

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 23-0416.03 Nicole Myers x4326

SENATE BILL 23-286

SENATE SPONSORSHIP

Hansen,

HOUSE SPONSORSHIP

Snyder and Soper,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING PUBLIC ACCESS TO GOVERNMENT RECORDS.

Bill Summary

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

The bill makes changes to the "Colorado Open Records Act" (CORA) and to record retention requirements for state agencies.

Definitions. The bill modifies the definition of "public records" (records) in CORA to clarify that writings made, maintained, or kept by the state, including any office of the state, are records. The bill also changes the definition of "electronic mail" to "electronic communication" to encompass all forms of electronic communication.

Format of records for inspection. Current law specifies how a

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

custodian is required to provide a record for inspection if the record is available in a digital format that is sortable, searchable, or both. The bill specifies that if a record is available and can be transmitted in digital format, the custodian is required to transmit the record by electronic communication unless otherwise requested by the requester. In addition, the bill prohibits a custodian from converting a digital record into a non-searchable or non-sortable format prior to transmission.

Records subject to inspection. CORA currently allows a custodian to deny a requester's right to inspect certain records on the ground that disclosure of the record would be contrary to the public interest. The bill includes in this category the telephone number or home address that a person provides to an elected official for the purpose of future communication with the elected official.

The bill specifies that if an elected official is the subject of a government-authorized investigation into the elected official's alleged sexual harassment in the workplace, the final report of the investigation is a public record; except that the identity of any accuser and any potentially identifiable characteristics of any accuser must be redacted unless the identity of all accusers is already known to the public.

Transmission and per-page fees for records. Currently, a custodian may transmit a record to a requester in one of several ways and may charge the requester for the costs associated with transmitting the record; except that the custodian may not charge a fee if the record is transmitted via electronic communication. In addition, a custodian may currently charge a per-page fee for providing copies of a record. The bill specifies that the custodian may not charge a per-page fee if the records are provided in a digital or electronic format.

Electronic payments. The bill requires a custodian to allow records requesters to pay any fee or deposit associated with the request via a credit card or electronic payment if the custodian allows members of the public to pay for any other product or service provided by the custodian with a credit card or electronic payment.

Records retention requirements. The bill requires all electronic communications sent to or received by an officer or employee of a state agency, the contents of which include any discussion of the public business of the state agency and are relevant to any proceeding in which the state agency is involved, to be retained for at least the length of the applicable proceeding. In addition, the bill requires each state agency to retain all electronic mail messages in its custody or control that may be responsive to a request for records pursuant to CORA until the request for records and any subsequent appeals are resolved.

1 **SECTION 1.** In Colorado Revised Statutes, 24-72-202, **amend**
2 (1)(c), (1.2), (6)(a)(I), and (7) as follows:

3 **24-72-202. Definitions.** As used in this part 2, unless the context
4 otherwise requires:

5 (1) "Correspondence" means a communication that is sent to or
6 received by one or more specifically identified individuals and that is or
7 can be produced in written form, including, without limitation:

8 (c) Communications sent via electronic ~~mail~~ COMMUNICATION.

9 (1.2) "Electronic ~~mail~~ COMMUNICATION" means an electronic
10 message that is transmitted between two or more computers or electronic
11 terminals, whether or not the message is converted to hard copy format
12 after receipt and whether or not the message is viewed upon transmission
13 or stored for later retrieval. "Electronic ~~mail~~ COMMUNICATION" includes
14 electronic ~~messages~~ COMMUNICATIONS that are transmitted through a
15 local, regional, or global computer network.

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

24 (7) "Writings" means and includes all books, papers, maps,
25 photographs, cards, tapes, recordings, or other documentary materials,
26 regardless of physical form or characteristics. "Writings" includes
27 digitally stored data, including without limitation electronic ~~mail~~

1 ~~messages~~ COMMUNICATIONS, but does not include computer software.

2 **SECTION 2.** In Colorado Revised Statutes, 24-72-203, **amend**
3 (3.5)(a)(II), (3.5)(a)(III), (3.5)(b) introductory portion, and (3.5)(b)(II);
4 and **add** (3.5)(a)(IV) and (3.5)(a)(V) as follows:

5 **24-72-203. Public records open to inspection.** (3.5) (a) Except
6 as otherwise required by subsection (3.5)(b) of this section:

7 (II) If a public record is stored in a digital format that is
8 searchable but not sortable, the custodian shall provide a DIGITAL copy of
9 the public record in a searchable format UNLESS OTHERWISE REQUESTED
10 BY THE REQUESTER.

11 (III) If a public record is stored in a digital format that is sortable,
12 the custodian shall provide a DIGITAL copy of the public record in a
13 sortable format UNLESS OTHERWISE REQUESTED BY THE REQUESTER.

14 (IV) IF A PUBLIC RECORD IS AVAILABLE IN A DIGITAL FORMAT, THE
15 CUSTODIAN SHALL TRANSMIT THE RECORD IN THAT DIGITAL FORMAT BY
16 ELECTRONIC COMMUNICATION UNLESS OTHERWISE REQUESTED BY THE
17 REQUESTER.

