TITLE 24 - ARTICLE 72 - Public (Open) Records

NOTE: The following text is current through the 2010 Legislative Regular Session. **This website is for informational use only. It is not a definitive source for the Colorado Revised Statutes.**

24-72-112. Public records free to servicemen

Whenever a copy of any public record is required by the United States veterans administration or its successors or any other agency of the government of the United States to be used in determining the eligibility of any person who has served in the armed forces of the United States or any dependent of such person to participate in benefits for such person made available by the laws of the United States in relation to such service in the armed forces of the United States, the official charged with the custody of such public records, without charge, shall provide the applicant for such benefits or any person acting on his behalf, or the representative of such bureau or other agency, with a certified copy of such record.

HISTORY: Source: L. 45: p. 208, § 1.CSA: C. 135, § 12.CRS 53: § 113-1-12. C.R.S. 1963: § 113-1-12. .

24-72-201. Legislative declaration

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

HISTORY: Source: L. 68: p. 201, § 1. C.R.S. 1963: § 113-2-1.

ANNOTATION

Open records act creates a general presumption in favor of public access to government documents, exceptions to the act must be narrowly construed, and an agreement by a governmental entity that information in public records will remain confidential is insufficient to transform a public record into a private one. Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

Nothing in the expressions of public policy in the law concerning the operation of school boards and in the open records act conclusively directs that the terms of a settlement agreement between an outgoing school superintendent and a school district, which allude to unadjudicated allegations of sexual harassment against the superintendent, must categorically be subject to public inspection. Pierce v. St. Vrain Valley Sch. Dist., 981 P.2d 600 (Colo. 1999).

Courts guided by legislative intent in construing provisions. In construing the open

records provisions, the courts are guided by the clear legislative intent manifested in the declaration of policy and the language of the provisions themselves. Denver Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Court considers and weighs public interest. The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Construction of open records law. Open records law is a general act and will not be interpreted to repeal a conflicting special provision unless the intent to do so is clear and unmistakable. Uberoi v. Univ. of Colo., 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of § 24-72-202 (1.5)).

Section clearly eliminates any requirement that a person must show a special interest in order to be permitted access to particular public records. Denver Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974); Anderson v. Home Ins. Co., 924 P.2d 1123 (Colo. App. 1996).

The open records act does not expressly limit access to any records merely because a person is engaged in litigation with the public agency from which access to records is requested. People v. Interest of A.A.T., 759 P.2d 853 (Colo. App. 1988).

Official is unauthorized to deny access in absence of specific statutory provision. This section establishes the basic premise that in the absence of a specific statute permitting the withholding of information, a public official has no authority to deny any person access to public records. Denver Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Vital statistics records held confidential and exempt from right to inspect. Eugene Cervi Co. v. Russell, 31 Colo. App. 525, 506 P.2d 748 (1972), aff'd, 184 Colo. 282, 519 P.2d 1189 (1974).

Police personnel files and staff investigation reports not exempt from discovery. The open records provisions do not, ipso facto, exempt the personnel files and the staff investigation bureau reports of the Denver police department from discovery in civil litigation. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Applied in City County of Denver v. District Court, 199 Colo. 303, 607 P.2d 985 (1980).

24-72-202. Definitions

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

(1) "Correspondence" means a communication that is sent to or received by one or

more specifically identified individuals and that is or can be produced in written form, including, without limitation:

(a) Communications sent via U.S. mail;

(b) Communications sent via private courier;

(c) Communications sent via electronic mail.

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

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

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

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

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

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

(1.8) "Institutionally related real estate foundation" means a nonprofit corporation, foundation, institute, or similar entity that is organized for the benefit of one or more institutions and that has as its principal purpose receiving or using private donations to be held or used for the acquisition, development, financing, leasing, or disposition of

real property for the benefit of an institution. An institutionally related real estate foundation shall be deemed not to be a governmental body, agency, or other public body for any purpose.

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

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

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

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

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

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

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

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

(A) Work product;

(B) Without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds;

(C) A communication from a constituent to an elected official that clearly implies by its nature or content that the constituent expects that it is confidential or that is communicated for the purpose of requesting that the elected official render assistance or information relating to a personal and private matter that is not publicly known affecting the constituent or a communication from the elected official in response to such a communication from a constituent; or

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

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

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

(b) "Public records" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(X) The information security plan of a public agency developed pursuant to section 24-

37.5-404 or of an institution of higher education developed pursuant to section 24-37.5-404.5;

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

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

(XIII) The information provided to the state medical marijuana licensing authority pursuant to section 25-1.5-106 (7) (e), C.R.S.

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

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

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

(b) "Work product" also includes:

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

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

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

(IV) All documents and all research projects conducted by staff of legislative council pursuant to section 2-3-304 (1), C.R.S., if the research is requested by a member of the general assembly and identified by the member as being in connection with pending or proposed legislation or amendments thereto. However, the final product of any such research project shall become a public record unless the member specifically requests that it remain work product. In addition, if such a research project is requested by a member of the general assembly and the project is not identified as being in connection with pending or proposed legislation or amendments thereto, the final product shall

become a public record.

(c) "Work product" does not include:

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

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

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

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

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

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

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

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

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

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

(8) For purposes of subsections (6) and (6.5) of this section and sections 24-72-203 (2)

(b) and 24-6-402 (2) (d) (III), the members of the Colorado reapportionment commission shall be considered elected officials.

HISTORY: Source: L. 68: p. 201, § 2. C.R.S. 1963: § 113-2-2.L. 77: (6) amended, p. 1250, § 2, effective December 31.L. 85: (1.5) added, p. 867, § 1, effective June 6.L. 90: (3) amended, p. 449, § 21, effective April 18.L. 91: (5) amended, p. 726, § 3, effective April 20.L. 92: (4.5) added and (7) amended, p. 1103, § 2, effective July 1.L. 94: (1.3) added, p. 936, § 1, effective April 28; (4.5) amended, p. 832, § 2, effective April 28.L. 96: (1.7) added and (2) and (6) amended, p. 141, § 2, effective April 8; (1), (6), and (7) amended and (1.1), (1.2), and (6.5) added, p. 1480, § 4, effective June 1.L. 97: (6)(b)(II) and (6.5)(b) amended and (6.5)(d) added, p. 1104, § § 2, 3, effective August 6.L. 98: (6)(b)(III) added, p. 213, § 3, effective August 5.L. 99: (6.5)(c)(IV) amended, p. 205, § 2, effective March 31.L. 2000: (6)(b)(III) amended, p. 223, § 4, effective March 29; (6)(b)(IV) added, p. 243, § 8, effective March 29; (6)(a)(I) amended, p. 415, § 6, effective April 13; (6)(b)(V) added, p. 1736, § 4, effective June 1.L. 2001: (8) added, p. 1075, § 4, effective August 8.L. 2002: (3) amended, p. 643, § 2, effective May 24; (5) amended, p. 402, § 3, effective August 7.L. 2004: (6)(b)(III) amended, p. 575, § 33, effective July 1.L. 2005: (1.6), (1.8), (1.9), (6)(a)(IV), (6)(b)(VI), (6)(b)(VII), (6)(b)(VIII), and (6)(b)(IX) added and (2) amended, pp. 530, 531, § § 1, 2, 3, effective May 24; (5) amended, p. 1068, § 15, effective January 1, 2006.L. 2006: (1.7), (1.8), and (1.9) amended, p. 1503, § 43, effective June 1; (6)(b)(X), (6)(b)(XI), and (6)(b)(XII) added, p. 1719, § 2, effective June 6.L. 2007: (6)(b)(X), (6)(b)(XI), and (6)(b)(XII) amended, p. 917, § 16, effective May 17.L. 2009: (6)(a)(II)(C) and (6.5)(b) amended, (HB 09-1348), ch. 358, p. 1864, § 3, effective June 1.L. 2010: (6)(b)(XI) and (6)(b)(XII) amended and (6)(b)(XIII) added, (HB 10-1284), ch. 355, p. 1687, § 13, effective July 1.L. 2011: (6)(b)(X) amended, (SB 11-062), ch. 128, p. 435, § 18, effective April 22; (6)(b)(XIII) amended, (HB 11-1043), ch. 266, p. 1211, § 18, effective July 1.

Editor's note: Amendments to subsection (6) by House Bill 96-1029 and Senate Bill 96-212 were harmonized.

Cross references: (1) For the legislative declaration contained in the 1996 act amending subsections (1), (6), and (7) and enacting subsections (1.1), (1.2), and (6.5), see section 1 of chapter 271, Session Laws of Colorado 1996.

(2) For the legislative declaration contained in the 2002 act amending subsection (3), see section 1 of chapter 187, Session Laws of Colorado 2002.

(3) For the legislative declaration contained in the 2005 act amending subsection (5), see section 1 of chapter 269, Session Laws of Colorado 2005.

RECENT ANNOTATIONS

Billing statements generated by a phone company and kept in the possession of the governor are not public records when they logged calls made from a personal phone that the governor used to discuss both public and private business and the parties

stipulated that the governor kept and used the statements only for payment of the bills, did not obtain any reimbursement from the state for payment of the bills, and did not turn the bills over to any other state agency or official for their use. Denver Post Corp. v. Ritter, 255 P.3d 1083 (Colo. 2011).

ANNOTATION

Law reviews. For article, "E-mail, Open Meetings, and Public Records", see 25 Colo. Law. 99 (October 1996).

The courts are not agencies for all purposes of this act. Office of State Court Adm'r v. Background Info. Servs., Inc., 994 P.2d 420 (Colo. 1999).

Scope of term "personnel files". A public entity may not restrict access to information by merely placing a record in a personnel file; a legitimate expectation of privacy must exist. Denver Publishing Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Information "maintained because of the employer-employee relationship" so as to be exempt from disclosure under the personnel files exemption must be of the same general nature as an employee's home address and telephone number or personal financial information; it does not include records relating to complaints of sexual harassment, gender discrimination, and retaliation. Such records must be produced, subject to redaction of names of individuals against whom complaints could not be substantiated. Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

Whether a private entity is a "political subdivision" for purposes of the Colorado Open Records Act is determined by considering a nonexclusive list of nine factors examining the level of a public agency's involvement with the private entity. The factors include: (1) The level of public funding; (2) whether funds were commingled; (3) whether the activity was conducted on publicly owned property; (4) whether services contracted for were an integral part of the public agency's chosen decision-making process; (5) whether the private entity was performing a governmental function or a function the public agency would otherwise perform; (6) the extent of the public agency's involvement with, regulation of, or control over the private entity; (7) whether the private entity was created by the public agency; (8) whether the public agency has a substantial financial interest in the private entity; and (9) for whose benefit the private entity was functioning. Denver Post Corp. v. Stapleton Dev. Corp., 19 P.3d 36 (Colo. App. 2000).

Autopsy reports are "public records", as defined in this section. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Records of state compensation authority included. State compensation authority is a statutorily created "political subdivision", which is indistinguishable from any other "political subdivision" specified in subsection (5) of this section and is, therefore, subject to the state open records law. Dawson v. State Comp. Ins. Auth., 811 P.2d 408 (Colo. App. 1990).

Documents were public records in custody of stadium district under subsections (1) and (2) where documents, while never in actual personal control or custody of any employee or officer of district, were maintained by general contractor of stadium in manner that gave district full access to documents. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Police records are not "public records". Police department files and records showing arrests, convictions, and other information are not public records. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

Portions of draft legislation prepared by the office of legislative legal services and excerpted in a memorandum prepared by a private citizen were work product and were not public records subject to disclosure. Draft legislation prepared by the office of legislative legal services and never introduced in the general assembly is work product under subsection (6.5)(b) and § 2-3-505 (2)(b), does not automatically lose its work product status when incorporated into a memorandum that is otherwise a public record, and may be redacted from the memorandum when the memorandum is produced. Ritter v. Jones, 207 P.3d 954 (Colo. App. 2009).

And the work product disclosure exemption was not waived when the legislator who had requested the draft legislation voluntarily disclosed it only to persons with whom the legislator had a common legal interest. To hold otherwise would contravene the purpose of the general assembly's work product exemption by limiting the legislators' ability to consult in confidence regarding draft legislation with private parties possessing expertise in a particular area. Ritter v. Jones, 207 P.3d 954 (Colo. App. 2009).

Any record made, maintained, or kept by a criminal justice entity is not a public record. Materials seized by sheriff's department pursuant to a valid search warrant and held by the department were not open to inspection as public records. Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005).

Such records may be subject to inspection as criminal justice records. Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005).

Records of university not included. Reference to "institution" in definition of "public records" is not specific enough to demonstrate legislative intent to make open records law applicable to the university of Colorado. Uberoi v. Univ. of Colo., 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of subsection (1.5)).

A county retirement plan operates as an agency or instrumentality of the county when the plan has availed itself of public entity tax and health benefits, has used county purchasing accounts, facilities, and the county seal, is authorized to levy a retirement tax, and has a budget that is factored into the county budget. Such plan is thereby subject to the open meetings law and the open records law. Zubeck v. El Paso County Ret. Plan, 961 P.2d 597 (Colo. App. 1998).

Severance payments received pursuant to the city of Colorado Springs transitional employment program were subject to disclosure because they were not part of employees' "personnel files". Statutory definition of "personnel files" specifically excludes such amounts. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

To be a "public record" as defined by subsection (6)(a)(II), an e-mail message must be for use in the performance of public functions or involve the receipt of public funds. A message sent in furtherance of a personal relationship does not fall within the definition. The fact that a public employee or public official sent or received a message while compensated by public funds or using publicly owned computer equipment is insufficient to make the message a "public record". Denver Publ'g Co. v. Bd. of County Comm'rs, 121 P.3d 190 (Colo. 2005).

Certain documents prepared by city council in connection with performance evaluation of city administrator constituted "work product" and are therefore exempt from disclosure requirements. Because preliminary review forms prepared by individual city council members, and spreadsheet based on those forms, were advisory in nature and did not express a final decision by any council member, city was not required to disclose them as public records when requested by local newspaper. Fort Morgan v. E. Colo. Publ'g Co., 240 P.3d 481 (Colo. App. 2010).

A mixed message that addresses both the performance of public functions and private matters must be redacted to exclude from disclosure the information that does not address the performance of public functions. The open records law does not mandate that e-mail records be disclosed in complete form or not at all. Denver Publ'g Co. v. Bd. of County Comm'rs, 121 P.3d 190 (Colo. 2005).

24-72-203. Public records open to inspection

(1) (a) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

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

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

(II) Take such measures as are necessary to assist the public in locating any specific

public records sought and to ensure public access to the public records without unreasonable delay or unreasonable cost. Such measures may include, without limitation, the availability of viewing stations for public records kept on microfiche; the provision of portable disk copies of computer files; or direct electronic access via on-line bulletin boards or other means.

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

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

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

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

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

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

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

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

(III) A request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian's obligation to perform his or her other public service responsibilities.

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

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

HISTORY: Source: L. 68: p. 202, § 3. C.R.S. 1963: § 113-2-3.L. 92: (4) added, p. 1104, § 3, effective July 1.L. 96: (1) to (3) amended, p. 1483, § 5, effective June 1.L. 99: IP(3)(b) amended and (3)(b)(III) added, p. 207, § 1, effective March 31.

Cross references: For the legislative declaration contained in the 1996 act amending this section, see section 1 of chapter 271, Session Laws of Colorado 1996.

