Colorado Revised Statutes 2017

TITLE 24

GOVERNMENT - STATE

ARTICLE 72

Public Records

PART 2

INSPECTION, COPYING, OR PHOTOGRAPHING

Cross references: For provisions concerning the distribution of reports of agencies pursuant to the "Information Coordination Act", see § 24-1-136; for provisions concerning access to records pursuant to federal law, see the "Freedom of Information Act", 5 U.S.C. § 552.

Law reviews: For article, "'Columbine' and Colorado's Records Acts", see 45 Colo. Law. 45 (Sept. 2016).

24-72-200.1. Short title. Part 2 of this article shall be known and may be cited as the "Colorado Open Records Act" or "CORA".

Source: L. 2009: Entire section added, (SB 09-292), ch. 369, p. 1969, § 79, effective August 5.

24-72-201. Legislative declaration. It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

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

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 records will remain confidential is insufficient to transform a public record into a private one. Daniels 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 harassment against the superintendent, must categorically be subject to public inspection. Pierce v. St. Vrain Valley Sch. Dist., 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 Publishing 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 interest. Martinelli v. District 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 Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974); Anderson v. Home Ins. 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 person access to public records. Denver Publishing Co. v. Dreyfus, 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. District Court, 199 Colo. 303, 607 P.2d 985 (1980).

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

(1) "Correspondence" means a communication that is sent to or received by one or more specifically identified individuals and that is or can be produced in written form, including,

without limitation:

(a) Communications sent via U.S. mail;

(b) Communications sent via private courier;

(c) Communications sent via electronic mail.

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

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

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

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

(1.6) "Institutionally related 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 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 institutionally related health care foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.8) "Institutionally related real estate 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 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, institution, or political subdivision of the state, of any institutionally related foundation, of any institutionally related health care foundation, of any institutionally 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 disability, "person in interest" means and includes his parent or duly appointed legal representative.

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

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

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

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

(A) Work product;

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

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or that is communicated for the purpose of requesting that the elected official render assistance 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 this subsection (6), for an institutionally related foundation, an institutionally related health care foundation, or an institutionally related real estate 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 justice records that are subject to the provisions of part 3 of this article;

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

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

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

(B) Data, information, and records, including medical records, relating to designated beneficiaries of and individual contributors to an individual trust account or savings account under the savings programs established pursuant to part 3 of article 3.1 of title 23, C.R.S., including any records that reveal personally identifiable information about such individuals;

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

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

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

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

(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 institutionally related foundation;

(C) Proprietary fundraising information of an institution or an institutionally 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 writings relating to such transaction;

(X) The information security plan of a public agency developed pursuant to section 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); or

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

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

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

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

(b) "Work product" also includes:

(I) All documents relating to the drafting of bills or amendments, pursuant to section 2-3-304 (1) or 2-3-505 (2)(b), C.R.S., but it does not include the final version of documents prepared or assembled pursuant to section 2-3-505 (2)(c), C.R.S.;

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

(c) "Work product" does not include:

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

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

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

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

a decision by an elected official.

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

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

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

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

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

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

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

Source: L. 68: p. 201, § 2. **C.R.S. 1963:** § 113-2-2. **L. 77:** (6) amended, p. 1250, § 2, effective December 31. **L. 85:** (1.5) added, p. 867, § 1, effective June 6. **L. 90:** (3) amended, p. 449, § 21, effective April 18. **L. 91:** (5) amended, p. 726, § 3, effective April 20. **L. 92:** (4.5) added and (7) amended, p. 1103, § 2, effective July 1. **L. 94:** (1.3) added, p. 936, § 1, effective April 28; (4.5) amended, p. 832, § 2, effective April 28. **L. 96:** (1.7) added and (2) and (6) amended, p. 141, § 2, effective April 8; (1), (6), and (7) amended and (1.1), (1.2), and (6.5) added, p. 1480, § 4, effective June 1. **L. 97:** (6)(b)(II) and (6.5)(b) amended and (6.5)(d) added, p. 1104, §§ 2, 3, effective August 6. **L. 98:** (6)(b)(III) added, p. 213, § 3, effective August 5. **L. 99:** (6.5)(c)(IV) amended, p. 205, § 2, effective March 31. **L. 2000:** (6)(b)(III) amended, p. 223, § 4, effective March 29; (6)(b)(IV) added, p. 243, § 8, effective March 29; (6)(a)(I) amended, p. 415, § 6, effective April 13; (6)(b)(V) added, p. 1736, § 4, effective June 1. **L. 2001:** (8) added, p. 1075, § 4, effective August 8. **L. 2002:** (3) amended, p. 643, § 2, effective May 24; (5) amended, p. 402, § 3, effective August 7. **L. 2004:** (6)(b)(III) amended, p. 575, § 33, effective July 1. **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.

