Colorado Association of School Boards

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Open Records Law for School Districts

Updated July 2024

Colorado's Open Records Act (CORA), C.R.S. 24-72-200.1 *et seq*., applies to public bodies, including school districts. This memo is intended to provide an overview of CORA and its application to school districts. *This memo is for informational purposes only and does not constitute legal advice. Specific questions should be referred to the school district's legal counsel.*

General rule: All public records must be made available to the public for inspection and copying unless there is a specific legal exception that permits or requires the school district to deny inspection or disclosure. "Public records" means and includes all writings made, maintained, or kept by the district. C.R.S. 24-72-202(6)(a)(I).

Timeline: In general, inspection of the record must be provided upon a person's request, unless the record is in active use, in storage, or otherwise not readily available at the time the person requests it. C.R.S. 24-72-203(3)(a). In those instances, inspection of the record must occur within a "reasonable time" after the request. CORA defines "reasonable time" as three working days or less. This timeline may be extended another seven working days "if extenuating circumstances exist." CORA limits the types of "extenuating circumstances" that justify the extension of the three day period to the following circumstances:

- A broadly stated request that encompasses all, or substantially all, of a large category of records and the request does not provide enough detail to allow the district reasonably to prepare or gather the documents within the three-day period;
- A broadly stated request that that encompasses all, or substantially all, of a large category of records and the district is unable to prepare or gather the records within the three-day period because the district needs to devote all, or substantially all, of its resources to meeting an impending deadline or period of peak demand that is either unique or not predicted to recur more frequently than once a month; or
- A request involves such a large volume of records that the district cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the district's obligation to perform its other public service responsibilities. C.R.S. 24-72-203(3)(b).

Fees:

- **General.** Districts must allow credit card or other electronic payments, as long as the district already allows people to pay for any other services or products via credit card or electronically.

- **Per-Page Fees.** The copying fee per page should be established in policy or regulation and may not exceed $0.25 per standard page. C.R.S. 24-72-205(5)(a). A per-page fee cannot be charged if records are provided in a digital or electronic format.
- **Research and retrieval fees:** A district cannot charge fees for time spent researching and retrieving the requested public records unless it has adopted and published a written policy specifying when the district will charge a research and retrieval fee as well as the amount of such fee. The first hour spent on researching or retrieving the records must be free of charge.

  Effective **July 1, 2024**, the new maximum hourly fee that a district may charge after the first hour spent on researching or retrieving the records is $41.37. Before increasing the fee above the previous maximum of $33.58, the district must revise its CORA policies to include the new fee and post the updated policy on its website or otherwise publish the written policy. C.R.S. 24-72-205(6). The maximum hourly fee shall be determined by July 1 every five years by the director of research of the legislative council "in accordance with the United States Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Denver-Boulder-Greeley" or its successor index. C.R.S. § 24-72-205(6)(b). Once determined, the director of research must post the adjusted maximum hourly fee on the state legislature's website.

- **Manipulation and transmission fees:** The district's records custodian may charge additional fees for manipulation of data or other expenses incurred in generating or transmitting documents (except that custodians may not charge transmission fees for sending public records via email). C.R.S. 24-72-205(1)(b) & (3). If the person requesting the record asks that it be transmitted, the custodian must inform the person that a copy of the record will be transmitted once the custodian receives payment of shipping costs and other lawfully allowed fees, unless such fees are waived or other arrangements for payment are made. A copy of the record must then be transmitted within three business days of the custodian's receipt of payment or making arrangements to receive such payment. C.R.S. 24-72-205(1)(b).

Records format: CORA dictates the format in which the district's records custodian must provide the public record. C.R.S. 24-72-203(3.5). If the district stores the public record in a digital format, the district must provide a copy of the record in a digital format via e-mail. Records stored in a searchable format must be provided in a searchable format and records stored in a sortable format must be provided in a sortable format. Additionally, a digital record cannot be converted into a non-searchable or non-sortable format prior to transmission. However, records

do not need to be provided in a searchable or sortable format if any of the following exceptions apply:

- producing the record in the requested format would violate the terms of a copyright or licensing agreement;
- producing the record in the requested format would result in the release of third party proprietary information; or
- after making reasonable inquiries, the district's records custodian determines that:
    - it is not technologically or practically feasible to permanently remove information that the district is required or permitted to withhold;
    - it is not technologically or practically feasible to provide a copy of the record in a searchable or sortable format; or
    - producing the record in a searchable or sortable format would require the purchase of software, or the creation of additional programming or functionality in existing software, to remove information a district is required or permitted to withhold.