ANNOTATION

Law reviews. For article, "E-mail, Open Meetings, and Public Records", see 25 Colo. Law. 99 (October 1996). For article, "Privacy Rights and Public Records in Colorado: Hiding in Plain Sight", see 33 Colo. Law. 111 (October 2004).

First amendment does not guarantee the press a constitutional right of special access to information not available to the public generally. This is true where the information sought is personal in nature and is to be published primarily for commercial purposes. Eugene Cervi Co. v. Russell, 184 Colo. 282, 519 P.2d 1189 (1974).

Court considers and weighs public interest in determining disclosure question. The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Statutory scheme strikes a balance between the statutory right of the public to inspect and copy public records and the administrative burdens that may be placed upon government agencies in responding to open records requests. Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994); Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

By requiring specificity in records requests, spelling out reasonable procedures, and providing that records requests will not take priority over the entity's previously scheduled work activities, the entity's policy is consistent with the statutory authorization for "reasonably necessary" rules and the jurisprudential recognition of the need for balance between the public's right to inspect public records and the administrative burdens that may be placed on government agencies responding to such requests. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

Regulations that reasonably restrict the manner of access and do not deny access to public records do not violate the public records law. Tax Data Corp. v. Hutt, 826 P.2d 353 (Colo. App. 1991).

Regulations which limit access to records to minimize the dangers of record alteration and obliteration are reasonably necessary within the meaning of subsection (1). Tax Data Corp. v. Hutt, 826 P.2d 353 (Colo. App. 1991).

A computer print-out provides the reader with the same information as would a visual examination of the same information on a computer screen. Oral communications and microfiche copies are also readily accessible and meet the statutory requirements concerning reasonable accessibility. Tax Data Corp. v. Hutt, 826 P.2d 353 (Colo. App. 1991).

Nominal research and retrieval fee permitted under subsection (1)(a). Although the opens records law does not expressly require the payment of a fee to exercise the right of inspection, legislative history reflects that this omission was intentional. Black v. S.W. Water Conserv. Dist., 74 P.3d 462 (Colo. App. 2003).

Subsection (2) does not impose an unreasonable burden on a state agency. There is no obligation to investigate outside the department for the requested documents or to undertake a special search to locate requested documents. The agency needs only to notify the requesting party that it has no knowledge of the location of requested records, or to refer such party to the agency it believes might maintain the records. Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

Construction of open records law. Open records law is a general act and will not be interpreted to repeal a conflicting special provision unless the intent to do so is clear and unmistakable. Uberoi v. Univ. of Colo., 686 P.2d 785 (Colo. 1984) (decided prior to 1985 enactment of § 24-72-202 (1.5)).

The courts do not have an implied duty to manipulate computer generated data under the public records act in order to create a new document solely for purposes of disclosure. Office of State Court Adm'r v. Background Info. Servs., Inc., 994 P.2d 420 (Colo. 1999).

Access to court-maintained files involves a fragile balance between the interests of the public and the protection of individuals who are parties to cases in court. Office of State Court Adm'r v. Background Info. Servs., Inc., 994 P.2d 420 (Colo. 1999).

No implied duty to delete exempt information. The fact that data which is exempt under the open records law could be altered such that it would qualify as group scholastic achievement data not subject to an exemption does not create a duty on the part of the school district to do such alteration. The exceptions to the open records law are unambiguous and do not support a judicial interpretation of an implied duty. Sargent Sch. Dist. v. Western Servs., 751 P.2d 56 (Colo. 1988).

Records not available to the requesting party at the time of the request because of his incarceration, must be open to his inspection at a reasonable time when he is no longer confined. Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

Was reasonable for court to conclude that a request for written approval or certification of an institution as an accredited law school was not an existing document or "writing". Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

Vital statistics records held confidential and exempt from right to inspect. Eugene Cervi Co. v. Russell, 31 Colo. App. 525, 506 P.2d 748 (1972), aff'd, 184 Colo. 282, 519 P.2d 1189 (1974).

Claim that transportation contracts entered into between city department of public utilities and railroad were confidential commercial matters did not preclude disclosure of contracts under open records act, where governmental body is involved. Freedom News v. Denver Rio Grande R. Co., 731 P.2d 740 (Colo. App. 1986).

Federal law, i.e. the Staggers Act of 1980, which provides that certain information in contracts filed with Interstate Commerce Commission is available only where requested by certain specified parties does not prohibit public disclosure under open records act of transportation contracts entered into between city and railroad. Freedom News v. Denver Rio Grande R. Co., 731 P.2d 740 (Colo. App. 1986).

Privileges for attorney-client communication and attorney work product established by common law, though incorporated into open records law, are waived by any voluntary disclosure by privilege holder to a third person. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Class record sheet qualifies as "scholastic achievement data on individual persons". Because the class record sheets with the "Comprehensive Test of Basic Skills" test

results provide individual student scores which directly correspond to individual student names, these sheets are protected under the open records law as "scholastic achievement data on individual persons". Sargent Sch. Dist. v. Western Servs., 751 P.2d 56 (Colo. 1988).

Trial court was presented with insufficient evidence to conclude that records were not "public records". The court's decision was based only on evidence demonstrating that the records were not maintained by the department of corrections; no evidence was presented concerning the records of any other agency. Pruitt v. Rockwell, 886 P.2d 315 (Colo. App. 1994).

The names of transitional employment program participants and the amounts paid to them were not exempt from disclosure under the Colorado Open Records Act. Releasing the total amount paid to employees under the program is inconsistent with the plain language of the statute. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

Records custodian cannot be sanctioned for failure to comply with time limits in subsection (3)(b) in situations where compliance with a request within those time limits is found to be a physical impossibility. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

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

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

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

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

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

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

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(I) Any records of the investigations conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of

any sheriff, prosecuting attorney, or police department, or any investigatory files compiled for any other law enforcement purpose;

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

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

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

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

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

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

(VIII) (A) Specialized details of security arrangements or investigations. Nothing in this subparagraph (VIII) shall prohibit the custodian from transferring records containing

specialized details of security arrangements or investigations to the office of preparedness, security, and fire safety in the department of public safety, the governing body of any city, county, city and county, or other political subdivision of the state, or any federal, state, or local law enforcement agency; except that the custodian shall not transfer any record received from a nongovernmental entity without the prior written consent of such entity unless such information is already publicly available.

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

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

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

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

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

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

(I) Medical, mental health, sociological, and scholastic achievement data on individual persons, other than scholastic achievement data submitted as part of finalists' records as set forth in subparagraph (XI) of this paragraph (a) and exclusive of coroners'

autopsy reports and group scholastic achievement data from which individuals cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

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

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

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data, including a social security number unless disclosure of the number is required, permitted, or authorized by state or federal law, furnished by or obtained from any person;

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

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

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

(VIII) Repealed.

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

(X) (A) Any records of sexual harassment complaints and investigations, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to information necessary to the investigation of such a

complaint. This sub-subparagraph (A) shall not apply to records of sexual harassment complaints and investigations that are included in court files and records of court proceedings. Disclosure of all or a part of any records of sexual harassment complaints and investigations to the person in interest is permissible to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved. This sub-subparagraph (A) shall not preclude disclosure of all or part of the results of an investigation of the general employment policies and procedures of an agency, office, department, or division, to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved.

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

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

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

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

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

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

(XIII) Records protected under the common law governmental or "deliberative process" privilege, if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government, unless the privilege has been waived. The general assembly hereby finds and declares that in some circumstances,

public disclosure of such records may cause substantial injury to the public interest. If any public record is withheld pursuant to this subparagraph (XIII), the custodian shall provide the applicant with a sworn statement specifically describing each document withheld, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public interest. If the applicant so requests, the custodian shall apply to the district court for an order permitting him or her to restrict disclosure. The application shall be subject to the procedures and burden of proof provided for in subsection (6) of this section. All persons entitled to claim the privilege with respect to the records in issue shall be given notice of the proceedings and shall have the right to appear and be heard. In determining whether disclosure of the records would cause substantial injury to the public interest, the court shall weigh, based on the circumstances presented in the particular case, the public interest in honest and frank discussion within government and the beneficial effects of public scrutiny upon the quality of governmental decision-making and public confidence therein.

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

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

(XVI) (Deleted by amendment, L. 2003, p. 1636, § 1, effective May 2, 2003.)

(XVII) Repealed.

(XVIII) (A) Military records filed with a county clerk and recorder's office concerning a

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

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

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

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

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

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

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

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

(XXI) All records, including, but not limited to, analyses and maps, compiled or maintained pursuant to statute or rule by the department of natural resources or its divisions that are based on information related to private lands and identify or allow to

be identified any specific Colorado landowners or lands; except that summary or aggregated data that do not specifically identify individual landowners or specific parcels of land shall not be subject to this subparagraph (XXI).

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

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

(d) The provisions of this paragraph (d) shall apply to all public schools and school districts that receive funds under article 54 of title 22, C.R.S. Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names, addresses, and home telephone numbers of students in any secondary school shall be released to a recruiting officer for any branch of the United States armed forces who requests such information, subject to the following:

(I) Each local board of education shall adopt a policy to govern the release of the names, addresses, and home telephone numbers of secondary school students to military recruiting officers that provides that such information shall be released to recruiting officers unless a student submits a request, in writing, that such information not be released.

(II) The directory information requested by a recruiting officer shall be released by the local board of education within ninety days of the date of the request.

(III) The local board of education shall comply with any applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec.

1232g, and the federal regulations cited thereunder relating to the release of student information by educational institutions that receive federal funds.

(IV) Actual direct expenses incurred in furnishing this information shall be paid for by the requesting service and shall be reasonable and customary.

(V) The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(e) (I) The provisions of this paragraph (e) shall apply to all public schools and school districts. Notwithstanding the provisions of subparagraph (I) of paragraph (a) of this subsection (3), under policies adopted by each local board of education, consistent with applicable provisions of the federal "Family Education Rights and Privacy Act of 1974" (FERPA), 20 U.S.C. sec. 1232g, and all federal regulations and applicable guidelines adopted thereto, information directly related to a student and maintained by a public school or by a person acting for the public school shall be available for release if the disclosure meets one or more of the following conditions:

(A) The disclosure is to other school officials, including teachers, working in the school at which the student is enrolled who have specific and legitimate educational interests in the information for use in furthering the student's academic achievement or maintaining a safe and orderly learning environment;

(B) The disclosure is to officials of a school at which the student seeks or intends to enroll or the disclosure is to officials at a school at which the student is currently enrolled or receiving services, after making a reasonable attempt to notify the student's parent or legal guardian or the student if he or she is at least eighteen years of age or attending an institution of postsecondary education, as prescribed by federal regulation;

(C) The disclosure is to state or local officials or authorities if the disclosure concerns the juvenile justice system and the system's ability to serve effectively, prior to adjudication, the student whose records are disclosed and if the officials and authorities to whom the records are disclosed certify in writing that the information shall not be disclosed to any other party, except as otherwise provided by law, without the prior written consent of the student's parent or legal guardian or of the student if he or she is at least eighteen years of age or is attending an institution of postsecondary education;

(D) The disclosure is to comply with a judicial order or a lawfully issued subpoena, if a reasonable effort is made to notify the student's parent or legal guardian or the student if he or she is at least eighteen years of age or is attending a postsecondary institution about the order or subpoena in advance of compliance, so that such parent, legal guardian, or student is provided an opportunity to seek protective action, unless the disclosure is in compliance with a federal grand jury subpoena or any other subpoena issued for a law enforcement purpose and the court or the issuing agency has ordered

that the existence or contents of the subpoena or the information furnished in response to the subpoena not be disclosed;

(E) The disclosure is in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals, as specifically prescribed by federal regulation.

(II) Nothing in this paragraph (e) shall prevent public school administrators, teachers, or staff from disclosing information derived from personal knowledge or observation and not derived from a student's record maintained by a public school or a person acting for the public school.

(3.5) (a) Effective January 1, 1992, any individual who meets the requirements of this subsection (3.5) may request that the address of such individual included in any public records concerning that individual which are required to be made, maintained, or kept pursuant to the following sections be kept confidential:

(I) Sections 1-2-227 and 1-2-301, C.R.S.;

(II) (Deleted by amendment, L. 2000, p. 1337, § 1, effective May 30, 2000.)

(III) Section 24-6-202.

(b) (I) An individual may make the request of confidentiality allowed by this subsection (3.5) if such individual has reason to believe that such individual, or any member of such individual's immediate family who resides in the same household as such individual, will be exposed to criminal harassment as prohibited in section 18-9-111, C.R.S., or otherwise be in danger of bodily harm, if such individual's address is not kept confidential in accordance with this subsection (3.5).

(II) A request of confidentiality with respect to records described in subparagraph (I) of paragraph (a) of this subsection (3.5) shall be made in person in the office of the county clerk and recorder of the county where the individual making the request resides. Requests shall be made on application forms approved by the secretary of state, after consultation with county clerk and recorders. The application form shall provide space for the applicant to provide his or her name and address, date of birth, and any other identifying information determined by the secretary of state to be necessary to carry out the provisions of this subsection (3.5). In addition, an affirmation shall be printed on the form, in the area immediately above a line for the applicant's signature and the date, stating the following: "I swear or affirm, under penalty of perjury, that I have reason to believe that I, or a member of my immediate family who resides in my household, will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential." Immediately below the signature line, there shall be printed a notice, in a type that is larger than the other information contained on the form, that the applicant may be prosecuted for perjury in the second degree under section 18-8-503, C.R.S., if the applicant signs such affirmation and does not believe such

affirmation to be true.

(III) The county clerk and recorder of each county shall provide an opportunity for any individual to make the request of confidentiality allowed by this subsection (3.5) in person at the time such individual makes application to the county clerk and recorder to register to vote or to make any change in such individual's registration, and at any other time during normal business hours of the office of the county clerk and recorder. The county clerk and recorder shall forward a copy of each completed application to the secretary of state for purposes of the records maintained by him or her pursuant to subparagraph (I) of paragraph (a) of this subsection (3.5). The county clerk and recorder shall collect a processing fee in the amount of five dollars of which amount two dollars and fifty cents shall be transmitted to the secretary of state for the purpose of offsetting the secretary of state's costs of processing applications forwarded to the secretary of state pursuant to this subparagraph (III). All processing fees received by the secretary of state pursuant to this subparagraph (III) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(IV) The secretary of state shall provide an opportunity for any individual to make the request of confidentiality allowed by paragraph (a) of this subsection (3.5), with respect to the records described in subparagraph (III) of paragraph (a) of this subsection (3.5). The secretary of state may charge a processing fee, not to exceed five dollars, for each such request. All processing fees collected by the secretary of state pursuant to this subparagraph (IV) or subparagraph (III) of this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the department of state cash fund.

(V) Notwithstanding the amount specified for any fee in subparagraph (III) or (IV) of this paragraph (b), the secretary of state by rule or as otherwise provided by law may reduce the amount of one or more of the fees credited to the department of state cash fund if necessary pursuant to section 24-75-402 (3), to reduce the uncommitted reserves of the fund to which all or any portion of one or more of the fees is credited. After the uncommitted reserves of the fund are sufficiently reduced, the secretary of state by rule or as otherwise provided by law may increase the amount of one or more of the fees as provided insection 24-75-402 (4).

