

Legislative Policies Related to Open Records Requests and Email

March 18, 2025

I. Purposes

- A. To adopt a public records request policy ("Policy") pursuant to sections 2-3-303 (2) and 24-72-203, C.R.S.:
 1. For providing access to and the protection of public records in the custody of members and staff agencies of the Colorado General Assembly;
 2. For the prevention of unnecessary interference with the regular discharge of the duties of the members and staff agencies in compliance with the Colorado Open Records Act, sections 24-72-201 to 24-72-309, C.R.S. ("CORA"); and
 3. That recognizes that members are the custodians of their own records and are uniquely situated in that members must balance their duties as custodians with the fact that members have minimal resources as an elected official to respond to CORA requests, and are therefore dissimilar to custodians of records in state agencies to whom CORA may more readily be applied.
- B. To establish reasonable and standardized fees for producing copies of and information from records maintained by members and staff agencies as authorized by CORA.
- C. To adopt a policy for email to ensure that use of email and associated equipment is consistent with the Colorado General Assembly's legal responsibility and business interests.
- D. To make users of the legislative computer network aware of their rights and responsibilities with regard to the use of email.
- E. To make members of the Colorado General Assembly aware of their rights and responsibilities with regard to their use of email, regardless of whether they are users of the legislative computer network.

- F. To provide recommendations for the retention or deletion of email by members and staff and to promote best practices for the effective management of email keeping the potential of a CORA request in mind.
- G. To adopt a policy for the retention of records in furtherance of section 24-72-204.5, C.R.S., and article 80 of title 24, C.R.S.

II. Public Records Requests

A. Applicability

The public records request policy under this Section II applies to requests submitted to members of the Colorado General Assembly or General Assembly employees for the inspection of public records pursuant to CORA. This policy should not be construed to apply to other governmental entities or to suggest any legislative intent with respect to CORA.

B. Definitions

1. **"Custodian"**: Except as otherwise provided in this policy:
 - a. The Director or head of each staff agency is the custodian of public records under the custody and control of that staff agency. In the case of the Senate and the House of Representatives, the Chief Clerk of the House of Representatives or the Secretary of the Senate is the custodian for all public records relating to that chamber but excluding any public records in the custody and control of the members of that chamber.
 - b. Each member of the Senate and the House of Representatives is the custodian of public records under their custody and control. A district email account is under the custody and control of the member from that district.
2. **"Public Records"**: As defined in section 24-72-202 (6)(a) and (6.5), C.R.S.:
 - a. "Public records" means and includes all writings made, maintained, or kept by members or staff agencies for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

- b. "Public records" includes the correspondence of members or staff agencies, including email, except to the extent that the correspondence or email is:
 - i. Work product;
 - ii. Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;
 - iii. A communication from a constituent to the member that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the member in response to such a communication from a constituent; or
 - iv. Not subject to disclosure because such inspection would be contrary to any state statute or federal statute or regulation, is prohibited by rules promulgated by the Supreme Court or by the order of any court, or would be contrary to the requirements of any joint rule of the Senate and the House of Representatives pertaining to lobbying practices.
 - c. "Public records" does not include "work product" prepared for members.
 - d. "Public records" does not include computer hardware, including desktop or laptop computers or storage devices such as computer hard drives or thumb drives.
3. **"Staff Agencies" or "staff agency"** means and includes:
- a. Joint Budget Committee Staff;
 - b. Legislative Council Staff;
 - c. Office of Legislative Legal Services;
 - d. Office of the State Auditor;
 - e. Staff of the Colorado House of Representatives; or
 - f. Staff of the Colorado Senate.

4. **"Work Product"**: As defined in section 24-72-202 (6.5), C.R.S.:
 - a. "Work product" includes, but is not limited to, all documents relating to the drafting of bills or amendments to bills or certain research projects prepared by staff agencies.
 - b. "Work product" does not include those items described in section 24-72-202 (6.5)(c), C.R.S., including, but not limited to, any final version of a document that expresses a final decision by an elected official or any materials that would otherwise be work product if such materials are produced and distributed to the members of a public body for their use and consideration in a public meeting.
5. **"Writings"**: As defined in section 24-72-202 (7), C.R.S.:
 - a. "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.
 - b. "Writings" includes digitally stored data including, without limitation, email messages, text messages, and other electronic communications, but does not include computer software.
 - c. "Writings" does not include data that is automatically created, stored, or retained on an individual computer or on network equipment or servers, such as email metadata that is not otherwise imprinted or stored as part of the visible content of an email message, logs, web traffic statistics, browser cookies, browser cache, server logs, browser history, or firewall logs.

