

SUNSHINE LAWS



PUBLIC / PRESS GUIDE TO COLORADO LAWS ON OPEN MEETINGS & OPEN RECORDS

Sponsored by
Governor Bill Ritter
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Freedom of Information Council

Revised July 2008



Colorado Press Association
303-571-5117

OPEN MEETINGS (Sunshine) LAW (24-6-401+)

LEGISLATIVE POLICY: It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.

WHO IS COVERED? All boards, committees, commissions, authorities or other advisory, policy-making, rule-making or other formally constituted bodies and any public or private entity which has been delegated a governmental decision-making function by a body or official are included under the law. Administrative meetings (staff, faculty) are **not** open.

TWO-TIERED LAW: The Sunshine Law treats state government and local government differently in some areas. The statutes use the following definitions:

State Public Body includes General Assembly, governing boards of institutions of higher education including the CU Regents, state agencies, boards, commissions, etc.

Local Public Body includes all political subdivisions of the state, such as counties, cities, home rule cities, school districts, special districts, metropolitan districts, and RTD.

WHAT IS A MEETING? Any kind of gathering convened to discuss public business, in person, by telephone, electronically or other means of communication.

State Public Body: All meetings of **two or more** members at which public business is to be discussed or at which formal action may be taken are **open**.

Local Public Body: All meetings of a **quorum or three** or more members, whichever is fewer, at which public business is discussed or formal action might be taken are **open**.

SOCIAL GATHERINGS and chance meetings are exempt from open meetings regulations if discussion of public business is not the central purpose.

E-MAIL exchanged between elected officials on subjects other

than public business is not a "meeting."

PUBLIC NOTICE is to be given prior to all meetings where the adoption of any proposed policy, position, resolution, rule, regulation or formal action occurs or at which a majority or quorum is expected to be in attendance. Notice must be "full and timely." No publication is required.

Local Public Bodies may comply with "full and timely" by posting a notice in a formally designated public place at least 24 hours before a meeting. Posted notices must include a specific agenda if at all possible.

State and Local Public Bodies must also maintain a list of persons who request to be notified of meetings or discussions on specific topics and provide reasonable advance notice. A request covers a two-year period.

County Notice Exemption: Commissioners do not have to give 24-hour notice or personal notification if two or more meet to discuss "day-to-day oversight of property or supervision of employees." Hiring or firing, building a new courthouse or buying major equipment are not "oversight."

MINUTES are to be taken of all meetings and "promptly recorded" but minutes of an executive session must include only the topic of discussion. Minutes (including tape recordings) are open.

Local Public Bodies must keep minutes of meetings where formal action does or could occur. Workshops or committee meetings do not necessarily require minutes.

EXECUTIVE SESSIONS: An executive session is permitted only during a regular or special meeting and must follow this formula – **Topic for executive session, with as much specificity as can be provided without compromising the reason for the executive session, must be announced to the public. Also cite the legal basis for the executive session. A vote to go into executive session must then be taken.**

State Public Body can go into an executive session only after two-thirds of the entire body vote in favor.

Local Public Body can go into executive session only after two-thirds of the quorum present vote in favor.

EXECUTIVE SESSIONS ARE LIMITED TO:

- **Matters which state or federal law require be kept confidential, including confidential records.** Local public body must give specific citation of the statute or rules which apply.

- **Security** arrangements.

- **Property matters:**

State Public Body: To discuss purchase of property or sale at competitive bidding if premature disclosure would give an unfair competitive or bargaining advantage. A donor of property to a university or college may request that the gift be discussed in executive session.

Local Public Body: To purchase, acquire, lease, transfer or sell any real, personal or other property interest. A closed door session cannot be held to conceal the fact that a member has a personal interest in the transaction.

- **Attorney conference:**

State Public Body: To receive legal advice from an attorney on pending or imminent court actions. College and university boards can also meet with an attorney to discuss **specific** legal questions.

Local Public Body: To receive legal advice from an attorney on **specific legal questions**. An attorney being present does not by itself justify an executive session nor does "legal questions" as a topic if the body's attorney is not present.