(c) The custodian of any records described in paragraph (a) of this subsection (3.5) which concern an individual who has made a request of confidentiality pursuant to this subsection (3.5) and paid any required processing fee shall deny the right of inspection of the individual's address contained in such records on the ground that disclosure would be contrary to the public interest; except that such custodian shall allow the inspection of such records by such individual, by any person authorized in writing by such individual, and by any individual employed by one of the following entities who makes a request to the custodian to inspect such records and who provides evidence satisfactory to the custodian that the inspection is reasonably related to the authorized purpose of the employing entity:

(I) A criminal justice agency, as defined by section 24-72-302 (3);

(II) An agency of the United States, the state of Colorado, or of any political subdivision or authority thereof;

(III) A person required to obtain such individual's address in order to comply with federal or state law or regulations adopted pursuant thereto;

(IV) An insurance company which has a valid certificate of authority to transact insurance business in Colorado as required in section 10-3-105 (1), C.R.S.;

(V) A collection agency which has a valid license as required by section 12-14-115 (1), C.R.S.;

(VI) A supervised lender licensed pursuant to section 5-1-301 (46), C.R.S.;

(VII) A bank as defined in section 11-101-401 (5), C.R.S., an industrial bank as defined in section 11-108-101 (1), C.R.S., a trust company as defined in section 11-109-101 (11), C.R.S., a credit union as defined in section 11-30-101 (1), C.R.S., a domestic savings and loan association as defined in section 11-40-102 (5), C.R.S., a foreign savings and loan association as defined in section 11-40-102 (8), C.R.S., or a broker-dealer as defined in section 11-51-201 (2), C.R.S.;

(VIII) An attorney licensed to practice law in Colorado or his representative authorized in writing to inspect such records on behalf of the attorney;

(IX) A manufacturer of any vehicle required to be registered pursuant to the provisions of article 3 of title 42, C.R.S., or a designated agent of such manufacturer. Such inspection shall be allowed only for the purpose of identifying, locating, and notifying the registered owners of such vehicles in the event of a product recall or product advisory and may also be allowed for statistical purposes where such address is not disclosed by such manufacturer or designated agent. No person who obtains the address of an individual pursuant to this subparagraph (IX) shall disclose such information, except as necessary to accomplish said purposes.

(d) Notwithstanding any provisions of this subsection (3.5) to the contrary, any person who appears in person in the office of any custodian of records described in paragraph (a) of this subsection (3.5) and who presents documentary evidence satisfactory to the custodian that such person is a duly accredited representative of the news media may verify the address of an individual whose address is otherwise protected from inspection in accordance with this subsection (3.5). Such verification shall be limited to the custodian confirming or denying that the address of an individual as known to the representative of the news media is the address of the individual as shown by the records of the custodian.

(e) No person shall make any false statement in requesting any information pursuant to paragraph (a) or (b) of this subsection (3.5).

(f) Any request of confidentiality made pursuant to this subsection (3.5) shall be kept confidential and shall not be open to inspection as a public record unless a written release is executed by the person who made the request.

(g) Prior to the release of any information required to be kept confidential pursuant to this subsection (3.5), the custodian shall require the person requesting the information to produce a valid Colorado driver's license or identification card and written authorization from any entity authorized to receive information under this subsection (3.5). The custodian shall keep a record of the requesting person's name, address, and date of birth and shall make such information available to the individual requesting confidentiality under this subsection (3.5) or any person authorized by such individual.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Except as provided in subsection (5.5) of this section, any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record; except that, at least three business days prior to filing an application with the district court, the person who has been denied the right to inspect the record shall file a written notice with the custodian who has denied the right to inspect the record informing said custodian that the person intends to file an application with the district court. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court; except that no court costs and attorney fees shall be awarded to a person who has filed a lawsuit against a state public body or local public body and who applies to the court for an order pursuant to this subsection (5) for access to records of the state public body or local public body being sued if the court finds that the records being sought are related to the pending litigation and are discoverable pursuant to chapter 4 of the Colorado rules of civil procedure. In the event the court finds that the denial of the right of inspection was proper, the court shall award court costs and reasonable attorney fees to the custodian if the court finds that the action was frivolous, vexatious, or groundless.

(5.5) (a) Any person seeking access to the record of an executive session meeting of a state public body or a local public body recorded pursuant to section 24-6-402 (2)(d.5) shall, upon application to the district court for the district wherein the records are found, show grounds sufficient to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402 (3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive

session in contravention of section 24-6-402 (3) (a) or (4). If the applicant fails to show grounds sufficient to support such reasonable belief, the court shall deny the application and, if the court finds that the application was frivolous, vexatious, or groundless, the court shall award court costs and attorney fees to the prevailing party. If an applicant shows grounds sufficient to support such reasonable belief, the applicant cannot be found to have brought a frivolous, vexatious, or groundless action, regardless of the outcome of the in camera review.

(b) (I) Upon finding that sufficient grounds exist to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402 (3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402 (3) (a) or (4), the court shall conduct an in camera review of the record of the executive session to determine whether the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402 (3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session in contravention of section 24-6-402 (3) (a) or (4).

(II) If the court determines, based on the in camera review, that violations of the open meetings law occurred, the portion of the record of the executive session that reflects the substantial discussion of matters not enumerated in section 24-6-402 (3) or (4) or the adoption of a proposed policy, position, resolution, rule, regulation, or formal action shall be open to public inspection.

(6) (a) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection or if the official custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited pursuant to this part 2, the official custodian may apply to the district court of the district in which such record is located for an order permitting him or her to restrict such disclosure or for the court to determine if disclosure is prohibited. Hearing on such application shall be held at the earliest practical time. In the case of a record that is otherwise available to public inspection pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure would cause substantial injury to the public interest, issue an order authorizing the official custodian to restrict disclosure. In the case of a record that may be prohibited from disclosure pursuant to this part 2, after a hearing, the court may, upon a finding that disclosure of the record is prohibited, issue an order directing the official custodian not to disclose the record to the public. In an action brought pursuant to this paragraph (a), the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him or her in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard. The attorney fees provision of subsection (5) of this section shall not apply in cases brought pursuant to this paragraph (a) by an official custodian who is unable to determine if disclosure of a

public record is prohibited under this part 2 if the official custodian proves and the court finds that the custodian, in good faith, after exercising reasonable diligence, and after making reasonable inquiry, was unable to determine if disclosure of the public record was prohibited without a ruling by the court.

(b) In defense against an application for an order under subsection (5) of this section, the custodian may raise any issue that could have been raised by the custodian in an application under paragraph (a) of this subsection (6).

(7) (a) Except as permitted in paragraph (b) of this subsection (7), the department of revenue or an authorized agent of the department shall not allow a person, other than the person in interest, to inspect information contained in a driver's license application under section 42-2-107, C.R.S., a driver's license renewal application under section 42-2-118, C.R.S., a duplicate driver's license application under section 42-2-117, C.R.S., a commercial driver's license application under section 42-2-403, C.R.S., an identification card application under section 42-2-302, C.R.S., a motor vehicle title application under section 42-6-116, C.R.S., a motor vehicle registration application under section 42-3-113, C.R.S., or other official record or document maintained by the department under section 42-2-121, C.R.S.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (7), only upon obtaining a completed requestor release form under section 42-1-206 (1) (b), C.R.S., the department may allow inspection of the information referred to in paragraph (a) of this subsection (7) for the following uses:

(I) For use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;

(II) For use in connection with matters of motor vehicle or driver safety and theft; motor vehicle emissions; motor vehicle product alterations, recalls, or advisories; performance monitoring of motor vehicles, motor vehicle parts and dealers; motor vehicle market research activities, including survey research; and removal of non-owner records from the original owner records of motor vehicle manufacturers;

(III) For use in the normal course of business by a legitimate business or its agents, employees, or contractors, but only:

(A) To verify the accuracy of personal information submitted by the individual to the business or its agents, employees, or contractors; and

(B) If such information as so submitted is not correct or is no longer correct, to obtain the correct information, but only for the purposes of preventing fraud by, pursuing legal remedies against, or recovering on a debt or security interest against, the individual;

(IV) For use in connection with any civil, criminal, administrative, or arbitral proceeding

in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(V) For use in research activities, and for use in producing statistical reports, so long as the personal information is not published, redisclosed, or used to contact the parties in interest;

(VI) For use by any insurer or insurance support organization, or by a self-insured entity, or its agents, employees, or contractors, in connection with claims investigation activities, antifraud activities, rating or underwriting;

(VII) For use in providing notice to the owners of towed or impounded vehicles;

(VIII) For use by any private investigative agency or security service for any purpose permitted under this paragraph (b);

(IX) For use by an employer or its agent or insurer to obtain or verify information relating to a party in interest who is a holder of a commercial driver's license;

(X) For use in connection with the operation of private toll transportation facilities;

(XI) For any other use in response to requests for individual motor vehicle records if the department has obtained the express consent of the party in interest pursuant to section 42-2-121 (4), C.R.S.;

(XII) For bulk distribution for surveys, marketing or solicitations if the department has obtained the express consent of the party in interest pursuant to section 42-2-121 (4), C.R.S.;

(XIII) For use by any requestor, if the requestor demonstrates he or she has obtained the written consent of the party in interest;

(XIV) For any other use specifically authorized under the laws of the state, if such use is related to the operation of a motor vehicle or public safety; or

(XV) For use by the federally designated organ procurement organization for the purposes of creating and maintaining the organ and tissue donor registry authorized in section 12-34-120, C.R.S.

(c) (I) For purposes of this paragraph (c), "law" shall mean the federal "Driver's Privacy Protection Act of 1994", 18 U.S.C. sec. 2721 et seq., the federal "Fair Credit Reporting Act", 15 U.S.C. sec. 1681 et seq., section 42-1-206, C.R.S., and this part 2.

(II) If the requestor release form indicates that the requestor will, in any manner, use,

obtain, resell, or transfer the information contained in records, requested individually or in bulk, for any purpose prohibited by law, the department or agent shall deny inspection of any motor vehicle or driver record.

(III) In addition to completing the requestor release form under section 42-1-206 (1) (b), C.R.S., and subject to the provisions of section 42-1-206 (3.7), C.R.S., the requestor shall sign an affidavit of intended use under penalty of perjury that states that the requestor shall not obtain, resell, transfer, or use the information in any manner prohibited by law. The department or the department 's authorized agent shall deny inspection of any motor vehicle or driver record to any person, other than a person in interest as defined in section 24-72-202 (4), or a federal, state, or local government agency carrying out its official functions, who has not signed and returned the affidavit of intended use.

(d) Notwithstanding paragraph (b) of this subsection (7), the department of revenue or an authorized agent of the department shall allow inspection of records maintained by the department pursuant to section 42-2-121.5, C.R.S., only by the person in interest or by an officer of a law enforcement or public safety agency in accordance with section 42-2-121.5 (3), C.R.S.

(8) (a) A designated election official shall not allow a person, other than the person in interest, to inspect the election records of any person that contain the original signature, social security number, month of birth, day of the month of birth, or identification of that person, including electronic, digital, or scanned images of a person's original signature, social security number, month of birth, day of the month of birth, or identification.

(b) Nothing in paragraph (a) of this subsection (8) shall be construed to prohibit a designated election official from:

(I) Making such election records available to any law enforcement agency or district attorney of this state in connection with the investigation or prosecution of an election offense specified in article 13 of title 1, C.R.S.;

(II) Making such election records available to employees of or election judges appointed by the designated election official as necessary for those employees or election judges to carry out the duties and responsibilities connected with the conduct of any election; and

(III) Preparing a registration list and making the list available for distribution or sale to or inspection by any person.

(c) For purposes of this subsection (8):

(I) "Designated election official" shall have the same meaning as set forth in section 1-1-104 (8), C.R.S.

(II) "Election records" shall have the same meaning as set forth in section 1-1-104 (11), C.R.S., and shall include a voter registration application.

(III) "Identification" shall have the same meaning as set forth in section 1-1-104 (19.5), C.R.S.

(IV) "Registration list" shall have the same meaning as set forth in section 1-1-104 (37), C.R.S.

HISTORY: Source: L. 68: p. 202, § 4.L. 69: pp. 925, 926, § § 1, 1. C.R.S. 1963: § 113-2-4.L. 77: (2)(a)(I) repealed, p. 1250, § 4, effective December 31.L. 81: (3)(d) added, p. 1237, § 1, effective May 18; (3)(a)(I) amended, p. 1236, § 1, effective May 26.L. 83: (3)(a)(V) and (3)(a)(VI) amended and (3)(a)(VII) added, p. 1023, § 2, effective March 22.L. 85: (3)(a)(VI) and (3)(a)(VII) amended and (3)(a)(VIII) added, p. 933, § 3, effective July 1.L. 88: (2)(a)(I) RC&RE, p. 979, § 1, effective April 20.L. 91: (3.5) added, p. 828, § 1, effective July 1.L. 92: (2)(a)(IV) and (3)(a)(II) amended and (3)(a)(IX) added, p. 1104, § 4, effective July 1.L. 93: (3)(d) amended, p. 64, § 1, effective March 22; (3)(a)(IX) amended, p. 293, § 1, effective April 7; (2)(a)(III) and (2)(a)(IV) amended and (2)(a)(V) added, p. 1763, § 1, effective June 6; (3)(a)(II) amended, p. 667, § 2, effective July 1.L. 94: (3)(a)(I) amended and (3)(a)(XI) added, p. 936, § 2, effective April 28; (3.5)(a)(I) amended, p. 1638, § 53, effective May 31; (3)(a)(X) added, p. 680, § 1, effective July 1; (2)(a)(IV), (2)(a)(V), (3.5)(a)(II), and (3.5)(b)(II) amended and (2)(a)(VI) added, pp. 2557, 2558, § 59, 60, effective January 1, 1995.L. 96: (3)(c) amended, p. 431, § 1, effective April 22; (2)(a)(II) and (6) amended and (3)(a)(VIII) repealed, pp. 1484, 1470, § § 16, 6, effective June 1.L. 97: (3)(a)(I) amended, p. 350, § 5, effective April 19; (2)(a)(VI) amended, p. 1178, § 1, effective July 1; (3)(a)(XII) added, p. 354, § 1, effective August 6; (7) added, p. 1050, § 2, effective September 1.L. 98: (3)(d) amended, p. 974, § 21, effective May 27; (3.5)(b)(V) added, p. 1332, § 43, effective June 1.L. 99: (3)(a)(X)(A) amended and (3)(a)(XIII) added, p. 207, § 2, effective March 31; (2)(a)(VI) amended and (3.5)(g) added, p. 344, § § 1, 2, effective April 16; (2)(a)(VI) amended, p. 1241, § 3, effective August 4; (3)(a)(XIV) added, p. 370, § 1, effective August 4.L. 2000: (2)(c) added, p. 243, § 9, effective March 29; (2)(a)(VI), (3.5)(a)(II), (3.5)(b)(II), (3.5)(b)(III), (3.5)(b)(V), and (7) amended, p. 1337, § 1, effective May 30; (3)(e) added, p. 1963, § 5, effective June 2; (7)(b)(XV) added, p. 732, § 13, effective July 1; (3.5)(c)(VI) amended, p. 1873, § 111, effective August 2.L. 2001: (7)(a) amended, p. 1274, § 35, effective June 5; (1)(d) added, p. 151, § 6, effective July 1; (3)(a)(XI)(A), (5), and (6)(a) amended and (5.5) added, p. 1073, § 3, effective August 8; (7)(a) and (7)(c) amended, p. 586, § 1, effective August 8.L. 2002: (3.5)(c)(VII) amended, p. 113, § 7, effective March 26; (3)(a)(XVI) added, p. 239, § 8, effective April 12; (3)(a)(XVII) added, p. 1213, § 10, effective June 3; (3)(a)(XVIII) added, p. 935, § 1, effective July 1; (3)(a)(XV) added, p. 86, § 2, effective August 7.L. 2003: (3)(a)(XVI) and (3)(a)(XVII) amended, p. 1636, § 1, effective May 2; (3.5)(c)(VII) amended, p. 1211, § 23, effective July 1; (3)(a)(IX) amended, p. 1619, § 30, effective August 6.L. 2004: (2)(a)(VII) added, p. 1959, § 3, effective August 4.L. 2005: (2)(a)(VIII) added, (3)(a)(IX) amended, and (3)(a)(XVII) repealed, pp. 502, 503, 504, § § 1, 2, 5, effective July 1; (3)(a)(XII) and (7)(a) amended, p. 1182, § 29, effective August 8; (3)(a)(XIV) amended, p. 462, § 3, effective December

1.L. 2006: (8) added, p. 44, § 1, effective March 17; (3)(a)(XIX) added, p. 564, § 1, effective April 24; (3)(a)(IV) amended, p. 276, § 2, effective January 1, 2007.L. 2007: (2)(d) added, p. 34, § 2, effective March 5; (3)(a)(XIV) amended, p. 1590, § 7, effective July 1; (7)(b)(XV) amended, p. 798, § 8, effective July 1.L. 2008: (7)(a) amended and (7)(d) added, p. 1520, § 2, effective May 28; (3)(a)(XX) added, p. 1703, § 2, effective June 2.L. 2009: (3)(a)(XXI) added, (SB 09-158), ch. 387, p. 2094, § 3, effective August 5.L. 2010: (3)(a)(XII) amended, (HB 10-1019), ch. 400, p. 1930, § 6, effective January 1, 2011.

