

Legislative Policies Related to Public Records and Email

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Presented by Anastasia DelCarpio and Ed DeCecco



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Purpose of the Policy

To adopt policies for the Legislative Branch related to:

1. The Colorado Open Records Act (CORA);
2. Email; and
3. Retention of records.



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Types of Proposed Changes

- Nonsubstantive changes
 - Improve readability and clarity, as well as update language to reflect modern grammar and usage.
- Substantive changes
 - Includes changes related the General Assembly's implementation of the Google Workspace.
- Policy changes for the Committee's consideration
 - Increase the hourly search and retrieval fee?
 - Permit custodians to waive the search and retrieval fee?



Nonsubstantive Changes

Improve readability and clarity, as well as update language to reflect modern grammar and usage.

G. F. To provide recommendations for the retention or **disposition deletion** of **e-mail email** by members and staff and to promote best practices for the effective management of **e-mail with email keeping** the potential of a CORA request in mind.

6. Responses to requests of members may be **made drafted and sent** by the member or by **a staff-agency-designated the Office of Legislative Legal Services, if authorized** by the member.

2. To help assure receipt of a request, in the case of requests for inspection of a member's records, **such the** request **must should** be **both** submitted to **both** the member and **copied** to the Director of the Office of Legislative Legal Services. Upon receipt of **such**



Nonsubstantive Changes

Improve readability and clarity, as well as update language to reflect modern grammar and usage.

1. Under no circumstances shall **members and legislative staff use** equipment, supplies, or other similar items, including **e-mail email**, which is the property of the Colorado General Assembly, **be used** for political purposes of a partisan nature, for campaign purposes, or for **the** personal gain of a legislative staff person.

5. A request **shall be is** considered "made" when the request is actually received by the person to whom the request is **made directed**:

reasonable effort. This provision **shall does** not **be construed to** prohibit the custodian of a staff agency from making public records available pursuant to an oral request for inspection if **such the** records are normally readily available for inspection by the public.



Substantive Changes

Changes to Colorado law.

~~2. Pursuant to section 24-6-402, Colorado Revised Statutes, (the "Open Meetings" law) if members use e-mail to discuss pending legislation or other public business among themselves, that e-mail transaction may be considered a public meeting, and, as such may be subject to the provisions of that section.~~

IV. Policies Include Changes in the Law

If the Colorado Revised Statutes are amended to create a conflict with any provision of these Policies, the Policies will be interpreted to apply the law.



Substantive Changes

Remove provisions that are inconsistent with CORA or current practices.

~~d. Will make every attempt, where possible, to respect an objection to disclosure of an e-mail based on a claim that disclosure will result in personal embarrassment.~~

~~a. Waive his or her right to personally inspect public records in the office of the custodian, and waive any objection to the custodian's identification of the document or documents that the custodian determines are responsive to the applicant's request; and,~~



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Substantive Changes

Technological changes - removing references to technology no longer used by the General Assembly.

4. Requests may be submitted by postal mail, ~~electronic mail, fax email~~, or hand-delivery and shall include the ~~applicant's name~~ requester's email address, street address; if ~~any the requester is seeking delivery of public records by postal mail~~, and telephone number. Information regarding ~~electronic mail email~~ addresses and contact information for individual members, ~~employees of~~ the House of Representatives, ~~employees of~~ the Senate, and the legislative staff agencies is attached as Addendum A.

Legislative Council Staff
State Capitol Building
200 E. Colfax Ave., Room 029
Denver, CO 80203
(303) 866-3521
~~(303) 866-3855 (fax)~~
LCS.Director@coleg.gov

5. A request ~~shall be~~ is considered "made" when the request is actually received by the person to whom the request is ~~made directed~~:
- Postal mail or an electronic message is received when it is opened in the usual course of business by the recipient or a person authorized to open the recipient's postal or ~~electronic mail: email~~.
 - ~~A fax is received when it is printed during regular business hours, or if received after hours, at 8:00 a.m. on the following business day.~~



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Substantive Changes

Technological changes - reflect the shift to providing responsive public records digitally.