If the district's records custodian is not able to produce the public record in the requested format, the custodian must provide the record in an alternate format or issue a denial. If the custodian denies access to the record, the custodian shall provide a written statement to the person requesting the record, explaining the reasons why the custodian cannot produce the record in the requested format. If the court subsequently rules that the district should have provided the record in the requested format, attorney fees may be awarded "only if the custodian's action was arbitrary or capricious." C.R.S. 24-72-203(3.5)(c).

Finally, the district's records custodian must provide records to individuals with disabilities in a format that complies with the Americans with Disabilities Act and other applicable state and federal law.

Denial of access: If the district denies a request for access to public records and the person requesting the records asks for a written statement of the grounds for denial, the district must provide a written statement to the person, citing the law or regulation under which the district denied access. Such written statement must be provided "forthwith" to the person. C.R.S. 24-72-204(4).

Duty to confer: A person denied access to school district records may seek a district court order compelling disclosure. However, the person must first provide written notice to the district's records custodian at least 14 days before filing an application in district court. During the 14-day period, the district's records custodian must meet in person or communicate on the telephone with the person denied access to determine if the dispute may be resolved without court involvement. Any "common expense" necessary to resolve the dispute "must be apportioned equally between or among the parties unless the parties have agreed to a different method of allocating the costs between or among them." C.R.S. 24-72-204(5)(a).

SCHOOL DISTRICT AND BOARD OF EDUCATION

Specific legal exclusions in CORA make clear that the following documents are ***not*** public records and therefore may, but are not required to, be released[1]:

1. Work product or records protected under the common law governmental or "deliberative process" privilege, if the material is so candid or personal that public disclosure is likely to stifle honest and frank discussion. This includes advisory or deliberative materials assembled for the benefit of elected officials that state an opinion or are deliberative in nature; including notes, memos and drafts.

   If access to a public record is withheld based on the work product or deliberative process privilege, the custodian must provide to the requesting party a sworn statement specifically describing each document withheld, explaining why each document is privileged and why disclosure would cause substantial injury to the public interest. C.R.S. 24-72-204(3)(a)(XIII).

   In contrast, the following materials are not protected by the work product or deliberative process privilege, so the district ***must*** release:

   - Materials previously distributed to the public;
   - Final decisions/reports;
   - Materials identified in the text of final decisions/reports by an elected official;
   - Materials distributed to board members "for their use or consideration in a public meeting" (except those discussed only in executive session). C.R.S. 24-72-202(6.5)(c)-(d).

     Note: CORA's definition of deliberative process or work product privilege is subject to varying interpretations as to when materials distributed to board members lose this protection and become public records. One interpretation is that materials provided to the board in anticipation of an upcoming board meeting should be considered public records at the time they are provided to the board; the other interpretation is that they should be considered public records when they are actually discussed at the board meeting. Local boards should discuss their practice and confer with their attorney as appropriate.

     Materials provided to the board for their use or consideration in a board meeting that would cause "substantial injury to the public interest" if disclosed may remain protected, however. C.R.S. 24-72-204(6). Materials may also be protected from disclosure for other reasons under CORA, as discussed herein.

[1] If inspection is allowed for any of these records to a member of the media, inspection must be allowed for all members of the media. C.R.S. 24-72-204(2)(b).

2. Records that have no demonstrable connection (i.e. relationship) to the exercise of functions required or authorized by law or to the receipt or expenditure of public funds. C.R.S. 24-72-202(6)(A)(II)(B).

3. Communication to or from a constituent that clearly implies, by its nature or content, that the constituent expects that it remain confidential. C.R.S. § 24-72-202(6)(A)(II)(C).

4. When disclosure is contrary to state or federal law or regulation or to a court order. C.R.S. § 24-72-204(1).

5. When disclosure is contrary to public interest, including the following (C.R.S. § 24-72-204(2)):

    - Law enforcement investigation and security materials;
    - Tests/answer keys related to licensing, employment and academic exams;
    - Details of bona fide research projects undertaken by the state, governor or legislature related to pending/anticipated legislation;
    - Details of physical and cyber assets of critical infrastructure, such as protective measures or emergency response plans, which would be useful to a person planning an attack on critical infrastructure; and
    - Real estate appraisals, until title passes to the state/political subdivision (with special exceptions for those involved in condemnation proceedings).

