

CHAPTER 406

GOVERNMENT - STATE

SENATE BILL 23-286

BY SENATOR(S) Hansen, Bridges, Exum, Moreno, Priola;
also REPRESENTATIVE(S) Snyder and Soper, Brown, Hamrick, Lindsay, Ricks, Titone.

AN ACT

CONCERNING IMPROVING PUBLIC ACCESS TO GOVERNMENT RECORDS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-72-203, **amend** (1)(a), (3.5)(a)(II), (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.

(IV) IF A PUBLIC RECORD IS AVAILABLE IN A DIGITAL FORMAT, THE CUSTODIAN SHALL TRANSMIT A DIGITAL COPY OF THE PUBLIC RECORD IN A DIGITAL FORMAT BY

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

ELECTRONIC MAIL OR BY ANOTHER MUTUALLY-AGREED UPON TRANSMISSION METHOD IF THE SIZE OF THE RECORD PREVENTS TRANSMISSION BY ELECTRONIC COMMUNICATION.

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

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

(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 DIGITAL 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.

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

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal - definitions - repeal. (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:

(VII) Electronic mail addresses, TELEPHONE NUMBERS, OR HOME ADDRESSES provided by a person to an ELECTED OFFICIAL, agency, institution, or political subdivision of the state for the purposes of future electronic communications to the person from the ELECTED OFFICIAL, agency, institution, or political subdivision; and

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

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

24-72-204.5. Adoption of electronic mail policy. (3) ON OR BEFORE JANUARY 1, 2024, EACH MEMBER OF THE GENERAL ASSEMBLY, THE GOVERNOR'S OFFICE AND

EACH OFFICE OF THE GOVERNOR, AND EACH STATE AGENCY AND INSTITUTION SHALL SUBMIT A REPORT TO THE STAFF OF THE LEGISLATIVE COUNCIL OF THE GENERAL ASSEMBLY OUTLINING ITS RESPECTIVE ELECTRONIC MAIL RETENTION POLICY. THE MEMBERS OF THE GENERAL ASSEMBLY MAY SUBMIT INDIVIDUAL REPORTS OR MAY SUBMIT A REPORT THAT SPECIFIES THE ELECTRONIC MAIL RETENTION POLICIES OF MULTIPLE MEMBERS OF THE GENERAL ASSEMBLY.

SECTION 4. In Colorado Revised Statutes, 24-72-205, **amend** (5)(a); and **add** (7) as follows:

24-72-205. Copy, printout, or photograph of a public record - imposition of research and retrieval fee.

(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; EXCEPT THAT A CUSTODIAN SHALL NOT CHARGE A PER-PAGE FEE FOR PROVIDING RECORDS IN A DIGITAL OR ELECTRONIC FORMAT.

(7) IF A CUSTODIAN OF A PUBLIC RECORD REQUESTED PURSUANT TO THIS PART 2 ALLOWS MEMBERS OF THE PUBLIC TO PAY FOR ANY OTHER SERVICE OR PRODUCT PROVIDED BY THE CUSTODIAN WITH A CREDIT CARD OR ELECTRONIC PAYMENT, THE CUSTODIAN MUST ALLOW THE REQUESTER OF THE PUBLIC RECORD TO PAY ANY FEE OR DEPOSIT ASSOCIATED WITH THE REQUEST WITH A CREDIT CARD OR VIA AN ELECTRONIC PAYMENT. THE CUSTODIAN MAY REQUIRE A REQUESTER TO PAY ANY SERVICE CHARGE OR FEE IMPOSED BY THE PROCESSOR OF A CREDIT CARD OR ELECTRONIC PAYMENT.

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

Approved: June 6, 2023