



**Colorado  
Legislative  
Council  
Staff**

**SB17-040**

**FINAL  
FISCAL NOTE**

**FISCAL IMPACT:**  State  Local  Statutory Public Entity  Conditional  No Fiscal Impact

**Drafting Number:** LLS 17-0153  
**Prime Sponsor(s):** Sen. Kefalas  
Rep. Pabon

**Date:** September 5, 2017  
**Bill Status:** Signed into Law  
**Fiscal Analyst:** Amanda Hayden (303-866-4918)

**BILL TOPIC:** PUBLIC ACCESS TO GOVERNMENT FILES

<b>Fiscal Impact Summary</b>	<b>FY 2017-2018</b>	<b>FY 2018-2019</b>
<b>State Revenue</b> Cash Funds	Increase. See State Revenue section.	
<b>State Expenditures</b> General Fund Cash Funds	Increase. See State Expenditures section.	
<b>Appropriation Required:</b> None.		
<b>Future Year Impacts:</b> Ongoing increase in state revenue and expenditures.		

**Summary of Legislation**

This bill modifies the Colorado Open Records Act (CORA) with respect to digital or electronic records. For public records stored in a digital format that are neither searchable nor sortable, custodians must provide records in a digital format. For digital records that are searchable but not sortable, custodians must provide them in a searchable format. For digital records that are sortable but not searchable, custodians must provide them in a sortable format. Altering an existing public record or excising fields of information to remove information that the custodian is allowed or required to withhold does not constitute the creation of a new public record.

**Exceptions.** The bill provides additional grounds upon which a custodian may deny a records request, specifically with regard to electronic health records and the physical and cyber assets of critical infrastructure. A custodian does not have to provide records in a searchable or structured data format if:

- producing the data in the requested format would violate a copyright or licensing agreement or result in the release of a third party's proprietary information;
- it is not technologically or practically feasible to permanently remove information that the custodian is required or allowed to withhold;
- it is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format; or
- the custodian would be required to purchase software or hardware or to create additional programming or functionality in the existing software or hardware to remove information.

**Civil remedies.** If the custodian cannot provide records in the requested format, he or she must provide them in an alternate format or document in writing the reasons for not being able to comply with the request. If a court rules that the custodian should have provided the records in the requested format, attorneys fees may be awarded to the plaintiff only if the custodian's action was found to be arbitrary or capricious.

**Repeal of violation.** The bill repeals the class 2 misdemeanor for knowingly and willfully violating the section of CORA on inspection, copying, or photographing a record.

## **Background**

CORA creates a presumption in favor of public access to government documents. Statute defines public records to include all writings made, maintained, or kept by the state, any agency, institution, political subdivision of the state, local government-financed entity, or nonprofit corporation incorporated by a state supported higher education institution's governing board.

In the last three years, there have been no criminal charges filed or convictions entered for a violation of the class 2 misdemeanor repealed by the bill.

## **State Revenue**

Beginning in FY 2017-18, this bill may increase or decrease state cash fund revenue from fees. To the extent that agencies fulfill requests by sending electronic files rather than charging for printed copies, revenue may decrease. The amount of revenue generated or lost will depend on the number of CORA requests, the complexity of those requests, and the services rendered.

## **State Expenditures**

Beginning in FY 2017-18, the bill will increase workload for state agencies that respond to CORA requests that require the agency to program, code, or perform custom search queries. The bill allows agencies to deny requests for records in certain formats if they are deemed too onerous to fulfill, provided the agency fulfills the request in an alternative format. If the bill increases workload significantly, some state agencies may require increased and permanent FTE to accommodate CORA requests that cannot be paid for with fee revenue and will require state appropriations to backfill insufficient resources. Agencies may also be ordered to pay attorneys fees in any court proceeding where their actions are deemed arbitrary or capricious. The fiscal note assumes that if this occurs at all, it will be rare. Since new costs and workload cannot be predicted in advance, this analysis assumes that agencies will address the need for additional appropriations through the annual budget process.

**Department of Law (DOL).** The bill will increase workload and expenditures in the DOL to provide assistance and review for legal matters related to CORA requests for state agencies. The bill may lead to an increase in lawsuits filed against state agencies that deny requests for records in data formats. The fiscal note assumes that state agencies will follow the law and the requirements of the bill when denying requests. If a client agency of the DOL requires additional legal support on an annual basis, the DOL will coordinate with the client agency through the annual budget process.

### **Local Government and Statutory Public Entity Impact**

The bill increases revenue and workload for any local government or statutory public entity that responds to CORA requests that require them to program, code, or perform custom search queries. Entities may also be ordered to pay attorneys fees in any court proceeding where their actions are deemed arbitrary or capricious. The fiscal note assumes that if this occurs at all, it will be rare. The amount of additional revenue that the bill will generate or workload required to fulfill its requirements for local governments or statutory public entities will vary depending on the number of CORA requests received, the complexity of those requests, and the fee charged. The exact impact to local governments and statutory public entities has not been estimated.

### **Effective Date**

The bill was signed into law by the Governor on June 1, 2017, and became effective on August 9, 2017.

### **Departmental Difference**

**Higher Education.** The Department of Higher Education (DHE) estimates that the bill requires a one-time expenditure of \$80,000 to enhance, modify, and strengthen its current database and database security. The DHE received 32 CORA requests and about 250 data requests last year. The department also estimates that CORA requests will increase as a result of the bill and that it will require \$79,962 and one additional FTE to accommodate the increase. Several institutions of higher education have made similar estimates. The fiscal note acknowledges that workload and expenditures will increase as a result of the bill; however, the increase will depend on the number of data requests, the exact nature of those requests, and the technology issues associated with fulfilling the requests, none of which can be predicted in advance accurately enough to calculate an appropriation.

### **State and Local Government Contacts**

All State Agencies	Counties	District Attorneys
Joint Budget Committee	Judicial	Legislative Council Staff
Legislative Legal Services	Municipalities	PERA
Regional Transportation District	Special Districts	State Auditor