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The Honorable Colorado State Senate  
75th General Assembly  
First Regular Session  
Colorado State Capitol  
200 East Colfax Avenue  
Denver, CO 80203

Dear Honorable Members of the Colorado State Senate,

Today, I vetoed Senate Bill 25-077, "Concerning Modifications to the 'Colorado Open Records Act,'" at 3:05 PM.

Transparency in government is essential to a healthy democracy. SB 25-077 makes a number of changes to the Colorado Open Records Act (CORA). It would require custodians to publicly post additional information about CORA and any records retention policies, so that members of the public fully understand the CORA process and how to make a request. The bill would also require custodians, upon request, to provide requesters with a detailed cost breakdown when the custodian charges a fee for a request.

While these minor administrative changes to CORA to make it work better would be fine in a stand-alone bill, the bill has two substantive flaws. First, it puts government employees in the perilous position of determining whether a requester is a legitimate "mass medium" or "newsperson" (e.g. a member of the media) or whether they are making a request for pecuniary – or financial – gain. The bill leaves the custodian with far too much power to define who is and is not a member of the media, and what is and isn't news. For instance, a public official may deem a request from a media outlet focusing specifically on climate change as not meeting the statutory definitions of "newsperson" or "mass medium" given the perspective of some elected officials that climate change is categorically not news.

Likewise, public officials – records custodians – would be in the inappropriate position of deciding if a request "will be used for the direct solicitation of business for pecuniary gain." Indeed, even a conventional and legitimate request from the media might derive a financial benefit, in the sense that a for-profit news outlet, in addition to serving the public interest in covering government business, makes profit from advertising or subscription based on gaining viewership or readership from a story that uses information obtained in a CORA request. I am concerned about the inconsistent application of these new provisions, given the novel, subjective determinations required. Involving the government with prioritizing or determining the category of requesters could suggest bias or favoritism.

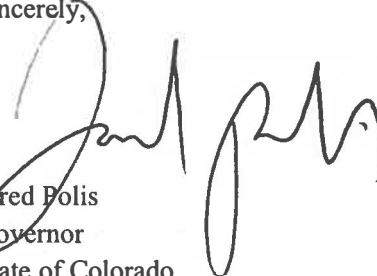
Second, the bill creates three classes of open records requests that are subject to different timelines: those made by mass media, those made for pecuniary gain, and all other requests. Media requests are elevated, requiring custodians to respond to these requests on an expedited timeline (three days with a period of extension of seven days). In contrast, custodians would have up to thirty days to respond to pecuniary gain requests, while all other requests would be subject to a new, longer timeline of five days, with an extension of up to ten days. Essentially, under this bill, speed to access public information is determined by who you are. A newsperson, a member of the public, and a person seeking financial gain may all request the same information and, under this bill, get access to that information on different timelines. To ensure fairness and confidence in public transparency, all legitimate requests for public transparency under CORA should be treated equally under the law, without preference for some requestors over others.

I acknowledge CORA can be improved, and the bill includes some narrowly tailored common-sense reforms, such as excluding from “public records” written or electronic records that are produced by a device or application used to assist individuals with a disability or language barrier to facilitate communication, if those records are produced in lieu of verbal communication. The bill would also require custodians to withhold any public elementary or secondary school student’s information that could be used by someone to directly contact the student, beyond addresses and telephone numbers which are already withheld pursuant to current law.

While I would support these types of narrowly-scoped adjustments to CORA, I cannot do so in the context of the broader, more significant problems SB 25-077 would have on transparency and the State’s open records structure. It would certainly be convenient for the Executive Branch to agree to weaken CORA, but as a representative for the people of Colorado, I support more, not less, openness and transparency. I look forward to working with the legislature to address some of the narrow issues addressed in the bill, and to continue to promote public transparency.

For the reasons stated above, SB 25-077 is disapproved and vetoed.

Sincerely,



Jared Polis  
Governor  
State of Colorado

cc: Jena Griswold, Colorado Secretary of State