18 (V) EXCEPT AS OTHERWISE REQUIRED BY SUBSECTION (3.5)(b) OF
19 THIS SECTION, A CUSTODIAN SHALL NOT CONVERT A DIGITAL PUBLIC
20 RECORD INTO A NON-SEARCHABLE OR NON-SORTABLE FORMAT BEFORE
21 TRANSMISSION.

22 (b) A custodian is not required to produce a DIGITAL public record
23 in a searchable or sortable format in accordance with subsection (3.5)(a)
24 of this section if:

25 (II) After making reasonable inquiries, it is not technologically or
26 practically feasible to permanently remove information that the custodian
27 is required or allowed to withhold within the requested format, it is not

1 technologically or practically feasible to provide a copy of the record in
2 a DIGITAL searchable or sortable format, or if the custodian would be
3 required to purchase software or create additional programming or
4 functionality in its existing software to remove the information.

5 **SECTION 3.** In Colorado Revised Statutes, 24-72-204, **amend**
6 (2)(a)(VII); and **add** (9) as follows:

7 **24-72-204. Allowance or denial of inspection - grounds -**
8 **procedure - appeal - definitions - repeal.** (2) (a) The custodian may
9 deny the right of inspection of the following records, unless otherwise
10 provided by law, on the ground that disclosure to the applicant would be
11 contrary to the public interest:

12 (VII) Electronic ~~mail~~ COMMUNICATION addresses provided by a
13 person to an agency, institution, or political subdivision of the state for
14 the purposes of future electronic communications to the person from the
15 agency, institution, or political subdivision AND TELEPHONE NUMBERS OR
16 HOME ADDRESSES PROVIDED BY A PERSON TO AN ELECTED OFFICIAL FOR
17 THE PURPOSE OF FUTURE COMMUNICATION WITH THE ELECTED OFFICIAL;
18 and

19 (9) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3)(a)(X)
20 OF THIS SECTION, IF AN ELECTED OFFICIAL IS THE SUBJECT OF A
21 GOVERNMENT-AUTHORIZED INVESTIGATION INTO THE ELECTED OFFICIAL'S
22 ALLEGED SEXUAL HARASSMENT IN THE WORKPLACE, THE FINAL REPORT OF
23 THE INVESTIGATION, INCLUDING THE CONCLUSIONS REGARDING THE
24 ALLEGATIONS, ARE A PUBLIC RECORD; EXCEPT THAT THE IDENTITY OF ANY
25 ACCUSER AND ANY JOB DESCRIPTION OR OTHER POTENTIALLY
26 IDENTIFIABLE CHARACTERISTICS OF ANY ACCUSER MUST BE REDACTED
27 UNLESS THE IDENTITY OF ALL ACCUSERS ASSOCIATED WITH THE

1 INVESTIGATION IS ALREADY KNOWN TO THE PUBLIC.

2 **SECTION 4.** In Colorado Revised Statutes, **amend** 24-72-204.5
3 as follows:

4 **24-72-204.5. Adoption of electronic communication policy.**

5 (1) On or before July 1, 1997, the state or any agency, institution, or
6 political subdivision thereof that operates or maintains an electronic ~~mail~~
7 communications system shall adopt a written policy on any monitoring of
8 electronic ~~mail~~ communications and the circumstances under which it will
9 be conducted.

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

14 **SECTION 5.** In Colorado Revised Statutes, 24-72-205, **amend**
15 (1)(b) and (5)(a); and **add** (6)(c) and (8) as follows:

16 **24-72-205. Copy, printout, or photograph of a public record**
17 **- imposition of research and retrieval fee.** (1) (b) Upon request for
18 records transmission by a person seeking a copy of any public record, the
19 custodian shall transmit a copy of the record by United States mail, other
20 delivery service, facsimile, or electronic ~~mail~~ COMMUNICATION. No
21 transmission fees may be charged to the record requester for transmitting
22 public records via electronic ~~mail~~ COMMUNICATION. Within the
23 APPLICABLE period specified in ~~section 24-72-203 (3)(a)~~ SECTION
24 24-72-203 (3)(c), the custodian shall notify the record requester that a
25 copy of the record is available but will only be sent to the requester once
26 the custodian either receives payment or makes arrangements for
27 receiving payment for all costs associated with records transmission and

1 for all other fees lawfully allowed, unless recovery of all or any portion
2 of such costs or fees has been waived by the custodian. Upon either
3 receiving such payment or making arrangements to receive such payment
4 at a later date, the custodian shall send the record to the requester as soon
5 as practicable but no more than three business days after receipt of, or
6 making arrangements to receive, such payment.