- **Negotiations:**

State Public Body: To determine positions in negotiations with **employees or employee organizations**, develop strategy or receive reports and instruct negotiators.

Local Public Body: To determine positions on **matters** that may be **subject to** negotiations, to develop strategy and instruct negotiators.

- **Personnel:**

State Public Body: Meeting open unless individual

requests closure.

Higher education boards are authorized to discuss personnel matters in executive session if the subject of the discussion requests it and the board thereafter votes to meet in executive session; they may meet in executive session to discuss investigations of students unless the student(s) involved authorize disclosure.

Local Public Body: Meeting may be closed except if the individuals ask that it be open.

Under the Teacher Employment, Compensation and Dismissal Act, a school board must hold teacher's hearing in public **unless** executive session is requested.

- **Additional State Public Body:**

University Hospital may hold a closed session to talk about patient care programs.

Parole Board can meet in executive session to discuss individuals but has to vote in public.

- **Additional Local Public Body:**

To discuss **individual students** (in the case of school boards, etc.) if disclosure would adversely affect the person or persons involved.

No adoption of any rule, regulation, policy, position, or formal action shall occur at any meeting closed to the public.

EXECUTIVE SEARCH (CEO):

- **Initial meeting must be open** to establish job search goals, including writing of job description, deadline for applications, requirements, selection of procedures, and time frame for selection of local or state chief executive officer.

- List of finalists must be made public at least **14** days prior to appointment. No prior offer of employment can be made.

- Executive sessions may be held by the search committee.

HONORARY DEGREES AND NAMING OF BUILDINGS:

Higher Education governing boards may go into executive session to discuss issuance of honorary degrees and naming of buildings. Any decision to actually issue honorary degrees or

name buildings must take place in a public meeting.

OPENING THE DOORS:

Any citizen can ask the court to issue an injunction to enforce the law. If the citizen wins, the court is required to award the citizen costs and reasonable attorney's fees; however, if the public body wins, the court can award costs and fees to the public body if the suit was perceived as frivolous or groundless.

REMEDIES:

A record of all executive sessions must be kept by electronic recording. If a person believes that topics other than those allowed to be discussed in executive session were discussed, he or she may ask a judge to review the record. If the judge determines inappropriate topics were discussed, he or she will make such records public.

REPORTER'S SHIELD LAW

(13-90-119; 24-72.5-101+)

A reporter does not have to disclose a source or disclose any information received in the pursuit of a story, unless the media person personally observed the crime or the information is essential to the case and cannot reasonably be obtained by any other means.

COLORADO PUBLIC RECORDS LAW

(24-72-201+)

LEGISLATIVE POLICY: It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times.

WHAT ARE PUBLIC RECORDS? All "writings" made, maintained, or kept by the state or any agency, institution or political subdivision for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. Records of foundations of public institutions of higher education are public records

with the exception of donors and donor information. Police and court records are found in the Criminal Justice Records Act. "Writings" includes photographs, tapes, recording, digitally stored data including electronic mail and other documentary materials in addition to books, papers and maps but does not include computer software.

EXCEPTIONS: The custodian of public records must allow any person to inspect any record unless:

1. State statutes have closed it;
2. Federal law forbids it;
3. The Supreme Court or a state court has closed the record.

WHEN CUSTODIAN MAY DENY ACCESS:

The custodian has the **discretion** to close the following records on the ground that disclosure to the applicant would be **contrary to public interest**:

1. **Records of Investigations** conducted by any sheriff, prosecuting attorney, or police department, any records of the intelligence information or security procedures of these same officials, or any investigatory files compiled for any other law enforcement purpose. (Also in Criminal Justice Act)

2. **Test questions** on licensing, employment or academic exams, but scores are available to person in interest.

3. **Details of research** being conducted by a state institution or on proposed legislation by legislative staff or Governor.

4. **Real estate appraisals** until title is transferred.

5. **Certain information** generated by the bid analysis and management system of the Department of Transportation.