Editor's note: (1) Subsection (3)(a)(IX) was numbered as (3)(a)(X) in House Bill 92-1195 but has been renumbered on revision for ease of location.

(2) Amendments to subsection (2)(a)(VI) by House Bill 99-1293 and Senate Bill 99-174 were harmonized.

(3) Amendments to subsection (7)(a) by House Bill 01-1025 and Senate Bill 01-138 were harmonized.

(4) Subparagraph (3)(a)(XVIII) was originally numbered as (3)(a)(XV) in House Bill 02-1395 but has been renumbered on revision for ease of location.

Cross references: For the legislative declaration contained in the 1996 act amending subsections (2)(a)(II) and (6), see section 1 of chapter 271, Session Laws of Colorado 1996; for service of process, see C.R.C.P. 4.

RECENT ANNOTATIONS

The investigatory files exemption provided for in subsection (2)(a)(I) must be construed narrowly to apply only to investigatory files compiled for criminal law enforcement purposes and not to investigatory files compiled in civil law enforcement proceedings. Land Owners United, LLC v. Waters, -- P.3d -- (Colo. App. 2011) published August 18, 2011 .

Under subsection (3)(a)(IV), district court had discretion to order redaction of specific confidential financial information from documents otherwise subject to inspection as public records. Land Owners United, LLC v. Waters, -- P.3d -- (Colo. App. 2011) published August 18, 2011 .

This section authorizes the release of public records for inspection absent a constitutional or statutory exception. "Secrecy in voting" as used in article VII, section 8, of the constitution does not exempt digital copies of ballots from release under CORA because that constitutional provision protects only the identity of an individual voter and any content of the voter's ballot that could identify the voter. Section 31-10-616 does not exempt digital copies of ballots from release under CORA because the copies are not ballots. Marks v. Koch, -- P.3d -- (Colo. App. 2011) published September 29, 2011 .

Digital copies of ballots are eligible for release under CORA, with the narrow exception of any copy containing content that could identify an individual voter and thereby contravene the intent of article VII, section 8(1), of the constitution. Marks v. Koch, -- P.3d -- (Colo. App. 2011) published September 29, 2011 .

In an action brought under subsection (5) for the recovery of attorney fees and costs on the grounds that the public records custodian improperly withheld inspection of a public record, a party who brings an action against a public records custodian and obtains any improperly withheld public record as a result of such action is a prevailing applicant who must be awarded court costs and reasonable attorney fees unless a statutory provision precludes the award of such amount. Because the petitioner succeeded in obtaining the right to inspect documents it sought from the custodians, it is a prevailing party within the terms of this statutory provision. Colo. Republican Party v. Benefield, -- P.3d -- (Colo. App. 2011) published November 10, 2011 .

Custodians not sheltered by safe harbor provision of subsection (6)(a). Custodians' belief that survey responses giving rise to the CORA action clearly implied an expectation of confidentiality on their part is incompatible with the statutory requirement for applicability of the safe harbor provision, which is an inability to make a determination as to the requirement to disclose. Because custodians are unable to meet the requirements to successfully avoid an award of attorney fees under subsection (6)(a), they are unable to come within the protections from the imposition of attorney fees under subsection (6)(b). Colo. Republican Party v. Benefield, -- P.3d -- (Colo. App. 2011) published November 10, 2011 .

ANNOTATION

Law reviews. For article, "E-mail, Open Meetings, and Public Records", see 25 Colo. Law. 99 (October 1996). For article, "Protecting Confidential Information Submitted in Procurements to Colorado State Agencies", see 34 Colo. Law. 67 (January 2005).

Three-part test to show that the Colorado Open Records Act applies to a record. A plaintiff must show that a public entity: (1) improperly; (2) withheld; (3) a public record in order for the Act to apply. Wick Commc'ns Co. v. Montrose County Bd. of County Comm'rs, 81 P.3d 360 (Colo. 2003).

The requesting party must make a threshold showing that the document is likely a public record, in cases where it is not clear whether the custodian holds a record in an individual or official capacity, and thus whether the record is private or public. Wick Commc'ns Co. v. Montrose County Bd. of County Comm'rs, 81 P.3d 360 (Colo. 2003).

And because the requesting party failed to make such a showing with respect to the personal cell phone billing statements of the governor, even though the governor regularly used the phone to conduct state business, the billing statements were not public records subject to disclosure and dismissal for failure to state a claim was appropriate. Denver Post Corp. v. Ritter, 230 P.3d 1238 (Colo. App. 2009), aff'd, 255

P.3d 1083 (Colo. 2011).

Court considers and weighs public interest in determining disclosure question. The limiting language making certain of the open records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Subsection (3)(a)(I) prohibits the disclosure of medical records "unless otherwise provided by law". Section 30-10-606 (6)(a) expressly provides otherwise, granting coroners access to medical information from health care providers. Bodelson v. City of Littleton, 36 P.3d 214 (Colo. App. 2001).

A person need not show a special interest in order to be permitted access to particular public records. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Official is unauthorized to deny access in absence of specific statutory provision. In the absence of a specific statute permitting the withholding of information, a public official has no authority to deny any person access to public records. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974); Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Because waiver is not included as one of the statutory grounds for denying the right of access, public policy prohibits enforcing a waiver of the right to inspect psychological test results. Carpenter v. Civil Serv. Comm'n, 813 P.2d 773 (Colo. App. 1990).

The exception made in subsection (3)(a)(IV) for "privileged information" incorporates the common law deliberative process privilege. The purpose of the privilege is to protect the frank exchange of ideas and opinions critical to the government's decision-making process where disclosure would discourage such discussion in the future. Thus, material prepared by a governmental employee is not subject to disclosure if the court finds that the material is both predecisional and deliberative and that disclosure would be likely to adversely affect the purposes of the privilege and stifle frank communication within an agency. City of Colo. Springs v. White, 967 P.2d 1042 (Colo. 1998).

Documents containing legal advice on how to proceed with lobbying efforts and how to respond to a taxpayer's open records law requests are protected by the attorney-client privilege. Such documents were not lobbying because they were not communications made to a public official for the purpose of influencing legislation. Black v. S.W. Water Conserv. Dist., 74 P.3d 462 (Colo. App. 2003).

In enacting exception to discovery rule for personnel files in subsection (3)(a)(II), the general assembly intended a blanket protection for all personnel files, except applications and performance ratings, and did not grant custodian discretion to balance interest in disclosure with individual's right to privacy. Denver Post Corp. v. Univ. of

Colo., 739 P.2d 874 (Colo. App. 1987).

Although subsection (3)(a)(II) does not authorize any balancing of the public interest and the right of privacy, the protection for personnel files is based on a concern for the individual's right to privacy, and it remains the duty of the courts to ensure that documents as to which this protection is claimed actually do implicate this right. The applicant must bear the burden of proving that the custodian's denial of inspection was arbitrary and capricious. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

A legitimate expectation of privacy must exist for the exception to discovery rule for personnel files to apply and a public entity may not restrict access to information by merely placing a record in a personnel file. Denver Publ'g Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990); Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

The disclosure of names of public employees receiving severance payments pursuant to the city of Colorado Springs transitional employment program would not cause substantial injury to the public interest. Such exemption applies only to extraordinary situations that the general assembly could not identify in advance. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

Documents subject to disclosure under the Colorado Open Records Act are exempt if disclosure would cause substantial injury to the public interest by invading a constitutionally protected liberty interest. The release of employees' names and amounts paid pursuant to the city of Colorado Springs transitional employment program does not unduly interfere with the employees' liberty interest. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

The public's right to know how public funds are spent is paramount in weighing whether disclosure may chill Colorado state university's ability to use the transitional employment program to remain competitive. Freedom Newspapers, Inc. v. Tollefson, 961 P.2d 1150 (Colo. App. 1998).

A county officer and a county employee who exchanged sexually explicit e-mail messages had a reasonable expectation that the disclosure of such highly personal and sensitive information would be limited, even though they were on notice that the messages were not private. In re Bd. of County Comm'rs, 95 P.3d 593 (Colo. App. 2003).

Disclosure of sexually explicit e-mails between a county officer and a county employee may serve a compelling state interest to the extent they help explain why the officer promoted the employee, why the employee received increases in salary and overtime pay, and why the employee was not terminated despite allegations of embezzlement. In re Bd. of County Comm'rs, 95 P.3d 593 (Colo. App. 2003).

The sexual harassment exception in subsection (3)(a)(X)(A) does not prohibit the disclosure of e-mails unrelated to official business and of portions of an investigative report that do not refer to other employees by name. In re Bd. of County Comm'rs, 95 P.3d 593 (Colo. App. 2003).

Public interest in ensuring that public entities conduct internal reviews effectively and efficiently outweighs interest of public entity employer in maintaining confidentiality. Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

Police personnel files and staff investigation reports are not exempt from discovery. The open records provisions do not, ipso facto, exempt the personnel files and the staff investigation bureau reports of the Denver police department from discovery in civil litigation. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Subsections (5) and (6) provide the exclusive procedures for persons requesting records and record custodians to resolve disputes concerning record accessibility. People in Interest of A.A.T., 759 P.2d 853 (Colo. App. 1988).

However, the procedure under subsection (6) is inapplicable where a custodian of records is not claiming that disclosure would do substantial injury to the public interest and does not seek to have disclosure prohibited if an open records request is made in compliance with the entity's open records policy. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

Where the government entity has a legitimate basis for concluding that compliance with an open records request within the statutory time limits is physically impossible, a trial court may properly entertain a complaint for declaratory relief even if doing so could result in delay in the production of documents. Citizens Progressive Alliance v. S.W. Water Conservation Dist., 97 P.3d 308 (Colo. App. 2004).

Provisions of subsection (5) and § 24-72-206 are the sole remedies under this part. Bd. of County Comm'rs v. HAD Enterp., Inc., 35 Colo. App. 162, 533 P.2d 45 (1974).

The procedure set forth in subsection (5) is the exclusive remedy set forth in the statute when a custodian fails to allow inspection of records. Pope v. Town of Georgetown, 648 P.2d 672 (Colo. App. 1982).

A court's review under subsection (5) of a claim under the Colorado Open Records Act (CORA) does not end when parties have stipulated to in camera review of disputed documents. Once submitted for review, court must determine whether a document is subject to a CORA exception. If a document was withheld that was not subject to an exception, the prevailing applicant may be entitled to court costs and reasonable attorney fees as determined by the court. Sierra Club v. Billingsley, 166 P.3d 309 (Colo. App. 2007).

Even assuming withholding by county land use official of copy of e-mail was in violation

of Colorado Open Records Act (CORA), neither CORA nor C.R.C.P. 106 (a)(4) contains any provision that would authorize remand for reconsideration of determination by county board of adjustment that lapse provision contained in county land use code did not apply to special use permit in light of withholding copy of e-mail. Remedies for wrongful withholding of documents under CORA are limited to an order to produce the documents for inspection and an award of attorney fees and court costs. Any other remedy for such a violation would need to be enacted by general assembly, and in the absence of such legislation, court of appeals not at liberty to craft such remedy. Sierra Club v. Billingsley, 166 P.3d 309 (Colo. App. 2007).

Where custodian denies access to any public record, applicant may request written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied. The written statement must be furnished forthwith. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Any action filed by the custodian or the party requesting the record must be separate, independent action in the appropriate district court and the action cannot be filed as part of any ongoing proceeding. People in Interest of A.A.T., 759 P.2d 853 (Colo. App. 1988).

Subsection (6) specifically places the burden of proof upon the custodian. Denver Publ'g Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

As to documents which involve privacy rights, custodian of documents bears burden of proving that disclosure would do substantial injury to public interest by invading right to privacy of individuals involved. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Arbitrary and capricious refusal was not shown, hence attorney fees would not be awarded, where city's denial of request for records reflected a conscientious effort to reasonably apply legislative standards. Daniels v. City of Commerce City, 988 P.2d 648 (Colo. App. 1999).

Applicant does not bear burden of proof that denial of inspection by custodian of records is arbitrary and capricious. Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Presumption in favor of disclosure suggests that burden of establishing confidential financial information exemption ought to rest with the party opposing disclosure to overcome that presumption and not on citizen to show that disclosure is warranted. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Under subsection (3)(a)(II), an employee is entitled to access to his leave records in his own personnel files. Ornelas v. Dept. of Insts., 804 P.2d 235 (Colo. App. 1990).

Subsection (6) allows a court to restrict access to public records, although they might be

accessible under another provision, where it finds that substantial injury to the public interest would occur. Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991); Bodelson v. Denver Publ'g Co., 5 P.3d 373 (Colo. App. 2000).

The construction and interpretation that will render subsection (6) effective in accomplishing the purpose for which it was enacted is to allow the district court to restrict access to public records where substantial injury to the public interest would result, notwithstanding the fact that said record might otherwise be available for inspection by a party in interest or by the general public. Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991); Bodelson v. Denver Publ'g Co., 5 P.3d 373 (Colo. App. 2000).

Public interest exception to discovery rule in subsection (6) requires consideration of (1) whether individual has a legitimate expectation of nondisclosure, (2) whether there is a compelling public interest in access to information, and (3), if public interest compels disclosure, how disclosure may occur in a manner least intrusive with respect to individual's right of privacy. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980); Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Privacy protections for letters of reference under subsection (3)(a)(III) apply to handwritten notes made on questionnaire forms used in contacting references. The general assembly intended to protect from disclosure the documentary materials obtained from references in confidence. This intent applies equally to the notes taken by the hiring agency when calling references. City of Westminster v. Dogan Constr., 930 P.2d 585 (Colo. 1997).

The phrase, "letters of reference concerning employment", used in subsection (3)(a)(III), includes handwritten notes from references for a private contractor. As with hiring any prospective employee, the hiring entity is justifiably concerned about a contractor's past performance and ability to complete jobs on time and in budget. City of Westminster v. Dogan Constr., 930 P.2d 585 (Colo. 1997).