5. The custodian or the custodian's designee shall make the responsive public records available for inspection via email or, if there is a request to view the records in person, during regular business hours: 8:00 a.m. to 5:00 p.m., Monday through Friday, except for times the custodian's office is closed.
 - a. Upon notice to the requester that the public records are available for inspection through an online cloud-based storage system, the records will be available for inspection for thirty calendar days after the date of notice. At the conclusion of the thirty-day period, the requester's CORA request will be deemed closed and any responsive public records shared through an online cloud-based storage system will no longer be accessible.

- 6: 7. As a general practice, in response to a public an open records request:
 - a. ~~Public records in hard copy, paper, published, or documentary form shall be made available for inspection;~~ Public records will be shared with the requester electronically, whenever possible;



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Substantive Changes

Technological changes - including other forms of electronic communication, not just email, where applicable.

III. ~~Email and Other Electronic Mail~~ Communications

A. Scope

- 1: Pursuant to CORA, ~~e-mail electronic communications, including email,~~ that ~~is are~~ written in the conduct of public business by members or legislative staff could be considered a public record. ~~This is true records,~~ regardless of whether the ~~e-mail was electronic communications were~~ sent or received on a public or privately owned ~~personal~~ computer ~~or and regardless of~~ whether a member or legislative staff ~~utilize the utilizes a~~ state or a private service provider ~~that is~~ paid for at ~~member the member's or staff staff's~~ expense to send or receive the ~~e-mail electronic communications~~. Therefore, any ~~e-mail electronic communications~~ that ~~is are~~ written in the conduct of public business by members or legislative staff could be subject to the provisions of CORA and this ~~e-mail policy~~. Policy.

~~own categories in writing.~~ Members and legislative staff are encouraged, to the extent possible, to apply these retention guidelines to text messages and other forms of electronic communications.



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Substantive Changes

Technological changes - removing information that is no longer accurate due to advances in technology and the switch to Google Workspace.

- d. ~~Use the network e-mailing list sparingly. Use of these lists contributes greatly to network traffic and should be avoided unless necessary.~~
- e. ~~An e-mail file quota of 1GB has been set on all e-mail accounts maintained on the General Assembly in order to control growth of e-mail related data being stored on the General Assembly's resources and to encourage proper management of e-mail as a resource of the General Assembly. Users will receive a warning at 650MB that they are nearing the limit so they can take steps to reduce the e-mail file size. Once the quota is reached, no new e-mail will be delivered. The primary means for reducing e-mail file size is through regular deletion or archiving of messages. Agency technical support or information technology personnel from the Legislative Council Staff office~~



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Substantive Changes

Changes from the Google Workspace implementation staff recommendations.

- b. Each member of the Senate and the House of Representatives is the custodian of public records under **their custody and control. A district email account is under** the custody and control of the member **from that district.**
- a. **Members should also not respond to a campaign-related email that is sent to a coleg.gov or district account. Instead they should respond in a separate email from a non-state provided account.**



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Substantive Changes

Changes from the Google Workspace implementation staff recommendations.

6. **Members shall not share their individual Google Workspace account login information with anyone, including aides. Upon the member's request, aides may be provided delegated access to the member's individual account.**
7. **Members shall promptly communicate aide turnover to the Secretary of the Senate or Chief Clerk of the House of Representatives, for purposes of facilitating timely addition or deletion of access to the Google Workspace account.**
9. **Staff members from Legislative Council Staff, Information Technology are not the custodian of a record by virtue of having access to it in order to provide information technology assistance to members and legislative staff agencies.**
10. **Staff members, including Legislative Council Staff, Information Technology, are prohibited from accessing data within member and district Google Workspace accounts, unless requested to do so by the member who owns the account.**

Substantive Changes

Removing information that is now common knowledge.

F. Forwarding Messages

~~1. — Users should be aware that they have no control over what the recipient of an e-mail does with that e-mail once it is in their possession. The intentional or accidental forwarding of an e-mail is always a possibility. When writing an e-mail, this possibility should always be kept in mind. A sender may attempt to limit forwarding by identifying to the recipient on the subject line: “Do Not Forward” or “For Your Eyes Only.”~~

~~a. — Where possible, read your incoming e-mail regularly.~~

~~b. — Where a response is appropriate, answer e-mail promptly.~~

~~c. — Keep your e-mail environment organized.~~

E. Confidentiality

~~No guarantee of any degree of confidentiality of e-mail can be made. If it is necessary or desirable to send confidential information, the use of another medium is strongly recommended.~~



Possible Policy Changes

Decision item 1: Does the EC want to keep or delete subsection III.C.?

