

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

ENGROSSED

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

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
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING IMPROVING 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.

SENATE
Amended 2nd Reading
April 28, 2023

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.

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SECTION 1. In Colorado Revised Statutes, 24-72-203, **amend** (3.5)(a)(II), (3.5)(a)(III), (3.5)(b) introductory portion, and (3.5)(b)(II); and **add** (3.5)(a)(IV) and (3.5)(a)(V) as follows:

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. EXCEPT AS OTHERWISE REQUIRED BY SECTION 24-72-204 (3.5)(g), AND EXCEPT WHEN A RECORD REQUESTED IS CONFIDENTIAL AND ACCESSIBLE ONLY ON THE BASIS THAT THE REQUESTER IS THE PERSON IN INTEREST, A CUSTODIAN OF PUBLIC RECORDS SHALL NOT REQUIRE A REQUESTER TO PROVIDE THE CUSTODIAN WITH ANY FORM OF IDENTIFICATION TO REQUEST OR INSPECT RECORDS PURSUANT TO THIS PART 2.

(3.5) (a) Except as otherwise required by subsection (3.5)(b) of this section:

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

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

1 (IV) IF A PUBLIC RECORD IS AVAILABLE IN A DIGITAL FORMAT, THE
2 CUSTODIAN SHALL TRANSMIT A DIGITAL COPY OF THE PUBLIC RECORD IN
3 A DIGITAL FORMAT BY ELECTRONIC COMMUNICATION OR BY ANOTHER
4 MUTUALLY-AGREED UPON TRANSMISSION METHOD IF THE SIZE OF THE
5 RECORD PREVENTS TRANSMISSION BY ELECTRONIC COMMUNICATION.

6 (V) EXCEPT AS OTHERWISE REQUIRED BY SUBSECTION (3.5)(b) OF
7 THIS SECTION, A CUSTODIAN SHALL NOT CONVERT A DIGITAL PUBLIC
8 RECORD INTO A NON-SEARCHABLE FORMAT BEFORE TRANSMISSION.

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

12 (II) After making reasonable inquiries, it is not technologically or
13 practically feasible to permanently remove information that the custodian
14 is required or allowed to withhold within the requested format, it is not
15 technologically or practically feasible to provide a copy of the record in
16 a DIGITAL searchable or sortable format, or if the custodian would be
17 required to purchase software or create additional programming or
18 functionality in its existing software to remove the information.

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

21 **24-72-204. Allowance or denial of inspection - grounds -**
22 **procedure - appeal - definitions - repeal.** (2) (a) The custodian may
23 deny the right of inspection of the following records, unless otherwise
24 provided by law, on the ground that disclosure to the applicant would be
25 contrary to the public interest:

26 (VII) Electronic ~~mail~~ COMMUNICATION addresses, TELEPHONE
27 NUMBERS, OR HOME ADDRESSES provided by a person to an ELECTED

1 OFFICIAL, agency, institution, or political subdivision of the state for the
2 purposes of future electronic communications to the person from the
3 ELECTED OFFICIAL, agency, institution, or political subdivision; and

4 (9) NOTWITHSTANDING THE PROVISIONS OF SECTION 2-3-511 AND
5 SUBSECTIONS (3)(a)(X) AND (3)(a)(X.5) OF THIS SECTION, RECORDS OF
6 SEXUAL HARASSMENT COMPLAINTS MADE AGAINST AN ELECTED OFFICIAL
7 AND THE RESULTS OR REPORT OF INVESTIGATIONS REGARDING ALLEGED
8 SEXUAL HARASSMENT BY AN ELECTED OFFICIAL CONDUCTED BY OR FOR
9 THAT OFFICIAL'S GOVERNMENT SHALL BE MADE AVAILABLE FOR
10 INSPECTION IF THE INVESTIGATION CONCLUDES THAT THE ELECTED
11 OFFICIAL IS CULPABLE FOR ANY ACT OF SEXUAL HARASSMENT; EXCEPT
12 THAT THE IDENTITY OF ANY ACCUSER, ACCUSED WHO IS NOT AN ELECTED
13 OFFICIAL, VICTIM, OR WITNESS AND ANY OTHER INFORMATION THAT
14 WOULD IDENTIFY ANY SUCH PERSON MUST BE REDACTED. THE RECORDS
15 MUST BE REDACTED, IF POSSIBLE, TO PERMIT INSPECTION WITHOUT
16 REVEALING ANY PART OF THE RECORD THAT WOULD NOT BE SUBJECT TO
17 DISCLOSURE PURSUANT TO ANY OTHER PROVISION OF THIS PART 2.
18 NOTHING IN THIS SUBSECTION (9) REQUIRES THE DISCLOSURE OF ANY
19 RECORD SUBJECT TO PART 3 OF THIS ARTICLE 72. ___

20 **SECTION 3.** In Colorado Revised Statutes, 24-72-204.5, **add (3)**
21 as follows:

22 **24-72-204.5. Adoption of electronic mail policy. (3) ON OR**
23 **BEFORE JANUARY 1, 2024, EACH MEMBER OF THE GENERAL ASSEMBLY,**
24 **THE GOVERNOR'S OFFICE AND EACH OFFICE OF THE GOVERNOR, AND EACH**
25 **STATE AGENCY AND INSTITUTION SHALL SUBMIT A REPORT TO THE STAFF**
26 **OF THE LEGISLATIVE COUNCIL OF THE GENERAL ASSEMBLY OUTLINING ITS**
27 **RESPECTIVE ELECTRONIC MAIL RETENTION POLICY. THE MEMBERS OF THE**

1 GENERAL ASSEMBLY MAY SUBMIT INDIVIDUAL REPORTS OR MAY SUBMIT
2 A REPORT THAT SPECIFIES THE ELECTRONIC MAIL RETENTION POLICIES OF
3 MULTIPLE MEMBERS OF THE GENERAL ASSEMBLY.

4 **SECTION 4.** In Colorado Revised Statutes, 24-72-205, **amend**
5 **___ (5)(a); and add ___ (8) as follows:**

6 **24-72-205. Copy, printout, or photograph of a public record**
7 **- imposition of research and retrieval fee. ___ = = =**

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

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

24 **___ = = =**
25 **SECTION 5. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly; except

1 that, if a referendum petition is filed pursuant to section 1 (3) of article V
2 of the state constitution against this act or an item, section, or part of this
3 act within such period, then the act, item, section, or part will not take
4 effect unless approved by the people at the general election to be held in
5 November 2024 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.