6. **Identifying information in Motor Vehicle license records.**

7. **Specialized details of security arrangements or investigations**

WHEN CUSTODIAN MUST DENY ACCESS:

The custodian **must** deny inspections of the following records:

1. **Medical**, psychological, sociological and scholastic achievement data. **A coroner's report is open.** Scholastic information is available on finalists for executive positions. Marriage license

applications are closed, but marriage licenses are public records.

2. **Personnel files**. Personnel files include only: home addresses, phone numbers, financial information, and other similar private information maintained because of employer-employee relationship and documents exempt in other statutes, i.e. letters of reference.

What is specifically not in the file and therefore open:

Applications of past and current employees. Employment agreements. Any amount paid or benefit provided incident to termination of employment. Performance ratings (with school limitations). Salaries, including expense allowances, benefits. Final sabbatical reports required by law.

3. **Letters of reference**.

4. **Trade secrets**, privileged information and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person.

5. **Library** and museum material contributed by private persons if they so request.

6. **Addresses** and telephone numbers of public school children, except to recruiting officers as decided locally.

7. **Library records** disclosing identity of a user.

8. **Health data** furnished to Health Data Commission.

9. **Addresses**, phone numbers and personal financial information of past or present users of public utilities, public facilities or recreational or cultural services owned and operated by the state, its agencies, institutions or political subdivisions. Includes golf courses, ice skating rinks, etc.

10. **Sexual harassment** complaints and investigations under any General Assembly policy unless released by person in interest (complainant or person charged).

12. Motor vehicle records (other than traffic accident reports) are closed, except for certain specified uses, which does not include the press.

REQUESTED CLOSURE:

Candidates for executive positions (college president, city

manager, superintendent of schools, etc.) **may** request **in writing** that their applications be kept confidential; however, names of all the finalists **must** be disclosed. When three or fewer candidates are under consideration, they are finalists. No appointment may be made less than 14 days after finalists are named. Information submitted by finalists become public records.

E-MAIL IS "CORRESPONDENCE"

"Public Records" correspondence does not include:

- "Work Product" prepared for elected officials unless the official releases it;
- Correspondence not connected to official duties not involving public funds;
- Message from a constituent to an elected official or vice versa that clearly implies expectation of confidentiality.

"Work Product" includes:

Deliberative materials assembled to assist elected officials in reaching a decision, such as background information or drafts of documents expressing a decision;

Drafts of bills or amendments;

Research by legislative council for legislator and identified as proposed legislation. Member can request final product remain work product; otherwise it becomes public record.

"Work Product" does not include:

Final versions of documents expressing official's decision; fiscal or performance audit reports on public entity management or expenditure of public funds, or final financial reports;

Materials distributed in a public meeting or identified in text of a document that expresses a decision;

Documents which consist solely of factual information compiled from public sources including comparisons of existing laws, etc., in other jurisdictions or compilations of existing public information, statistics or data or explanations of general areas of law or policy.

NOTE: Official custodian must consult with elected official to determine if correspondence is public record.

TRADEMARK AND COPYRIGHT. Governmental entities can now get trademark and copyright protection for public records; however, this cannot restrict public access or fair use of copyrighted materials and does not apply to writings which are "merely lists or other compilations."

COST OF PUBLIC RECORDS: Copies may be made of any public record at a cost of not more than 25 cents per page; however, an additional "reasonable fee" may be charged for:

1. Special requests for data in a form not required as a record. Requester may have to pay costs to manipulate the data. Subsequent requesters to pay same as first.

2. Use of a computer program other than word processing if necessary to provide a record. Fee for a copy can recover costs of the system; however, this may be waived for public purposes, including journalists, nonprofits and academic research.

3. Records "not readily available" must be provided within three working days, unless custodian in writing declares there are "extenuating circumstances," such as number of documents required. This extends access time to seven days.