C. [Acceptable Content]

1. Users of the General Assembly network will be held to the same standards of professionalism, good taste, and judgment when utilizing **e-mail email** as with any other business communication.
2. This policy does not prohibit users of the General Assembly network from sending e-mail of a social nature directly related to officially sponsored functions of the General Assembly or any staff agency that do not contain otherwise prohibited content. **The following are examples of acceptable e-mail:**
 - a. **Social function announcements.**
 - b. **Birth, bereavement, and engagement announcements.**
 - c. **Lost and found.**
 - d. **Blood drive & other charitable event announcements.**
3. **The following are examples of e-mail that would NOT be considered acceptable:**
 - a. **Garage Sale announcements.**
 - b. **Sporting pools.**
 - c. **Ticket/merchandise sales.**
 - d. **Jokes, audio, or video correspondence that are strictly for entertainment purposes.**
4. **3. Avoid Users of the General Assembly network should avoid** the use of language that might be offensive or embarrassing if read by an unintended recipient.

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Possible Policy Changes

Decision item 2: Does the EC want to increase the hourly search and retrieval fee, to reflect inflation, from \$33.58 per hour to \$41.37 per hour?

2. Fees for **search Search** and **retrieval Retrieval**:
 - a. In the case of any request requiring more than one hour **of staff time** for search and retrieval or for supervision of inspection or copying, the custodian or the custodian's designee [shall][**may**] charge a fee of ~~\$33.58~~ **\$41.37** per hour **for such staff time**. See: *Black v. S.W. Water Conserv. Dist.*, 74 P.3d 462 (Colo. App.

Section 24-72-205 (6) (b), C.R.S., requires the Director of Research of the Legislative Council Staff to adjust the Colorado Open Records Act maximum hourly fee for the research and retrieval of public documents for inflation on July 1, 2019, and each five years thereafter. The maximum hourly fee increased from \$30.00 to \$33.58 on July 1, 2019. Effective July 1, 2024, the maximum hourly fee will increase to \$41.37. Before increasing the fee, government entities must revise and publish their Colorado Open Records Act policies to include the new fee.



Possible Policy Changes

Decision item 3: Does the EC want to permit custodians within the General Assembly to waive the search and retrieval fee at their discretion?

2. Fees for ~~search~~ **Search** and ~~retrieval~~ **Retrieval**:

- a. In the case of any request requiring more than one hour ~~of staff time~~ for search and retrieval or for supervision of inspection or copying, the custodian or the custodian's designee ~~[shall]~~**[may]** charge a fee of ~~\$33.58~~ **\$41.37** per hour ~~for such staff time~~. See: *Black v. S.W. Water Conserv. Dist.*, 74 P.3d 462 (Colo. App.

requester for transmitting public records via electronic mail. Within the period specified in section 24-72-203 (3)(a), the custodian shall notify the record requester that a copy of the record is available but will only be sent to the requester once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records transmission and for all other fees lawfully allowed, **unless recovery of all or any portion of such costs or fees has been waived by the custodian.** Upon either receiving such payment or making arrangements to

Possible Policy Changes

FY Year	Requests total	Required a search & retrieval fee	Fees paid	Total fees collected
2020-21	263	16	13 (81.25%)	\$1,273.23
2021-22	288	74	12 (16.22%)	\$2,330.46
2022-23	308	33	7 (21.21%)	\$338.49
2023-24	282	31	13 (51.72%)	\$5,754.95
2024-25	106*	5*	3 (60%)*	\$1,118.89*

*as of 3/3/25



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Possible Policy Changes

Examples of CORA requests that required fees over \$100:

All of Representative X's e-mail records containing the following terms: firearm, gun, waiting period, constitutional, acre, shot, shooting, AR, assault rifle, magazine, mag, dealer, handgun, rifle....

Any and all communications to or from Senator X including but not limited to emails, letters, memos, text messages or meeting notes mentioning the following keywords: "Election" or "elections"; "Campaign," "campaigns," "campaigned," or "campaigning." "Race,"; "races," "ran," "run," or "running."; "Primary" or "primaries."; "Democrat," "Democrats," "Republican," or "Republicans."; and "Congress," or "House of Representatives."....



Conclusion

1. Questions?
2. Next Steps

