

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

March 4, 2024
Date

Committee on State, Civic, Military, & Veterans Affairs.

After consideration on the merits, the Committee recommends the following:

HB24-1296 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

- 1 Amend printed bill, page 3, line 8, strike "PERSON'S" and substitute
2 "INDIVIDUAL'S", and after "CONDUCT," insert "AS DETERMINED BY THE
3 COURT IN ACCORDANCE WITH SECTION 24-72-303 (5)".
- 4 Page 3, line 9, after the first "THE" insert "PUBLIC".
- 5 Page 3, line 15, strike "PERSON" and substitute "INDIVIDUAL OR ENTITY".
- 6 Page 4, line 1, strike "OR".
- 7 Page 4, line 2, strike "(1)(c)." and substitute "(1)(c), OR AN INDIVIDUAL OR
8 ENTITY ENGAGED IN COLLECTIVE BARGAINING, ORGANIZING, OR
9 EXERCISING RIGHTS PROTECTED BY ARTICLE 33 OF TITLE 29".
- 10 Page 4, line 5, after "**add**" insert "(1)(c)," and strike "(3)(a.5)," and after
11 "(3)(b)(IV)," insert "(3)(b.5)," and strike "(3)(f)" and substitute "(5)".
- 12 Page 4, line 6, after "**inspection.**" insert "(1) (c) A PUBLIC ENTITY THAT
13 HAS PUBLIC RECORDS THAT MAY BE SUBJECT TO DISCLOSURE PURSUANT
14 TO THIS PART 2 SHALL POST ON ITS WEBSITE ANY RULES OR POLICIES
15 ADOPTED IN ACCORDANCE WITH THIS PART 2, INCLUDING RULES
16 CONCERNING THE INSPECTION OF PUBLIC RECORDS. THE PUBLIC ENTITY
17 SHALL ALSO POST INFORMATION ON ITS WEBSITE INFORMING MEMBERS OF
18 THE PUBLIC HOW TO REQUEST INSPECTION OF PUBLIC RECORDS FROM A
19 CUSTODIAN OF THE PUBLIC ENTITY. IF THE PUBLIC ENTITY DOES NOT HAVE
20 A PUBLICLY ACCESSIBLE WEBSITE, THEN THE INFORMATION REQUIRED TO
21 BE POSTED PURSUANT TO THIS SUBSECTION (1)(c) MUST BE PHYSICALLY
22 POSTED IN THE LOCATION DESIGNATED BY THE PUBLIC ENTITY FOR

- 1 POSTING NOTICES."
- 2 Page 4, line 6, strike "(a.5) (I) A".
- 3 Page 4, strike lines 7 through 27.
- 4 Page 5, strike lines 1 through 7.
- 5 Page 5, strike lines 10 through 13 and substitute "after the request. As
6 used in".
- 7 Page 5, line 14, strike "three" and substitute "~~three~~ FIVE".
- 8 Page 5, line 17, strike "seven" and substitute "~~seven~~ TEN" and strike
9 "shall" and substitute "~~shall~~ MUST".
- 10 Page 5, strike lines 18 through 20 and substitute "be made in writing by
11 the custodian and ~~shall~~ MUST be provided to the person making the
12 request within the ~~three-day~~ FIVE-DAY period. Extenuating circumstances
13 ~~shall~~ apply only".
- 14 Page 6, line 10, strike "THE THREE-DAY" and substitute "ALL OR PART OF
15 THE FIVE-DAY".
- 16 Page 6, strike lines 11 through 27 and substitute:
- 17 "(b.5) NOTWITHSTANDING THE PERIODS SET FORTH IN SUBSECTION
18 (3)(b) OF THIS SECTION, A "REASONABLE TIME" TO RESPOND TO A REQUEST
19 MADE BY A MASS MEDIUM, AS DEFINED IN SECTION 13-90-119 (1)(a), OR
20 A NEWSPERSON, AS DEFINED IN SECTION 13-90-119 (1)(c), IS PRESUMED TO
21 BE THREE WORKING DAYS OR LESS, AND SUCH PERIOD MAY BE EXTENDED
22 UP TO SEVEN WORKING DAYS IF EXTENUATING CIRCUMSTANCES EXIST AS
23 SET FORTH IN SUBSECTION (3)(b) OF THIS SECTION.
- 24 (d) (I) (A) IF A CUSTODIAN, DESPITE EXPENDING REASONABLE
25 EFFORT, IS UNABLE TO DETERMINE OR ACCESS PUBLIC RECORDS THAT MAY
26 BE RESPONSIVE TO A REQUEST BECAUSE THE PUBLIC RECORDS MAY BE IN
27 THE CUSTODY AND CONTROL OF ANOTHER EMPLOYEE, VOLUNTEER,
28 DIRECTOR, AGENT, ELECTED OFFICIAL, OR OTHER PERSON AUTHORIZED TO
29 HAVE CUSTODY AND CONTROL OF THE PUBLIC RECORDS WHO IS ON LEAVE,
30 NOT ON CONTRACT, OR OTHERWISE NOT SCHEDULED TO WORK WITHIN THE
31 THREE-DAY OR FIVE-DAY PERIOD, AS APPLICABLE, THE CUSTODIAN SHALL
32 PROVIDE WITHIN THE PERIODS SET FORTH IN THIS SUBSECTION (3), AS
33 APPLICABLE, ALL OTHER AVAILABLE RESPONSIVE PUBLIC RECORDS IN