4. Records of the state archivist, secretary of state and Judicial Branch are subject to different fee schedules.

DELIBERATIVE PROCESS:

Deliberative process may legally exist if "material is so candid or personal that public disclosure is likely to stifle honest and frank discussion within the government." A records custodian asserting this privilege must produce an affidavit so declaring. In cases where a member of the public believes the privilege has been misapplied, the custodian of the record must apply to district court for permission to restrict disclosure. Records discussed in public meetings or used for discussion in public meetings can NOT be protected under the deliberative process exemption.

WHAT TO DO IF ACCESS IS DENIED: Write a letter to the custodian asking for an answer in writing as to the reason access was denied. The custodian must answer within three

working days. If the reason is not deemed adequate, request for inspection may be made to district court, with hearing to be held "at the earliest practical time." Three days' notice must be given to the records custodian before the suit is filed in order to recover attorneys' fees, if successful. The custodian must prove that it would be injurious to the public interest to open the record.

PENALTY: Anyone who willfully and knowingly violates the provisions can be found guilty of a misdemeanor. The fine is set at \$100 and/or imprisonment of 90 days. If a court finds the document was withheld improperly, custodian may personally be ordered to pay petitioner's court costs.

CRIMINAL JUSTICE RECORDS (24-72-301+)

LEGISLATIVE POLICY: Criminal justice agencies shall maintain records of official actions and such records shall be open to inspection by any person and that all other records of criminal justice agencies in this state may be open for inspection.

WHAT AGENCIES ARE INVOLVED: Any court with criminal jurisdiction and any law enforcement agency in counties, cities, home rule cities, governing boards of institutions of high education, school districts, special districts or authorities which investigate crime or work with those convicted of crimes.

OFFICIAL ACTIONS INCLUDE: Arrest, indictment, or other formal filing of charges; agency taking action; date and place action taken; name, birth date, last-known address, physical description, sex of accused; charges brought or offenses alleged; disposition, including decision not to file criminal charges after arrest, conviction, acquittal, acquittal by reason of insanity; dismissal, abandonment, or indefinite postponement; formal diversion from prosecution; sentencing; correctional supervision; release from supervision with terms and conditions.

Other Criminal Justice records may be open unless:

1. Inspection prohibited by state statute.
2. Inspection prohibited by Supreme Court or other court

order.

3. Custodian believes disclosure would be "contrary to public interest" because an investigation is still in progress by law enforcement personnel, sheriff, district attorney; intelligence information, security procedures and investigatory files compiled for any other law enforcement purpose.

4. Sexual assault cases are to be stamped "Sexual Assault" and the name of the victim is to be deleted from the files before their release. Name of accused is public record.

Ethical Rules of Attorneys: The ethical rules governing attorneys and prosecutors (Rules 3.6 and 3.8) restrict attorneys and law enforcement agents associated with an investigation from making "extrajudicial statements" to the press that have "a substantial likelihood of materially prejudicing an adjudicative proceeding." However, these rule do not limit the disclosure of "records of officials actions" which the statute declares are required to be disclosed. Also, these rules arguably do not apply to disclosure of even discretionary-release records (the Comment to the rule expresses concern only with the "commentary of a lawyer" who is involved in a proceeding and recognizes "that the public value of informed commentary is great"). In any case, in exercising discretion to release pre-arrest/investigatory records, prosecutors should be advised under the ethical rules to withhold only information that poses a substantial likelihood of prejudice to a prosecution that is in progress or likely to be commenced in the reasonably near future.

INFORMATION NOT FOR PROFIT: Custodian must deny access to records to anyone who wishes to use them in a business venture. A signed statement may be necessary.

SEALING OF RECORDS: Records of persons convicted of most misdemeanors or class four or five drug felonies not involving sales of drugs may be sealed ten years after final disposition of criminal proceedings if the person has not been charged with or convicted of a crime and all restitution, fees and court costs have been paid and if a district court judge deter-

mines the privacy rights of the applicant outweighs the public interest of the record remaining public. Any petition to seal a record must be posted on the web site of the state court administrator for at least 30 days before a hearing to seal the record and the applicant must pay all expenses related to sealing a criminal record. Additionally, records of persons who were not officially charged, had charges dismissed, was acquitted or arrest records of a person who pled to a lesser charge may be sealed by the court if the person involved requests it. Traffic offenses and sexual assault cases where the defendant is convicted or pleads guilty or nolo contendere may not be sealed.

