

OPEN GOVERNMENT GUIDE

Access to Public Records
and Meetings in

COLORADO

**REPORTERS
COMMITTEE**
FOR FREEDOM OF THE PRESS

Sixth Edition
2011

OPEN GOVERNMENT GUIDE

OPEN RECORDS AND MEETINGS LAWS IN

COLORADO

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Previously Titled
Tapping Officials' Secrets

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Contents

Introductory Note	iv	C. Administrative appeal.	17
User’s Guide	v	D. Court action.	17
Foreword	1	E. Appealing initial court decisions.	19
Open Records	2	F. Addressing government suits against disclosure.	19
I. STATUTE — BASIC APPLICATION	2	Open Meetings	20
A. Who can request records?	2	I. STATUTE — BASIC APPLICATION.	20
B. Whose records are and are not subject to the act?	2	A. Who may attend?	20
C. What records are and are not subject to the act?	3	B. What governments are subject to the law?	20
D. Fee provisions or practices.	5	C. What bodies are covered by the law?	20
E. Who enforces the act?	6	D. What constitutes a meeting subject to the law.	21
F. Are there sanctions for noncompliance?	6	E. Categories of meetings subject to the law.	23
II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	6	F. Recording/broadcast of meetings.	26
A. Exemptions in the open records statute.	6	G. Are there sanctions for noncompliance?	26
B. Other statutory exclusions.	8	II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS	26
C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.	11	A. Exemptions in the open meetings statute.	26
D. Are segregable portions of records containing exempt material available?	11	B. Any other statutory requirements for closed or open meetings. 26	
E. Homeland Security Measures.	12	C. Court mandated opening, closing.	27
III. STATE LAW ON ELECTRONIC RECORDS	12	III. MEETING CATEGORIES — OPEN OR CLOSED.	27
A. Can the requester choose a format for receiving records?	12	A. Adjudications by administrative bodies.	27
B. Can the requester obtain a customized search of computer databases to fit particular needs?	12	B. Budget sessions.	27
C. Does the existence of information in electronic format affect its openness?	12	C. Business and industry relations.	27
D. How is e-mail treated?	12	D. Federal programs.	27
E. How are text messages and instant messages treated?	12	E. Financial data of public bodies.	27
F. How are social media postings and messages treated?	13	F. Financial data, trade secrets or proprietary data of private corporations and individuals.	27
G. How are online discussion board posts treated?	13	G. Gifts, trusts and honorary degrees.	27
H. Computer software.	13	H. Grand jury testimony by public employees.	27
I. How are fees for electronic records assessed?	13	I. Licensing examinations.	27
J. Money-making schemes.	13	J. Litigation; pending litigation or other attorney-client privileges.	27
IV. RECORD CATEGORIES — OPEN OR CLOSED	13	K. Negotiations and collective bargaining of public employees.	27
A. Autopsy reports.	13	L. Parole board meetings, or meetings involving parole board decisions.	27
B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)	13	M. Patients; discussions on individual patients.	28
C. Bank records.	13	N. Personnel matters.	28
D. Budgets.	13	O. Real estate negotiations.	28
E. Business records, financial data, trade secrets.	13	P. Security, national and/or state, of buildings, personnel or other. 28	
F. Contracts, proposals and bids.	13	Q. Students; discussions on individual students.	28
G. Collective bargaining records.	13	IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS	28
H. Coroners reports.	13	A. When to challenge.	28
I. Economic development records.	13	B. How to start.	28
J. Election records.	13	C. Court review of administrative decision.	28
L. Hospital reports.	13	D. Appealing initial court decisions.	30
M. Personnel records.	14	V. ASSERTING A RIGHT TO COMMENT.	30
N. Police records.	14	A. Is there a right to participate in public meetings?	30
O. Prison, parole and probation reports.	15	B. Must a commenter give notice of intentions to comment?	30
P. Public utility records.	15	C. Can a public body limit comment?	30
Q. Real estate appraisals, negotiations.	15	D. How can a participant assert rights to comment?	30
R. School and university records.	15	E. Are there sanctions for unapproved comment?	30
S. Vital statistics.	15	Statute.	31
V. PROCEDURE FOR OBTAINING RECORDS	15		
A. How to start.	15		
B. How long to wait.	17		

Introductory Note

The OPEN GOVERNMENT GUIDE is a comprehensive guide to open government law and practice in each of the 50 states and the District of Columbia. Fifty-one outlines detail the rights of reporters and other citizens to see information and attend meetings of state and local governments.

The OPEN GOVERNMENT GUIDE — previously published as *Tapping Officials' Secrets* — is the sole reference on open government laws in many states.

Written to follow a standard outline to allow easy comparisons between state laws, the compendium has enabled open government advocates in one state to use arguments successful in other states to enhance access rights at home. Press associations and lobbyists have been able to invoke other sunshine laws as they seek reforms in their own.

Volunteer attorneys, expert in open government laws in each state and in Washington, D.C., generously donated their time to prepare the initial outlines for the first incarnation of this project in 1989. In most states these same attorneys or their close associates updated and rewrote the outlines for the 1993, 1997, 2001 and 2006 editions as well this current 2011 edition.

Attorneys who are new to the compendium in this edition are also experts in open government and access issues, and we are grateful to them for their willingness to share in this ongoing project to create the first and only detailed treatise on state open government law. The rich knowledge and experience all the participating attorneys bring to this project make it a success.

While most of the initial users of this compendium were journalists, we know that lawyers and citizens have discovered it and find it to be indispensable as well.

At its core, participatory democracy decries locked files and closed doors. Good citizens study their governors, challenge the decisions they make and petition or vote for change when change is needed. But no citizen can carry out these responsibilities when government is secret.

Assurances of open government exist in the common law, in the first state laws after colonization, in territorial laws in the west and even in state constitutions. All states

have passed laws requiring openness, often in direct response to the scandals spawned by government secrecy. The U.S. Congress strengthened the federal Freedom of Information Act after Watergate, and many states followed suit.

States with traditionally strong access laws include Vermont, which provides virtually unfettered access on many levels; Florida, which was one of the first states to enact a sunshine law; and Ohio, whose courts have issued several access-friendly rulings. Other jurisdictions, such as Pennsylvania and the District of Columbia, have made significant changes to their respective open government laws since the fifth edition was published designed to foster greater public access to information. Historically, Pennsylvania had a reputation as being relatively non-transparent while the District of Columbia was known to have a very restrictive open meetings law.

Some public officials in state and local governments work hard to achieve and enforce open government laws. The movement toward state freedom of information compliance officers reflects a growing activism for access to information in the states.

But such official disposition toward openness is exceptional. Hardly a day goes by when we don't hear that a state or local government is trying to restrict access to records that have traditionally been public — usually because it is feared release of the records will violate someone's "privacy" or threaten our nation's security.

It is in this climate of tension between broad democratic mandates for openness and official preference for secrecy that reporters and good citizens need to garner their resources to ensure the passage and success of open government laws.

The Reporters Committee genuinely hopes that the OPEN GOVERNMENT GUIDE will help a vigorous press and citizenry to shape and achieve demands for openness, and that it will serve as a primer for those who battle in government offices and in the courts for access to records and meetings. When challenges to secrecy are successful, the news is better and so is the government.

User's Guide

Whether you are using a guide from one state to find a specific answer to an access issue, or the complete compendium encompassing all states to survey approaches to a particular aspect of open government law around the country, knowing a few basics on how the OPEN GOVERNMENT GUIDE is set up will help you to get the most out of it.

Following the outline. Every state section is based on the same standard outline. The outline is divided into two parts: access to records and access to meetings.

Start by reviewing the table of contents for each state. It includes the first two tiers of that state's outline. Once you are familiar with the structure of the outline, finding specific information is simple. Typically, the outline begins by describing the general structure of the state law, then provides detailed topical listings explaining access policies for specific kinds of records or meetings.

Every state outline follows the standard outline, but there will be some variations. Some contributors added items within the outline, or omitted subpoints found in the complete outline which were not relevant to that state's law. Each change was made to fit the needs of a particular state's laws and practices.

In general, outline points that appear in boldface type are part of the standard outline, while additional topics will appear in italicized type.

Whether you are using one state outline or any number of outlines, we think you will find the outline form helpful in finding specific information quickly without having to read an entire statute or search through many court cases. But when you do need to consult statutes, you will find the complete text of the relevant portions at the end of each outline.

Additional copies of individual state booklets, or of the compendium covering the 50 states and the District of Columbia, can be ordered from The Reporters Committee for Freedom of the Press, 1101 Wilson Blvd., Suite 1100, Arlington, Virginia 22209, or by calling (703) 807-2100. The compendium is available in electronic format on CD.

The state outlines also are available on our World-Wide Web site, www.rcfp.org/ogg. The Internet version of the outlines allows you to search the database and compare the law in different states.

Updates: The Reporters Committee published new editions of THE OPEN GOVERNMENT GUIDE in 1989, 1993, 1997, 2001, 2006, and now in 2011. We expect future updates to follow on approximately the same schedule. If we become aware of mistakes or material omissions in this work, we will post notices on this project's page on our World-Wide Web site, at www.rcfp.org/ogg. This does not mean that the outlines will constantly be updated on the site — it simply means known errors will be corrected there.

For our many readers who are not lawyers: This book is designed to help journalists, lawyers, and citizens understand and use state open records and meetings law. Although the guides were written by lawyers, they are designed to be useful to and readable by nonlawyers as well. However, some of the elements of legal writing may be unfamiliar to lay readers. A quick overview of some of these customs should suffice to help you over any hurdles.

Lawyers are trained to give a "legal citation" for most statements of law. The name of a court case or number of a statute may therefore be tacked on to the end of a sentence. This may look like a sentence fragment, or may leave you wondering if some information about that case was omitted. Nothing was left out; inclusion of a legal citation provides a reference to the case or statute supporting the statement and provides a shorthand method of identifying that authority, should you need to locate it.

Legal citation form also indicates where the law can be found in official reporters or other legal digests. Typically, a cite to a court case will be followed by the volume and page numbers of a legal reporter. Most state cases will be found in the state reporter, a larger regional reporter, or both. A case cite reading 123 A.2d 456 means the case could be found in the Atlantic (regional) reporter, second series, volume 123, starting at page 456.

Note that the complete citation for a case is often given only once. We have tried to eliminate as many cryptic second-reference cites as possible, but you may encounter cites like "Jackson at 321." This means that the author is referring you to page 321 of a case cited earlier that includes the name Jackson. Authors may also use the words *supra* or *infra* to refer to a discussion of a case appearing earlier or later in the outline, respectively.

Except for these legal citation forms, most "legalese" has been avoided. We hope this will make this guide more accessible to everyone.

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FOREWORD

Open Records. Prior to enactment of the Colorado Public Records law in 1969, access to public records in Colorado was largely a matter of discretion of the custodian, except in cases where records were specifically made confidential by statute. This was even true of court records. See *Times-Call Publishing Co. Inc. v. Wingfield*, 159 Colo. 172, 410 P.2d 511 (1966).

The Colorado Public Records law was inspired by and patterned after the federal Freedom of Information Act as originally enacted, before the 1974 amendments. See *Denver Post Corp. v. University of Colorado*, 739 P.2d 874 (1987). The Open Records Act contains a broad legislative declaration that all public records shall be open for inspection unless otherwise specifically provided by law. Colo. Rev. Stat. § 24-72-201. Consonant with this mandate, the Colorado Supreme Court has held that a public official has no authority to deny any person access to a public record unless there is a specific statute permitting the withholding of the information requested. *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974). In several particulars, the Colorado General Assembly determined to achieve the general policy of the Public Records Law differently than did Congress in the federal Freedom of Information Act. See Colorado Legislative Council Research Publication No. 126, Open Records for Colorado (1967). For example, the Colorado statutory scheme provides that all “personnel” files are exempt from disclosure regardless of whether they would cause an invasion of an individual’s privacy. Colo. Rev. Stat. § 24-72-204(3)(a)(II)(A). In addition, most of the exemptions that parallel those of the Federal FOIA are not simply exempted from the disclosure requirements, but nondisclosure is mandatory. *Id.* at 204(3)(a). This gives parties who are the subject of information sought the right to challenge a request for disclosure of the information, which is not the case under the federal act. See *Freedom Newspapers Inc. v. City of Colorado Springs*, 739 P.2d 881 (Colo. App. 1987); *CFI Steel Corp. v. Office of Air Pollution Control*, 77 P.3d 933 (Colo. App. 2003).

The statute was amended in 1977 by the Criminal Justice Records Act, which dealt with all law enforcement investigative records and all court records in criminal prosecutions under separate legislation. Colo. Rev. Stat. §§ 24-72-301, *et seq.* This legislation gives criminal justice agencies, including courts and law enforcement agencies, discretion to withhold all criminal justice information other than records of official action, such as records of arrest, detention, charging, conviction, etc. The latter records are required to be maintained and available for public inspection, but even these records are subject to limited access orders or expungement after certain periods of time. In 1988, the Criminal Justice Records Act was amended to simplify the grounds and procedure for sealing of criminal justice records, but continues the requirement that records of official action be open unless they are ordered sealed.

Open Meetings. Colorado’s open meetings law, known as the “Sunshine Law,” was enacted by the people pursuant to a referendum held in 1972. Colo. Rev. Stat. §§ 24-6-401, *et seq.* The Sunshine Law was modeled after the Florida Government in the Sunshine Law. As initially enacted, this statute applied only to the General Assembly and “state agencies,” *i.e.*, agencies having statewide jurisdiction. The Sunshine Law has been liberally construed in favor of openness and to permit non-public sessions only in relatively narrowly defined circumstances. All discussions not falling within these “executive session” categories must be held in public, and in any event the discussion leading to the final decision must occur in public. See *Cole v. State*, 673 P.2d 345 (Colo. 1983).

A second statutory scheme (referred to herein as the “local government open meetings law”) formerly applied to cities, counties and political subdivisions not having statewide jurisdiction. See Colo. Rev. Stat. § 29-9-101 (Repealed 1991). This statute provided that “all meetings” of local governmental agencies shall be held in public, but permitted executive sessions for determination of negotiation strategy, and “for consideration of documents or testimony given in confidence.” The courts gave this statute a less than liberal construction, and held that executive sessions were appropriate for “deliberations” without limitation as to subject matter, so long as final decisions were made in public. See *Hudspeth v. Board of County Commissioners*, 667 P.2d 775 (Colo. App. 1983); see also *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1986).

In 1991, the Colorado General Assembly enacted S.B. 91-33, which amended the Sunshine Law to apply to local governments as well as state agencies, thereby eliminating the two-tier system of open meetings laws. All government agencies.

Open Records

I. STATUTE — BASIC APPLICATION

A. Who can request records?

1. Status of requestor.

“Any person” may inspect any public record at reasonable times. Colo. Rev. Stat. §§ 24-72-201, 24-72-203(1)(a). “Person” is defined as any natural person, including any public employee and any elected or appointed public official acting in an official or personal capacity, and any corporation, limited liability company, partnership, firm, or association. Colo. Rev. Stat. § 24-72-202(3).

Copying of records is subject to federal copyright and trademark laws. The state and its agencies, institutions, and political subdivisions may maintain an action to obtain and enforce copyright or trademark protection under federal law. Colo. Rev. Stat. § 24-72-203(4). This authorization, however, is not intended to restrict public access to fair use of copyrighted materials, *see* 17 U.S.C. § 107, and does not apply to writings which are merely lists or other compilations.

The “person in interest,” the person who is the subject of a record, may have greater rights of access to records about that person than do others. *See* Colo. Rev. Stat. §§ 24-72-204(2)(a)(II), (3).

2. Purpose of request.

The purpose of the person requesting the records does not affect the right to inspect public records. *Anderson v. Home Ins. Co.*, 924 P.2d 1123, 1126 (Colo. App. 1996).

3. Use of records.

The Open Records Act does not restrict any subsequent use of the records provided or of information contained in them. However, requesters of access to criminal justice records must certify that they do not intend to use the records for solicitation of business for pecuniary gain. Colo. Rev. Stat. § 24-72-305.5.

B. Whose records are and are not subject to the act?

“State” Records in General. “Public Records” are defined to include records “made, maintained, or kept by the state or any agency, institution, a nonprofit corporation incorporated pursuant to Colo. Rev. Stat. § 23-5-121(2), or political subdivision of the state, or that are described in Colo. Rev. Stat. § 29-1-902, and held by any local government-financed entity.” Colo. Rev. Stat. § 24-72-202(6). The broad scope of this definition includes all agencies of the executive branch and legislative bodies.

“Political subdivisions” to which the Open Records Act applies include every county, city, town, school district, special district, public highway authority, rural transportation authority, and housing authority within the State of Colorado. Colo. Rev. Stat. § 24-72-202(5). The definition of “political subdivision” is to be liberally construed, and includes the State Compensation Insurance Authority, the state workers’ compensation insurance fund. *Dawson v. State Compensation Ins. Auth.*, 811 P.2d 408 (Colo. App. 1990).

The Act also applies to any “agency or instrumentality” of a political subdivision. *Zubeck v. El Paso Cty. Retirement Plan*, 961 P.2d 597 (Colo. App. 1998). The Act also applies to a non-profit corporation established by a governmental body to perform governmental functions with public funds and subject to governmental oversight, supervision, or control. *Denver Post v. Stapleton Dev. Corp.*, 19 P.3d 36 (Colo. App. 2000).

The Act applies to every state institution of higher education and the respective governing boards. The University of Colorado and its regents are specifically included as a state “institution” to which the Act applies. Colo. Rev. Stat. § 24-72-202(1.5).

The act also applies to “institutionally related foundations,” includ-

ing health care foundations and real estate foundations. Colo. Rev. Stat. §§ 24-72-202(1.6), (1.8), (1.9). An institutionally related foundation is a nonprofit corporation, institute or similar entity that is organized for the benefit of an institution, and whose principal purpose is receiving private donations to be used for the benefit of that institution. Colo. Rev. Stat. §§ 24-72-202(1.6). “Public records” for such a foundation include all writings relating to the requests for disbursement or expenditure of funds. Colo. Rev. Stat. § 24-72-202(6)(a)(IV).

1. Executive branch.

The Act applies to members of the Executive Branch.

a. Records of the executives themselves.

All executives’ records, as defined by the statute quoted above, are subject to the Act.

b. Records of certain but not all functions.

All records that are “for use in the exercise of functions required or authorized by law or administrative rule or involving the expenditure of public funds” are covered by the Act.

Governor did not make, maintain or keep personal cell phone billing statements in his official capacity. *Denver Post Corp. v. Ritter*, 230 P.3d 1238 (Colo. App. 2009), *cert. granted* 2010 WL 1948645 (Colo. May 17, 2010) (No. 10SC94). While governor made the telephone calls, the telephone service provider created and generated the phone bills. *Id.* at 1242. Governor did not maintain the records as they were kept solely to pay the bills and there was no evidence that the governor was responsible for updating the records. *Id.* at 1243. The term maintain, at the least means to “keep up or keep in good repair.” *Id.* Finally, it was stipulated that the governor kept the bills only to verify the amounts he owed and to pay them, which the court deemed is a personal, rather than official, function. *Id.*

2. Legislative bodies.

The records of the General Assembly are covered by the Act.

3. Courts.

Not all court records are covered by the Act. *See Office of State Court Administrator v. Background Info. Sys.*, 994 P.2d 420 (Colo. 1999). Absent statutory mandate dealing with particular court records, courts themselves retain authority over the dissemination of court records. *Id.* at 432. Examples of documents that must be made public under the Act include court registry of actions, judgment records, and records of official actions in criminal cases. *Id.* at 429. Criminal case files are subject to disclosure under the Criminal Justice Records Act. *Id.* *See also* Chief Justice Directive 2001-05 (Apr. 2005).

4. Nongovernmental bodies.

a. Bodies receiving public funds or benefits.

See Denver Post v. Stapleton Dev. Corp., 19 P.3d 36 (Colo. App. 2000).

b. Bodies whose members include governmental officials.

See Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976).

5. Multi-state or regional bodies.

No cases or statutory language specifically address this question.

6. Advisory boards and commissions, quasi-governmental entities.

See Denver Post v. Stapleton Dev. Corp., 19 P.3d 36 (Colo. App. 2000).

7. Others.

Pursuant to House Bill 1041 (2004), fundraising and expenditure records of the University of Colorado Foundation are subject to public inspection.

C. What records are and are not subject to the act?

(1) “Public Records” Defined.

“Public records” subject to the Act are defined by Colo. Rev. Stat. § 24-72-202(6)(a)(I) generally to include all records made, maintained, or kept by the state or by any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state (including cities, towns, and counties), or that are set forth in Colo. Rev. Stat. § 29-1-902, and held by any local government-financed entity:

For use in the exercise of functions required or authorized by law or administrative rule; or

Involving the receipt or expenditure of public funds.

A record not made, maintained or kept by a government actor in his official capacity is not a public record. *Wick Communications v. Montrose County Board of County Commissioners*, 81 P.3d 360 (Colo. 2003) (County manager’s private diary was held not a public record); *Denver Pub’g Co. v. Board of Cty. Commrs. for Arapahoe Cty.*, 121 P.3d 190, 2005 WL 2203157 (Colo. Sept. 12, 2005).

(2) A person may request copies, printout, or photographs of any public record that the Act grants the right to inspect. Colo. Rev. Stat. § 24-72-205(1).

(3) “Public records” subject to the Act include “writings,” which is defined by Colo. Rev. Stat. § 24-72-202(7) as meaning and including “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.” “Writings” also includes digitally stored data, including electronic mail messages. *Id.* However, computer software is specifically excluded from the definition of “writings” in Colo. Rev. Stat. § 24-72-202(7).

(4) “Public records” also includes the “correspondence” of elected officials, Colo. Rev. Stat. § 24-72-202(6)(a)(II), which is defined by Colo. Rev. Stat. § 24-72-202(1) as a communication sent or received by one or more specifically identified individuals and that is or can be produced in written form, including communications sent via U.S. mail, private courier, and electronic mail. However, “public records” does not include correspondence that is:

Work product, as defined in Colo. Rev. Stat. § 24-72-202(6.5);

Without a demonstrable connection to the exercise of functions authorized by law and does not involve the receipt or expenditure of public funds; or

A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent. Colo. Rev. Stat. § 24-72-202(6)(a)(II).

(5) In addition, the following records are expressly designated as public records by statute:

a. Disclosure Statements of Public Officials (Colo. Rev. Stat. §§ 24-6-202, *et seq.*).

Under Colo. Rev. Stat. § 24-6-202, a written disclosure statement must be filed with the Secretary of State within 30 days after their election or appointment by all legislators, the Governor, Lieutenant Governor, Secretary of State, Attorney General, State Treasurer, judges, district attorneys, members of the State Board of Education, Regents of the University of Colorado, and members of the Public Utility Commission.

Disclosure is to include sources of income, investments over \$5,000, real estate, offices and directorships, lobbyists, creditors to whom is owed \$1,000 or more, and state-regulated businesses with which the official is associated.

The disclosure is also to include the same information for the official’s spouse and minor children.

Each disclosure statement is public information, available to any person upon request during normal working hours. Colo. Rev. Stat. § 24-6-202(5).

Income tax returns filed with or in lieu of disclosure statements are also public information under Colo. Rev. Stat. § 24-6-202(6).

b. Lobbyist Disclosure Statements (Colo. Rev. Stat. §§ 24-6-301, *et seq.*).

Under Colo. Rev. Stat. § 24-6-302, all registered professional lobbyists and firms organized for professional lobbying purposes that employ such lobbyists must file a disclosure statement with the Secretary of State that contains information about all contributions received by and spent by lobbyists, gift or entertainment expenditures, names of persons who have received contributions, and other specific information required by Colo. Rev. Stat. § 24-6-301(1.9).

Lobbyists’ disclosure statements are public records of the Secretary of State, and shall be open and readily accessible for public inspection. Colo. Rev. Stat. § 24-6-304(2).

c. State Auditor Reports.

Reports of the State Auditor shall be open to public inspection except for portions of any report containing recommendations, comments, and any narrative statements, which are released only upon a majority vote of the audit committee. Colo. Rev. Stat. § 2-3-103(2).

Work papers of the State Auditor shall be open to public inspection only upon majority approval of the audit committee. Work papers are not open to public inspection until the completed report has been filed with the committee. Colo. Rev. Stat. § 2-3-103(3).

d. Division of Labor. All proceedings of the Division of Labor are public records under Colo. Rev. Stat. § 8-1-106(3).

e. Jail Records.

The keeper of the county jail is to keep daily records of the commitment and discharge of all persons delivered to his custody, including date of entrance, name, offense, sentence, fine, age, sex, citizenship, and times and conditions of commitment and discharge. The record shall be open to inspection by the public at all reasonable hours. Colo. Rev. Stat. § 17-26-118.

f. County Records.

All books and records required to be in the offices of the County Sheriff, clerk and recorder, treasurer, and clerk of the district and county courts are generally open to examination by any person. Colo. Rev. Stat. § 30-10-101(1). Any officer having the custody of such books and records may make “reasonable and general regulations” concerning their inspection by the public. Colo. Rev. Stat. § 30-10-101(2).

g. Court Records.

The judgment record and register of actions in all courts are declared open to public inspection during office hours by Colo. Rev. Stat. § 13-1-119. This statute provides that this information may also be presented on microfilm or computer terminal.

Pursuant to Colorado Supreme Court Chief Justice Directive 05-01, all books, records, pleadings, filings, documents, indexes, calendars, orders, judgments, decrees, minutes, registers of action, and any other materials in any court that are *not* declared to be private or confidential by statute or specific order shall be open to the public for reasonable inspection at reasonable times during business hours. The general policy is that court materials are open to the public unless they are closed for specific reasons by specific court order.

Although persons other than parties in interest and their attorneys may examine pleadings and other papers filed in actions pending be-

fore any court, they may do so at the discretion of the court. *Times-Call Publishing Co. v. Wingfield*, 159 Colo. 172, 410 P.2d 611 (1966); see Colo. Rev. Stat. § 30-10-101(1). The *Times-Call* case holds that a statute that on its face limits the right of access to certain classes of persons, but does not expressly include access to others will, because of First Amendment considerations, be construed to confer discretion to permit access to the media. Moreover, where the subject matter of the action is of public interest, refusal to allow inspection is an abuse of discretion. *Id.*

Records in civil cases may be sealed for privacy or similar reasons. Colo. R. Civ. P. 121, § 1-5.

In *Office of State Court Administrator v. Background Info. Sys.*, 994 P.2d 420 (Colo. 1999), the Supreme Court upheld its own directive prohibiting disclosure of court records in bulk (computerized data).

h. Real Estate Records.

Records of the county clerk and recorder pertaining to interests in real property are public records under Colo. Rev. Stat. § 30-10-101(1). However, under Colo. Rev. Stat. § 30-10-101(2), the clerk may make “reasonable and general regulations” concerning the inspection of such books and papers by the public.

Torrens Titles. Records of titles to real property registered under the Torrens Title Registration Act in the office of the registrar of titles are public records. Colo. Rev. Stat. § 38-36-150.

i. Professions and Occupations. The following are specifically declared to be public records:

Chiropractors. Records of the proceedings of the State Chiropractic Board and the register of all applications for licensing and all licensed chiropractors are declared to be public records under Colo. Rev. Stat. § 12-33-110.

Dentists. Records by the State Dental Board of all persons to whom dental licenses and license renewal certificates have been granted, and the numbers and dates of granting are declared by Colo. Rev. Stat. § 12-35-120 to be public records open to public inspection during ordinary hours.

Psychologists. Records by the grievance board of the names, addresses, educational qualifications, disclosure statements, therapeutic orientations or methodologies, and years of experience in each specialty area of all person practicing psychotherapy in the state are open to public inspection under Colo. Rev. Stat. § 12-43-220(1).

Real Estate Commission. Records of real estate licenses, investigations, and proceedings of the Real Estate commission kept in its office or in the Department of Regulatory Agencies are open to public inspection under Colo. Rev. Stat. § 12-61-112(1).

j. Motor Vehicle Records.

Records of the Department of Revenue pertaining to motor vehicle registrations, licenses and permits are declared to be confidential, consistent with the federal Driver’s Privacy Protection Act of 1994 (18 U.S.C. § 2721, *et seq.*). Such records may be obtained by various parties in connection with motor vehicle matters, debt collection, litigation, or “research activities . . . so long as the personal information is not published, rediscovered, or used to contact the parties in interest.” Colo. Rev. Stat. § 24-72-204(7) (2004).

Accident reports made by sheriffs, police, coroners, or law enforcement officers are public records under Colo. Rev. Stat. § 42-4-1610; 42-1-206. Accident reports made by any person involved in an accident, however, are declared confidential by Colo. Rev. Stat. § 42-4-1610. *Clark v. Reichman*, 130 Colo. 329, 275 P.2d 952 (1954).

Mobile home titles are public records under Colo. Rev. Stat. § 42-6-141.

k. Election Records.

All certificates of designation, petitions, certificates of nomination, acceptances, declinations, and withdrawals filed in connection with public elections are declared public records by Colo. Rev. Stat. § 1-4-504.

l. Voter Registration Records.

Voter registration books in the custody of the county clerk and recorder are declared to be public records subject to examination during office hours under Colo. Rev. Stat. § 1-2-227.

m. Division of Correctional Industries.

Records of the Division of Correctional Industries, including accounts of all monies received by and disbursed on its behalf, are public records open to inspection under Colo. Rev. Stat. § 17-24-107.

n. Minutes of Meetings of State Agencies.

The minutes of a meeting of any state board, committee, commission or other policy-making or rule-making body shall be open to public inspection under Colo. Rev. Stat. § 24-6-402(d)(I).

(6) Criminal Records.

Criminal justice records are the subject of a separate part of the Open Records Act, Colo. Rev. Stat. §§ 24-72-301, *et seq.* Records of official actions of criminal justice agencies are declared open to inspection by any person by Colo. Rev. Stat. § 24-72-303; all other records of criminal justice agencies are open for inspection as provided.

Records of Official Actions. Records of “official actions” include records of any arrests, indictments, releases from custody, parole decisions, sentencing decisions, and dispositions of cases. Colo. Rev. Stat. § 24-72-302(7).

Other Records. All criminal justice records other than records of official actions are open to inspection by any person at reasonable times at the discretion of the official custodian. Colo. Rev. Stat. § 24-72-304(1).

i. Grounds for denial of inspection.

Disclosure contrary to statute or court rule or order. Colo. Rev. Stat. § 24-72-305(1).

Disclosure “contrary to public interest.” The custodian may deny access to records of investigations, intelligence information, or security procedures of any sheriff, district attorney, police, or other law enforcement agency. Colo. Rev. Stat. § 24-72-305(5). See *Losavio v. Mayber*, 178 Colo. 184, 496 P.2d 1032 (1972) (holding under former law that some official action records may not be available, overruling § 24-72-303).