Editor's note: Amendments to subsection (6) by House Bill 96-1029 and Senate Bill 96-212 were harmonized.

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.

ANNOTATION

Law reviews. For article, "E-mail, Open Meetings, and Public Records", see 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 restrict access to information by merely placing a record in a personnel file; a legitimate expectation of privacy must exist. Denver Publishing 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, subject to redaction of names of individuals against whom complaints could not be substantiated. Daniels 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 funds were commingled; (3) whether the activity was conducted on publicly owned property; (4) whether services 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. Dreyfus, 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 district full access to documents. 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 assembly is work product under subsection (6.5)(b) and § 2-3-505 (2)(b), does not automatically lose its work product status when incorporated into a memorandum that is otherwise 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).

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 subsection (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 because they were not part of employees' "personnel files". Statutory definition of "personnel files" specifically excludes such amounts. Freedom Newspapers, 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. Fort 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 disclosure the information that does not address the performance of public functions. The open records law does not mandate that e-mail records 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 state for payment of the bills, and did not turn the bills over to any other state agency or official for their use. Denver Post Corp. v. Ritter, 255 P.3d 1083 (Colo. 2011).

24-72-203. Public records open to inspection. (1) (a) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

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

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

(II) Take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via 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 person's custody or control, the location of the records, and what person then has custody or control of the records.

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

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

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

the custodian and shall be provided to the person making the request within the three-day period. Extenuating circumstances shall apply only when:

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

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

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

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

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

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

(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 subsection (1)(a) of this section if:

(I) Producing the record in the requested format would violate the terms of any copyright or licensing agreement between the custodian and a third party or result in the release 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 software or create additional programming or functionality in its existing software 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 (1)(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 existing public record, or excising fields of information pursuant to this

subsection (3.5) to remove information that the custodian is either required or permitted to withhold, does not constitute 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 this authorization shall not restrict public access to or fair use of copyrighted materials and shall not apply to writings which are merely lists or other compilations.

Source: L. 68: p. 202, § 3. **C.R.S. 1963:** § 113-2-3. **L. 92:** (4) added, p. 1104, § 3, effective July 1. **L. 96:** (1) to (3) amended, p. 1483, § 5, effective June 1. **L. 99:** IP(3)(b) amended and (3)(b)(III) added, p. 207, § 1, effective March 31. **L. 2017:** (3.5) added, (SB 17-040), ch. 286, p. 1582, § 1, effective August 9.

Cross references: For the legislative declaration contained in the 1996 act amending subsections (1) to (3), see section 1 of chapter 271, Session Laws of Colorado 1996.

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", see 33 Colo. Law. 111 (Oct. 2004). For article, "Copyright, Privacy, and Open Records Act Website Policies for Governmental Entities", see 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 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).

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 scheduled work activities, the entity's policy

is consistent with the statutory authorization for "reasonably necessary" rules and the jurisprudential recognition of the need for balance between the public's right to inspect public records and the administrative burdens that may be placed on government agencies responding to such requests. 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 exercise the right of inspection, legislative history reflects that this omission was intentional. Black v. S.W. Water Conserv. Dist., 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 needs only to notify the requesting party that it has no knowledge of the location of requested records, or to refer such party to the agency it believes 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 records act in order to create a new document solely for purposes of disclosure. Office of State Court Adm'r v. Background Info. Servs., 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 is exempt under the open records law could be altered such that it would qualify as group scholastic achievement data not subject 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 is involved. Freedom News 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 prohibit 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 statute. Freedom Newspapers, Inc. v. Tollefson, 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).