C. Submission of Requests

1. Requests for inspection of records must be submitted in writing to the custodian and must be sufficiently specific as to enable the custodian to locate the information requested with reasonable effort. This provision does not prohibit the custodian of a staff agency from making public records available pursuant to an oral request for inspection if the records are normally readily available for inspection by the public.
2. To help assure receipt of a request, in the case of requests for inspection of a member's records, the request should be both submitted to the member and copied to the Director of the Office of Legislative Legal Services. Upon receipt of the request, the Director of

the Office of Legislative Legal Services or the Director's designee shall notify the member of the request as soon as possible.

3. Requests made seeking access to records associated with a former member of the General Assembly or former staff of a member of the General Assembly will be responded to as fully as possible, given the limited scope of records that may be in the custody of a staff agency (e.g., payroll or other financial records related to the former member's service in the General Assembly). Records of which the former member or the former staff was the custodian, including email records, are not maintained or preserved by the General Assembly.
4. Requests may be submitted by postal mail, email, or hand-delivery and shall include the requester's email address, street address if the requester is seeking delivery of public records by postal mail, and telephone number. Information regarding email addresses and contact information for individual members, employees of the House of Representatives, employees of the Senate, and the legislative staff agencies is attached as Addendum A.
5. A request is considered "made" when the request is actually received by the person to whom the request is directed:
 - a. Postal mail or an electronic message is received when it is opened in the usual course of business by the recipient or a person authorized to open the recipient's postal or email.
 - b. In the case of a request made to a member that was also copied to the Director of the Office of Legislative Legal Services, the request is considered "made" when the request is actually received by the member or when the member actually receives notice of the request by the Office of Legislative Legal Services, whichever occurs earlier.
6. Responses to requests of members may be drafted and sent by the member or by the Office of Legislative Legal Services, if authorized by the member.
7. Responses to requests of staff agencies may be drafted and sent by the custodian of the staff agency's records or by the Office of Legislative Legal Services.

8. An employee of a staff agency who receives a request for records shall immediately forward the request to the staff agency's custodian.

D. Inspection

1. The custodian or the custodian's designee shall respond to the requester within three business days after the date of receiving the request and inform the requester whether the custodian located any responsive public records and how the requester may inspect the records. The three-day period for a response may be extended by an additional seven business days if extenuating circumstances, as described in section 24-72-203 (3)(b), C.R.S., exist.
2. Extenuating circumstances may also exist if the request for public records is made to a member during the legislative interim and the member's office is closed. Under such circumstances, the member may make other arrangements with the requester concerning the time and location at which the public records will be available. The arrangements may include extending the period of time in which the member will make the records available to reflect the volume of records requested, whether the member must travel to access the records, and the member's professional and family commitments at the time of the request.
3. All public records that are responsive to an open records request shall be preserved from the date the request is received by the custodian until the date the response, including any responsive public records, is sent to the requester, regardless of any records maintenance, retention, or deletion policy or practices utilized by the custodian.
4. If a public record is not immediately or readily available for inspection, the custodian or the custodian's designee must make an appointment or other arrangements with the requester concerning the time at which the public record will be available. Responding to requests for inspection of public records does not take priority over the previously scheduled work activities of the custodian or the custodian's designee.
5. The custodian or the custodian's designee shall make the responsive public records available for inspection via email or, if there is a request to view the records in person, during regular business hours: 8:00 a.m. to 5:00 p.m., Monday through Friday, except for times the custodian's office is closed.

