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## The ~~thin blue~~ thick black line: Getting information from criminal justice records

### COLORADO CRIMINAL JUSTICE RECORDS ACT (C.R.S. § 24-72-301, *et seq.*)

**Legislative declaration:** “The maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern.”

**Records of “official action”:** Must be disclosed unless prohibited by another law. Includes arrest and indictment information; case disposition; releases from custody; judicial determinations of mental or physical condition; decisions regarding probation, parole or placements.

**All other criminal justice records:** Custodians have discretion to withhold such records if they determine that disclosure would be “contrary to the public interest.” This is most frequently their determination with respect to investigatory records. Along with other factors, the custodian must articulate and balance: 1) the public interest in the investigation; 2) the private interest or danger of adverse consequences to the public; and 3) whether disclosure of redacted information would satisfy statutory objectives of disclosure and address privacy concerns.

**Redaction:** The Colorado Supreme Court in 2008 ([Freedom Colo. Info. Inc. v. El Paso Cty. Sheriff](#)) stressed that the CCJRA favors making criminal justice records available for public inspection. For records containing private information that can’t be disclosed, the Court noted that custodians’ power to redact is “an effective tool to provide the public with as much information as possible, while still protecting privacy interests when deemed necessary.” The Court also directed custodians to “redact sparingly to promote the CCJRA’s preference for public disclosure.”

**Cost of records:** Agencies may charge “reasonable fees,” not to exceed actual costs, to search, retrieve and redact criminal justice records. Fees may be waived at the agency’s discretion. Charges for standard-sized copies may not exceed 25 cents per page.

**Challenging denials:** Any person denied access to a criminal justice record may apply to district court for an order directing the custodian to show cause why inspection should not be permitted. The denial decision is reviewed for “abuse of discretion” (non-official action records). If the court finds that the withholding of records was “arbitrary or capricious,” the applicant may recover court costs and attorney fees and the custodian may be ordered to personally pay the applicant a penalty of up to \$25 for each day access was improperly denied.

**Autopsy reports:** Not criminal justice records, but available for inspection under the Colorado Open Records Act (CORA). May be withheld only upon a showing in court that disclosure would cause “substantial injury to the public interest.”

**Internal affairs investigative files:** These records concern official duties and, therefore, may not be withheld under CORA’s “personnel file exemption.” Portions may be withheld under the “contrary to the public interest” standard (see above).

**Sexual assault victims:** The name of a victim of sexual assault or attempted sexual assault (alleged or otherwise) must be redacted from any criminal justice record prior to its release, other than to another criminal justice agency, when the record bears the notation “SEXUAL ASSAULT.”