Where the police have a legitimate interest in avoiding disclosure of potential criminal conduct not ripe for prosecution, full access may be denied to police intelligence information, including taped recordings of an informant’s statements that mentioned the petitioner’s name. *Pretash v. City of Leadville*, 715 P.2d 1272 (Colo. App. 1985).

Solicitation of Business. Criminal justice records and records of official actions are not to be used for the purpose of soliciting business for pecuniary gain. The custodian shall deny access to records unless the person making the request signs a statement affirming that the records will not be used to solicit business. Colo. Rev. Stat. § 24-72-305.5. See *Lanphere & Urbaniak v. Colorado*, 21 F.3d 1508 (10th Cir.) (1994) (Colo. Rev. Stat. § 24-72-305.5, although a content-based restriction on commercial speech under the First Amendment, is valid under the *Central Hudson* framework.)

ii. Procedure upon denial.

The applicant can request a written statement from the custodian of the grounds for the denial of access. The statement must be provided within 72 hours and must cite the law or regulation under which access is denied or the general nature of the public interest protected. Colo. Rev. Stat. § 24-72-305(6).

The person denied access can also apply to the district court for an order directing the custodian to show cause why inspection of the record should not be allowed. The court can order the custodian to permit inspection if denial was improper, and may also award the applicant court costs, attorney fees, and a \$25 per day penalty if the denial was arbitrary and capricious. Colo. Rev. Stat. § 24-72-305(7).

iii. Types of Records. “Criminal justice records” subject to inspection include books, papers, cards, photographs, tapes, recordings, and other documentary materials made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule. Colo. Rev. Stat. § 24-72-302(4). *Denver Post Corp. v. Cook*, 104 P.3d 293 (Colo. App. 2004) (records seized subject to search warrants are not criminal justice records, but public records), *cert. granted in part, Harris v. Denver Post Corp.*, 2005 Colo. LEXIS 9 (Colo. 2005).

iv. Copies. Fees for copies are set by the agency that has the records. Colo. Rev. Stat. § 24-72-306(1). If the custodian does not have facilities for making copies, the person requesting the records is to be granted access to the records to make copies. Colo. Rev. Stat. § 24-72-306(2).

v. Restricted Records. In certain areas, records of arrests, indictments, charges, and the identities of persons may be limited in release or sealed.

Sexual Assault Victims. The name of any victim of a sexual assault or alleged sexual assault is to be deleted from any criminal justice record prior to its release to any individual or agency other than a criminal justice agency when such record bears the notation “SEXUAL ASSAULT” as prescribed in Colo. Rev. Stat. § 24-72-304(4).

Authors of Correspondence. The court may order sealed any information in a criminal justice record, including basic identification information, to protect the author of any correspondence contained in the record. Colo. Rev. Stat. § 24-72-308(1.5).

Applicants in Regulated Professions or Occupations. Any division, board, commission, or person responsible for the licensing, certification, or registration functions for any governmental entity, in addition to any other authority conferred by law, may use fingerprints to access, for comparison purposes, arrest history records of any licensee, registrant, or person certified to practice a profession or occupation or applicant thereof, or any employee or prospective employee of a licensee, registrant, or person certified to practice an occupation or profession. Colo. Rev. Stat. § 24-72-305.4(1).

vi. Sealed Records.

Criminal records may be sealed by court order upon the petition of a person in interest upon a finding that harm to the person’s privacy or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records. Colo. Rev. Stat. § 24-72-308(1)(c). See *R.J.Z. v. People*, 104 P.3d 278 (Colo. App. 2004); *People v. Bushu*, 876 P.2d 106 (Colo. App. 1994); *D.W.M. v. District Court*, 751 P.2d 74 (Colo. App. 1988).

Records pertaining to traffic infractions and convictions for driving under the influence of alcohol or drugs and convictions for offenses involving unlawful sexual behavior may not be sealed. Colo. Rev. Stat. § 24-72-308(3).

Basic identification information is not subject to an order to seal records. Colo. Rev. Stat. § 24-72-308(1). This includes the name, place and date of birth, last known address, Social Security number, occupation and address of employment, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person. Colo. Rev. Stat. § 24-72-302(2).

Upon an order to seal records, they are deemed not to exist, and the person who is the subject of the records may lawfully deny the criminal record. Colo. Rev. Stat. §§ 24-72-308(1)(d) and 24-72-308(1)(f).

See *D.W.M. v. District Court*, 751 P.2d 74 (Colo. App. 1988).

After records have been sealed, inspection may be permitted by the court only upon the petition of the person who is the subject of the records or by the prosecutor, and only for reasons identified in the petition. Colo. Rev. Stat. § 24-72-308(1)(e).

In general, if a person is not charged, is acquitted or the charges are dismissed, the arrest and criminal information records of that person may be sealed upon the petition of the person in interest. Colo. Rev. Stat. § 24-72-308(1)(a)(I). See *People v. D.K.B.*, 843 P.2d 1326 (Colo. 1993) (convicted persons may not have records sealed). See generally Ison & Blumenthal, “Sealing Criminal Records in Colorado,” 21 Colorado Lawyer 247 (Feb. 1992). However, arrest and criminal records information may not be sealed if an offense is not charged due to a plea agreement in a separate case, or a dismissal occurs as part of a plea agreement in a separate case. Colo. Rev. Stat. § 24-72-308(1)(a)(II).

vii. Electronic Mail.

The status of electronic mail as a public record is addressed in Colo. Rev. Stat. § 24-72-204.5. See Vol. 25 No. 10 Colorado Lawyer p. 99 (Oct. 1996).

On or before July 7, 1997, any state or agency, institution, or political subdivision thereof that maintains an electronic mail communications system shall adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted. Colo. Rev. Stat. § 24-72-204.5(1).

The policy shall include a statement that correspondence in the form of electronic mail may be a public record under the public records law and may be subject to public inspection under Colo. Rev. Stat. § 24-72-203. Colo. Rev. Stat. § 24-72-204.5(2).

1. What kind of records are covered?

“Electronic mail” is defined by Colo. Rev. Stat. § 24-72-202(1.2) as an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. “Electronic mail” includes electronic messages that are transmitted through a local, regional, or global computer network. However, electronic mail whose content does not bear a demonstrable connection to discharge of public functions or to the receipt or expenditure of public funds is not a public record. *Denver Pub’g Co. v. Board of Cty. Commrs. for Arapahoe Cty.*, 121 P.3d 190, 2005 WL 2203157 (Colo. Sept. 12, 2005).

2. What physical form of records are covered?

See previous subsection (defining “electronic mail”). The statute defines “public records” as “all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, *regardless of physical form or characteristics.*” Furthermore, “writings” include “digitally stored data, including without limitation electronic mail messages, but does not include computer software.” Colo. Rev. Stat. § 24-72-202(7).

3. Are certain records available for inspection but not copying?

No.

D. Fee provisions or practices.

1. Levels or limitations on fees.

Costs of copies are to be “reasonable,” not exceeding \$0.25 per page for any standard sized page, and a fee not to exceed actual costs of providing a copy for other sized pages. Colo. Rev. Stat. § 24-72-205(1), (5)(a). In practice, costs of copies depend upon the agency.

Only “nominal” fees may be charged for search and retrieval, if there are no copies made. *Black v. Southwestern Water Conservation Dist.*, 74 P.3d 462 (Colo. App. 2003).

2. Particular fee specifications or provisions.

See subsection 1 above. Where records are in the custody of the Secretary of State, costs of copies are governed by Colo. Rev. Stat. § 24-21-104(3). No statutory fee is set.

a. Search.

Only “nominal” fees may be charged for search and retrieval. *Black v. Southwestern Water Conservation Dist.*, 74 P.3d 462 (Colo. App. 2003).

Data Compilations. If, in response to a specific request, data available from public records has been manipulated so as to generate a record in a form not used by the governmental agency, a reasonable fee, not to exceed the actual cost of manipulating the date and generating the record, may be charged to the application. Colo. Rev. Stat. § 24-72-205(3).

Computer Records. Costs of copies of public records kept only in digitized or electronic form that are the result of computer output (other than word processing) may be based on actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. This fee may be waived or reduced by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Colo. Rev. Stat. § 24-72-205(4).

b. Duplication.

Costs of copies are to be “reasonable,” not exceeding \$.25 per page for a standard sized page and not to exceed actual costs for other sized pages. Colo. Rev. Stat. §§ 24-72-205(1), (5). In practice, costs of copies depend upon the agency.

Data Compilations. If, in response to a specific request, data available from public records has been manipulated so as to generate a record in a form not used by the governmental agency, a reasonable fee, not to exceed the actual cost of manipulating the date and generating the record, may be charged to the application. Colo. Rev. Stat. § 24-72-205(3).

Computer Records. Costs of copies of public records that are the result of computer output (other than word processing) may be based on actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. This fee may be waived or reduced by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Colo. Rev. Stat. § 24-72-205(4).

c. Other.

If practical, copies are to be made in the place where records are kept. If other facilities are necessary, the cost of providing them is to be paid by the person desiring a copy of the records. Colo. Rev. Stat. § 24-72-205(2).

The custodian of records may charge the same fee for the services rendered by him or a deputy in supervising the copying as may be charged for the copies. Colo. Rev. Stat. § 24-72-205(2).

3. Provisions for fee waivers.

Custodians of records in the form of computer output (other than word processing) have discretion to reduce or waive the fees associated with producing such records, upon request, if the electronic services and products are to be used for a public purpose, including journalism, non-profit activities and academic research. Colo. Rev. Stat. § 24-72-205(4).

4. Requirements or prohibitions regarding advance payment.

None.

5. Have agencies imposed prohibitive fees to discourage requesters?

Yes, especially with respect to database files, e-mail archives, or other digital or electronic records.

E. Who enforces the act?

1. Attorney General’s role.

None. *But see* Attorney General Opinion No. 01-01 “Colorado Open Records Act: Nineteen Frequently Asked Questions” available at <http://www.ago.state.co.us/AGO/AGO01/ago01-1.htm>. The Attorney General has also appeared as *amicus* in certain open records cases before Colorado’s appellate courts. *See Harris v. Denver Post Corporation*, 2005 Colo. LEXIS 9 (Colo. 2005).

2. Availability of an ombudsman.

None.

3. Commission or agency enforcement.

None.

F. Are there sanctions for noncompliance?

Any person who willfully and knowingly violates the provisions of the public records act is guilty of a misdemeanor, carrying a fine, upon conviction, of not more than \$100 and/or imprisonment in the county jail for not more than 90 days. Colo. Rev. Stat. § 24-72-206

If the court finds that a criminal justice agency arbitrarily or capriciously withheld a criminal justice record, the court may impose a penalty of \$25 per day (for each day of withholding) that must be personally paid by the custodian. Colo. Rev. Stat. § 24-72-305(7).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open records statute.

1. Character of exemptions.

In the absence of a specific statute or court rule permitting information to be withheld, a public official has no authority to deny any person access to public records. *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974).

a. General or specific?

Specific.

b. Mandatory or discretionary?

Both. See particular exemptions below.

c. Patterned after federal Freedom of Information Act?

Yes, although there are discrepancies.

2. Discussion of each exemption.

Public records not subject to the act

(1) The following records are specifically exempt from disclosure under the Act, except that such records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest.

- a. Medical, psychological, sociological, and scholastic achievement data on individual persons, other than scholastic achieve-

ment data submitted as part of finalists' records as set forth in Colo. Rev. Stat. § 24-72-204(3)(a)(XI). Colo. Rev. Stat. § 24-72-204(3)(a)(I).

This does not include coroners' autopsy reports.

Nor does it include group scholastic data from which the individual cannot be identified. See *Sargent School Dist. No. RE-337 v. Western Services Inc.*, 751 P.2d 56 (Colo. 1988). However, individual scholastic data may not be disclosed under the Open Records Act even if the individuals' names have been deleted. *Id.* The schools have no implied duty to convert individual scholastic data into group scholastic data documents.

b. Personnel files. Colo. Rev. Stat. § 24-72-204(3)(a)(II).

"Personnel files," as defined by Colo. Rev. Stat. § 24-72-202(4.5), means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, including other documents specifically exempt from disclosure by law. Only information that is akin to an employee's home address, telephone number and personal financial information is properly classified as "personnel file." *Daniels v. City of Commerce City*, 988 P.2d 648, 651 (Colo. App. 1999).

"Personnel files," as defined by Colo. Rev. Stat. § 24-72-202(4.5), does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under Colo. Rev. Stat. § 23-5-123, or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions. Because employment applications are public records, an applicant cannot waive the right to information concerning denial of an application for employment. *Carpenter v. Civil Service Commission*, 813 P.2d 773 (Colo. App. 1990).

Employment records concerning the terms of employment and compensation of employees, including agreements made in settlement of disputed claims, are public records. *Denver Publishing Co. v. University of Colorado*, 812 P.2d 682 (Colo. App. 1990); *Freedom Colo. Info. Inc. v. City of Colo. Springs*, 37 Med.L.Rptr. (BNA) 1639 (Ct. App. Feb. 26, 2009) (requiring disclosure of employment agreements for two heart-lung surgeons on staff at public hospital); See Colo. Rev. Stat. § 24-72-204(3)(a)(II)(B).

Only documents that are actually present in an employee's personnel file are exempt from disclosure under the Act. *Denver Post v. University of Colorado*, 739 P.2d 874, 878 (Colo. App. 1987). A public employer cannot restrict access to documents that are otherwise subject public records merely by placing them in an employee's personnel file; such records must implicate an employee's personal privacy to qualify as a "personnel record." *Denver Publishing Co. v. University of Colorado*, 812 P.2d 682 (Colo. App. 1990).

Personnel files are available to the person in interest and to duly elected and appointed public officials who supervise the employee's work. Colo. Rev. Stat. § 24-72-204(3)(a)(II)(A). See *Ornelas v. Department of Institutions*, 804 P.2d 235 (Colo. App. 1990).

c. Letters of reference. Colo. Rev. Stat. § 24-72-204(3)(a)(III). Letters of reference concerning employment, licensing or issuance of permits are *not* available to the person in interest. Colo. Rev. Stat. § 24-72-204(3)(a). *City of Westminster v. Dogan Constr. Co.*, 930 P.2d 585 (Colo. 1997) (telephone survey notes of references are "letters of reference").

d. Trade secrets, Colo. Rev. Stat. § 24-72-204(3)(a)(IV), including privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person. See *Griffin v. S.W. Devanney & Co.*, 775 P.2d 555 (Colo.

1989); *International Bhd. of Elec. Workers Local 68 v. Denver Metro. Major League Baseball Stadium Dist.*, 880 P.2d 160 (Colo. App. 1994); *Zubeck v. El Paso Cty. Retirement Plan*, 961 P.2d 597 (Colo. App. 1998) (only information obtained by private parties is subject to this exemption).

e. Information about library and museum material contributed by private persons, Colo. Rev. Stat. § 24-72-204(3)(a)(V), but only to the extent of any limitations placed on such information as a condition of contribution. Thus, the identity of an anonymous donor may not be divulged if anonymity of the donor is a condition of the gift or loan.

f. Addresses and telephone numbers of students in public elementary and secondary schools. Colo. Rev. Stat. § 24-72-203(3)(a)(VI).

g. Library records disclosing the identity of a user. Colo. Rev. Stat. § 24-72-203(3)(a)(VII); Colo. Rev. Stat. § 24-90-119 (see below).

h. Records disclosing the addresses, telephone numbers, and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services owned and operated by the state, its agencies, institutions, or political subdivisions. Colo. Rev. Stat. § 24-72-203(3)(a)(IX).

i. Records of sexual harassment complaints and investigations. Colo. Rev. Stat. § 24-72-204(3)(a)(X).

Any records of sexual harassment complaints and investigations that 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 files, are not open to inspection. Colo. Rev. Stat. § 24-72-204(3)(a)(X)(A). However, an administrative agency investigating the complaint may, upon a showing of necessity, gain access to information necessary to the investigation of such a complaint. *Id.*

A person in interest, who includes the person making a complaint and the person whose conduct is the subject of such a complaint, may make a record of sexual harassment complaint or investigation available for public inspection when such record supports the claim that an allegation of sexual harassment against such person is false. Colo. Rev. Stat. § 24-72-204(3)(a)(X)(C).

j. Records submitted by or on behalf of an applicant or candidate for an "executive position" who is not a "finalist" if the applicant or candidate makes a written request that the records be kept confidential at the time of submission of the records. Colo. Rev. Stat. § 24-72-204(3)(a)(XI)(A).

"Executive position" is defined by Colo. Rev. Stat. § 24-72-202(1.3) as any non-elective employment position with a state agency, institution, or political subdivision, except employment positions in the state personnel system or in a classified system or civil service system of an institution or political subdivision.

A "finalist" is defined by Colo. Rev. Stat. § 24-72-204(3)(a)(XI)(A) as an applicant or candidate for an executive position as the chief executive officer of a state agency, institution, or political subdivision or agency thereof who is a member of the final group of applicants or candidates made public pursuant to section 24-6-402(3.5); if only three or fewer applicants or candidates for the chief executive officer position possess the minimum qualifications for the position, then said applicants or candidates shall be considered finalists..

Records submitted by or on behalf of an applicant or candidate include records of employment selection processes for all executive positions, including selection processes conducted or assisted by private persons or firms at the request of a state agency, institution, or political subdivision. Colo. Rev. Stat. § 24-72-204(3)(a)(XI)(C).

k. Any record which is deemed confidential or protected from inspection by:

State statute. Colo. Rev. Stat. § 24-72-204(1)(a). (See (B) below.)

Federal statute or regulation. Colo. Rev. Stat. § 24-72-204(1)(b).

Supreme Court rule or court order. Colo. Rev. Stat. § 24-72-204(1)(c).

(2) The Custodian of Records has the discretionary authority to deny inspection of the following records on the ground that disclosure would be contrary to the public interest:

a. Test questions, scoring keys, and other examination data pertaining to administration of licensing examinations, examinations for employment, or academic examinations. Colo. Rev. Stat. § 24-72-204(2)(a)(II). See *Garner v. Colorado State Dep't of Personnel*, 835 P.2d 527 (Colo. App. 1992), cert. denied, 507 U.S. 917 (1993).

b. Specific details of bona fide research projects being conducted by a state institution. Colo. Rev. Stat. § 24-72-204(2)(a)(III).

c. Contents of real estate appraisals made for the state or political subdivision concerning acquisition of property for public use until title to the property has passed to the state or political subdivision. Colo. Rev. Stat. § 24-72-204(2)(a)(IV). The contents of an appraisal are available to the property owner if eminent domain proceedings are brought.

d. Any market analysis data generated by the Department of Transportation's bid analysis and management system for the confidential use of the department for awarding contracts or for the purchase of goods and services, and any records, documents, and automated systems prepared for the bid analysis and management system. Colo. Rev. Stat. § 24-72-204(2)(a)(V).

e. Photographs filed with, maintained by, or prepared by the Department of Revenue pursuant to Colo. Rev. Stat. § 42-2-121(2)(c)(I)(F). Colo. Rev. Stat. § 24-72-204(2)(a)(VI).

f. NOTE: If the right of inspection of any of the above records is allowed to any person in the media, it shall be allowed to all news media. Colo. Rev. Stat. § 24-72-204(2)(b).

(3) "Substantial Injury to the Public Interest."

a. The Open Records Act in Colo. Rev. Stat. § 24-72-204(6) provides that if the official custodian of any public record is of the opinion that disclosure of the contents of a record otherwise subject to disclosure would do "substantial injury to the public interest," the custodian may request the district court to order that disclosure of the record is restricted.

b. Any hearing is to be held "at the earliest practical time." The person seeking to examine the record has a right to appear at the hearing.

c. The custodian has the burden of proving that disclosure would substantially injure the public interest. This is primarily a question of fact. *Civil Service Comm'n v. Pinder*, 812 P.2d 645 (Colo. 1991).

d. If the court determines that disclosure would do "substantial injury to the public interest," the court may restrict access to public records even though such records might otherwise be available to the person in interest or the general public. *Civil Service Comm'n v. Pinder*, 812 P.2d 645 (Colo. 1991).

B. Other statutory exclusions.

A number of Colorado statutes specifically provide that certain designated records are not public records subject to the Open Records Act and are to be kept confidential. Most of these exemptions from the Open Records Act pertain to records involving children and juve-

niles and to health records. These and other specific exemptions are discussed below.

1. Juvenile Records.

a. Juvenile Delinquency Records.

i. Court records. Court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance are open to inspection by various parties, including the juvenile, the juvenile's parent or guardian, any attorney of record, the juvenile probation department, any Colorado law enforcement agency, any person conducting a custody evaluation, and the state department of human services. Colo. Rev. Stat. § 19-1-304(1)(a). In addition, with the consent of the court, such records may be inspected by any other person having a legitimate interest in the proceedings. Colo. Rev. Stat. § 19-1-304(1)(b).

ii. Arrest and criminal records.

The public has access to arrest and criminal records information that concerns a juvenile who is adjudicated a juvenile delinquent or is subject to a revocation of probation for committing the crime of possession of a handgun by a juvenile, an act that would constitute a class 1, 2, 3, or 4 felony, or an act that would constitute any crime that involves the use or possession of a weapon if such act were committed by an adult. Colo. Rev. Stat. § 19-1-304(1)(b.5)(II)(A). In addition, the public has access to arrest and criminal records information that concerns a juvenile charged with any such act. Colo. Rev. Stat. § 19-1-304(1)(b.5)(II)(B).

The public also has access to arrest and criminal records information concerning a juvenile between the ages of 12 and 18 years who is charged with the commission of an offense that would constitute a violent crime if committed by an adult. Colo. Rev. Stat. § 19-1-304(5).

All other records of law enforcement officers concerning juveniles are not open to public inspection except to the juvenile, the juvenile's parent or guardian, any attorney of record, and to other law enforcement agencies who have a legitimate need for such information, and under certain circumstances, including when the court orders that the juvenile be tried as an adult criminal or when the juvenile has escaped from an institution to which such juvenile has been committed. Colo. Rev. Stat. § 19-1-304(2)(a).

Probation records. A juvenile probation officer's records are not open to inspection except to certain parties, including persons who have consent of the court, the juvenile's parent or guardian, any attorney of record, any person conducting a custody evaluation, the state department of human services, and law enforcement officers and fire investigators, who have access to limited information. Colo. Rev. Stat. § 19-1-304(1)(c).

iii. Juvenile Facilities.

All records prepared or obtained by the department of human services are confidential and privileged, and may be disclosed only to the parents, legal guardian, or attorney for the juvenile, to the extent necessary to make claims on behalf of the juvenile who is eligible to receive aid, insurance, or medical assistance, and for research or evaluation purposes. Colo. Rev. Stat. § 19-1-305(1).

2. Children's Matters.

a. Child Abuse Records.

i. Reports of child abuse or neglect received by the Department of Social Services or a law enforcement agency,

including the name and address of the child, family or informant, along with any other identifying information, are declared confidential and not open to the public under Colo. Rev. Stat. § 19-1-307(1)(a).

ii. This confidentiality provision covers the entire contents of a child abuse report and related records. Consequently, such records cannot contain any “non-confidential” information that may be subject to public disclosure. *Gillies v. Schmidt*, 38 Colo. App. 233, 556 P.2d 82 (1976).

iii. Disclosure of reports is not prohibited when there is a death of a suspected victim of abuse or neglect and the death becomes a matter of public record, and the subject of an arrest and formal criminal charge. Colo. Rev. Stat. § 19-1-307(1)(b).

iv. Disclosure of confidential child abuse records by any person is a class 2 petty offense, subject to a \$300 fine. Colo. Rev. Stat. § 19-1-307(1)(c).

b. Child Care Centers. Records regarding children and all facts learned about children and their relatives that are required to be kept by licensed child care facilities are declared confidential by Colo. Rev. Stat. § 26-6-107(3).

c. Child Custody Records. Written reports and evaluations concerning custodial arrangements for children made in child custody proceedings are considered confidential and are not available for public inspection. Colo. Rev. Stat. § 14-10-127(1)(a)(II); Colo. Rev. Stat. § 14-10-126(2).

d. Adoption Records. Records and proceedings in adoption are confidential and not open to public inspection. Colo. Rev. Stat. § 19-1-309. The confidentiality provision applies to adult adoptions as well as to children’s adoptions. *W.D.A. v. City and County of Denver*, 632 P.2d 582 (Colo. 1981).

Information provided to the state registrar of vital statistics concerning information about birth parents and adoptees shall not be disclosed under any public records law or Freedom of Information Act. Colo. Rev. Stat. § 25-2-113.5(9).

e. Relinquishment Proceedings. All records and proceedings in any action for relinquishment of a child by natural parents are confidential and open to inspection by court order for good cause shown. Colo. Rev. Stat. § 19-1-309.

f. Paternity Proceedings. All papers and records of proceedings in actions to establish paternity of a child are confidential and not subject to inspection except with consent of the court and all interested parties or upon court order for good cause shown. Colo. Rev. Stat. § 19-1-308.

3. Health Records.

a. Alcohol Treatment Records. The registration and other records of alcohol treatment facilities concerning alcoholics and intoxicated persons are confidential under Colo. Rev. Stat. § 25-1-312(1).

However, information from patients’ records may be made available for purposes of research into causes and treatment of alcoholism if patients’ names or other identifying information is not disclosed. Colo. Rev. Stat. § 25-1-312(2).

b. Prescription Drug Records. Records of prescriptions, orders, and stocks of controlled substances kept by pharmacists are confidential and not available for public inspection. Colo. Rev. Stat. § 12-22-320.

c. Tuberculosis Reports. Laboratories performing diagnostic services are required to report the names of persons whose specimens reveal the presence of tuberculosis, but such reports and records are confidential under Colo. Rev. Stat. § 25-4-505.

d. AIDS Tests. Reports concerning positive tests for Acquired Immune Deficiency Syndrome (AIDS) that are required to be submitted to the State Department of Health by Colo. Rev. Stat. §§ 25-4-1402 and 25-4-1403 are declared to be strictly confidential by Colo. Rev. Stat. § 25-4-1404(1). Any physician, state employee or any other person who makes confidential AIDS information public is guilty of a misdemeanor and subject to a \$5,000 fine and 2 years in jail. Colo. Rev. Stat. 25-4-1409(2).

e. Mental Illness Records. Mental health records of patients of mental health facilities are declared confidential by Colo. Rev. Stat. § 27-10-120(1).

An exception to confidentiality exists for information concerning observed criminal behavior of a mental patient while receiving treatment. Colo. Rev. Stat. § 27-10-120(2).

Court-ordered mental health evaluations are deemed confidential records by Colo. Rev. Stat. § 27-10-106(5).

f. Peer Review Records. Medical records produced for use in any review of a physician, surgeon or registered professional nurse by a hospital governing board, state board of medical examiners, state board of nursing, peer review committee, or other review organization do not become public records by virtue of such use. Colo. Rev. Stat. § 13-90-107(2); *see also* Colo. Rev. Stat. §§ 12-35-118(7), 12-36-118(10), and 12-38-120(10).

4. Miscellaneous statutory confidentiality provisions.

a. Accident Reports. Accident reports made by any driver, owner, or person involved in any motor vehicle accident are confidential and not public records. Colo. Rev. Stat. §§ 42-4-1610, 42-4-206. *See Clark v. Reichman*, 130 Colo. 329, 275 P.2d 952 (1954).

However, statements made by persons involved in an accident to law enforcement officers and contained in official reports are not confidential under Colo. Rev. Stat. § 42-4-1610. *People v. Reyes*, 42 Colo. App. 73, 589 P.2d 1385 (1979).

b. Agricultural Records. Statistical reports concerning farm operations, crop production, etc., made to the Commissioner of Agriculture are confidential. Colo. Rev. Stat. § 35-2-106. Disclosure by a state employee is a misdemeanor punishable by a \$500 fine and 1 year in jail.

Information obtained as a result of fruit and vegetable inspections by the State Agricultural Commission are not open to public inspection. Colo. Rev. Stat. § 35-23-115.

Information concerning agricultural markets prepared for the Board of Marketing Control is confidential and not subject to public disclosure. Colo. Rev. Stat. § 35-28-119(2).

c. Arson Investigations. Information received by an insurance company or agency concerning arson investigations is confidential. Colo. Rev. Stat. § 10-4-1004(1).

d. Banking Records. Information from records of the State Division of Banking is not open to public inspection. Colo. Rev. Stat. § 11-2-111(1).

Disclosure of information acquired by the banking board and the bank commissioner concerning banks is prohibited by Colo. Rev. Stat. § 11-2-111.5.

e. Court Decisions. Decisions of a court record are confidential until publicly announced. Colo. Rev. Stat. § 13-1-128(1). Disclosure is a class 6 felony under Colo. Rev. Stat. § 13-1-128(4).

f. Education Records. Department of Education records containing personal information about employment applicants, holders of teachers’ certificates or letters of authorization, and pupil test scores are confidential and may not be disclosed except with written consent of the person in interest. Colo. Rev. Stat. § 22-2-

111(3); *see also* Colo. Rev. Stat. §§ 24-72-204(3)(a)(II), (III), and (VI).

g. **Employer Records.** Information contained in reports furnished by employer and employees to the Division of Labor is considered confidential and is not open to the public. Colo. Rev. Stat. § 8-1-115(1). Disclosure of confidential information by a division of labor employee is punishable by a \$1,000 fine and disqualification from state employment. Colo. Rev. Stat. § 8-1-115(2). This includes information required to be furnished by employers to the Division of Labor under the Workers' Compensation Act. Colo. Rev. Stat. § 8-47-202. However, records of the State Compensation Insurance Authority, the state workers' compensation insurance fund, are public. *Dawson v. State Compensation Ins. Auth.*, 811 P.2d 408 (Colo. App. 1990).

h. **Inquest Verdicts.** If it is found in an inquest into the death of a person that a crime has been committed on the deceased, and the report names the person who the jury believes committed the crime, the inquest is not to be made public until after the suspect has been arrested. Colo. Rev. Stat. § 30-10-613.

i. **Judicial Discipline Records.** The record of an investigation of a judge conducted by the Commission on Judicial Discipline, including all papers filed and all proceedings, is confidential. Colo. Rev. Stat. § 24-72-401; *see* Colo. R. Jud. Discip. 6(a). *See generally* Wehmhoefer, "The Confidentiality of Judicial Disciplinary Proceedings," 17 Colorado Lawyer 1043 (June 1988).

However, the Commission's recommendation for removal, censure, discipline, suspension, or retirement of a judge is not confidential after it is filed with the Supreme Court. Colo. R. Jud. Discip. 6(a). *See* Colo. Rev. Stat. § 24-72-401.

