Sunshine Laws

Guide to Colorado Open Meetings & Open Records Laws

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Sponsored by:
Governor John Hickenlooper, Attorney General John Suthers, Colorado Press Association, Colorado Freedom of Information Coalition

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Open Meetings (Sunshine) Law C.R.S. 24-6-401+

LEGISLATIVE POLICY: It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

THE LAW COVERS: All boards, committees, commissions, authorities and other advisory, policy-making, rule-making or other formally constituted bodies, as well as any public or private entities that have been delegated governmental decision-making functions by a body or official. Administrative meetings (staff, faculty) are not open.

> **The Sunshine Law is two-tiered,** treating state government and local governments differently in some areas. **State public bodies** include the General Assembly; the governing boards of institutions of higher education, such as the University of Colorado Regents; and other state agencies, boards, commissions, etc. **Local public bodies** include all political subdivisions of the state, such as counties, cities, home rule cities, school districts, special districts, metropolitan districts and the Regional Transportation District.

DEFINITION OF A MEETING: Any kind of gathering convened to discuss public business, in person, by telephone, electronically or by other means of communication.

> **State public bodies** must open meetings of **two or more** members at which public business is to be discussed or at which formal action may be taken.
>
> **Local public bodies** must open meetings of a **quorum or three or more** members, whichever is fewer, at which public business is discussed or formal action may be taken.
>
> **Social gatherings** and chance meetings are exempt from open meetings regulations if discussion of public business is not the central purpose.
>
> **Email** exchanges between elected officials on subjects other than public business are not "meetings."

PUBLIC NOTICE: Required prior to all meetings where the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or at

which a majority or quorum is expected to be in attendance. Notice must be "full and timely." No publication is required.

Local public bodies may comply with "full and timely" by posting a notice in a formally designated public place at least 24 hours before a meeting. Posted notices must include specific agendas if at all possible.

State and local public bodies must also maintain lists of persons who request to be notified of meetings or discussions on specific topics and provide reasonable advance notice. A request covers a two-year period.

County commissioners do not have to give 24-hour notice or personal notification if two or more meet to discuss "day-to-day oversight of property or supervision of employees." Hiring and firing, building a new courthouse or buying major equipment are not "oversight."

MINUTES: Must be taken at all meetings and "promptly recorded." Minutes (including tape recordings) are open to public inspection. However, the record of an executive session (except for the topic of discussion) is not open without the public body's consent.

Local public bodies must keep minutes of meetings where formal action does or could occur. Workshops or committee meetings do not necessarily require minutes.

School boards must keep minutes of meetings where formal action does or could occur and must make electronic recordings of meetings at which decisions can be made. Such recordings must be available to the public and must be maintained for at least 90 days.

EXECUTIVE SESSIONS: Permitted only during regular or special meetings. The topic must be announced to the public with as much specificity as can be provided without compromising the reason for the executive session. The legal basis for the executive session must be cited. A vote to go into executive session must be taken in public.

State public bodies can go into executive session only after two-thirds of the entire body vote in favor.

Local public bodies can go into executive session only after two-thirds of the quorum present vote in favor.

Executive sessions are limited to matters and records that must be kept confidential according to state or federal laws, and all public bodies must cite specific statutes or rules that apply. These matters include:

- **Specialized details of security arrangements**

- **Property transactions**

  State public bodies may discuss the purchase or sale of property at competitive bidding in an executive session if premature disclosure would give an unfair competitive or bargaining advantage. A donor of property to a university or college may request that the gift be discussed in an executive session.

  Local public bodies may discuss the purchase, acquisition, lease, transfer or sale of any real, personal or other property interest in an executive session. A closed-door session cannot be held to conceal the fact that a member has a personal interest in the transaction.

- **Attorney conferences**

  State and local public bodies (including college and university boards) may use executive sessions to receive advice from an attorney on specific legal questions.

- **Negotiation strategy**

  State public bodies may use executive sessions to determine positions in negotiations with employees or employee organizations, to develop strategies or receive reports and instruct negotiators.

  Local public bodies may use executive sessions to determine positions on matters that may be subject to negotiations, to develop strategies and instruct negotiators.

- **Personnel**

  State public bodies must open meetings unless the individual being discussed requests closure.

  Higher Education boards are authorized to discuss personnel matters in executive session if the subject of the discussion requests it and the board thereafter votes to meet in executive session; they may meet in executive session to discuss investigations of students unless the student(s) involved authorizes disclosure.

  Local public bodies may close a meeting except if all of the individual(s) involved asks that it be open.