7 (5) (a) A custodian may charge a fee not to exceed twenty-five
8 cents per standard page for a copy of a public record or a fee not to
9 exceed the actual cost of providing a copy, printout, or photograph of a
10 public record in a format other than a standard page; EXCEPT THAT A
11 CUSTODIAN SHALL NOT CHARGE A PER-PAGE FEE FOR PROVIDING RECORDS
12 IN A DIGITAL OR ELECTRONIC FORMAT.

13 (6) (c) ANY REQUESTER MAY PETITION THE CUSTODIAN TO HAVE
14 THE FEES OR CHARGES IMPOSED PURSUANT TO THIS SUBSECTION (6)
15 WAIVED AT THE SOLE DISCRETION OF THE CUSTODIAN.

16 (8) IF A CUSTODIAN OF A PUBLIC RECORD REQUESTED PURSUANT
17 TO THIS PART 2 ALLOWS MEMBERS OF THE PUBLIC TO PAY FOR ANY OTHER
18 SERVICE OR PRODUCT PROVIDED BY THE CUSTODIAN WITH A CREDIT CARD
19 OR ELECTRONIC PAYMENT, THE CUSTODIAN MUST ALLOW THE REQUESTER
20 OF THE PUBLIC RECORD TO PAY ANY FEE OR DEPOSIT ASSOCIATED WITH
21 THE REQUEST WITH A CREDIT CARD OR VIA AN ELECTRONIC PAYMENT.

22 **SECTION 6.** In Colorado Revised Statutes, 24-80-102.7, **amend**
23 (2)(a); and **add** (4) as follows:

24 **24-80-102.7. Records management programs - records liaison**
25 **officers - definitions.** (2) Each state agency shall:

26 (a) Establish and maintain a records management program for the
27 state agency THAT COMPLIES WITH THE REQUIREMENTS OF SUBSECTION (4)

1 OF THIS SECTION and document the policies and procedures of such
2 program. The state agency shall ensure that such program satisfies the
3 administrative and technical procedures for records maintenance and
4 management established by the state archivist pursuant to section
5 24-80-102 (12).

6 (4) (a) NOTWITHSTANDING SECTION 24-80-101 (2)(f), UNLESS AN
7 ELECTRONIC COMMUNICATION IS SUBJECT TO A LONGER RETENTION
8 REQUIREMENT PURSUANT TO THE STATE AGENCY'S RECORD MANAGEMENT
9 PROGRAM, EACH STATE AGENCY SHALL ENSURE THAT ALL ELECTRONIC
10 COMMUNICATIONS SENT OR RECEIVED BY ANY OFFICER OR EMPLOYEE OF
11 THE STATE AGENCY, THE CONTENTS OF WHICH INCLUDE ANY DISCUSSION
12 OF THE PUBLIC BUSINESS OF THE STATE AGENCY AND ARE RELEVANT TO A
13 PROCEEDING IN WHICH THE STATE AGENCY IS INVOLVED, ARE RETAINED
14 FOR AT LEAST THE LENGTH OF THE APPLICABLE PROCEEDING.

15 (b) A STATE AGENCY SHALL RETAIN ALL ELECTRONIC
16 COMMUNICATIONS IN ITS CUSTODY OR CONTROL THAT MAY BE RESPONSIVE
17 TO A REQUEST FOR RECORDS UNDER PART 2 OR 3 OF ARTICLE 72 OF THIS
18 TITLE 24 UNTIL THE REQUEST FOR RECORDS AND ANY SUBSEQUENT
19 APPEALS ARE RESOLVED, NOTWITHSTANDING THE EXPIRATION OF THE
20 PERIOD OF RETENTION UNDER SUBSECTION (4)(a) OF THIS SECTION.

21 (c) AS USED IN THIS SUBSECTION (4):

22 (I) "ELECTRONIC COMMUNICATION" HAS THE SAME MEANING SET
23 FORTH IN SECTION 24-72-202 (1.3).

24 (II) "PROCEEDING" MEANS ANY INVESTIGATION, HEARING, OR
25 OTHER PROCESS FOR OBTAINING INFORMATION CONDUCTED BY, BEFORE,
26 OR UNDER THE AUTHORITY OF ANY EXECUTIVE OR ADMINISTRATIVE BODY,
27 PANEL, OR OFFICER OF THE STATE OF COLORADO. "PROCEEDING" DOES

1 NOT INCLUDE ANY INVESTIGATION, HEARING, OR OTHER PROCESS FOR
2 OBTAINING INFORMATION CONDUCTED BY, BEFORE, OR UNDER THE
3 AUTHORITY OF THE GENERAL ASSEMBLY OR ANY COURT.

4 **SECTION 7. Act subject to petition - effective date.** This act
5 takes effect at 12:01 a.m. on the day following the expiration of the
6 ninety-day period after final adjournment of the general assembly; except
7 that, if a referendum petition is filed pursuant to section 1 (3) of article V
8 of the state constitution against this act or an item, section, or part of this
9 act within such period, then the act, item, section, or part will not take
10 effect unless approved by the people at the general election to be held in
11 November 2024 and, in such case, will take effect on the date of the
12 official declaration of the vote thereon by the governor.