- a. Upon notice to the requester that the public records are available for inspection through an online cloud-based storage system, the records will be available for inspection for thirty calendar days after the date of notice. At the conclusion of the thirty-day period, the requester's CORA request will be deemed closed and any responsive public records shared through an online cloud-based storage system will no longer be accessible.
 - b. Upon notice to the applicant that the public records are available for inspection in person, the records will be available for inspection for thirty calendar days after the date of notice. If the applicant does not inspect the records within that thirty-day period, the applicant's CORA request will be deemed closed and the records produced in response to the request will be retained or disposed of pursuant to the custodian's records retention and management policy.
6. A requester shall not remove a public record from the custodian's offices without the permission of the custodian. Records may be removed from file folders or places of storage for photocopying by the custodian or the custodian's designee. The custodian may allow a person to use the custodian's own portable electronic equipment to make copies of public records.
7. As a general practice, in response to an open records request:
 - a. Public records will be shared with the requester electronically, whenever possible.
 - b. A document will not ordinarily be created in order to respond to a request.
 - c. In the case of an email that is a public record, copies of the email will be made available by the custodian in PDF format.
 - d. The person making the request shall not be allowed to access the custodian's computer or any other computer for purposes of inspecting any public records.
8. Upon request by the requester, the custodian shall transmit a copy of any public records by United States mail, other delivery service, or facsimile. If such request is made, the requester is required to prepay any applicable fee for preparing the documents and for any search and

retrieval costs incurred pursuant to section II. E. 2. of this Policy and, if applicable, any costs associated with the mailing or delivery of the requested public records. The custodian shall transmit the public records to the requester within three business days after receipt of payment.

9. Any portion of a public record containing non-public information that is not subject to inspection may be redacted by the custodian prior to making the record available for inspection. The custodian is not required to redact information from a writing that is not a public record in order to make the writing available for inspection. *Denver Publishing Co. v. Bd. of County Comm'rs of the County of Arapahoe*, 121 P.3d 190 (Colo. 2005); *Colorado Republican Party v. Benefield, et al.*, Court of Appeals No. 07CA1216, Oct. 23, 2008 (Unpublished).
10. For any record that is available at a location that is open and accessible to the public, including websites, the custodian may direct the requester to that location for purposes of inspecting the record.
11. The custodian or the custodian's designee shall deny the inspection of the records if inspection would be contrary to federal or state law or regulation or would violate a court order. In special circumstances, a custodian may deny inspection of the records if the inspection would cause substantial injury to the public interest. The denial shall be made in writing by the custodian to the requester and shall specify the grounds of the denial. Custodians are encouraged to consult with the Office of Legislative Legal Services prior to denying inspection of any records.

E. Fees for Record Requests

1. Fees for Standard Reproductions: The custodian or the custodian's designee shall charge a fee not to exceed twenty-five cents (\$0.25) per page for any photocopies of records that are required to make a record available. Printouts and other reproductions of records shall be provided at a cost not to exceed the actual cost of the printout or other reproduction. The fees shall be paid by the requester prior to the receipt of copies of any public records.
2. Fees for Search and Retrieval:
 - a. In the case of any request requiring more than one hour for search and retrieval or for supervision of inspection or copying,

the custodian or the custodian's designee shall charge a fee of \$41.37 per hour. See: *Black v. S.W. Water Conserv. Dist.*, 74 P.3d 462 (Colo. App. 2003). Prior to performing any services necessary to respond to a request, the custodian or the custodian's designee may require the requester to pay a deposit equal to estimated fees that will be charged by the custodian for searching and retrieving the records. In circumstances when a deposit is required for the estimated fees, the records requested shall be made available within three business days from the date of receipt of the deposit, or within ten business days from the date of the receipt of the deposit if extenuating circumstances, as described in section 24-72-203 (3)(b), C.R.S., exist.

- b. In the case of any request requiring a member to travel over fifty miles for purposes of searching, retrieving, or making records available, the member may charge an amount equal to the member's reasonable expenses incurred in connection with such travel.

III. Email and Other Electronic Communications

A. Scope

Pursuant to CORA, electronic communications, including email, that are written in the conduct of public business by members or legislative staff could be considered public records, regardless of whether the electronic communications were sent or received on a public or privately owned computer and regardless of whether a member or legislative staff utilizes a state or a private service provider that is paid for at the member's or staff's expense to send or receive the electronic communications. Therefore, any electronic communications that are written in the conduct of public business by members or legislative staff could be subject to the provisions of CORA and this Policy.

B. General Provisions

1. Under no circumstances shall members and legislative staff use equipment, supplies, or other similar items, including email, which is the property of the Colorado General Assembly, for political purposes of a partisan nature, for campaign purposes, or for the personal gain of a member or a legislative staff person.