Civil service commission was entitled to judgment restricting access to examination results where person requesting access presented no evidence disputing the factual issue of whether substantial injury to the public interest would result if the information were not restricted under subsection (6). Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991).

Privacy rights of employees of university were not sufficient to preclude disclosure of university documents pertaining to said employees, considering important public interest in disclosing circumstances under which those individuals received payments from a foreign government in connection with university contracts to establish a hospital and a medical school in a foreign country. Denver Post Corp. v. Univ. of Colo., 739 P.2d 874 (Colo. App. 1987).

Public policy of Open Records Act violated by grant of authority to university's custodian

of records to place any document in personnel files in which custodian determines a faculty member would have a legitimate expectation of privacy and, therefore, precluding its disclosure under said Act. Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Access to terms of employment between institution of higher education and its employees cannot be restricted merely by placing documents in personnel file. Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Documents in personnel file of former university chancellor which did not involve a privacy right or which contained information routinely disclosed to others were not entitled to protection pursuant to nondisclosure exception of subsection (3). Denver Pub. Co., v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

Public interest exception in subsection (6) did not prevent release of terms of final settlement agreement between former chancellor and university as public's right to know how public funds are spent outweighed any potential damage to university's ability to resolve internal matters of dispute by releasing information contrary to parties' expectations. Denver Pub. Co. v. Univ. of Colo., 812 P.2d 682 (Colo. App. 1990).

District court erred in prohibiting access to a governmental entity's own financial statements by exempting them under subsection (6) because the governmental entity did not demonstrate an extraordinary situation or that substantial injury to the public would result if the statements were disclosed. Zubeck v. El Paso County Retirement Plan, 961 P.2d 597 (Colo. App. 1998).

A record may be "public" for one purpose and not for another, because whether a record is to be regarded as a public record in a particular instance will depend upon the purposes of the law which will be served by so classifying it. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

Pursuant to strong presumption favoring public disclosure of all documents defined as public records, trial court properly concluded that in balancing commercial harm that could be caused by disclosure against perceived benefits, transportation contracts entered into between city department of public utilities and railroad were subject to disclosure under open records act. Freedom News v. Denver Rio Grande R. Co., 731 P.2d 740 (Colo. App. 1986).

Open records statutes do not necessarily provide for release of information merely because it is in the possession of the government. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Financial information generated by a governmental entity is not confidential under subsection (3)(a)(IV) because disclosure would not impair the governmental entity's ability to gain future information nor cause substantial harm to any person providing the information as most of the information was generated by the governmental entity itself.

Zubeck v. El Paso County Ret. Plan, 961 P.2d 597 (Colo. App. 1998).

Confidential financial information contained in bid related documents are not per se unprotected if bid is successful. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Confidential financial information exemption under subsection (3)(a)(IV) may apply to redacted material in successful subcontractor's bid proposal and prequalification documents where material may have contained information that was ultimately incorporated into subcontract and where disclosure may pose substantial risk to subcontractor's competitive position. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

However, evidence presented at hearing was inadequate to establish that redacted material was protected by confidential financial information exemption which was based solely upon opinion of witness that information was confidential. Intern. Broth. of Elec. v. Denver Metro., 880 P.2d 160 (Colo. App. 1994).

Legislative intent to classify autopsy reports as public records. The phrase "exclusive of coroners' autopsy reports" in subsection (3)(a)(I) is convincing evidence of the legislative intent to classify autopsy reports as public records open to inspection, rather than directing the denial of a right of inspection by any person, as is the case with other medical, psychological, sociological, and scholastic data. Denver Publishing Co. v. Dreyfus, 184 Colo. 288, 520 P.2d 104 (1974).

Coroners' autopsy reports are "public records" and not "criminal justice records", so that autopsy report on homicide victim may be withheld from public inspection by custodian thereof only pursuant to procedure under the open records law requiring establishment that disclosure would do "substantial injury to the public interest". Freedom Newspapers, Inc. v. Bowerman, 739 P.2d 881 (Colo. App. 1987).

The controlling standard in subsection (6)(a) regarding the release of the complete autopsy report is public, not private, injury. Blesch v. Denver Publ'g Co., 62 P.3d 1060 (Colo. App. 2002).

Trial court properly denied the release of autopsy reports of victims of the Columbine high school massacre. Testimony by family members of the victims and the coroner supported the court's finding that release of the reports would do substantial injury to the public interest. Furthermore, the Open Records Act did not require the trial court to conduct an in camera hearing on the report. Bodelson v. Denver Publ'g Co., 5 P.3d 373 (Colo. App. 2000). But see Blesch v. Denver Publ'g Co., 62 P.3d 1060 (Colo. App. 2002).

Records of state compensation insurance authority do not fall within any of the exemptions enumerated in this section and are, therefore, subject to the state opens records law as a "political subdivision". Dawson v. State Comp. Ins. Auth., 811 P.2d 408

(Colo. App. 1990).

Police records showing arrests, convictions, and other information about individuals are not public and should not be open to the scrutiny of the public at large. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

Except when given to prosecution. When lists of the conviction records of prospective jurors are given to the prosecution, they can no longer be classified as internal matters affecting only the internal operations of the police department. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

In which case, defense entitled to obtain information. Police records are not public records open to inspection by the general public but where the district attorney's office regularly receives information from such records, the defense attorneys, including the public defender's office, are entitled to obtain such information in the possession of the prosecution. Losavio v. Mayber, 178 Colo. 184, 496 P.2d 1032 (1972).

Applied in Laubach v. Bradley, 194 Colo. 362, 572 P.2d 824 (1977); In re W.D.A. v. City County of Denver, 632 P.2d 582 (Colo. 1981); Marks v. Koch, -- P.3d -- (Colo. App. 2011).

24-72-204.5. Adoption of electronic mail policy

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

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

HISTORY: Source: L. 96: Entire section added, p. 1485, § 7, effective June 1.

24-72-205. Copy, printout, or photograph of a public record

(1) In all cases in which a person has the right to inspect a public record, the person may request a copy, printout, or photograph of the record. The custodian shall furnish a copy, printout, or photograph and may charge a fee determined in accordance with subsection (5) of this section; except that, when the custodian is the secretary of state, fees shall be determined and collected pursuant to section 24-21-104 (3), and when the custodian is the executive director of the department of personnel, fees shall be determined and collected pursuant to section 24-80-102 (10). Where the fee for a

certified copy or other copy, printout, or photograph of a record is specifically prescribed by law, the specific fee shall apply.

(2) If the custodian does not have facilities for making a copy, printout, or photograph of a record that a person has the right to inspect, the person shall be granted access to the record for the purpose of making a copy, printout, or photograph. The copy, printout, or photograph shall be made while the record is in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of the custodian. When practical, the copy, printout, or photograph shall be made in the place where the record is kept, but if it is impractical to do so, the custodian may allow arrangements to be made for the copy, printout, or photograph to be made at other facilities. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the record. The custodian may establish a reasonable schedule of times for making a copy, printout, or photograph and may charge the same fee for the services rendered in supervising the copying, printing out, or photographing as the custodian may charge for furnishing a copy, printout, or photograph under subsection (5) of this section.

(3) If, in response to a specific request, the state or any of its agencies, institutions, or political subdivisions has performed a manipulation of data so as to generate a record in a form not used by the state or by said agency, institution, or political subdivision, a reasonable fee may be charged to the person making the request. Such fee shall not exceed the actual cost of manipulating the said data and generating the said record in accordance with the request. Persons making subsequent requests for the same or similar records may be charged a fee not in excess of the original fee.

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

(5) (a) A custodian may charge a fee not to exceed twenty-five cents per standard page for a copy of a public record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a public record in a format other than a standard page.

(b) Notwithstanding paragraph (a) of this subsection (5), an institution, as defined in section 24-72-202 (1.5), that is the custodian of scholastic achievement data on an individual person may charge a reasonable fee for a certified transcript of the data.

HISTORY: Source: L. 68: p. 204, § 5. C.R.S. 1963: § 113-2-5.L. 83: (1) amended, p. 863, § 4, effective July 1.L. 92: (3) and (4) added, p. 1105, § 5, effective July 1.L. 2007: (1) and (2) amended and (5) added, p. 578, § 1, effective August 3.

Cross references: For distribution of copies of reports made to the general assembly, see § 24-1-136 (9).

24-72-206. Violation - penalty

Any person who willfully and knowingly violates the provisions of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

HISTORY: Source: L. 68: p. 204, § 6. C.R.S. 1963: § 113-2-6.

ANNOTATION

Provisions of this section and § 24-72-204 (5) are the sole remedies under this part. Bd. of County Comm'rs v. HAD Enterprises, Inc., 35 Colo. App. 162, 533 P.2d 45 (1974).

This section does not create a private right of action for a violation of this act. Shields v. Shetler, 682 F. Supp. 1172 (D. Colo. 1988).

24-72-301. Legislative declaration

(1) The general assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern and that, in defining and regulating those areas, only statewide standards in a state statute are workable.

(2) It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3, and that all other records of criminal justice agencies in this state may be open for inspection as provided in this part 3 or as otherwise specifically provided by law.

HISTORY: Source: L. 77: Entire part added, p. 1244, § 1, effective December 31.

Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

Law reviews: For article, "Procedures and Ethical Questions Under the Colorado Criminal Justice Records Act", see 14 Colo. Law. 2193 (1985).

ANNOTATION

Law reviews. For article, "Home Rule Municipalities and Colorado's Open Records and Meetings Laws", see 18 Colo. Law. 1125 (1989). For article, "Sealing Criminal Records in Colorado", see 21 Colo. Law. 247 (1992).

Court considers and weighs public interest in determining disclosure question. The limiting language making certain of the public records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Police personnel files and staff investigation reports not exempt from discovery. The Colorado open records provisions do not, ipso facto, exempt the personnel files and the staff investigation bureau reports of the Denver police department from discovery in civil litigation. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Destruction of records after complaint dismissed not intent of general assembly. The general assembly did not intend that the physical destruction of criminal arrest records be allowed after the dismissal of the complaint. People v. Wright, 43 Colo. App. 30, 598 P.2d 157 (1979).

Statutory remedies deemed exclusive. Because the criminal justice records provisions provide a comprehensive scheme concerning criminal records, the statutory remedies are exclusive for those persons whose records come within the purview of the statutory scheme. People v. Wright, 43 Colo. App. 30, 598 P.2d 157 (1979).

Applied in City County of Denver v. District Court, 199 Colo. 223, 607 P.2d 984 (1980); City County of Denver v. District Court, 199 Colo. 303, 607 P.2d 985 (1980); Denver Policemen's Protective Ass'n v. Lichtenstein, 660 F.2d 432 (10th Cir. 1981).

24-72-302. Definitions

As used in this part 3, unless the context otherwise requires:

(1) "Arrest and criminal records information" means information reporting the arrest, indictment, or other formal filing of criminal charges against a person; the identity of the criminal justice agency taking such official action relative to an accused person; the date and place that such official action was taken relative to an accused person; the name, birth date, last-known address, and sex of an accused person; the nature of the charges brought or the offenses alleged against an accused person; and one or more dispositions relating to the charges brought against an accused person.

(2) "Basic identification information" means the name, place and date of birth, last-known address, social security number, occupation and address of employment, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases of any person.

(3) "Criminal justice agency" means any court with criminal jurisdiction and any agency of the state, including but not limited to the department of education, or any agency of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority that performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule, including but not limited to the results of chemical biological substance testing to determine genetic markers conducted pursuant to sections 16-11-102.4 and 16-23-104, C.R.S.

(5) "Custodian" means the official custodian or any authorized person having personal custody and control of the criminal justice records in question.

(6) "Disposition" means a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive clemency.

(7) "Official action" means an arrest; indictment; charging by information; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline,

reclassify, or relocate any person under criminal sentence.

(8) "Official custodian" means any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of criminal justice records, regardless of whether such records are in his actual personal custody and control.

(9) "Person" means any natural person, corporation, limited liability company, partnership, firm, or association.

(10) "Person in interest" means the person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parents or duly appointed legal representative.

(11) "Private custodian" means a private entity that has custody of the criminal justice records in question and is in the business of providing the information to others.

HISTORY: Source:. L. 77: Entire part added, p. 1244, § 1, effective December 31.L. 81: (3) amended, p. 1238, § 1, effective June 4.L. 88: (2) amended, p. 979, § 2, effective April 20.L. 89: (2) amended, p. 845, § 114, effective July 1.L. 90: (9) amended, p. 449, § 22, effective April 18.L. 98: (2) amended, p. 947, § 6, effective May 27.L. 99: (4) amended, p. 1170, § 5, effective July 1.L. 2000: (4) amended, p. 1266, § 5, effective May 26; (4) amended, p. 1027, § 7, effective July 1.L. 2002: (4) amended, p. 1023, § 43, effective June 1; (4) amended, p. 1155, § 15, effective July 1.L. 2006: (4) amended, p. 1692, § 15, effective July 1, 2007.L. 2007: (4) amended, p. 2040, § 60, effective June 1.L. 2008: (3) amended, p. 1668, § 13, effective May 29.L. 2009: (4) amended, (SB 09-241), ch. 295, p. 1577, § 2, effective September 30, 2010.L. 2010: (4) amended, (HB 10-1422), ch. 419, p. 2087, § 76, effective August 11.L. 2011: (11) added, (HB 11-1203), ch. 72, p. 199, § 1, effective August 10.

Editor's note: (1) Amendments to subsection (4) by House Bill 00-1166 and Senate Bill 00-121 were harmonized.

(2) Amendments to subsection (4) by Senate Bill 02-159 and Senate Bill 02-019 were harmonized.

ANNOTATION

Investigative records were properly classified as "criminal justice records" under this section, because they were made and maintained in the exercise of an authorized function of the DOC governed by administrative regulations. Johnson v. Colo. Dept. of Corr., 972 P.2d 692 (Colo. App. 1998).

Police reports in the possession of a county department of social services are "criminal justice records", regardless of whether the department itself is a "criminal justice agency". Moreover, the department became a "custodian" of such records by keeping copies of the police reports in its files. In re Petition of T.L.M., 39 P.3d 1239 (Colo. App. 2001).

Sheriff's department is a "criminal justice agency". Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005).

Applied in Berman v. People, 41 Colo. App. 488, 589 P.2d 508 (1978).

24-72-303. Records of official actions required - open to inspection

(1) Each official action as defined in this part 3 shall be recorded by the particular criminal justice agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 or as otherwise provided by law. The official custodian of any records of official actions may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested record of official action of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the agency which has custody or control of the record in question.

(3) If the requested record of official action of a criminal justice agency is in the custody and control of the person to whom application is made but is in active use or in storage and therefore not available at the time an applicant asks to examine it, the custodian shall forthwith notify the applicant of this fact in writing, if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the record will be available for inspection.

HISTORY: Source: L. 77: Entire part added, p. 1246, § 1, effective December 31.

ANNOTATION

Law reviews. For article, "Home Rule Municipalities and Colorado's Open Records and Meetings Laws", see 18 Colo. Law. 1125 (1989).

A grand jury indictment is a criminal justice record of official action presented in open court, the full release of which, save the identifying information of any alleged victims of sexual assault contained therein, is not contrary to public interest. People v. Thompson, 181 P.3d 1143 (Colo. 2008).

