

About the ACLU

"So long as we have enough people in this country willing to fight for their rights, we'll be called a democracy." -ACLU Founder Roger Baldwin

The ACLU is our nation's guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU of Colorado was officially chartered as the seventeenth affiliate of the National ACLU in 1952.

The ACLU of Colorado vigorously supports the public's right to access government records and information as fundamental to our democracy. More information about the ACLU of Colorado's work in and out of the courtroom on open records issues, and other civil rights and civil liberties issues, is available online:

www.aclu-co.org

The information in the ACLU's Citizen's Guide to Colorado Open Records Laws is meant to provide you with basic information and suggestions about your right to obtain public records in Colorado. This information can educate you and empower you, but it is informational only and is not legal advice. You should be aware that the law is constantly changing, and may have changed since the time this handbook was last updated. If you need legal advice, you should always consult with an attorney.

© 2010 ACLU of Colorado

ACLU Guide to Colorado Open Records Laws

Table of Contents

Introduction	i
Public access to information in American democracy	i
Transparency comes to Colorado	ii
The importance of Colorado's open records laws	iii
Using the ACLU Citizen's Guide to Colorado Open Records Laws	v
Glossary of Key Terms and Acronyms Under Colorado open records laws.....	vii
Section 1.0 Researching your potential open records request	1
1.1. Categories of records available under CORA and the CCJRA	1
1.2. Research the records you are seeking	1
1.3. Determine if the records you are seeking are already publicly available	4
1.4. Are the records I'm seeking exempt from public disclosure?.....	5
1.5. Special considerations regarding the Colorado Criminal Justice Records Act	6
Section 2.0 Drafting the Request	8
2.1 The form of the request	8
2.2 Where to send your request	9
2.3 Describe the nature of your request.....	10
2.4 Narrowly identify the documents you seek	10
2.5 Requesting electronic production	13
2.6 Requesting your own records/using authorizations for release	13
2.7 Make an advance request for statement explaining any delay or denial.....	13
2.8 Finishing touches.....	14
Section 3.0 Fees & Costs	15
3.1 Fees authorized by Colorado open records laws	15
3.1.1 Authorized charges under CORA	16
3.1.2 Authorized charges under CCJRA.....	16

3.2	Minimizing fees	17
3.3	Challenging fees not authorized by Colorado open records laws.....	19
Section 4.0 Timeframes for the custodian’s response to your request.....		22
4.1	Timeframes for requests under CORA	22
4.2	Timeframes for requests under CCJRA	23
4.3	Dealing with delay.....	23
Section 5.0 Reviewing and appealing the custodian’s response		26
5.1	Examining the Response	26
5.2	Identifying the legal basis for withheld records.....	27
5.3	Evaluating Exemptions	29
5.4	Strategies for appealing an agency’s decision to withhold records.....	31
Section 6.0 Obtaining legal assistance.....		34
6.1	Before filing a lawsuit.....	34
6.2	Filing a lawsuit.....	34
Conclusion Supporting Transparency and Accountability in Colorado.....		37
APPENDIX A: QUICK CHECKLIST FOR AN OPEN RECORDS ACT REQUEST		39
APPENDIX B: TEMPLATE FOR OPEN RECORDS ACT REQUEST.....		40
ENDNOTES.....		41

Introduction

He has called together legislative bodies at places unusual, uncomfortable, and distant from the depository of their Public Records, for the sole purpose of fatiguing them into compliance with his measures.

–Declaration of Independence, July 4, 1776

Public access to information in American democracy

When the final draft of the Declaration of Independence emerged in Philadelphia on July 4, 1776, after more than 80 revisions and edits, the grievance quoted above was almost at the very top—fourth on a long list of over two dozen complaints the drafters “submitted to a candid world” to prove King George’s “absolute Tyranny.”¹

What were the drafters of the Declaration talking about, and why was this complaint so high on the list?

In modern terms, the drafters were concerned with transparency, the fundamental principle that openness in government affairs is critical to a participatory democracy and for holding government officials accountable when they do not act in the public’s best interest. In colonial times, the governors of Virginia and Massachusetts had moved legislative assemblies to remote locations at the last minute, far away from public records vital to informed decision-making. The King and the governors said the measures were necessary for “public safety”—a familiar refrain still used to justify unwarranted government secrecy today—but the drafters of the Declaration weren’t buying it. They complained that the King’s actions were taken “for the sole purpose of fatiguing them into compliance with his measures.” In other words, drafters were putting the world on notice that the King was subverting democratic processes by limiting access to information and stifling well-informed democratic input.

Although the drafters of the Declaration recognized that transparency in government decision-making was fundamental to a democratic society, they unfortunately did little to legally protect that right 13 years later when drafting the constitution. Consequently, for the first 190 years of our country’s history, the public’s ability to access records was governed only by court decisions that discussed vague “common law” rights to public records. Those decisions gave government officials broad discretion to deny requests for records.² Following World War II, federal agencies clamped down even more tightly on the public’s access to information in the era of the Cold War, McCarthyism, and J. Edgar Hoover’s FBI.³

Beginning in the late 1940s, journalists took the lead in a 20-year campaign to enshrine and expand the public’s legal right to access to government records. As a result of these efforts, in 1966 Congress passed the Freedom of Information Act (“FOIA”). After FOIA, all information held by the federal government was presumed to be public, unless it fell into a specific exemption which permitted information to be withheld. Although FOIA only applied to information held by federal government agencies, its passage motivated similar changes in Colorado’s state laws.

Transparency comes to Colorado

...excessive government secrecy, especially when imposed arbitrarily by elected or administrative officials, can endanger the freedom of speech concept embodied in the first amendment and may threaten democracy generally.

–Colorado Committee on Open Public Records, 1967⁴

Just like the public's access to records held by the United States government, for much of Colorado's history there was no specific law governing whether the public had a right to access information held by Colorado state, county, or city government agencies. Whether information could be obtained by the public was generally at the sole discretion of government officials.⁵ After the passage of the federal FOIA law, however, Colorado's legislature took similar action to create broad access to public records in Colorado.

Colorado's open records law were inspired by the federal FOIA and were passed in 1969, just three years after FOIA was enacted. Like FOIA, under the Colorado's Open Records Act, all records are presumed to be available to the public unless specifically exempted from disclosure by law. These laws underwent significant amendments in 1974 and 1977.

In their modern form, Colorado's open records laws are really composed of two different laws: the **Colorado Open Records Act** ("CORA") and the **Colorado Criminal Justice Records Act** ("CCJRA"). The simplest way of understanding the relationship between the two laws is as follows: the CCJRA governs the disclosure of "criminal justice records—those records made or kept by law enforcement agencies like police departments, county sheriffs, and criminal courts. CORA governs every other type of record. The application of these laws and the difference between them is explored in more depth later in this guide.

Colorado's open record laws permit "any person" to request information from Colorado government agencies. Under Colorado's open records laws, the phrase "any person" really does mean anyone—the requestor can be a journalist, organization, community organizer, lawyer, or just a curious member of the public. Colorado's open records laws apply to every branch of government—legislative, executive, and judicial—and at every level of governance including towns, cities, counties, and state agencies. Even nongovernmental bodies can be subject to Colorado's open records law if the entity receives public funding or includes a member who is a government official.⁶ On paper, Colorado's public records laws promise the public the ability to access a wide scope of information regarding Colorado's government affairs. In reality, however, the effectiveness of Colorado's open records acts in ensuring government transparency and accountability is wholly dependent on the public's vigorous use of its right to obtain public records under these laws.

The importance of Colorado's open records laws

...the concentration of power and the subjugation of individuals will increase amongst democratic nations ... in the same proportion as their ignorance.

--Alexis de Tocqueville, *Democracy in America*, 1840

The records made, kept and maintained by Colorado's government agencies are indeed *our* records, in the very literal sense of that word. All people who work for Colorado's city, county or state governments, whether they have been elected, appointed or hired, have been granted their power and authority by Colorado voters. Every dollar that Colorado government officials make or spend comes from taxes collected from Colorado residents. Each time a government official drafts a policy, signs a contract, or sends an official letter or email, they are doing so in discharge of duties they are supposed to be taking on behalf of the best interest of Coloradans. Each time a record custodian copies a piece of paper in response to an open records act request, the copier, toner, and piece of paper was paid for by public tax dollars.

These public records are fundamental to understanding official policies, examining government decision-making processes, exposing waste and fraud, and uncovering government wrongdoing. These records are equally useful to student researching a paper, a blogger investigating government misconduct, an advocacy organization trying to influence public policy, or a person who is merely curious about how his or her government officials are fulfilling their duties and responsibilities. Public records reveal the raw data and first-hand account of events, before the information is edited, spun or tweaked for official presentation to the public by the government or news media. In this way, government records are of singular importance to our democracy.

Traditionally, journalists have been the primary users of open records laws—submitting requests, haggling with agencies over insufficient responses, calling the public's attention to unwarranted government secrecy, and tediously reviewing and combing through documents to look for a clue or "smoking gun" hidden in the records. With newspapers shuttering daily and an overall decline in investigative journalism, however, it is now more important than ever that individuals and organizations in Colorado understand and utilize our open records laws to obtain and review public records concerning the issues and matters important to them.

You do not have to have any special training, education or prior experience to understand and effectively use Colorado's open records laws. Making an open records request is an easy way for organizations, community groups, and any curious member of the public to learn more about how their government is working and ensure that transparency and accountability remain fundamental principles of our democracy. Consider the following hypothetical situations:

SITUATION 1: A neighborhood association becomes concerned after the city council awards a contract to a developer to construct a new city building in their neighborhood. The contract is awarded in a closed door process, and no information about the bidding process or the amount or the terms of the contract seems to be publicly available.

SITUATION 2: A college student working on a paper wants to gather data about deaths caused by well water contamination in a Colorado county over the last 50 years.

SITUATION 3: A young person of color feels that he was stopped and racially harassed by a police officer. The person becomes even more concerned after learning that other people in his neighborhood have had similar confrontations with this officer. The young person files a complaint with the police, and the police department conducts an investigation. The department finds that the officer did not engage in racial harassment or violate any department policies, and the department does not disclose any information about the reason for their decision, how the investigation was conducted, or whether the officer has any history of racial profiling complaints.

SITUATION 4: A high school student journalist becomes concerned after hearing complaints from other students that a newly hired counselor seems woefully inexperienced and has inappropriately disclosed confidential information about students to other students and staff.

Can you think of any way in which public records might help the persons in these situations learn more about how their public officials are discharging their duties? Before reading any further, try to think about some records you might request in each situation, and how you might use any records you obtained. Now consider the following possible requests and results in each case:

SITUATION 1: Using Colorado open records laws, the neighborhood association requests a copy of the contract from the city. In addition, the association requests copies of any emails between the developer and the city council referring to the contract, and any internal city policies that govern the contract award process. *RESULT: Emails disclosed in response to the neighborhood association's open records request show that one particular city council member was responsible for keeping the bidding process closed. An internal city guideline suggests that the councilperson's actions may have violated city policy. When the neighborhood association gives the emails to a local reporter, the newspaper runs an article. The article starts an internal inquiry by the city, which confirms that the city council member directed the contract to a close personal friend at a contract price far above the market rate, and that the city council person violated internal city guidelines.*

SITUATION 2: Using Colorado open records laws, the student requests copies of coroner's reports from the county. The student also investigates whether the county health department tracks statistics relevant to her research, and finds some of that public data is already available online. *RESULT: The student's review of coroner's reports finds that deaths from well water contamination are far more common than previously thought. The student's findings are published in a paper that is used by an environmental advocacy group to convince county commissioners to adopt measures to monitor and remedy the contamination.*

SITUATION 3: The young person who filed the police complaint requests a copy of the police department's internal investigation file under Colorado's open records laws. The young person also requests copies of internal policies the department uses to prevent officers from engaging in racial harassment and profiling. *RESULT: The police department refuses to disclose some pages from the*

internal investigation file, but the young person obtains portions of the file showing that police investigators never even interviewed independent witnesses who saw the racial harassment, and asked leading questions when interviewing the officer. The file also reveals that the officer has a long history of racial profiling complaints. The young person also obtains the department's policy on racial profiling, which is bare-bones and out-of-date. The complainant contacts local religious leaders and community organizations, who work to convince the police chief to conduct additional racial profiling training for her officers, and to improve the department's racial profiling policy and internal investigative procedures.