- a. Members should also not respond to a campaign-related email that is sent to a coleg.gov or district account. Instead they should respond in a separate email from a non-state provided account.
2. The legislative computer network and its accompanying email facilities are intended for official use by members and legislative staff for the purpose of conducting the business of the state of Colorado.
3. The incidental and occasional personal use of email by members and legislative staff is permissible when such use does not:
 - a. Generate a direct or incremental cost to the state;
 - b. Directly or indirectly interfere with the legislative computer network; or
 - c. Contain otherwise unacceptable content more fully described in section III. C of this Policy.
4. Members may use state equipment, and email generated from state equipment, to communicate or correspond with constituents, family members, and business and professional associates for purposes not related to campaigns.
5. Members and legislative staff should be aware that when sending any email from a state-owned email address, or using state-owned equipment, there is an inherent danger of the content being interpreted as an official policy or opinion of the General Assembly or the staff agency.
6. Members shall not share their individual Google Workspace account login information with anyone, including aides. Upon the member's request, aides may be provided delegated access to the member's individual account.
7. Members shall promptly communicate aide turnover to the Secretary of the Senate or Chief Clerk of the House of Representatives, for purposes of facilitating timely addition or deletion of access to the Google Workspace account.
8. The daily backup system is intended for use only in cases of disaster recovery. As provided in the open records request policy contained in Section II of this Policy, the backup system is not a writing or part of

any custodian's document management or record-keeping process and shall not be relied upon or used as a means of compliance with open records requests or the open records law. The entity that manages the system storage of records shall not be considered the custodian of the record by virtue of managing that system.

9. Staff members from Legislative Council Staff, Information Technology are not the custodian of a record by virtue of having access to it in order to provide information technology assistance to members and legislative staff agencies.
10. Staff members, including Legislative Council Staff, Information Technology, are prohibited from accessing data within member and district Google Workspace accounts, unless requested to do so by the member who owns the account.

C. Acceptable Content

1. Users of the General Assembly network will be held to the same standards of professionalism, good taste, and judgment when utilizing email as with any other business communication.
2. This policy does not prohibit users of the General Assembly network from sending email of a social nature directly related to officially sponsored functions of the General Assembly or any staff agency that do not contain otherwise prohibited content.
3. Users of the General Assembly network should avoid the use of language that might be offensive or embarrassing if read by an unintended recipient.

D. Privacy Rights

1. Authorized network administrators and agency management may, from time to time and without prior notice, monitor the use of email by legislative staff or employees. Such monitoring may include tracking addresses of email sent and received, accessing inbox messages, accessing messages in folders, and accessing archived email.
2. All email delivered to the General Assembly network will be scanned automatically to determine if it contains a virus/spy-ware or is considered junk email (spam) and will be automatically handled, as deemed appropriate, to keep such material off the General Assembly network.

3. The results of any monitoring activity are intended to gather usage statistics, troubleshooting information, or other management metrics in order to identify problems or trends and, as such, are not considered a public record.
4. With the approval of the appropriate custodian, authorized network administrators and agency management may access any email of legislative staff or employees in order to comply with a CORA request.
5. The Colorado General Assembly, its designated representatives, or agency management:
 - a. Reserves the right to discipline or terminate employees based on information obtained from monitoring or inspecting email where such information is grounds for such action.
 - b. Reserves the right to disclose email of legislative staff or employees to law enforcement officials, without consent and without giving prior notice if such action is deemed appropriate.
 - c. Will make every effort to refrain from inspection of email of legislative staff or employees it determines is of a personal and private nature when such determination can be made without actually inspecting the email.
6. When there are overriding management concerns regarding office policy, compliance with the public records law, compliance with requests from law enforcement officials, or other purposeful disclosure, individual privacy rights of legislative staff or employees may not exist and the provisions of Section III. D. 5, may not apply.