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions. (1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

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

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

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

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

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

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files 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 state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest 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 such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property, if a condemning authority determines that it intends to acquire said property as 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 analysis data generated by the department of transportation's bid analysis and management system for the confidential use of the department of transportation 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 details of either security arrangements or investigations or the physical and cyber assets of critical infrastructure, including the specific 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 custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is 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 sub-subparagraph (B) that contain specialized details of security arrangements or investigations and shall allow inspection of the remaining portions 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 records of ongoing civil or administrative investigations conducted by the state or an agency of the state in furtherance of their statutory authority to protect the public health, welfare, or safety unless the investigation focuses on a person or persons inside 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 investigative file except pursuant to paragraph (a) of subsection (6) of this section if the record was publicly disclosed; was filed with an agency of the state 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 events, it shall be allowed to all such news media.

(c) 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 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 this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by the safe2tell program, as described in section 24-31-606.

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

(I) Medical, mental health, sociological, and scholastic achievement data, and electronic health records, on individual persons, other than scholastic achievement data submitted as 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 officials who supervise such person's work.

(B) The provisions of this subparagraph (II) shall not be interpreted to prevent the public inspection or copying of any employment contract or any information regarding amounts 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 limitations placed thereon as conditions of such contributions;

(VI) Addresses and telephone numbers of students 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 justice agency as defined in section 24-72-302 (3) that makes a request to the custodian to inspect such records and who asserts that the request for information is 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 access to information necessary to the investigation of such a complaint. This sub-subparagraph (A) shall not apply to records of sexual harassment complaints and investigations that are included in court files and records of court proceedings. Disclosure 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 preclude 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 disclosure can be made without permitting the identification, as a result of the disclosure, 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.

(XI) (A) Records submitted by or on behalf of an applicant or candidate for an executive position as defined in section 24-72-202 (1.3) who is not a finalist. For purposes of this subparagraph (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 is a member of the final group of applicants or candidates made public pursuant to section 24-6-402 (3.5), and if only three or fewer applicants or candidates for the chief executive officer position possess the minimum qualifications for the position, said applicants or candidates shall be considered finalists.

(B) The provisions of this subparagraph (XI) shall not be construed to prohibit the public inspection or copying of any records submitted by or on behalf of a finalist; except that letters of reference or medical, psychological, and sociological data concerning finalists shall not be made available for public inspection or copying.

(C) The provisions of this subparagraph (XI) shall apply to employment selection processes for all 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.

(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) Records protected under the common law governmental or "deliberative process" privilege, if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has 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 interest. If the applicant so requests, the custodian shall apply to the district court for an order permitting him or her to restrict disclosure. The application shall be subject 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 records on individual animals that are owned by private individuals or business entities, but are in the custody of a veterinary medical practice or hospital, including the veterinary teaching hospital at Colorado state 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 subparagraph (XIV), "person in interest" means the owner of an animal undergoing veterinary medical treatment or such owner's designated representative. Nothing in this subparagraph (XIV) shall prevent the state agricultural commission, the state agricultural commissioner, or the state board of veterinary medicine from exercising their investigatory and enforcement powers and duties granted pursuant to section 35-1-106 (1)(h), article 50 of title 35, and section 12-64-105 (9)(e), C.R.S., respectively. The veterinary-patient-client privilege described in this subparagraph (XIV), pursuant to section 12-64-121 (5), C.R.S., 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, C.R.S., or for an act of animal fighting under section 18-9-204, C.R.S.

(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 support of such nominations and proposals;

(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 inspection to the member's parents, siblings, widow or widower, and children.

(B) On and after July 1, 2002, any county clerk and recorder that accepts for filing any military records described in sub-subparagraph (A) of this subparagraph (XVIII) shall 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 storage by the county clerk and recorder prior to July 1, 2002, in accordance with any limitations determined necessary 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 sub-subparagraph (C) of this subparagraph (XIX), applications for a marriage license submitted pursuant to section 14-2-106, C.R.S., and, except as provided in sub-subparagraph (C) of this subparagraph (XIX), applications for a civil union license submitted pursuant to section 14-15-110, C.R.S. A person in interest under this subparagraph (XIX) includes an immediate family member of either party to the marriage application. As used in this subparagraph (XIX), "immediate family member" means a person who is related by blood, marriage, or adoption. Nothing in this subparagraph (XIX) shall be 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 records, including, but not limited to, analyses and maps, 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).