SITUATION 4: Under Colorado open records laws, the student journalist requests copies of the job applications of everyone who applied for the counselor position. **RESULT:** *The student journalist obtains copies of the job applications and finds that the person hired to fill the counselor position was the least qualified of 10 candidates for the position, and had no previous experience as a counselor. The student journalist then makes another open records act request for the salary information of all the counselors from her school, and obtains the counselor's criminal arrest history. The student finds that her school was paying a much higher salary to the inexperienced counselor compared to other counselors at her school, and that the inexperienced counselor pled guilty to theft before being hired. The student journalist writes an article reporting her research in the school newspaper, which prompts someone to come forward and disclose that the counselor is the son of a district administrator.*

The above hypothetical situations help demonstrate some of the many ways in which Colorado open records laws can be used to ensure accountability and transparency. These examples, however, represent only a fraction of the records and information available from Colorado's government agencies and the potential ways in which that information can inform and strengthen our democracy. While this guide cannot tell you every type of public record that is available or its value to an informed Colorado citizenry, it will help you research, draft, and follow-through with your open records act requests.

Using the ACLU Guide to Colorado Open Records Laws

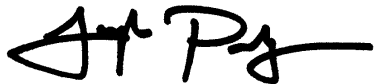
Regardless of the reason that you are seeking information from a government agency in Colorado, this guide will help you to understand how to most effectively utilize Colorado's open records laws in order to obtain the records you are seeking.

This guide will walk you through the steps you should consider when making an open records act request, and offers practical tips based on the ACLU's experience in filing hundreds of requests. Section 1 discusses preliminary research you should undertake before you even put pen to paper. Section 2 provides practical guidelines for drafting your request. Section 3 discusses the fees you might be charged by the government agency for producing and copying the records you want, and some common-sense strategies for avoiding or minimizing those charges. Section 4 discusses the legal timeframes in which the government agency must respond after you have submitted your request. Section 5 discusses steps for reviewing what is produced, what do to if an agency refuses to disclose the records or information that you have requested, and offers possible alternatives that might allow you to

get the information you want without having to file a lawsuit. In those cases where a government agency refuses to budge even after you've exhausted all other efforts, Section 6 of this guide discusses issues to consider when seeking legal advice and assistance.

Finally, in the Conclusion to this guide, we offer some thoughts and suggestions on how you can continue to support, defend and expand transparency and accountability in Colorado through our open records laws. We hope you find the guide useful, and if so, that you will consider getting involved in some of the broader efforts discussed in the Conclusion.

Happy hunting.

A handwritten signature in black ink, appearing to read "T. Pendergrass", with a long horizontal flourish extending to the right.

Taylor Pendergrass
Staff Attorney, ACLU of Colorado

Glossary of Key Terms and Acronyms under Colorado open records law

Some basic familiarity with the following terms will be helpful as you use this guide.

CCJRA: The Colorado Criminal Justice Records Act.

CORA: The Colorado Open Records Act.

Criminal justice records: Records held by law enforcement agencies like the state patrol, county sheriffs, police departments, and criminal courts.

Custodian: The person at a government agency who is responsible for reviewing and responding to records requests.

Disclose: When a government agency allows a person to inspect or copy or record, or is required to do so by law or court order. The opposite of **withhold**.

Discretion: In the context of Colorado open records laws, the term “discretion” is used to refer to a situation where the law permits the government agency to decide whether or not to disclose a particular type of record.

Exempt: A term used in Colorado open records laws to refer to a type of record that does not have to be disclosed to the public.

Inspect: Used in Colorado open records laws as another way of saying that a member of the public has the right to go to the government office and review public records as an alternative to, or in addition to, obtaining copies of those records.

Government agency: In this guide, the phrase “government agency” is used to refer to any government unit, agency or department in Colorado at the state, county, or municipal level.

Privilege: A type of legal right permitting the government to withhold certain types of records as confidential, even if that record would otherwise have to be disclosed.

Redact: To white-out or black-out certain words, sentences, paragraphs, or other information on a public record.

Withhold: Refers to a situation where the government acknowledges that a document exists, but refuses to allow the person to inspect or copy the record. The opposite of **disclose**.

Section 1.0

Researching your potential open records request

Before you file an open records act request, you should first undertake some brainstorming and research regarding your potential request. Advance research will make sure that you do not send your request to the wrong agency, or waste time waiting for a response when the records you are seeking are already publicly available. In addition, research done in advance will be invaluable when you begin drafting your request, as detailed in Section 2.0. This section begins by giving you a basic idea of the universe of records available under Colorado open records laws, and some broad categories of records which are usually exempt from disclosure. This discussion is followed by a list of issues you should research regarding your request, some suggested resources for that research, and some particular issues to keep in mind when requesting criminal justice records.

1.1. Categories of records available under CORA and the CCJRA

Under Colorado open records laws, records held by government agencies are presumed to be open for inspection or copying by any member of the public unless otherwise exempted by law. The following four points should give you a rough idea about the universe of records available under Colorado open records laws. You should keep these general guidelines in mind as you begin brainstorming and researching the types of records that you might request.

- Any person, including any organization, can request to inspect or copy public records.⁷
- Any writing made, maintained or kept by a government agency in Colorado is presumed to be open to public inspection unless the law says otherwise.⁸
- The list of entities covered by Colorado's open records laws is very broad. It includes all branches of government—judicial, executive, and legislative. The laws cover any state agency or department, counties, cities, towns, school districts, special districts, public highway authorities, regional transportation authorities, housing authorities, organizations or institutions that receive public funds, and organizations whose members include government officials.⁹
- The Colorado open records act includes all forms of both physical and electronic materials.¹⁰ Under open records laws, therefore, you can request papers, books, maps, photographs, cards, tapes, recordings, digitally stored data, emails, and any other form of documentary material that exists. The term “digitally stored data” includes databases maintained by government agencies.

1.2. Research the records you are seeking

Before you begin drafting an open records act request, you should first try to define as best you can the information you are seeking, what government agency may have that information, and figure out as specifically as possible what records might contain that information. In some cases, this will be easy, for example, if you know you are looking for a specific report from a government agency, or a particular

letter from a government official. In other cases, however, you might only have a general idea about the *information* you want, and not know very much regarding what type of *record* would contain that information, or which government agency keeps that kind of record. Below are some questions you should consider as you try to determine the types of records you are seeking.

Am I seeking information made, kept or maintained by a Colorado government agency? As explained in the introduction to this guide, Colorado’s open records laws entitle the public to access information from all *branches* of Colorado’s government (legislature, courts, and executive branch) at all *levels* of Colorado’s government (towns, cities, counties, state agencies, and private organizations that receive public funds or have government officials as members). Colorado’s open records laws cannot, however, provide you with access to records held solely by federal agencies. If you are seeking records from a federal agency, you will need to file a FOIA request. There are many helpful FOIA resources available for free online, for example, the Reporter’s Committee for Freedom of the Press maintains a helpful FOIA guide at <http://www.rcfp.org/fogg/index.php>.

Tip: There is no automatic “federal document” exclusion to the Colorado open records laws! *Be wary of any Colorado government agency that tells you that it cannot disclose a record or information simply because it is a “federal document.” If that record is kept, made or maintained by a Colorado government agency, it is generally subject to Colorado’s open records laws, regardless of whether it also is kept by, or contains information supplied by, a federal agency.¹¹ For example, if you request a copy of an agreement between a Colorado county and the Environmental Protection Agency, under Colorado open records laws the county should disclose any copy of the agreement kept in the county’s files, even if the agreement was drafted by federal employees. See Sections 5.0 and 6.0 of this guide for information on what you should do to investigate further if an agency withholds records on these grounds.*

What agency is likely to have the records I seek? Determine as best you can the agency or agencies that are likely to have the information you seek. If you are unsure of what agency might have the records you are seeking, consider the following research options:

- Research any news articles that have been written regarding the issue. Those articles might contain references to government agencies or officials that were a source for the article.

Tip: Go local! *In addition to looking for news articles using a search engine like Google, consider also using a dedicated news search engine at the public library, which may be more accurate and permit access to older articles for free. In addition, articles from small local newspapers are often not easily located through online searches. If the issue you are concerned about may have been covered locally, consider researching the local newspaper’s website directly. A list of local Colorado newspapers can be found at <http://www.usnpl.com/conews.php>.*

- The State of Colorado maintains a website with information on various agencies and their missions. Many county, cities and towns also have their own websites. Searching through these

websites might provide you with information about which government agency or department has the information you seek.

- Call or visit the government agency before you draft your request to ask if they have the types of information or records you are seeking. In some cases, the government agency may be able to direct you to another agency that has the records you want.

***Tip: Document, Document, Document!** Anytime you visit with a government official, make sure to write down the name and title of the government official, the time and date you spoke, and the information that he or she provided. If you can communicate with the government official by email or fax, that is an easy way to keep a written record of all communications.*

What are the specific records I want to request? Try to figure out the types of documents you plan to seek from the agency. As described further in Section 2.0, being as specific as possible in your records request is more likely to make the request effective, generate a timely response, and avoid unnecessary fees. If you are unfamiliar with the subject matter you are investigating or unsure of what types of records might contain the information you are seeking, some basic research in advance can make a significant difference in the response you ultimately receive. Consider the following research ideas prior to drafting your request:

- Research news articles, as described above, noting the names of any documents, reports, or other records that are described in the article relevant to your issue.
- Research the government agency's website, as described above, noting the names of any documents or information referenced on those websites.
- Call or visit the government agency and describe the information you are seeking.
- Government agencies often operate in accordance with laws, regulations, and internal policies specific to those agencies. Searching through laws, regulations and/or policies related to an agency might uncover the existence of specific records containing the information you seek. For example, you might find a law that requires a government agency to conduct an internal audit every year, and you could request a copy of the audit. Or, you might uncover a police department's internal policy that describes all the different types of records that are supposed to be completed by officers each time an arrest is made, and you can make sure to request each type of record relevant to you. Or, you might locate a regulation that requires that the county submit certain categories of data on environmental hazards to a state agency which allows you to determine that the state only publishes a portion of this data online—so you make a request for all the raw data. The laws, regulations and internal policies that pertain to a government agency are commonly posted or referenced on the agency's website.

- Organizations that frequently make public records requests, such as the ACLU, commonly post documents obtained from those requests on their websites. Through an internet search, you might find organizations that have made previous open records acts related to your issue. If so, you can review any available material posted on those websites to inform your own request.
- Talk to someone who is familiar with the types of records kept by the government agency. For example, if you are interested in obtaining information regarding an arrest, a criminal defense attorney in the area might be able to tell you all the types of records typically kept by that police department. As another example, if you are researching city contracts, a local business person who has done business with the city might be familiar with all the different types of records used in such transactions.

1.3. Determine if the records you are seeking are already publicly available

Before you spend time drafting an open records act request and potentially incurring charges to obtain records, make sure that the records are not already available. Government agencies should make public records easily accessible online without the need for a specific open records act request.¹² Online publication is already a reality in many circumstances, especially for larger government agencies and departments.

If you have researched the government agency online and/or have talked to employees of the government agency, you might already know whether the records you are seeking are already publicly available on the agency's website or at a government office. If not, however, you should call the agency or review their website to see if the information you want is already publicly available. The following resources might also be helpful:

- Links to all types of state public records and data can be found at the Colorado State Publications Library at <http://www.cde.state.co.us/stateinfo/>.
- Many criminal justice agencies, like county sheriffs and police departments, post crime statistics on their websites. The crime statistics an agency voluntarily publishes on its website, however, may be a much smaller subset of the total statistics the agency actually tracks and records.
- Colorado's open records laws mandate that some types of records are always open to the public. Many of Colorado's cities and counties have already put this information online, including online access to searchable databases. Information that is already widely available online from county and municipal websites includes property taxes, property documents filed with the clerk and recorder, voter registration information, health department inspection reports, foreclosure records, and public contracts, bids and proposals.

- Many government agencies publish their internal policies and guidelines on their websites. In addition, as discussed above, reviewing an agency’s internal policies can be a helpful background research for your records request.
- When journalists obtain public records for a story, more news organizations are posting those records online when publishing the news article. Look for hyperlinks to public records in news story itself or as a link to the side of the story. In addition, advocacy organizations like the ACLU often post public records they’ve obtained on their website.

“Nothing can be more contemptible than to suppose Public Records to be true.”

-William Blake

***Tip: Dig Deeper!** Discovering that the records you are interested in have already been made publicly available is often be the beginning of a records quest, not the end. Often, a review of publicly available records will reveal the existence of an additional record or underlying data that was not voluntarily disclosed by the government, but is nevertheless public information. Section 5.1 discusses searching for clues in publicly disclosed records that may lead to other records requests.*

1.4. Are the records I’m seeking exempt from public disclosure?

Making an open records act does not require any familiarity with Colorado’s open records laws, any prior journalism experience, or a law degree. All it requires is simple curiosity and the willingness to make a request. Before making an open records act request, you do not have to figure out whether the records you are requesting are legally exempt from disclosure. If you ask for a record and the government agency believes that record can be legally withheld, they will withhold the record and are required to tell you the legal basis for doing so (if you request, as discussed in Section 2.0). There is no penalty, other than perhaps a little lost time, if you request records that turn out to be legally exempt from disclosure. The worst thing you can do is to not ask for a record simply because you are unsure of whether or not the record might be exempt.