E. Recommended Practices for Classifying Email for Retention or Deletion

1. The easiest way to manage the retention and deletion of email is to determine how long each email will be useful to you so that you can store it accordingly. Some email that you receive or send may be deleted immediately or a very short time after you read or send the message, while other email may need to be kept for an extended period of time. It is likely however, that many of the email messages you send and receive in the course of your workday will be somewhere between these two extremes. Any email that you retain may become the subject of an open records request. (See section 24-72-202 (7), C.R.S.) It is

suggested that you think of typical email in the following four broad categories:

- a. **"Transient Email"** means an email that is personal in nature, of fleeting or no value, or otherwise not created or received in the course of state business. Transient email should be deleted immediately after the custodian has read or sent the message.
 - b. **"Short-Term Email"** means an email that serves a work-related purpose, but is also transitory or of time-limited value because it serves a time-defined administrative purpose. Short-term email should be retained until it is no longer of administrative value and then it should be deleted. In most cases, it should not be necessary to retain a short-term email for more than thirty days.
 - c. **"Intermediate Email"** means an email that is neither transient nor permanent and that has more significant administrative, legal, or fiscal value than a short-term email. Intermediate email should be retained until it is no longer of administrative, legal, or fiscal value and then it should be deleted. In many cases, it may be necessary to retain an intermediate email for more than thirty days. Custodians should review saved intermediate emails frequently and should delete an email when it is no longer of administrative, legal, or fiscal value.
 - d. **"Permanent Email"** means an email that is kept due to its significant administrative, legal, or fiscal value. Permanent email may be retained indefinitely or until the custodian determines that the email is in a different category or that it should otherwise be deleted. Consider saving in a more permanent and accessible location.
2. Members and legislative staff are encouraged, to the extent possible, to apply these retention guidelines to text messages and other forms of electronic communications.
 3. Members and legislative staff may follow the suggested categories described in Section III. E. 1 of this Policy or establish their own categories and policies in writing.

IV. Policies Include Changes in the Law

If the Colorado Revised Statutes are amended to create a conflict with any provision of these Policies, the Policies will be interpreted to apply the law.

V. Records Retention

A. Definitions

1. **"Records"** means "records" as defined in section 24-80-101 (1), C.R.S.
2. **"Staff Agency"** means and includes:
 - a. The Joint Budget Committee Staff;
 - b. Legislative Council Staff;
 - c. Office of Legislative Legal Services;
 - d. Office of the State Auditor;
 - e. Staff of the Colorado House of Representatives; or
 - f. Staff of the Colorado Senate.

B. Records Management

1. Each staff agency shall comply with the provisions of section 24-80-102.7, C.R.S., in regard to retention and disposition of records of the staff agency.
2. In establishing and maintaining a records management program as required by section 24-80-102.7 (2)(a), C.R.S., each staff agency shall follow the guidelines for the retention and disposition of records as set forth in the Colorado State Archives Records Management Manual as applicable, except when:
 - a. The retention or disposition of any records of the staff agency is otherwise controlled by law;
 - b. The retention or disposition of any records of the staff agency is controlled by policies adopted by the Executive Committee of Legislative Council pursuant to section 2-3-303 (2)(d), C.R.S.; or

- c. The needs of the staff agency with regard to the retention or disposition of any of its records are different for legal, administrative, audit, fiscal, research, historical, or other reasons.

[The Records Management Manual may be accessed here.](#)

Addendum A: Contact Information

Individual Legislative Members: Contact information for individual legislators can be found on the [LEGISLATORS section of the General Assembly's website](#).

Legislative Staff Agencies

Colorado House of Representatives

Attn.: Chief Clerk of the House
State Capitol Building
200 E. Colfax Ave., Room 307
Denver, CO 80203
303-866-2904
House.ChiefClerk@coleg.gov

Colorado Senate

Attn.: Secretary of the Senate
State Capitol Building
200 E. Colfax Ave., Room 346
Denver, CO 80203
303-866-4838
Senate.Secretary@coleg.gov

Office of Legislative Legal Services

State Capitol Building
200 E. Colfax Ave., Room 091
Denver, CO 80203
303-866-2045
OLLS.Director@coleg.gov

Legislative Council Staff

State Capitol Building
200 E. Colfax Ave., Room 029
Denver, CO 80203
303-866-3521
LCS.Director@coleg.gov

Joint Budget Committee Staff

Legislative Services Building, 3rd
Floor
200 E. 14th Ave.
Denver, CO 80203
303-866-2061
JBC.Director@coleg.gov

Office of the State Auditor

1525 Sherman Street, 7th Floor
Denver, CO 80203
303-869-2800
OSA.GA@coleg.gov

Addendum A contact information last updated on October 30, 2024.