(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

sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(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, transfers, or makes application for transfer, and the written permission of such student or his or her parent or guardian shall not be required therefor. No state educational institution shall 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 numbers of students in any secondary school must be released to a recruiting officer for any branch of the United States armed forces who requests such information, subject 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 regulations cited thereunder relating to the release of student information by educational institutions that receive federal funds.

(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 subsection (3)(a)(I) of this section, under policies adopted by each local board of education, consistent with applicable provisions of the federal "Family Educational Rights 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 disclosure is to officials of a school at which the student seeks or intends to enroll or the disclosure is to officials at a school at which the student is currently enrolled or receiving services, after making a reasonable attempt to notify the student's 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 disclosed certify in writing that the information shall not be disclosed to any other party, except as otherwise provided by law, without the prior written consent of the student's 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 subpoena or any other subpoena issued for a law enforcement purpose and the court or the issuing agency has ordered that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(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 meets the requirements of this subsection (3.5) may request that the address of such individual included in any public records 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 resides in the same household as such individual, will be exposed to criminal harassment as prohibited in section 18-9-111, C.R.S., or otherwise 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 secretary of state to be necessary to carry out the provisions of this subsection (3.5). In addition, an affirmation shall be printed on the form, in the area immediately above a line for the applicant's signature and the date, stating 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 second degree under section 18-8-503, C.R.S., if the applicant signs such affirmation and does not believe such 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 subsection (3.5). The county clerk and recorder shall collect a processing fee in the amount of five dollars of which amount two dollars and fifty cents shall be transmitted to the secretary of state for the purpose of offsetting the secretary of state's costs of processing 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 request. All processing fees collected by the secretary of state pursuant to this subparagraph (IV) or subparagraph (III) of this paragraph (b) shall be transmitted to the state treasurer, 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 custodian of any records described in subsection (3.5)(a) of this section 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 justice agency, as defined by section 24-72-302 (3);

(II) An agency of the United States, the state of Colorado, or of any political subdivision 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 supervised lender licensed pursuant to section 5-1-301 (46), C.R.S.;

(VII) A bank as defined in section 11-101-401 (5), C.R.S., a trust company as 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 designated agent of such manufacturer. Such inspection shall be allowed only for the purpose of identifying, locating, and notifying the registered owners of such vehicles in the event of a product recall or product advisory and may also 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 subsection (3.5). Such verification shall be limited to the custodian confirming or denying that the address of an individual as known to the representative of the news media is the address 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 is 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's license or identification card and written authorization from any entity authorized to receive information under this subsection (3.5). The custodian shall 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 inspect any record covered by this part 2 or who alleges a violation of section 24-72-203 (3.5) may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should 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 this subsection (5)(a), the custodian who has denied the right to inspect the record shall either meet in person or communicate on the telephone with the person who has 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 such written notice, including a factual basis of the expedited need for the record, to the custodian at least three business days prior to the date on which the person files the application with the district court and, in such circumstances, 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 sued if the court finds that the records being sought are related to the pending litigation and are discoverable pursuant 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 substantial discussion of any matters not enumerated in section 24-6-402 (3) or (4) or that the state 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). 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 sufficient grounds exist to support a reasonable belief that 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 that the state 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 session in contravention of section 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 said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection or if the official custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable 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 disclosure of the record is prohibited, issue an order directing the official custodian not to disclose 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 reasonable inquiry, was unable to determine if disclosure of the public record was 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 paragraph (b) of this subsection (7), 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, C.R.S., a driver's license renewal application under section 42-2-118, C.R.S., a duplicate driver's license application under section 42-2-117, C.R.S., a commercial driver's license application under section 42-2-403, C.R.S., an identification card application under section 42-2-302, C.R.S., a motor vehicle title application under section 42-6-116, C.R.S., a motor vehicle registration application under section 42-3-113, C.R.S., or other official record or document maintained by the department under section 42-2-121, C.R.S.

