, Colorado Revised Statutes,
3 on or after the applicable effective date of this act.

4 (b) Section 5 of this act applies to public records of the members
5 of the general assembly on or after the applicable effective date of this
6 act.