As discussed further in Section 5.0 of this guide, the most appropriate time to evaluate whether or not an exemption prevents the disclosure of a record you have requested is *after* the custodian responds to your request and refuses to produce a record. Nevertheless, some requestors want to get a general sense, in advance, for whether or not the records they are seeking are likely exempt from public disclosure. The following guidelines can be kept in mind as you research and draft your request. If you want to do more advance research regarding whether or not the records might be exempt from disclosure, Section 5.3 contains more information and resources related to evaluating exemptions.

- **Records regarding the allocation or expenditure of public funds are generally public records open to inspection.** For example, contracts, bids, requests for proposals, and any other business record involving the expenditure of public funds, are public records.¹³

One thing is true of all governments - their most reliable records are tax records.
-Inspector Finch, V for Vendetta

Tip: Follow the money! *Of all the different types of records available under Colorado's open records laws, records that show how the government is spending the public's money—such as contracts, bids, invoices, expenditures, employment contracts, settlement agreements, etc.—are almost always considered public records and are less likely to be subject to any exemptions.*

- **Records related to elections and voter registrations are public records open to inspection.**¹⁴
- **Colorado laws often exempt records where minor's privacy interests are involved.** For example, records regarding children, juveniles, adoption, custody, and individual student records may be exempt from disclosure.
- **Colorado laws often exempt records where sensitive or personal financial information is involved.** For example, tax records and trade secret information may be exempt from disclosure.
- **Colorado laws often exempt health and medical records.** For example, medical records, mental health records, alcohol treatment records, and pharmacist records may be exempt from disclosure.
- **Even where privacy interests prevent records from being disclosed to third parties, the person to whom the records pertain to may be able to obtain the records.** For example, in some cases juvenile records or mental health records can be disclosed if the person is requesting his or her own records, or is requesting on behalf of a third party who has authorized the release of the records to the requestor. This topic is discussed further in Section 2.6.
- **Even if a public record would normally be public and disclosed, it can nevertheless be withheld if the agency shows that disclosure would do "substantial injury to the public interest."**¹⁵ This is a high standard, and the burden is on the agency to demonstrate that disclosure would cause substantial injury to the public interest.
- **Records made, kept or maintained by a criminal justice agency are governed by the CCJRA, not CORA.**¹⁶ The standards of the CCJRA, which treat "criminal justice records" differently than "public records," are discussed in Section 1.5 below.

1.5. Special considerations regarding the Colorado Criminal Justice Records Act

As noted above, requests for "criminal justice records" are governed by CCJRA, not CORA. A criminal justice record means any writing made, maintained, or kept by a criminal justice agency. Generally, the term criminal justice agency includes law enforcement agencies like as county sheriffs, city police

departments, the state patrol, and courts ruling in criminal cases.¹⁷ Although many of the standards in the CCJRA are similar to those in CORA, several differences should be considered as your research your potential request, as detailed below.

Records of official actions must be disclosed by criminal justice agencies when requested. Official actions include all records of any arrests, indictments, releases from custody, parole decisions, sentencing decisions, and dispositions of cases. A criminal justice agency must provide all records related to official actions when requested.

Criminal justice records made that are not “official actions” should be disclosed unless the agency determines that disclosure would be contrary to the public interest or is otherwise exempted by law. When the record does not fall into the definition of an “official action,” CCJRA permits the custodian the discretion to withhold the record if disclosure of the records would be “contrary to the public interest.” The Reporter’s Committee for Freedom of the Press’s Colorado Open Government Guide has compiled a list of different types of particular criminal justice records and the current law regarding the handling of requests for those types of records, including the following:

Accident reports, police blotters, 911 tapes, investigatory records, arrest records, compilations of criminal histories, information regarding victims, records of confessions, records regarding confidential informants, police techniques (including internal policies), and mug shots.

How to respond to a criminal justice agency that refuses to disclose non-“official action” documents on the grounds that disclosure would be contrary to the public interest is discussed further in Section 5.0.

Criminal justice records cannot be used for financial gain. A provision of the CCJRA states that criminal justice records may not be used for financial gain, for example, selling the records themselves or selling products or services to persons identified using criminal justice records.¹⁸ If you are seeking criminal justice records, you should be aware that the criminal justice agency may ask you to certify that the records will not be used for financial, or “pecuniary,” gain, before agreeing to release records.

Criminal justice records that would normally be disclosed may be withheld if an investigation or prosecution is pending. If you are requesting non-“official action” records that are being used in a pending criminal prosecution, or if you requesting non-“official action” records related to an ongoing internal investigation, be aware that the timing of your request might make a difference in the agency’s response. If you are requesting records related to an ongoing prosecution or investigation, the criminal justice agency is much more likely to withhold the records and may have a better legal basis for doing so. Whenever possible, you should wait until the investigation or prosecution has concluded before you request those records.

Section 2.0

Drafting the Request

If you've completed the steps above, you now have a fairly good idea about what agency you are going to contact and the types of documents you are going to request. You're also pretty sure that the documents you are asking for are not already publicly available. If that is the case, then you are ready to draft your open records act request. This section will walk you step-by-step through the essential parts of your request, and also suggest language to consider using depending on the nature of the request and the records that you are seeking.

2.1 The form of the request

Make written requests. Whenever possible, requests under the Colorado open records act should always be made in writing. You can make a written request by letter, email, or fax, based upon your preference and the contact information available for the agency. Although written requests are not required under the Colorado open records laws, putting your request in writing will ensure that you have documentation regarding your request. In addition, even though the law itself does not require a written request, some Colorado agencies have adopted rules which require the request to be in writing.¹⁹ Putting your request in writing will also ensure that you comply with any such agency rules.

Do not feel constrained by pre-printed request forms. Some government agencies may require that you use a certain pre-printed form in order to request records. This is particularly true of criminal justice agencies, like county sheriffs and police departments, that may have a written fill-in-the-blank form for requesting criminal justice records. You can often determine in advance whether or not an agency wants requesters to use a pre-printed form by looking on that agency's website (look for a webpage titled "Records" or "Requesting Records") or by calling the agency. In general, there is nothing objectionable about an agency requiring the use of a pre-printed form, as long as the following considerations are kept in mind:

- The records you can request from a government agency cannot be artificially limited by a pre-printed form. If the agency is the custodian of a record, you can request it under Colorado open records laws, regardless of whether or not there is a "check-box" for that particular record on the pre-printed form. Most pre-printed forms contain a space for you to identify and request "other" records that are not already identified on the form. If not, however, you can complete the pre-printed form and then attach an additional written request that describes the record(s) you are seeking.
- If your request is complicated and you believe the government agency is going to more accurately identify the records you are seeking if you provide some background explanation regarding the request (as discussed in Section 2.3), you should not feel constrained by the pre-printed form. You can call the custodian and explain that your request cannot be adequately

explained using the pre-printed form. If the custodian insists that the form must be used, attach additional pages to the form explaining your request.

- If the government agency requires the use of a pre-printed form and you cannot submit a written form because of a disability, the government agency should provide you with assistance in completing the form, or permit an oral request.

Make the request in English. Unless the agency explicitly states that requests may be made in a foreign language, the request should be made in English.

Request a receipt or assistance if you have difficulty making a written request. If you have difficulty submitting a request in writing because of a disability or for any other reason, you can make an oral request and ask the agency to provide you with a written receipt of the request. Alternatively, where possible, you may consider asking a friend, relative, or service organization to help you draft a written request.

State clearly that you are making an open records act request. At the beginning of your request, you should make clear that you are requesting records under the Colorado open records laws. You do not have to identify in advance whether the records you seek are “public records” governed by CORA or “criminal justice records” governed by CCJRA. The following opening statement is sufficient for a request:

“Please consider the following a request pursuant to the Colorado Open Records Act and the Colorado Criminal Justice Records Act.”

2.2 Where to send your request

Colorado open records laws direct that requests should be received by the “custodian of records” for a governmental agency. In larger government agencies, the custodian of records might be a person whose sole job is to review and process open records requests. The title used for that person might be Custodian of Records, Records Manager, Public Information Officer, Records Custodian, or something similar. In smaller government agencies, the person who serves as the custodian may have an entirely different job title and deal with records requests as just one small part of his or her overall job.

The name, address and email of the custodian may be posted on the agency’s website. If not, you can always call by telephone and simply ask for the name and address (or fax or email address) of where you should send a records request.

Tip: Cover your bases! *Even with thorough advance research, it occasionally happens that your request will end up in the wrong inbox or at the wrong agency. In your request, it is a good idea to ask that your request be forwarded to the proper person. This will lessen the chance that your request will be summarily denied or go missing in the wrong department. Consider adding the following language to your request: “If you are not the proper custodian of records for this request, please forward this request on to the appropriate designee.” Although the agency is not legally*

required to forward the request, if you've sent your request to the wrong place, Colorado open records laws do require that the custodian tell you where the records you are seeking are located, if that custodian knows that information.²⁰

If an agency simply refuses to provide you with information on where to send a request, you can address your request to the “Custodian of Records” and send it to the agency’s general business address.

2.3 Describe the nature of your request

Provide context and background for your request before identifying the documents you want. Even a custodian whose full-time job is responding to requests may have trouble identifying what you are seeking without some information about the request. Furthermore, records custodians may be responsible for responding to requests related to many units and departments in the agency, each of which generates its own numerous different kinds of unique records. Do not assume that the records custodian is necessarily aware, or has ever seen, the type of document you are requesting. Instead, write your request assuming that the custodian is not familiar with the topic. Giving some background will increase the chances that the custodian will locate what you are looking for and do so in a timely manner.

The less you know about record or where to find it, the more context you should provide. The amount of context you need to provide should be roughly proportional to the complexity and breadth of the request. If you are asking for only a few easily identifiable records, you probably need to do less explaining in your request. If you are less sure about types of records you want or you are unable to identify them specifically, more descriptive background information will help the custodian locate and produce the records you seek.

Attach documents where appropriate. In some cases, attaching documents or news articles to your request can be a helpful way of identifying the documents that you are seeking. For example, suppose a news article quotes a government official referring to a letter between two agencies, and that is the record you want. By referencing the news article and attaching it to your request, it should be clear what record you are seeking even though you don’t know the date of the letter, the name of the author, or the name of the recipient. In addition, if you are requesting a new record that is referenced in another publicly available record you already have, reference and attach a copy of the record you have to your request. For example, suppose you have already obtained an internal memo that states that a public employee was disciplined for violating an internal agency policy. You want a copy of the policy, but the memo contains absolutely no information identifying the policy. Attaching the memo to your request might be the best way to identify the internal policy you are seeking.

2.4 Narrowly identify the documents you seek

In addition to providing background and context for your request, identifying the records you are seeking as specifically as you can will maximize the possibility that the documents you seek will be located and that you will get a response in a timely fashion. More importantly, the more vague and

broad your request, the more power you give the records custodian to interpret your request and decide what to give you and what to withhold. Finally, keep in mind a request that is too broad or vague to be accurately interpreted at all may simply be denied. Keep the following guidelines in mind when drafting your request.

There is no numerical limit on open records act requests. Colorado's open records law permit you to request records as many times as you want, as often as you want. If you are asking for records related to a particularly complex or broad topic, consider starting with a smaller request. There is seldom a disadvantage to starting your records quest with a smaller, narrow request, and then broadening your search with additional requests as you obtain more information about the subject matter you are investigating. A broad request may take the custodian longer to respond to, and result in exorbitant search and retrieval fees, as discussed further in Section 3.0. In addition, if a custodian cannot figure out what you are looking for, you may get charged for the production of dozens or hundreds of pages of documents that are of little relevance to your issue.

Include as many details as possible. Use full names, accurate dates, and titles of documents whenever they are known. Many criminal justice agencies use electronic databases that are searchable by name and birthdate. If you are requesting information related to a person with a common name, you may want to include a birthdate. If you are not sure of the date of an incident, a common way to indicate the date is uncertain is to use the phrase "on or about," or to give a date range. If you can specify some, but not all of the documents that you want, the phrase "including, but not limited to" is effective way of listing a particular record you want, without precluding the production of other types of records that are responsive to your request. Below are some examples:

- All correspondence, whether written or electronic, between Sheriff Smith and any employee or representative of Taser International in May 2009.
- All documents related to the City's proposal to close Emma Goldman High School including, but not limited to, all complaints made by members of the public objecting to the closure as referred to by Councilperson Smith in the May 15, 2009, Gazette article attached to this request.
- Any patrol car video recording showing the arrest of William James (D.O.B. 1/1/80) on or about January 1, 2010, at approximately 20th and Broadway.

Where appropriate, use time periods to constrain your request. The following are some examples of requests that include time frames narrowing the request:

- All documents related to any reimbursements requested by or made to County Commissioner Ben Roberts between January 1, 2005 and December 31, 2007.
- Copies of the county's annual environmental impact audits for the years 2002, 2007, and 2009.

- A copy of the most current Department of Motor Vehicle policy, guideline or criteria regarding the investigation and handling of citizen complaints, and any prior version of this policy from 2000 to the present.