(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 use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;

(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 vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers;

(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, state, or local court or agency or before any self-regulatory body, including the service of process, investigation 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;

(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 use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud 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 12-58.5-106, C.R.S., licensed private investigative agency, or licensed security service for any purpose permitted under this paragraph (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 use in response to requests for individual motor vehicle records if the

department has obtained the express consent of the party in interest pursuant to section 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 use specifically authorized under the laws of the state, if such use is related to the operation of a motor vehicle or public safety; 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 requester release form indicates that the requester will, in any manner, use, obtain, resell, or transfer the information contained in records, requested individually or in bulk, for any purpose prohibited by law, the department or agent shall deny inspection 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 has not signed and returned the affidavit of intended use.

(d) Notwithstanding paragraph (b) of this subsection (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 scanned images of a person's original signature, social security 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 registration list and making the list available for distribution or sale to or inspection by any person.

(c) For purposes of this subsection (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" shall have the same meaning as set forth in section 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.

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 August 4; (3)(a)(XIV) added, p. 370, § 1, effective August 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 August 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 August 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 August 9.

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) was originally numbered as (3)(a)(XV) in House Bill 02-1395 but has been renumbered on revision for ease of location.

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

(6) Section 2(2) of chapter 197 (HB 17-1177), Session Laws of Colorado 2017, provides that the act changing this section applies to requests for inspections of public records submitted on or after August 9, 2017.

Cross references: 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 Colorado 1996; for service of process, see C.R.C.P. 4.

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 cases where it is not clear whether the custodian holds 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 Post 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 investigatory files compiled in civil law enforcement proceedings. 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. Dreyfus, 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 efforts and how to respond to a taxpayer's 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).

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 documents as to which this protection is claimed actually do implicate this right. The applicant must bear the burden of proving that the custodian's denial of inspection was 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 interest. Freedom Newspapers, Inc. v. Tollefson, 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 disclosure of such highly personal and sensitive information would be limited, even though they were on notice that the messages 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 subsection (3)(a)(X)(A) does not prohibit the disclosure of e-mails unrelated to official business and of portions of an investigative report that do not refer to other employees 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 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).

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 interest and does not seek to have disclosure prohibited if an open records request is made in compliance with the entity's open records policy. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 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 set forth in subsection (5) is the exclusive remedy set forth in the statute when a custodian fails to allow inspection of records. 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. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

As to documents which involve privacy rights, custodian of documents bears 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 inspection by custodian of records is arbitrary and capricious. 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 Insts., 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. Requestor also entitled to reasonable appellate attorney fees under CORA. Marks 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 records as to which the applicant has actually succeeded in gaining access, rather than the costs and attorney fees in prosecuting the action as 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 terms of this statutory provision. 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 subsection (5), a prevailing records requestor is entitled to costs and attorney fees unless the district court finds that the denial of the right of

inspection was 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 provision of subsection (5)". By logical implication, the safe harbor language incorporates the attorney fees provision of subsection (5) into subsection (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 because the custodian risks having to pay a prevailing applicant's costs and attorney fees unless the court finds that the denial of inspection was 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 subsection (5)'s fee-shifting provision does not apply to custodian-initiated actions likely would promote litigation instead of encouraging the parties to resolve the matter out of court. Because subsection (5) requires a records requestor to give the custodian written notice at least three business days before filing an application in district court to challenge the custodian's denial of inspection, a custodian 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); Bodelson v. Denver Publ'g Co., 5 P.3d 373 (Colo. App. 2000).

The construction and interpretation that will render subsection (6) effective in accomplishing the purpose for which it was enacted is to allow the district 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 interest compels disclosure, how disclosure may occur in a manner least intrusive with respect to individual's right of privacy. Martinelli v. District 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 person requesting access presented no evidence disputing the factual issue of whether substantial injury to the public interest would result 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 custodian determines 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 others were not entitled to protection pursuant to nondisclosure exception of subsection (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) because the governmental entity did not demonstrate an extraordinary situation or that substantial injury to the public would result if the statements were disclosed. 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 documents defined as public records, trial court properly concluded that in balancing commercial harm that could be caused by disclosure against 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) because disclosure would not impair the governmental entity's ability to gain future information nor cause substantial harm to any person providing the information as most 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. Waters, 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 solely upon opinion of witness that information was 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 Publishing 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. Testimony by family members of the victims and the coroner supported the court's 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 district attorney's office regularly receives information from such records, the defense attorneys, including the public defender's office, are entitled to obtain such 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'rs,

2015 COA 84, __ P.3d __.

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, __ P.3d __.

