

Colorado Open Records Act



What is a “Public Record?”



Public Records

All “_____” are open for inspection (with some exceptions). CRS §24-72-301(1).

“Public records” include all records made, maintained, or kept by a local government, or involving the receipt or expenditure of public funds. CRS § 24-72-202(6).

The term also includes digital data such as emails. C.R.S. § 24-72-202(7); 24-72-204.5.

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Wick

 *Commc'ns Co. v. Montrose Bd. Of
Cty. Comm'rs*, 81 P.3d 360 (Colo. 2003)

A personal diary of a County Manager was not a public record (despite having been referenced in a public grievance hearing) when made in the Manager's individual capacity, the diary was not maintained by the county, diary was not used in daily functioning of the manager's office, county did not require manager to keep a diary, and the County Manager kept the diary locked and in his possession.

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Ritter

Denver Post Corp. v. _____, 255
P.3d 1083 (Colo. 2011)

Personal cell phone records of the
Governor were not automatically
public records.

Key Facts: Governor kept and used the
billing statements only for payment of
the bills, State did not reimburse him
for those bills, and the bills were never
turned over to any other State agency
or official for use by them.

Third-Party

_____ (Records)

When a local government readily has access to records held by a 3rd party, those 3rd party records may be accessible under CORA

Correspondence

_____ records are public records.

“Correspondence” is defined as communication sent or received by specifically defined individuals, can be produced in written form (e.g., mail, email, etc.). C.R.S. § 24-72-202(1).

What is a NOT a Public Record?



Work Product

Exception:

Includes records that are deliberative or advisory in nature that were “assembled for the purpose of assisting elected officials in reaching a decision within their authority.” C.R.S. § 24-72-202(6.5)(a) (e.g., background information provided in notices or memos; preliminary drafts and discussion copies).

Does not include final versions of reports/documents or materials that were circulated to members of the public body for use or consideration in a public meeting.

Univ. of Colo

Denver Post Corp v. _____, 739
P.2d 874 (Colo. App. 1987)

University was entitled to claim a privilege for attorney-client communications and attorney work product by reason of relationship between university counsel and special review committee appointed to obtain information on payments received by employees from a foreign government in connection with university contracts to establish a hospital and medical school in foreign country, but by disclosing information to state auditor and district attorney as potential adversaries of employees, university waived right to claim a privilege to protect information on behalf of employee

Fort Morgan

City of _____ v. Eastern Colo. Pub. Co., 240 P.3d 481 (Colo. App. 2010)

City council members' individual review forms and the spreadsheet the city attorney prepared based on those forms were “advisory,” and thus, these documents constituted “work product” and did not need to be disclosed to newspaper under Colorado Open Records Act (CORA).

Constituent

_____Correspondence

Exception: Correspondence to and from elected officials, when such correspondence “clearly implies by its nature or content that the constituent expects that it is confidential or that it is communicated for the purpose of requesting that the elected official render assistance or information related to a personal and private matter that is not publicly known.”

Custodian **MUST** deny access



Personnel Files

MUST DENY:

“_____s” are defined as “home addresses, telephone numbers, financial information and other information maintained because of the employer-employee relationship. C.R.S. § 24-72-202(4.5)

Exceptions (thus disclosable): applications of past or current employees, employment agreements, performance ratings, compensation paid, and any amount paid or benefit provided in connection with termination. C.R.S. § 24-72-202(4.5).

Exception: To the person in interest and those elected and appointed officials who supervise the person’s work. C.R.S. § 24-72-204(3)(a)(ii)(A).

Martinelli

 *v. Dist. Court for
City of Denver*, 612 P.2d
1083 (Colo. 1980)

CORA does not, *ipso facto*,
exempt personnel files of
employees from discovery
in civil litigation.

Executive Positions

“Finalist” Records for applicants of _____ on are disclosable (except for letters of reference or medical, psychological and sociological data concerning the finalist). CRS § 24-72-204(3)(a)(XI)(A)

Finalist records for Chief Executive Officer positions must be made public "no later than 14 days prior to any appointment or employment" of one of the applicants.

Letters of Reference

The Open Records Act prohibits inspection of _____ by anyone other than the person in interest.

C.R.S. § 24-72-204(3)(a)(III)

Dogan

*City of Westminster v. _____
_____ Constr. Co., 930 P.2d
585 (Colo. 1997)*

Notes taken during a call
with references were
“letters of reference”
within meaning of CORA.

Trade Secrets

_____, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person cannot be accessed by the general public.

C.R.S. § 24-72-204(3)(a)(IV).

Utility Users

The custodian of records cannot release names, addresses, telephone numbers, or personal financial information of past or present users of public utilities, public facilities, or municipal recreational or cultural services. C.R.S. § 24-72-204(3)(a)(ix).

Exception: federal agencies and criminal justice agencies.

