

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-0662.01 Bob Lackner x4350

SENATE BILL 16-037

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SENATE SPONSORSHIP

Kefalas,

HOUSE SPONSORSHIP

Pabon,

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Senate Committees

State, Veterans, & Military Affairs

House Committees

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A BILL FOR AN ACT

101 CONCERNING REQUIRED PUBLIC ACCESS UNDER THE "COLORADO  
102 OPEN RECORDS ACT" TO PUBLIC RECORDS AS DEFINED BY SUCH  
103 ACT CONTAINED IN DIGITALLY STORED DATA MAINTAINED BY  
104 GOVERNMENTAL BODIES.

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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://www.leg.state.co.us/billsummaries>.)*

The bill makes the following modifications to existing legal requirements under the "Colorado Open Records Act" (CORA) pertaining to the inspection of public records:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

- ! Updates outmoded statutory language used to describe public records kept in miniaturized, electronic, or digital form as a foundation for inspection requirements in connection with such records;
- ! Deletes existing language requiring the official custodian to take such measures as are necessary to assist the public in locating the specific records sought and to ensure public access to the public records without unreasonable delay or cost. In place of such language, the bill substitutes provisions requiring the official custodian to provide records, or any portion of such records, in any nonproprietary file format and storage medium specified by a records requestor including digital copies of any computer files on any digital storage medium in common usage at the time of the request, via electronic mail, records uploaded to an online storage location shared with the requestor, access through viewing stations for public records kept on microfiche, or, in the discretion of the official custodian, direct electronic access. If requested, the official custodian must provide the records, or any portion of such records, in the same database or other file format in which the records are maintained by the official custodian unless, in the sole discretion of the official custodian, providing the records or any portion of such records, in the same database or other file format in which the records are maintained by the official custodian will result in the public disclosure of confidential or proprietary information of third parties or specialized details of security arrangements or investigations. In such cases, the official custodian is required to export the data into an alternative machine-readable digital format in common usage at the time of the request.
- ! Requires the official custodian to manipulate electronically or digitally stored data in order to delete any confidential data in response to a records request. Removal of confidential information or data does not trigger certain requirements specified in CORA for the payment of fees for the generation or copy of a public record. However, the official custodian may charge the requestor for the actual cost of the digital storage medium used, if any, and a research and retrieval fee for the time spent removing such information.

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

1           **SECTION 1.** In Colorado Revised Statutes, 24-72-203, **amend**  
2 (1) (b) introductory portion and (1) (b) (II); and **add** (1) (b.5) as follows:

3           **24-72-203. Public records open to inspection.** (1) (b) Where  
4 public records are kept ~~only~~ in miniaturized, ELECTRONIC, or digital form,  
5 ~~whether on magnetic or optical disks, tapes, microfilm, microfiche, or~~  
6 ~~otherwise~~ INCLUDING DIGITALLY STORED DATA AND ELECTRONIC MAIL  
7 MESSAGES AS THOSE TERMS ARE REFERENCED IN SECTION 24-72-202 (7),  
8 the official custodian shall:

9           ~~(II) Take such measures as are necessary to assist the public in~~  
10 ~~locating any specific public records sought and to ensure public access to~~  
11 ~~the public records without unreasonable delay or unreasonable cost. Such~~  
12 ~~measures may include, without limitation, the availability of viewing~~  
13 ~~stations for public records kept on microfiche; the provision of portable~~  
14 ~~disk copies of computer files; or direct electronic access via on-line~~  
15 ~~bulletin boards or other means~~ PROVIDE RECORDS, OR ANY PORTION OF  
16 SUCH RECORDS, IN ANY NONPROPRIETARY FILE FORMAT AND STORAGE  
17 MEDIUM SPECIFIED BY A RECORDS REQUESTOR INCLUDING DIGITAL COPIES  
18 OF ANY COMPUTER FILES ON ANY DIGITAL STORAGE MEDIUM IN COMMON  
19 USAGE AT THE TIME OF THE REQUEST, VIA ELECTRONIC MAIL AS THAT  
20 TERM IS REFERENCED IN SECTION 24-72-205 (1) (b), RECORDS UPLOADED  
21 TO AN ONLINE STORAGE LOCATION SHARED WITH THE REQUESTOR, ACCESS  
22 THROUGH VIEWING STATIONS FOR PUBLIC RECORDS KEPT ON MICROFICHE,  
23 OR, IN THE DISCRETION OF THE OFFICIAL CUSTODIAN, DIRECT ELECTRONIC  
24 ACCESS. IF REQUESTED, THE OFFICIAL CUSTODIAN MUST PROVIDE THE  
25 RECORDS, OR ANY PORTION OF SUCH RECORDS, IN THE SAME DATABASE OR  
26 OTHER FILE FORMAT IN WHICH THE RECORDS ARE MAINTAINED BY THE  
27 OFFICIAL CUSTODIAN UNLESS, IN THE SOLE DISCRETION OF THE OFFICIAL

1 CUSTODIAN, PROVIDING THE RECORDS OR ANY PORTION OF SUCH RECORDS  
2 IN THE SAME DATABASE OR OTHER FILE FORMAT IN WHICH THE RECORDS  
3 ARE MAINTAINED BY THE OFFICIAL CUSTODIAN WILL RESULT IN THE PUBLIC  
4 DISCLOSURE OF CONFIDENTIAL OR PROPRIETARY INFORMATION OF THIRD  
5 PARTIES OR SPECIALIZED DETAILS OF SECURITY ARRANGEMENTS OR  
6 INVESTIGATIONS. IN SUCH CASES, THE OFFICIAL CUSTODIAN SHALL EXPORT  
7 THE DATA INTO AN ALTERNATIVE MACHINE-READABLE DIGITAL FORMAT  
8 SPECIFIED BY THE REQUESTOR.

9 (b.5) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION,  
10 THE OFFICIAL CUSTODIAN SHALL MANIPULATE ELECTRONICALLY OR  
11 DIGITALLY STORED DATA IN ORDER TO REMOVE ANY CONFIDENTIAL DATA  
12 IN RESPONSE TO A RECORDS REQUEST. REMOVAL OF CONFIDENTIAL  
13 INFORMATION OR DATA UNDER THIS PARAGRAPH (b.5) DOES NOT TRIGGER  
14 THE FEE REQUIREMENTS SPECIFIED IN SECTION 24-72-205 (3) OR (4).  
15 HOWEVER, IN SUCH CIRCUMSTANCES, THE OFFICIAL CUSTODIAN MAY  
16 CHARGE THE REQUESTOR FOR THE ACTUAL COST OF THE DIGITAL STORAGE  
17 MEDIUM USED, IF ANY, AND A RESEARCH AND RETRIEVAL FEE UNDER  
18 SECTION 24-72-205 (6) FOR THE TIME SPENT REMOVING SUCH  
19 INFORMATION.

20 **SECTION 2. Act subject to petition - effective date.** This act  
21 takes effect September 1, 2016; except that, if a referendum petition is  
22 filed pursuant to section 1 (3) of article V of the state constitution against  
23 this act or an item, section, or part of this act within the ninety-day period  
24 after final adjournment of the general assembly, then the act, item,  
25 section, or part will not take effect unless approved by the people at the

1 general election to be held in November 2016 and, in such case, will take  
2 effect on the date of the official declaration of the vote thereon by the  
3 governor.