Willful disclosure of the contents of papers filed with or proceedings before the judicial discipline commission is a misdemeanor punishable by a \$500 fine. Colo. Rev. Stat. § 24-72-402.

j. **Library User Records.** Any record or other information of a public library which identifies a person as having requested or obtained specific materials or having otherwise used the library is confidential under Colo. Rev. Stat. § 24-90-119(1), and is excluded from the Open Records Act by Colo. Rev. Stat. § 24-72-204(3)(a)(VII).

Any library employee who discloses user information commits a class 2 petty offense and is subject to a \$300 fine. Colo. Rev. Stat. § 24-90-119(3).

k. **Parole Records.** Records containing information on parolees maintained by the Department of Corrections are not public records and are confidential. Confidential information may not be made public. Colo. Rev. Stat. § 17-2-104.

l. **Public Securities Records.** Records of ownership of or security interests in registered public obligations (municipal or special district bonds, etc.), are not subject to public inspection or copying under the Open Records Act. Colo. Rev. Stat. § 11-57-105.

m. **Public Utility Property Schedules.** Schedules required to be filed with the Department of Revenue by public utilities containing information about property owned by a public utility are considered private documents available only to tax officials. Colo. Rev. Stat. § 39-4-103(2).

n. **Savings and Loan Records.** Information acquired by the state commissioner of savings and loan institutions in the discharge of official duties concerning savings and loan institutions is not to be divulged. Colo. Rev. Stat. § 11-44-107.

o. **Securities Records.** Colo. Rev. Stat. § 11-51-703(2) of the Colorado Securities Act of 1981 provides that the securities commissioner or any of his officers or employees are not authorized to disclose information concerning securities transactions filed

with the commissioner and not made public. Although records of a securities broker-dealer filed with the securities commissioner do not qualify as public records under Colo. Rev. Stat. § 24-72-204(3)(a)(IV) because they contain confidential commercial or financial information, the securities commissioner may disclose such records to other government agencies for purposes of law enforcement. *Griffin v. S.W. Devanney & Co.*, 775 P.2d 555 (Colo. 1989).

p. **Tax Records.** Income tax returns, documents, reports, and information obtained from tax investigations are not to be divulged by the Department of Revenue. Colo. Rev. Stat. § 39-21-113(4)(a). Violation is a misdemeanor punishable by a \$1,000 fine, and if the offender is an officer or employee, he or she shall be dismissed from office under Colo. Rev. Stat. § 39-21-113(6).

Gift tax returns are declared confidential by Colo. Rev. Stat. § 39-25-114. Disclosure is unlawful.

Inheritance tax applications are declared confidential by Colo. Rev. Stat. § 39-23-168. Disclosure is unlawful.

Personal property schedules, along with accompanying exhibits or statements, filed with the tax assessor are private and confidential documents. Colo. Rev. Stat. § 39-5-120.

q. **Trade Secrets.** Under the Uniform Trade Secrets Act, Colo. Rev. Stat. § 7-74-101, *et seq.*, a court in which an action for misappropriation of a trade secret is pending is to preserve the secrecy of a trade secret by reasonable means, including protective orders, sealed records, and gag orders. Colo. Rev. Stat. § 7-74-106.

Information furnished by employers to the Division of Labor that contains a trade secret, or information obtained through inspections or other proceedings by the Division of Labor that might reveal a trade secret is confidential information not to be divulged by the Division of Labor under Colo. Rev. Stat. § 8-1-115.

Information relating to trade secrets or secret processes concerning water quality control furnished to the State Water Quality Control Commissioner is confidential. Colo. Rev. Stat. § 25-8-405(2). However, this section does not prohibit full disclosures of effluent (pollution) data. *See CF & I Steel v. Air Pollution Control Div.*, 77 P.3d 933 (Colo. App. 2003).

r. **Welfare and Public Assistance Records.** Disclosure of names or of any information concerning persons applying for or receiving public assistance and welfare is unlawful under Colo. Rev. Stat. § 26-1-114(3)(a), and is punishable by a \$500 fine and 3 months in jail. Colo. Rev. Stat. § 26-1-114(5).

However, this right of privacy is surrendered when a welfare recipient becomes a criminal defendant charged with or convicted of a crime involving violation of welfare laws. *Lincoln v. Denver Post*, 31 Colo. App. 283, 501 P.2d 152 (1972).

s. **Wills.** Wills deposited with a court for safekeeping during the lifetime of the person who made the will are to be kept confidential. Colo. Rev. Stat. § 15-11-515.

Request for confidentiality by person in interest

1. Effective January 1, 1992, and pursuant to the procedures set forth in Colo. Rev. Stat. § 24-72-204(3.5), any person may request that the following records containing that person's address be kept confidential and exempt from public disclosure:

a. Voter registration records;

b. Motor vehicle registration and driver's license records; and

c. Records pertaining to disclosures required to be made by public officials pursuant to Colo. Rev. Stat. § 24-6-202.

2. The person requesting confidentiality must apply with the

county clerk where the voter or motor vehicle records are located, or, in the case of records of disclosures by public officials, with the secretary of state, pay a fee of \$5.00, and sign the following sworn statement: “I swear or affirm, under penalty of perjury, that I have reason to believe that I, or a member of my immediate family who resides in my household, will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential.” Colo. Rev. Stat. § 24-72-204(3.5)(b). The request for confidentiality is itself confidential and exempt from public disclosure. Colo. Rev. Stat. § 24-72-204(3.5)(f).

3. If the above application for confidentiality has been made, the custodian of records shall deny the right of inspection of the person’s address contained in such records on the ground that disclosure would be contrary to the public interest. Colo. Rev. Stat. § 24-72-204(3.5)(c).

4. The following persons are authorized by Colo. Rev. Stat. § 24-72-204(3.5)(c) to inspect records containing the person’s address notwithstanding the request for confidentiality:

- a. The person in interest, or any person authorized in writing by such individual;
- b. Criminal justice agencies;
- c. State or federal governmental agencies;
- d. Persons required to obtain the individual’s address in order to comply with state or federal law or regulations;
- e. Insurance companies authorized to transact business in Colorado;
- f. Licensed collection agencies;
- g. Supervised lenders, banks, trust companies, savings and loan associations, credit unions, and securities brokers-dealers;
- h. Attorneys licensed to practice in Colorado; and
- i. Vehicle manufacturers for the purpose of giving notice of product recalls or advisories.

5. News Media Exception. A duly accredited representative of the news media may request the custodian of records to verify the address of any individual whose address is otherwise protected from disclosure. Verification is limited to the custodian confirming or denying that the person’s address as known to the representative of the news media is the address as shown by the records. Colo. Rev. Stat. § 24-72-204(3.5)(d).

Professional review board records

Closed. Records of the following Professional Review Committees concerning disciplinary actions, hearings, investigations, and reports are declared confidential and/or exempt from the Open Records Act: State Board of Dental Examiners, Colo. Rev. Stat. § 12-35-118(7); State Board of Medical Examiners, Colo. Rev. Stat. § 12-36-118(10); State Board of Nursing, Colo. Rev. Stat. § 12-38-120(10); State Board of Psychologist Examiners, Colo. Rev. Stat. § 12-43-705(4); State Board of Registration for Professional Engineers & Professional Land Surveyors.

Complaints and results of investigation are closed to public inspection during the investigatory period. Colo. Rev. Stat. §§ 12-25-109(2), 12-25-209(2). Otherwise, the board’s records and papers are subject to Colo. Rev. Stat. §§ 24-72-203 and 24-72-204.

C. Court-derived exclusions, common law prohibitions, recognized privileges against disclosure.

1. Court Rules.

- a. Limitations of Access to Court Files. A court may limit access to civil court files upon a showing by a person in inter-

est that the public interest in access to the files is outweighed by harm to that person’s privacy that access would cause. Colo. R. Civ. P. 121,1-5. See *Anderson v. Home Ins. Co.*, 924 P.2d 1123 (Colo. App. 1996). The court may also issue protective orders under Colo. R. Civ. P. 26(c) to restrict public access to materials obtained in discovery in civil litigation. See *Bowlen v. District Court*, 733 P.2d 1179 (Colo. 1987).

b. Attorney Discipline Records. Records of proceedings before the Supreme Court Attorney Disciplinary Committee are confidential and not to be made public under Colo. R. Civ. P. 241.24(a). Disclosure is punishable by contempt. An exception exists if the disciplinary proceeding is based on a lawyer’s public discipline in another jurisdiction or on the lawyer’s conviction of a crime, Colo. R. Civ. P. 241.24(b)(1), or if the proceeding is based on allegations that have already been made public. Colo. R. Civ. P. 241.24(b)(3). The lawyer may also waive confidentiality. Colo. R. Civ. P. 241.24(b)(2).

c. Grand Jury Proceedings. Grand Jury proceedings are secret until an indictment is made public or a grand jury report is issued. Colo. R. Crim. P. 6.2(a); see *In re P.R. v. District Court*, 637 P.2d 346 (Colo. 1981).

2. Court-Made Exemptions.

Attorney-Client Privilege. Because the Open Records Act specifically authorizes denial of inspection of “privileged information” in Colo. Rev. Stat. § 24-72-204(3)(a)(IV), common law attorney-client and attorney work product privileges are incorporated into the Open Records Act. Hence, communications between attorneys and clients and materials prepared by an attorney in anticipation of litigation are not public records subject to inspection. *Denver Post v. University of Colorado*, 739 P.2d 874, 880-81 (Colo. App. 1987).

3. Relation Between Open Records Act and Civil Discovery Rules. The Open Records Act does not limit access to any public records merely because a person is engaged in litigation with the public agency from which access to records is requested. *People in Interest of A.A.T.*, 759 P.2d 853 (Colo. App. 1988). Thus, a court in which a civil action is pending has no jurisdiction to enter a protective order against a request under the Open Records Act. *Id.* And, a public agency may not deny an Open Records Act request on the ground that the rules of civil procedure governing discovery provide the exclusive means of obtaining the documents. *Id.* Where a party is entitled to public records, such as a personnel file, an Open Records request rather than a formal discovery request is sufficient. *Ornelas v. Department of Institutions*, 804 P.2d 235 (Colo. App. 1990). On the other hand, the exemptions of certain records from the public inspection provisions of the Open Records act do not *ipso facto* exempt such records from discovery in civil litigation. *Martinelli v. District Court*, 199 Colo. 163, 612 P.2d 1083 (1980).

D. Are segregable portions of records containing exempt material available?

1. The presence of exempt information does not prevent inspection. Because the Open Records Act does not expressly exempt from inspection records that contain both exempt and nonexempt information, it does not prohibit inspection of public information in a record otherwise subject to inspection merely because the record also contains exempt information. However, the custodian of the record does not have a duty to delete exempt materials from an otherwise disclosable record. See *Sargent School Dist. No. RE-337 v. Western Services Inc.*, 751 P.2d 56, 61 (Colo. 1988); *Office of State Court Administrator v. Background Info. Sys.*, 994 P.2d 420 (Colo. 1999) (digital records).

2. However, the Colorado Supreme Court has recognized that a problem may arise whereby an otherwise public record could be rendered inaccessible to public scrutiny by the inclusion of confidential material. See *Sargent School Dist. No. RE-337 v. Western Services Inc.*,

751 P.2d 56, 61 n.5 (Colo. 1988).

3. Scope of Exemption. If a statute declares all records or information in a record confidential, there is no “non-confidential” information that can be separately disclosed. *Gillies v. Schmidt, supra*.

E. Homeland Security Measures.

Records of the expenditure of public moneys on security arrangements or investigations, including contracts for security arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, shall be open for inspection, except to the extent that they contain specialized details of security arrangements or investigations. A custodian may deny the right of inspection of only the portions of a record that contain specialized details of security arrangements or investigations and shall allow inspection of the remaining portions of the record.

If an official custodian has custody of a public record provided by another public entity, including the state or a political subdivision, that contains specialized details of security arrangements or investigations, the official custodian shall refer a request to inspect that public record to the official custodian of the public entity that provided the record and shall disclose to the person making the request the names of the public entity and its official custodian to which the request is referred.

Colo. Rev. Stat. § 24-72-204-(2)(a)(VIII)

III. STATE LAW ON ELECTRONIC RECORDS

A. Can the requester choose a format for receiving records?

Yes. In *Tax Data Corp. v. Hutt*, 826 P.2d 353 (Colo. App. 1991) the Colorado Court of Appeals held the Open Records Act does not permit the public to dictate the format in which information will be transmitted, it only guarantees the public’s right to access information that is a matter of public record “in a form which is reasonably accessible and which does not alter the contents of the information.” Applying this standard, the court upheld regulations denying public access to government-owned computer terminals or magnetic computer tapes, but requiring that the information on those computers be transmitted to the requester in another “reasonably accessible” format (either orally, on microfiche, or computer printout). These regulations, ruled the court, do not deny access to the electronically stored information but merely regulate the *manner* of access to that information.

Subsequent to the decision above, in 1996, the General Assembly enacted legislation requiring custodians of “records kept only in miniaturized or digital form” to adopt a policy for retention, archiving, and destruction of such records and to “take such measures as are reasonably necessary to assist the public in locating any specific record or public records sought and to ensure public access to the records without reasonable delay or unreasonable cost.” Included in the measures suggested is “the provision of portable disk copies of computer files . . . or direct electronic access via online bulletin boards or other means.” Colo.Rev.Stat. § 24-72-203(1)(b).

B. Can the requester obtain a customized search of computer databases to fit particular needs?

Yes, however if the state or any of its agencies, institutions, or political subdivisions has performed a manipulation of data, so as to generate a record in a form not used by the state or by said agency, institution or political subdivision, a reasonable fee may be charged to the person making the request. Colo.Rev.Stat. § 24-72-205(3).

C. Does the existence of information in electronic format affect its openness?

No. Public records are defined as including all “writings” which are further defined as meaning and including “all books, papers, maps, photographs, cards, tapes, recordings or other documentary materials, regardless of physical form or characteristics.” Furthermore, “writings” include “digitally stored data, including without limitation elec-

tronic mail messages, but does not include computer software.” Colo. Rev.Stat. § 24-72-202(7).

D. How is e-mail treated?

On or before July 1, 1997, the state or any agency, institution, or political subdivision thereof that operates or maintains an electronic mail communications system shall adopt a written policy on any monitoring of electronic mail communications and the circumstances under which it will be conducted. The policy shall include a statement that correspondence of the employee in the form of electronic mail may be a public record under the public records law and may be subject to public inspection under the Open Records Act. Colo.Rev.Stat. § 24-72-204.5.

1. Does e-mail constitute a record?

Yes. Colo. Rev. Stat. § 24-72-202(1)(c) & -202(1.2).

2. Public matter on government e-mail or government hardware

Yes. To be a public record, an e-mail message must be made, maintained, or kept for use in the performance of public functions or involve the receipt and expenditure of public funds. *Denver Publ’g Co. v. Bd. of County Comm’rs of Arapahoe County*, 121 P.3d 190, 199 (Colo. 2005).

3. Private matter on government e-mail or government hardware

No. For example, sexually-explicit e-mails sent between two county employees were private exchanges and not subject to disclosure. *Denver Publ’g Co.*, 121 P.3d at 203. To extent private matters are discussed along with public matters in the same e-mail, the e-mail should be redacted to protect the parties’ privacy prior to disclosure. *Id.* at 205.

4. Public matter on private e-mail

No case law has yet addressed this issue, but under the terms of the open records statute, any record that is “made, maintained, or kept” for use in the exercise of official functions, or involving the expenditure or receipt of public funds is a public record, regardless of its location on public or private property, so long as it is within the lawful possession, custody or control of a records custodian.

5. Private matter on private e-mail

In light of the *Denver Publ’g Co.* decision, discussed above, e-mails whose contents bear no rational relationship to the discharge of official functions are not public records, regardless of what server such e-mails reside upon.

E. How are text messages and instant messages treated?

Text messages and instant messages are likely to be treated identically to e-mail. See *Denver Publ’g Co. v. Bd. of County Comm’rs of Arapahoe County*, 121 P.3d at 192 & n.1.

1. Do text messages and/or instant messages constitute a record?

Yes, under the same analysis as any other electronic mail.

2. Public matter message on government hardware.

Same as e-mail above.

3. Private matter message on government hardware.

Same as e-mail above.

4. Public matter message on private hardware.

Same as e-mail above.

5. Private matter message on private hardware.

Same as e-mail above.

F. How are social media postings and messages treated?

No case law yet on this issue. Likely to be treated the same as e-mail, above.

G. How are online discussion board posts treated?

No case law yet on this issue. Likely to be treated the same as e-mail, above.

H. Computer software

No. Public records includes all writings, but writings is defined as “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. “Writings” includes digitally stored data, including without limitation electronic mail messages, *but does not include computer software.*” Colo. Rev. Stat. § 24-72-202(7).

1. Is software public?

No. See above.

2. Is software and/or file metadata public?

Software is not public; see above. Metadata may be public since it likely constitutes “digitally stored data.” Colo. Rev. Stat. § 24-72-202(7).

I. How are fees for electronic records assessed?

If the public record is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Colo. Rev. Stat. § 24-72-205(4). Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. *Id.*

J. Money-making schemes.

No statutory provision or case law addresses this issue.

IV. RECORD CATEGORIES — OPEN OR CLOSED**A. Autopsy reports.**

Open.

Coroners’ autopsy reports are specifically excluded from the general medical records exemption under § 24-72-204(3)(a)(I). The Colorado Supreme Court has held that this section shows the clear intent of the legislature to classify autopsy reports as public records open to inspection. *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974).

Autopsy reports are not criminal justice records. An autopsy report on a homicide victim may be withheld from public inspection by its custodian only under the procedure in the Open Records Act for denying access based on “substantial injury to the public interest.” *Freedom Newspapers Inc. v. Bowerman*, 739 P.2d 881 (Colo. App. 1987); *Bodelson v. Denver Post Corp.*, 5 P.3d 373 (Colo. App. 2000) (unique public grieving in the immediate aftermath of the Columbine High School massacre justifies non-disclosure of victims’ autopsies).

B. Administrative enforcement records (e.g., worker safety and health inspections, or accident investigations)**C. Bank records.**

Closed. Information furnished by banks to the State Division of Banking, the bank commissioner, or the banking board is confidential under Colo. Rev. Stat. §§ 11-2-111(1) and 11-2-111.5.

D. Budgets.

Open. Budgets fall within the statutory definition of a public record. See Colo. Rev. Stat. § 24-72-202(6)(a)(I).

E. Business records, financial data, trade secrets.

If a business record is in the custody of a state agency and involves the receipt or expenditure of public funds, it is a public record under Colo. Rev. Stat. § 24-72-202(6) and subject to the Open Records Act. *Freedom Newspapers Inc. v. Denver & Rio Grande Western R.R.*, 731 P.2d 740 (Colo. App. 1986).

Some business records in state custody may be specifically exempt from inspection. These include:

Information furnished by employers to the Division of Labor. Colo. Rev. Stat. §§ 8-1-115 and 8-47-202.

Information furnished by securities brokers-dealers to the securities commissioner. Colo. Rev. Stat. § 11-51-703(2). See *Griffin v. S.W. Devanney & Co.*, 775 P.2d 555 (Colo. 1989).

Tax records. Colo. Rev. Stat. § 39-21-113.

Trade secrets. Colo. Rev. Stat. § 8-1-115; Colo. Rev. Stat. § 25-8-405.

F. Contracts, proposals and bids.

Open. Contracts made by any government agency involving an expenditure of public funds are open to inspection as public records under the Open Records Act. *Freedom Newspapers Inc. v. Denver & Rio Grande Western R.R.*, 731 P.2d 740 (Colo. App. 1986). After a contract has been let, the bidding documents, of successful and unsuccessful bidders, are subject to inspection. See *International Bhd. of Elec. Workers Local 68 v. Denver Metro. Major League Baseball Stadium Dist.*, 880 P.2d 160 (Colo. App. 1994); *Denver Post v. Stapleton Dev. Corp.*, 19 P.3d 36 (Colo. App. 2000).

G. Collective bargaining records.

Open. No specific exemption is provided for collective bargaining records in the Open Records Act or any other statute.

H. Coroners reports.

Coroners’ autopsy reports are specifically excluded from the general medical records exemption under § 24-72-204(3)(a)(I). If it is found in an inquest into the death of a person that a crime has been committed on the deceased, and the report names the person who the jury believes committed the crime, the inquest is not to be made public until after the suspect has been arrested. Colo. Rev. Stat. § 30-10-613.

I. Economic development records.

Open. No specific exemption is provided for such records in the Open Records Act or any other statute.

J. Election records.

Open. Election records are expressly declared open public records by Colo. Rev. Stat. § 1-4-504.

1. Voter registration records.

Voter registration records are public records under Colo. Rev. Stat. § 1-2-227.

L. Hospital reports.

Closed.

Medical records of individual persons are expressly exempted from the Open Records Act by Colo. Rev. Stat. § 24-72-204(3)(a)(1).

Alcohol treatment records are confidential under Colo. Rev. Stat. § 25-1-312(1).

Mental health records are confidential under Colo. Rev. Stat. § 27-10-120(1).

M. Personnel records.

Closed.

Personnel files, except applications for employment, employment contracts, and performance ratings, are expressly exempted from inspection by Colo. Rev. Stat. § 24-72-204(3)(a)(II).

“Personnel files,” as defined by Colo. Rev. Stat. § 24-72-202(4.5), means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, including other documents specifically exempt from disclosure by law. Only information that is similar in nature to an employee’s home address, telephone number and personal financial information is properly classified as “personnel file.” *Daniels v. City of Commerce City*, 988 P.2d 648, 651 (Colo. App. 1999).

“Personnel files” as defined by Colo. Rev. Stat. § 24-72-202(4.5) does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under Colo. Rev. Stat. § 23-5-123, or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions. See *Freedom Newspapers Inc. v. Tollefson*, 961 P.2d 1150 (Colo. App. 1998).

This exemption applies only to documents actually present in an employee’s personnel file. *Denver Post v. University of Colorado*, 739 P.2d 874, 878 (Colo. App. 1987). A public employer cannot restrict access to documents which are otherwise public records merely by placing them in an employee’s personnel file. *Denver Publishing Co. v. University of Colorado*, 812 P.2d 682 (Colo. App. 1990).

Personnel records that are not present in an employee’s file but which involve privacy rights may be withheld from inspection only upon a showing in court that disclosure would do substantial injury to the public interest by invading the employee’s constitutional privacy rights. *Denver Post v. University of Colorado*, 739 P.2d 874 (Colo. App. 1987).

1. Salary.

Open. Expressly excluded from the “personnel files” exemption are “employment agreements [and] any amount paid or benefit provided incident to termination of employment.” Colo. Rev. Stat. § 24-72-202(4.5).

2. Disciplinary records.

Open. Only information that is similar in nature to an employee’s home address, telephone number and personal financial information is properly classified as “personnel file.” *Daniels v. City of Commerce City*, 988 P.2d 648, 651 (Colo. App. 1999).

3. Applications.

Open. Expressly excluded from the “personnel files” exemption are “does not include applications of past or current employees.” Colo. Rev. Stat. § 24-72-202(4.5).

4. Personally identifying information.

Yes. No privacy interest in individual’s names or amounts paid under severance program unless disclosure would do substantial injury to the public interest by invading the employee’s constitutional privacy rights. *Freedom Newspapers, Inc. v. Tollefson*, 961 P.2d 1150, 1154, 1157 (Colo. App. 1998)

5. Expense reports.

Open. Documents that relate to the expenditure of public funds are declared to be “public records.” See *Pinnacle Assurance v. KMGH-TV*, No. 10-cv-4127 (Denver Dist. Ct., Aug. 19, 2010) (ordering state

unemployment insurance provider to disclose employee’s expense reports).

N. Police records.

A record of official action must be available for public inspection unless one of the two exceptions applies: (1) non-disclosure is required by the Colorado Criminal Justice Records Act, or (2) non-disclosure is required by other law. *In re People v. Thompson*, 181 P.3d 1143, 1143-44 (2008); see Colo. Rev. Stat. § 24-72-301(2).

Colo Rev. Stat. § 24-72-304(1) provides that the custodian can exercise its discretion in determining whether disclosure of criminal justice records other than “records of official action” would be “contrary to the public interest.” Custodian must articulate and balance the following factors: (1) the public interest in the investigation; (2) the private interest or danger of adverse consequences to the public involved; and (3) whether disclosure of a redacted file would satisfy the statutory objectives of disclosure and address any privacy concerns. *Freedom Colo. Info., Inc. v. El Paso County Sheriff’s Dep’t*, 196 P.3d 892, 903 (Colo. 2008).

1. Accident reports.

See above.

2. Police blotter.

See above.

3. 911 tapes.

See above.

4. Investigatory records.

Colo Rev. Stat. § 24-72-304(1) provides that the custodian can exercise its discretion in determining whether disclosure of criminal justice records other than “records of official action” would be “contrary to the public interest.”

a. Rules for active investigations.

The statute does not differentiate between active and closed investigations. Investigatory records are subject to public inspection unless, in the opinion of the records custodian, their disclosure would be “contrary to the public interest.” See *Pretash v. City of Leadville*, 715 P.2d 1272 (Colo. App. 1985) (inspection of records of active investigations may be denied if disclosure would impair or impede the investigation).

b. Rules for closed investigations.

The statute does not differentiate between active and closed investigations. Investigatory records are subject to public inspection unless, in the opinion of the records custodian, their disclosure would be “contrary to the public interest.”

5. Arrest records.

Yes. “Records of Official Action” (which includes arrest) must be released for public inspection in their entirety. *In re People v. Thompson*, 181 P.3d 1143, 1143-44 (2008). Court held that this principle is subject only to the redaction of identifying information of any alleged sexual assault victims. *Id.*

A custodian should redact sparingly to promote the Act’s preference for public disclosure. *Freedom Colo. Info., Inc. v. El Paso County Sheriff’s Dep’t*, 196 P.3d 892, 900 n.3 (Colo. 2008).

6. Compilations of criminal histories.

Compilations of criminal history are open under Colo. Rev. Stat. § 24-72-303.

7. Victims.

Victims’ identities, insofar as they are part of police records, are

public records subject to inspection. The only exception is the name of victims of sexual assault. Colo. Rev. Stat. § 24-72-304(4).

8. Confessions.

Confessions are public records if procured during an official action by a criminal justice agency.

9. Confidential informants.

Confidential informants' identities and statements are subject to withholding if their disclosure may harm an ongoing investigation or cause other injury to the public interest. Colo. Rev. Stat. § 24-72-305(5). See *Pretash v. City of Leadville*, 715 P.2d 1272 (Colo. App. 1985).

10. Police techniques.

Records of security procedures may be withheld under Colo. Rev. Stat. § 24-72-305(5) if disclosure would be contrary to the public interest.

11. Mug shots.

Open. The official website of the Colorado Judicial Branch recognizes that "mug shots" a/k/a "arrest photographs" are "records of official action" that must be disclosed.

12. Sex offender records.

All records of arrest and conviction are "records of official action" that are subject to mandatory disclosure. See above.

O. Prison, parole and probation reports.

County jail records are public records open to inspection under Colo. Rev. Stat. § 17-26-118.

Prison records are open to public inspection since no specific exemption applies. Records of the Division of Correctional Industries are public under Colo. Rev. Stat. § 17-24-107.

Parole records kept by the Division of Adult Services of the Department of Corrections are closed to the public under Colo. Rev. Stat. § 17-2-104. Other parole records that are records of official actions of a criminal justice agency are open under Colo. Rev. Stat. § 24-72-303.

Probation records.

· Juveniles. Closed (except to persons having consent of court, limited access to law enforcement officers, any attorney of record in a juvenile or domestic action in which the juvenile is named, the state department of human services, parent or guardian of the juvenile, principal of the school where the juvenile is enrolled.). Colo. Rev. Stat. § 19-1-304(1)(c).

· Adults. Adult probation records which are records of an official action of a criminal justice agency are open public records under Colo. Rev. Stat. § 24-72-303(1).

P. Public utility records.

Utilities. Records of public utilities may be inspected only by the State Public Utilities Commission or by any person with authorization from the Commissioner. Colo. Rev. Stat. § 40-6-106.

Public Utilities Commission. Records of the Public Utilities Commission are subject to inspection under the Open Records Act. Copies of records are 20 cents per page under Colo. Rev. Stat. § 40-6-105(1).

Q. Real estate appraisals, negotiations.

1. Appraisals.

Contents of real estate appraisals made for the state or political subdivision concerning acquisition of property for public use until title to the property has passed to the state or political subdivision. Colo. Rev. Stat. § 24-72-204(2)(a)(IV).

R. School and university records.

Records that are "educational records" under the FERPA cannot be disclosed under the state open records act. Colo. Rev. Stat. § 24-72-204(3)(e).

3. Student records.

Records that are "educational records" under the FERPA cannot be disclosed under the state open records act. Colo. Rev. Stat. § 24-72-204(3)(e).

S. Vital statistics.

Vital statistics records shall be treated as confidential, but the department of public health and environment shall, upon request, furnish to any applicant having a direct and tangible interest in a vital statistics record a certified copy of any record. Colo. Rev. Stat. § 25-2-117(1).

1. Birth certificates.

See above.

2. Marriage & divorce.

See above.

3. Death certificates.

See above.

V. PROCEDURE FOR OBTAINING RECORDS

A. How to start.

(1) Custodian of Records. Under the Open Records Act, the person to whom a request for inspection should be directed is the custodian of records. See Colo. Rev. Stat. § 24-72-203(1)(a). The first step, then, is to determine where the records are located and who has custody of them.

(2) Request for Inspection.

(a) Requests for inspection may be either written or oral. A written request may be made in advance; an oral request may be made to the custodian at the place where the records are kept.

(b) Inspection of public records must be done "at reasonable times." Colo. Rev. Stat. § 24-72-203(1)(a). The official custodian may make rules and regulations governing inspection of public records which are "reasonably necessary" for the protection of the records and the prevention of "unnecessary interference" with the regular duties of the custodian or his office. Colo. Rev. Stat. § 24-72-203(1)(a). See *Tax Data Corp. v. Hutt*, 826 P.2d 353 (Colo. App. 1991).

Where public records are kept only in miniaturized or digital form, such as on magnetic or optical disks, tapes, microfilm, or microfiche, the official custodian shall adopt a policy regarding the retention, archiving, and destruction of such records, and take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the records without unreasonable delay or cost. Such measures may include viewing stations for public records kept on microfiche, portable disk copies of computer files, or direct electronic access via online bulletin boards or other means. Colo. Rev. Stat. § 24-72-203(1)(b). See *Tax Data Corp. v. Hutt, supra*.

(c) Therefore, a person wanting to inspect records should inquire of their custodian whether any rules or regulations restrict or limit access to particular times, dates, etc., or whether written requests are required.