  Under the Teacher Employment, Compensation and Dismissal Act, a school board must hold a teacher's hearing in public unless an executive session is requested.

The University Hospital board may hold a closed session to talk about patient-care programs.

The Colorado Parole Board can meet in executive session to discuss individuals, but has to vote in public.

Local school boards may meet in executive session to discuss individual students if disclosure would adversely affect the person(s) involved.

No adoption of any rule, regulation, policy, position or formal action shall occur at any meeting closed to the public.

During state and local executive (CEO) searches, initial meetings must be open to establish job-search criteria, including job descriptions, application deadlines, requirements, selection procedures and hiring time frames. **List of finalists** must be made public at least 14 days prior to an appointment. No prior offer of employment can be made. **Executive sessions may be held by the search committee, but only if the prerequisites for state or local public bodies are met.**

To discuss honorary degrees and the naming of buildings, higher education governing boards may go into executive session. Any decision to actually issue honorary degrees or name buildings must take place in a public meeting.

Any citizen can ask a court to issue an injunction to enforce the law. If the citizen wins, the court is required to award the citizen costs and reasonable attorney's fees; however, if the public body wins, the court can award costs and fees to the public body only if the suit was frivolous or groundless.

A record of all executive sessions must be kept by electronic recording. If a person believes that topics other than conferences with the public body's attorney(s) were discussed, he or she may ask a judge to review the record. If the judge determines inappropriate topics were discussed, he or she will make such records public.

Reporter's Shield Law
13-90-119; 24-72.4-101+

A reporter does not have to disclose a source or any information received in the pursuit of a story, unless the media person personally observed a crime or information is essential to a substantial issue in a court case and cannot reasonably be obtained by any other means.

Colorado Public Records Law
C.R.S. 24-72-201+

LEGISLATIVE POLICY: 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.

DEFINITION OF PUBLIC RECORDS: All "writings" made, maintained or kept by the state or any agency, institution or political subdivision for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. Records of foundations of public institutions of higher education are public records with the exception of donors and donor information. Laws pertaining to police and court records are found in the Criminal Justice Records Act. "Writings" include photographs, tapes, recordings and digitally stored data, including electronic mail, and other documentary materials in addition to books, papers and maps, but do not include computer software.

Voted ballots are available for public inspection, but are subject to specific handling requirements.

The custodian of public records must allow any person to inspect any record unless:

- State statutes have closed it.
- Federal law forbids it.
- The Colorado Supreme Court or another state court has closed it.

The custodian has the discretion to close the following records on the grounds that disclosure would be contrary to public interest:

- **Records of investigation** conducted by any sheriff, prosecuting attorney or police department; any records of the intelligence

information or security procedures of these same officials; or any investigatory files compiled for any other law enforcement purpose. Records of ongoing civil or administrative investigations conducted by state agencies may be withheld. Upon completion of such civil or administrative investigations, any record not exempt from disclosure under another statutory provision is open for public inspection.

- **Test questions** on licensing, employment or other academic exams, but scores are available to the person in interest.
- **Details of research** being conducted by a state institution or on proposed legislation by legislative staff or the Governor's office.
- **Real estate appraisals** until title is transferred.
- **Certain information** generated by the bid analysis and management system of the Department of Transportation.
- **Identifying information in motor vehicle license records.**
- **Specialized details of security arrangements** or investigations.

The custodian must deny inspection of the following records:

- **Medical, psychological, sociological and scholastic achievement data.** A coroner's report is open. Scholastic information is available on finalists for executive positions. Marriage and civil union license applications are closed, but marriage and civil union licenses are public records.
- **Personnel file information,** including home addresses; phone numbers; financial information; other similar private information maintained because of employer-employee relationships; and documents exempt in other statutes, e.g. letters of reference. Personnel file information that is open includes applications of past and current employees; employment agreements; any amount paid or benefit provided incident to termination of employment; performance ratings (with school limitations); salaries, including expense allowances and benefits; and final sabbatical reports as required by law.
- **Letters of reference.**
- **Trade secrets,** privileged information and confidential commercial, financial, geological or geophysical data furnished by or obtained from any person outside of government.
- **Library and museum material** contributed by private persons if they so request.

- **Addresses and telephone numbers** of public school children, except to recruiting officers as decided locally.
- **Library records** disclosing the identity of a user.
- **Addresses, phone numbers and personal financial information** of past or present users of public utilities, public facilities or recreational or cultural services owned and operated by the state or its agencies, institutions or political subdivisions. This includes golf courses, ice-skating rinks, etc.
- **Sexual harassment complaints** and investigations under any General Assembly policy unless released by person in interest (complainant or person charged).
- **Motor vehicle records** (other than traffic accident reports), except for certain specified uses that do not include the news media.