The investigatory files exception in subsection (2)(a)(I) did not permit the custodian to withhold the requested public records. The district court erred in finding that the records were of investigations conducted by a "prosecuting attorney" and that they were investigatory files 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, __ P.3d __.

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.

24-72-204.5. Adoption of electronic mail policy. (1) On or before July 1, 1997, the state or any agency, institution, or political subdivision 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.

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

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 pursuant to section 24-21-104 (3), and when the custodian is the executive director of the department of personnel, fees shall 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

is available but will only be sent to the requester once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records transmission and for all other fees lawfully allowed, unless 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 custodian does not have facilities for making a copy, printout, or photograph of a record that a person has the right to inspect, the person shall be granted access 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 custodian may establish a reasonable schedule of times for making a copy, printout, or photograph and may charge the same fee for the services rendered in supervising the copying, printing out, or photographing as the custodian 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 is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof may be based 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 cost of providing a copy, printout, or photograph of a public record in a format other than a standard 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 such policy, the custodian shall not impose a charge for the first hour of time expended in connection with the research and retrieval of public records. After the first hour of time has been expended, the custodian 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), C.R.S., shall adjust the maximum hourly fee specified in paragraph (a) of this subsection (6) in accordance with the percentage change over the period in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Boulder-Greeley, all items, 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.

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 August 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.

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

24-72-205.5. Public inspection of ballots - stay period - recounts - rules governing public inspection of ballots - legislative declaration - definitions. (1) (a) By enacting this section, the general assembly intends to permit the inspection of ballots under the conditions specified in this section and to protect the integrity of the election process while protecting voter privacy and preserving secrecy in voting in accordance with the provisions of section 8 of article VII of the state constitution.

(b) In order to facilitate and ensure a consistent application of the provisions of this section across the state, the matters addressed in this section are matters of statewide concern.

(2) As used in this section, unless the context otherwise requires:

(a) "Ballot" means a ballot voted by any acceptable, applicable, or legal method that is in the custody of an election official. "Ballot" includes any digital image or electronic representation of votes cast.

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

(c) "Interested party" means:

(I) Any candidate who was in an election contest that is the subject of a recount or the political party or political organization as defined in section 1-1-104 (24), C.R.S., of such candidate;

(II) Any petition representative identified pursuant to section 1-40-113 or 31-11-106 (2), C.R.S., as applicable, in connection with a ballot issue or ballot question that is the subject of the recount;

(III) The governing body that referred a ballot question or ballot issue to the electorate that is the subject of the recount; or

(IV) The agent of an issue committee that is required to report contributions pursuant to

the "Fair Campaign Practices Act", article 45 of title 1, C.R.S., that either supported or opposed a ballot question or ballot issue that is the subject of the recount.

(3) (a) Except as otherwise provided in paragraph (b) of this subsection (3), the designated election official shall not fulfill a request under this part 2 for the public inspection of ballots during the period commencing with the forty-fifth day preceding election day and concluding with the date either by which the designated election official is required to certify an official abstract of votes cast for the applicable candidate contest or ballot issue or ballot question pursuant to section 1-10-102 or 31-10-1205 (1), C.R.S., as applicable, or by which any recount conducted in accordance with article 10.5 of title 1, C.R.S., or section 31-10-1207, C.R.S., is completed, as applicable, whichever date is later. The denial of public inspection of ballots authorized pursuant to this paragraph (a) shall also apply to any internal batch reports generated by a designated election official for the specific purpose of auditing ballots received in the course of conducting an election.