(d) As a general rule, the more specific the request the better. Any identification of the document by date, author, agency, sub-

ject matter is helpful to the custodian in locating the requested records.

(3) When Records are not Available.

(a) If the requested records are not in the custody or control of the person to whom application is made, that person must immediately notify the applicant that the records are not in his or her custody. Colo. Rev. Stat. § 24-72-203(2)(a). *See Pruitt v. Rockwell*, 886 P.2d 315 (Colo. App. 1994). The applicant may request written notification. The notification must state in detail, to the best of the person's knowledge and belief:

The reason for the absence of the records;

Their location; and

Who has custody or control of the records. Colo. Rev. Stat. § 24-72-203(2)(a).

(b) If an official custodian has custody of correspondence sent or received by an elected official, the custodian shall consult with the elected official prior to permitting inspection of the correspondence for the purpose of determining whether the correspondence is a public record. Colo. Rev. Stat. § 24-72-203(2)(b).

(c) If the requested records are in the custody or control of the person to whom application for inspection is made, but the records are in active use or storage, the custodian shall immediately notify the applicant that the records are not available at the time. The applicant may request written notification. The applicant may request that the custodian set a date and hour of the notification when the records will be available for inspection. Colo. Rev. Stat. § 24-72-203(3)(a). The date and hour set for inspection must be within a reasonable time after the request, presumed to be three days. Such period may be extended up to seven days if extenuating circumstances exist. 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. Colo. Rev. Stat. § 24-72-203(3)(b). Extenuating circumstances only exist when:

A broad request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to gather the records within the three-day period;

A broad request is made that encompasses all or substantially all of a large category of records and the agency is unable to gather the records within the three-day period because the agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or does not occur more often than once a month or, in the case of the general assembly or its staff or service agencies, the general assembly is in session.

1. Who receives a request?

Requests should be made to any custodian or the "official custodian" of the record. Anyone who has possession, custody or control of a public record is a "custodian."

2. Does the law cover oral requests?

Requests may be made orally. Custodians have been permitted to require written requests as part of their rule-making authority under the statute. *See Citizens Progressive Alliance v. Southwestern Water Conservation Dist.*, 97 P.3d 308, 312 (Colo. App. 2004);

a. Arrangements to inspect & copy.

If records are available for inspection, then the person requesting them may also request copies, printouts, or photographs of the re-

ords. Colo. Rev. Stat. § 24-72-205(1).

If the custodian does not have facilities for making copies of the records, the applicant is to be granted access to the records in order to make copies. Colo. Rev. Stat. § 24-72-205(2).

Copies are to be made while the records are in the possession and under the supervision of the custodian.

The custodian may establish a reasonable schedule of times for making copies. Colo. Rev. Stat. § 24-72-205(2).

b. If an oral request is denied:

(1). How does the requester memorialize the refusal?

If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial. The custodian's statement must cite the law or regulation under which access is denied. Colo. Rev. Stat. § 24-72-204(4).

Further, the applicant may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record. However, at least three business days prior to filing an application with the court, the applicant must file a written notice with the custodian informing the custodian that the applicant intends to file such application. Colo. Rev. Stat. § 24-72-204(5).

(2). Do subsequent steps need to be in writing?

Statute does not explicitly say so, but it appears to be the case.

3. Contents of a written request.

In all cases in which a person has the right to inspect any public record, he may request that he be furnished copies, printouts, or photographs of such record. Colo. Rev. Stat. § 24-72-205(1).

a. Description of the records.

A person may request copies, printouts or photographs of a public record. Colo. Rev. Stat. § 24-72-205(1).

b. Need to address fee issues.

The custodian may charge a reasonable fee, to be set by the official custodian, not to exceed one dollar and twenty five cents per page, unless actual costs exceed that amount. Where fees are specifically prescribed by law, such specific fees apply. Colo. Rev. Stat. § 24-72-205(1).

If special facilities, other than those present at the place where the records are kept, are necessary, the cost of providing them shall be paid by the person requesting the record. Colo. Rev. Stat. § 24-72-205(2).

If the state or any of its agencies has performed a manipulation of data so as to generate a record in a form not used by the state or by the agency a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the data and generating the record in accordance with the request. Persons making subsequent requests for similar records may be charged a fee not in excess of the original fee. Colo. Rev. Stat. § 24-72-205(3).

If the public record is a result of computer output other than word processing, the fee may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, non-profit activities, journalism, and academic research. Fee reductions and waivers must be uniformly applied among persons who are similarly situated. Colo. Rev. Stat. § 24-72-205(4).

c. Plea for quick response.

No statutory provision on point. However, the custodian is required to set a time for inspection within three business days of receiving a public records request, unless extenuating circumstances exist to request an extension for ten business days. *See* Section B. below.

d. Can the request be for future records?

No statutory provision on point.

B. How long to wait.

Denial of inspection

A public official has no authority to deny any person access to public records unless there is a specific statute permitting withholding of the information requested. *Denver Post Corp. v. University of Colorado*, 739 P.2d 874 (Colo. App. 1987). Waiver is not a ground for denial of access to public records. *Carpenter v. Civil Service Comm'n*, 813 P.2d 773 (Colo. App. 1990).

If the custodian denies access to a requested record, the applicant may request a written statement of the grounds for denial, with citation to the law or regulation under which access is denied. Colo. Rev. Stat. § 24-72-204(4); *see Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974).

Inspection may be denied under a specific provision of the Open Records Act, under a specific statute requiring records to be confidential, or when the custodian has applied for and been granted a court order permitting him to restrict disclosure on the grounds that disclosure would do substantial injury to the public interest. Colo. Rev. Stat. § 24-72-204(6). If the denial is based on “deliberative process” privilege, custodian must provide Vaughn index and a sworn affidavit specifically describing each document withheld, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public interest. Colo. Rev. Stat. § 24-72-204(3)(a)(XIII).

1. Statutory, regulatory or court-set time limits for agency response.

All public records are open for inspection by any person at reasonable times, but the official custodian of any public records may make such rules 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. Colo. Rev. Stat. § 24-72-203(1).

Where public records are kept only in miniaturized or digital form, the official custodian shall ensure public access to the public records without unreasonable delay. Colo. Rev. Stat. § 24-72-203(1).

If the public records requested are not readily available at the time an applicant asks to examine them, the custodian shall notify the applicant of this fact, and if requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection within a reasonable time after the request. A “reasonable time” shall be presumed to be three working days or less. Under extenuating circumstances such period may be extended to no more than 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. Colo. Rev. Stat. § 24-72-203(3).

2. Informal telephone inquiry as to status.

No statutory provision or case law on point.

3. Is delay recognized as a denial for appeal purposes?

Not by statute.

4. Any other recourse to encourage a response.

If the custodian denies access to any public record, the applicant

may request a written statement of the grounds for the denial. The custodian’s statement must cite the law or regulation under which access is denied. Colo. Rev. Stat. § 24-72-204(4).

Further, the applicant may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record. However, at least three business days prior to filing an application with the court, the applicant must file a written notice with the custodian informing the custodian that the applicant intends to file such application. Colo. Rev. Stat. § 24-72-204(5).

C. Administrative appeal.

Not applicable.

D. Court action.

(1) If inspection of any public records is denied, the person who requested the record may file an application with the district court in the district where the records are located. Colo. Rev. Stat. § 24-72-204(5). *See Daines v. Harrison*, 838 F. Supp. 1406 (D. Colo. 1993). In order to be entitled to recover attorneys’ fees if she prevails, the person who requested the record shall notify the custodian who has denied access to records of intent to file suit within at least 3 days prior to filing the application. Colo. Rev. Stat. § 24-72-204(5).

(a) A hearing on the application is to be held “at the earliest practical time.” Colo. Rev. Stat. § 24-72-204(5).

(b) The burden of proof is on the custodian to show exemption from inspection. *See Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974). The applicant does not bear the burden of proving that the custodian’s denial of inspection was arbitrary or capricious. *Denver Publishing Co. v. University of Colorado*, 812 P.2d 682 (Colo. App. 1990).

(c) Unless the court finds denial of inspection was proper, it shall order the custodian to permit the inspection requested. Colo. Rev. Stat. § 24-72-204(5).

(d) If the court finds that records were improperly withheld, the custodian shall be ordered to pay the applicant’s court costs and attorney fees. Colo. Rev. Stat. § 24-72-204(5).

(2) Willful and knowing violation of the Open Records Act is a misdemeanor, punishable by up to a \$100 fine, up to 90 days in county jail, or both. Colo. Rev. Stat. § 24-72-206. This section, however, does not create a private right of action for violation of the Open Records Act. *Shields v. Shelter*, 682 F. Supp. 1172, *reh’g denied*, 120 F.R.D. 123 (D. Colo. 1988).

(3) The procedure for obtaining a show cause order in Colo. Rev. Stat. § 24-72-204(5) and the penalties of Colo. Rev. Stat. § 24-72-206 are the exclusive remedies available under the Open Records Act. *Board of County Comm’rs v. HAD Enterprises Inc.*, 35 Colo. App. 162, 533 P.2d 45 (1974); *Pope v. Town of Georgetown*, 648 P.2d 672 (Colo. App. 1982). There is no private right of action for violation of the Open Records Act. *Shields v. Shelter*, 682 F. Supp. 1172, *reh’g denied*, 120 F.R.D. 123 (D. Colo. 1988). Hence, failure to follow the procedure outlined by Colo. Rev. Stat. § 24-72-204(5), either by filing the wrong kind of action or by failing to name the custodian of records as a defendant, will not allow attorney fees to be awarded under that section. *Pope v. Town of Georgetown*, 648 P.2d 672, 673 (Colo. App. 1982).

(4) Who may sue? Any person whose request for access to or inspection of public records has been denied may seek an order directing the custodian to show why inspection should not be permitted. Colo. Rev. Stat. § 24-72-204(5).

(5) Proper Parties. The proper party defendant to an application for a show cause order is the custodian who has denied the request for inspection. *See* Colo. Rev. Stat. § 24-72-204(5); *Pope v. Town of Georgetown*, 648 P.2d 672, 673 (Colo. App. 1982).

(6) *Pro se* Actions. Although no rule restricts an applicant from filing an action under the Open Records Act *pro se*, any non-lawyer who acts as a lawyer on his or her own behalf is held to the same rules and knowledge of the law as an attorney. See *Viles v. Scofield*, 128 Colo. 185, 261 P.2d 148 (1953). Because the custodian will most likely be represented by the Attorney General or agency counsel, a *pro se* litigant would be at a distinct disadvantage. For an action under the Open Records Act brought (and lost) by an applicant *pro se*, see *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984).

(a) Corporations. Under Colorado law, a corporation cannot appear or proceed *pro se*. *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 P. 718 (1923); *Woodford Mfg. Co. v. A.O.Q. Inc.*, 772 P.2d 652 (Colo. App. 1989); *BPQ Industries Inc. v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984). A pleading which purports to be filed by a corporation *pro se* is in violation of law and null and void for all purposes. See *Bennie v. Triangle Ranch Co.*, *supra*; *Woodford Mfg. Co. v. A.O.Q. Inc.*, 772 P.2d at 654.

(b) The sole exception to this general rule is allowed under Colo. Rev. Stat. § 13-1-127(2), which allows a corporation to appear through an officer or director where the amount in controversy does not exceed \$10,000.00, the corporation is closely held, and there has been a written resolution signed by at least 50 percent of the shareholders. See Colo. Rev. Stat. §§ 13-1-127(2)(a) and (b).

(7) *Costs and attorneys' fees*. Attorneys' fees shall be awarded to a person who has been denied access to public records and who subsequently prevails after applying to a court to have such records made open. Additionally, where a government agency seeks guidance from the courts as to whether a record is open or closed, no attorneys' fees are available. Colo. Rev. Stat. § 24-72-204(5).

1. Who may sue?

Any person whose request for access to or inspection of public records has been denied may seek an order directing the custodian to show why inspection should not be permitted. Colo. Rev. Stat. § 24-72-204(5).

2. Priority.

Applications are to be heard "at the earliest practical time."

3. Pro se.

Persons seeking access to public records may proceed *pro se*. Although no rule restricts an applicant from filing an action under the Open Records Act *pro se*, any non-lawyer who acts as a lawyer on his or her own behalf is held to the same rules and knowledge of the law as an attorney. See *Viles v. Scofield*, 128 Colo. 185, 261 P.2d 148 (1953). Because the custodian will most likely be represented by the Attorney General or agency counsel, a *pro se* litigant would be at a distinct disadvantage. For an action under the Open Records Act brought (and lost) by an applicant *pro se*, see *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984).

4. Issues the court will address:

a. Denial.

Unless the court finds denial of inspection was proper, it shall order the custodian to permit the inspection requested. Colo. Rev. Stat. § 24-72-204(5).

b. Fees for records.

Courts may determine whether fees charged for inspection or copying are not reasonable.

c. Delays.

A hearing on the application is to be held "at the earliest practical time." Colo. Rev. Stat. § 24-72-204(5).

d. Patterns for future access (declaratory judgment).

No decided cases on this point.

5. Pleading format.

See C.R.C.P. 121(c)§ 1-20.

6. Time limit for filing suit.

None.

7. What court.

District court in the district where the records are located. Colo. Rev. Stat. § 24-72-204(5).

8. Judicial remedies available.

If the court finds denial of inspection was improper, it shall order the custodian to permit the inspection requested and award the plaintiff her reasonable attorneys' fees. Colo. Rev. Stat. § 24-72-204(5).

9. Litigation expenses.

Attorneys' fees shall be awarded to a person who has been denied access to public records and who subsequently prevails after applying to a court to have such records made open. Where a government agency seeks guidance from the courts as to whether a record is open or closed, after reasonable and good faith investigation and being unable to determine if disclosure is prohibited, no attorneys' fees shall be awarded. Colo. Rev. Stat. § 24-72-204(5).

Failure to follow the procedure outlined by Colo. Rev. Stat. § 24-72-204(5), either by filing the wrong kind of action or by failing to name the custodian of records as a defendant, will not allow attorney fees to be awarded under that section. *Pope v. Town of Georgetown*, 648 P.2d 672, 673 (Colo. App. 1982).

a. Attorney fees.

Attorneys' fees and court costs shall be awarded to a person who has been denied access to public records and who subsequently prevails after applying to a court to have such records made open. Colo. Rev. Stat. § 24-72-204(5).

b. Court and litigation costs.

Attorneys' fees and court costs shall be awarded to a person who has been denied access to public records and who subsequently prevails after applying to a court to have such records made open. Colo. Rev. Stat. § 24-72-204(5).

10. Fines.

Willful and knowing violation of the Open Records Act is a misdemeanor, punishable by up to a \$100 fine, up to 90 days in county jail, or both. Colo. Rev. Stat. § 24-72-206.

11. Other penalties.

The penalties of Colo. Rev. Stat. § 24-72-206 are the exclusive remedies available under the Open Records Act. *Board of County Comm'rs v. HAD Enterprises Inc.*, 35 Colo. App. 162, 533 P.2d 45 (1974); *Pope v. Town of Georgetown*, 648 P.2d 672 (Colo. App. 1982). Thus, any person who willfully and knowingly violates the Open Records Act is guilty of a misdemeanor punishable by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or both. There is no private right of action for violation of the Open Records Act. *Shields v. Shelter*, 682 F. Supp. 1172, *reh'g denied*, 120 F.R.D. 123 (D. Colo. 1988).

12. Settlement, pros and cons.

Not applicable.

E. Appealing initial court decisions.

1. Appeal routes.

There are two routes of appealing a district court decision which upholds denial of access to public records.

a. Appeal to the Court of Appeals pursuant to C.A.R. 4. This is the usual route. The drawbacks include a one-to-two year wait for a decision from the Court of Appeals, although this court has been more willing than the state Supreme Court to give effect to the Open Records Act. See, e.g., *Western Services Inc. v. Sargent School Dist. No. RE-337*, 719 P.2d 355 (Colo. App. 1986), *rev'd*, 751 P.2d 56 (Colo. 1988).

If the applicant seeks to challenge the constitutionality of the statute under which inspection of records has been denied, appeal may be taken directly to the Supreme Court. See Colo. Rev. Stat. § 13-4-102(1)(b). When the proceeding raises a challenge to the constitutionality of the statute, a copy of the proceedings must be served on the attorney general under Colo. Rev. Stat. § 13-51-115, and Colo. R. Civ. P. 57(j). In general, a person seeking to challenge the constitutionality of a statute should bring an action for declaratory judgment along with the application for an order to show cause.

b. Petition for Writ to the Supreme Court pursuant to C.A.R. 21. In extraordinary cases, such as where immediate harm is threatened in the absence of disclosure, or where the issue presented is likely to arise again, the applicant may petition the Supreme Court directly under Appellate Rule 21 for a writ of mandamus directing the district court to order that inspection of public records be allowed. A Rule 21 petition is *not* a substitute for an appeal to the Court of Appeals.

2. Time limits for filing appeals.

An appeal to the Court of Appeals must be filed within 45 days of the date of the final order in the district court. C.A.R. 4(a).

A petition to the Supreme Court under C.A.R. 21 should be filed at the earliest practicable time. There is no time limitations on the petition, but it must be “within a reasonable time” of the district court’s order.

3. Contact of interested amici.

a. Leave of Court Required. Briefs by *amicus curiae* (friends of the court) may be filed only with leave of the appellate court. C.A.R. 29. The standard procedure is for the *amicus* to tender the proposed brief along with the motion for leave to appeal as *amicus curiae*.

b. Interest of *Amicus*. A motion for leave must identify the interest of the *amicus* and state why an *amicus* brief is desirable.

c. Briefs of *amicus curiae* must be filed within the time for filing briefs allowed the party whose petition the *amicus* brief will support, unless the court grants leave for later filing. C.A.R. 29. *Amicus curiae* are generally restricted to the issues raised by the appealing parties, and any additional questions presented in a brief filed by an *amicus* brief will not be considered by the appellate court. *United States Nat’l Bank v. People ex rel. Dunbar*, 29 Colo. App. 93, 480 P.2d 849 (1970).

d. Oral Argument. “A motion of an *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.” C.A.R. 29.

e. The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

F. Addressing government suits against disclosure.

A public records custodian may file an application with a district court seeking an order permitting him or her to restrict or deny access to the records if (s)he establishes that although no specific statutory exemption from disclosure applies, public disclosure of the particular records would cause “substantial injury to the public interest.” C.R.S. section 24-72-204(6); see also *Civil Service Comm’n v. Pinder*, 812 P.2d 645 (Colo. 1991)(to establish “substantial injury to public interest” to warrant nondisclosure, custodian must demonstrate that the particular circumstances of the case are such that the legislature could not have anticipated them); *Bodelson v. Denver Publishing Co.*, 5 P.3d 373 (Colo. App. 2000)(same). Alternatively, the custodian may apply to a district court for an order permitting him or her to restrict disclosure if the custodian “is unable, in good faith, after exercising reasonable diligence and after reasonable inquiry, to determine whether disclosure of the public record is prohibited” by the statute. C.R.S. section 24-72-204(6).

Open Meetings

I. STATUTE — BASIC APPLICATION.

The declared policy behind the Sunshine Law is that “the formation of public policy is public business and may not be conducted in secret.” Colo. Rev. Stat. § 24-6-401. The Colorado Act was modeled after the Florida Government in the Sunshine Law. The same policy has been held to underlie the local agency open meetings law. *Bagby v. School District No. 1*, 106 Colo. 428, 528 P.2d 1299 (1974).

A. Who may attend?

1. Although who constitutes the “public” is not defined in the statute, it has been expressly held to allow the attendance of “citizens,” see *Littleton Educ. Ass’n v. Arapahoe Cty. School Dist. No. 6*, 191 Colo. 411, 553 P.2d 793 (1976) (local agencies); *Cole v. State*, 673 P.2d 345 (Colo. 1983) (state agencies); and, by implication, to the media. See *Gosliner v. Denver Election Comm’n*, 191 Colo. 328, 552 P.2d 1010 (1976); *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1988). See also *Bagby v. School Dist. No. 1*, 186 Colo. 428, 528 P.2d 1299 (1974) (expressly holding that informal conferences of school boards must be open to the public and to the news media).

2. Even though reporters from the media are allowed access to attend meetings, this does not mean that the media have a right to broadcast public meetings where a potential for disruption of the meeting exists. *Combined Communications Corp. v. Finesilver*, 672 F.2d 818 (10th Cir. 1982).

B. What governments are subject to the law?

1. State.

Colo. Rev. Stat. § 24-6-402(1)(d) defines a “state public body” subject to the Sunshine Law as any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency or authority, as well as to the general assembly (legislature). Also included within this definition are the governing board of any state institution of higher education, specifically including the Regents of the University of Colorado, and any public or private entity to which the state, or an official thereof, has delegated a governmental decision-making function, but not persons on the administrative staff of the state public body.

2. County.

Boards of County Commissioners are to meet in open sessions by the provisions of Colo. Rev. Stat. § 30-10-302. That section provides that “all persons conducting themselves in an orderly manner may attend its meetings.” This section was not repealed by S.B. 91-33.

This does not require that the doors to the meetings be kept physically open, only that free public access be allowed. *Allen v. Board of Comm’rs*, 178 Colo. 354, 497 P.2d 1026 (1972).

An exception to the requirement of open meetings exists for the “day-to-day oversight of property or supervision of employees by county commissioners.” Colo. Rev. Stat. § 24-6-402(2)(f).

3. Local or municipal.

Colo. Rev. Stat. § 24-6-402(1)(a) defines a “local public body” subject to the Sunshine Law as any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state, and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function, but not persons on the administrative staff of the local public body.

A “political subdivision of the state” is defined by Colo. Rev. Stat. § 24-6-402(1)(c) as any county, city, town, home rule city, home rule county, home rule city and county (*i.e.*, Denver), school district, spe-

cial district, local improvement district, special improvement district, or service district.

School Boards. Regular and special meetings of the board of education of a school district are open to the public under Colo. Rev. Stat. §§ 22-32-108(5) and 24-6-402(2)(b). See *Bagby v. School District No. 1*, 186 Colo. 428, 528 P.2d 1299 (1974).

C. What bodies are covered by the law?

1. Executive branch agencies.

a. What officials are covered?

The Sunshine Law expressly applies to all meetings of two or more members of any state agency or committee thereof. Colo. Rev. Stat. § 24-6-401(2)(a). See, *e.g.*, *Hyde v. Banking Bd.*, 38 Colo. App. 41, 552 P.2d 32 (1976).

b. Are certain executive functions covered?

The Sunshine Law expressly applies to all meetings of two or more members of any state agency or committee thereof at which public business is discussed. Colo. Rev. Stat. § 24-6-401(2)(a). See, *e.g.*, *Hyde v. Banking Bd.*, 38 Colo. App. 41, 552 P.2d 32 (1976).

c. Are only certain agencies subject to the act?

The Sunshine Law expressly applies to all meetings of two or more members of any state agency or committee thereof at which public business is discussed. Colo. Rev. Stat. § 24-6-401(2)(a). See, *e.g.*, *Hyde v. Banking Bd.*, 38 Colo. App. 41, 552 P.2d 32 (1976).

2. Legislative bodies.

Colorado Constitution Article V, § 14 provides that the sessions of both houses of the legislature and their committees “shall be open, unless when the business is such as ought to be kept secret.”

a. The Sunshine Law applies not only to the General Assembly, but also to meetings of any board, committee, or other policy-making or rule-making body of the General Assembly. Colo. Rev. Stat. § 24-6-402(1)(d).

b. This includes legislative caucus meetings at which public business is discussed. *Cole v. State*, 673 P.2d 345 (Colo. 1983).

c. Unless the legislature has expressly designated business which “ought to be kept secret” pursuant to § 14 of Article V of the state Constitution, it is presumed that all legislative and committee meetings are subject to the Open Meetings Act. *Cole v. State*, *supra*.

d. However, the Sunshine Law was not intended to interfere with the abilities of legislative bodies to perform their duties in a reasonable manner, and thus strict compliance with all requirements, such as giving notice of which matters will be considered at a particular meeting, may not be required. *Benson v. McCormick*, 195 Colo. 381, 578 P.2d 651 (1978).

3. Courts.

a. Although state courts are not subject to the Sunshine Law, they are subject to the federal constitutional requirement under the First Amendment that the public right of access to a criminal trial cannot be denied. *Richmond Newspapers v. Virginia*, 448 U.S. 555 (1980); *Press Enterprise Co. v. Superior Court*, 478 U.S. 1 (1986); see *In re P.R.*, 637 P.2d 346 (Colo. 1981); *Star Journal Publishing Corp. v. County Court*, 197 Colo. 234, 591 P.2d 1028 (1978).

b. A judge may order a pretrial proceeding in a criminal case closed only if (1) the dissemination of information would create a clear and present danger to the fairness of the trial; and (2) the prejudicial effect of such information cannot be avoided by any reasonable alternative means. *Star Journal Publishing Corp. v. County Court*, 197 Colo. 234, 591 P.2d 1028 (1978). The Colorado Supreme Court has specifically adopted Section 8-3 of the ABA Fair Trial and Free Press Standards

(2d ed. 1978).

c. Similarly, the evidentiary phase of a hearing on contempt for refusal to testify before a grand jury may be closed only upon express findings by the court that a public hearing would create a clear and present danger to the investigation of matters pending before the grand jury and that the prejudicial effect of such information of presently pending grand jury matters cannot be avoided by any reasonable alternative less drastic than disclosure. *In re P.R.*, *supra*.

d. A hearing on child custody proceedings may be closed to the public by the court under Colo. Rev. Stat. § 14-10-128(3).

e. Hearings in juvenile delinquency proceedings are open to the general public under Colo. Rev. Stat. § 19-2-204, unless the court finds that it is in the best interest of the juvenile to exclude the general public, in which case a closed hearing may be held.

4. Nongovernmental bodies receiving public funds or benefits.

Under prior law, unless a board or other body was specifically declared to be a state agency or authority by its organic legislation, it was not subject to the Sunshine Law. *James v. Board of Comm'rs of Denver Urban Renewal Authority*, 200 Colo. 28, 611 P.2d 976 (1980). Under the 1991 amendments, any public or private entity to which the state or a political subdivision of the state, or an official thereof, has delegated a governmental decision-making function is subject to the Sunshine Law. Colo. Rev. Stat. §§ 24-6-402(1)(a) and 24-6-402(1)(d). Persons on the administrative staff of the state or local public body, however, are exempted.

If a board or body does not meet the above definition, its meetings are not open to the general public in Colorado.

5. Nongovernmental groups whose members include governmental officials.

Under the 1991 amendments, any public or private entity to which the state or a political subdivision of the state, or an official thereof, has delegated a governmental decision-making function is subject to the Sunshine Law. Colo. Rev. Stat. §§ 24-6-402(1)(a) and 24-6-402(1)(d). Persons on the administrative staff of the state or local public body, however, are exempted.

If a board or body does not meet the above definition, its meetings are not open to the general public in Colorado.

6. Multi-state or regional bodies.

Not specified.

7. Advisory boards and commissions, quasi-governmental entities.

Under the 1991 amendments, any public or private entity to which the state or a political subdivision of the state, or an official thereof, has delegated a governmental decision-making function is subject to the Sunshine Law. Colo. Rev. Stat. §§ 24-6-402(1)(a) and 24-6-402(1)(d). Persons on the administrative staff of the state or local public body, however, are exempted.

If a board or body does not meet the above definition, its meetings are not open to the general public in Colorado.

8. Other bodies to which governmental or public functions are delegated.

Governing Boards of Universities.

As amended in 1987, Colo. Rev. Stat. § 24-6-402(2)(a) declares that meetings of the Board of Regents of the University of Colorado or any other governing board of a state institution of higher education are open to the public. Colo. Sess. Laws 1987, ch. 166, § 1.

The 1987 amendment legislatively reversed the Colorado Supreme Court's decision in *Associated Students v. Regents of University of Colo-*

rado, 189 Colo. 482, 543 P.2d 59 (1975), which had held the Board of Regents exempt from the Sunshine Law.

The 1991 amendments include the governing board of any state institution of higher education, and specifically the Regents of the University of Colorado, within the definition of a "state public body" subject to Sunshine Law. Colo. Rev. Stat. § 24-6-402(1)(d).

A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. A list of all finalists being considered for a position shall be made public by the search committee no less than fourteen days prior to the first interview conducted for the position. Records submitted by or on behalf of a finalist for such position shall be subject to the provisions of Colo. Rev. Stat. § 24-72-204(3)(a)(XI). Colo. Rev. Stat. § 24-6-402(3.5).

Student Loan Authority. Meetings of the Board of Directors of the Colorado Student Obligation Board Authority are required to be open to the public by Colo. Rev. Stat. § 23-3.1-205(2).

9. Appointed as well as elected bodies.

Yes. Colo. Rev. Stat. § 24-6-402(1)(a) and (d).

D. What constitutes a meeting subject to the law.

1. Number that must be present.

a. Must a minimum number be present to constitute a "meeting"?

State. Under Colo. Rev. Stat. § 24-6-402(2)(a), all meetings attended by two or more members of any state board, commission, committee, or other body at which any public business is discussed or at which any formal action may be taken are declared public meetings open to the public at all times.

Local Government. Under Colo. Rev. Stat. § 24-6-402(2)(b), all meetings of a quorum, or of three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared public meetings open to the public at all times.

The former local government open meetings law simply declares that "all meetings" are open to the public, without specifying a required number in attendance. Colo. Rev. Stat. § 29-9-101(1) (Repealed 1991).

b. What effect does absence of a quorum have?

Because a meeting is open to the public if only two members of any state board or commission, or if only three members of a local government board or commission attend, the absence of a quorum does not affect the public status of the meeting, although it may affect the business conducted at the meeting.

2. Nature of business subject to the law.

(a) Public Business. Meetings subject to the Sunshine Law are "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication." Colo. Rev. Stat. § 24-6-402(1)(b). This general rule of application, however, is subject to several specific exceptions. *Board of County Comm'rs, Costilla County v. Costilla County Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004) (for a meeting to be subject to Open Meetings Law, there must be a demonstrated link between the meeting and the policy-making powers of the public body, for example enactment of a rule, regulation, or ordinance, or a discussion of a pending measure or action which is subsequently "rubber stamped" by the public body. Mere discussion of matters of public importance does not trigger the Open Meetings Law.)

(b). Public Employment. Meetings of a state public body to consider appointment or employment of public officials or employees or the dismissal, discipline, promotion, demotion, compensation of, or charges or complaints against public officials or employees are open unless the public applicant, official, or employee requests an executive session. Colo. Rev. Stat. § 24-6-402(3)(b). However, meetings of local public bodies to consider similar matters with respect to public employees (not public officials) are closed unless the subject of the executive session requests that it be conducted as an open meeting. Colo. Rev. Stat. § 24-6-402(4)(f).