IF ACCESS IS DENIED: An individual may request a written statement of the grounds for denial of access and an answer must be produced within three working days citing the law or regulation and the general nature of the public interest which needs to be protected. An appeal may be made to district court with a hearing at "the earliest practical time."

FEES FOR COPIES: Criminal justice agencies may charge a fee not to exceed twenty-five cents per standard page for a copy of a criminal justice record or a fee not to exceed the actual cost of providing a copy, printout or photograph of a criminal justice record in a format other than a standard page. There may be additional charges for research, retrieval or redaction of records.

PENALTY: If a court finds the denial was arbitrary or capricious, it may order the custodian to pay court costs and attorney fees, and, in addition, can add a penalty of up to \$25 for each day access was improperly denied to be paid to the applicant. Violation is also punishable as a misdemeanor.

JUVENILE RECORDS (19-1-100+)

The public can be excluded from juvenile hearings if the court determines it is in the best interest of the juvenile or the community to close them. Names of juveniles in misdemeanor, custody, and abuse cases are not open to the public.

ACCESS TO JUVENILE RECORDS: Arrest and criminal

records information of juveniles charged with a crime that would be a felony if committed by an adult, involves a weapon, or non-felony traffic citation or who has been adjudicated a juvenile delinquent or is subject to revocation of probation for possession of a hand gun are public record. Other juvenile cases are closed unless the case is transferred to district court where the juvenile will be tried as an adult or the juvenile is a run-away from a correctional facility. {19-1-119(1)(b.5)}

CHILD ABUSE RECORDS are confidential unless the child dies and a criminal charge is filed, and family's name is available if arrested or formal charges filed { 19-1-120(1)(b)}.

Names of adult perpetrators charged with a crime are NOT confidential.

OPEN COURTS AND COURT PROCEDURES

U.S. Constitution, Article VI

CONSTITUTIONAL DECLARATION: Rights of Accused. In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial.

HOW TO PROTEST CLOSURE OF COURT HEARINGS

If a judge decides to close a courtroom for proceedings usually held in open court, a reporter should walk to the railing and say, "Your honor, I am a reporter. May I be heard?" The following statement should then be read:

"Your honor, I am_____, a reporter for_____, and I'd like to object on behalf of myself, my employer, and the public to the closing of this hearing (or sealing of this court record). The Colorado Supreme Court has said that all court proceedings are presumptively open and may be closed only when strictly and inescapably necessary. Our attorney is prepared to make a number of arguments against closings such as this one, and we respectfully ask the court for a hearing on those issues. I believe our attorney can be here relatively quickly for the court's convenience, and he will be able to demonstrate the closure of this case will violate the First Amendment, and possibly state statu-

tory and constitutional provision as well. I cannot make the arguments myself but our attorney can point out several issues for your consideration. If it please the court, we request the opportunity to be heard through counsel."

EXPANDED MEDIA COVERAGE - {CANON 3A(8)} **(Cameras in the Courtroom)**

A judge may authorize the use of cameras and recording equipment in the courtroom for any session which is open to the public (the only pre-trial proceedings applicable are advisements and arraignments). Limitations include no cameras during jury voir dire or "in camera" hearings and no closeups of bench conferences, communications between counsel and client or between co-counsel, or members of the jury. A judge may restrict or limit coverage as necessary. The Canon limits coverage to a pool of one video camera and one still camera at a time.

HOW TO REQUEST CAMERA ACCESS: A written request must be submitted to the judge at least one day before coverage is to begin with copies given to counsel for each party involved. The request should include the name, case number, date and time of proceeding, the type of coverage requested, and a description of the pooling arrangements, if necessary.