(b) Notwithstanding any other provision of this section, the denial of public inspection of ballots authorized pursuant to paragraph (a) of this subsection (3) shall apply to a recount that is conducted in accordance with the provisions of article 10.5 of title 1, C.R.S., or section 31-10-1207, C.R.S., as applicable; except that, during the period described in paragraph (a) of this subsection (3), an interested party may inspect and request copies of ballots in connection with such recount without having to obtain a court order granting such inspection. In connection with an inspection by an interested party as authorized by this paragraph (b), an interested party may witness the handling of ballots involved in the recount to verify that the recount is being conducted in a fair, impartial, and uniform manner so as to determine that all ballots that have been cast are accurately interpreted and counted; except that an interested party is not permitted to handle the original ballots. Except as specified in this paragraph (b), nothing in this section shall be construed to prohibit an interested party from requesting copies of ballots in connection with a recount, to affect the conduct of a recount, or to affect the rights of an interested party in connection with a recount.

(c) Notwithstanding any other provision of this section, nothing in this section shall be construed to restrict the public inspection of election records as defined in section 1-1-104 (11), C.R.S.; except that, for purposes of this section, election records shall not include ballots.

(4) (a) In accordance with the provisions of section 24-72-203 (1)(a) and in addition to any other requirements that are applicable to a person requesting the inspection of public records under this part 2, prior to and later than the stay period described in paragraph (a) of subsection (3) of this section, ballots shall be available for inspection by the public in accordance with the requirements of this part 2.

(b) In connection with the public inspection of the ballots to which this section pertains:

(I) The original ballots shall at all times remain in the custody of the designated election official or his or her designee. In the discretion of the designated election official or his or her designee, and subject to the provisions of paragraph (a) of this subsection (4) and this part 2, the designated election official or his or her designee shall determine the manner in which such ballots may be viewed by the public.

(II) The designated election official or his or her designee shall cover or redact, based upon the most practical means available, any markings or message on a ballot that may identify the particular elector who cast the ballot before the ballot may be made available for public inspection;

(III) To protect the privacy of particular electors, any ballots cast by electors within groups of discrete individuals who are more susceptible of being personally identified, such as military and overseas electors, shall be made available for public inspection only to the extent such ballots may be duplicated without identifying elector information. Insofar as such ballots are not able to be duplicated without identifying elector information, they are not available for public inspection. Notwithstanding any other provision of this section, no ballot, or any portion thereof, may be made available for inspection where the ballot, or any requested portion thereof, is identical in printed form, considering a combination of the election contests at issue and precinct coding, to only nine or fewer ballots, or comparable portions thereof, among all ballots used in the same election. However, any such ballot, or any requested portion thereof, that is identical in printed form to ten or more ballots, or comparable portions thereof, used in the same election may be inspected.

(IV) To protect the privacy of particular electors, ballots made available for inspection may be presented in random order selected by the designated election official or his or her designee;

(V) For the purpose of minimizing the costs of making ballots available for public inspection, the person seeking the inspection may indicate the candidate contest, ballot issue, or ballot question for which the person seeks to inspect the ballots; and

(VI) Any actual costs incurred by the office of the designated election official in making the ballots available for inspection in accordance with the requirements of this section may be charged to the person requesting inspection of the ballots. If the designated election official selects a person other than an employee of his or her office to conduct the duties required by this section, the actual costs to be charged the person seeking inspection shall not exceed the actual costs that would have been incurred if the work involved in complying with the requirements of this section was completed by an employee of the designated election official.

(5) Notwithstanding any other provision of this section, nothing in this section affects either the rights of a watcher set forth in the provisions of titles 1 and 31, C.R.S., or the operation of a canvass board in accordance with the provisions of articles 1 to 13 of title 1, C.R.S.

Source: L. 2012: Entire section added, (HB 12-1036), ch. 269, p. 1420, § 2, effective June 7.

24-72-206. Violation - penalty. (Repealed)

Source: L. 68: p. 204, § 6. **C.R.S. 1963:** § 113-2-6. **L. 2017:** Entire section repealed, (SB 17-040), ch. 286, p. 1584, § 3, effective August 9.

ANNOTATION

Provisions of this section and § 24-72-204 (5) are the sole remedies under this part. Bd. of County Comm'rs v. HAD Enterprises, Inc., 35 Colo. App. 162, 533 P.2d 45 (1974).

This section does not create a private right of action for a violation of this act. Shields v. Shetler, 682 F. Supp. 1172 (D. Colo. 1988); McDonald v. Miller, 945 F. Supp. 2d 1201 (D. Colo. 2013), aff'd, 769 F.3d 1202 (10th Cir. 2014).