(c). Exemptions.

i. Social gatherings. The Sunshine Law does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose. Colo. Rev. Stat. § 24-6-402(2)(e).

ii. Executive sessions. A state public body otherwise subject to the Sunshine Law may, after an announcement to the public of the topic for discussion in the executive session and upon a two-thirds vote of its entire membership, and a local government upon a two-thirds vote of the quorum present, hold an executive session at regular or special meetings. Colo. Rev. Stat. § 24-6-402(3)(a) (state); Colo. Rev. Stat. § 24-6-402(4) (local). Discussion in an executive session of a state or local public body shall be recorded in the same manner and media that the body uses to record minutes of open meetings. An electronic recording satisfies the requirement. A public body going into executive session shall identify the particular matter to be discussed therein in as much detail as possible. Colo. Rev. Stat. § 24-6-402(2)(d.5)(I)(A). The public body may meet in executive session only to consider the following matters:

(1) Purchase or sale of public property, if premature disclosure of information would give an unfair advantage to any person whose private interest is adverse to the public interest. Colo. Rev. Stat. § 24-6-402(3)(a)(I) (state); Colo. Rev. Stat. § 24-6-402(4)(a) (local).

However, no member of a state public body may request an executive session as a subterfuge for providing covert information to prospective buyers or sellers, and no member of a local public body may request an executive session for the purpose of concealing that the member has a personal interest in the transaction.

(2) Conferences between a state public body and its attorney to consider legal disputes involving the public body, if the disputes are the subject of pending or imminent court action, Colo. Rev. Stat. § 24-6-402(3)(a)(II), and conferences between a local public body and its attorney for the purpose of receiving specific legal advice on specific legal questions. Colo. Rev. Stat. § 24-6-402(4)(b). *Cf. Denver Post Corp. v. University of Colorado*, 739 P.2d 874 (Colo. App. 1987) (attorney-client privileged communications exempt from Open Records Act). The mere presence or participation of an attorney at an executive session does not satisfy the requirements. However, when an attorney representing a public body determines that a portion of an executive session constitutes a privileged attorney-client communication, no record need be kept thereof and any written minutes shall contain a signed statement by the attorney attesting to the privilege and a signed statement by the chair of the session. Colo. Rev. Stat. § 24-72-204(5.5)(II)(B).

(3) Matters required to be kept confidential by federal law or rules or state statute. Colo. Rev. Stat. §§ 24-6-402(3)(a)(III) (state) and 24-6-402(4)(c) (local). The local public body shall announce the specific citation of the statutes or rules that serve as the basis for such confidentiality before holding the executive session. Colo. Rev. Stat. § 24-6-402(4)(c). *See*,

e.g., Gillies v. Schmidt, 38 Colo. App. 233, 556 P.2d 82 (1976) (public committee subject to local government open meetings law on child abuse may hold executive session not subject to Open Meetings Act to consider child abuse reports and related records where statute required such records to be kept confidential). However, non-confidential matters may not be discussed in closed executive sessions. *Gillies v. Schmidt, supra*.

(4) Specialized details of security arrangements and investigations regarding defenses against domestic and foreign terrorism which, if disclosed, might reveal information which could be used for violating the law. Colo. Rev. Stat. §§ 24-6-402(3)(a)(IV) (state) and 24-6-402(4)(d) (local).

(5) Positions and strategies on matters subject to negotiations with employees or employee organizations, *i.e.*, matters pertaining to collective bargaining. Colo. Rev. Stat. §§ 24-6-402(3)(a)(V) (state) and 24-6-402(4)(e) (local).

(6) Meetings of a state public body to consider appointment or employment of public officials or employees or the dismissal, discipline, promotion, demotion, compensation of, or charges or complaints against public officials or employees are open unless the public applicant, official, or employee requests an executive session. Colo. Rev. Stat. § 24-6-402(3)(b). However, meetings of local public bodies to consider similar matters with respect to public employees (not public officials) are closed unless the subject of the executive session requests that it be conducted as an open meeting. Colo. Rev. Stat. § 24-6-402(4)(f).

iii. Local public bodies may meet in executive session, in addition to the matters listed above to consider the following matters:

(1) Documents protected by the mandatory nondisclosure provisions of the Open Records Act. Colo. Rev. Stat. § 24-6-402(4)(g).

(2) Discussion of individual students where public disclosure would adversely affect the persons involved. Colo. Rev. Stat. § 24-6-402(4)(h).

iv. Governing Boards of Institutions of Higher Education (including Board of Regents of University of Colorado). In addition to the matters listed above which may be considered in a closed executive session, the governing board of any institution of higher education, upon its own affirmative vote, may meet in executive session to consider the following matters:

(1) Gifts. Governing boards of state universities may also hold executive sessions to consider acquisition of property as a gift, if requested by the donor. Colo. Rev. Stat. § 24-6-402(3)(a)(I).

(2) Legal Advice. Conferences with an attorney concerning specific claims or grievances or for purposes of receiving legal advice on specific legal questions. However, the mere presence of an attorney at an executive session does not satisfy this requirement. Colo. Rev. Stat. § 24-6-402(3)(a)(II). *See Associated Students v. Regents of University of Colorado*, 189 Colo. 482, 543 P.2d 59 (1975) (Open Meetings Law does not repeal attorney-client privilege).

(3) Patient Care Programs. Matters and reports concerning initiation, modification, or cessation of patient care programs at University of Colorado Hospital, if premature disclosure of the information would give anyone an unfair advantage. Colo. Rev. Stat. § 24-6-402(3)(a)(VI).

(4) Honorary awards. Nominations for the awarding of honorary degrees, medals and other institutional awards, as well as proposals for the naming of a building after a person. Colo. Rev. Stat. § 24-6-402(3)(a)(VIII).

(5) Student Discipline. Executive sessions may be held to review administrative actions regarding investigations and reports of charges and complaints against students, unless the student has specifically requested or consented to disclosure of such matters. Colo. Rev. Stat. § 24-6-402(3)(b).

v. State Parole Board. The state parole board may, by two-thirds vote of the membership present, meet in executive session to consider matters connected with any parole proceedings under its jurisdiction. Colo. Rev. Stat. § 24-6-402(3)(c). However, no final parole decisions may be made by the board while in executive session.

vi. Nonprofit corporations. Nonprofit companies incorporated pursuant to section 23-5-121(2), C.R.S. may hold executive sessions to review matters concerning trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data. Colo. Rev. Stat. § 24-6-402(3)(a)(VII).

(d). Final Decisions to be Made in Public. Although executive sessions may be held to conduct deliberations on a matter exempt from the Open Meetings law, any final decision must be taken at a subsequently reconvened public meeting. *See* Colo. Rev. Stat. § 24-6-402(3)(a) (state agencies); Colo. Rev. Stat. § 24-6-402(4) (local government); Colo. Rev. Stat. § 22-32-108(5) (school boards); *see also Bagby v. School Dist. No. 1*, 186 Colo. 428, 528 P.2d 1299 (1974) (holding that the Open Meetings Law is designed to avoid mere “rubber stamping” in public decisions that are effectively made in private, since the public is entitled to know “the discussions, the motivations, the public arguments and other considerations which led to the discretion exercised . . .”); *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979); *Glenwood Post v. City of Glenwood Springs*, 731 P.2d 761 (Colo. App. 1986); *Hudspeth v. Board of Cty. Comm’rs*, 667 P.2d 775 (Colo. App. 1983).

a. “Information gathering” and “fact-finding” sessions.

Open. Under Colo. Rev. Stat. § 24-6-402(2)(a), all meetings attended by two or more members of any *state* board, commission, committee, or other body *at which any public business is discussed* or at which any formal action may be taken are declared public meetings open to the public at all times.

Under Colo. Rev. Stat. § 24-6-402(2)(b), all meetings of a quorum, or of three or more members of any *local* public body, whichever is fewer, *at which any public business is discussed* or at which any formal action may be taken are declared public meetings open to the public at all times, *But see Board of County Comm’rs, Costilla County v. Costilla County Conservancy Dist.*, 88 P.3d 1188 (Colo. 2004) (holding that for a meeting to be subject to Open Meetings Law, there must be a demonstrated link between the meeting and the policy-making powers of the public body; mere discussion of matters of public importance does not trigger the Open Meetings Law).

b. Deliberations toward decisions.

Executive sessions may be held to conduct deliberations only on a matter that is expressly exempt from the Open Meetings law; all other “deliberations” must occur at a public meeting. *See Bagby v. School Dist. No. 1*, 186 Colo. 428, 528 P.2d 1299 (1974) (holding that the Open Meetings Law is designed to avoid mere “rubber stamping” in public decisions that are effectively made in private, since the public is entitled to know “the discussions, the motivations, the public arguments and other considerations which led to the discretion exercised . . .”);

3. Electronic meetings.

a. Conference calls and video/Internet conferencing.

Pursuant to Colo. Rev. Stat. § 24-6-402(1) a meeting is defined as any kind of gathering, convened to discuss public business, in person,

by telephone, electronically, or by other means of communication. All such public meetings are subject to the Open Meetings Act § 24-6-402(2).

b. E-mail.

Electronic Mail. If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the above requirements. Colo. Rev. Stat. § 24-6-402(2)(d)(III). However, electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a “meeting” and therefore is not subject to the above requirements.

c. Text messages.

Yes. “Meeting” means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, *or by other means of communication*. *See* Colo. Rev. Stat. § 24-6-402(1)(b).

d. Instant messaging.

Yes. “Meeting” means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, *or by other means of communication*. *See* Colo. Rev. Stat. § 24-6-402(1)(b).

e. Social media and online discussion boards.

Yes. “Meeting” means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, *or by other means of communication*. *See* Colo. Rev. Stat. § 24-6-402(1)(b).

E. Categories of meetings subject to the law.

1. Regular meetings.

a. Definition.

The statute does not distinguish between “regular” and “special” meetings. A general definition of “meeting” is provided under Colo. Rev. Stat. § 24-6-402(1)(b) as “any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.” *Id.*

b. Notice.

(1). Time limit for giving notice.

Sunshine Law: “Full and timely” notice. § 24-6-402(2)(c) provides that “full and timely notice to the public” must be given before any meeting can be held at which adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs, or at which a majority or quorum of the body is in attendance or expected to be in attendance.

“Full and timely notice” is a flexible standard, and the time for giving notice of daily meetings, for example, differs from that of monthly meetings. *See Benson v. McCormick*, 195 Colo. 381, 578 P.2d 651 (1978).

Some overt action must be taken by the public body within a reasonable time to give notice to the public that a meeting is to be held. *Hyde v. Banking Board*, 38 Colo. App. 41, 552 P.2d 32 (1976).

A local government body is deemed to have given full and timely notice if notice of the meeting is posted in a designated place within the boundaries of the local government body no less than 24 hours before the meeting. Colo. Rev. Stat. § 24-6-402(2)(c).

(2). To whom notice is given.

Notice under Colo. Rev. Stat. § 24-6-402(2) must be given to the public, that is, made available to the public by posting notice in an area open to public view, *see Hyde v. Banking Board, supra*, or by distributing copies of the notice to the media. *See Benson v. McCormick, supra*.

“Sunshine Lists.” Persons who within the previous two years have requested notification of all meetings of a local public body or of

meetings where certain specified policies are discussed shall have their names placed on a “sunshine list” by the secretary or clerk of the state or local public body. The secretary or clerk shall then provide reasonable advance notification of such meetings to all persons on the list. Colo. Rev. Stat. § 24-6-402(7). However, notice to persons on the Sunshine List is not a substitute for notice to the general public. *Hyde v. Banking Board, supra*.

(3). Where posted.

To be valid under Colo. Rev. Stat. § 24-6-402(2)(c), notice of meetings must be posted in an area which is open to public view. *Hyde v. Banking Board, supra*. Places of posting notices of local government body meetings shall be designated annually at the body’s first regular meeting of each calendar year.

(4). Public agenda items required.

Although notice under Colo. Rev. Stat. § 24-6-402(2)(c) must be “full,” it need not designate with specificity the precise agenda for each meeting, particularly if a strict agenda would interfere with public duties. *See Benson v. McCormick, supra*. However, the posting shall include specific agenda information where possible. Colo. Rev. Stat. § 24-6-402(2)(c).

In determining whether the notice at issue is “full,” courts apply an objective standard, meaning that a notice should be interpreted in light of the knowledge of an ordinary member of the community to whom it is directed. *Town of Marble v. Darien*, 181 P.3d 1148, 1152 (Colo. 2008). A notice need not precisely set forth every single item to be considered at a meeting and is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice. *Id.* at 1153.

(5). Other information required in notice.

Not specified.

(6). Penalties and remedies for failure to give adequate notice.

Any resolution, rule, or regulation made or any formal or quasi-formal action taken by a public body at a meeting which is not public or for which notice was not given is invalid. Colo. Rev. Stat. § 24-6-402(8). *Lanes v. State Auditor’s Office*, 797 P.2d 764 (Colo. App. 1990); *see Hyde v. Banking Board, supra* (invalidating order of board issued at meeting where no public notice of meeting was given). However, unintentional failure to provide advance notice of meetings to persons on a “sunshine list” will not nullify actions taken at an otherwise properly published meeting. Colo. Rev. Stat. § 24-6-402(7).

c. Minutes.

(1). Information required.

Minutes of meetings of any *state* public body shall be promptly recorded and such records shall be open to public inspection. Colo. Rev. Stat. § 24-6-402(2)(d)(I).

Minutes of meetings of any *local* government public body at which the adoption of any proposed policy, position, rule, regulation, or formal action occurs or could occur shall be promptly recorded and such records shall be open to public inspection. Colo. Rev. Stat. § 24-6-402(2)(d)(II).

(2). Are minutes public record?

Yes. *See* Colo. Rev. Stat. §§ 24-6-402(2)(d)(I) and(II).

2. Special or emergency meetings.

The Open Meetings Law applies to *all* meetings of public bodies. *See* Colo. Rev. Stat. § 24-6-402(1)(b). No distinction is made between regular and special meetings.

The statute applicable to meetings of boards of education provides that all regular and special meetings of the board shall be open to the

public. Colo. Rev. Stat. § 22-32-108(5).

a. Definition.

An “emergency” is defined as “an unforeseen combination of circumstances or the resulting state that calls for immediate action.” Thus, an emergency necessarily presents a situation in which public notice, and likewise, a public forum, would be either impractical or impossible. *Lewis v. Town of Nederland*, 934 P.2d 848 (Colo. App. 1996).

b. Notice requirements.

Sec. 24-6-402(2)(c) provides that “full and timely notice to the public” must be given before any public meeting can be held. *but see Lewis v. Town of Nederland*, 934 P.2d 848, 851 (Colo. App. 1996) (holding that ratification of action taken at an emergency meeting at either the next regular Board meeting or a special meeting where public notice of the emergency has been given, satisfy the requirements of the Open Meetings Law under emergency circumstances).

(1). Time limit for giving notice.

Sunshine Law: “Full and timely” notice. § 24-6-402(2)(c) provides that “full and timely notice to the public” must be given before any meeting can be held at which adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs, or at which a majority or quorum of the body is in attendance or expected to be in attendance.

“Full and timely notice” is a flexible standard, and the time for giving notice of daily meetings, for example, differs from that of monthly meetings. *See Benson v. McCormick*, 195 Colo. 381, 578 P.2d 651 (1978).

Some overt action must be taken by the public body within a reasonable time to give notice to the public that a meeting is to be held. *Hyde v. Banking Board*, 38 Colo. App. 41, 552 P.2d 32 (1976).

A local government body is deemed to have given full and timely notice if notice of the meeting is posted in a designated place within the boundaries of the local government body no less than 24 hours before the meeting. Colo. Rev. Stat. § 24-6-402(2)(c).

(2). To whom notice is given.

Notice under Colo. Rev. Stat. § 24-6-402(2) must be given to the public, that is, made available to the public by posting notice in an area open to public view, *see Hyde v. Banking Board, supra*, or by distributing copies of the notice to the media. *See Benson v. McCormick, supra*.

“Sunshine Lists.” Persons who within the previous two years have requested notification of all meetings of a local public body or of meetings where certain specified policies are discussed shall have their names placed on a “sunshine list” by the secretary or clerk of the state or local public body. The secretary or clerk shall then provide reasonable advance notification of such meetings to all persons on the list. Colo. Rev. Stat. § 24-6-402(7). However, notice to persons on the Sunshine List is not a substitute for notice to the general public. *Hyde v. Banking Board, supra*.

(3). Where posted.

To be valid under Colo. Rev. Stat. § 24-6-402(2)(c), notice of meetings must be posted in an area which is open to public view. *Hyde v. Banking Board, supra*. Places of posting notices of local government body meetings shall be designated annually at the body’s first regular meeting of each calendar year.

(4). Public agenda items required.

Although notice under Colo. Rev. Stat. § 24-6-402(2)(c) must be “full,” it need not designate with specificity the precise agenda for each meeting, particularly if a strict agenda would interfere with public duties. *See Benson v. McCormick, supra*. However, the posting shall include specific agenda information where possible. Colo. Rev. Stat. § 24-6-402(2)(c). In determining whether the notice at issue is “full,”

courts apply an objective standard, meaning that a notice should be interpreted in light of the knowledge of an ordinary member of the community to whom it is directed. *Town of Marble v. Darien*, 181 P.3d 1148, 1152 (Colo. 2008). A notice need not precisely set forth every single item to be considered at a meeting and is sufficient as long as the items actually considered at the meeting are reasonably related to the subject matter indicated by the notice. *Id.* at 1153.

(5). Other information required in notice.

Not specified.

(6). Penalties and remedies for failure to give adequate notice.

Any resolution, rule, or regulation made or any formal or quasi-formal action taken by a public body at a meeting which is not public or for which notice was not given is invalid. Colo. Rev. Stat. § 24-6-402(8). *Lanes v. State Auditor's Office*, 797 P.2d 764 (Colo. App. 1990); see *Hyde v. Banking Board*, *supra* (invalidating order of board issued at meeting where no public notice of meeting was given). However, unintentional failure to provide advance notice of meetings to persons on a “sunshine list” will not nullify actions taken at an otherwise properly published meeting. Colo. Rev. Stat. § 24-6-402(7).

c. Minutes.

(1). Information required.

Minutes of meetings of any *state* public body shall be promptly recorded and such records shall be open to public inspection. Colo. Rev. Stat. § 24-6-402(2)(d)(I).

Minutes of meetings of any *local* government public body at which the adoption of any proposed policy, position, rule, regulation, or formal action occurs or could occur shall be promptly recorded and such records shall be open to public inspection. Colo. Rev. Stat. § 24-6-402(2)(d)(II).

(2). Are minutes a public record?

Yes. See Colo. Rev. Stat. §§ 24-6-402(2)(d)(I) and (II).

3. Closed meetings or executive sessions.

a. Definition.

An executive session is a closed meeting which is attended only by the members of the public body and, in some cases, by attorneys, witnesses, or persons who are the subject of the meeting or action to be taken by the body or other persons invited by the body. See *Hudspeth v. Board of Cty. Comm'rs*, 667 P.2d 115 (Colo. App. 1983); *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979); see also Colo. Rev. Stat. § 22-32-108(5) (executive sessions of school boards).

b. Notice requirements.

An executive session may be held only at a regular or special meeting, and only after the announcement to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the state public body or two-thirds of the quorum present of the local public body. Colo. Rev. Stat. §§ 24-6-402(3)(a) (state) and 24-6-402(4) (local). If an executive session is not convened properly, then the meeting and the recorded minutes are open to the public. *Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004) (Colo. App. 2004) (City council's failure to “strictly comply” with the requirements of the statute rendered its meeting open and the terminated city employee had the right to inspect the minutes.); *Zubeck v. El Paso County Ret. Plan*, 961 P.2d 597, 600 (Colo. App. 1998); *WorldWest LLC v. Steamboat Springs Sch. Dist. RE-2 Bd. of Educ.*, No. 07-CA-1104, 37 Media L. Rep. (BNA) 1663 (Colo. App. 2009); *Ctr. for Indep't Media v. Indep't Ethics Comm'n of Colo.*, No. 09-cv-5109, 37 Media L. Rep. (BNA) 2522 (Colo. Denver Dist. Ct. Aug. 31, 2009)

(1). Time limit for giving notice.

Sunshine Law: “Full and timely” notice. § 24-6-402(2)(c) provides that “full and timely notice to the public” must be given before any meeting can be held at which adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs, or at which a majority or quorum of the body is in attendance or expected to be in attendance.

“Full and timely notice” is a flexible standard, and the time for giving notice of daily meetings, for example, differs from that of monthly meetings. See *Benson v. McCormick*, 195 Colo. 381, 578 P.2d 651 (1978).

Some overt action must be taken by the public body within a reasonable time to give notice to the public that a meeting is to be held. *Hyde v. Banking Board*, 38 Colo. App. 41, 552 P.2d 32 (1976).

A local government body is deemed to have given full and timely notice if notice of the meeting is posted in a designated place within the boundaries of the local government body no less than 24 hours before the meeting. Colo. Rev. Stat. § 24-6-402(2)(c).

(2). To whom notice is given.

Notice under Colo. Rev. Stat. § 24-6-402(2) must be given to the public, that is, made available to the public by posting notice in an area open to public view, see *Hyde v. Banking Board*, *supra*, or by distributing copies of the notice to the media. See *Benson v. McCormick*, *supra*.

“Sunshine Lists.” Persons who within the previous two years have requested notification of all meetings of a local public body or of meetings where certain specified policies are discussed shall have their names placed on a “sunshine list” by the secretary or clerk of the state or local public body. The secretary or clerk shall then provide reasonable advance notification of such meetings to all persons on the list. Colo. Rev. Stat. § 24-6-402(7). However, notice to persons on the Sunshine List is not a substitute for notice to the general public. *Hyde v. Banking Board*, *supra*.

(3). Where posted.

To be valid under Colo. Rev. Stat. § 24-6-402(2)(c), notice of meetings must be posted in an area which is open to public view. *Hyde v. Banking Board*, *supra*. Places of posting notices of local government body meetings shall be designated annually at the body's first regular meeting of each calendar year.

(4). Public agenda items required.

Although notice under Colo. Rev. Stat. § 24-6-402(2)(c) must be “full,” it need not designate with specificity the precise agenda for each meeting, particularly if a strict agenda would interfere with public duties. See *Benson v. McCormick*, *supra*. However, the posting shall include specific agenda information where possible. Colo. Rev. Stat. § 24-6-402(2)(c).

(5). Other information required in notice.

Notice must state the topic for the closed session or executive meeting, cite the specific subsection of the statute relevant to the topic(s) to be discussed, and identify the matter in as much detail as possible without compromising the purpose of the session. *Worldwest Ltd. Liability Co. v. Steamboat Springs Sch. Dist. RE-2*, 37 Media L. Rptr. (BNA) 1663 (Colo. App. 2009); *Ctr. for Indep't Media v. Indep't Ethics Comm'n of Colo.*, No. 09-cv-5109, 37 Media L. Rep. (BNA) 2522 (Colo. Denver Dist. Ct. Aug. 31, 2009).

(6). Penalties and remedies for failure to give adequate notice.

Any resolution, rule, or regulation made or any formal or quasi-formal action taken by a public body at a meeting which is not public or for which notice was not given is invalid. Colo. Rev. Stat. § 24-6-402(8). *Lanes v. State Auditor's Office*, 797 P.2d 764 (Colo. App. 1990);

see *Hyde v. Banking Board*, *supra* (invalidating order of board issued at meeting where no public notice of meeting was given). However, unintentional failure to provide advance notice of meetings to persons on a “sunshine list” will not nullify actions taken at an otherwise properly published meeting. Colo. Rev. Stat. § 24-6-402(7).

Minutes of meeting for which notice was invalid are public records and must be released. . *Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004) (Colo. App. 2004); *Zubeck v. El Paso County Ret. Plan*, 961 P.2d 597, 600 (Colo. App. 1998); *Worldwest Ltd. Liability Co. v. Steamboat Springs Sch. Dist.* RE-2, 37 Media L. Rptr. 1663 (Colo. App. 2009); *Ctr. for Indep’t Media v. Indep’t Ethics Comm’n of Colo.*, No. 09-cv-5109, 37 Media L. Rep. (BNA) 2522 (Colo. Denver Dist. Ct. Aug. 31, 2009).

c. Minutes.

(1). Information required.

Minutes of executive sessions need only reflect the general subject matter of discussions. Colo. Rev. Stat. § 24-6-402(2)(d).

(2). Are minutes a public record?

No, unless court determines that topic was not properly announced or, upon in camera inspection, court determines that discussion went substantially beyond the scope of the announced topic or included formal action or adoption of policy, position, or resolution. Colo. Rev. Stat. § 24-72-204(5.5)(b).

d. Requirement to meet in public before closing meeting.

An executive session may be held only after the announcement to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the state public body or two-thirds of the quorum present of the local public body. Colo. Rev. Stat. §§ 24-6-402(3)(a) (state) and 24-6-402(4) (local).

e. Requirement to state statutory authority for closing meetings before closure.

See Colo. Rev. Stat. § 24-6-402(3)(a) (authorizing the body to meet in executive session).

f. Tape recording requirements.

Discussion in an executive session of a state or local public body shall be recorded in the same manner and media that the body uses to record minutes of open meetings. An electronic recording satisfies the requirement. See *Gumina v. City of Sterling*, 119 P.3d 527 (Colo. App. 2004).

F. Recording/broadcast of meetings.

In general, whether a meeting may be recorded or broadcast is left to the discretion of the particular public body. The Open Meetings law contains no guarantee or prohibition of recording or broadcast of public meetings. If a public body electronically recorded the minutes of its open meetings on or after August 8, 2001, then it must continue to electronically record all its open meetings; except that electronic recording will not be required for two successive meetings while the regular equipment is inoperable. Colo. Rev. Stat. §§ 24-6-402(2)(d.5) (I)(A) (state) and 24-6-402(2)(d.5)(II)(A) (local).

The photographing, broadcasting, televising, or recording of administrative hearing proceedings is governed in accordance with Canon 3 of the Code of Judicial Conduct. Division of Administrative Hearings Rule of Procedure 6.

At least one court has held that neither the Open Meetings Law nor the First Amendment guarantees the media any right to broadcast a public meeting. *Combined Communications Corp. v. Finesilver*, 672 F.2d 818 (10th Cir. 1982). The test applied was whether the potential for

disruption of the meeting outweighs the benefit to the public from a broadcast of the proceedings.

1. Sound recordings allowed.

No statutory provisions or case law on this point.

2. Photographic recordings allowed.

No statutory provisions or case law on this point.

G. Are there sanctions for noncompliance?

Any resolution, rule, or regulation made or any formal or quasi-formal action taken by a public body at a meeting which is in violation of the statute is declared invalid. Colo. Rev. Stat. § 24-6-402(8). In all such actions, the prevailing plaintiff recovers costs and reasonable attorney fees. If there is no violation, and if the court finds that the action was frivolous, vexatious, or groundless, then the court shall award costs and reasonable attorney fees to the other party. Colo. Rev. Stat. § 24-6-402(9).

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS

A. Exemptions in the open meetings statute.

1. Character of exemptions.

The Sunshine Law has been liberally construed in favor of openness and to permit non-public sessions only in specific, relatively narrowly defined circumstances. All discussions not falling within these “executive session” categories must be held in public, and in any event the discussion leading to the final decision must occur in public. See *Cole v. State*, 673 P.2d 345 (Colo. 1983).

a. General or specific.

Specific.

b. Mandatory or discretionary closure.

Discretionary, upon public announcement and public vote of two-thirds of body.

2. Description of each exemption.

No general provision for closure of meetings “in the public interest” is provided for in the Open Meetings Law.

Chance Meetings and Social Gatherings. The requirements of the Open Meetings Law do not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose. Colo. Rev. Stat. § 24-6-402(2)(e).

B. Any other statutory requirements for closed or open meetings.

Boards of county commissioners are required to meet in open session by Colo. Rev. Stat. § 30-10-302.

Boards of Education. Meetings of boards of education are declared open to the public by Colo. Rev. Stat. § 22-32-108(5).

Colorado Student Obligation Bond Authority. Meetings of the board of directors of Colorado Student Obligation Bond Authority are declared open to the public by Colo. Rev. Stat. § 23-3.1-205(2).

Division of Labor. Sessions of the director of the Division of Labor, or any deputy or referee of the division are required to be open to the public by Colo. Rev. Stat. § 8-1-106(3).

Search committees. Open. A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. A list of all finalists being considered for a position shall be made public by the search committee

no less than fourteen days prior to the first interview conducted for the position. Records submitted by or on behalf of a finalist for such position shall be subject to the provisions of Colo. Rev. Stat. § 24-72-204(3)(a)(XI). Colo. Rev. Stat. § 24-6-402(3.5).

C. Court mandated opening, closing.

Where a public agency or board considers matters declared confidential by statute, the Open Meetings Act does not preclude consideration of such matters in executive sessions closed to the public. *Gillies v. Schmidt*, 38 Colo. App. 233, 556 P.2d 82 (1976); see Colo. Rev. Stat. §§ 24-6-402(3)(a)(III) and 24-6-402(4)(c) (executive session allowed to consider matters required to be kept confidential by federal or state law). A person seeking access to the records may apply to the court which shall conduct an in camera review of the records of the executive session. If the court determines that the action taken in executive session contravened the law, it shall order those portions of the recorded executive session be open to the public. Colo. Rev. Stat. § 24-72-204(5.5)(II)(C).

Thus, where an Inter-Agency Committee on Child Abuse held closed meetings to consider child abuse reports and records which are declared confidential by statute, the Open Meetings Law did not require public meetings where such confidential reports were considered. *Gillies v. Schmidt*, *supra*.

III. MEETING CATEGORIES — OPEN OR CLOSED.

A. Adjudications by administrative bodies.

1. Deliberations closed, but not fact-finding.

Fact-Finding and Evidentiary Sessions. Although evidentiary sessions must be open, deliberation upon the evidence may be conducted at a closed executive session. See *Einarsen v. City of Wheat Ridge*, 43 Colo. App. 232, 604 P.2d 691 (1979); *Robertson v. Board of Educ.*, 39 Colo. App. 462, 570 P.2d 19 (1977).

Final action, however, must be taken at a reconvened hearing. *Hudspeth v. Board of Cty. Comm'rs*, 667 P.2d 775 (Colo. App. 1983); *Einarsen v. City of Wheat Ridge*, *supra*.

2. Only certain adjudications closed, i.e. under certain statutes.

Certain adjudications are closed under statute.

Disciplinary proceedings of the following professional review boards are declared confidential and/or exempt from the Open Meetings Law: State Board of Dental Examiners, Colo. Rev. Stat. § 12-35-118(7); State Board of Medical Examiners, Colo. Rev. Stat. § 12-36-118(10); State Board of Nursing, Colo. Rev. Stat. § 12-38-120(10); State Grievance Board relating to mental health professionals, Colo. Rev. Stat. § 12-43-705(4).

