

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0110.01 Megan McCall x4215

HOUSE BILL 24-1296

HOUSE SPONSORSHIP

Kipp and Soper,

SENATE SPONSORSHIP

Marchman,

House Committees

State, Civic, Military, & Veterans Affairs

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MODIFICATIONS TO LESSEN THE BURDENS OF
102 RESPONDING TO RECORDS REQUESTS FOR CUSTODIANS OF
103 RECORDS UNDER THE "COLORADO OPEN RECORDS ACT".

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill makes the following changes to the "Colorado Open Records Act" (CORA):

- Requires a custodian to evaluate a request for public records promptly and for no longer than 2 days. Within the 2-day period the custodian shall notify the requester

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

whether or not any costs or fees that may apply to the request and if extenuating circumstances exist that allow for an extension of the reasonable time to respond to a CORA request (response period). If there are costs or fees that may apply, the response period does not begin until the custodian receives a response from the requester acknowledging acceptance of the costs or fees. Alternatively, a requester may revise their request and the custodian shall evaluate the revised request within the 2-day evaluation period. Otherwise, the response period begins after the custodian has provided notice to the requester.

- Adds an extenuating circumstance that allows for an extension of the response period when the custodian is not scheduled to work within the response period;
- If public records are in the custody and control of someone who is not scheduled to work within the response period, a custodian shall notify the requester of the date the person is scheduled to return to work and make best efforts to make responsive records available for inspection within the response period or extended response period, as applicable. The requester may make a subsequent request for additional responsive records, if any, on or after the date the person who is authorized to have custody and control of the records is scheduled to return to work.
- Allows a custodian to determine that a requester is a vexatious requester, requires the custodian to make a sworn statement in support of the determination to provide to the requester, allows the custodian a 30-day response period when a requester is a vexatious requester, and permits the requester to appeal the determination that the requester is a vexatious requester to the district court;
- Excludes a mass medium or newsperson from being a vexatious requester;
- Allows a custodian to determine that a request is made for the direct solicitation of business for pecuniary gain, requires the custodian to make a sworn statement in support of the determination to provide to the requester, allows the custodian a 30-day response period for such a request, permits the requester to appeal the determination that the request is made for the direct solicitation of business for pecuniary gain to the district court, and allows a custodian to charge the requester for the full cost of responding to the request notwithstanding the allowance for the first hour of research and retrieval to otherwise be free of charge and

notwithstanding the statutory cap on fees, which otherwise would apply;

- Prohibits disclosure of any other contact information of students in any public elementary or secondary school in addition to the prohibition of disclosure of addresses and telephone numbers that is in current law;
- Allows a custodian to deny the right of inspection of public records that are an employee's calendar, unless the public record is an elected official's calendar or the calendar of an employee who is in a leadership position or the request is made by a mass medium or newsperson; and
- Allows a custodian to treat a CORA request made within 14 calendar days of another CORA request made by the same person as one request for purposes of calculating the fee that the custodian may charge to the requester for research and retrieval of responsive public records.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-202, **add** (6.3)
3 as follows:

4 **24-72-202. Definitions.** As used in this part 2, unless the context
5 otherwise requires:

6 (6.3) (a) "VEXATIOUS REQUESTER" MEANS A PERSON OR ENTITY
7 THAT SUBMITS A REQUEST FOR PUBLIC RECORDS AND THAT, BY THE
8 PERSON'S OR ENTITY'S CONDUCT, DEMONSTRATES AN INTENT TO ANNOY OR
9 HARASS A CUSTODIAN, THE ENTITY FOR WHICH THE CUSTODIAN WORKS
10 LISTED IN SUBSECTION (2) OF THIS SECTION, ANOTHER EMPLOYEE OF THAT
11 ENTITY, A PERSON WHO DEPENDS ON SERVICES FROM THAT ENTITY, OR
12 ANOTHER ENTITY WHICH MAY OR MAY NOT BE AN ENTITY LISTED IN
13 SUBSECTION (2) OF THIS SECTION; EXCEPT THAT A PERSON OR ENTITY IS
14 NOT A VEXATIOUS REQUESTER SOLELY DUE TO THE NUMBER OF REQUESTS
15 THE PERSON HAS FILED OR THE NUMBER OF PUBLIC RECORDS SOUGHT.