Requested closures:

Candidates for executive positions (college president, city manager, superintendent of schools, etc.) may request in writing that their applications be kept confidential; however, names of all finalists must be disclosed. When three or fewer candidates are considered for a vacancy, they must be considered finalists and their names must be made public. In cases where there are more than three finalists, the names of all finalists must be made public. No appointment may be made less than 14 days after finalists are named. Information submitted by finalists becomes public record.

Emails are considered "correspondence" under the public records law.

Correspondence is not open for inspection if it is:

- Not connected to official duties and does not involve public funds.
- A message from a constituent to an elected official or vice versa that clearly implies expectation of confidentiality.
- "Work product" prepared for elected officials unless the official releases it.

"Work product" includes:

- o Deliberative materials assembled to assist elected officials in reaching a decision, such as background information or drafts of documents expressing a decision.
- o Drafts of bills or amendments.
- o Research by Legislative Council for a legislator and identified as proposed legislation. A legislator can request that the final product remain work product; otherwise, it becomes public record.

"Work product" does not include:

- o Final versions of documents expressing an official decision; fiscal or performance audit reports on public entity management or the expenditure of public funds; or final financial reports.
- o Materials distributed in a public meeting or identified in the text of a document that expresses a decision.
- o Documents which consist solely of factual information compiled from public sources, including comparison of existing laws, etc. in other jurisdictions or compilations of existing public information, statistics or data explanations of general areas of law or policy.

NOTE: Official custodians must consult with elected officials to determine if correspondence is public record.

Governmental entities can get trademark and copyright protection for public records; however, this cannot restrict public access or fair use of copyrighted materials and does not apply to writings that are "merely lists or other compilations."

COST OF PUBLIC RECORDS: Copies may be made of any public record at a cost of not more than 25 cents per page; however, an additional "reasonable fee" may be charged for:

- Special requests for data in a form not maintained by the government. The requester may have to pay costs to manipulate the data. Subsequent requesters pay the same as the first.
- Use of a computer program other than word processing if necessary to provide a record. Copying fees can recover costs of the system; however, this may be waived for requesters working for public purposes, including journalists, nonprofits and academic researchers.

"Nominal" costs may be charged for research and retrieval of public records. "Nominal" means "trifling" especially when compared to actual costs incurred.

Records of the state archivist, secretary of state and Judicial Branch are subject to different fee schedules.

TIME FOR PRODUCTION: Records "not readily available" must be provided within three working days, unless the custodian in writing declares there are "extenuating circumstances," such as the number of documents required. This extends access time to seven days.

If a person opts not to request a record in person and instead requests that the record be sent by the custodian, the custodian may charge the costs associated with records transmission, except that there shall be no transmission charges to transmit a record via electronic mail.

DELIBERATIVE PROCESS: Under deliberative process, the normal disclosure of information can be denied if "material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government." A records custodian asserting this privilege must produce an affidavit so declaring. In cases where a member of the public believes the privilege has been misapplied, the custodian of the record must apply to district court for permission to restrict disclosure. Only if the court determines that the need for confidentiality outweighs the public interest in disclosure will such an order be enforced. Records discussed in public meetings cannot be protected under the deliberative process exemption.

WHAT TO DO IF ACCESS IS DENIED: Write a letter to the custodian asking for an answer in writing as to the reason access was denied. The custodian must answer within three working days. If the reason is not deemed adequate, a request for inspection may be made to district court, with the hearing to be held "at the earliest practical time." Three days' notice must be given to the records custodian before a suit is filed in order to recover attorneys' fees, if successful. The custodian must prove that it would be injurious to the public interest to open the record.

PENALTY: Anyone who willfully and knowingly violates the provisions of the public records law can be found guilty of a misdemeanor. The fine is set at $100 and/or imprisonment of 90 days.

Criminal Justice Records
C. R. S. 24-72-301+

LEGISLATIVE POLICY: Criminal justice agencies shall maintain records of "official actions." Records of official actions shall be open to inspection by any person. Other records of criminal justice agencies may be open for inspection at the discretion of the custodian or as specifically provided by law.

AGENCIES COVERED: Any court with criminal jurisdiction and any law enforcement agency that investigates crime or works with those convicted of

crimes. These include agencies and authorities representing counties, cities, home-rule cities, public institutions of higher education, school districts and special districts.