Use the agency’s own internal tracking and identifying numbers when possible. Many government agencies use their own internal numbering systems for files, investigations, contracts, forms, and numerous other types of records. Using those identifying numbers, when available, can be an effective way of identifying the records you seek. Here are some examples:

- Copies of all requests for proposal (Form 33-B) submitted to the housing authority from January 1, 2005 to the present.
- A copy of the entire file for internal investigation #P2009567.
- All documents related to city contract B-890-121.

Suggest keywords or phrases for information to be retrieved from a database. Many government agencies use electronic databases to store and track information. Under Colorado open records laws, you are allowed to request information from these databases. If you are requesting information from a database, identify the keywords you want the custodian to use, for example:

- All records from August 8, 2009 through December 8, 2009, contained in the SQL database containing one or more of following terms: “illegal,” “unlawful,” “violation,” “discipline.”

Section 3.1 discusses the different types of fees that may be charged for retrieving records from electronic databases.

When a broad request is necessary, invite the custodian’s participation in narrowing the request. In some circumstances, making a broad, general subject request is unavoidable because of nature of the issue you are researching, or because a custodian is unwilling to discuss in advance the types of records that the agency keeps. In those instances, you can try to minimize the chance of a massive or unfocused search by including language similar to the below in your request:

“I realize that the records requested may be quite voluminous. If this is the case, please give me a call and I would be happy to discuss with you what records are in your custody and how I can narrow the scope of the request to minimize any burden on your staff while still providing the information sought in the request.”

Tip: Try a sample! *In cases where you are requesting a large amount of records, you can try to arrange for the production of some smaller portion of records initially, before deciding whether or not you want the remainder. For example, suppose you have requested all documents related to every city contract for the calendar year 2008. The custodian tells you that there are 100 files responsive to your request, and that each file is composed of a summary that is 1-2 pages, the actual contract which is 5-6 pages, and a request for proposal which is usually 25 pages. You might ask to review 2 or 3 of these files in their entirety before deciding what you want to copy.*

For example, after a review of a few files, you might decide that copies of just the summary pages are sufficient for your purposes.

Other strategies for narrowing the scope of the custodian's search are discussed in Section 3.2 in the context of minimizing fees.

2.5 Requesting electronic production

The Colorado open records laws do not allow you to dictate the manner in which the records are produced.²¹ Many custodians, however, are happy to produce documents in electronic format if requested, which avoids the need for making physical copies. Unless you definitely want the records produced in physical form, consider requesting the records in electronic format, using language similar to that below:

"If the records are in electronic form or can be scanned and sent by email, I request to receive those records solely by electronic means to *[insert your email address]*."

2.6 Requesting your own records/using authorizations for release

In some circumstances, Colorado's laws prevent public disclosure of records where a person's privacy interests are involved, especially if that person is not a government official or employee and the record does not pertain to any government function or business. For example, medical records are generally protected as confidential and cannot be obtained by third parties through an open records request. In many cases, however, you can obtain records that are normally confidential if those records pertain to you, you have a close legal relationship with the person whose records you seek, or you can demonstrate that the person whose records you are requesting consents to you receiving their records.²² Follow the following guidelines below when requesting records under these circumstances.

- If the records you seek pertain to you (for example, you are requesting your own mental health records, jail records, juvenile records, etc.) make sure that you state so clearly in your request.
- If you have a significant legal relationship with the person whose record you seek, such as a parent, guardian, guardian *ad litem*, conservator, power of attorney, etc., make sure that you state so clearly in your request. Attach authorizing documentation as appropriate, or offer to provide such documentation if requested by the custodian.
- If you are an organization or individual making a request on behalf of another person, have that person sign a release and attach a copy to your request.

2.7 Make an advance request for statement explaining any delay or denial

If the custodian withholds records that are responsive to your request, both CORA and CCJRA require the custodian to state in writing the legal authority for withholding those records, upon your request for such an explanation.²³ Likewise, if you request, the custodian is also required to explain the reason for any delay in producing records, and to tell you a time and date when the documents will be available.²⁴

You can ask the custodian in advance for these written explanations by including language similar to the following in your initial request:

If you deny this request for records in whole or in part, I ask that you provide a written statement explaining the reason for the denial that cites the legal authority that is the basis for the denial. If any of the requested records are in active use, in storage or otherwise unavailable at this time, I likewise request that you provide a written statement informing me of the reason they are currently unavailable and a date and hour at which time the records will be available for inspection.

Reviewing the sufficiency of the custodian's response to these requests is discussed in Section 5.0.

2.8 Finishing touches

Include contact information. Do not forget to include your name, address, fax and email, as appropriate, to ensure that the custodian has a way to contact you to discuss your request and/or to send you the response to your request

Keep copies for your own records. Make a copy your initial request and every subsequent communication you send to the custodian, and keep it in a file for your own records. If you are communicating with the custodian over email, consider saving an electronic copy of your email on a separate backup drive, or printing out the email and putting it in a file as a backup copy.

Section 3.0

Fees & Costs

As discussed in the Introduction to this guide, the information in the government's possession is really *our* information. The records that the government possesses are made, kept and maintained for the benefit of the public interest. The records custodian's salary is paid using public tax revenues. When the custodian prints out a copy of a record, the computer, printer, and even the piece of paper are all paid for with tax dollars. Consequently, when the government charges additional fees for searching for or copying public records, it is quite literally charging the public twice.

The federal FOIA strikes a balance between the public's right to access records that it has already paid for once, with the government's need not to be inundated with burdensome requests that might be expected if there was no financial incentive to make reasonable, specific requests. Under FOIA, only individuals and organizations requesting public records for *commercial* purposes are charged full search, review, and copying fees. The federal government is not permitted to charge any search and review fees for records requested for a *non-commercial* purpose made by educational institutions, non-commercial scientific institutions, and the news media (including many types of advocacy organizations). Individuals and organizations that do not fit into these categories, but are nevertheless requesting records for non-commercial purpose, still get two hours of search and review for free, and everyone but commercial users get the first 100 pages of copies for free.

Unfortunately, unlike FOIA, Colorado's legislature did not strike such a careful balance in drafting Colorado's laws. Colorado's open records laws currently *allow* fee waivers and reductions in certain circumstances, but do not *require* fee waivers if the request is for a public purpose or is made by an individual or organization with limited financial resources. Although Colorado law caps fees for some copying charges and limits other charges to no more than "actual costs," fees for records requests can climb very quickly. This section begins by explaining the fees that agencies are permitted to charge under the law, provides some practical tips for minimizing or avoiding those fees, and finally discusses strategies for challenging unauthorized or excessive fees.

3.1 Fees authorized by Colorado open records laws

Colorado's open records laws authorize several different types of fees based upon the type of record being obtained. First, the laws distinguish between copying fees (the cost of producing a copy of a record) and search and retrieval fees (charges based on the time it takes the custodian to find the record and determine whether it should be released in whole or in part). Second, the laws distinguish between the fees charged for standard copies on 8 ½ x 11 paper, versus copies of other physical records like photographs, CDs, DVDs, etc. The guiding principle of all fees under both CORA and CCJRA is that the fees should never exceed "actual costs," in other words, the government agency cannot profit from the fees charged for copying records that the public owns and has already paid for once.

3.1.1 Authorized charges under CORA

Physical records. In nearly all cases, government agencies cannot charge more than \$0.25 for a standard single-page copy or print-out for a public record covered by CORA.²⁵ In a few circumstances, the government is permitted to charge more than \$0.25/page if a higher fee is specifically authorized by law for a particular type of record, like a “certified” copy.²⁶ If a government agency charges you more than \$0.25/page for a single standard piece of paper, you can ask the custodian to identify the legal authority for the higher charge. For other types of physical records, such as photographs, large or color copies, CDs, DVDs, etc., the agency cannot charge more than the “actual cost” of providing the copy.

Information obtained from databases. If the government agency provides you with a print-out of a record that comes from a word processor or other electronic document format, the agency cannot charge you more than \$0.25/page. If the agency provides you with data from a database that is not a word processing document, however, then the government is allowed to charge you the actual costs of the “incremental fee” associated with producing the information, plus a portion of the costs for maintaining the database.²⁷ The charges may be different, and likely higher, if the request requires more than just accessing pre-existing data and providing you with a copy. For example, if your request requires that the agency create an entirely new type of form just for you in order to gather or display information you want—such as taking information from a database and transferring that data into a special spreadsheet just for your use—then the government is allowed to charge you the actual costs for manipulating the data and producing it in the form that you request.²⁸ The fees that a government agency may charge for providing information from databases are often difficult to estimate in advance, and you should consider the tips discussed in Section 3.2 for minimizing fees.

Search and Retrieval Fees. CORA does not explicitly authorize the charge of any search and retrieval fees for public records. In one case, however, a “nominal” search and retrieval fees was approved by a court where an “exceptionally voluminous request” was involved.²⁹ The word “nominal” is defined in legal dictionaries as “trifling, especially as compared to what would be expected.” If a government agency attempts to charge you a “search and retrieval” fee of any kind for public records, you should consider the tips in Sections 3.2 and 3.3 for minimizing fees and challenging unwarranted fees.

3.1.2 Authorized charges under CCJRA

Physical records. The authorized fee for copies of standard pages under CCJRA is the same as CORA. In nearly all cases, criminal justice agencies cannot charge more than \$0.25 for a standard single-page copy or print-out, except in the rare circumstance where the law specifically authorizes a higher fee for a particular type of record, such as a certified copy.³⁰ If a government agency charges you more than \$0.25/page, you can ask the custodian to explain the legal basis for the higher charge. For other types of physical records, such as photographs, large or color copies, CDs, DVDs, etc., the agency cannot charge more than the actual cost of providing the copy.

***Tip: Educate your custodian!** The CCJRA was recently amended to lower the cost of criminal justice records to \$0.25/page, and those changes went into effect in August 2008. Criminal justice agencies that are still charging minimum or flat fees for copies or print-outs of criminal*

justice records on a standard piece of paper, or are otherwise charging more than \$0.25/page, may have neglected to amend their fee schedules to reflect these recent changes in the law. If the copy of the record you are requesting is a standard 8 ½ x 11 piece of paper, the agency cannot charge you more than \$0.25/page. If you encounter minimum or flat rate charges for standard criminal justice records that exceed that \$0.25/page, consider the strategies discussed in Section 3.3.

Information obtained from databases. CCJRA does not distinguish between information obtained from databases and information obtained from other sources. If the record is produced in the form of a single standard page, the agency cannot charge more than \$0.25/page, regardless of whether it came from a database or a physical file. If the record comes in another physical form like a CD or DVD, then only the actual costs for that record can be charged. Note, however, that under the CCJRA, custodians are permitted to charge search and retrieval fees, which could include the time spent accessing information from a database.

Search, Retrieval and Redaction Fees. The CCJRA permits criminal justice agencies to charge fees for the search, retrieval and redaction of criminal justice records.³¹ Any such fees charged, however, must both be reasonable and cannot exceed actual costs. Such fees are often hard to estimate in advance, and you should consider the tips outlined in Section 3.2 below.

3.2 Minimizing fees

If you have done advance research and have identified the documents you want narrowly and specifically, you have already done much of the most effective legwork to minimize any fees you might be charged in connection with your records request. The following ideas, however, may also help you to minimize or avoid fees for obtaining records.

Research and review fee schedules in advance. Many agencies have their fee schedules posted on their website. If you cannot find the fee schedule, you can contact the custodian and ask what they will charge to produce the type of records you are requesting.

Request a fee estimate in advance, and reserve the right to inspect records before copying. Possibly the easiest way to limit fees is to ask the custodian to provide an estimate of charges before the request is processed. In fact, some agencies require prepayment of fees before processing your request. In those cases, the custodian will call you with an estimate and a request for payment before processing your request, even if you do not specifically request an estimate in advance. You may also decide to authorize a certain maximum amount that you will agree to pay under any circumstances, as demonstrated example at the end of this subsection.

As discussed in Section 1.0, Colorado's open records laws give you the right to "inspect" records. In other words, you have the right to actually review the records in the office of the custodian instead of, or in addition to, getting your own copies of the records. The right to inspect records is important, especially in light of the fact that the law does not provide for any automatic fee waivers or reductions,

because it preserves a person's right to review public information even if that person lacks the financial resources to pay the fees associated with copying those records.

Inspecting records can help minimize costs by allowing you to select records you actually want to copy and permit you to do some of the "searching and retrieving" yourself. For example, suppose the custodian tells you that there are 1,000 pages of documents that are potentially responsive to your request. Instead of asking for copies of all 1,000 pages, or paying for the custodian's time to dig through the 1,000 pages and copy the pages you want, you have the right under Colorado open records laws to inspect the documents at the agency's office and select only the pages you want copied. Suppose you end up selecting only 100 pages for copying—by inspecting the documents first, you lowered the copy charges alone from \$250 to \$25. Consider using language similar to the below in your request:

"If the anticipated charges will be in excess of \$X.00, or if your office requires prepayment for copies, please contact me prior to processing the request. If the estimated charges will be in excess of \$X.00 we may elect to first inspect the records, and then designate only certain records for copying."