The mere fact that an indictment contains detailed factual allegations that would otherwise be subject to grand jury secrecy does not warrant that the indictment be sealed. People v. Thompson, 181 P.3d 1143 (Colo. 2008).

24-72-304. Inspection of criminal justice records

(1) Except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law, and the official custodian of any such records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

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

(3) If the requested records are not in the custody and control of the criminal justice agency to which the request is directed but are in the custody and control of a central repository for criminal justice records pursuant to law, the criminal justice agency to which the request is directed shall forward the request to the central repository. If such a request is to be forwarded to the central repository, the criminal justice agency receiving the request shall do so forthwith and shall so advise the applicant forthwith. The central repository shall forthwith reply directly to the applicant.

(4) (a) The name and any other information that would identify any victim of sexual assault or of alleged sexual assault or attempted sexual assault or alleged attempted sexual assault shall be deleted from any criminal justice record prior to the release of such record to any individual or agency other than a criminal justice agency when such record bears the notation "SEXUAL ASSAULT" prescribed by this subsection (4).

(b) (I) A criminal justice agency or custodian of criminal justice records shall make the notation "SEXUAL ASSAULT" on any record of official action and on the file containing

such record when the official action is related to the commission or the alleged commission of any of the following offenses:

(A) Sexual assault under section 18-3-402, C.R.S., or sexual assault in the first degree under section 18-3-402, C.R.S., as it existed prior to July 1, 2000;

(B) Sexual assault in the second degree under section 18-3-403, C.R.S., as it existed prior to July 1, 2000;

(C) Unlawful sexual contact under section 18-3-404, C.R.S., or sexual assault in the third degree under section 18-3-404, C.R.S., as it existed prior to July 1, 2000;

(D) Sexual assault on a child under section 18-3-405, C.R.S.;

(E) Sexual assault on a child by one in a position of trust under section 18-3-405.3, C.R.S.;

(F) Sexual assault on a client by a psychotherapist under section 18-3-405.5, C.R.S.;

(G) Incest under section 18-6-301, C.R.S.;

(H) Aggravated incest under section 18-6-302, C.R.S.; or

(I) An attempt to commit any of the offenses listed in sub-subparagraphs (A) to (H) of this subparagraph (I).

(II) The notation required pursuant to subparagraph (I) of this paragraph (b) shall be made when:

(A) Any record or file or both of official action is prepared relating to the commission or alleged commission of an offense enumerated in subparagraph (I) of this paragraph (b); or

(B) The name of any victim of the commission or alleged commission of any offense enumerated in subparagraph (I) of this paragraph (b) for which official action was taken appears on the criminal information or indictment.

(c) A criminal justice agency or custodian of criminal justice records shall make the notation "SEXUAL ASSAULT" on any record of official action and on the file containing such record when:

(I) Any employee of the court, officer of the court, or judicial officer notifies such agency or custodian of the name of any victim of the commission or alleged commission of any offense enumerated in subparagraph (I) of paragraph (b) of this subsection (4) when such victim's name is disclosed to or obtained by such employee or officer during the course of proceedings related to such official action; or

(II) Such record or file contains the name of a victim of the commission or alleged commission of any such offense and the victim requests the custodian of criminal justice records to make such a notation.

(d) The provisions of this subsection (4) shall not apply to the sharing of information by a state institution of higher education police department to authorized university administrators pursuant to section 23-5-141, C.R.S.

(5) Nothing in this section shall be construed to limit the discretion of the district attorney to authorize a crime victim, as defined in section 24-4.1-302 (5), or a member of the victim's immediate family, as defined in section 24-4.1-302 (6), to view all or a portion of the presentence report of the probation department.

HISTORY: Source:. L. 77: Entire part added, p. 1246, § 1, effective December 31.L. 92: (4) added, p. 1106, § 6, effective July 1.L. 93: (4) amended, p. 1863, § 1, effective June 6.L. 96: (4)(a) amended, p. 1587, § 14, effective July 1.L. 97: (5) added, p. 1551, § 2, effective July 1.L. 2000: (4)(b)(I)(A), (4)(b)(I)(B), and (4)(b)(I)(C) amended, p. 707, § 36, effective July 1.L. 2006: (4)(a) and (4)(b)(I) amended, p. 421, § 3, effective April 13.L. 2011: (4)(d) added, (HB 11-1169), ch. 119, p. 374, § 2, effective April 20.

ANNOTATION

Court considers and weighs public interest in determining disclosure question. The limiting language making certain of the public records provisions applicable except as "otherwise provided by law" is a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Person requesting inspection of an item has the initial burden to show that the item is likely a "criminal justice record". The capacity in which the custodian makes, maintains, keeps, and uses the record is the linchpin to this inquiry. Harris v. Denver Post Corp., 122 P.3d 1166 (Colo. 2005).

If the initial burden is met, the burden then shifts to the custodian to show whether the item in contention relates to the performance of public functions. The agency must look to the content of the record to resolve this issue. Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005).

A grand jury indictment is a criminal justice record of official action presented in open court, the full release of which, save the identifying information of any alleged victims of sexual assault contained therein, is not contrary to public interest. People v. Thompson, 181 P.3d 1143 (Colo. 2008).

The mere fact that an indictment contains detailed factual allegations that would otherwise be subject to grand jury secrecy does not warrant that the indictment be sealed. People v. Thompson, 181 P.3d 1143 (Colo. 2008).

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal

(1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in subsection (5) of this section:

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

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

(1.5) On the ground that disclosure would be contrary to the public interest, the custodian of criminal justice records shall deny access to the results of chemical biological substance testing to determine the genetic markers conducted pursuant to sections 16-11-102.4 and 16-23-104, C.R.S.

(2) to (4) Repealed.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

(6) If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and shall be furnished forthwith to the applicant.

(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay the applicant's court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount

not to exceed twenty-five dollars for each day that access was improperly denied.

(8) The allowance or denial of the right to inspect criminal justice records that contain specialized details of security arrangements or investigations shall be governed by section 24-72-204 (2) (a) (VIII).

HISTORY: Source:. L. 77: Entire part added, p. 1246, § 1, effective December 31.L. 78: IP(1) amended and (2) to (4) repealed, pp. 403, 407, § § 1, 4, effective May 5.L. 99: (1.5) added, p. 1170, § 6, effective July 1.L. 2000: (1.5) amended, p. 1266, § 6, effective May 26; (1.5) amended, p. 1028, § 8, effective July 1.L. 2002: (1.5) amended, p. 1024, § 44, effective June 1; (1.5) amended, p. 1155, § 16, effective July 1.L. 2005: (8) added, p. 503, § 3, effective July 1.L. 2006: (1.5) amended, p. 1692, § 16, effective July 1, 2007.L. 2007: (1.5) amended, p. 2040, § 61, effective June 1.L. 2009: (1.5) amended, (SB 09-241), ch. 295, p. 1577, § 3, effective September 30, 2010.L. 2010: (1.5) amended, (HB 10-1422), ch. 419, p. 2087, § 77, effective August 11.

Editor's note: (1) Amendments to subsection (1.5) by House Bill 00-1166 and Senate Bill 00-121 were harmonized.

(2) Amendments to subsection (1.5) by Senate Bill 02-159 and Senate Bill 02-019 were harmonized.

ANNOTATION

Court considers and weighs public interest in determining disclosure question. The limiting language making certain of the public records provisions of Colorado's open records laws applicable except as "prohibited by rules promulgated by the supreme court or by the order of any court" are a reference to the rules of civil procedure and expresses the legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

General assembly's purpose in providing for judicial review of discretionary inspection decisions is to prevent abuse of discretion in denying inspection of records. Where county sheriff did not properly perform the role of balancing public and private interests in denying an inspection, the district court should have ordered him to do so. Freedom v. El Paso County Sheriff's Dept., 196 P.3d 892 (Colo. 2008).

Police personnel files and staff investigation reports not exempt from discovery. The open records provisions do not, ipso facto, exempt the personnel files and the staff investigation bureau reports of the Denver police department from discovery in civil litigation. Martinelli v. District Court, 199 Colo. 163, 612 P.2d 1083 (1980).

Investigative records resulting from internal affairs investigation are "criminal justice

records" under § 24-72-302 (4) because they were made and maintained in the exercise of an authorized function of the department of corrections governed by administrative regulations. Denial of access to the investigative records was proper because disclosure of the records would be contrary to the public interest. Johnson v. Colo. Dept. of Corr., 972 P.2d 692 (Colo. App. 1998).

Nondisclosure of police intelligence information. Trial court did not err in failing to permit petitioner full access to a city police department's taped recordings of informant's statements in which petitioner's name was mentioned where the tape could reasonably be classified as police intelligence, where the informants statements became the basis for an internal police investigation, and where the police had a legitimate interest in avoiding disclosure of investigations of potential criminal conduct not ripe for prosecution. Prestash v. City of Leadville, 715 P.2d 1272 (Colo. App. 1985).

Coroners' autopsy reports are "public records" and not "criminal justice records", so that autopsy report on homicide victim inspection by custodian thereof only pursuant to procedure under the open records law requiring establishment that disclosure would do "substantial injury to the public interest". Freedom Newspapers, Inc. v. Bowerman, 739 P.2d 881 (Colo. App. 1987).

If a private record seized from an individual is not relevant to the performance of the criminal justice agency's public function, the record is not subject to inspection. If, however, the record is relevant to the agency's public function and the agency obtained the record in its public capacity and no statute or court order prohibits inspection, the custodian may consider releasing the record in response to an inspection request. Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005).

Recordings seized by a sheriff's department and used by the department to investigate the commission of crimes are criminal justice records subject to inspection. Harris v. Denver Post Corp., 123 P.3d 1166 (Colo. 2005).

24-72-305.3. Private access to criminal history records of volunteers and employees of charitable organizations

(1) (Deleted by amendment, L. 2001, p. 1233, § 1, effective June 5, 2001.)

(2) (a) As used in this subsection (2):

(I) "Authorized agency" means a division or office of a state designated by a state to report, receive, or disseminate information under the "Volunteers for Children Act", contained in Public Law 105-251, as amended.

(II) "Bureau" means the Colorado bureau of investigation created in section 24-33.5-401.

(III) "Care" means the provision of care, treatment, education, training, instruction,

supervision, or recreation to children, the elderly, or individuals with disabilities.

(IV) "Convicted" means a conviction by a jury or by a court and shall also include a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, an adjudication, and a plea of guilty or nolo contendere.

(V) (Deleted by amendment, L. 2001, p. 1233, § 1, effective June 5, 2001.)

(V.2) "The elderly" means persons sixty years of age or older receiving care.

(V.5) "Individuals with disabilities" means persons with a mental or physical impairment who require assistance to perform one or more daily living tasks.

(VI) "Provider" shall have the same meaning as set forth in 42 U.S.C. sec. 5119c and includes an owner of, an employee of, an applicant seeking employment with, or a volunteer with a qualified entity.

(VII) "Qualified entity" means a business or organization, whether public, private, for-profit, not-for-profit, or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies others to provide care or care placement services.

(b) For the purpose of implementing the provisions of the "Volunteers for Children Act", contained in Public Law 105-251, as amended, on and after July 1, 2000, each qualified entity in the state may contact an authorized agency for the purpose of determining whether a provider has been convicted of, or is under pending indictment for, a crime that bears upon the provider's fitness to have responsibility for the safety and well-being of children, the elderly, or individuals with disabilities. Such crimes shall include, but need not be limited to:

(I) Felony child abuse, as specified in section 18-6-401, C.R.S.;

(II) A crime of violence, as defined in section 18-1.3-406, C.R.S.;

(III) Any felony offenses involving unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.;

(IV) Any felony, the underlying factual basis of which has been found by the court on the record to include an act of domestic violence, as defined in section 18-6-800.3, C.R.S.;

(V) Any felony offense in any other state, the elements of which are substantially similar to the elements of any one of the offenses described in subparagraphs (I) to (IV) of this paragraph (b).

(c) (I) For purposes of this subsection (2), the bureau shall be designated an authorized

agency. The executive director of the department of public safety shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the director of the department of public safety may promulgate all reasonable and necessary rules to implement this subsection (2).

(II) For purposes of this subsection (2):

(A) The department of human services, created in section 24-1-120, may serve as an authorized agency for those qualified entities that are regulated by the said department. The state board of human services shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of human services may promulgate all reasonable and necessary rules to implement this subsection (2).

(B) The department of public health and environment, created in section 24-1-119, may serve as an authorized agency for those qualified entities that are regulated by said department. The state board of health shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of health may promulgate all reasonable and necessary rules to implement this subsection (2).

(C) The department of education, created in section 24-1-115, may serve as an authorized agency for those qualified entities that are regulated by said department. The state board of education shall identify by rule, consistent with applicable federal and state law, those entities that may serve as qualified entities. In addition, the state board of education may promulgate all reasonable and necessary rules to implement this subsection (2).

(d) Any authorized agency reporting, receiving, or disseminating criminal history record information pursuant to this subsection (2) shall request such information only through the bureau. The bureau, in responding to such request, shall access records that are maintained by or within this state and any other state or territory of the United States, any other nation, or any agency or subdivision of the United States including, but not limited to, the federal bureau of investigation in the United States department of justice.

HISTORY: Source:. L. 95: Entire section added, p. 111, § 1, effective March 30.L. 2000: Entire section amended, p. 1701, § 1, effective July 1.L. 2001: Entire section amended, p. 1233, § 1, effective June 5.L. 2002: (2)(b)(III) amended, p. 1189, § 32, effective July 1; (2)(b)(II) amended, p. 1535, § 258, effective October 1.

Cross references: For the legislative declaration contained in the 2002 act amending subsection (2)(b)(II), see section 1 of chapter 318, Session Laws of Colorado 2002.

24-72-305.4. Governmental access to criminal history records of applicants in regulated professions or occupations

(1) Any division, board, commission, or person responsible for the licensing, certification, or registration functions for any governmental entity, in addition to any other authority conferred by law, may use fingerprints to access, for comparison purposes, arrest history records of:

(a) Any applicant for licensure, registration, or certification to practice a profession or occupation;

(b) Any licensee, registrant, or person certified to practice a profession or occupation;

(c) Any prospective employee or any employee of a licensee, registrant, or person certified to practice an occupation or profession.

(2) The persons or entities authorized to access arrest history records pursuant to subsection (1) of this section may access records that are maintained by or within this state through the Colorado bureau of investigation.

(3) For the purposes of this section, "governmental entity" means the state and any of its political subdivisions, including entities governed by home rule charters, and any agency or institution of the state or any of its political subdivisions.

HISTORY: Source:. L. 94: Entire section added, p. 1048, § 1, effective July 1.L. 2002: IP(1) and (2) amended, p. 977, § 14, effective June 1.

24-72-305.5. Access to records - denial by custodian - use of records to obtain information for solicitation

Records of official actions and criminal justice records and the names, addresses, telephone numbers, and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The official custodian shall deny any person access to records of official actions and criminal justice records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

HISTORY: Source: L. 92: Entire section added, p. 406, § 23, effective June 3.

ANNOTATION

Law reviews. For article, "Commercial Speech and Lawyer Access to Public Records", see 24 Colo. Law. 1313 (1995).

24-72-305.6. County clerk and recorder access to criminal history records of election judges and employees

(1) A county clerk and recorder shall request the criminal history records from the public web site maintained by the Colorado bureau of investigation for all full-time, part-time, permanent, and contract employees of the county who staff a counting center and who have any access to electromechanical voting systems or electronic vote tabulating equipment. The county clerk and recorder shall request the records not less than once each calendar year prior to the first election of the year.