16 (b) "VEXATIOUS REQUESTER" DOES NOT INCLUDE A MASS MEDIUM,

1 AS DEFINED IN SECTION 13-90-119 (1)(a), OR A NEWSPERSON, AS DEFINED
2 IN SECTION 13-90-119 (1)(c).

3 **SECTION 2.** In Colorado Revised Statutes, 24-72-203, **amend**
4 (3)(b) introductory portion, (3)(b)(I), (3)(b)(II)(B), and (3)(b)(III); and
5 **add** (3)(a.5), (3)(b)(IV), (3)(d), (3)(e), and (3)(f) as follows:

6 **24-72-203. Public records open to inspection.** (3) (a.5) (I) A
7 CUSTODIAN SHALL PROMPTLY EVALUATE A REQUEST FOR PUBLIC RECORDS
8 MADE PURSUANT TO THIS PART 2 AND IS ALLOWED NOT MORE THAN TWO
9 WORKING DAYS AFTER RECEIPT OF THE REQUEST TO COMPLETE THE
10 EVALUATION. BEFORE THE END OF THE TWO-DAY PERIOD, THE CUSTODIAN
11 SHALL NOTIFY THE REQUESTER IN WRITING WHETHER ANY COSTS OR FEES
12 APPLY TO THE REQUEST AND IF EXTENUATING CIRCUMSTANCES EXIST AS
13 SET FORTH IN SUBSECTION (3)(b) OF THIS SECTION.

14 (II) IF THE CUSTODIAN DETERMINES THAT THERE ARE COSTS AND
15 FEES THAT MAY APPLY TO THE REQUEST, THEN THE NOTICE REQUIRED
16 PURSUANT TO SUBSECTION (3)(a.5)(I) OF THIS SECTION MUST INFORM THE
17 REQUESTER THAT THE CUSTODIAN WILL NOT TAKE ADDITIONAL ACTION ON
18 THE REQUEST UNTIL THE REQUESTER, IN WRITING, EITHER ACKNOWLEDGES
19 ACCEPTANCE OF THE COSTS AND FEES OR REVISES THE REQUEST. UPON
20 RECEIPT OF THE REQUESTER'S RESPONSE, THE CUSTODIAN SHALL:

21 (A) SET THE DATE AND HOUR FOR INSPECTION OF RECORDS IN
22 ACCORDANCE WITH THIS SUBSECTION (3) IF THE REQUESTER
23 ACKNOWLEDGES ACCEPTANCE OF THE COSTS AND FEES; OR

24 (B) EVALUATE THE REQUEST IN ACCORDANCE WITH SUBSECTION
25 (3)(a.5)(I) OF THIS SECTION IF THE REQUESTER REVISES THE REQUEST.

26 (III) IF THE CUSTODIAN DETERMINES THAT NO COSTS OR FEES
27 APPLY TO THE REQUEST, THEN UPON PROVIDING NOTICE IN ACCORDANCE

1 WITH SUBSECTION (3)(a.5)(I) OF THIS SECTION, THE CUSTODIAN SHALL SET
2 THE DATE AND HOUR FOR INSPECTION OF RECORDS IN ACCORDANCE WITH
3 THIS SUBSECTION (3).

4 (IV) NOTHING IN THIS SUBSECTION (3)(a.5) PREVENTS A
5 CUSTODIAN FROM REQUIRING RECEIPT OF PAYMENT OR ARRANGEMENT FOR
6 RECEIVING PAYMENT BEFORE RELEASING ANY RESPONSIVE RECORDS TO A
7 REQUEST IN ACCORDANCE WITH SECTION 24-72-205 (1)(b).