Request a fee waiver. Both CORA and CCJRA permit, but do not require, the custodian to waive a portion or all of the fees for records.³² CORA states that fees may be reduced or waived for information produced from a computer database if the records are to be used for a "public purpose," including "nonprofit activities, journalism, and academic research." CCJRA simply permits any kind of fees to be waived at the agency's discretion. Agencies that recognize the importance of access to public information, and that access should not be denied simply because a person or organization has limited financial resources, may grant requests for fee reductions and waivers. Unfortunately, there is no established legal requirement that the custodian *must* grant a fee waiver for "public purpose" requests or for requests from indigent persons or non-profit organizations. There is never any harm, however, in requesting that fees be reduced or waived. If you do, explain the basis for the request (i.e. lack of funds, a public purpose to be served by the request, etc.). Consider using language similar to that below in your request:

"I am seeking these records for a non-commercial public purpose, including (non-profit activities/journalism/academic research). I request a reduced or waived fee for these records."

Pool resources and dedicate funds for records requests. Pooling resources with others interested in your request can minimize the individual burden of obtaining public records. Reach out to individuals and groups who might be interested in your request, such as other students, parents, a neighborhood association, or other like-minded individuals. See if they would be willing to chip in to share the expenses for obtaining the records. If you are a member of a non-profit or other organization, advocate within your organization for establishing a "open records investigation" line item in the annual budget, to ensure that dedicated money is always set aside for fees associated with open records requests.

3.3 Challenging fees not authorized by Colorado open records laws

Doing adequate advance research, making narrow and specific requests, and using strategies for minimizing fees will always be easier ways of avoiding unreasonable charges as compared to trying to challenge the fees and costs assessed after the fact. Unfortunately, some government agencies charge (or threaten to charge, if you've requested a fee estimate in advance) excessive fees to discourage records requests. The fees may be "excessive" in a variety of ways—the fees may not be authorized by law, the copying fees may exceed actual costs, the agency may try to charge more than "nominal" fees for records governed by CORA, the fees may include unreasonable hourly rates, the agency may have "rounded up" to the nearest hour in charging hourly rates, etc. In circumstances where you believe the fees charged are clearly unauthorized or excessive, the following guidelines will help you document your objections and may prompt the agency to reduce or waive the charges. In many circumstances, the custodian you are communicating with will not have authority to alter the fees assessed, and your request will be considered by someone else at the agency.

Request an itemized invoice for the charges. Before making any objection to fees, the first step is to figure out what fees are actually being assessed by the agency. Custodians should provide you with an invoice or explanation for fees. If the custodian hasn't given you any invoice at all, you should request one. Furthermore, even when the custodian provides an invoice, it may be impossible to evaluate whether the fees are excessive or unwarranted because the custodian has not provided a sufficient explanation for the basis of the charges. For example, if you receive an invoice of \$20.00 for the production of 10 pages of criminal justice records, the custodian may be wrongfully charging \$2.00/page for copying or, more likely, the custodian is charging you \$0.25/page for copies plus some unknown hourly search, retrieval and redaction fee. Similarly, if you have requested different types of physical records (paper copies, CDs, and audio tapes) but receive a lump sum invoice, it is impossible to tell whether the agency might be charging you more than the actual costs for copies of the records. If the invoice only contains a lump sum fee or otherwise lacks sufficient explanation, make a written request for an itemized invoice so that you can independently review each type of fee. For a search and retrieval fee, an adequate invoice should tell you both the hourly rate and how much time was spent. If you are requesting a fee estimate in advance of your request being processed, you should adapt these steps to make sure you have enough information to evaluate the legitimacy of the fee estimate.

Request an explanation for unusually high search, retrieval, and redaction fees for criminal justice records. Search, retrieval and redaction fees cannot exceed actual costs. For example, if the custodian has provided you with an invoice stating that the search and retrieval fee was \$45 to produce just 5 pages of documents, that invoice does not provide sufficient information to tell you why a search and retrieval fee was so high for just 5 pages. The custodian should provide you with some information regarding how the fee was calculated, for example, an hourly rate time the amount of time it took to produce the record (3 hours x \$15/hour). A sufficient explanation should also allow you to determine whether the agency is attempting to charge you more than the "actual costs" of producing the record. For example, if it takes the custodian only 10 minutes to locate, review and copy a record for you, the agency cannot "round up" and charge you for a whole hour worth of time. Similarly, criminal justice

agencies cannot charge “flat fees” or “minimum fees” for the production of records if those flat fees exceed the actual costs of producing the records you requested. If the search and retrieval fee appears excessive and the custodian has not adequately explained the basis for the charges, make a written request for further explanation. Likewise, if the custodian charges an hourly rate that seems clearly excessive, or charges for too much search and retrieval time relative to the amount of records you requested, make a written request for further explanation of these charges and/or ask that they be reduced.

Request an explanation for search and retrieval fees for public records governed by CORA. Unlike CCJRA, agencies are not allowed under CORA to charge “search and retrieval” fees. In some cases, the court may nevertheless allow an agency to charge a “nominal,” or very small, search and retrieval fee if your request is very large. If you are charged a search and retrieval fee of any kind for public records governed by CORA, you should write the custodian and ask the agency to give the legal basis for these charges. Keep in mind that agencies are permitted to charge some fees for information retrieved from databases, as discussed in Section 3.1.1 above, making it more important that you clarify the agency’s official position on the basis for the charges before you make your objections.

Review a copy of the legislative document approving the fee schedule for criminal justice records that are obtained from sheriffs and police departments. The Colorado state legislature has capped the amount that criminal justice agencies can charge for standard page copies at \$0.25/page. For all other types of fees, however, including search and retrieval fees and copies for physical records such as CDs and DVDs, the governing body of the county or city determines how much the law enforcement agency can charge.³³ In the case of county sheriff departments, the governing body is the board of county commissioners. In the case of police departments, the governing body is the city or town council.

The legal requirement that the governing body approve the fees charged for criminal justice records is a critical component of protecting the public’s right to access criminal justice information. If law enforcement agencies were permitted to unilaterally set their own fees, they might put a disproportionate weight on the agency’s interest in gathering revenue. In addition, the agency might charge higher fees in order to discourage the public’s interest in obtaining records, or to avoid the “inconvenience” of having to provide criminal justice records to the public. Requiring that the board of county commissioners or city council review and approve the fees provides the opportunity for the public’s elected representatives to balance the strong public interest in transparency and accountability, facilitated by low or no-cost access to public information, against the interests of law enforcement. In addition, it provides individuals and organizations with the opportunity to advocate for inexpensive access to criminal justice records at public hearings held on the proposed ordinance or resolution.

If you believe the county or municipal criminal justice agency is charging you an exorbitant search and retrieval fee, or a clearly excessive copying fee, it is possible that the criminal justice agency has departed from the fees authorized by board of county commissioners or city council. The fee schedule is usually approved by a “resolution” or “ordinance” passed by the commissioners or city council, and in

many cases is posted online. If you cannot find it online, you can contact the custodian for the city council or the board of county commissioners to help you locate a copy.

Be aware that the legislative document (the resolution or ordinance) that approves the fee schedule may be different than what the sheriff or police department has posted online or put on pre-printed records request form. In other words, just because the sheriff or police department has published a list of fees, that does not necessarily mean those charges have been approved by the governing body of the county or city. In many cases, the sheriff or police department's fee schedule will cite the ordinance or resolution that authorizes fees. When you locate the ordinance or resolution, note if the date of passage is older than 2008. If so, the fees may not reflect the recent changes to the law discussed on Page 16 lowering copying charges for all criminal justice records to no more than \$0.25/page.

If you find that the criminal justice agency is charging more than the city council or board of county commissioners has authorized, make a written request for the fee to be reduced. If the criminal justice agency is charging a type of fee that has not been authorized at all, request that the specific fee be completely waived.

Protest any discriminatory refusals to grant fee reductions or waivers for public records from databases. Under CORA, if a custodian provides for a waiver or fee reduction for the production of records from electronic databases, it must be uniformly applied among all persons who are similarly situated.³⁴ In other words, the custodian cannot grant a fee waiver to an individual or organization she likes, but deny a fee waiver to a similar individual or organization making a comparable request that the custodian dislikes. If you have been denied a fee waiver and know that other similar individuals or groups have being granted one for equivalent requests, you can protest in writing and request that you receive the same fee reduction or waiver. This requirement does not apply to waivers of fees charged for criminal justice records; under CCJRA, the agency is free to waive or reduce fees at the agency's discretion.

***Tip: Record the silence!** If the custodian fails or refuses to respond to any of your communications requesting a further explanation of fees or asking for fees to be reduced or waived, adapt the steps outlined in the subsection "Make a written record of non-responses," on Page 24, to document your objections and attempts to get the custodian's response.*

Make a written objection to the fee and give the custodian the opportunity to reduce the fee or explain the basis for the charges. Regardless of the reason that you object to a fee, you should put your objection in writing. Clearly, briefly and respectfully explain why you believe the fee to be unwarranted or excessive. Request that the fee be reduced or waived, or that the custodian provide a written response explaining the basis for the charge.

Section 4.0

Timeframes for the custodian's response to your request

Compared to open records laws in other states, Colorado open records laws require a relatively quick response from the custodian. The response times will depend on the scope of your request, and whether the records you seek are in “active use or storage.” This section of the guide first describes the timeframes in which the custodian is required to respond under CORA and under CCJRA, and then suggests strategies for dealing with delayed responses.

4.1 Timeframes for requests under CORA

If the records are available, they should be provided immediately. If the records are available (not in active use or storage, as described below), then the records should be open for inspection, or copied, immediately and without delay, at reasonable times during the business day.³⁵

If the records are not immediately available, the agency should provide them within 3 to 7 business days. If the records are in active use, storage, or are otherwise not readily available, the custodian should provide them to you within 3 business days, unless extenuating circumstances exist, in which case the custodian may take up to 7 business days to copy the records or make them available for inspection.³⁶ If the custodian believes that extenuating circumstances exist, he or she must provide you with a written statement within 3 business days of receiving the request explaining why an extension of time is necessary. CORA permits the custodian to request an extension of up to 7 days on the following grounds:³⁷

- Your request is so vague that the custodian cannot identify all the documents requested within 3 business days;
- Your request is very broad and the agency is unusually and exceptionally busy with an impending deadline, and therefore cannot process the request within 3 business days;
- You've requested legislative records while the state legislature is in session;
- Your request is so broad that the custodian cannot gather the records within 3 business days.

If the custodian requests more than 3 days to process your request, he or she should identify one of the grounds above in a written statement explaining why the extension is needed, and tell you when the records will be made available. No extension of any kind is permitted if your request is only for a single, specifically identified document.³⁸

If the agency doesn't have the records you are seeking, they should tell you immediately. If the agency is not in custody of the records you are asking for, CORA requires the custodian to notify you

“forthwith,” or immediately. If the custodian knows where to find the records you are seeking, the custodian should tell you where the records are located.³⁹

4.2 Timeframes for requests under CCJRA

If the records are available, they should be provided immediately. Like CORA, under CCJRA if the records are available (not in active use or storage, as described below), then the records should be open for inspection or copying immediately, at reasonable times during the business day.⁴⁰

If the records are not immediately available, the agency should provide them within 3 to 7 business days. CCJRA is silent as to a precise timeframe in which the custodian is required to provide a response to a request for criminal justice records. As CORA notes, however, 3 business days is “presumed” to be a “reasonable time” for a response under Colorado open records laws. If you do not receive any response to a request for criminal justice records within 3 days, you should contact the custodian and ask her or him to explain why the request is taking more than 3 days, and to specify a date when the records will be available.

If the agency doesn’t have the records you are seeking, they should tell you immediately or forward your request. If the agency is not in custody of the records you are asking for, CCJRA requires the custodian to notify you “forthwith,” or immediately. If the custodian knows where to find the records you are seeking, the custodian should tell you where the records can be obtained.⁴¹ In addition, if the criminal justice records you are seeking are not held with the local agency itself, but rather with a “central repository” like the Colorado Bureau of Investigation, then the agency is required to forward your request on to that other agency and notify you that the request has been forwarded.⁴²

4.3 Dealing with delay

Colorado’s open records laws protect your right to a quick response to your request. Locating records, however, can take time even for the most diligent custodian. Unless you have reason to believe the custodian is unreasonably delaying a response to your request or your need for the record is especially urgent, there is little purpose served by refusing to agree to a reasonable timeframe for production – even if it exceeds the timeframes proscribed under Colorado open records laws. The following guidelines may help you consider how to deal with a delayed response.

