

## CHAPTER 73

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**GOVERNMENT - STATE**

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**HOUSE BILL 99-1191**

BY REPRESENTATIVES Smith, Chavez, Grossman, Clarke, Coleman, Hagedorn, Leyba, Saliman, and Tupa;  
also SENATORS Matsunaka and Lamborn.

**AN ACT**

CONCERNING THE INSPECTION OF PUBLIC RECORDS.

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

**SECTION 1.** The introductory portion to 24-72-203 (3) (b), Colorado Revised Statutes, is amended, and the said 24-72-203 (3) (b) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

**24-72-203. Public records open to inspection.** (3) (b) The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a "reasonable time" shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven WORKING days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the three-day period. Extenuating circumstances shall apply only when:

(III) A REQUEST INVOLVES SUCH A LARGE VOLUME OF RECORDS THAT THE CUSTODIAN CANNOT REASONABLY PREPARE OR GATHER THE RECORDS WITHIN THE THREE-DAY PERIOD WITHOUT SUBSTANTIALLY INTERFERING WITH THE CUSTODIAN'S OBLIGATION TO PERFORM HIS OR HER OTHER PUBLIC SERVICE RESPONSIBILITIES.

**SECTION 2.** 24-72-204 (3) (a) (X) (A), Colorado Revised Statutes, is amended, and the said 24-72-204 (3) (a) is further amended BY THE ADDITION OF A NEW SUBPARAGRAPH, to read:

**24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.**

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(X) (A) Any records of sexual harassment complaints and investigations, ~~which are maintained pursuant to any rule of the general assembly on a sexual harassment policy;~~ whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to information necessary to the investigation of such a complaint. THIS SUB-SUBPARAGRAPH (A) SHALL NOT APPLY TO RECORDS OF SEXUAL HARASSMENT COMPLAINTS AND INVESTIGATIONS THAT ARE INCLUDED IN COURT FILES AND RECORDS OF COURT PROCEEDINGS. DISCLOSURE OF ALL OR A PART OF ANY RECORDS OF SEXUAL HARASSMENT COMPLAINTS AND INVESTIGATIONS TO THE PERSON IN INTEREST IS PERMISSIBLE TO THE EXTENT THAT THE DISCLOSURE CAN BE MADE WITHOUT PERMITTING THE IDENTIFICATION, AS A RESULT OF THE DISCLOSURE, OF ANY INDIVIDUAL INVOLVED. THIS SUB-SUBPARAGRAPH (A) SHALL NOT PRECLUDE DISCLOSURE OF ALL OR PART OF THE RESULTS OF AN INVESTIGATION OF THE GENERAL EMPLOYMENT POLICIES AND PROCEDURES OF AN AGENCY, OFFICE, DEPARTMENT, OR DIVISION, TO THE EXTENT THAT THE DISCLOSURE CAN BE MADE WITHOUT PERMITTING THE IDENTIFICATION, AS A RESULT OF THE DISCLOSURE, OF ANY INDIVIDUAL INVOLVED.

(XIII) RECORDS PROTECTED UNDER THE COMMON LAW GOVERNMENTAL OR "DELIBERATIVE PROCESS" PRIVILEGE, IF THE MATERIAL IS SO CANDID OR PERSONAL THAT PUBLIC DISCLOSURE IS LIKELY TO STIFLE HONEST AND FRANK DISCUSSION WITHIN THE GOVERNMENT, UNLESS THE PRIVILEGE HAS BEEN WAIVED. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT IN SOME CIRCUMSTANCES, PUBLIC DISCLOSURE OF SUCH RECORDS MAY CAUSE SUBSTANTIAL INJURY TO THE PUBLIC INTEREST. IF ANY PUBLIC RECORD IS WITHHELD PURSUANT TO THIS SUBPARAGRAPH (XIII), THE CUSTODIAN SHALL PROVIDE THE APPLICANT WITH A SWORN STATEMENT SPECIFICALLY DESCRIBING EACH DOCUMENT WITHHELD, EXPLAINING WHY EACH SUCH DOCUMENT IS PRIVILEGED, AND WHY DISCLOSURE WOULD CAUSE SUBSTANTIAL INJURY TO THE PUBLIC INTEREST. IF THE APPLICANT SO REQUESTS, THE CUSTODIAN SHALL APPLY TO THE DISTRICT COURT FOR AN ORDER PERMITTING HIM OR HER TO RESTRICT DISCLOSURE. THE APPLICATION SHALL BE SUBJECT TO THE PROCEDURES AND BURDEN OF PROOF PROVIDED FOR IN SUBSECTION (6) OF THIS SECTION. ALL PERSONS ENTITLED TO CLAIM THE PRIVILEGE WITH RESPECT TO THE RECORDS IN ISSUE SHALL BE GIVEN NOTICE OF THE PROCEEDINGS AND SHALL HAVE THE RIGHT TO APPEAR AND BE HEARD. IN DETERMINING WHETHER DISCLOSURE OF THE RECORDS WOULD CAUSE SUBSTANTIAL INJURY TO THE PUBLIC INTEREST, THE COURT SHALL WEIGH, BASED ON THE CIRCUMSTANCES PRESENTED IN THE PARTICULAR CASE, THE PUBLIC INTEREST IN HONEST AND FRANK DISCUSSION WITHIN GOVERNMENT AND THE BENEFICIAL EFFECTS OF PUBLIC SCRUTINY UPON THE QUALITY OF GOVERNMENTAL DECISION-MAKING AND PUBLIC CONFIDENCE THEREIN.

**SECTION 3. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 31, 1999