Records of "official action" include arrest, indictment or other formal filing of charges; agency taking action; date and place action taken; name, birth date, last known address, physical description and sex of the accused; charges brought or offenses alleged; disposition, including decision not to file criminal charges after arrest, conviction, acquittal, and acquittal by reason of insanity; dismissal, abandonment, or indefinite postponement; formal diversion from prosecution; sentencing; correctional supervision; and release from supervision with terms and conditions.

Other criminal justice records may be open unless:

- Inspection is prohibited by state statute.
- Inspection is prohibited by the Colorado Supreme Court or other court order.
- The custodian believes disclosure would be "contrary to public interest" because an investigation is still in progress by law enforcement personnel or a district attorney, or the records pertain to intelligence information, security procedures or investigatory files compiled for other law enforcement purposes.

  Sexual assault cases are to be stamped "Sexual Assault" and victims' names are to be deleted from the files before their release. Names of those accused are public records.

ETHICAL RULES OF ATTORNEYS: The ethical rules governing attorneys and prosecutors (Rules 3.6 and 3.8) restrict attorneys and law enforcement agents associated with an investigation from making "extrajudicial statements" to the news media that have "a substantial likelihood of materially prejudicing an adjudicative proceeding." However, these rules do not limit the disclosure of "records of official actions" which the statute declares are not required to be disclosed. Also, these ethical rules do not apply to the disclosure of even discretionary-release records (the comment to the rule expresses concern only with the "commentary of a lawyer" who is involved in a proceeding and recognizes "that the public value of informed commentary is great"). In exercising discretion to release pre-arrest/investigatory records, prosecutors should be advised under the ethical rules to withhold only information that poses a substantial likelihood of prejudice to a prosecution that is in progress or likely to commence in the reasonably near future.

INFORMATION NOT FOR PROFIT: Custodians must deny access to records to anyone who wishes to use them to solicit customers for a business venture. A signed statement may be necessary. This provision does not apply to the news media.

SEALING OF RECORDS: Records of persons convicted of certain crimes may be sealed if the person has not been charged with or convicted of an additional crime and all restitution, fees and court costs have been paid and if a district court judge determines the privacy rights of the applicant outweighs the public interest of the record remaining public. Depending upon the classification of the crime, the time after which the applicant may request a record be sealed varies from one to 10 years after final disposition of criminal proceedings. Any petition to seal a record of a conviction must be posted on the website of the state court administrator for at least 30 days before a hearing to seal the record and the applicant must pay all expenses related to sealing a criminal record. Additionally, records of persons who were not officially charged, had charges dismissed, successfully completed a diversion program or were acquitted or the arrest records of a person who pled to a lesser charge may be sealed by the court if the person involved requests it. Traffic offenses and sexual assault cases, where the defendant is convicted or pleads guilty or *nolo contendere*, may not be sealed.

IF ACCESS IS DENIED: An individual may request a written statement of the grounds for denial of access and an answer must be produced within three working days citing the law or regulation and the general nature of the public interest which needs to be protected. An appeal may be made to the district court with a hearing at the "earliest practical time."

FEES FOR COPIES: Criminal justice agencies may charge a fee not to exceed 25 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. There may be additional charges for research, retrieval or redaction of records.

PENALTY: If a court finds the denial was arbitrary or capricious, it may order the custodian to pay court costs and attorney fees, and, in addition, can add a penalty of up to $25 for each day access was improperly denied to be paid to the applicant. Violations also are punishable as misdemeanors.

Juvenile Records
C. R. S. 19-1-100+

The public can be excluded from juvenile hearings if the court determines it is in the best interest of the juvenile or the community to close them. Names of juveniles in misdemeanor, custody and abuse cases are not open to the public.

ACCESS TO JUVENILE RECORDS: Public information includes arrest and criminal records of juveniles charged with crimes that would be felonies if committed by adults, crimes involving weapons or non-felony traffic citations. Also public are criminal records of those who have been adjudicated juvenile delinquents or are subject to revocation of probation for possession of a handgun. Other juvenile cases are closed unless the case is transferred to district court where the juvenile will be tried as an adult or the juvenile is a runaway from a correctional facility. {19-1-119(1)(b.5)}

CHILD ABUSE RECORDS: Confidential unless the child dies and a criminal charge is filed, and family's name is available if arrested or formal charges filed {19-1-120(1)(b)]}. Names of adult perpetrators charged with a crime are not confidential.