Count the days correctly. The timeframes in Colorado’s open records laws count only “working” or business days, which does not include holidays or weekends. Also keep in mind that if you send a request by mail, it may have taken a couple of days to reach the custodian. Likewise, if the custodian is sending you a response by mail, that will take a couple of days to get to you. Sending your request by email, fax, or by mail with a return receipt requested is the easiest way to keep track of the exact date your request was received.

Plan ahead. The best way to avoid a delay that significantly interferes with your need for public records is to plan ahead. If you know that you are going to need records by a certain date in order for a city council meeting, research paper due date, legislative committee meeting, statute of limitations, or some

other deadline, submit your request far enough in advance to allow for some flexibility in case the custodian requests extra time or refuses to respond in a timely fashion. If your request is especially broad or complicated, make sure to factor in even more additional time.

If urgent circumstances arise, tailor your request accordingly. In some cases, an urgent need for public records will arise that you could not have planned for in advance. In these cases, try to narrow and focus your request to specific, identifiable documents whenever possible. As noted above, the custodian is not permitted any extension of time to respond to a request for a single, specifically identified public record governed by CORA.⁴³ You may also consider contacting the custodian in advance to give them advance warning of your request, explain the need for a quick response, and develop a plan to obtain the documents you want in the quickest amount of time possible.

Consider alternatives to expedite the request. Requesting to inspect records (discussed in Section 3.2), rather than waiting for copies to be made, may be a quicker way to review the information if you have an urgent need to obtain the information. Likewise, if your request contains several different requests, you could also consider working with the custodian to prioritize records you need most urgently.

If the custodian requests an extension beyond 7 days, do not unreasonably deny the request. Under Colorado open records laws, the custodian has the right to extend the timeframe to produce records up to 7 business days if exigent circumstances exist. In some cases, the custodian may call and request an extension of time even where exigent circumstances do not exist, or ask for more than 7 days to produce the records. Unless you cannot agree to an extension because of the urgency of the request, work with the custodian to choose an alternative reasonable timeframe for production. Keep in mind that if you refuse to agree to an extension and custodian is still unable or unwilling to produce the records within the 7-day period, your only recourse to obtain the records more quickly will be a lawsuit.

If a custodian requests an extension and you have no objection, you should ask the custodian to commit to a specific date for the production of the records, rather than granting an open-ended extension. If the conversation occurs orally, send a written confirmation to the custodian that notes the new date by which the records will be produced.

Make a written record any time the agency refuses to respond. Once you have confirmed that your request has been received, if the custodian does not respond in any fashion within 3 business days, send an additional written request documenting the custodian's lack of response. If the custodian does not respond after 7 business days, send another written request documenting the lack of response. If you have received no response at all after 14 business days, you should send a final written communication stating as follows:

“On the following dates [DATES], I sent written requests for public records. I have confirmed that these requests were received by your agency. To date, however, I have not received any response. It has now been 14 business days since my first request was sent. I interpret your lack of response as a complete denial of my request. If I do not hear from you within 1 business day, I will conclude that my request has been denied in whole.”

After you send this statement, consider the options in Sections 5.4 & 6.0. You should follow the same steps above if, after you make initial arrangements with a custodian to extend a deadline for production, the custodian subsequently misses that new deadline.

Section 5.0

Reviewing and appealing the custodian's response

The custodian's response to your records request may take one of several different forms. The custodian may provide you with all the records you requested. Alternatively, the custodian may provide you with some of the records you requested, but withhold pages or portions of records on the basis that the records were exempt from disclosure. Finally, the custodian may not give you any of the records you requested. When you receive a response, the first step should be to examine the response itself, discussed in the first subsection below. If the custodian has withheld any documents, the next step is to make sure that the custodian has given you sufficient information for you to evaluate the basis for denying your request, as discussed in the second part of this section. Once you have adequate information regarding the legal basis for the purported exemption, the third step is to evaluate that exemption. If any exemptions or fees appear to be unjustified, this section will help guide you through the process of making a written objection. Finally, in cases where a written objection does not work to obtain the documents, this section concludes by suggesting some additional strategies to consider.

5.1 Examining the Response

Evaluate the responsive documents produced in comparison to your initial request. If your request was for a single specified document, clearly defined data, or a copy of a DVD, it will probably not take you much time to evaluate whether or not the custodian responded adequately to your request. If your request was broad or more generalized, however, it may take some initial examination on your part to determine whether or not you received the documents you requested. Take a look at the type of records produced and the records themselves, and take note of anything that seems to be missing. In addition, if your initial request asked for the custodian to provide you with a written statement identifying any documents that were withheld and the legal basis for doing so, do not automatically assume that the absence of such a statement means that no responsive documents were withheld or overlooked by the custodian. Occasionally, custodians might neglect to give you a written statement identifying that a type or category of records was withheld. If a type or category of records you requested appears to be absent without explanation, ask the custodian in writing to either confirm that there were no responsive records or identify any records withheld and the legal basis for the withholding.

Search for clues in the records produced to identify other records that you should have received or now want to obtain. As discussed in Section 2.3, records custodians may be responsible for producing records from numerous units and departments within an agency, and may themselves have little familiarity with the records you are requesting. Even the most diligent records custodian acting in good faith may be unaware of some category of responsive records. Closely examine the records you receive, and note any references to the existence of other specific records, or types or categories of records, that may have been responsive to your initial request but were not produced. If you discover the existence

of records that you believe should have been produced in response to your initial request, send a written follow-up to the custodian. If you discover references to records relevant to your issue that were not covered by your initial request, submit a follow-up records request asking for those records.

Compare the records you receive to records that have been provided for similar past requests. If you researched your request in advance as described in Section 1.2, you may have already located public records produced in response to someone else's similar open records request. If so, take the records produced in response to the past request and compare them to the records produced to you now. Note any instance where records produced by the custodian in the past are now being withheld. In some cases, the custodian might have disclosed records in the past only after a requestor raised objections or took legal action, or an attorney, the media, or an organization like the ACLU made the request. The custodian might be hoping to keep documents secret from you, even though they were released in the past, because the custodian is hoping you won't raise objections or diligently pursue the release of the records through other strategies. If you suspect that records being withheld from you now are substantially the same as records that have been disclosed publicly in the past, send a written objection to the custodian. Clearly explain your objection, attach an example of the record that was disclosed in the past, and ask the custodian to release any similar records withheld from you now, or to explain the legitimate difference in disclosing the one record but withholding the other.

5.2 Identifying the legal basis for withheld records

If the custodian has determined that records responsive to your request are exempt from disclosure, they may be withheld in one of two different ways. First, the entire page of the document may be withheld. Alternatively, the custodian may have redacted information from a record before disclosing it to you. Redaction refers to blacking out or whiting out information exempt from disclosure to the public, like the following:

1. Intelligence gained using the interrogation techniques has saved American lives and property, and it is likely that [REDACTED]
2. The interrogation of [REDACTED] should proceed only with a clear understanding [REDACTED] of all the legal and policy matters involved with the interrogation techniques, including:

If you have requested that the custodian identify the legal basis for any withholding, as discussed in Section 2.7, then the custodian should state the legal basis for each redaction, identify any pages withheld, and state the legal basis for withholding each page. If the custodian has provided you with a detailed list identifying each record withheld, and the legal basis for each, you might be able to skip directly to Section 5.3 below. Before moving on, however, you might want to read further to make sure that you have enough information to effectively evaluate whether the records were appropriately withheld.

In many instances, the custodian may have provided too little information for you to tell what was withheld, how much was withheld, and why. In these cases, before you can analyze whether the records were withheld appropriately, you need to first obtain more information from the custodian.

The following paragraphs in this section provide some examples of inadequate responses, and help explain why these responses are insufficient. Strategies for dealing with these types of responses by the custodian are discussed in Section 5.4.

- **The legal basis for the withholding must be clearly identified and explained.** Whether the custodian has withheld records by redaction or by refusing to disclose entire pages of records, the legal basis for the withholding must be clearly explained. It is not sufficient for the custodian to simply state “Exempt” or “Withheld pursuant to open records act.” The custodian must identify a particular law or privilege that applies to the record that was withheld. For example, the custodian must put next to a redaction (or provide in a separate list or letter explaining the redactions or withheld pages), “Withheld under C.R.S. § 24-72-204(3)(a)(IV)—trade secret.”
- **If the records are withheld pursuant to the “public interest” exemption, the custodian must provide an explanation of the public interest involved.** If the custodian withholds records based on a determination that disclosure would be contrary to the “public interest,” it is not sufficient for the custodian to simply state, “Withheld—disclosure contrary to public interest.” The custodian must provide some explanation of how the disclosure of that record would be “contrary to the public interest.”⁴⁴
- **The identity and number of withheld documents should be identified.** If the custodian withholds entire pages of documents, it is not sufficient for the custodian to simply state that *some* records have been withheld, without identifying how many records were withheld. For example, the custodian cannot say, “Pages withheld under C.R.S. § 24-72-204(3)(a)(IV)—trade secret.” The custodian may have withheld 1 page or 100 pages. The custodian should clearly identify the amount of records being withheld from the public, for example, “12 pages withheld under C.R.S. § 24-72-204(3)(a)(IV)—trade secret.” Or, if the pages were withheld from a consecutively numbered document or file, “Pages 2, 7, 8, 19, 27, and 28, withheld under C.R.S. § 24-72-204(3)(a)(IV)—trade secret.”
- **The custodian cannot use a “catch-all” legal justification to withhold clearly distinct records.** A custodian cannot withhold an entire collection of records on the basis that a single record within that group contains exempt information. For example, consider a city’s file related to a contract bid, previously discussed in the tip on page 12. In this case, assume that the file contains 100 pages of documents composed of several different kinds of records, including a contract, a request for proposal, various email correspondence, and a 1-page confidential brochure from a software manufacturer. If the product brochure contains information protected by the “trade secret” exemption, the custodian may redact that information from the record and disclose the redacted copy, or perhaps withhold the entire 1-page document. The custodian cannot, however, refuse to differentiate between the many obviously distinct records with in the file and withhold the entire file—including the contract, request for proposal and email correspondence—based only upon the “trade

secret” information in the brochure. For each separate record withheld, the custodian must identify a specific legal basis that justifies the withholding. If you think the custodian has withheld numerous types of different and distinct records, and based the withholding upon one or more unspecified “catch-all” legal grounds, follow the steps at the end of this section to request more specific explanation from the custodian.

- **The custodian cannot use a “catch-all” basis for redacting different types of information.** Similar to the above, the custodian cannot redact different types of information throughout a multi-page document and simply state that the redactions are justified by a single legal basis, unless that legal basis actually applies universally to all the redactions made. If you think the custodian has redacted different types of information from records but just relied on one or more unspecified “catch-all” legal grounds to justify all redactions, follow the steps at the end of this section.
- **Special procedures related to the “deliberative process privilege” exemption under CORA.** The “deliberative process privilege” applies to records made by government officials as they make government decisions, and describes records so “candid or personal that public disclosure is likely to stifle honest and frank discussion within the government.” If the deliberative process privilege applies to a record, it may be withheld as confidential. The privilege is meant to be used very, very narrowly. If an agency seeks to withhold records public records covered by CORA based upon the “deliberative process privilege,” the law requires special procedures meant to ensure the privilege is not abused by government officials to withhold otherwise public information. Under CORA, if the privilege is invoked to withhold public documents, the custodian must provide a sworn (under oath) statement describing the grounds for each record withheld.⁴⁵ If records covered by CORA have been withheld from you on the basis of the “deliberative process privilege” and no sworn statement has been provided, make a written request for that statement in addition to following the steps below.

Make a written request for a sufficient withholding statement. If the custodian has failed to provide you with a written statement that sufficiently explains the legal basis for each record withheld, make a written request for a more detailed explanation. In your request, explain why the custodian’s statement lacks adequate detail. As appropriate, refer to any particular records that were withheld or produced to illustrate your point, and consider attaching examples of the records you are discussing. In some cases, asking the custodian to provide more detail will require the custodian to revisit the records withheld, and may prompt to custodian to produce records that should not have been initially withheld.

5.3 Evaluating Exemptions

After the custodian has responded to your request and identified the legal grounds for each record withheld, you are in a position to review the legal basis that the custodian claims justifies keeping the record secret. Although the application of a legal exemption occasionally requires a complicated legal analysis, it is often easy to get at least a general sense of whether or not the exemption was

appropriately used by the custodian. In order to evaluate exemptions, first start by reviewing the following general information about exemptions and how they work.

A record can be exempt from public disclosure under a number of different circumstances. First, the record might be exempt from public disclosure based on a provision in the Colorado open records laws themselves, requiring that the record not be disclosed. Second, a record may be exempted by a law that is not considered part of the Colorado open records laws (a law found in a different part of the state law books that requires that certain records remain confidential). Third, the record might be exempt if the record is subject to a privilege--the legal rule that some documents are presumed to be confidential whether or not there is a specific law stating that they should be confidential. This includes the deliberative process privilege, discussed in Section 5.2 above. Another type of privilege is the attorney-client privilege, which protects the private communications between attorneys and clients as confidential in most circumstances. Finally, in some circumstances a record might be withheld where the open records law permits the custodian the discretion to determine whether or not a record's release would be "contrary to the public interest."