1 ACCORDANCE WITH THIS PART 2. THE CUSTODIAN SHALL NOTIFY THE
2 REQUESTER OF THE EARLIEST DATE ON WHICH THE OTHER PERSON WHO
3 MAY HAVE ADDITIONAL POTENTIALLY RESPONSIVE PUBLIC RECORDS, IF
4 ANY, IS EXPECTED TO BE AVAILABLE AND IF THE PERSON'S RETURN DATE
5 IS UNABLE TO BE DETERMINED AT THE TIME OF THE REQUEST, THE
6 CUSTODIAN SHALL NOTIFY THE REQUESTER OF THE DATE OF THE PERSON'S
7 RETURN AS SOON AS IT IS ABLE TO BE DETERMINED OR IF THE PERSON IS
8 NOT EXPECTED TO RETURN TO WORK THE CUSTODIAN SHALL PROVIDE
9 NOTICE TO THE REQUESTER OF THAT. THE REQUESTER MAY SUBMIT A NEW
10 REQUEST FOR ADDITIONAL POTENTIALLY RESPONSIVE PUBLIC RECORDS ON
11 OR AFTER THE DATE THAT THE CUSTODIAN PROVIDES.

12 (B) THIS SUBSECTION (3)(d) IS NOT INTENDED TO BE UTILIZED TO
13 INTENTIONALLY DELAY OR CIRCUMVENT THE RELEASE OF PUBLIC RECORDS
14 AND IT DOES NOT EXEMPT A CUSTODIAN'S RESPONSIBILITY TO MAINTAIN
15 REASONABLE ACCESS TO PUBLIC RECORDS.

16 (II) THE PROVISIONS SET FORTH IN THIS SUBSECTION (3)(d) DO NOT
17 MODIFY THE PROVISIONS SET FORTH IN SUBSECTION (2)(a) OF THIS
18 SECTION."

19 Strike page 7.

20 Page 8, strike lines 1 through 8.

21 Page 8, line 9, strike "(f)" and substitute "(e)".

22 Page 8, line 12, strike "TWO-DAY".

23 Page 8, strike line 13 and substitute "THREE-DAY OR FIVE-DAY PERIOD, AS
24 APPLICABLE, AND,".

25 Page 8, line 14, strike "SUBSECTIONS (3)(b) AND (3)(d)" and substitute
26 "SUBSECTION (3)(b)".

27 Page 8, line 17, after the period add "A REQUESTER MAY SUBMIT WITH A
28 REQUEST A SIGNED STATEMENT AFFIRMING THAT THE REQUESTED PUBLIC
29 RECORDS WILL NOT BE USED FOR THE DIRECT SOLICITATION OF BUSINESS
30 FOR PECUNIARY GAIN, WHICH THE CUSTODIAN MUST CONSIDER IN MAKING
31 THE CUSTODIAN'S DETERMINATION PURSUANT TO THIS SUBSECTION
32 (3)(e)(I)."

33 Page 8, strike lines 20 through 25 and substitute "BUSINESS FOR
34 PECUNIARY GAIN MAY APPLY TO THE DISTRICT COURT OF THE DISTRICT IN
35 WHICH THE REQUESTED PUBLIC RECORDS ARE LOCATED FOR A

1 DETERMINATION THAT THE REQUEST IS NOT FOR THE DIRECT SOLICITATION
2 OF BUSINESS FOR PECUNIARY GAIN. THE COURT SHALL REVIEW THE
3 MATTER AT THE EARLIEST PRACTICAL TIME AND HAS DISCRETION TO LIMIT
4 ITS REVIEW TO SUBMISSION OF PLEADINGS, AFFIDAVITS, AND OTHER
5 MATERIAL AS DEEMED APPROPRIATE BY THE COURT, OR THE COURT MAY
6 SCHEDULE A HEARING. IN ITS REVIEW, THE COURT SHALL APPLY AN ABUSE
7 OF DISCRETION STANDARD TO THE CUSTODIAN'S DETERMINATION."