8 (b) The date and hour set for the inspection of records not readily
9 available at the time of the request ~~shall~~ MUST be within a reasonable time
10 after EITHER the ~~request~~ CUSTODIAN PROVIDES NOTICE IN ACCORDANCE
11 WITH SUBSECTION (3)(a.5)(I) OF THIS SECTION OR THE CUSTODIAN
12 RECEIVES THE REQUESTER'S RESPONSE IN ACCORDANCE WITH SUBSECTION
13 (3)(a.5)(II)(A) OF THIS SECTION IF COSTS OR FEES MAY APPLY. As used in
14 this subsection (3), a "reasonable time" ~~shall be~~ IS presumed to be three
15 working days or less. Such period may be extended if extenuating
16 circumstances exist. However, such period of extension shall not exceed
17 seven working days. A finding that extenuating circumstances exist shall
18 be made in writing by the custodian ~~and shall be provided to the person~~
19 ~~making the request within the three-day period~~ PURSUANT TO SUBSECTION
20 (3)(a.5)(I) OF THIS SECTION. Extenuating circumstances ~~shall~~ apply only
21 when:

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

26 (II) A broadly stated request is made that encompasses all or
27 substantially all of a large category of records and the agency is unable to

1 prepare or gather the records within the three-day period because:

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

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

8 (IV) THE CUSTODIAN, OR A PERSON WHO IS ESSENTIAL TO THE
9 PROCESS OF RESPONDING TO REQUESTS, IS NOT SCHEDULED TO WORK
10 WITHIN THE THREE-DAY PERIOD.

11 (d) IF A CUSTODIAN RECEIVES A REQUEST FOR PUBLIC RECORDS
12 THAT ARE IN THE CUSTODY AND CONTROL OF ANOTHER PERSON WHO IS
13 AUTHORIZED TO HAVE CUSTODY AND CONTROL OF THE PUBLIC RECORDS
14 BUT THAT PERSON IS NOT SCHEDULED TO WORK WITHIN THE THREE-DAY
15 PERIOD, THE CUSTODIAN SHALL, IN THE NOTICE REQUIRED PURSUANT TO
16 SUBSECTION (3)(a.5)(I) OF THIS SECTION, NOTIFY THE REQUESTER OF THE
17 DATE UPON WHICH THE PERSON IS SCHEDULED TO RETURN TO WORK, MAKE
18 BEST EFFORTS TO MAKE RECORDS THAT ARE RESPONSIVE TO THE REQUEST
19 AVAILABLE WITHIN THE PERIODS SET FORTH IN THIS SUBSECTION (3), AS
20 APPLICABLE, AND MAKE AVAILABLE RECORDS THAT ARE RESPONSIVE TO
21 THE REQUEST, IF ANY, THAT ARE IN THE CUSTODY AND CONTROL OF THE
22 CUSTODIAN IN ACCORDANCE WITH THIS PART 2. THE REQUESTER MAY
23 MAKE A SUBSEQUENT REQUEST FOR ADDITIONAL RESPONSIVE RECORDS, IF
24 ANY, ON OR AFTER THE DATE THE PERSON WHO IS AUTHORIZED TO HAVE
25 CUSTODY AND CONTROL OF THE RECORDS IS SCHEDULED TO RETURN TO
26 WORK.

27 (e) (I) NOTWITHSTANDING SUBSECTIONS (3)(b) AND (3)(d) OF THIS

1 SECTION, IN SETTING A DATE AND HOUR FOR RECORDS TO BE AVAILABLE
2 FOR INSPECTION, IF A CUSTODIAN DETERMINES THAT A REQUEST FOR
3 PUBLIC RECORDS IS MADE BY A VEXATIOUS REQUESTER, THE CUSTODIAN
4 SHALL HAVE THIRTY WORKING DAYS FROM PROVIDING THE NOTICE
5 REQUIRED PURSUANT TO SUBSECTION (3)(e)(II) OF THIS SECTION.