First, if the custodian relied on a provision in the law for denying your records request, start by reading the legal provision itself. This website offers free access to all Colorado laws:

<http://www.michie.com/colorado/>.

You may also consider consulting the **Colorado Open Government Guide**. The Colorado Open Government guide is published free online by the **Reporter's Committee for Freedom of the Press**. The Colorado Open Government Guide contains detailed information on laws and court rulings that apply to particular categories of records, and is updated periodically to reflect changes in the law. For example, the Colorado Open Government Guide contains sections discussing each of the following categories of records by record type:

Categories of records where disclosure is required in whole or in part: disclosure statements of public officials; lobbyist disclosure statements; state auditor reports; Division of Labor records; jail records; various county records; court records; records related to professions including chiropractors, dentists, psychologists and real estate; Motor Vehicle Records; election records; voter registration records, and minutes of meetings of state agencies.

Categories of records where disclosure is exempted in whole or in part: medical, psychological, sociological, and scholastic achievement data on individual persons; personnel files; letters of reference; trade secrets; information about library and museum material contributed by private persons; addresses and telephone numbers of students in public elementary and secondary schools; library records disclosing the identity of a user; records disclosing the addresses, telephone numbers, and personal financial information of past or present users of public utilities and public facilities; records of sexual harassment complaints and investigations; juvenile records; health records; accident reports; agricultural records; arson investigations; banking records; Department of Education records; judicial discipline records,

public securities and other financial filings; tax records; welfare and public assistance records, and wills.

Categories of records where disclosure is committed to the discretion of the agency in whole or in part: Test questions, scoring keys, and other examination data pertaining to administration of licensing examinations, examinations for employment, or academic examinations; details of bona fide research projects being conducted by a state institution; 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; market analysis data generated by the Department of Transportation; and photographs filed with, maintained by, or prepared by the Department of Revenue.

At the time of the publication of this guide, the Colorado Open Government Guide was available at <http://www.rcfp.org/ogg/index.php?op=browse&state=CO>. An internet search for “Colorado Open Government Guide” should also find the guide in the event that the URL address changes in the future.

If you believe an exemption was wrongfully applied, you should follow the steps in Section 5.4 below. In addition, you may also consider asking for an attorney’s opinion regarding whether or not the exemption was appropriately applied, as discussed further in Section 6.1.

5.4 Strategies for appealing an agency’s decision to withhold records

If you believe that records have been wrongfully withheld, your first step should always be to make a written objection. In some cases, your objections might prompt the custodian to disclose records that were initially withheld. In all circumstances, lodging well-founded objections ensures that the agency does not become accustomed to easily keeping public information secret as a matter of course. Once you have made those written objections and exhausted efforts to get the records from the custodian yourself, you can consider pursuing other strategies discussed in this section, and/or requesting legal assistance, as discussed in Section 6.0.

Object to wrongfully withheld documents. If you believe an exemption was wrongfully applied, your first step should be to write the custodian and object to the withholding. In your letter, clearly describe your dispute, identify the record in question, and ask that the record be produced. Request that the custodian respond to your letter within 5 business days. Remember to document any occasion where a custodian fails to respond to your correspondence, by adapting the steps outlined in the subsection entitled “Make a written record of non-responses” on Page 24 of this guide.

Request redaction when entire pages are withheld. When a custodian withholds an entire page of a record, it is possible that only a few words or sentences on that page are actually exempt. In order to obtain access to the non-exempt portion of the page, you can make a written request to the custodian to redact any exempt information from the record and then provide copies to you with the exempt information blacked out. In some cases, the custodian has an explicit legal duty under Colorado open records laws to redact exempt information and provide you with a copy of the redacted page.⁴⁶ Even in cases where a specific legal provision does not require redaction, Colorado’s open records laws and

court decisions suggest that redaction is the appropriate tool for balancing the custodian's need to keep exempt information private, while providing the maximum amount of disclosure of public records.

Contact a member of the media. If you believe the custodian is unreasonably withholding documents and your appeals to the custodian have been unsuccessful, consider investigating whether a news organization might be interested in the issue. A journalist might write a story about your efforts and the government agency withholding the records. Or, if the journalist is interested in the same records you are seeking, it is possible that the journalist or their news organization might try to obtain the records themselves. The following tips might help increase your chances of getting a journalist interested in your story:

- Try to locate a journalist who has already expressed some interest in your issue. If your advance research, described in Section 1.2, uncovered any previous media coverage related to your issue, start by trying to contact the journalist who previously covered the story. If your records request concerns a matter of local importance, consider contacting local media outlets. An online resource for locating local newspapers is discussed in the subsection "What agency is likely to have the records I seek?" on page 2 of this guide. In addition to traditional media outlets like newspapers and television stations, consider contacting bloggers, online publications, and other alternative media.
- If you locate a journalist or blogger you want to contact, explain the issue clearly and concisely to that person. If there has been prior media coverage related to the issue, include references to that coverage. You may want to let the journalist know that you have all the correspondence with the custodian, and offer to provide copies of that correspondence at the journalist's request. In addition, if your records request relates to an issue or matter of public importance, explain the public interest involved. Requesting public records just out of curiosity is an absolutely appropriate use of Colorado's open records laws. Those types of requests may not, however, be of interest to a journalist. Therefore, provide an explanation of how your request concerns a subject matter of broad public interest. Alternatively, if you believe the agency's decision is noteworthy for reasons having to do with government secrecy—for example, the agency has a pattern of thwarting open records requests by charging unreasonable fees or denying requests, regardless of the record involved—be sure to make that context clear to the journalist.

Contact an interested community or advocacy organization. In addition to contacting a journalist, you might also try to contact a local non-profit or organization that has been involved with your issue. Follow the steps above for contacting journalists—explain your efforts in clear and concise terms, reference any previous media coverage, and offer to provide copies of your correspondence. If you are contacting an organization for the purpose of obtaining legal assistance, then you should follow the more specific steps outlined in Section 6.2 below.

Contact your elected representative. You can also contact your elected representative and see if he or she is willing to help advocate on your behalf to obtain records, or reduce excessive fees. Unlike a journalist or advocacy organization, your elected representative might be willing to intervene even if your request is not necessarily “newsworthy.” Make sure to locate and contact an elected representative that is most directly connected with your request. For example, if you are seeking records from a town or city, contact a city council person or the mayor. If you are seeking records from a county, get in touch with your county commissioner. If your request seeks records from a Colorado state agency or department, contact your state representative or senator. In addition, you can also contact the state representative or senator who sits on a committee with oversight of the department or agency that is the custodian of the record you are seeking. City and county websites should help you find your city council representative and county commissioner. You can use the VoteSmart website, <http://www.votesmart.org/>, to locate your state senators and representatives. The Colorado General Assembly website, <http://www.leg.state.co.us/>, contains information on members of legislative committees.

Be your own media! It is easy to start your own blog or website to post the public records you obtain online. For an example of a local Colorado resident who has requested numerous Colorado government records under open records laws and has posted them online, check out: <http://www.nataliementen.com/>.

Section 6.0

Obtaining legal assistance

In some circumstances, even if you have a legitimate objection to a withheld record or excessive fee, the agency will simply refuse to budge. If you've exhausted all your efforts, you may want to consider obtaining legal assistance. Both CORA and CCJRA provide that you have the right to file a lawsuit in Colorado state district court to ask a judge to review the custodian's decision. This section of the guide will describe some different types of legal assistance, and discuss some issues to think about if you decide to hire a private attorney or seek free legal assistance.

6.1 Before filing a lawsuit

Gather and organize your records and correspondence. Before you ask an attorney for any kind of legal assistance, make sure that you can succinctly and clearly explain the basis of your objection to the custodian's action. Make copies of your correspondence with the custodian that the attorney will be able to keep and review. Also make copies of any records you have received that illustrate your objection. If you are disputing the custodian's decision to withhold a document and have already done some research, let the attorney know about your research. If there has been some press coverage related to this issue in the past, or as a result of your actions, alert the attorney to the existence of that coverage and provide copies of news articles where possible.

Consider hiring an attorney to evaluate your potential claim. Obtaining legal assistance does not necessarily mean that you have to be ready to file a lawsuit and incur the expenses associated with litigation. As a first step, consider having an attorney evaluate your potential case and provide an opinion regarding the strength or weakness of your potential claim. Some attorneys provide free initial "consultations," meetings, to discuss your potential case before you are charged any money. If you are trying to locate a private attorney, you can ask if they provide free initial or low-cost consultations. Some resources for locating private attorneys are listed in Section 6.2.

Consider hiring an attorney to send a letter demanding production of the records. Unfortunately, some government agencies refuse to respond appropriately to records requests until and unless an attorney gets involved. If you believe that the custodian is refusing to take your request or your objections seriously, you can consider hiring an attorney to send a "demand letter" to the agency insisting that it disclose the wrongfully withheld records. A demand letter from an attorney might prompt the custodian to revisit her decision and disclose additional records. Alternatively, a demand letter from an attorney might be passed on to the government agency's legal counsel, who might make an independent assessment regarding whether the custodian's decision to withhold records was proper.

6.2 Filing a lawsuit

Whether or not you should file a lawsuit to obtain records involves a number of considerations. On one hand, a lawsuit under Colorado's open records laws may be decided much more quickly than other types of lawsuits—probably within a few weeks or months. Thus, a lawsuit seeking records may be less expensive than other kinds of litigation. On the other hand, even a relatively uncomplicated lawsuit will

costs at least hundreds of dollars in filing fees and thousands of dollars in attorney fees, and even a seemingly straightforward lawsuit can ultimately end up with unforeseen complications and expenses. While a court can require the government agency to pay fines and to pay your attorney fees if the court agrees with you that the agency should have disclosed the records you sought, courts may be also be deferential to decisions made by records custodians.

Before deciding whether or not lawsuit is a good option, you might want to ask yourself the following questions: How important are the records am I seeking? Does the government agency have a pattern of secrecy, or appear to be acting in bad faith, in a way that merits a legal challenge? Have I exhausted my appeals with the custodian, as described in Section 5.4, so I know enough about the withheld records, and the reason for the denial, to make a compelling case in court? Are there other organizations or community members who also want these records who can help support me with resources or help the court understand the importance of these records? This guide cannot provide you with any legal advice regarding a potential lawsuit, however, the following sections highlight some issues and options to consider.

Retaining a private attorney. If you want to seek legal assistance for the purpose of suing to obtain records, one option is to hire a private attorney to pursue the claim on your behalf. You may want to find an attorney who has experience and familiarity with lawsuits under the open records laws. The following are fee online resources for locating attorneys:

FindLaw: <http://lawyers.findlaw.com/lawyer/state/Colorado>

Martindale-Hubbell: <http://www.martindale.com/>

Colorado Bar Association: <http://www.cobar.org/directory/>

If you contact an attorney, you can inquire to see if the attorney offers free or low-cost consultations to evaluate your potential case. You might also ask attorneys whether they offer a “contingent fee” arrangement for potential clients. A contingent fee agreement means that you will not have to pay some or all of the lawyer’s costs and fees until and unless the case is successfully resolved. The FindLaw website also has a “Guide to Hiring a Lawyer,” <http://public.findlaw.com/library/hiring-lawyer>, that includes a discussion of commonly asked questions about retaining a private attorney.

Seeking free legal assistance. If you cannot afford an attorney, you can also seek assistance from organizations that offer free (also called “*pro bono*”) legal assistance. For example, the ACLU of Colorado is able to offer *pro bono* legal assistance in a very small number of cases, some of which have included lawsuits under the Colorado open records laws. The ACLU receives thousands of requests for legal assistance every year, however, and only is able to provide assistance with a very few select cases. Other organizations that offer free legal assistance may be similarly limited in the numbers or types of cases they take. If you want to request free legal assistance from an organization, send your request in writing, making sure to follow all the steps outlined in Section 6.1 for clearly describing your request and including copies of all documentation. In addition, follow the same general guidelines outlined on Page

32 for contacting journalists—if your records request concerns a subject matter that you believe is of broad public interest or you think the agency’s decision is noteworthy for other reasons—be sure to make that context clear in your letter.

If you are contacting the ACLU of Colorado, send your written request for legal assistance to: Intake Department, 400 Corona Street, Denver, Colorado, 80218. More information on requesting legal assistance from the ACLU of Colorado can be found at http://www.aclu-co.org/docket/legal_help.htm.

