



The Voice of Colorado's Cities and Towns

FAQ: Personnel records requests

The FAQ column features frequently asked questions submitted to the Colorado Municipal League. This information is of a general nature and should not be interpreted as legal advice. Local facts determine which laws may apply and how, so you should always consult your municipal attorney before proceeding.

Q: Are personnel records available for inspection and release under the Colorado Open Records Act (CORA), codified at C.R.S. §§ 24-72-202 to 206?

CORA provides that all public records are open to public inspection except as provided in the act itself or as otherwise specifically provided by law. CORA divides the exceptions to this rule into two categories: records to which the custodian may deny access and records to which the custodian shall deny access. Personnel files are included in the list of records to which the custodian shall deny access. C.R.S. § 24-72-204(3).

Q: Why would CORA except certain records from the act if the purpose is to provide transparency in government?

CORA directs the custodian to deny access to public records if inspection would be contrary to any state or federal statute, any rule or regulation promulgated by the Supreme Court, or an order of any court. The policy goal is to balance the privacy of individual employees with a value for transparent governance.

Q: Who may view a personnel file?

The person in interest and those elected and appointed officials who supervise the person's work shall have access to the contents of personnel files. A "person in interest" generally includes the person who is the subject of the record or any representative designated by that person. If the subject of the record is under some legal disability, a parent or appointed legal representative can act on his or her behalf as the person in interest. C.R.S. § 24-72-202(4).

It should be noted that Colorado courts have held that this nondisclosure provision applies only to documents that actually are contained in the personnel file and, furthermore, does not insulate material in the personnel file from discovery in civil litigation. *Martinelli v. District Court*, 612 P.2d 1083, 1093 (Colo. 1980).

Q: What constitutes a personnel file for purposes of a CORA request?

The act defines "personnel files" as including "home addresses, telephone numbers,

financial information, and other information maintained because of the employer-employee relationship," as well as other documents specifically exempt from disclosure pursuant to the Open Records Act or another provision of law. C.R.S. § 24-72-202(4.5).

Q: What is not part of the personnel file?

The following are expressly not part of the personnel file for CORA purposes (and thus are available for public inspection): applications of past or current employees, employment agreements, performance ratings, compensation paid (including expense allowances and benefits), and any amount paid or benefit provided in connection with a termination. C.R.S. § 24-72-202(4.5).

Furthermore, although not mentioned specifically in this statute, the name of the recipient of an amount paid or benefit provided incident to termination must be made public. *Freedom Newspapers v. Tollefson*, 961 P.2d 1150 (Colo. Ct. App. 1998). The act also provides that any information regarding amounts paid or benefits provided in connection with a settlement agreement "pursuant to the provisions of Article 19 of this title" shall be available to the public for both inspection and copying. C.R.S. § 24-72-204(3)(a)(II)(B). The statute referenced in the quoted section has limited applicability in the municipal context, because Article 19 of Title 24 (which generally concerns severance agreements and other "post-employment compensation") does not, by its terms, apply to employees of units of local government "whose governing body is directly elected by the electors of such local government." C.R.S. § 24-19-108(1)(c).

Additionally, in a case in which employee records relating to a sexual harassment investigation were sought, the Court of Appeals held that this class of record was not appropriately part of the personnel file of the employee. Of most significance, the court narrowly construed the definition of "personnel file" to include (i.e., shield from release) only "personal demographic information" of the type specifically mentioned in the definition.

Daniels v. Commerce City, 988 P.2d 648, 651 (Colo. Ct. App. 1999). The General Assembly subsequently provided specific protection against release of sexual harassment investigation records "whether or not such records are maintained as part of a personnel file" (see C.R.S. § 24-72-204(3)(a)(X)(A)), but did not address the Daniels court's narrow construction of "personnel file."

The Court of Appeals has said that, while the custodian has no discretion other than to deny release of material in personnel files, the courts may independently review whether material is appropriately shielded from release by the "personnel files" exception. The exclusion 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 in fact implicate this right." Indeed, the court has upheld the disclosure of materials contained in a personnel file using this authority when the court found that the documents in question did not implicate a privacy right or had been routinely disclosed to others. *Bodelson v. Denver Publishing Co.*, 5 P.3d 373, 377 (Colo. Ct. App. 2000).

Q: Are letters of reference included as part of the personnel file under CORA?

CORA prohibits inspection of letters of reference by anyone other than the person in interest. C.R.S. § 24-72-204(3)(A)(III). Furthermore, if the record requested is a letter of reference concerning employment, licensing, or issuance of permits, the custodian is directed to deny access to the person in interest, as to well as the general public. C.R.S. § 24-72-204(3)(a).

The Colorado Supreme Court has held that the "letters of reference" exception encompasses not just "letters," in the conventional sense, but a broader class of "documentary materials elicited from references in confidence and designed to inform an evaluation" of a potential employee, including notes of phone conversations with references. *City of Westminster v. Dogan Constr. Co.*, 930 P.2d 585, 592 (Colo. 1997).