6 (II) A CUSTODIAN WHO DETERMINES THAT A REQUEST FOR PUBLIC
7 RECORDS IS MADE BY A VEXATIOUS REQUESTER PURSUANT TO SUBSECTION
8 (3)(e)(I) OF THIS SECTION SHALL PROVIDE THE REQUESTER WITH A SWORN
9 STATEMENT WITHIN THE TWO-DAY PERIOD SET FORTH IN SUBSECTION
10 (3)(a.5)(I) OF THIS SECTION THAT DETAILS THE CONDUCT BY THE
11 REQUESTER THAT THE CUSTODIAN DETERMINES DEMONSTRATES
12 VEXATIOUSNESS, WHICH MAY INCLUDE:

13 (A) THE NUMBER OF REQUESTS FILED; EXCEPT THAT THE
14 DETERMINATION CANNOT BE MADE SOLELY ON THIS BASIS;

15 (B) THE TOTAL NUMBER OF PENDING REQUESTS; EXCEPT THAT THE
16 DETERMINATION CANNOT BE MADE SOLELY ON THIS BASIS;

17 (C) THE SCOPE OF THE REQUESTS;

18 (D) THE NATURE, CONTENT, LANGUAGE, OR SUBJECT MATTER OF
19 THE REQUESTS;

20 (E) THE NATURE, CONTENT, LANGUAGE, OR SUBJECT MATTER OF
21 OTHER ORAL AND WRITTEN COMMUNICATIONS TO THE CUSTODIAN;

22 (F) CONDUCT THAT THE CUSTODIAN DETERMINES IS PLACING AN
23 UNREASONABLE BURDEN ON THE CUSTODIAN;

24 (G) CONDUCT THAT THE CUSTODIAN DETERMINES IS INTENDED TO
25 HARASS; AND

26 (H) ANY OTHER RELEVANT INFORMATION, INCLUDING SIMILAR
27 DETERMINATIONS THAT HAVE BEEN MADE BY OTHER CUSTODIANS AGAINST

1 THE SAME INDIVIDUAL OR ENTITY.

2 (III) A PERSON OR ENTITY THAT HAS BEEN DETERMINED BY A
3 CUSTODIAN TO BE A VEXATIOUS REQUESTER MAY APPEAL THE
4 DETERMINATION TO THE DISTRICT COURT OF THE DISTRICT IN WHICH THE
5 REQUESTED PUBLIC RECORDS ARE LOCATED. THE PROVISIONS OF SECTION
6 24-72-204 (5)(b) AND (6)(a) CONCERNING THE TIMING FOR A HEARING,
7 COSTS AND ATTORNEY FEES, AND BURDEN OF PROOF GOVERN AN APPEAL
8 PURSUANT TO THIS SUBSECTION (3)(e)(III).

9 (f) (I) IF A CUSTODIAN DETERMINES THAT REQUESTED PUBLIC
10 RECORDS WILL BE USED FOR THE DIRECT SOLICITATION OF BUSINESS FOR
11 PECUNIARY GAIN, THE CUSTODIAN SHALL PROVIDE THE REQUESTER WITH
12 A SWORN STATEMENT OF THE DETERMINATION WITHIN THE TWO-DAY
13 PERIOD SET FORTH IN SUBSECTION (3)(a.5)(I) OF THIS SECTION AND,
14 NOTWITHSTANDING SUBSECTIONS (3)(b) AND (3)(d) OF THIS SECTION, IN
15 SETTING A DATE AND HOUR FOR RECORDS TO BE AVAILABLE FOR
16 INSPECTION, THE CUSTODIAN SHALL HAVE THIRTY WORKING DAYS FROM
17 PROVIDING THE NOTICE.

18 (II) A REQUESTER THAT MAKES A REQUEST THAT HAS BEEN
19 DETERMINED BY A CUSTODIAN TO BE FOR THE DIRECT SOLICITATION OF
20 BUSINESS FOR PECUNIARY GAIN MAY APPEAL THE DETERMINATION TO THE
21 DISTRICT COURT OF THE DISTRICT IN WHICH THE REQUESTED PUBLIC
22 RECORDS ARE LOCATED. THE PROVISIONS OF SECTION 24-72-204 (5)(b)
23 AND (6)(a) CONCERNING THE TIMING FOR A HEARING, COSTS AND
24 ATTORNEY FEES, AND BURDEN OF PROOF GOVERN AN APPEAL PURSUANT
25 TO THIS SUBSECTION (3)(f)(II).