Expanded Media Coverage
Chapter 38, Rule 2
(Cameras in the Courtroom)

A judge may authorize the use of cameras and recording equipment in the courtroom for any session that is open to the public (the only pre-trial proceedings applicable are advisements and arraignments). Limitations include no photographing of jury *voir dire* or *in camera* hearings and no close-ups of bench conferences, communications between counsel and client or between co-counsel, or members of the jury. A judge may restrict or limit coverage as necessary. The rule limits coverage to a pool of one video camera and one still camera at a time.

HOW TO REQUEST CAMERA ACCESS: A written request must be submitted to the judge at least one day before coverage is to begin with copies given to counsel for each party involved. The request should include the name, case number, date and time of proceeding, the type of coverage requested and a description of the pooling arrangements, if necessary.

Colorado Jail Records Law
C. R. S. 17-26-188

ARREST RECORDS: Each county jail must keep a daily record of the commitments and discharges of all persons. The record must include the name, offense, term of sentence, fine, age, sex, citizenship, how and by whom committed and when and by whom discharged. The record shall be open to inspection by the public at all reasonable hours.

Statutory Reference Guide

(For complete text, refer to citation below)

Open Meetings (Sunshine) – C.R.S. 24-6-401+
Open Public Records – C.R.S. 24-72-201+
Criminal Justice Records – C.R.S. 24-72-301+
Children's Code – C.R.S. – 19-1-101+
Shield Law – C.R.S. 13-90-119, 24-72.5-101+

Templates

Format for Letter Requesting Access to Records under the Colorado Open Records Act, SS24-72-201, et. seq.:

Dear Records Custodian [Name and Address of Agency]:

(Requests should be directed to the individuals of each agency that has either actual possession of the records or legal responsibility for maintaining the records).

Pursuant to the Colorado Open Records Act, SS24-72-201 et seq., will you please make available for inspection and copying the following public records:

(Use a description of the records sought that is reasonably particularized, but general enough to encompass all records that may contain the information).

If these records are not in your custody or control, will you please forthwith so notify me and state in details, to the best of your knowledge, the reasons for the absence of the records, their location, and what person(s) has custody or control of the records, as required by SS24-72-203(2), C.R.S.

Will you please set a date and hour within three working days at which time the records will be available for inspection, pursuant to SS24-72-203(3).

If you deny access to any of the above public records, will you please provide forthwith a written statement of the grounds for denial, citing the law or regulation under which access is denied, as required by SS24-72-204(4).

Sincerely,
[Name]
[Address]
[Date]
[Name of Bureaucrat or FOIA Officer – Optional]
[Address of FOIA Officer – Optional]

Send By Certified Mail — Return Receipt Requested

Format for Federal Freedom of Information Act Request:

This is a request for information under the Freedom of Information Act, 5 U.S.C. § 552, on behalf of [Name of Group] for records [Description of the documents relating to, constituting, discussing, concerning or mentioning],

As required by the Freedom of Information Act, I expect a reply within 10 working days. If you have any questions concerning this request, please contact me. Thank you.

Sincerely,
[Name]

To Protest Closure of Court Hearings:

If a judge decides to close a courtroom for proceedings usually held in open court, a reporter should walk to the railing and say, "Your honor, I am a reporter. May I be heard?" The following statement should then be read:

"Your honor, I am _____, a reporter for _____, and I'd like to object on behalf of myself, my employer, and the public to the closing of this hearing (or sealing of this court record). The Colorado Supreme Court has said that all court proceedings are presumptively open and may be closed only when strictly and inescapably necessary. Our attorney is prepared to make a number of arguments against closings such as this one, and we respectfully ask the court for a hearing on those issues. I believe our attorney can be here relatively quickly for the court's convenience, and he will be able to demonstrate the closure of this case will violated the First Amendment, and possibly state statutory and constitutional provision as well. I cannot make the arguments myself but our attorney can point out several issues for your consideration. If it pleases the court, we request the opportunity to be heard through counsel."

To Protest Decision to Go Into Executive Session:

If you feel the public body isn't following the proper procedures, you should ask to speak and read the following statement:

"I am _____, a reporter for _____ and I'd like to object on behalf of my employer and the public the decision to go into executive session. Colorado Revised Statutes state this body can only meet in executive session to discuss certain matters, and this does not appear to meet any of those criteria. I'd like the opportunity to allow our attorney or someone from our newspaper to present our arguments against meeting in executive session."

To download this booklet, visit coloradopressassociation.com/resources

Notes

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