8 Page 9, after line 3 insert:

9 "(IV) A REQUEST FOR PUBLIC RECORDS FOR PURPOSES RELATED TO
10 COLLECTIVE BARGAINING, ORGANIZING, OR OTHER RIGHTS AND ACTIVITIES
11 PROTECTED BY ARTICLE 33 OF TITLE 29 BY AN ENTITY ENGAGED IN
12 COLLECTIVE BARGAINING, ORGANIZING, OR OTHER RIGHTS AND ACTIVITIES
13 PROTECTED BY ARTICLE 33 OF TITLE 29 IS NOT A REQUEST FOR THE DIRECT
14 SOLICITATION OF BUSINESS FOR PECUNIARY GAIN.

15 (V) THIS SUBSECTION (3)(f) DOES NOT APPLY TO A CONTRACT OR
16 OTHER INFORMATION DELIVERED ROUTINELY USING COMPUTER DATA
17 EXTRACTION METHODS THAT REQUIRE MINIMAL HUMAN INTERVENTION
18 FOR RETRIEVAL.

19 (5) (a) A CUSTODIAN OF A PUBLIC ENTITY MAY APPLY TO THE
20 DISTRICT COURT OF THE DISTRICT THAT THE PUBLIC ENTITY IS LOCATED IN
21 FOR A DETERMINATION THAT AN INDIVIDUAL OR ENTITY IS A VEXATIOUS
22 REQUESTER. THE COURT SHALL REVIEW THE MATTER AT THE EARLIEST
23 PRACTICAL TIME AND MAY LIMIT ITS REVIEW TO SUBMISSION OF
24 PLEADINGS, AFFIDAVITS, AND OTHER MATERIAL AS DEEMED APPROPRIATE
25 BY THE COURT OR SCHEDULE A HEARING. THE INDIVIDUAL OR ENTITY THAT
26 IS THE SUBJECT OF SUCH AN APPLICATION SHALL HAVE NOTICE OF THE
27 APPLICATION AND ANY HEARING SET BY THE COURT SERVED UPON THEM
28 IN THE MANNER PROVIDED FOR SERVICE OF PROCESS BY THE COLORADO
29 RULES OF CIVIL PROCEDURE AND HAS THE RIGHT TO RESPOND OR APPEAR
30 AND BE HEARD, AS APPLICABLE. IN AN ACTION BROUGHT PURSUANT TO
31 THIS SUBSECTION (5)(a), THE BURDEN OF PROOF IS ON THE CUSTODIAN.
32 THE COURT SHALL MAKE A DETERMINATION ON THE APPLICATION BY
33 BALANCING THE FACTORS SET FORTH IN SUBSECTION (5)(b) OF THIS
34 SECTION. IF THE COURT DETERMINES THAT THE INDIVIDUAL OR ENTITY IS
35 A VEXATIOUS REQUESTER, THE COURT SHALL ISSUE AN ORDER SETTING
36 FORTH ITS DETERMINATION AND THE DETERMINATION SHALL BE EFFECTIVE
37 FOR THREE YEARS FROM THE DATE OF THE COURT'S ORDER. THE
38 CUSTODIAN WHO APPLIED TO THE DISTRICT COURT MAY RELY ON THE
39 COURT'S ORDER IN RESPONDING TO SUBSEQUENT RECORDS REQUESTS
40 SUBMITTED BY THE INDIVIDUAL OR ENTITY THAT'S BEEN DETERMINED TO
41 BE A VEXATIOUS REQUESTER AND NOTWITHSTANDING SUBSECTION (3)(b)

1 OF THIS SECTION, IN SETTING A DATE AND HOUR FOR RECORDS TO BE
2 AVAILABLE FOR INSPECTION, SHALL HAVE THIRTY WORKING DAYS FROM
3 THE DATE OF RECEIPT OF THE REQUEST IN ACCORDANCE WITH ALL OTHER
4 APPLICABLE PROVISIONS OF THIS PART 2.