(2) A county clerk and recorder may request, in his or her discretion, the criminal history records from the public web site maintained by the Colorado bureau of investigation for an election judge serving in the county.

(3) A county clerk and recorder authorized to access criminal history records pursuant to this section may access records that are maintained by or within this state directly through the public web site maintained by the Colorado bureau of investigation. A county clerk and recorder that does not have access or authorization to use a credit card for conducting business on behalf of the county in which the clerk and recorder serves may request that the county sheriff for the county access the criminal records from the public web site maintained by the Colorado bureau of investigation. Criminal records shall not be accessed pursuant to this section directly from the Colorado criminal justice computer system or the national criminal justice computer system.

HISTORY: Source: L. 2006: Entire section added, p. 120, § 1, effective March 27.

24-72-306. Copies, printouts, or photographs of criminal justice records - fees authorized

(1) Criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and redaction of criminal justice records requested pursuant to this part 3 and may waive fees at their discretion. In addition, criminal justice agencies may charge a fee not to exceed twenty-five cents per standard page for a copy of a criminal justice record or a fee not to exceed the actual cost of providing a copy, printout, or photograph of a criminal justice record in a format other than a standard page. Where fees for certified copies or other copies, printouts, or photographs of criminal justice records are specifically prescribed by law, such specific fees shall apply. Where the criminal justice agency is an agency or department of any county or municipality, the amount of such fees shall be established by the governing body of the county or municipality in accordance with this subsection (1).

(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession,

custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow other arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

(3) The provisions of this section shall not apply to discovery materials that a criminal justice agency is required to provide in a criminal case pursuant to rule 16 of the Colorado rules of criminal procedure.

HISTORY: Source:. L. 77: Entire part added, p. 1248, § 1, effective December 31.L. 2008: (1) amended and (3) added, p. 428, § 1, effective August 5.

ANNOTATION

Subsection (1) can be read in harmony with the requirement of Crim. P. 16 part V(c) so that any costs for search or retrieval are limited to materials discoverable. Thus, an agency is limited to reasonable fees for discoverable materials. People v. Trujillo, 114 P.3d 27 (Colo. App. 2004).

24-72-307. Challenge to accuracy and completeness - appeals

(1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such

record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the refusal of correction was proper, it shall order the custodian to make such correction, and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

HISTORY: Source: L. 77: Entire part added, p. 1248, § 1, effective December 31.

24-72-308. Sealing of arrest and criminal records other than convictions

(1) (a) (I) Except as otherwise provided in subparagraphs (II) and (III) of this paragraph (a), any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged, in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

(II) Except as provided in subparagraph (III) of this paragraph (a), arrest or criminal records information may not be sealed if:

(A) An offense is not charged due to a plea agreement in a separate case;

(B) A dismissal occurs as part of a plea agreement in a separate case; or

(C) The defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal criminal records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated such order.

(III) A person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense that was not charged or a case that was dismissed due to a plea agreement in a separate case, and if:

(A) The petition is filed ten years or more after the date of the final disposition of all criminal proceedings against the person in interest; and

(B) The person in interest has not been charged for a criminal offense in the ten years since the date of the final disposition of all criminal proceedings against the person in interest.

(b) (I) Any petition to seal criminal records shall include a listing of each custodian of the records to whom the sealing order is directed and any information which accurately and completely identifies the records to be sealed.

(II) (A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the petitioner is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the petitioner. The court's order shall specify the reasons for the denial of the petition.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing and the petitioner shall notify the prosecuting attorney by certified mail, the arresting agency, and any other person or agency identified by the petitioner.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of such order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to an order from its database. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

(d) Upon the entry of an order to seal the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such records exist with respect to such person.

(e) Inspection of the records included in an order sealing criminal records may thereafter be permitted by the court only upon petition by the person who is the subject of such records or by the prosecuting attorney and only for those purposes named in such petition.

(f) (I) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application

may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction which comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall have no right to privacy or privilege which justifies his refusal to answer to any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (f), the department of education may require a licensed educator or an applicant for an educator's license who files a petition to seal a criminal record to notify the department of education of the pending petition to seal. The department shall have the right to inquire into the facts of the criminal offense for which the petition to seal is pending. The educator or applicant shall have no right to privacy or privilege that justifies his or her refusal to answer any questions concerning the arrest and criminal records information contained in the pending petition to seal.

(g) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

(1.5) For the purpose of protecting the author of any correspondence which becomes a part of criminal justice records, the court having jurisdiction in the judicial district in which the criminal justice records are located may, in its discretion, with or without a hearing thereon, enter an order to seal any information, including, but not limited to, basic identification information contained in said correspondence. However, the court may, in its discretion, enter an order which allows the disclosure of sealed information to defense counsel or, if the defendant is not represented by counsel, to the defendant.

(2) Advisements. (a) Whenever a defendant has appeared before the court and has charges against him or her dismissed or not filed, or whenever the defendant is acquitted, the court shall provide him or her with a written advisement of his or her rights pursuant to this section concerning the sealing of his or her criminal justice records if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (2), if a defendant's case is dismissed after a period of supervision by probation, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights pursuant to this section concerning the sealing of his or her criminal justice records if he or she complies with the applicable provisions of this section.

(3) Exceptions. (a) This section shall not apply to records pertaining to:

(I) A class 1 or class 2 misdemeanor traffic offense;

(II) A class A or class B traffic infraction;

(III) A conviction for a violation of section 42-4-1301 (1) or (2), C.R.S.

(b) Court orders sealing records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

(c) This section shall not apply to records pertaining to a conviction of an offense for which the factual basis involved unlawful sexual behavior, as defined in section 16-22-102 (9), C.R.S.

(d) This section shall not apply to arrest and criminal justice information or criminal justice records in the possession and custody of a criminal justice agency when inquiry concerning the arrest and criminal justice information or criminal justice records is made by another criminal justice agency.

(e) This section shall not apply to records pertaining to a conviction of an offense concerning the holder of a commercial driver's license as defined in section 42-2-402, C.R.S., or the operator of a commercial motor vehicle as defined in section 42-2-402, C.R.S.

HISTORY: Source:. L. 77: Entire part added, p. 1249, § 1, effective December 31.L. 78: (1) and (2) amended, (1.1) to (1.3) and (9) added, and (3)(b) repealed, pp. 403, 406, § § 2, 3, effective May 5.L. 79: (1)(a), (1.1)(c) to (1.1)(f), and (9) amended and (10) added, p. 975, § 1, effective March 13.L. 81: Entire section R&RE, p. 1238, § 2, effective June 4.L. 82: (2)(b)(I), (2)(b)(II), and (5)(a) amended, p. 655, § 8, effective January 1, 1983.L. 83: (1)(a) amended, p. 680, § 4, effective July 1; (2)(i) and (3)(c)(II) amended, p. 963, § 11, effective July 1, 1984.L. 87: (5)(a) amended, p. 1498, § 8, effective July 1.L. 88: Entire section R&RE, p. 979, § 3, effective April 20.L. 92: (1.5) added, p. 281, § 1, effective July 1; (3) amended, p. 1106, § 7, effective July 1.L. 95: (3)(a) amended, p. 314, § 1, effective July 1.L. 96: (1)(a) amended, p. 736, § 5, effective July 1; (3)(c) amended and (3)(d) added, p. 1587, § 13, effective July 1.L. 2002: (3)(c) amended, p. 1190, § 33, effective July 1.L. 2003: (1)(b)(II) amended, p. 634, § 1, effective March 18.L. 2004: (1)(a) amended, p. 1375, § 1, effective August 4.L. 2006: (1)(a)(II) amended, p. 422, § 4, effective April 13.L. 2008: (1)(f)(III) added, p. 1668, § 14, effective May 29; (1)(a)(III), (2), and (3)(a) amended, p. 1937, § 1, effective July 1; (3)(e) added, p. 473, § 1, effective July 1.L. 2011: (1)(c) amended, (HB 11-1203), ch. 72, p. 199, § 2, effective August 10.

ANNOTATION

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986). For article, "Sealing Criminal Records in Colorado", see 21 Colo. Law. 247 (1992).

Section indicates the general assembly's intent to preserve the complete criminal justice record, but in a form that protects the individual named from any harmful effects. People v. Wright, 43 Colo. App. 30, 598 P.2d 157 (1979).

Physical destruction of records not generally allowed. By fashioning the remedy of sealing records, the general assembly did not intend that the physical destruction of the records also be allowed in most situations. People v. Wright, 43 Colo. App. 30, 598 P.2d 157 (1979).

The court must balance the competing interests in determining whether criminal records should be sealed, and its decision in this regard may not be overturned on appeal absent an abuse of that discretion. In re T.L.M., 39 P.3d 1239 (Colo. App. 2001).

Arrest and criminal records should not be sealed when the underlying case is not completely dismissed as contemplated in subsection (1)(a)(I). Warren v. People, 192 P.3d 477 (Colo. App. 2008).

A case that is dismissed with prejudice is not "completely dismissed". Warren v. People, 192 P.3d 477 (Colo. App. 2008).

When determining if case falls under the exception in subsection (3)(c), a guilty plea to an offense that involved sexual behavior constitutes a "conviction", even if conviction was subsequently dismissed under a deferred judgment. M.T. v. People, -- P.3d -- (Colo. App. 2010).

Exception for crimes involving unlawful sexual behavior applies to convictions that have been subsequently dismissed under a deferred judgment. Text of statute suggests that records do not have to pertain to only extant convictions; such a construction is necessary to avoid rendering exception meaningless; and legislative intent was that exception should apply to records of all convictions involving unlawful sexual behavior, regardless of whether conviction was extant. M.T. v. People, -- P.3d -- (Colo. App. 2010).

Since this section concerns the sealing of criminal records and juvenile delinquency proceedings are noncriminal in nature, the trial court should have proceeded under the expungement provisions set forth in § 19-1-306 when considering a petition to seal arrest and criminal records relating to a juvenile delinquency case. C.B. v. People, 122 P.3d 1065 (Colo. App. 2005).

Once the court determines that arrest records and criminal justice information should be sealed, subsection (1)(c) requires the order to be directed to every custodian having custody of any of the records to be sealed. In re T.L.M., 39 P.3d 1239 (Colo. App.

2001).

No irreconcilable conflict or inconsistency between the sealing provisions of this section and § 19-3-313 (7)(a) and (9). Because they deal with the same subject, all of these provisions should be given effect. In re T.L.M., 39 P.3d 1239 (Colo. App. 2001) (decided before the 2004 repeal of § 19-3-313).

There is no basis under either statutory scheme for exempting criminal records held by the Boulder county department of social services from the application of the sealing provisions of this section. Rather, the provisions apply to the police reports in the possession of the Boulder county department of social services, but do not apply to its own investigative records or to the remainder of its files. In re T.L.M., 39 P.3d 1239 (Colo. App. 2001) (decided before the 2004 repeal of § 19-3-313).

An individual may deny his past criminal record. Subsection (3)(f)(I) (now subsection (1)(f)(I)) clearly allows an individual to deny past criminal involvement if the criminal record has been sealed pursuant to the provisions of subsection (3)(c)(I) (now subsection (1)(c)(I)). In making a determination, the trial court should consider the severity of the offense sought to be sealed, the time which has elapsed since the conviction, the subsequent criminal history of the petitioner, and the need for the government agency to retain the records. D.W.M. v. District Court, 751 P.2d 74 (Colo. 1988); People v. Bushu, 876 P.2d 106 (Colo. App. 1994).

Where a petitioner requests to seal criminal records of an acquittal, the court may also consider factors relating to the strength of the case, petitioner's age and employment history, and various consequences if the records are not sealed. The balance test allows for consideration of other factors on a case-by-case basis. People v. Bushu, 876 P.2d 106 (Colo. App. 1994).

Where all charges against the petitioner were dismissed or resulted in acquittal, the severity of the charges is not a factor supporting denial of a petition to seal the records. If anything, in an acquittal context, the fact that the charges of which the petitioner was acquitted were serious increases the potential harm to the petitioner if the records are not sealed. R.J.Z. v. People, 104 P.3d 278 (Colo. App. 2004).

There is no reason to attach any significance to a brief lapse of time since the trial when the sealing of records is sought after an acquittal. R.J.Z. v. People, 104 P.3d 278 (Colo. App. 2004).

Assessing the strength of the case against a defendant based on the length of jury deliberations is necessarily speculative and does not, without more, establish that the prosecution's case was strong. R.J.Z. v. People, 104 P.3d 278 (Colo. App. 2004).

Where all charges of sexual misconduct were dismissed or resulted in acquittal, the petitioner's desire to pursue employment that will permit the petitioner to supervise and be alone with children could not warrant keeping the records unsealed, given the

absence of other factors supporting denial of the petition to seal the records. R.J.Z. v. People, 104 P.3d 278 (Colo. App. 2004).

Subsection (3)(a)(I) applies to charges and not merely convictions, that is, although the exception refers to an "offense", that term is sufficiently broad to include a charge that does not result in a conviction. Clark v. People, 221 P.3d 447 (Colo. App. 2009).

Partial sealing. Nothing in this section permits the partial sealing of a record where any portion of the record may not be sealed pursuant to subsection (3). Clark v. People, 221 P.3d 447 (Colo. App. 2009).

Petitioner's punishment was increased retroactively in violation of the ex post facto clause of the Colorado Constitution when petitioner was denied the automatic entry of an order limiting access to records relating to the charge against her because the trial court applied an amendment of the statute enacted after petitioner committed her crime. In re R.B., 815 P.2d 999 (Colo. App. 1991).

The opportunity to petition and to have the balancing test applied in a hearing under this section is not a vested or a substantive right. People v. D.K.B., 843 P.2d 1326 (Colo. 1993); E.J.R. v. District Court, County of Boulder, 892 P.2d 222 (Colo. 1995).

Therefore, where petitioner was convicted prior to the 1988 amendment to subsection (1)(a) but did not petition for sealing prior to the amendment, applying the provisions of the amendment to the petitioner did not violate the constitutional prohibition against retrospective legislation. People v. D.K.B., 843 P.2d 1326 (Colo. 1993).

Convicted felon, however, has vested privacy interest in sealed criminal records as of the date of the court's final order to seal the records and expiration of the appeal period, regardless of whether the court, having proper subject matter jurisdiction to seal criminal records, inappropriately authorized the sealing of felony records. The judgment may have been erroneous, but is not void. E.J.R. v. District Court, County of Boulder, 892 P.2d 222 (Colo. 1995).

An order entered under subsection (1)(c) to seal records must be directed to every custodian having custody of any of the records to be sealed. In re Petition of T.L.M., 39 P.3d 1239 (Colo. App. 2001).

A waiver of the right to request sealing of records is not contrary to public policy. Rather, public policy favors the enforcement of a defendant's express waiver of the statutory right to request sealing of criminal records. People v. Ward-Garrison, 72 P.3d 423 (Colo. App. 2003); Walker-Lawrence v. District Court of Teller County, 74 P.3d 521 (Colo. App. 2003).

Applied in Tipton v. City of Lakewood ex rel. People, 198 Colo. 18, 595 P.2d 689 (1979); People v. Whittle, 628 P.2d 169 (Colo. App. 1981); People v. Chamberlin, 74 P.3d 489 (Colo. App. 2003).