Although these statutory sections grant professional review boards the discretion to close hearings to the public, in practice, complaints and hearings in disciplinary proceedings against licensed professionals are made public. The confidentiality provisions do not confer any right upon a person who is the subject of a disciplinary proceeding to require that hearings be closed to the public. *Coe v. United States District Court*, 676 F.2d 411 (10th Cir. 1982).

B. Budget sessions.

Open, unless a two-thirds vote is taken to go into executive session to consider the purchase of property for public purposes. Colo. Rev. Stat. §§ 24-6-402(3)(a)(I) (state) and 24-6-402(4)(a) (local).

C. Business and industry relations.

Open.

D. Federal programs.

Open unless matters considered are required to be kept confidential by federal law.

E. Financial data of public bodies.

Open.

F. Financial data, trade secrets or proprietary data of private corporations and individuals.

Open, unless disclosure of a trade secret is involved.

G. Gifts, trusts and honorary degrees.

Open, unless the donor requests an executive session. Colo. Rev. Stat. § 24-6-402(3)(a)(I).

H. Grand jury testimony by public employees.

Closed. Colo. R. Crim. P. 6.2; see Colo. Rev. Stat. § 16-5-204.

I. Licensing examinations.

Open. Local licensing authorities, e.g., liquor or special permit licensing boards, are political subdivisions of the state and thus within the definition of "local public body" of a "political subdivision of the state" subject to the Open Meetings Law. The 1991 amendments change the prior law in this regard. See *Lasteika Corp. v. Buckingham*, 759 P.2d 925 (Colo. App. 1987).

Liquor Licenses. In addition, public hearings on applications for beer and liquor licenses are required to be held by the local licensing authority, after public notice of the hearing and application has been posted. Colo. Rev. Stat. § 12-47-136(1) (liquor licenses); Colo. Rev. Stat. § 12-46-117(3) (beer licenses).

J. Litigation; pending litigation or other attorney-client privileges.

Conferences between a state public body and its attorney to consider legal disputes involving the public body, if the disputes are the subject of pending or imminent court action, are closed, Colo. Rev. Stat. § 24-6-402(3)(a)(II), as are conferences between a local public body and its attorney for the purpose of receiving specific legal advice on specific legal questions. Colo. Rev. Stat. § 24-6-402(4)(b). Cf. *Denver Post Corp. v. University of Colorado*, 739 P.2d 874 (Colo. App. 1987) (attorney-client privileged communications exempt from Open Records Act). The mere presence or participation of an attorney at an executive session does not satisfy the requirements.

K. Negotiations and collective bargaining of public employees.

1. Any sessions regarding collective bargaining.

Sessions regarding collective bargaining strategy, positions, and reports may be held in executive session pursuant to Colo. Rev. Stat. § 24-6-402(3)(a)(V).

2. Only those between the public employees and the public body.

Local governments, including school boards, may meet in executive session to determine positions relative to issues that may be subject to negotiation, to receive reports on negotiations progress and status, to develop strategy, and to instruct negotiators. Colo. Rev. Stat. § 24-6-402(4)(e).

L. Parole board meetings, or meetings involving parole board decisions.

Open, unless the state board of parole by two-thirds vote of membership present at the meeting elects to proceed in executive session

to consider matters connected with any parole proceedings under its jurisdiction. Colo. Rev. Stat. § 24-6-402(3)(c). However, no final parole decisions may be made by the board while in executive session.

M. Patients; discussions on individual patients.

Closed. Because matters pertaining to patients are required to be kept confidential by statute, these matters may be considered in closed executive session.

N. Personnel matters.

1. Interviews for public employment.

Meetings of a state public body to consider appointment or employment of public officials or employees or the dismissal, discipline, promotion, demotion, compensation of, or charges or complaints against public officials or employees are open unless the public applicant, official, or employee requests an executive session. Colo. Rev. Stat. § 24-6-402(3)(b). However, meetings of local public bodies to consider similar matters with respect to public employees (not public officials) are closed unless the subject of the executive session requests that it be conducted as an open meeting. Colo. Rev. Stat. § 24-6-402(4)(f).

2. Disciplinary matters, performance or ethics of public employees.

Meetings of a state public body to consider appointment or employment of public officials or employees or the dismissal, discipline, promotion, demotion, compensation of, or charges or complaints against public officials or employees are open unless the public applicant, official, or employee requests an executive session. Colo. Rev. Stat. § 24-6-402(3)(b). However, meetings of local public bodies to consider similar matters with respect to public employees (not public officials) are closed unless the subject of the executive session requests that it be conducted as an open meeting. Colo. Rev. Stat. § 24-6-402(4)(f).

3. Dismissal; considering dismissal of public employees.

Meetings of a state public body to consider appointment or employment of public officials or employees or the dismissal, discipline, promotion, demotion, compensation of, or charges or complaints against public officials or employees are open unless the public applicant, official, or employee requests an executive session. Colo. Rev. Stat. § 24-6-402(3)(b). However, meetings of local public bodies to consider similar matters with respect to public employees (not public officials) are closed unless the subject of the executive session requests that it be conducted as an open meeting. Colo. Rev. Stat. § 24-6-402(4)(f).

O. Real estate negotiations.

Closed. A public body may by two-thirds vote go into executive session to consider purchase of property for public use or sale of public property, if disclosure of information would give an unfair advantage to any person whose interest is adverse to the public interest. Colo. Rev. Stat. §§ 24-6-402(3)(a)(I) (state) and 24-6-402(4)(a) (local).

P. Security, national and/or state, of buildings, personnel or other.

Closed. A public body may by two-thirds vote go into executive session to discuss specialized details of security arrangements where disclosure of discussions might reveal information that could be used to violate the law or avoid prosecution. Colo. Rev. Stat. §§ 24-6-402(3)(a)(IV) (state) and 24-6-402(4)(d) (local).

Q. Students; discussions on individual students.

Colleges and Universities. Closed. Governing boards of institutions of higher education may vote to hold executive sessions to review actions, investigations, charges, complaints, or reports concerning individual students, where public disclosure could adversely affect the persons involved, unless the student has specifically consented to or requested disclosure. Colo. Rev. Stat. § 24-6-402(3)(b).

Elementary and High Schools. Closed. Colo. Rev. Stat. § 24-6-402(4)(h) authorizes executive sessions to consider actions, investigations, reports, charges, and complaints against any elementary or high school student. *See also* Colo. Rev. Stat. § 22-32-108(5) (boards of education may meet in executive session).

IV. PROCEDURE FOR ASSERTING RIGHT OF ACCESS

A. When to challenge.

1. Does the law provide expedited procedure for reviewing request to attend upcoming meetings?

The Open Meetings Law does not provide any expedited procedure for agency review of requests to attend upcoming meetings. However, persons who wish to receive notice of upcoming meetings may request the secretary or clerk of the public body to place their names on a “sunshine list” pursuant to Colo. Rev. Stat. § 24-6-402(7).

2. When barred from attending.

In general, a person who seeks access to a meeting should attend and request admittance. Unruly or indecorous conduct of the person seeking admittance is not advisable, since this will only give the public body legitimate grounds for exclusion.

3. To set aside decision.

There is no time limit or statute of limitations under the Open Meetings Law.

4. For ruling on future meetings.

Not Applicable.

5. Other.

None.

B. How to start.

The right of access to public meetings is enforced through court injunctions.

1. Where to ask for ruling.

a. Administrative forum.

Not Applicable.

b. State attorney general.

Not Applicable.

c. Court.

Colo. Rev. Stat. § 24-6-402(9) provides that upon the application of “any citizen” of the State of Colorado, an injunction may be issued by any court of record to enforce the purposes of the Sunshine Law. *See Bagby v. School District No. 1*, 186 Colo. 428, 528 P.2d 1299 (1974).

2. Applicable time limits.

Not Applicable.

3. Contents of request for ruling.

Not Applicable.

4. How long should you wait for a response?

Not Applicable.

5. Are subsequent or concurrent measures (formal or informal) available?

Not Applicable.

C. Court review of administrative decision.

Enforcement by Injunction. Colo. Rev. Stat. § 24-6-402(9) provides that upon the application of “any citizen” of the State of Colorado, an

injunction may be issued by any court of record to enforce the purposes of the Sunshine Law. See *Bagby v. School District No. 1*, 186 Colo. 428, 528 P.2d 1299 (1974).

A person who desires to require a public body to hold open or public meetings or hearings should apply to the district court of the district where the public body meets for an injunction pursuant to Colo. Rev. Stat. § 24-6-402(9) and Colo. R. Civ. P. 65. See, e.g., *Benson v. McCormick*, 195 Colo. 381, 578 P.2d 651 (1978); *Associated Students v. Regents of University of Colorado*, 189 Colo. 482, 543 P.2d 59 (1975). The injunction should be sought to order the public body to cease and desist holding further closed meetings or executive sessions to the exclusion of the public.

Procedure for Injunctive Relief:

Temporary Restraining Order. A person denied access to a meeting may be granted a temporary restraining order (TRO) without written or oral notice to the adverse party only if: (1) it clearly appears from specific facts shown by affidavit, verified complaints, or testimony that immediate and irreparable injury will result to the applicant before the adverse party can be heard; and (2) the applicant's attorney certifies the efforts made to give notice and the reasons supporting the claim that notice is not required. Colo. R. Civ. P. 65(b).

TROs may not exceed 10 days, and a motion for preliminary injunction shall be set for hearing at the earliest possible time and take precedence over all matters except similar older matters.

In general, a TRO should only be sought to restrain a public body from closing a single meeting.

However, a court has no authority to issue a TRO or order enjoining an administrative board or agency from holding a scheduled hearing altogether, *Banking Board v. District Court*, 177 Colo. 77, 492 P.2d 837 (1972).

Preliminary Injunction.

Upon notice to the adverse party, a person may seek a preliminary injunction restraining a public body from meeting in closed session. Colo. R. Civ. P. 65(a)(1).

The court may order a hearing on an application for a preliminary injunction consolidated with the trial on the merits. Colo. R. Civ. P. 65(a)(2).

Mandatory Injunction. If merely restraining a public body from meeting in secret will not grant effective relief, the court may make the injunction mandatory and order all subsequent meetings to be open to the public. See Colo. R. Civ. P. 65(f).

Bond for Costs. Any party seeking a TRO or injunction may be required to give security pursuant to Colo. R. Civ. P. 65(c), which may be in the form of a cash bond, surety bond, property bond, or letter of credit. See Colo. R. Civ. P. 121 § 1-23.

1. Who may sue?

Colo. Rev. Stat. § 24-6-402(9) provides that an injunction may be sought upon application by "any citizen" of the state. It is unclear whether "citizen" may refer to a corporation in addition to a natural person.

2. Will the court give priority to the pleading?

A motion for preliminary injunction shall be set for hearing at the earliest possible time and take precedence over all matters except similar older matters.

3. Pro se possibility, advisability.

Although no rule restricts an applicant from filing an action *pro se* to enjoin an agency from holding closed meetings, any non-lawyer who acts as a lawyer on his or her own behalf is held to the same rules and knowledge of the law as an attorney. See *Viles v. Scofield*, 128 Colo. 185,

261 P.2d 148 (1953). Because the public body will most likely be represented by the Attorney General or agency counsel, a *pro se* litigant would be at a distinct disadvantage.

Corporations. Under Colorado law, a corporation cannot appear or proceed *pro se*. *Bennie v. Triangle Ranch Co.*, 73 Colo. 586, 216 P. 718 (1923); *Woodford Mfg. Co. v. A.O.Q. Inc.*, 772 P.2d 652 (Colo. App. 1989); *BPQ Industries Inc. v. State Bd. of Equalization*, 694 P.2d 337 (Colo. App. 1984). A pleading which purports to be filed by a corporation *pro se* is in violation of law and null and void for all purposes. See *Bennie v. Triangle Ranch Co.*, *supra*; *Woodford Mfg. Co. v. A.O.Q. Inc.*, 772 P.2d at 654.

The sole exception to this general rule is allowed under Colo. Rev. Stat. § 13-1-127(2), which allows a corporation to appear through an officer or director where the amount in controversy does not exceed \$10,000.00, the corporation is closely held, and there has been a written resolution signed by at least 50 percent of the shareholders. See Colo. Rev. Stat. §§ 13-1-127(2)(a) and (b).

4. What issues will the court address?

a. Open the meeting.

Injunctive relief is authorized by Colo. Rev. Stat. § 24-6-402(9) to order that meetings be open, and that all future meetings be open.

b. Invalidate the decision.

Colo. Rev. Stat. § 24-6-402(8) provides that no resolution, rule, regulation, ordinance, or formal action of a state agency, board, committee, commission, or other body shall be valid unless taken or made at a meeting which is open to the public and of which full and timely public notice has been given. See *Lanes v. State Auditor's Office*, 797 P.2d 764 (Colo. App. 1990). However, unintentional failure to provide advance notice of meetings to persons on a "sunshine list" will not nullify actions taken at an otherwise properly published meeting. Colo. Rev. Stat. § 24-6-402(7).

A declaration that an agency rule or action is invalid should be sought as a declaratory judgment under Colo. R. Civ. P. 57. The agency, board or commission should be named as an adverse party. See, e.g., *Littleton Educ. Ass'n v. Arapahoe Cty. School Dist. No. 6*, 191 Colo. 411, 553 P.2d 793 (1976) (collective bargaining agreement reached in secret in violation of public meetings law declared void).

However, only the persons affected by the rule or action made or taken without compliance with the Open Meetings law have standing to seek a declaration that the rule or action is invalid. See Colo. R. Civ. P. 57(b).

c. Order future meetings open.

Not specified.

5. Pleading format.

A complaint for injunctive relief should be verified or accompanied by an affidavit of the party seeking relief. It should also state that relief is being sought pursuant to Colo. Rev. Stat. § 24-6-402(9), specify the relief requested, and state that no plain or adequate remedy exists at law.

6. Time limit for filing suit.

As soon as possible. A party who waits too long before seeking an injunction may be subject to the equitable doctrine of laches, particularly if damages or losses are permitted to continue.

7. What court.

Only the district court of the district where the agency or board is located, or where the meetings are held, has jurisdiction and venue to grant relief. Because most state agencies are located and meet in Denver, the proper court would be Denver District Court.

8. Judicial remedies available.

In addition to injunctive relief, a court may invalidate actions taken during an illegally closed meeting.

9. Availability of court costs and attorneys’ fees.

Court costs may be awarded to the prevailing party at the court’s discretion pursuant to Colo. Rev. Stat. § 13-16-114.

An award of attorney fees in an action to enforce the Open Meetings Law may be made to the citizen bringing suit if the court finds a violation of law. § 24-6-402(9); *see also Zubeck v. El Paso Cty. Retirement Plan*, 961 P.2d 597 (Colo. App. 1998). However, if the court does not find a violation of the section, it shall award costs and attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless. Colo. Rev. Stat. § 24-6-402(9). Attorney fees may be awarded to the government entity if an application seeking access to a record of an executive session is found vexatious, groundless, or frivolous. Colo. Rev. Stat. § 27-72-204(3)(a)(XI)(A)(5.5)(a).

10. Fines.

Unlike the Open Records Act, the Open Meetings Law does not provide for fines or penalties for its violation.

11. Other penalties.

Any actions in violation of the statute are declared invalid. Colo. Rev. Stat. § 24-6-402(8). In all such actions, the prevailing plaintiff recovers costs and reasonable attorney fees. If there is no violation, and if the court finds that the action was frivolous, vexatious, or groundless, then the court shall award costs and reasonable attorney fees to the other party. Colo. Rev. Stat. § 24-6-402(9).

D. Appealing initial court decisions.

1. Appeal routes.

There are two routes of appealing a district court decision which upholds denial of access to meetings of a governmental body.

a. Appeal to the Court of Appeals pursuant to C.A.R. 1. Pursuant to C.A.R. 1(a)(3), an appeal may be taken from an order denying a preliminary injunction. This is the usual route. The major drawback is a one-to-two year wait for a decision from the Court of Appeals.

b. Petition for writ to the Supreme Court pursuant to C.A.R. 21. In extraordinary cases, such as where immediate harm is threatened in the absence of an open meeting, or where the issue presented is likely to arise again, the applicant may petition to Supreme Court directly under Appellate Rule 21 for a writ of mandamus directing the district court to order that the further holding or closed meetings be enjoined.

A Rule 21 petition is *not* a substitute for an appeal to the Court of Appeals.

2. Time limits for filing appeals.

An appeal to the Court of Appeals must be filed within 45 days of the date of the final order denying the injunction in the district court. C.A.R. 4(a).

A petition to the Supreme Court under C.A.R. 21 should be filed at the earliest practicable time. There is no time limitation on the petition, but it must be “within a reasonable time” of the district court’s order.

3. Contact of interested amici.

a. Leave of court required. Briefs by *amicus curiae* (friends of the court) may be file only with leave of the appellate court. C.A.R. 29. The standard procedure is for the *amicus* to tender the proposed brief along with the motion for leave to appear as *amicus curiae*.

b. Interest of *Amicus*. A motion for leave must identify the interest of the *amicus* and state why an *amicus* brief is desirable.

c. Briefs of *amicus curiae* must be filed within the time for filing briefs allowed the party with the position the *amicus* will support, unless the court grants leave for later filing. C.A.R. 29.

Amicus curiae are generally restricted to the issues raised by the appealing parties, and any additional questions presented in a brief filed by an *amicus curiae* will not be considered by the appellate court. *United States Nat’l Bank v. People ex rel Dunbar*, 29 Colo. App. 93, 480 P.2d 849 (1970).

d. Oral Argument. “A motion of an *amicus curiae* to participate in the oral argument will be granted only for extraordinary reasons.” C.A.R. 29.

e. The Reporters Committee for Freedom of the Press often files *amicus* briefs in cases involving significant media law issues before a state’s highest court.

V. ASSERTING A RIGHT TO COMMENT.

The meetings act does not address this issue.

A. Is there a right to participate in public meetings?

No provision in the Open Meetings Law addresses this issue. Unruly or indecorous conduct of the person seeking admittance is not advisable, since this will only give the public body legitimate grounds for exclusion.

B. Must a commenter give notice of intentions to comment?

No provision in the Open Meetings Law addresses this issue.

C. Can a public body limit comment?

No provision in the Open Meetings Law addresses this issue.

D. How can a participant assert rights to comment?

No provision in the Open Meetings Law addresses this issue. Unruly or indecorous conduct of the person seeking admittance is not advisable, since this will only give the public body legitimate grounds for exclusion.

E. Are there sanctions for unapproved comment?

No provision in the Open Meetings Law addresses this issue. Unruly or indecorous conduct of the person seeking admittance is not advisable, since this will only give the public body legitimate grounds for exclusion.

Statute

Open Records

Colorado Revised Statutes

Title 24. Government—State

Public (Open) Records

Article 72. Public Records (Refs & Annos)

Part 2. Inspection, Copying, or Photographing (Refs & Annos)

§ 24-72-201. Legislative declaration

It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

§ 24-72-202. Definitions

As used in this part 2, unless the context otherwise requires:

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

- (a) Communications sent via U.S. mail;
- (b) Communications sent via private courier;
- (c) Communications sent via electronic mail.

(1.1) “Custodian” means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(1.2) “Electronic mail” means an electronic message that is transmitted between two or more computers or electronic terminals, whether or not the message is converted to hard copy format after receipt and whether or not the message is viewed upon transmission or stored for later retrieval. “Electronic mail” includes electronic messages that are transmitted through a local, regional, or global computer network.

(1.3) “Executive position” means any nonelective employment position with a state agency, institution, or political subdivision, except employment positions in the state personnel system or employment positions in a classified system or civil service system of an institution or political subdivision.

(1.5) “Institution” includes but is not limited to every state institution of higher education, whether established by the state constitution or by law, and every governing board thereof. In particular, the term includes the university of Colorado, the regents thereof, and any other state institution of higher education or governing board referred to by the provisions of section 5 of article VIII of the state constitution.

(1.6) “Institutionally related foundation” means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the benefit of an institution. An institutionally related foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.7) “Institutionally related health care foundation” means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for medical or health care related programs or services at an institution. An institutionally related health care foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.8) “Institutionally related real estate foundation” means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the acquisition, development, financing, leasing, or disposition of real property for the benefit of an institution. An institutionally related real estate foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

(1.9) “Local government-financed entity” shall have the same meaning as provided in section 29-1-901(1), C.R.S.

(2) “Official custodian” means and includes any officer or employee of the state, of any agency, institution, or political subdivision of the state, of any institutionally related foundation, of any institutionally related health care foundation, of any institutionally related real estate foundation, or of any local government-financed entity, who is responsible for the maintenance, care, and keeping of public records, regardless of whether the records are in his or her actual personal custody and control.

(3) “Person” means and includes any natural person, including any public employee and any elected or appointed public official acting in an official or personal capacity, and any corporation, limited liability company, partnership, firm, or association.

(4) “Person in interest” means and includes the person who is the subject of a record or any representative designated by said person; except that, if the subject of the record is under legal disability, “person in interest” means and includes his parent or duly appointed legal representative.

(4.5) “Personnel files” means and includes home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship, and other documents specifically exempt from disclosure under this part 2 or any other provision of law. “Personnel files” does not include applications of past or current employees, employment agreements, any amount paid or benefit provided incident to termination of employment, performance ratings, final sabbatical reports required under section 23-5-123, C.R.S., or any compensation, including expense allowances and benefits, paid to employees by the state, its agencies, institutions, or political subdivisions.

(5) “Political subdivision” means and includes every county, city and county, city, town, school district, special district, public highway authority, regional transportation authority, and housing authority within this state.

(6)

(a)

(I) “Public records” means and includes all writings made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(II) “Public records” includes the correspondence of elected officials, except to the extent that such correspondence is:

(A) Work product;

(B) 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;

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or a communication from the elected official in response to such a communication from a constituent; or

(D) Subject to nondisclosure as required in section 24-72-204(1).

(III) The acceptance by a public official or employee of compensation for services rendered, or the use by such official or employee of publicly owned equipment or supplies, shall not be construed to convert a writing that is not otherwise a “public record” into a “public record”.

(IV) “Public records” means, except as provided in subparagraphs (VIII) and (IX) of paragraph (b) of this subsection (6), for an institutionally related foundation, an institutionally related health care foundation, or an institutionally related real estate foundation, all writings relating to the requests for disbursement or expenditure of funds, the approval or denial of requests for disbursement or expenditure of funds, or the disbursement or expenditure of funds, by the institutionally related foundation, the institutionally related health care foundation, or the institutionally related real estate foundation, to, on behalf of, or for the benefit of the institution or any employee of the institution. For purposes of this subparagraph (IV), “expenditure” shall be defined in accordance with generally accepted accounting principles.

(b) “Public records” does not include:

(I) Criminal justice records that are subject to the provisions of part 3 of this article;

(II) Work product prepared for elected officials. However, elected officials may release, or authorize the release of, all or any part of work product prepared for them.

(III) Data, information, and records relating to collegeinvest programs pursuant to sections 23-3.1-225 and 23-3.1-307.5, C.R.S., as follows:

(A) Data, information, and records relating to individual purchasers and qualified beneficiaries of advance payment contracts under the prepaid expense trust fund and the prepaid expense program, including any records that reveal personally identifiable information about such individuals;

(B) Data, information, and records relating to designated beneficiaries of and individual contributors to an individual trust account or savings account under the college savings program, including any records that reveal

personally identifiable information about such individuals;

(C) Trade secrets and proprietary information regarding software, including programs and source codes, utilized or owned by collegeinvest; and

(D) Marketing plans and the results of market surveys conducted by collegeinvest.

(IV) Materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of section 24-4.1-107.5.

(V) Notification of a possible nonaccidental fire loss or fraudulent insurance act given to an authorized agency pursuant to section 10-4-1003(1), C.R.S.

(VI) For purposes of an institutionally related foundation, any documents, agreements, or other records or information other than the writings relating to the financial expenditure records specified in subparagraph (IV) of paragraph (a) of this subsection (6).

(VII) For purposes of an institution or an institutionally related foundation:

(A) The identity of, or records or information identifying or leading to the identification of, any donor or prospective donor to an institution or an institutionally related foundation;

(B) The amount of any actual or prospective gift or donation from a donor or prospective donor to an institutionally related foundation;

(C) Proprietary fundraising information of an institution or an institutionally related foundation; or

(D) Agreements or other documents relating to gifts or donations or prospective gifts or donations to an institution or an institutionally related foundation from a donor or prospective donor.

(VIII) For purposes of an institutionally related health care foundation, expenditures by an institutionally related health care foundation to an institution for medical or health care related programs or services;

(IX) For purposes of an institutionally related real estate foundation, prior to the completion of any transaction for the acquisition, development, financing, leasing, or disposition of real property, all writings relating to such transaction;

(X) The information security plan of a public agency developed pursuant to section 24-37.5-404 or of the department of higher education or an institution of higher education developed pursuant to section 24-37.5-404.5;

(XI) Information security incident reports prepared pursuant to section 24-37.5-404(2)(e) or 24-37.5-404.5(2)(e);

(XII) Information security audit and assessment reports prepared pursuant to section 24-37.5-403(2)(d) or 24-37.5-404.5(2)(d); or

(XIII) State and local applications and licenses for an optional premises cultivation operation as described in section 12-43.3-403, C.R.S., and the location of the optional premises cultivation operation.

(6.5)

(a) “Work product” means and includes all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority. Such materials include, but are not limited to:

(I) Notes and memoranda that relate to or serve as background information for such decisions;

(II) Preliminary drafts and discussion copies of documents that express a decision by an elected official.

(b) “Work product” also includes:

(I) All documents relating to the drafting of bills or amendments, pursuant to section 2-3-304(1) or 2-3-505(2)(b), C.R.S., but it does not include the final version of documents prepared or assembled pursuant to section 2-3-505(2)(c), C.R.S.;

(II) All documents prepared or assembled by a member of the general assembly relating to the drafting of bills or amendments;

(III) All documents prepared by or submitted to any legislative staff in connection with assisting a member of the general assembly in responding to the correspondence from a constituent when such correspondence is not a public record of an elected official as provided for in subsection (6) of this section;

(IV) All documents and all research projects conducted by staff of legislative council pursuant to section 2-3-304(1), C.R.S., if the research is requested by a member of the general assembly and identified by the member

as being in connection with pending or proposed legislation or amendments thereto. However, the final product of any such research project shall become a public record unless the member specifically requests that it remain work product. In addition, if such a research project is requested by a member of the general assembly and the project is not identified as being in connection with pending or proposed legislation or amendments thereto, the final product shall become a public record.

(c) “Work product” does not include:

(I) Any final version of a document that expresses a final decision by an elected official;

(II) Any final version of a fiscal or performance audit report or similar document the purpose of which is to investigate, track, or account for the operation or management of a public entity or the expenditure of public money, together with the final version of any supporting material attached to such final report or document;

(III) Any final accounting or final financial record or report;

(IV) Any materials that would otherwise constitute work product if such materials are produced and distributed to the members of a public body for their use or consideration in a public meeting or cited and identified in the text of the final version of a document that expresses a decision by an elected official.

(d)

(I) In addition, “work product” does not include any final version of a document prepared or assembled for an elected official that consists solely of factual information compiled from public sources. The final version of such a document shall be a public record. These documents include, but are not limited to:

(A) Comparisons of existing laws, ordinances, rules, or regulations with the provisions of any bill, amendment, or proposed law, ordinance, rule, or regulation; comparisons of any bills, amendments, or proposed laws, ordinances, rules, or regulations with other bills, amendments, or proposed laws, ordinances, rules, or regulations; comparisons of different versions of bills, amendments, or proposed laws, ordinances, rules, or regulations; and comparisons of the laws, ordinances, rules, or regulations of the jurisdiction of the elected official with the laws, ordinances, rules, or regulations of other jurisdictions;

(B) Compilations of existing public information, statistics, or data;

(C) Compilations or explanations of general areas or bodies of law, ordinances, rules, or regulations, legislative history, or legislative policy.

(II) This paragraph (d) shall not apply to documents prepared or assembled for members of the general assembly pursuant to paragraph (b) of this subsection (6.5).

(7) “Writings” means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. “Writings” includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.

(8) For purposes of subsections (6) and (6.5) of this section and sections 24-72-203(2)(b) and 24-6-402(2)(d)(III), the members of the Colorado reapportionment commission shall be considered elected officials.

§ 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.

(b) Where public records are kept only in miniaturized or digital form, whether on magnetic or optical disks, tapes, microfilm, microfiche, or otherwise, the official custodian shall:

(I) Adopt a policy regarding the retention, archiving, and destruction of such records; and

(II) Take such measures as are necessary to assist the public in locating any specific public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via on-line bulletin boards or other means.

(2)

(a) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification, the person shall state in detail to the best of the person's knowledge and belief the reason for the absence of the records from the person's custody or control, the location of the records, and what person then has custody or control of the records.

(b) If an official custodian has custody of correspondence sent by or received by an elected official, the official custodian shall consult with the elected official prior to allowing inspection of the correspondence for the purpose of determining whether the correspondence is a public record.

(3)

(a) If the public records requested are in the custody and control of the person to whom application is made but are in active use, in storage, or otherwise not readily available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour at which time the records will be available for inspection.

(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:

(I) A broadly stated request is made that encompasses all or substantially all of a large category of records and the request is without sufficient specificity to allow the custodian reasonably to prepare or gather the records within the three-day period; or

(II) A broadly stated request is made that encompasses all or substantially all of a large category of records and the agency is unable to prepare or gather the records within the three-day period because:

(A) The agency needs to devote all or substantially all of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or

(B) In the case of the general assembly or its staff or service agencies, the general assembly is in session; or

(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.

(c) In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.

(4) Nothing in this article shall preclude the state or any of its agencies, institutions, or political subdivisions from obtaining and enforcing trademark or copyright protection for any public record, and the state and its agencies, institutions, and political subdivisions are hereby specifically authorized to obtain and enforce such protection in accordance with the applicable federal law; except that this authorization shall not restrict public access to or fair use of copyrighted materials and shall not apply to writings which are merely lists or other compilations.

§ 24-72-204. Allowance or denial of inspection—grounds—procedure—appeal—definitions

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(a) Such inspection would be contrary to any state statute.

(b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.

(c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(d) Such inspection would be contrary to the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices.

(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:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

(II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation;

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property, if a condemning authority determines that it intends to acquire said property as provided in section 38-1-121, C.R.S., relating to eminent domain proceedings, but, in any case, the contents of such appraisal shall be available to the owner under this section no later than one year after the condemning authority receives said appraisal; and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner of such property who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which the owner has obtained relative to the proposed acquisition of the property.