5 (b) IN AN ACTION BROUGHT PURSUANT TO SUBSECTION (5)(a) OF
6 THIS SECTION, THE FACTORS THAT A COURT SHALL CONSIDER, AS
7 APPLICABLE, IN MAKING ITS DETERMINATION INCLUDE:

8 (I) THE TOTAL NUMBER OF REQUESTS FILED BY THE INDIVIDUAL OR
9 ENTITY TO THE PUBLIC ENTITY; EXCEPT THAT THE DETERMINATION
10 CANNOT BE MADE SOLELY ON THIS BASIS OR ON THE BASIS OF THE FACTORS
11 SET FORTH IN THIS SUBSECTION (5)(b)(I) AND SUBSECTION (5)(b)(II) OF
12 THIS SECTION;

13 (II) THE TOTAL NUMBER OF PENDING REQUESTS FILED BY THE
14 INDIVIDUAL OR ENTITY TO THE PUBLIC ENTITY; EXCEPT THAT THE
15 DETERMINATION CANNOT BE MADE SOLELY ON THIS BASIS OR ON THE
16 BASIS OF THE FACTORS SET FORTH IN THIS SUBSECTION (5)(b)(II) AND
17 SUBSECTION (5)(b)(I) OF THIS SECTION;

18 (III) THE SCOPE OF THE REQUESTS THAT HAVE BEEN MADE BY THE
19 INDIVIDUAL OR ENTITY;

20 (IV) THE NATURE, CONTENT, LANGUAGE, OR SUBJECT MATTER OF
21 THE REQUESTS;

22 (V) THE NATURE, CONTENT, LANGUAGE, OR SUBJECT MATTER OF
23 OTHER ORAL AND WRITTEN COMMUNICATIONS BY THE INDIVIDUAL OR
24 ENTITY TO THE CUSTODIAN;

25 (VI) CONDUCT THAT THE CUSTODIAN ALLEGES IS PLACING AN
26 UNREASONABLE BURDEN ON THE CUSTODIAN;

27 (VII) CONDUCT THAT THE CUSTODIAN ALLEGES IS INTENDED TO
28 HARASS;

29 (VIII) A PATTERN OF CONDUCT THAT AMOUNTS TO AN ABUSE OF
30 REQUESTS OR AN INTERFERENCE WITH THE PUBLIC ENTITY'S OPERATION;

31 (IX) THE PUBLIC PURPOSE TO BE SERVED BY THIS PART 2 AND THE
32 INTENT TO AVOID HINDERING THIS PURPOSE;

33 (X) THE PUBLIC INTEREST SERVED BY THE INDIVIDUAL OR ENTITY;
34 OR

35 (XI) ANY OTHER RELEVANT INFORMATION, INCLUDING SIMILAR
36 DETERMINATIONS THAT HAVE BEEN MADE BY THE COURT OR OTHER
37 COURTS AGAINST THE SAME INDIVIDUAL OR ENTITY."

38 Page 9, line 5, strike "(2)(a)(XI) and".

39 Page 9, line 8, strike "(2) (a) The custodian may".

40 Page 9, strike lines 9 through 13.

- 1 Page 10, line 12, after "(6)(c)" insert "and (8)".
- 2 Page 10, line 18, strike "REQUESTS." and substitute "REQUESTS; EXCEPT
3 THAT THIS SUBSECTION (6)(c) DOES NOT APPLY TO REQUESTS MADE BY A
4 MASS MEDIUM, AS DEFINED IN SECTION 13-90-119 (1)(a), OR A
5 NEWSPERSON, AS DEFINED IN SECTION 13-90-119 (1)(c).
6 (8) IF A CUSTODIAN IMPOSES ANY REQUIREMENTS CONCERNING
7 THE PRE-PAYMENT OF FEES OR THE PAYMENT OF FEES IN CONNECTION
8 WITH A REQUEST FOR INSPECTION OF PUBLIC RECORDS, THE REQUIREMENTS
9 MUST BE IN ACCORDANCE WITH THE CUSTODIAN'S ADOPTED RULES OR
10 WRITTEN POLICIES PURSUANT TO THIS PART 2 AND MUST NOT BE
11 INCONSISTENT WITH THE PROVISIONS SET FORTH IN THIS SECTION."
- 12 Strike "A PERSON" and substitute "AN INDIVIDUAL" on: **Page 3**, lines 6 and
13 13.
- 14 After "THAT" insert "PUBLIC" on: **Page 3**, lines 10 and 11.
- 15 Strike "three-day" and substitute "~~three-day~~ FIVE-DAY" on: **Page 5**, line
16 25; and **Page 6**, lines 1 and 6.

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