COLORADO JAIL RECORDS LAW (17-26-118)

ARREST RECORDS: Each county jail must keep a daily record of the commitments and discharges of all persons. The record must include the name, offense, term of sentence, fine, age, sex, citizenship, how and by whom committed and when and by whom discharged. The record **shall** be open to inspection by the public at all reasonable hours.

For more information go to:
www.coloradopressassociation.com
and click on the Sunshine Law link
or call the Colorado Press Association at (303) 571-5117

Statutory Reference Guide
(For Complete text, refer to citation below)

Open Meetings (Sunshine) - C.R.S. 24-6-401+
Open Public Records - C.R.S. 24-72-201+
Criminal Justice Records - C.R.S. 24-72-301+
Juvenile Code - C.R.S 19-1-101+
Shield Law - C.R. S 13-90-119, 24-72.5-101+

**FORMAT FOR LETTER REQUESTING ACCESS TO
RECORDS UNDER THE COLORADO OPEN RECORDS
LAW, SS24-72-201, et. seq.**

**Records Custodian [NAME AND ADDRESS OF AGENCY]
(Requests should be directed to the individuals of each
agency that has either actual possession of the records, or legal
responsibility for maintaining.)**

**Pursuant to the Colorado Open Records Act, SS24-72-201 et
seq., will you please make available for inspection and copy-
ing the following public records:**

**(Use a description of the records sought which is reasonably
particularized but general enough to encompass all records
that may contain the information.)**

**If these records are not in your custody or control, will you
please forthwith so notify me and state in detail to the best of
your knowledge the reason for the absence of the records,
their location, and what person or persons has custody or con-
trol of the records, as required by SS24-72-203(2),C.R.S.**

**Will you please set a date and hour within three working
days at which time the records will be available for inspection,
pursuant to SS24-72-203(3).**

**If you deny access to any of the above public records, will
you please provide forthwith a written statement of the
grounds for the denial, citing the law or regulation under
which access is denied, as required by SS24-72-204(4).**

Sincerely,
[***NAME***]

Sample Federal FOI request

[**YOUR ADDRESS**]

[**DATE**]

[**NAME OF BUREAUCRAT OR FOIA OFFICER-OPTIONAL**]

FOIA Officer

[**ADDRESS OF FOIA OFFICER**]

By Certified Mail - Return Receipt Requested

Re: Freedom of Information Act Request

This is a request for information under the Freedom of Information Act, 5 U.S.C. § 552, on behalf of the [NAME OF GROUP**] for records [**DESCRIPTION OF THE DOCUMENTS relating to, constituting, discussing, concerning or mentioning**]**

As required by the Freedom of Information Act, I expect a reply within ten working days. If you have any questions concerning this request, please contact me. Thank you.

**Sincerely,
[**NAME**]**

Protest Closure of Court Hearings

If a judge decides to close a courtroom for procedures usually held in open court, a reporter should walk to the railing and say, "Your honor, I am a reporter. May I be heard?" The following statement should then be read:

"Your honor, I am _____, a reporter for _____, and I'd like to object on behalf of myself, my employer, and the public to the closing of this hearing (or sealing of this court record). The Colorado Supreme Court has said that all court proceedings are presumptively open and may be closed only when strictly and inescapably necessary. Our attorney is prepared to make a number of arguments against closings such as this one. I cannot make the arguments myself but our attorney can point out several issues for your consideration. If it pleases the court, we request the opportunity to be heard through counsel."

Protest Decision to Go Into Executive Session

An executive session is permitted only during a regular or special meeting and must follow this formula - Topic for executive session, with as much specificity as can be provided without compromising the reason for executive session must be announced in public. A vote to go into executive session must be taken. If you feel the public body isn't following the proper procedures, you should ask to speak and read the following statement:

"I am _____, a reporter for _____ and I'd like to object on behalf of my employer and the public to the decision to go into executive session. Colorado Revised Statutes state this body can only meet in executive session to discuss certain matters, and this does not appear to meet any of those criteria. I'd like the opportunity to allow our attorney or someone from our newspaper to present our arguments against meeting in executive session."