Exception: information pertaining to users in an aggregate or statistical form (so long as "the identification, location, or habits of individuals" is not released). C.R.S. § 24-72-202(1.3)

Sexual Harassment

After *Daniels* held that _____
_____ complaints and investigations
were not shielded from release
under the "personnel files"
exception, the General Assembly
clarified these records are protected
from release. CRS §24-72-
204(3)(a)(X)(A)

Exception: investigation agencies
and complainant and person
subject to complaint (provided
redactions are made to prevent
identification of "any individual
involved")

Deliberative

_____ Process Privilege shields certain documents from release that are "so candid or personal in nature that public disclosure is likely to stifle honest and frank discussion within the agency."

City of Colorado Springs v. White, 967 P.2d 1042 (Colo. 1998)

Vaughn

The _____ index (required when using deliberative process privilege) must provide a description of the document not being disclosed, including each document's author, recipient, and subject matter, and must explain why each document qualifies for the privilege (e.g., role played by document in deliberative).

Requires an affidavit to attest why disclosure of each document would be harmful. CRS §24-72-204(3)(a)(XIII)

Person in Interest

“ _____ ” generally includes the person subject of the record or any representative of such person.
C.R.S. §24-82-202(4).

Election Records

Designated election official shall not allow any person, other than the person in interest, to inspect “ _____ ” that contain an original signature, social security number, month of birth or "identification of that person," including electronic digital or scanned versions of the identifying information.

C.R.S. § 24-72-204(8)

Custodian **MAY** deny access



Real Estate

Contents of _____ appraisals made for the municipality concerning acquisition of property or any interest in property for public use, until the time that title passes to the municipality.

Exception: when a municipality acquires property through eminent domain proceedings, the contents of the appraisal must be made available to the owner of the property no later than one year after receipt by the condemning municipality. C.R.S. § 24-72-204(2)(a)(IV).

E-Mail

 addresses provided by a person to a municipality "for the purpose of future electronic communications to the person" by the municipality. CRS §24-72-204(2)(a)(VII)

Security

Specialized details of either _____ 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. C.R.S. § 24-72-204(2)(a)(VIII)(A).

CORA Process



Extenuating

Records requests must be returned in 3 days unless “ circumstances” exist. If such circumstances exists, the custodian may extend the deadline up to 7 additional days.

The following are considered “extenuating circumstances:”

- (1) A broad request that encompasses a large category of records and the request is without sufficient specificity to allow the custodian to reasonably gather/prepare records in 3 days;
- (2) A broad request that encompasses a large category of records and the municipality is unable to gather/prepare records in 3 days because the municipality must devote all or substantially all of its resources meeting an impending deadline or is in a period of peak demand that is unique or occurs less than monthly; or
- (3) A request involves a large volume of records that the custodian cannot reasonably gather/prepare records within 3 days without substantially interfering with custodian’s other responsibilities.

C.R.S. § 24-72-203(3)

Does Not Exist

There is nothing in CORA that requires the custodian to create an entirely new document or record to answer the question, or to "manipulate" existing public records in response to the request".

If no single existing record answers the requestor's question, the requestor has the right to inspect any and all relevant public records that may help the requestor to piece together the answer to the question posed.

Fees

First hour is free.

After first hour, statute allows for \$30.00 per hour. However, beginning on July 1, 2019 (which set it at \$33.58) and every 5 years thereafter the Director of Research of the Legislative Council must adjust the fee based on the percentage change in the consumer price index for the Denver-Aurora-Lakewood area.

CRS § 24-72-205(6)

Mt. Plains

 *Investment
Corporation v. Parker Jordan
Metro, 312 P.3d 260 (Colo.
App. 2013)*

Upheld the requirement of a payment of a deposit before producing requested documents.

Black

 *v. Southwestern
Water Conservation Dist.*,
74 P.3d 462 (Colo. App.
2003)

Upheld validity of research
and retrieval fees.

Losavio

_____ v. *Mayber*, 496 P.2d 1032
(Colo. 1972)

Police records are not public records open to inspection by general public, but that where district attorney's office regularly received from police department lists of conviction records of prospective jurors, assumedly as possible check upon truthfulness of juror's answer on voir dire, defense attorneys, including public defender's office, were entitled to obtain such information in possession of prosecution

Colorado Criminal Justice Records Act



Criminal Justice

 records
(regardless of format) that
are made, maintained, or
kept by any criminal
justice agency in the state
for use in the exercise of
functions required or
authorized by law or
administrative rule.

CRS § 24-72-302(4)

Official Action

_____ are open for public inspection. CRS 24-72-303(1)

“_____” means an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence. CRS 24-72-302(7)

Internal Affairs

Disclosure of investigations after April 12, 2019, that involves conduct when the officer was in uniform or on-duty that involves a specific incident involving a member of the public must follow the process set forth in CRS 24-72-303(4)(a).

Disclosure for other internal affairs files, custodian must consider:

1. Privacy interests of individuals who may be impacted by disclosure;
2. Agency's interest in keeping information confidential;
3. Agency's interest in pursuing ongoing investigations without compromising them;
4. Public interest in disclosure; and
5. Other pertinent relevant factors.

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Harris

_____ *v. Denver Post
Corporation*, 123 P.3d 1166 (Colo.
2005)

Videos that were seized pursuant to a lawful warrant that were retained by the Sheriff's Office were public Records and subject to inspection.