PERSONNEL

General Rule: All personnel files (except as noted below) must be kept confidential. C.R.S. 24-72-204(3)(a)(II)(A), (X), & (XI); 24-72-202(4.5);

Personnel files include:

- Home addresses & telephone numbers
- Personal financial information
- The specific date of an educator's (teacher, principal, administrator, special services provider, education support professional) absence from work
- Reference letters
- Medical, mental health, sociological and scholastic data
- Evaluation reports or documents for licensed staff
- Records submitted by or on behalf of non-finalist applicants for a superintendent position (except that the demographic data—race and gender—of candidates for a superintendent position who were interviewed but not named as finalists is subject to public disclosure)

- Sexual harassment complaints and investigation materials (except, both the complainant and alleged harasser may have access if disclosure can be made without permitting the identification of any individual involved. However, records of complaints made against an elected official and results of an investigation may be public records if the investigation concludes that the elected official is culpable for sexual harassment. Additionally, the alleged harasser may make records public to show allegations are false.)
- Other information maintained because of the employment relationship

The district shall release upon request:

1. Job applications of past or current employees (not including reference letters)

2. Employment agreements/contracts

3. Employee compensation, including expense allowances and benefits

4. Amounts paid or benefits provided incident to termination of employment

5. Settlement agreements (except to the extent the agreement itself requires confidentiality)

6. Performance ratings (except for those contained in evaluation reports/documents for licensed staff)

7. Information in a superintendent's evaluation related to fulfilling the adopted school district objectives, fiscal management of the district, district planning responsibilities and supervision and evaluation of district personnel

8. Final sabbatical reports (C.R.S. § 24-72-202(4.5))

9. Records submitted by or on behalf of finalists for a superintendent position (except reference letters, electronic health records, and medical, psychological, sociological, or scholastic achievement data) (C.R.S. § 24-72-204(3)(a)(I))

   Note: A finalist is the person or persons who are named as a finalist or finalists by the board and whose names are made public by the board as required by law—at least 14 days prior to the appointment of the superintendent.

10. Demographic data of a candidate for a superintendent position who was interviewed by the board or search committee but not named as a finalist. "Demographic data" means information on a candidate's race and gender that has been legally requested and voluntarily provided on the candidate's application and does not include a candidate's name or other information. C.R.S. § 24-72-204(3)(a)(XI)(D).

STUDENTS

General Rule: In accordance with state law and the federal Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. 1232g and 34 C.F.R. Part 99, all student records containing personally identifiable information must be kept confidential unless the parent or "eligible student" gives consent for their release or the release falls within one of the exceptions to prior consent. An "eligible student" is a student who is 18 years of age or older or who is attending an institution of postsecondary education.

The district ***may*** release to the public without consent:

1. Directory information as defined by each school district. This may include the student's name, e-mail address, photograph, a student's ID number or other unique identifier displayed on a student's ID card (if the identifier cannot be used to access confidential student records except in conjunction with factors that authenticate the student's identity, such as electronic passwords), date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, grade level, enrollment status, degrees and awards received, the most recent and previous education institution attended, and other similar information. The district must give parents notice of its definition of directory information and a reasonable opportunity to submit a written request that such directory information not be released without written parental consent.

   Note: Colorado law exceeds federal law and provides additional protections to students by excluding student addresses and telephone numbers from directory information, so districts cannot release that information without consent. C.R.S. 24-72-204(3)(a)(VI). Additionally, Colorado law allows the district's custodian of records to deny public access to email addresses, telephone numbers, or home addresses provided to the district for the purpose of future electronic communication. C.R.S. 24-72-204(2)(a)(VII).

2. Aggregated scholastic data from which the student cannot be personally identified.

   Note: A district fulfilling its legal duties (including reporting information at the state, district, or school level) by collecting or using information concerning an individual educator's performance evaluation ratings and student assessment results linked to the individual educator must keep the identity of individual students confidential and must not publish or publicly disclose such information in any way that would identify an individual educator. C.R.S. 22-9-109(2).

3. Immunization and exemption rates. State law requires each school to make the immunization and exemption rates of its enrolled student population publicly available on request. C.R.S. 25-4-903(5).

The district may also release student records without consent to certain individuals or institutions in limited circumstances, in accordance with the board's policy on student records, state law and FERPA. For more information about student records and the exceptions to disclosure without consent, please see CASB's student records memo.

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