26 (III) NOTWITHSTANDING SECTION 24-72-205 (6)(a), A CUSTODIAN
27 IS ENTITLED TO RECOVER THE FULL COST ASSOCIATED WITH RESPONDING

1 TO A REQUEST FOR RECORDS THAT HAS BEEN DETERMINED BY THE
2 CUSTODIAN TO BE FOR THE DIRECT SOLICITATION OF BUSINESS FOR
3 PECUNIARY GAIN.

4 **SECTION 3.** In Colorado Revised Statutes, 24-72-204, **amend**
5 (3)(a)(VI) and (3)(a)(XXIII); and **add** (2)(a)(XI) and (3)(a)(XXIV) as
6 follows:

7 **24-72-204. Allowance or denial of inspection - grounds -**
8 **procedure - appeal - definitions - repeal.** (2) (a) The custodian may
9 deny the right of inspection of the following records, unless otherwise
10 provided by law, on the ground that disclosure to the applicant would be
11 contrary to the public interest:

12 (XI) ANY RECORD CONTAINING INFORMATION THAT, IF DISCLOSED,
13 WOULD INVADE ANOTHER INDIVIDUAL'S PERSONAL PRIVACY.

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

19 (VI) Except as provided in section 1-2-227, addresses, ~~and~~
20 telephone numbers, AND ANY OTHER CONTACT INFORMATION of students
21 in any public elementary or secondary school;

22 (XXIII) Records, including analyses and maps, compiled or
23 maintained in accordance with article 73 of title 35 that are based on
24 information related to private lands and identify or allow to be identified
25 any specific Colorado landowners, land managers, agricultural producers,
26 or parcels of land; except that the custodian may release or authorize
27 inspection of summary or aggregated data that do not specifically identify

1 individual landowners, land managers, agricultural producers, or parcels
2 of land; AND

3 (XXIV) AN EMPLOYEE'S CALENDAR THAT IS KEPT AND
4 MAINTAINED PRIMARILY PURSUANT TO THE EMPLOYEE'S EMPLOYMENT;
5 EXCEPT THAT CALENDARS OF ELECTED OFFICIALS OR EMPLOYEES IN
6 LEADERSHIP POSITIONS ARE NOT SUBJECT TO THIS SUBSECTION
7 (3)(a)(XXIV). NOTHING IN THIS SUBSECTION (3)(a)(XXIV) PROHIBITS THE
8 CUSTODIAN FROM ALLOWING A MASS MEDIUM, AS DEFINED IN SECTION
9 13-90-119 (1)(a), OR A NEWSPERSON, AS DEFINED IN SECTION 13-90-119
10 (1)(c), THE RIGHT OF INSPECTION OF THESE RECORDS.

11 **SECTION 4.** In Colorado Revised Statutes, 24-72-205, **add**
12 (6)(c) as follows:

13 **24-72-205. Copy, printout, or photograph of a public record**
14 **- imposition of research and retrieval fee.** (6) (c) FOR PURPOSES OF THE
15 FEE CHARGED PURSUANT TO THIS SUBSECTION (6), A CUSTODIAN MAY
16 TREAT A REQUEST FOR PUBLIC RECORDS MADE WITHIN FOURTEEN
17 CALENDAR DAYS OF ANOTHER REQUEST MADE BY THE SAME PERSON AS
18 ONE REQUEST AND NOT AS MULTIPLE INDIVIDUAL REQUESTS.

19 **SECTION 5. Act subject to petition - effective date -**
20 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
21 the expiration of the ninety-day period after final adjournment of the
22 general assembly; except that, if a referendum petition is filed pursuant
23 to section 1 (3) of article V of the state constitution against this act or an
24 item, section, or part of this act within such period, then the act, item,
25 section, or part will not take effect unless approved by the people at the
26 general election to be held in November 2024 and, in such case, will take
27 effect on the date of the official declaration of the vote thereon by the

1 governor.

2 (2) This act applies to requests for open records made pursuant to
3 article 72 of title 24, Colorado Revised Statutes, on or after the applicable
4 effective date of this act.