24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2008, and prior to July 1, 2011

(1) Definitions. For purposes of this section, "conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.

(2) Sealing of conviction records. (a) (I) Subject to the limitations described in subsection (4) of this section, a defendant may petition the district court of the district in which any conviction records pertaining to the defendant are located for the sealing of the conviction records, except basic identifying information, if:

(A) The petition is filed ten or more years after the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction, whichever is later; and

(B) The defendant has not been charged or convicted for a criminal offense in the ten or more years since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later.

(II) An order sealing conviction records shall not deny access to the criminal records of a defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual. An order sealing conviction records shall not be construed to vacate a conviction. A conviction sealed pursuant to this section may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not limited to any subsequent case that is filed against the defendant, or for any other lawful purpose within the scope of his, her, or its duties. If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court shall order the conviction records to be unsealed. A party or agency required by law to conduct a criminal history record check shall be authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(III) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated the order.

(b) (I) A petition to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. A verified copy of the defendant's criminal history, current through at least the twentieth day prior to the date of the filing of the petition, shall be submitted to the court by the defendant

along with the petition at the time of filing, but in no event later than the tenth day after the petition is filed. The defendant shall be responsible for obtaining and paying for his or her criminal history record.

(II) (A) Upon the filing of a petition, the court shall review the petition and determine whether there are grounds under this section to proceed to a hearing on the petition. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the defendant is not entitled to relief under this section, the court shall enter an order denying the petition and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the petition.

(B) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition under this section, the court shall set a date for a hearing, and the defendant shall notify by certified mail the prosecuting attorney, the arresting agency, and any other person or agency identified by the defendant.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (2) is conducted and if the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining the conviction records, the court may order the conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, the number of convictions and dates of the convictions for which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records. An order entered pursuant to this paragraph (c) shall be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this paragraph (c), the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to an order from its database. The defendant shall pay to the bureau any costs related to the sealing of his or her criminal conviction records in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(d) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2), upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant.

(e) Except as otherwise provided in subparagraph (II) of paragraph (a) of this

subsection (2), inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant.

(f) (I) Except as otherwise provided in subparagraph (II) of paragraph (a) of this subsection (2) or in subparagraphs (II) and (III) of this paragraph (f), employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed conviction records. An applicant need not, in answer to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(III) The provisions of subparagraph (I) of this paragraph (f) shall not apply to a criminal justice agency or to an applicant to a criminal justice agency.

(IV) Any member of the public may petition the court to unseal any file that has been previously sealed upon a showing that circumstances have come into existence since the original sealing and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy.

(g) The office of the state court administrator shall post on its web site a list of all petitions to seal conviction records that are filed with a district court. A district court may not grant a petition to seal conviction records until at least thirty days after the posting. After the expiration of thirty days following the posting, the petition to seal conviction records and information pertinent thereto shall be removed from the web site of the office of the state court administrator.

(h) Nothing in this section shall be construed to authorize the physical destruction of any conviction records.

(i) Notwithstanding any provision in this section to the contrary, in regard to any conviction of a defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this section only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this section.

(3) Advisements. (a) Whenever a defendant is sentenced following a conviction of an

offense described in paragraph (a) of subsection (4) of this section, the court shall provide him or her with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (3):

(I) If a defendant is sentenced to probation following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(II) If a defendant is released on parole following a conviction of an offense described in paragraph (a) of subsection (4) of this section, the defendant's parole officer, upon the termination of the defendant's parole, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(4) (a) Applicability. Except as otherwise provided in paragraph (b) of this subsection (4), the provisions of this section shall apply only to conviction records pertaining to judgments of conviction entered on and after July 1, 2008, and prior to July 1, 2011, for:

(I) Any petty offense in violation of a provision of article 18 of title 18, C.R.S.;

(II) Any misdemeanor in violation of a provision of article 18 of title 18, C.R.S.;

(III) Any class 5 or class 6 felony in violation of a provision of article 18 of title 18, C.R.S.; except that the provisions of this section shall not apply to conviction records pertaining to a judgment of conviction for a class 5 or class 6 felony for the sale, manufacturing, or dispensing of a controlled substance, as defined in section 18-18-102 (5), C.R.S.; attempt or conspiracy to commit the sale, manufacturing, or dispensing of a controlled substance; or possession with the intent to manufacture, dispense, or sell a controlled substance;

(IV) Any offense that would be classified as a class 5 or 6 felony in violation of a provision of article 18 of title 18, C.R.S., if the offense were to have occurred on July 1, 2008.

(b) For any judgment of conviction entered prior to July 1, 2008, for which the defendant would otherwise qualify for relief under this section, the defendant may obtain an order from the court to seal conviction records if:

(I) The prosecuting attorney does not object to the sealing; and

(II) The defendant pays to the office of the prosecuting attorney all reasonable attorney fees and costs of the prosecuting attorney relating to the petition to seal prior to the entry of an order sealing the conviction records; and

(III) The defendant pays:

(A) The filing fee required by law; and

(B) An additional filing fee of two hundred dollars to cover the actual costs related to the filing of the petition to seal records.

(c) The additional filing fees collected under sub-subparagraph (B) of subparagraph (III) of paragraph (b) of this subsection (4) shall be transmitted to the state treasurer for deposit in the judicial stabilization cash fund created in section 13-32-101 (6), C.R.S.

(d) The provisions of this section shall not apply to conviction records that are in the possession of a criminal justice agency when an inquiry concerning the conviction records is made by another criminal justice agency.

(5) Rules of discovery - rules of evidence - witness testimony. Court orders sealing records of official actions pursuant to this section shall not limit the operations of:

(a) The rules of discovery or the rules of evidence promulgated by the supreme court of Colorado or any other state or federal court; or

(b) The provisions of section 13-90-101, C.R.S., concerning witness testimony.

HISTORY: Source:. L. 2008: Entire section added, p. 1938, § 2, effective July 1.L. 2010: (4)(c) amended, (HB 10-1422), ch. 419, p. 2088, § 78, effective August 11.L. 2011: (2)(a)(II), (2)(c), (2)(d), and IP(4)(a) amended, (HB 11-1167), ch. 69, p. 181, § 1, effective March 29; (2)(c) amended, (HB 11-1203), ch. 72, p. 200, § 3, effective August 10.

Editor's note: Amendments to subsection (2)(c) by House Bill 11-1167 and House Bill 11-1203 were harmonized.

24-72-308.6. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2011

(1) Definitions. For purposes of this section, "conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.

(2) Sealing of conviction records. (a) (I) Subject to the limitations described in subsection (4) of this section, a defendant may petition the district court of the district in which any conviction records pertaining to the defendant are located for the sealing of the conviction records, except basic identifying information, if the petition is filed within the time frame described in subparagraph (II) of this paragraph (a).

(II) (A) If the offense is a petty offense or a class 2 or 3 misdemeanor in article 18 of title 18, C.R.S., the petition may be filed three years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(B) If the offense is a class 1 misdemeanor in article 18 of title 18, C.R.S., the petition may be filed five years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(C) If the offense is a class 5 felony or class 6 felony drug possession offense described in section 18-18-403.5 or 18-18-404, C.R.S., or section 18-18-405, C.R.S., as it existed prior to August 11, 2010, the petition may be filed seven years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(D) For all other offenses in article 18 of title 18, C.R.S., the petition may be filed ten years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(III) (A) If a petition is filed for the sealing of a petty offense in article 18 of title 18, C.R.S., the court shall order the record sealed after the petition is filed, the filing fee is paid, and the criminal history filed with the petition as required by paragraph (b) of this subsection (2) documents to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later.

(B) If a petition is filed for the sealing of a class 1, class 2, or class 3 misdemeanor in article 18 of title 18, C.R.S., the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney does not object, the court shall order that the record be sealed after the defendant documents to the court that he or she has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later. If the district attorney objects to the petition, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition as

required by paragraph (b) of this subsection (2) shall document to the court that the defendant has not been charged with or convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(C) If a petition is filed for the sealing of a class 5 or class 6 felony possession offense described in section 18-18-403.5 or 18-18-404, C.R.S., or section 18-18-405, C.R.S., as it existed prior to August 11, 2010, the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney does not object, the court may decide the petition with or without the benefit of a hearing. If the district attorney objects to the petition, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) shall document to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(D) If a petition is filed for any offense in article 18 of title 18, C.R.S., that is not covered by sub-subparagraphs (A) to (C) of this subparagraph (III), the defendant shall pay the filing fee and provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-308.5 (2) (c). If the district attorney objects to the petition, the court shall dismiss the petition. If the district attorney does not object, the court shall set the petition for a hearing. To order the record sealed, the criminal history filed with the petition as required by paragraph (b) of this subsection (2) shall document to the court that the defendant has not been charged or convicted for a criminal offense since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-308.5 (2) (c).

(IV) An order entered pursuant to this section shall be directed to each custodian who may have custody of any part of the conviction records that are the subject of the order. Whenever a court enters an order sealing conviction records pursuant to this section, the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order and shall pay to the bureau any costs related to the sealing of his or her criminal conviction records that are in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(V) An order sealing conviction records shall not deny access to the criminal records of a defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual. An order sealing conviction records shall not be construed to vacate a

conviction. A conviction sealed pursuant to this section may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not limited to any subsequent case that is filed against the defendant, or for any other lawful purpose within the scope of his, her, or its duties. If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court shall order the conviction records to be unsealed. A party or agency required by law to conduct a criminal history record check shall be authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(VI) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated the order.

(b) A petition to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. A verified copy of the defendant's criminal history, current through at least the twentieth day prior to the date of the filing of the petition, shall be submitted to the court by the defendant along with the petition at the time of filing, but in no event later than the tenth day after the petition is filed. The defendant shall be responsible for obtaining and paying for the verified copy of his or her criminal history record.

(c) Except as otherwise provided in subparagraph (V) of paragraph (a) of this subsection (2), upon the entry of an order to seal the conviction records, the defendant and all criminal justice agencies may properly reply, upon an inquiry in the matter, that public conviction records do not exist with respect to the defendant.

(d) Except as otherwise provided in subparagraph (V) of paragraph (a) of this subsection (2), inspection of the records included in an order sealing conviction records may thereafter be permitted by the court only upon petition by the defendant.

(e) (I) Except as otherwise provided in subparagraph (V) of paragraph (a) of this subsection (2) or in subparagraphs (II) and (III) of this paragraph (e), employers, state and local government agencies, officials, landlords, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed conviction records. An applicant need not, in answer to any question concerning conviction records that have been sealed, include a reference to or information concerning the sealed conviction records and may state that the applicant has not been criminally convicted.

(II) The provisions of subparagraph (I) of this paragraph (e) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall

have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall not have a right to privacy or privilege that justifies his or her refusal to answer a question concerning sealed conviction records that have come to the attention of the bar committee through other means.

(III) The provisions of subparagraph (I) of this paragraph (e) shall not apply to a criminal justice agency or to an applicant to a criminal justice agency.

(IV) Any member of the public may petition the court to unseal any file that has been previously sealed upon a showing that circumstances have come into existence since the original sealing, and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy.

(f) The office of the state court administrator shall post on its web site a list of all petitions to seal conviction records that are filed with a district court. A district court may not grant a petition to seal conviction records until at least thirty days after the posting. After the expiration of thirty days following the posting, the petition to seal conviction records and information pertinent thereto shall be removed from the web site of the office of the state court administrator.

(g) Nothing in this section shall be construed to authorize the physical destruction of any conviction records.

(h) Notwithstanding any provision in this section to the contrary, in regard to any conviction of a defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this section only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this section.

(3) Advisements. (a) Whenever a defendant is sentenced following a conviction of an offense described in paragraph (a) of subsection (2) of this section, the court shall provide him or her with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in paragraph (a) of this subsection (3):

(I) If a defendant is sentenced to probation following a conviction of an offense described in paragraph (a) of subsection (2) of this section, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(II) If a defendant is released on parole following a conviction for an offense described in

paragraph (a) of subsection (2) of this section, the defendant's parole officer, upon the termination of the defendant's parole, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(4) (a) Applicability. The provisions of this section shall apply only to conviction records pertaining to judgments of conviction entered on or after July 1, 2011.

(b) For any judgment of conviction entered prior to July 1, 2011, for which the defendant would otherwise qualify for relief under this section, the defendant may, after waiting the required waiting period and fulfilling all other statutory requirements under this section, obtain an order from the court to seal conviction records if:

(I) The district attorney does not object to the sealing; and

(II) The defendant pays to the office of the prosecuting attorney all reasonable attorney fees and costs of the prosecuting attorney relating to the petition to seal prior to the entry of an order sealing the conviction records; and

(III) The defendant pays:

(A) The filing fee required by law; and

(B) An additional filing fee of two hundred dollars to cover the actual costs related to the filing of the petition to seal records.

(c) The provisions of this section shall not apply to conviction records that are in the possession of a criminal justice agency when an inquiry concerning the conviction records is made by another criminal justice agency.

(d) If the district attorney objects to the petition, the court shall dismiss the petition.

(5) Rules of discovery - rules of evidence - witness testimony. Court orders sealing records of official actions pursuant to this section shall not limit the operations of:

(a) The Colorado rules of civil procedure related to discovery or the Colorado rules of evidence promulgated by the supreme court of Colorado or any other state or federal court; or

(b) The provisions of section 13-90-101, C.R.S., concerning witness testimony.

HISTORY: Source: L. 2011: Entire section added, (HB 11-1167), ch. 69, p. 182, § 2, effective March 29.

24-72-309. Violation - penalty

Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

HISTORY: Source: L. 77: Entire part added, p. 1250, § 1, effective December 31.

ANNOTATION

Applied in People v. Wright, 43 Colo. App. 30, 598 P.2d 157 (1979).

24-72-401. Commission on judicial discipline - confidentiality of records and procedures

The record of an investigation conducted by the commission on judicial discipline or by masters appointed by the supreme court at the request of the commission shall contain all papers filed with and all proceedings before the commission or the masters. The record shall be confidential and shall remain confidential after filing with the supreme court. A recommendation of the commission for the removal or retirement of a justice or judge shall not be confidential after it is filed with the supreme court.

HISTORY: Source: L. 83: Entire part added, p. 1003, § 1, effective July 1.

Cross references: For elections, see title 1; for peace officers and firefighters, see article 5 of title 29; for state engineer, see article 80 of title 37; for state chemist, see part 4 of article 1 of title 25; for offenses against government, see article 8 of title 18; for the "Uniform Records Retention Act", see article 17 of title 6.

ANNOTATION

Law reviews. For article, "The Confidentiality of Judicial Disciplinary Proceedings", see 17 Colo. Law. 1043 (1988).

24-72-402. Violation - penalty

Any member of the commission, any master appointed by the supreme court, or anyone providing assistance to such commission or such masters who willfully and knowingly discloses the contents of any paper filed with, or any proceeding before, such commission or such masters, or willfully and knowingly discloses the contents of any recommendation of the commission before such recommendation is filed with the supreme court is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars. This section shall not apply to any necessary communication between the members of the commission or the masters

appointed by the supreme court or anyone employed to aid such commission or such masters in the filing or documentation of any paper filed with, or any proceedings before, such commission or such masters or the preparation of the recommendation of such commission.

HISTORY: Source: L. 83: Entire part added, p. 1003, § 1, July 1.

ANNOTATION

Law reviews. For article, "The Confidentiality of Judicial Disciplinary Proceedings", see 17 Colo. Law. 1043 (1988).