(V) Any market analysis data generated by the department of transportation's bid analysis and management system for the confidential use of the department of transportation in awarding contracts for construction or for the purchase of goods or services and any records, documents, and automated systems prepared for the bid analysis and management system;

(VI) Records and information relating to the identification of persons filed with, maintained by, or prepared by the department of revenue pursuant to section 42-2-121, C.R.S.;

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

(VIII)

(A) Specialized details of security arrangements or investigations. Nothing in this subparagraph (VIII) shall prohibit the custodian from transferring records containing specialized details of security arrangements or investigations to the office of preparedness, security, and fire safety in the department of public safety, the governing body of any city, county, city and county, or other political subdivision of the state, or any federal, state, or local law enforcement agency; except that the custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of such entity unless such information is already publicly available.

(B) Records of the expenditure of public moneys on security arrangements or investigations, including contracts for security arrangements and records related to the procurement of, budgeting for, or expenditures on security systems, shall be open for inspection, except to the extent that they contain specialized details of security arrangements or investigations. A custodian may deny the right of inspection of only the portions of a record described in this sub-subparagraph (B) that contain specialized details of security arrangements or investigations and shall allow inspection of the remaining portions of the record.

(C) If an official custodian has custody of a public record provided by another public entity, including the state or a political subdivision, that contains specialized details of security arrangements or investigations, the official custodian shall refer a request to inspect that public record to the official custodian of the public entity that provided the record and shall disclose to the person making the request the names of the public entity and its official custodian to which the request is referred.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be al-

lowed to all such news media.

(c) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by a crime victim compensation board or a district attorney that are confidential pursuant to the provisions of section 24-4.1-107.5.

(d) Notwithstanding any provision to the contrary in subparagraph (I) of paragraph (a) of this subsection (2), the custodian shall deny the right of inspection of any materials received, made, or kept by a witness protection board, the department of public safety, or a prosecuting attorney that are confidential pursuant to section 24-33.5-106.5.

(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):

(I) Medical, mental health, sociological, and scholastic achievement data on individual persons, other than scholastic achievement data submitted as part of finalists' records as set forth in subparagraph (XI) of this paragraph (a) and exclusive of coroners' autopsy reports and group scholastic achievement data from which individuals cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II)

(A) Personnel files; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise such person's work.

(B) The provisions of this subparagraph (II) shall not be interpreted to prevent the public inspection or copying of any employment contract or any information regarding amounts paid or benefits provided under any settlement agreement pursuant to the provisions of article 19 of this title.

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions;

(VI) Addresses and telephone numbers of students in any public elementary or secondary school;

(VII) Library records disclosing the identity of a user as prohibited by section 24-90-119;

(VIII) Repealed by Laws 1996, S.B.96-208, § 16, eff. June 1, 1996.

(IX) Names, addresses, telephone numbers, and personal financial information of past or present users of public utilities, public facilities, or recreational or cultural services that are owned and operated by the state, its agencies, institutions, or political subdivisions; except that nothing in this subparagraph (IX) shall prohibit the custodian of records from transmitting such data to any agent of an investigative branch of a federal agency or any criminal justice agency as defined in section 24-72-302(3) that makes a request to the custodian to inspect such records and who asserts that the request for information is reasonably related to an investigation within the scope of the agency's authority and duties. Nothing in this subparagraph (IX) shall be construed to prohibit the publication of such information in an aggregate or statistical form so classified as to prevent the identification, location, or habits of individuals.

(X)

(A) Any records of sexual harassment complaints and investigations, 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.

(B) A person in interest under this subparagraph (X) includes the person making a complaint and the person whose conduct is the subject of such a complaint.

(C) A person in interest may make a record maintained pursuant to this subparagraph (X) available for public inspection when such record supports the contention that a publicly reported, written, printed, or spoken allegation of sexual harassment against such person is false.

(XI)

(A) Records submitted by or on behalf of an applicant or candidate for an executive position as defined in section 24-72-202(1.3) who is not a finalist. For purposes of this subparagraph (XI), "finalist" means an applicant or candidate for an executive position as the chief executive officer of a state agency, institution, or political subdivision or agency thereof who is a member of the final group of applicants or candidates made public pursuant to section 24-6-402(3.5), and if only three or fewer applicants or candidates for the chief executive officer position possess the minimum qualifications for the position, said applicants or candidates shall be considered finalists.

(B) The provisions of this subparagraph (XI) shall not be construed to prohibit the public inspection or copying of any records submitted by or on behalf of a finalist; except that letters of reference or medical, psychological, and sociological data concerning finalists shall not be made available for public inspection or copying.

(C) The provisions of this subparagraph (XI) shall apply to employment selection processes for all executive positions, including, but not limited to, selection processes conducted or assisted by private persons or firms at the request of a state agency, institution, or political subdivision.

(XII) Any record indicating that a person has obtained distinguishing license plates or an identifying placard for persons with disabilities under section 42-3-204, C.R.S., or any other motor vehicle record that would reveal the presence of a disability;

(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.

(XIV) Veterinary medical data, information, and records on individual animals that are owned by private individuals or business entities, but are in the custody of a veterinary medical practice or hospital, including the veterinary teaching hospital at Colorado state university, that provides veterinary medical care and treatment to animals. A veterinary-patient-client privilege exists with respect to such data, information, and records only when a person in interest and a veterinarian enter into a mutual agreement to provide medical treatment for an individual animal and such person in interest maintains an ownership interest in such animal undergoing treatment. For purposes of this subparagraph (XIV), "person in interest" means the owner of an animal undergoing veterinary medical treatment or such owner's designated representative. Nothing in this subparagraph (XIV) shall prevent the state agricultural commission, the state agricultural commissioner, or the state board of veterinary medicine from exercising their investigatory and enforcement powers and duties granted pursuant to section 35-1-106(1)(h), article 50 of title 35, and section 12-64-105(9) (e), C.R.S., respectively. The veterinary-patient-client privilege described in this subparagraph (XIV), pursuant to section 12-64-121(5), C.R.S., may not be asserted for the purpose of excluding or refusing evidence or testimony in a prosecution for an act of animal cruelty under section 18-9-202, C.R.S., or for an act of animal fighting under section 18-9-204, C.R.S.

(XV) Nominations submitted to a state institution of higher education for the awarding of honorary degrees, medals, and other honorary awards by the institution, proposals submitted to a state institution of higher education for the naming of a building or a portion of a building for a person or persons,

and records submitted to a state institution of higher education in support of such nominations and proposals;

(XVI) Deleted by Laws 2003, Ch. 244, § 1, eff. May 2, 2003.

(XVII) Repealed by Laws 2005, Ch. 145, § 5, eff. July 1, 2005.

(XVIII)

(A) Military records filed with a county clerk and recorder's office concerning a member of the military's separation from military service, including the form DD214 issued to a member of the military upon separation from service, that are restricted from public access pursuant to 5 U.S.C. sec. 552(b) (6) and the requirements established by the national archives and records administration. Notwithstanding any other provision of this section, if the member of the military about whom the record concerns is deceased, the custodian shall allow the right of inspection to the member's parents, siblings, widow or widower, and children.

(B) On and after July 1, 2002, any county clerk and recorder that accepts for filing any military records described in sub-subparagraph (A) of this subparagraph (XVIII) shall maintain such military records in a manner that ensures that such records will not be available to the public for inspection except as provided in sub-subparagraph (A) of this subparagraph (XVIII).

(C) Nothing in this subparagraph (XVIII) shall prohibit a county clerk and recorder from taking appropriate protective actions with regard to records that were filed with or placed in storage by the county clerk and recorder prior to July 1, 2002, in accordance with any limitations determined necessary by the county clerk and recorder.

(D) The county clerk and recorder and any individual employed by the county clerk and recorder shall not be liable for any damages that may result from good faith compliance with the provisions of this part 2.

(XIX)

(A) Except as provided in sub-subparagraphs (B) and (C) of this subparagraph (XIX), applications for a marriage license submitted pursuant to section 14-2-106, C.R.S. A person in interest under this subparagraph (XIX) includes an immediate family member of either party to the marriage application. As used in this subparagraph (XIX), "immediate family member" means a person who is related by blood, marriage, or adoption. Nothing in this subparagraph (XIX) shall be construed to prohibit the inspection of marriage licenses or marriage certificates or to otherwise change the status of those licenses or certificates as public records.

(B) Any record of an application for a marriage license submitted pursuant to section 14-2-106, C.R.S., shall be made available for public inspection fifty years after the date that record was created.

(C) Upon application by any person to the district court in the district wherein a record of an application for a marriage license is found, the district court may, in its discretion and upon good cause shown, order the custodian to permit the inspection of such record.

(XX) All proprietary information submitted by a provider of broadband service in connection with the broadband inventory authorized by section 24-37.5-106(3);

(XXI) All records, including, but not limited to, analyses and maps, compiled or maintained pursuant to statute or rule by the department of natural resources or its divisions that are based on information related to private lands and identify or allow to be identified any specific Colorado landowners or lands; except that summary or aggregated data that do not specifically identify individual landowners or specific parcels of land shall not be subject to this subparagraph (XXI).

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, disciplinary information involving a student, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his or her parent or guardian shall not be required therefor. No state educa-

tional institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his or her parent or guardian shall not be required therefor.

(d) The provisions of this paragraph (d) shall apply to all public schools and school districts that receive funds under article 54 of title 22, C.R.S. Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names, addresses, and home telephone numbers of students in any secondary school shall be released to a recruiting officer for any branch of the United States armed forces who requests such information, subject to the following:

(I) Each local board of education shall adopt a policy to govern the release of the names, addresses, and home telephone numbers of secondary school students to military recruiting officers that provides that such information shall be released to recruiting officers unless a student submits a request, in writing, that such information not be released.

(II) The directory information requested by a recruiting officer shall be released by the local board of education within ninety days of the date of the request.

(III) The local board of education shall comply with any applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. section 1232g, and the federal regulations cited thereunder relating to the release of student information by educational institutions that receive federal funds.

(IV) Actual direct expenses incurred in furnishing this information shall be paid for by the requesting service and shall be reasonable and customary.

(V) The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(e)

(I) The provisions of this paragraph (e) shall apply to all public schools and school districts. Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (3), under policies adopted by each local board of education, consistent with applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and all federal regulations and applicable guidelines adopted thereto, information directly related to a student and maintained by a public school or by a person acting for the public school shall be available for release if the disclosure meets one or more of the following conditions:

(A) The disclosure is to other school officials, including teachers, working in the school at which the student is enrolled who have specific and legitimate educational interests in the information for use in furthering the student's academic achievement or maintaining a safe and orderly learning environment;

(B) The disclosure is to officials of a school at which the student seeks or intends to enroll or the disclosure is to officials at a school at which the student is currently enrolled or receiving services, after making a reasonable attempt to notify the student's parent or legal guardian or the student if he or she is at least eighteen years of age or attending an institution of postsecondary education, as prescribed by federal regulation;

(C) The disclosure is to state or local officials or authorities if the disclosure concerns the juvenile justice system and the system's ability to serve effectively, prior to adjudication, the student whose records are disclosed and if the officials and authorities to whom the records are disclosed certify in writing that the information shall not be disclosed to any other party, except as otherwise provided by law, without the prior written consent of the student's parent or legal guardian or of the student if he or she is at least eighteen years of age or is attending an institution of postsecondary education;

(D) The disclosure is to comply with a judicial order or a lawfully issued subpoena, if a reasonable effort is made to notify the student's parent or legal guardian or the student if he or she is at least eighteen years of age or is attending a postsecondary institution about the order or subpoena in advance of compliance, so that such parent, legal guardian, or student is provided an opportunity to seek protective action, unless the disclosure is in compliance with a federal grand jury subpoena or any other subpoena issued for a law enforcement purpose and the court or the issuing agency has ordered that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(E) The disclosure is in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or

other individuals, as specifically prescribed by federal regulation.

(II) Nothing in this paragraph (e) shall prevent public school administrators, teachers, or staff from disclosing information derived from personal knowledge or observation and not derived from a student's record maintained by a public school or a person acting for the public school.

(3.5)

(a) Effective January 1, 1992, any individual who meets the requirements of this subsection (3.5) may request that the address of such individual included in any public records concerning that individual which are required to be made, maintained, or kept pursuant to the following sections be kept confidential:

(I) Sections 1-2-227 and 1-2-301, C.R.S.;

(II) Deleted by Laws 2000, Ch. 278, § 1, eff. May 30, 2000.

(III) Section 24-6-202.

(b)

(I) An individual may make the request of confidentiality allowed by this subsection (3.5) if such individual has reason to believe that such individual, or any member of such individual's immediate family who resides in the same household as such individual, will be exposed to criminal harassment as prohibited in section 18-9-111, C.R.S., or otherwise be in danger of bodily harm, if such individual's address is not kept confidential in accordance with this subsection (3.5).

(II) A request of confidentiality with respect to records described in subparagraph (I) of paragraph (a) of this subsection (3.5) shall be made in person in the office of the county clerk and recorder of the county where the individual making the request resides. Requests shall be made on application forms approved by the secretary of state, after consultation with county clerk and recorders. The application form shall provide space for the applicant to provide his or her name and address, date of birth, and any other identifying information determined by the secretary of state to be necessary to carry out the provisions of this subsection (3.5). In addition, an affirmation shall be printed on the form, in the area immediately above a line for the applicant's signature and the date, stating the following: "I swear or affirm, under penalty of perjury, that I have reason to believe that I, or a member of my immediate family who resides in my household, will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential." Immediately below the signature line, there shall be printed a notice, in a type that is larger than the other information contained on the form, that the applicant may be prosecuted for perjury in the second degree under section 18-8-503, C.R.S., if the applicant signs such affirmation and does not believe such affirmation to be true.

(III) The county clerk and recorder of each county shall provide an opportunity for any individual to make the request of confidentiality allowed by this subsection (3.5) in person at the time such individual makes application to the county clerk and recorder to register to vote or to make any change in such individual's registration, and at any other time during normal business hours of the office of the county clerk and recorder. The county clerk and recorder shall forward a copy of each completed application to the secretary of state for purposes of the records maintained by him or her pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5). The county clerk and recorder shall collect a processing fee in the amount of five dollars of which amount two dollars and fifty cents shall be transmitted to the secretary of state for the purpose of offsetting the secretary of state's costs of processing applications forwarded to the secretary of state pursuant to this subparagraph (III). All processing fees received by the secretary of state pursuant to this subparagraph (III) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(IV) The secretary of state shall provide an opportunity for any individual to make the request of confidentiality allowed by paragraph (a) of this subsection (3.5), with respect to the records described in subparagraph (III) of paragraph (a) of this subsection (3.5). The secretary of state may charge a processing fee, not to exceed five dollars, for each such request. All processing fees collected by the secretary of state pursuant to this subparagraph (IV) or subparagraph (III) of this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(V) Notwithstanding the amount specified for any fee in subparagraph (III) or (IV) of this paragraph (b), the secretary of state by rule or as otherwise provided by law may reduce the amount of one or more of the fees credited to the department of state cash fund if necessary pursuant to section 24-75-402(3), to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided in section 24-75-402(4).

(c) The custodian of any records described in paragraph (a) of this subsection (3.5) which concern an individual who has made a request of confidentiality pursuant to this subsection (3.5) and paid any required processing fee shall deny the right of inspection of the individual's address contained in such records on the ground that disclosure would be contrary to the public interest; except that such custodian shall allow the inspection of such records by such individual, by any person authorized in writing by such individual, and by any individual employed by one of the following entities who makes a request to the custodian to inspect such records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to the authorized purpose of the employing entity:

(I) A criminal justice agency, as defined by section 24-72-302(3);

(II) An agency of the United States, the state of Colorado, or of any political subdivision or authority thereof;

(III) A person required to obtain such individual's address in order to comply with federal or state law or regulations adopted pursuant thereto;

(IV) An insurance company which has a valid certificate of authority to transact insurance business in Colorado as required in section 10-3-105(1), C.R.S.;

(V) A collection agency which has a valid license as required by section 12-14-115(1), C.R.S.;

(VI) A supervised lender licensed pursuant to section 5-1-301(46), C.R.S.;

(VII) A bank as defined in section 11-101-401(5), C.R.S., an industrial bank as defined in section 11-108-101(1), C.R.S., a trust company as defined in section 11-109-101(11), C.R.S., a credit union as defined in section 11-30-101(1), C.R.S., a domestic savings and loan association as defined in section 11-40-102(5), C.R.S., a foreign savings and loan association as defined in section 11-40-102(8), C.R.S., or a broker-dealer as defined in section 11-51-201(2), C.R.S.;

(VIII) An attorney licensed to practice law in Colorado or his representative authorized in writing to inspect such records on behalf of the attorney;

(IX) A manufacturer of any vehicle required to be registered pursuant to the provisions of article 3 of title 42, C.R.S., or a designated agent of such manufacturer. Such inspection shall be allowed only for the purpose of identifying, locating, and notifying the registered owners of such vehicles in the event of a product recall or product advisory and may also be allowed for statistical purposes where such address is not disclosed by such manufacturer or designated agent. No person who obtains the address of an individual pursuant to this subparagraph (IX) shall disclose such information, except as necessary to accomplish said purposes.

(d) Notwithstanding any provisions of this subsection (3.5) to the contrary, any person who appears in person in the office of any custodian of records described in paragraph (a) of this subsection (3.5) and who presents documentary evidence satisfactory to the custodian that such person is a duly accredited representative of the news media may verify the address of an individual whose address is otherwise protected from inspection in accordance with this subsection (3.5). Such verification shall be limited to the custodian confirming or denying that the address of an individual as known to the representative of the news media is the address of the individual as shown by the records of the custodian.

(e) No person shall make any false statement in requesting any information pursuant to paragraph (a) or (b) of this subsection (3.5).

(f) Any request of confidentiality made pursuant to this subsection (3.5) shall be kept confidential and shall not be open to inspection as a public record unless a written release is executed by the person who made the request.

(g) Prior to the release of any information required to be kept confidential pursuant to this subsection (3.5), the custodian shall require the person requesting the information to produce a valid Colorado driver's license or identification card and written authorization from any entity authorized to receive information under this subsection (3.5). The custodian shall keep a record of the requesting person's name, address, and date of birth and shall make such information available to the individual requesting confidentiality under this subsection (3.5) or any person authorized by such individual.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Except as provided in subsection (5.5) of this section, any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the

custodian of such record to show cause why the custodian should not permit the inspection of such record; except that, at least three business days prior to filing an application with the district court, the person who has been denied the right to inspect the record shall file a written notice with the custodian who has denied the right to inspect the record informing said custodian that the person intends to file an application with the district court. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court; except that no court costs and attorney fees shall be awarded to a person who has filed a lawsuit against a state public body or local public body and who applies to the court for an order pursuant to this subsection (5) for access to records of the state public body or local public body being sued if the court finds that the records being sought are related to the pending litigation and are discoverable pursuant to chapter 4 of the Colorado rules of civil procedure. In the event the court finds that the denial of the right of inspection was proper, the court shall award court costs and reasonable attorney fees to the custodian if the court finds that the action was frivolous, vexatious, or groundless.

(5.5)

(a) Any person seeking access to the record of an executive session meeting of a state public body or a local public body recorded pursuant to section 24-6-402(2)(d.5) shall, upon application to the district court for the district wherein the records are found, show grounds sufficient to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402(3)(a) or (4). If the applicant fails to show grounds sufficient to support such reasonable belief, the court shall deny the application and, if the court finds that the application was frivolous, vexatious, or groundless, the court shall award court costs and attorney fees to the prevailing party. If an applicant shows grounds sufficient to support such reasonable belief, the applicant cannot be found to have brought a frivolous, vexatious, or groundless action, regardless of the outcome of the in camera review.

(b)

(I) Upon finding that sufficient grounds exist to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402(3)(a) or (4), the court shall conduct an in camera review of the record of the executive session to determine whether the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402(3)(a) or (4).

(II) If the court determines, based on the in camera review, that violations of the open meetings law occurred, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in section 24-6-402(3) or (4) or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection.

(6)

(a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection or if the official custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited pursuant to this part 2, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure or for the court to determine if disclosure is prohibited. Hearing on such application shall be held at the earliest practical time. In the case of a record that is otherwise available to public inspection pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure would cause substantial injury to the public interest, issue an order authorizing the official custodian to restrict disclosure. In the case of a record that may be prohibited from disclosure pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure of the record is prohibited, issue an order directing the official custodian not to disclose the record to the public. In an action brought pursuant to this paragraph (a), the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard. The attorney fees provision of subsection (5) of this section shall not apply in cases brought

pursuant to this paragraph (a) by an official custodian who is unable to determine if disclosure of a public record is prohibited under this part 2 if the official custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if disclosure of the public record was prohibited without a ruling by the court.

(b) In defense against an application for an order under subsection (5) of this section, the custodian may raise any issue that could have been raised by the custodian in an application under paragraph (a) of this subsection (6).

(7)

(a) Except as permitted in paragraph (b) of this subsection (7), the department of revenue or an authorized agent of the department shall not allow inspection of a person, other than the person in interest, to inspect information contained in a driver's license application under section 42-2-107, C.R.S., a driver's license renewal application under section 42-2-118, C.R.S., a duplicate driver's license application under section 42-2-117, C.R.S., a commercial driver's license application under section 42-2-403, C.R.S., an identification card application under section 42-2-302, C.R.S., a motor vehicle title application under section 42-6-116, C.R.S., a motor vehicle registration application under section 42-3-113, C.R.S., or other official record or document maintained by the department under section 42-2-121, C.R.S.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), only upon obtaining a completed requestor release form under section 42-1-206(1)(b), C.R.S., the department may allow inspection of the information referred to in paragraph (a) of this subsection (7) for the following uses:

(I) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;

(II) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers;

(III) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(A) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(IV) For use in connection with any civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(V) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact the parties in interest;

(VI) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting;

(VII) For use in providing notice to the owners of towed or impounded vehicles;

(VIII) For use by any private investigative agency or security service for any purpose permitted under this paragraph (b);

(IX) For use by an employer or its agent or insurer to obtain or verify information relating to a party in interest who is a holder of a commercial driver's license;

(X) For use in connection with the operation of private toll transportation facilities;

(XI) For any other use in response to requests for individual motor vehicle records if the department has obtained the express consent of the party in interest pursuant to section 42-2-121(4), C.R.S.;

(XII) For bulk distribution for surveys, marketing or solicitations if the department has obtained the express consent of the party in interest pursuant to section 42-2-121(4), C.R.S.;

(XIII) For use by any requestor, if the requestor demonstrates he or she has obtained the written consent of the party in interest;

(XIV) For any other use specifically authorized under the laws of the state, if such use is related to the operation of a motor vehicle or public safety; or

(XV) For use by the federally designated organ procurement agency for the purposes of creating and maintaining the organ and tissue donor registry created in section 12-34-110, C.R.S.

(c)

(I) For purposes of this paragraph (c), “law” shall mean the federal “Driver’s Privacy Protection Act of 1994”, 18 U.S.C. sec. 2721 et seq., the federal “Fair Credit Reporting Act”, 15 U.S.C. sec. 1681 et seq., section 42-1-206, C.R.S., and this part 2.

(II) If the requestor release form indicates that the requestor will, in any manner, use, obtain, resell, or transfer the information contained in records, requested individually or in bulk, for any purpose prohibited by law, the department or agent shall deny inspection of any motor vehicle or driver record.

(III) In addition to completing the requestor release form under section 42-1-206(1)(b), C.R.S., and subject to the provisions of section 42-1-206(3.7), C.R.S., the requestor shall sign an affidavit of intended use under penalty of perjury that states that the requestor shall not obtain, resell, transfer, or use the information in any manner prohibited by law. The department or the department’s authorized agent shall deny inspection of any motor vehicle or driver record to any person, other than a person in interest as defined in section 24-72-202(4), or a federal, state, or local government agency carrying out its official functions, who has not signed and returned the affidavit of intended use.

(d) Notwithstanding paragraph (b) of this subsection (7), the department of revenue or an authorized agent of the department shall allow inspection of records maintained by the department pursuant to section 42-2-121.5, C.R.S., only by the person in interest or by an officer of a law enforcement or public safety agency in accordance with section 42-2-121.5(3), C.R.S.

(8)

(a) A designated election official shall not allow a person, other than the person in interest, to inspect the election records of any person that contain the original signature, social security number, month of birth, day of the month of birth, or identification of that person, including electronic, digital, or scanned images of a person’s original signature, social security number, month of birth, day of the month of birth, or identification.

(b) Nothing in paragraph (a) of this subsection (8) shall be construed to prohibit a designated election official from:

(I) Making such election records available to any law enforcement agency or district attorney of this state in connection with the investigation or prosecution of an election offense specified in article 13 of title 1, C.R.S.;

(II) Making such election records available to employees of or election judges appointed by the designated election official as necessary for those employees or election judges to carry out the duties and responsibilities connected with the conduct of any election; and

(III) Preparing a registration list and making the list available for distribution or sale to or inspection by any person.

(c) For purposes of this subsection (8):

(I) “Designated election official” shall have the same meaning as set forth in section 1-1-104(8), C.R.S.

(II) “Election records” shall have the same meaning as set forth in section 1-1-104(11), C.R.S., and shall include a voter registration application.

(III) “Identification” shall have the same meaning as set forth in section 1-1-104(19.5), C.R.S.

(IV) “Registration list” shall have the same meaning as set forth in section 1-1-104(37), C.R.S.

§ 24-72-204.5. Adoption of electronic mail policy

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

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

§ 24-72-205. Copies, printouts, or photographs of public records

(1) In all cases in which a person has the right to inspect a public record,

the person may request a copy, printout, or photograph of the record. The custodian shall furnish a copy, printout, or photograph and may charge a fee determined in accordance with subsection (5) of this section; except that, when the custodian is the secretary of state, fees shall be determined and collected pursuant to section 24-21-104(3), and when the custodian is the executive director of the department of personnel, fees shall be determined and collected pursuant to section 24-80-102(10). Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, the specific fee shall apply.

(2) If the custodian does not have facilities for making a copy, printout, or photograph of a record that a person has the right to inspect, the person shall be granted access to the record for the purpose of making a copy, printout, or photograph. The copy, printout, or photograph shall be made while the record is in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of the custodian. When practical, the copy, printout, or photograph shall be made in the place where the record is kept, but if it is impractical to do so, the custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the record. The custodian may establish a reasonable schedule of times for making a copy, printout, or photograph and may charge the same fee for the services rendered in supervising the copying, printing out, or photographing as the custodian may charge for furnishing a copy, printout, or photograph under subsection (5) of this section.

(3) If, in response to a specific request, the state or any of its agencies, institutions, or political subdivisions has performed a manipulation of data so as to generate a record in a form not used by the state or by said agency, institution, or political subdivision, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

(4) If the public record is a result of computer output other than word processing, the fee for a copy, printout, or photograph thereof may be based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the costs associated with building and maintaining the information system. Such fee may be reduced or waived by the custodian if the electronic services and products are to be used for a public purpose, including public agency program support, nonprofit activities, journalism, and academic research. Fee reductions and waivers shall be uniformly applied among persons who are similarly situated.

(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.

(b) Notwithstanding paragraph (a) of this subsection (5), an institution, as defined in section 24-72-202(1.5), that is the custodian of scholastic achievement data on an individual person may charge a reasonable fee for a certified transcript of the data.

§ 24-72-206. Violation—penalty

Any person who willfully and knowingly violates the provisions of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Title 24. Government—State

Public (Open) Records

Article 72. Public Records (Refs & Annos)

Part 3. Criminal Justice Records (Refs & Annos)

§ 24-72-301. Legislative declaration

(1) The general assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern and that, in defining and regulating those areas, only statewide standards in a state statute are workable.

(2) It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3, and that all other

records of criminal justice agencies in this state may be open for inspection as provided in this part 3 or as otherwise specifically provided by law.

§ 24-72-302. *Definitions*

As used in this part 3, unless the context otherwise requires:

(1) “Arrest and criminal records information” means information reporting the arrest, indictment, or other formal filing of criminal charges against a person; the identity of the criminal justice agency taking such official action relative to an accused person; the date and place that such official action was taken relative to an accused person; the name, birth date, last-known address, and sex of an accused person; the nature of the charges brought or the offenses alleged against an accused person; and one or more dispositions relating to the charges brought against an accused person.

(2) “Basic identification information” means the name, place and date of birth, last-known address, social security number, occupation and address of employment, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

(3) “Criminal justice agency” means any court with criminal jurisdiction and any agency of the state or of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority which performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

(4) “Criminal justice records” means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule, including but not limited to the results of chemical biological substance testing to determine genetic markers conducted pursuant to sections 16-11-102.3, 16-11-104, 16-11-204.3, 16-11-308(4.5), 17-2-201(5)(h), and 17-22.5-202(3)(b.5)(II) and (3.5), C.R.S.

(5) “Custodian” means the official custodian or any authorized person having personal custody and control of the criminal justice records in question.

(6) “Disposition” means a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive clemency.

(7) “Official action” means an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.

(8) “Official custodian” means any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of criminal justice records, regardless of whether such records are in his actual personal custody and control.

(9) “Person” means any natural person, corporation, limited liability company, partnership, firm, or association.

(10) “Person in interest” means the person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that, if the subject of the record is under legal disability, “person in interest” means and includes his parents or duly appointed legal representative.

§ 24-72-303. *Records of official actions required—open to inspection*

(1) Each official action as defined in this part 3 shall be recorded by the particular criminal justice agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 or as otherwise provided by law. The official custodian of any records of official actions may make such rules and regulations 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 his office.

(2) If the requested record of official action of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the agency which has custody or control of the record in question.

(3) If the requested record of official action of a criminal justice agency is in the custody and control of the person to whom application is made but is in active use or in storage and therefore not available at the time an applicant asks to examine it, the custodian shall forthwith notify the applicant of this fact in writing, if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the record will be available for inspection.

§ 24-72-304. *Inspection of criminal justice records*

(1) Except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law, and the official custodian of any such records may make such rules and regulations 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 his office.

(2) If the requested criminal justice records are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the requested records are not in the custody and control of the criminal justice agency to which the request is directed but are in the custody and control of a central repository for criminal justice records pursuant to law, the criminal justice agency to which the request is directed shall forward the request to the central repository. If such a request is to be forwarded to the central repository, the criminal justice agency receiving the request shall do so forthwith and shall so advise the applicant forthwith. The central repository shall forthwith reply directly to the applicant.

(4)

(a) The name of any victim of sexual assault or of alleged sexual assault shall be deleted from any criminal justice record prior to the release of such record to any individual or agency other than a criminal justice agency when such record bears the notation “SEXUAL ASSAULT” prescribed by this subsection (4).

