The Colorado Open Records Act (CORA)\(^1\) creates a presumption in favor of public access to government documents. This issue brief addresses CORA’s two threshold questions: 1) what is and is not considered a public record; and 2) which public records are exempt from disclosure. It also briefly outlines CORA’s requirements for responding to an open records request.

**Public Records Generally**

CORA 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. "Writings" include all documentary materials, regardless of physical form, including but not limited to digitally stored data, books, papers, photographs, cards, tapes, and recordings. However, "public records" do not include criminal justice records or any records made, maintained, or kept by a criminal justice entity, which are instead subject to the Colorado Criminal Justice Records Act. CORA includes several other exceptions to the definition of “public records,” including records related to CollegInvest programs; certain records kept by institutionally related foundations; expenditures by an institutionally related health care foundation to an institution for medical or health care; and a public agency’s information security plans.

**Elected Officials’ Correspondence**

In addition, public records include all correspondence of elected officials, including communications sent via U.S. mail, private courier, and electronic mail, unless the correspondence falls into one of the following four categories. First, elected officials’ correspondence is not considered to be a public record if it is work product, which includes materials assembled for the benefit of elected officials by one of the General Assembly’s staff agencies for the purpose of assisting an elected official in reaching a decision within the scope of their authority, and documents related to the drafting of bills or amendments. Work product also includes research performed by Legislative Council Staff, when the research is requested by a member of the General Assembly and is identified by the member as being in connection with pending or proposed legislation.

Second, correspondence of elected officials is not considered a public record if it is without a demonstrable connection to the exercise of functions required or authorized by law or rule, and does not involve the receipt or expenditure of public funds. This includes messages sent in furtherance of personal relationships, even if sent while being compensated by public funds or using publicly owned computer equipment.

Correspondence from a constituent to an elected official is also not considered a public record when it clearly implies that the constituent expects it to be confidential or is for the purpose of requesting an elected official’s assistance in a personal and private matter. Finally, elected officials’ correspondence is not considered a public record when such disclosure would be contrary to

\(^1\)Section 24-72-200.1 C.R.S.
state or federal law; contrary to Senate or House
lobbying practices rules; or prohibited by Colorado
Supreme Court rules, such as material protected by
attorney-client privilege.

Records That Are Exempt From Disclosure

In accordance with CORA’s general
presumption that public records shall be open for
inspection by any person at reasonable times, the
law details specific instructions about how and when
public records must be made available for
inspection. It also outlines several key scenarios in
which a public record is exempt from disclosure.
This brief focuses on two of these scenarios: a) 
documents that are exempt from disclosure on the
ground that their disclosure would be contrary to
the public interest; and b) documents that are
protected from inspection except by the person in
interest. Whenever a records custodian denies
access to a requested record, the applicant may
request, in writing, an explanation of the grounds for
the denial, including a citation to the specific
provision of law or regulation protecting the record
from disclosure.

A custodian of records may deny a request to
inspect certain public records if their disclosure
would be contrary to the public interest. These
types of records include the specific details or
research projects conducted by a state institution,
including but not limited to research undertaken by
the General Assembly’s staff agencies conducted in
furtherance of pending or anticipated legislation. It
also includes test questions, scoring keys, and
examination data relating to administration of a
licensing examination, employment examination or
academic examination.

Records received, made, or kept by a crime
victim compensation board, a witness protection
board, and the Safe2Tell program are also protected
from disclosure, as are electronic mail addresses
provided by a person to a subdivision of the state for
the purpose of future communication between the
person and the state subdivision. The details of
security arrangements or investigations are
protected, including records of public spending on
such. In addition, records of ongoing civil or
administrative investigations conducted by an
agency of the state in furtherance of its statutory
authority to protect the public health, welfare, or
safety are protected, unless the investigation
focuses on a person inside the investigative agency.

CORA directs records custodians to deny
requests for inspection of certain records except to
the person in interest, i.e. the person who is the
subject of the record. Most significantly, this
exemption includes records protected under the
“deliberative process” privilege, which protects
disclosure “likely to stifle honest and frank
discussion within the government.”2 The Colorado
Supreme Court has found that the purpose of this
privilege is to protect the frank exchange of ideas
and opinions critical to the government’s decision
making process, where disclosure would discourage
such discussion in the future.

Person-in-interest records also include medical
records, mental health records, veterinary medical
records, personnel files, and records of sexual
harassment complaints and investigations. Records
custodians may not disclose scholastic achievement
records, library records, or elementary or secondary
school students’ addresses and telephone numbers.
This section of CORA also protects trade secrets,
privileged information, and confidential commercial,
financial, geological and geophysical data.

Responding to an Open Records Request

Under CORA, public records must be open for
inspection by any person at reasonable times.
Moreover, the right to inspect public records also
includes the right to request a copy of the record.
Agencies may charge a reasonable fee, not to
exceed the actual cost, of transmitting paper copies
or generating or manipulating data in a form not
used by the agency. Agencies may also charge a
research and retrieval fee after the first hour of
research, charging up to $30 per hour, if they have
published a written policy covering such fees prior to
receiving a request.

CORA defines “reasonable time” to be three
working days or less, which may be extended by an
additional seven working days when there are
textenuating circumstances such as an over-broad
request, a request made to an agency experiencing
a period of peak demand, a request made to the
General Assembly or one of its service agencies
during the legislative session, or a request that
covers such a large volume of records that they
cannot be prepared within three days. The records
custodian must identify such circumstances in
writing, within the original three-day period, to the
person making the request. In the event that a
records custodian has custody of correspondence
with an elected official, the custodian must consult
with the official before disclosing the records.

2Section 24-72-204 (3)(a)(XIII) C.R.S.