Proceeding *pro se*. You have the right to file a lawsuit even if you do not have an attorney representing you. Filing a lawsuit without an attorney is referred to as proceeding “*pro se*.” If you represent yourself in court, you will be held to the same general rules and knowledge of the law as an attorney.⁴⁷ The government agency will be represented by an attorney who is likely very familiar with court rules and the law regarding open records law requests. The law pertaining to your claim may include not just the Colorado open records act or other Colorado statutes, but also court decisions interpreting and applying those laws and other privileges. A *pro se* litigant bringing his or her own lawsuit under Colorado open records laws without the assistance of an attorney will likely be at a disadvantage.

Conclusion

Supporting Transparency and Accountability in Colorado

The Colorado open records laws are a potentially powerful tool for ensuring a transparent, responsive, and competent government. The effectiveness of this tool, however, is based largely on whether and how it is wielded by the public. We encourage you to use the open records acts frequently and vigorously, to disseminate the information you obtain, and to object when government agencies attempt to wrongfully thwart your access to public records. We hope that this guide will enable and empower you to use Colorado open records law to this end.

The Colorado open records laws are not, however, just a means to an end. The laws are also representative of a larger belief that transparency is fundamental to our system of government. Access to government records provides the public with the information they need to participate in the democratic process and to hold their public officials accountable. Unfortunately, like many of our most fundamental rights, the right to access public information is constantly under attack on a variety of fronts. Government agencies wrongfully withhold records in order to avoid disclosing information that reveals embarrassing government conduct, waste, abuse, or fraud. Government agencies and private actors that benefit more from secrecy and misinformation than from frank and transparent public decision-making consistently push for the passage of new laws that make more and more records confidential and inaccessible to the public. Court decisions restrict access through narrow interpretations of the law.

Restrictions on easy and open access to public records have only increased in the wake of the September 11th attacks. In the post-WWII era, government officials justified intense government secrecy by invoking “national security” and “public safety” as the basis for withholding records from the public. As information slowly leaked out, however, the public discovered that the purported rationales for excessive government secrecy were often just a pretext for covering up public officials’ violations of the Constitution, often for reasons that did little to improve safety or national security. After September 11th, similar arguments have been advanced by government officials to conceal all manner of public records. Courts have sometimes been too ready to accept those arguments without putting the government to its heavy burden to justify such secrecy. Then, as now, records slowly being pried loose suggest that government secrecy often has much to do with avoiding democratic decision-making and oversight, and that the public benefit of releasing these records would far outweigh any alleged impact on “national security.”

It is now more important than ever that all people in Colorado use and defend Colorado’s open records laws. The most direct way you can help fulfill the promise of our open records laws is by using them to request public information on the issues that are important to you. If you also believe in defending and expanding public’s right to access information, you might also consider helping in one or more of the following ways:

- Give a copy of this guide to someone you know.
- After you make your first records request, help someone else you know file a public records request.
- If you gain experience making open records requests, offer to volunteer for a group or organization who could utilize your skills.
- Publish the public records you receive on your own website or through the media.
- Commit personal or organizational resources toward holding agencies legally accountable when they refuse to disclose public records.
- Work locally in county and city governments to pass resolutions or ordinances that ensure a maximum amount of access to local records, including criminal justice records.
- Contact your elected state representative and make your voice heard on any proposed state legislation that would restrict or expand access to public records.
- Donate money or time to organizations like the ACLU that work in the courts, the legislature and in our communities to protect and expand the public's right to access information. These efforts—like the publication of this guide for free—are not undertaken cheaply. The ACLU counts entirely on membership and donations in order to fund our work. More information on becoming a member of the ACLU of Colorado can be found on our website:

<http://www.aclu-co.org/support/membership.htm>.

APPENDIX A: QUICK CHECKLIST FOR AN OPEN RECORDS ACT REQUEST

STEP 1: RESEARCH

- What types of records are relevant to my request?
- What agency or agencies keeps those records?
- Are any of those records already publicly available?

STEP 2: DRAFTING AND SENDING THE WRITTEN REQUEST

- Have I clearly stated that I am making an open records act request?
- Have I provided some context for the request?
- Have I clearly and specifically identified the records I am seeking?
- Do I need to attach supporting news articles or records to help explain my request?
- Have I requested in advance that the custodian explain any denial of my request?
- Am I requesting a fee waiver or reduction?
- Am I requesting to be contacted in advance before any fees are incurred?

STEP 3: EVALUATING THE RESPONSE TO YOUR REQUEST

- Do the records produced by the custodian satisfy my request?
- Has the custodian adequately explained the basis for any fees being charged?
- Has the custodian adequately explained the legal basis for any records that were withheld?

STEP 4: FOLLOWING THROUGH

- Have I made a written objection in the following situations:
 - The custodian has failed to make a timely response to my request;
 - The custodian has failed to adequately explain the basis for fees or the denial of my request;
 - The fees charged by the agency are excessive or unauthorized;
 - The agency has withheld records that should be disclosed.
- Did the custodian provide more explanation, produce records, or lower fees, as appropriate?
- If not, should I consider contacting the media or advocacy organizations, or seeking legal assistance?

APPENDIX B: TEMPLATE FOR OPEN RECORDS ACT REQUEST

[INSERT AGENCY ADDRESS]

Re: Records request

Dear Records Custodian:

The following is a request for records under Colorado's open records laws. If you are not the proper custodian of records for this request, please forward this request on to the appropriate designee. For the purpose of these requests, the term "records" is used as defined in Colorado open records laws, and refers to any recorded information, whether kept in written, electronic, or any other form.

This records request is related to [PROVIDE CONTEXT FOR YOUR REQUEST, AS NECESSARY].

I request to inspect and/or copy the following records [LIST EACH REQUEST]:

1.

I am seeking these records for a non-commercial public purpose, including [non-profit activities/journalism/academic research]. I request a reduced or waived fee for these records.

If the records are in electronic form or can be scanned and sent by email, I request to receive those records solely by electronic means sent to [INSERT EMAIL ADDRESS]. If the copies cannot be transmitted electronically, and any anticipated charges will total less than \$X.00, please mail the copies of the records to me with an itemized invoice.

If the anticipated charges will be in excess of \$X.00, or if your office requires prepayment for copies, please contact me first before processing my request. If the estimated charges will be in excess of \$X.00, I may elect to first inspect the records, and then designate certain records for copying.

If you deny this request for records in whole or in part, I ask that you provide a written statement of the reasons for the denial that cites the law or regulation that you rely on for each record withheld. If any of the requested records are in active use, in storage or otherwise unavailable at this time, I request that you set a date and hour when the records will be available for inspection.

I realize that the records requested may be quite voluminous. If this is the case, please give me a call and I would be happy to discuss with you what records are in your custody and how I can narrow the scope of the request to minimize any burden on your staff while still providing the information sought in the request.

If you have any questions about this request, please do not hesitate to give me a call or send me an email. I look forward to your response at your earliest convenience, and no later than three business days, as required by Colorado law. Thank you in advance for your time.

Sincerely,

[INSERT YOUR NAME; MAKE SURE CONTACT INFORMATION IS INCLUDED]

ENDNOTES

-
- ¹ DECLARING INDEPENDENCE: DRAFTING THE DOCUMENT (accessible at <http://www.loc.gov/exhibits/declara/declara3.html>)
- ² *Nixon v. Warner Communications, Inc.* v. 435 U.S. 589, 597 nn.7-8 (1978)
- ³ Harold C. Relyea, ACCESS TO GOVERNMENT INFORMATION IN THE UNITED STATES, CRS Report for Congress (Jan. 7, 2005)
- ⁴ Colorado Legislative Council, OPEN PUBLIC RECORDS FOR COLORADO, Research Publ. # 126 at xi (1967)
- ⁵ See *Times-Call Publishing Co. Inc. v. Wingfield*, 410 P.2d 511 (Colo. 1966)
- ⁶ See *Gillies v. Schmidt*, 38 Colo. App. 233, 556 P.2d 82 (1976); *Denver Post v. Stapleton Dev. Corp.*, 19 P.3d 36 (Colo. App. 2000)
- ⁷ Colo. Rev. Stat. § 24-72-202(3)
- ⁸ Colo. Rev. Stat. § 24-72-202(6)(a)(I)
- ⁹ Colo. Rev. Stat. § 24-72-202(5); (6)(a)(I)
- ¹⁰ Colo. Rev. Stat. § 24-72-202(7)
- ¹¹ Colorado courts have rejected the argument that a Colorado government agency is not the custodian of a record just because the record was initially made by another agency. In *In re T.L.M.*, 39 P.3d 1239, 1240 (Colo. Ct. App. 2001), a social service agency claimed that it was not the custodian of police records it had in its files, because the social service agency didn't initially create those records. The court rejected that argument, finding that "by keeping copies of the police reports in its custody as part of its files, the [social service agency] became a custodian of such criminal justice records...."
- ¹² See Colo. Rev. Stat. § 24-72-203(1)(b) ("stating that digitized records (maintained only in an electronic form) must be made available without "unreasonable delay" or at "unreasonable cost" and suggesting as one means of producing such records, "direct electronic access via online bulletin boards")
- ¹³ *Freedom Newspapers Inc. v. Denver & Rio Grande Western R.R.*, 731 P.2d 740 (Colo. App. 1986).
- ¹⁴ Colo. Rev. Stat. § 1-4-504 (election records); Colo. Rev. Stat. § 1-2-227 (voter records)
- ¹⁵ Colo. Rev. Stat. § 24-72-204(6)
- ¹⁶ Colo. Rev. Stat. § 24-72-302(7)
- ¹⁷ Colo. Rev. Stat. § 24-72-302(3)
- ¹⁸ Colo. Rev. Stat. § 24-72-305.5. See *Lanphere & Urbaniak v. Colorado*, 21 F.3d 1508 (10th Cir.) (1994)
- ¹⁹ See *Citizens Progressive Alliance v. Southwestern Water Conservation Dist.*, 97 P.3d 308, 312 (Colo. App. 2004).
- ²⁰ Colo. Rev. Stat. §§ 24-72-203(2)(a)(CORA); 24-72-303(2)(CCJRA official action records); 24-702-304(2)(CCJRA, non-official action records)
- ²¹ *Tax Data Corp. v. Hutt*, 826 P.2d 353 (Colo. App. 1991)
- ²² See Colo. Rev. Stat. §§ 24-72-204(2)(a)(II), (3); see also Colo. Rev. Stat. § 25-2-117(1) and *Eugene Cervi & Co. v. Russell*, 506 P.2d 748 (Colo. 1972) (vital statistics like birth and death certificates usually confidential, but also available to persons with a significant legal relationship to the person who is the subject of the record).
- ²³ Colo. Rev. Stat. § 24-72-204(4)(CORA); Colo. Rev. Stat. § 24-72-305(6)(CCJRA)
- ²⁴ Colo. Rev. Stat. § 24-72-203(3)(a)(CORA); Colo. Rev. Stat. § 24-72-303(3)(CCJRA)
- ²⁵ Colo. Rev. Stat. § 24-72-205(5)(a)
- ²⁶ Colo. Rev. Stat. § 24-72-205(1)
- ²⁷ Colo. Rev. Stat. § 24-72-205(4)
- ²⁸ Colo. Rev. Stat. § 24-72-205(3)
- ²⁹ *Black v. Southwestern Water Conservation Dist.*, 74 P.3d 462 (Colo. App. 2003)
- ³⁰ Colo. Rev. Stat. § 24-72-306(1)
- ³¹ Colo. Rev. Stat. § 24-72-306(1)
- ³² Colo. Rev. Stat. § 24-72-205(4); Colo. Rev. Stat. § 24-72-306(1)(CCJRA)
- ³³ Colo. Rev. Stat. § 24-72-306(1)(CCJRA)
- ³⁴ Colo. Rev. Stat. § 24-72-205(4)
- ³⁵ Colo. Rev. Stat. § 24-72-203(3)(b)
- ³⁶ Colo. Rev. Stat. § 24-72-203(3)(b)
- ³⁷ Colo. Rev. Stat. § 24-72-203(3)(b)(I)-(III)
- ³⁸ Colo. Rev. Stat. § 24-72-203(3)(c)

-
- ³⁹ Colo. Rev. Stat. § 24-72-203(2)(a)
- ⁴⁰ Colo. Rev. Stat. § 24-72-303(1)-304(1)
- ⁴¹ Colo. Rev. Stat. §§ 24-72-303(2)(CCJRA official action records); 24-702-304(2)(CCJRA, non-official action records)
- ⁴² Colo. Rev. Stat. §§ 24-72-304(3)
- ⁴³ Colo. Rev. Stat. § 24-72-203(3)(c)
- ⁴⁴ Colo. Rev. Stat. §§ 24-72-203(4)(CORA); 24-72-305(6)(CCJRA)
- ⁴⁵ Colo. Rev. Stat. § 24-72-204(3)(a)(XIII)
- ⁴⁶ Colo. Rev. Stat. § 24-72-204(2)(a)(VIII)
- ⁴⁷ *Viles v. Scofield*, 128 Colo. 185, 261 P.2d 148 (1953)