(b)

(I) A criminal justice agency or custodian of criminal justice records shall make the notation “SEXUAL ASSAULT” on any record of official action and on the file containing such record when the official action is related to the commission or the alleged commission of any of the following offenses:

(A) Sexual assault under section 18-3-402, C.R.S., or sexual assault in the first degree under section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(B) Sexual assault in the second degree under section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(C) Unlawful sexual contact under section 18-3-404, C.R.S., or sexual assault in the third degree under section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(D) Sexual assault on a child under section 18-3-405, C.R.S.;

(E) Sexual assault on a child by one in a position of trust under section 18-3-405.3, C.R.S.; or

(F) Sexual assault on a client by a psychotherapist under section 18-3-405.5, C.R.S.

(G) Incest under section 18-6-301, C.R.S.;

(H) Aggravated incest under section 18-6-302, C.R.S.; or

(I) An attempt to commit any of the offenses listed in sub-subparagraphs (A) to (H) of this subparagraph (I).

(II) The notation required pursuant to subparagraph (I) of this paragraph (b) shall be made when:

(A) Any record or file or both of official action is prepared relating to the commission or alleged commission of an offense enumerated in subparagraph (I) of this paragraph (b); or

(B) The name of any victim of the commission or alleged commission of any offense enumerated in subparagraph (I) of this paragraph (b) for which official action was taken appears on the criminal information or indictment.

(c) A criminal justice agency or custodian of criminal justice records shall make the notation “SEXUAL ASSAULT” on any record of official action and on the file containing such record when:

(I) Any employee of the court, officer of the court, or judicial officer notifies such agency or custodian of the name of any victim of the commission or alleged commission of any offense enumerated in subparagraph (I) of paragraph (b) of this subsection (4) when such victim’s name is disclosed to or obtained by such employee or officer during the course of proceedings related to such official action; or

(II) Such record or file contains the name of a victim of the commission or alleged commission of any such offense and the victim requests the custodian of criminal justice records to make such a notation.

(5) Nothing in this section shall be construed to limit the discretion of the district attorney to authorize a crime victim, as defined in section 24-4.1-302(5), or a member of the victim’s immediate family, as defined in section 24-4.1-302(6), to view all or a portion of the presentence report of the probation department.

§ 24-72-305. Allowance or denial of inspection—grounds—procedure—appeal

(1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in subsection (5) of this section:

(a) Such inspection would be contrary to any state statute;

(b) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(1.5) On the ground that disclosure would be contrary to the public interest, the custodian of criminal justice records shall deny access to the results of chemical biological substance testing to determine the genetic markers conducted pursuant to sections 16-11-102.4 and 16-23-104, C.R.S.

(2) to (4) Repealed by Laws 1978, H.B.1070, § 4.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

(6) If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and shall be furnished forthwith to the applicant.

(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay the applicant’s court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount not to exceed twenty-five dollars for each day that access was improperly denied.

(8) The allowance or denial of the right to inspect criminal justice records that contain specialized details of security arrangements or investigations shall be governed by section 24-72-204(2)(a)(VIII).

§ 24-72-305.3. Private access to criminal history records of volunteers and employees of charitable organizations

(1) Deleted by Laws 2001, Ch. 312, § 1, eff. June 5, 2001.

(2)

(a) As used in this subsection (2):

(I) “Authorized agency” means a division or office of a state designated by a state to report, receive, or disseminate information under the “Volunteers for Children Act”, contained in Public Law 105-251, as amended.

(II) “Bureau” means the Colorado bureau of investigation created in

section 24-33.5-401.

(III) “Care” means the provision of care, treatment, education, training, instruction, supervision, or recreation to children, the elderly, or individuals with disabilities.

(IV) “Convicted” means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

(V) Deleted by Laws 2001, Ch. 312, § 1, eff. June 5, 2001.

(V.2) “The elderly” means persons sixty years of age or older receiving care.

(V.5) “Individuals with disabilities” means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.

(VI) “Provider” shall have the same meaning as set forth in 42 U.S.C. sec. 5119c and includes an owner of, an employee of, an applicant seeking employment with, or a volunteer with a qualified entity.

(VII) “Qualified entity” means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

(b) For the purpose of implementing the provisions of the “Volunteers for Children Act”, contained in Public Law 105-251, as amended, on and after July 1, 2000, each qualified entity in the state may contact an authorized agency for the purpose of determining whether a provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider’s fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. Such crimes shall include, but need not be limited to:

(I) Felony child abuse, as specified in section 18-6-401, C.R.S.;

(II) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(III) Any felony offenses involving unlawful sexual behavior, as defined in section 16-22-102(9), C.R.S.;

(IV) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(V) Any felony offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in subparagraphs (I) to (IV) of this paragraph (b).

(c)

(I) For purposes of this subsection (2), the bureau shall be designated an authorized agency. The executive director of the department of public safety shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the director of the department of public safety may promulgate all reasonable and necessary rules to implement this subsection (2).

(II) For purposes of this subsection (2):

(A) The department of human services, created in section 24-1-120, may serve as an authorized agency for those qualified entities that are regulated by the said department. The state board of human services shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of human services may promulgate all reasonable and necessary rules to implement this subsection (2).

(B) The department of public health and environment, created in section 24- 1-119, may serve as an authorized agency for those qualified entities that are regulated by said department. The state board of health shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of health may promulgate all reasonable and necessary rules to implement this subsection (2).

(C) The department of education, created in section 24-1-115, may serve as an authorized agency for those qualified entities that are regulated by said department. The state board of education shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of education may promulgate all reasonable and necessary rules to implement this subsection (2).

(d) Any authorized agency reporting, receiving, or disseminating criminal history record information pursuant to this subsection (2) shall request such information only through the bureau. The bureau, in responding to such request, shall access records that are maintained by or within this state and any other state or territory of the United States, any other nation, or any agency or subdivision of the United States including, but not limited to, the federal

bureau of investigation in the United States department of justice.

§ 24-72-305.4. Governmental access to criminal history records of applicants in regulated professions or occupations

(1) Any division, board, commission, or person responsible for the licensing, certification, or registration functions for any governmental entity, in addition to any other authority conferred by law, may use fingerprints to access, for comparison purposes, arrest history records of:

(a) Any applicant for licensure, registration, or certification to practice a profession or occupation;

(b) Any licensee, registrant, or person certified to practice a profession or occupation;

(c) Any prospective employee or any employee of a licensee, registrant, or person certified to practice an occupation or profession.

(2) The persons or entities authorized to access arrest history records pursuant to subsection (1) of this section may access records that are maintained by or within this state through the Colorado bureau of investigation.

(3) For the purposes of this section, “governmental entity” means the state and any of its political subdivisions, including entities governed by home rule charters, and any agency or institution of the state or any of its political subdivisions.

§ 24-72-305.5. Access to records—denial by custodian—use of records to obtain information for solicitation

Records of official actions and criminal justice records and the names, addresses, telephone numbers, and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The official custodian shall deny any person access to records of official actions and criminal justice records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

§ 24-72-305.6. County clerk and recorder access to criminal history records of election judges and employees

(1) A county clerk and recorder shall request the criminal history records from the public website maintained by the Colorado bureau of investigation for all full-time, part-time, permanent, and contract employees of the county who staff a counting center and who have any access to electromechanical voting systems or electronic vote tabulating equipment. The county clerk and recorder shall request the records not less than once each calendar year prior to the first election of the year.

(2) A county clerk and recorder may request, in his or her discretion, the criminal history records from the public website maintained by the Colorado bureau of investigation for an election judge serving in the county.

(3) A county clerk and recorder authorized to access criminal history records pursuant to this section may access records that are maintained by or within this state directly through the public website maintained by the Colorado bureau of investigation. A county clerk and recorder that does not have access or authorization to use a credit card for conducting business on behalf of the county in which the clerk and recorder serves may request that the county sheriff for the county access the criminal records from the public website maintained by the Colorado bureau of investigation. Criminal records shall not be accessed pursuant to this section directly from the Colorado criminal justice computer system or the national criminal justice computer system.

§ 24-72-306. Copies, printouts, or photographs of criminal justice records—fees authorized

(1) Criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and redaction of criminal justice records requested pursuant to this part 3 and may waive fees at their discretion. In addition, criminal justice agencies may charge a fee not to exceed twenty-five cents per standard page for a copy of a criminal justice record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a criminal justice record in a format other than a standard page. Where fees for certified copies or other copies, printouts, or photographs of criminal justice records are specifically prescribed by law, such specific fees shall apply. Where the criminal justice agency is an agency or department of any county or municipality, the amount of such fees shall be established by the governing body of the county or municipality in accordance with this subsection (1).

(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow other arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

(3) The provisions of this section shall not apply to discovery materials that a criminal justice agency is required to provide in a criminal case pursuant to rule 16 of the Colorado rules of criminal procedure.

§ 24-72-307. Challenge to accuracy and completeness—appeals

(1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the refusal of correction was proper, it shall order the custodian to make such correction, and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

§ 24-72-308. Sealing of records

(1)

(a)

(I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged, in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

(II) Except as provided in subparagraph (III) of this paragraph (a), arrest or criminal records information may not be sealed if:

(A) An offense is not charged due to a plea agreement in a separate case; or

(B) A dismissal occurs as part of a plea agreement in a separate case; or

(C) The defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal criminal records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated such order.

(III) A person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense that was not charged or a case that was dismissed due to a plea agreement in a separate case, and if:

(A) The petition is filed ten years or more after the date of the final disposition of all criminal proceedings against the person in interest; and

(B) The person in interest has not been charged for any criminal

offense in the ten years since the date of the final disposition of all criminal proceedings against the person in interest.

(b)

(I) Any petition to seal criminal records shall include a listing of each custodian of the records to whom the sealing order is directed and any information which accurately and completely identifies the records to be sealed.

(II)

(A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the petitioner is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the petitioner. The court's order shall specify the reasons for the denial of the petition.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing and the petitioner shall notify the prosecuting attorney by certified mail, the arresting agency, and any other person or agency identified by the petitioner.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of such order. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

(d) Upon the entry of an order to seal the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such records exist with respect to such person.

(e) Inspection of the records included in an order sealing criminal records may thereafter be permitted by the court only upon petition by the person who is the subject of such records or by the prosecuting attorney and only for those purposes named in such petition.

(f)

(I) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction which comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall have no right to privacy or privilege which justifies his refusal to answer to any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

(g) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

(1.5) For the purpose of protecting the author of any correspondence which becomes a part of criminal justice records, the court having jurisdiction in the judicial district in which the criminal justice records are located may, in its discretion, with or without a hearing thereon, enter an order to seal any information, including, but not limited to, basic identification information contained in said correspondence. However, the court may, in its discretion, enter an order which allows the disclosure of sealed information to defense counsel or, if the defendant is not represented by counsel, to the defendant.

(2) Advisements.

(a) Whenever a defendant has appeared before the court and has charges against him or her dismissed or not filed, or whenever the defendant is acquitted, the court shall provide him or her with a written advisement of his or her

rights pursuant to this section concerning the sealing of his or her criminal justice records if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (2), if a defendant's case is dismissed after a period of supervision by probation, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights pursuant to this section concerning the sealing of his or her criminal justice records if he or she complies with the applicable provisions of this section.

(3) Exceptions.

(a) This section shall not apply to records pertaining to:

(I) Any class 1 or class 2 misdemeanor traffic offense;

(II) Any class A or class B traffic infraction; or

(III) Any conviction for a violation of section 42-4-1301(1) or (2), C.R.S.

(b) Court orders sealing records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

(c) This section shall not apply to records pertaining to a conviction of an offense for which the factual basis involved unlawful sexual behavior, as defined in section 16-22-102(9), C.R.S.

(d) This section shall not apply to arrest and criminal justice information or criminal justice records in the possession and custody of a criminal justice agency when inquiry concerning the arrest and criminal justice information or criminal justice records is made by another criminal justice agency.

(e) This section shall not apply to records pertaining to a conviction of an offense concerning the holder of a commercial driver's license as defined in section 42-2-402, C.R.S., or the operator of a commercial motor vehicle as defined in section 42-2-402, C.R.S.

§ 24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances

(1) Definitions. For purposes of this section, "conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.

(2) Sealing of conviction records.

(a)

(I) Subject to the limitations described in subsection (4) of this section, a defendant may petition the district court of the district in which any conviction records pertaining to the defendant are located for the sealing of the conviction records, except basic identifying information, if:

(A) The petition is filed ten or more years after the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction, whichever is later; and

(B) The defendant has not been charged or convicted for a criminal offense in the ten or more years since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later.

(II) An order sealing conviction records shall not deny access to the criminal records of a defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual. An order sealing conviction records shall not be construed to vacate a conviction. A conviction sealed pursuant to this section may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not limited to any subsequent case that is filed against the defendant, or for any other lawful purpose within the scope of his, her, or its duties. If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court, on its own motion or upon the motion of any prosecuting attorney, shall order the conviction records to be unsealed. A party or agency required by law to conduct a criminal history record check shall be authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(III) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated the order.

(b)

(I) A petition to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. A verified copy of the defendant's criminal history, current through at least the twentieth day prior to the date of the filing of the petition, shall be submitted to the court by the defendant along with the petition at the time of filing, but in no event later than the tenth day after the petition is filed. The defendant shall be responsible for obtaining and paying for his or her criminal history record.

(II)

(A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the defendant is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the petition.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing, and the defendant shall notify by certified mail the prosecuting attorney, the arresting agency, and any other person or agency identified by the defendant.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (2) is conducted and if the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining the conviction records, the court may order the conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, and the need for the government agency to retain the records. An order entered pursuant to this paragraph (c) shall be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this paragraph (c), the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order and shall pay to the bureau any costs related to the sealing of his or her criminal conviction records in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(d) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2), upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that conviction records do not exist with respect to the defendant.

(e) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2), inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant.

(f)

(I) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2) or in subparagraphs (II) and (III) of this paragraph (f), employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed conviction records. An applicant need not, in answer to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(III) The provisions of subparagraph (I) of this paragraph (f) shall not apply to a criminal justice agency or to an applicant to a criminal justice agency.

(IV) Any member of the public may petition the court to unseal any file that has been previously sealed upon a showing that circumstances have

come into existence since the original sealing and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy.

(g) The office of the state court administrator shall post on its web site a list of all petitions to seal conviction records that are filed with a district court. A district court may not grant a petition to seal conviction records until at least thirty days after the posting. After the expiration of thirty days following the posting, the petition to seal conviction records and information pertinent thereto shall be removed from the web site of the office of the state court administrator.

(h) Nothing in this section shall be construed to authorize the physical destruction of any conviction records.

(i) Notwithstanding any provision in this section to the contrary, in regard to any conviction of a defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this section only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this section.

(3) Advisements.

(a) Whenever a defendant is sentenced following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the court shall provide him or her with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (3):

(I) If a defendant is sentenced to probation following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(II) If a defendant is released on parole following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the defendant's parole officer, upon the termination of the defendant's parole, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(4)

(a) Applicability. Except as otherwise provided in paragraph (b) of this subsection (4), the provisions of this section shall apply only to conviction records pertaining to judgments of conviction entered on and after July 1, 2008, for:

(I) Any petty offense in violation of a provision of article 18 of title 18, C.R.S.;

(II) Any misdemeanor in violation of a provision of article 18 of title 18, C.R.S.;

(III) Any class 5 or class 6 felony in violation of a provision of article 18 of title 18, C.R.S.; except that the provisions of this section shall not apply to conviction records pertaining to a judgment of conviction for a class 5 or class 6 felony for the sale, manufacturing, or dispensing of a controlled substance, as defined in section 18-18-102(5), C.R.S.; attempt or conspiracy to commit the sale, manufacturing, or dispensing of a controlled substance; or possession with the intent to manufacture, dispense, or sell a controlled substance;

(IV) Any offense that would be classified as a class 5 or 6 felony in violation of a provision of article 18 of title 18, C.R.S., if the offense were to have occurred on July 1, 2008.

(b) For any judgment of conviction entered prior to July 1, 2008, for which the defendant would otherwise qualify for relief under this section, the defendant may obtain an order from the court to seal conviction records if:

(I) The prosecuting attorney does not object to the sealing; and

(II) The defendant pays to the office of the prosecuting attorney all reasonable attorney fees and costs of the prosecuting attorney relating to the petition to seal prior to the entry of an order sealing the conviction records; and

(III) The defendant pays:

(A) The filing fee required by law; and

(B) An additional filing fee of two hundred dollars to cover the actual costs related to the filing of the petition to seal records.

(c) The additional filing fees collected under sub-subparagraph (B) of subparagraph (III) of paragraph (b) of this subsection (4) shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in

section 13-32-101(6), C.R.S.

(d) The provisions of this section shall not apply to conviction records that are in the possession of a criminal justice agency when an inquiry concerning the conviction records is made by another criminal justice agency.

(5) Rules of discovery—rules of evidence—witness testimony. Court orders sealing records of official actions pursuant to this section shall not limit the operations of:

(a) The rules of discovery or the rules of evidence promulgated by the supreme court of Colorado or any other state or federal court; or

(b) The provisions of section 13-90-101, C.R.S., concerning witness testimony.

§ 24-72-309. *Violation—penalty*

Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Open Meetings

Title 24. Government—State

Administration

Article 6. Colorado Sunshine Law (Refs & Annos)

Part 4. Open Meetings Law (Refs & Annos)

§ 24-6-401. *Declaration of policy*

It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

§ 24-6-402. *Meetings—open to public—definitions*

(1) For the purposes of this section:

(a) “Local public body” means any board, committee, commission, authority, or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the local public body.

(b) “Meeting” means any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication.

(c) “Political subdivision of the state” includes, but is not limited to, any county, city, city and county, town, home rule city, home rule county, home rule city and county, school district, special district, local improvement district, special improvement district, or service district.

(d) “State public body” means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency, state authority, governing board of a state institution of higher education including the regents of the university of Colorado, a nonprofit corporation incorporated pursuant to section 23-5- 121(2), C.R.S., or the general assembly, and any public or private entity to which the state, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff of the state public body.

(2)(a) All meetings of two or more members of any state public body at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.

(c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public. In addition to any other means of full and timely notice, a local public body shall be deemed to have given full and timely notice if the notice of the meeting is posted in a designated public place within the boundaries of the local public body no less

than twenty-four hours prior to the holding of the meeting. The public place or places for posting such notice shall be designated annually at the local public body’s first regular meeting of each calendar year. The posting shall include specific agenda information where possible.

(d)(I) Minutes of any meeting of a state public body shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (3) of this section is held shall reflect the topic of the discussion at the executive session.

(II) Minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session.

(III) If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a “meeting” within the meaning of this section.

(d.5)(I)(A) Discussions that occur in an executive session of a state public body shall be electronically recorded. If a state public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the state public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the state public body while the regularly used electronic equipment is inoperable. A state public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the state public body. Except as provided in sub-subparagraph (B) of this subparagraph (I), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (3) of this section that authorizes the state public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a state public body pursuant to paragraph (b) of subsection (3) of this section.

(B) If, in the opinion of the attorney who is representing a governing board of a state institution of higher education, including the regents of the university of Colorado, and is in attendance at an executive session that has been properly announced pursuant to paragraph (a) of subsection (3) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the governing board of a state institution of higher education, including the regents of the university of Colorado, may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a state public body in accordance with section 24-72-204(5.5) and after an in camera review of the record of the executive session, that the state public body engaged in substantial discussion of any matters not enumerated in subsection (3) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of paragraph (a) of subsection (3) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (3) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204(5.5).

(D) No portion of the record of an executive session of a state public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the state public body or as provided in sub-subparagraph (C) of this subparagraph (I) and section 24-72-204(5.5).

(E) The record of an executive session of a state public body recorded pursuant to sub-subparagraph (A) of this subparagraph (I) shall be

retained for at least ninety days after the date of the executive session.

(II)(A) Discussions that occur in an executive session of a local public body shall be electronically recorded. If a local public body electronically recorded the minutes of its open meetings on or after August 8, 2001, the local public body shall continue to electronically record the minutes of its open meetings that occur on or after August 8, 2001; except that electronic recording shall not be required for two successive meetings of the local public body while the regularly used electronic equipment is inoperable. A local public body may satisfy the electronic recording requirements of this sub-subparagraph (A) by making any form of electronic recording of the discussions in an executive session of the local public body. Except as provided in sub-subparagraph (B) of this subparagraph (II), the electronic recording of an executive session shall reflect the specific citation to the provision in subsection (4) of this section that authorizes the local public body to meet in an executive session and the actual contents of the discussion during the session. The provisions of this sub-subparagraph (A) shall not apply to discussions of individual students by a local public body pursuant to paragraph (h) of subsection (4) of this section.

(B) If, in the opinion of the attorney who is representing the local public body and who is in attendance at an executive session that has been properly announced pursuant to subsection (4) of this section, all or a portion of the discussion during the executive session constitutes a privileged attorney-client communication, no record or electronic recording shall be required to be kept of the part of the discussion that constitutes a privileged attorney-client communication. The electronic recording of said executive session discussion shall reflect that no further record or electronic recording was kept of the discussion based on the opinion of the attorney representing the local public body, as stated for the record during the executive session, that the discussion constituted a privileged attorney-client communication, or the attorney representing the local public body may provide a signed statement attesting that the portion of the executive session that was not recorded constituted a privileged attorney-client communication in the opinion of the attorney.

(C) If a court finds, upon application of a person seeking access to the record of the executive session of a local public body in accordance with section 24-72-204(5.5) and after an in camera review of the record of the executive session, that the local public body engaged in substantial discussion of any matters not enumerated in subsection (4) of this section or that the body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of subsection (4) of this section, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in subsection (4) of this section or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection pursuant to section 24-72-204(5.5).

(D) No portion of the record of an executive session of a local public body shall be open for public inspection or subject to discovery in any administrative or judicial proceeding, except upon the consent of the local public body or as provided in sub-subparagraph (C) of this subparagraph (II) and section 24-72-204(5.5).

(E) The record of an executive session of a local public body recorded pursuant to sub-subparagraph (A) of this subparagraph (II) shall be retained for at least ninety days after the date of the executive session.

(e) This part 4 does not apply to any chance meeting or social gathering at which discussion of public business is not the central purpose.

(f) The provisions of paragraph (c) of this subsection (2) shall not be construed to apply to the day-to-day oversight of property or supervision of employees by county commissioners. Except as set forth in this paragraph (f), the provisions of this paragraph (f) shall not be interpreted to alter any requirements of paragraph (c) of this subsection (2).

(3)(a) The members of a state public body subject to this part 4, upon the announcement by the state public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (3) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the entire membership of the body after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the matters enumerated in paragraph (b) of this subsection (3) or the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (I) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(I) The purchase of property for public purposes, or the sale of property at competitive bidding, if premature disclosure of information would give an

unfair competitive or bargaining advantage to a person whose personal, private interest is adverse to the general public interest. No member of the state public body shall use this paragraph (a) as a subterfuge for providing covert information to prospective buyers or sellers. Governing boards of state institutions of higher education including the regents of the university of Colorado may also consider the acquisition of property as a gift in an executive session, only if such executive session is requested by the donor.

(II) Conferences with an attorney representing the state public body concerning disputes involving the public body that are the subject of pending or imminent court action, concerning specific claims or grievances, or for purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of a state public body is not sufficient to satisfy the requirements of this subsection (3).

(III) Matters required to be kept confidential by federal law or rules, state statutes, or in accordance with the requirements of any joint rule of the senate and the house of representatives pertaining to lobbying practices;

(IV) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(V) Determining positions relative to matters that may be subject to negotiations with employees or employee organizations; developing strategy for and receiving reports on the progress of such negotiations; and instructing negotiators;

(VI) With respect to the board of regents of the university of Colorado and the board of directors of the university of Colorado hospital authority created pursuant to article 21 of title 23, C.R.S., matters concerning the modification, initiation, or cessation of patient care programs at the university hospital operated by the university of Colorado hospital authority pursuant to part 5 of article 21 of title 23, C.R.S., (including the university of Colorado psychiatric hospital), and receiving reports with regard to any of the above, if premature disclosure of information would give an unfair competitive or bargaining advantage to any person or entity;

(VII) With respect to nonprofit corporations incorporated pursuant to section 23-5-121(2), C.R.S., matters concerning trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(VIII) With respect to the governing board of a state institution of higher education and any committee thereof, consideration of nominations for the awarding of honorary degrees, medals, and other honorary awards by the institution and consideration of proposals for the naming of a building or a portion of a building for a person or persons.

(b)(I) All meetings held by members of a state public body subject to this part 4 to consider the appointment or employment of a public official or employee or the dismissal, discipline, promotion, demotion, or compensation of, or the investigation of charges or complaints against, a public official or employee shall be open to the public unless said applicant, official, or employee requests an executive session. Governing boards of institutions of higher education including the regents of the university of Colorado may, upon their own affirmative vote, hold executive sessions to consider the matters listed in this paragraph (b). Executive sessions may be held to review administrative actions regarding investigation of charges or complaints and attendant investigative reports against students where public disclosure could adversely affect the person or persons involved, unless the students have specifically consented to or requested the disclosure of such matters. An executive session may be held only at a regular or special meeting of the state public body and only upon the announcement by the public body to the public of the topic for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the body after such announcement.

(II) The provisions of subparagraph (I) of this paragraph (b) shall not apply to discussions concerning any member of the state public body, any elected official, or the appointment of a person to fill the office of a member of the state public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this subsection (3), the state board of parole created in part 2 of article 2 of title 17, C.R.S., may proceed in executive session to consider matters connected with any parole proceedings under the jurisdiction of said board; except that no final parole decisions shall be made by said board while in executive session. Such executive session may be held only at a regular or special meeting of the state board of parole and only upon the affirmative vote of two-thirds of the membership of the board present at such meeting.

(d) Notwithstanding any provision of paragraph (a) or (b) of this subsection (3) to the contrary, upon the affirmative vote of two-thirds of the members of the governing board of an institution of higher education who are authorized to vote, the governing board may hold an executive session in accordance with the provisions of this subsection (3).

(3.5) A search committee of a state public body or local public body shall establish job search goals, including the writing of the job description, deadlines for applications, requirements for applicants, selection procedures, and the time frame for appointing or employing a chief executive officer of an agency, authority, institution, or other entity at an open meeting. The state or local public body shall make public the list of all finalists under consideration for the position of chief executive officer no later than fourteen days prior to appointing or employing one of the finalists to fill the position. No offer of appointment or employment shall be made prior to this public notice. Records submitted by or on behalf of a finalist for such position shall be subject to the provisions of section 24-72-204(3)(a)(XI). As used in this subsection (3.5), “finalist” shall have the same meaning as in section 24-72-204(3)(a)(XI). Nothing in this subsection (3.5) shall be construed to prohibit a search committee from holding an executive session to consider appointment or employment matters not described in this subsection (3.5) and otherwise authorized by this section.

(4) The members of a local public body subject to this part 4, upon the announcement by the local public body to the public of the topic for discussion in the executive session, including specific citation to the provision of this subsection (4) authorizing the body to meet in an executive session and identification of the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized, and the affirmative vote of two-thirds of the quorum present, after such announcement, may hold an executive session only at a regular or special meeting and for the sole purpose of considering any of the following matters; except that no adoption of any proposed policy, position, resolution, rule, regulation, or formal action, except the review, approval, and amendment of the minutes of an executive session recorded pursuant to subparagraph (II) of paragraph (d.5) of subsection (2) of this section, shall occur at any executive session that is not open to the public:

(a) The purchase, acquisition, lease, transfer, or sale of any real, personal, or other property interest; except that no executive session shall be held for the purpose of concealing the fact that a member of the local public body has a personal interest in such purchase, acquisition, lease, transfer, or sale;

(b) Conferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions. Mere presence or participation of an attorney at an executive session of the local public body is not sufficient to satisfy the requirements of this subsection (4);

(c) Matters required to be kept confidential by federal or state law or rules and regulations. The local public body shall announce the specific citation of the statutes or rules that are the basis for such confidentiality before holding the executive session.

(d) Specialized details of security arrangements or investigations, including defenses against terrorism, both domestic and foreign, and including where disclosure of the matters discussed might reveal information that could be used for the purpose of committing, or avoiding prosecution for, a violation of the law;

(e) Determining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators;

(f)(I) Personnel matters except if the employee who is the subject of the session has requested an open meeting, or if the personnel matter involves more than one employee, all of the employees have requested an open meeting. With respect to hearings held pursuant to the “Teacher Employment, Compensation, and Dismissal Act of 1990”, article 63 of title 22, C.R.S., the provisions of section 22-63-302(7)(a), C.R.S., shall govern in lieu of the provisions of this subsection (4).

(II) The provisions of subparagraph (I) of this paragraph (f) shall not apply to discussions concerning any member of the local public body, any elected official, or the appointment of a person to fill the office of a member of the local public body or an elected official or to discussions of personnel policies that do not require the discussion of matters personal to particular employees.

(g) Consideration of any documents protected by the mandatory non-disclosure provisions of the “Colorado Open Records Act”, part 2 of article 72 of this title; except that all consideration of documents or records that are work product as defined in section 24-72-202(6.5) or that are subject to the governmental or deliberative process privilege shall occur in a public meeting unless an executive session is otherwise allowed pursuant to this subsection (4);

(h) Discussion of individual students where public disclosure would adversely affect the person or persons involved.

(5) Deleted by Laws 1996, H.B.96-1314, § 1, eff. July 1, 1996.

(6) The limitations imposed by subsections (3), (4), and (5) of this section do not apply to matters which are covered by section 14 of article V of the state constitution.

(7) The secretary or clerk of each state public body or local public body shall maintain a list of persons who, within the previous two years, have requested notification of all meetings or of meetings when certain specified policies will be discussed and shall provide reasonable advance notification of such meetings, provided, however, that unintentional failure to provide such advance notice will not nullify actions taken at an otherwise properly published meeting. The provisions of this subsection (7) shall not apply to the day-to-day oversight of property or supervision of employees by county commissioners, as provided in paragraph (f) of subsection (2) of this section.

(8) No resolution, rule, regulation, ordinance, or formal action of a state or local public body shall be valid unless taken or made at a meeting that meets the requirements of subsection (2) of this section.

(9) The courts of record of this state shall have jurisdiction to issue injunctions to enforce the purposes of this section upon application by any citizen of this state. In any action in which the court finds a violation of this section, the court shall award the citizen prevailing in such action costs and reasonable attorney fees. In the event the court does not find a violation of this section, it shall award costs and reasonable attorney fees to the prevailing party if the court finds that the action was frivolous, vexatious, or groundless.

(10) Any provision of this section declared to be unconstitutional or otherwise invalid shall not impair the remaining provisions of this section, and, to this end, the provisions of this section are declared to be severable.