

CHAPTER 38

PUBLIC ACCESS TO INFORMATION AND RECORDS

Rule 2. Public Access to Administrative Records of the Judicial Branch

[NO CHANGE]

SECTION 1

DEFINITIONS

For purposes of Chapter 38, Rule 2, the following definitions apply:

(a) [NO CHANGE]

(b) “Confidential personal information” means a person's home address, telephone number, social security number, birth date, bank account information, tax identification number, ~~personal signature,~~ personal email addresses, or similar unique identifying information other than a person's name.

COMMENT: [NO CHANGE]

(c) [NO CHANGE]

(1) For Colorado State Courts and Probation, the custodian is the Chief Justice. The Chief Justice has delegated custodial authority to the following: the chief judge in each judicial district; the chief judge of the court of appeals; and the presiding judge of the Denver Probate and Denver Juvenile courts in their respective courts. Each chief judge or presiding judge may delegate authority to the ~~district administrator~~ court executive, clerk of court, chief probation officer, or other designee.

(2) For the Office of the State Court Administrator, the custodian is the State Court Administrator or ~~his or her~~ the State Court Administrator's designee.

(3) For the Office of the Presiding Disciplinary Judge, the custodian is the Presiding Disciplinary Judge or ~~his or her~~ the Presiding Disciplinary Judge's designee.

(4) For the Office of Judicial Performance Evaluation, the custodian is the Executive Director of the Office of Judicial Performance Evaluation or ~~his or her~~ the Director's designee.

(5) For the Office of Attorney Regulation Counsel and the Office of Attorney Registration, the custodian is the Attorney Regulation Counsel or ~~his or her~~ the Attorney Regulation Counsel's designee.

(6) For the Colorado Lawyer Assistance Program, the custodian is the Executive Director of the Colorado Lawyer Assistance Program or ~~his or her~~ the Director's designee.

(7) For the Colorado Attorney Mentor Program, the custodian is the Executive Director of the Colorado Attorney Mentor Program or ~~his or her~~ the Director's designee.

(8) For the Office of Alternate Defense Counsel, the custodian is the Director of the Office of Alternate Defense Counsel or ~~his or her~~ the Director's designee.

(9) For the Office of the Child's Representative, the custodian is the Executive Director of the Office of the Child's Representative or ~~his or her~~ the Director's designee.

(10) For the Office of the State Public Defender, the custodian is the State Public Defender or his or her designee.

(11) For the Office of the Respondent Parents' Counsel, the custodian is the Executive Director of the Office of the Respondent Parents' Counsel or ~~his or her~~ the Director's designee.

(12) For the Office of Bridges of Colorado, the custodian is the Executive Director of the Office of Bridges of Colorado or the Director's designee.

(d) to (e) [NO CHANGE]

COMMENT: [NO CHANGE]

(f) to (h) [NO CHANGE]

SECTION 2

ACCESS TO ADMINISTRATIVE RECORDS

(a) All Judicial Branch administrative records ~~shall~~ must be available for inspection by any person at reasonable times, except as provided in this rule or as otherwise provided by federal statute or regulation, state statute, court rule, or court order. The custodian of any administrative record ~~shall~~ must make policies governing the inspection of administrative records that are reasonably necessary to protect the records and prevent unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

(b) to (c) [NO CHANGE]

SECTION 3

EXCEPTIONS AND LIMITATIONS ON ACCESS TO RECORDS.

(a) Exceptions and Limitations on Access to Records. The custodian of any administrative record ~~shall~~ must allow any person to inspect a record or any portion thereof except based on the following grounds or as provided in subsection (b) or (c):

(1) to (4) [NO CHANGE]

(b) May Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian may deny inspection of the following records on the ground that disclosure would be contrary to the public interest:

(1) Information related to research projects conducted by or in affiliation with the Judicial Branch.

(2) ~~E-mail~~Email addresses provided by a person to the Judicial Branch for the purpose of future electronic communications to the person from the Judicial Branch.

(3) ~~E-mail~~Email addresses of any person currently or formerly associated with the Judicial Branch by virtue of employment, internship, volunteer position, contracting, or appointment to a board, commission, or committee.

COMMENT: CORA does not have a similar provision governing ~~email~~e-mail addresses of employees. This provision is intended to protect against improper ex parte contacts and to protect personal and Judicial Branch ~~e-mails~~email from being subject to phishing, marketing, or other security risks.

(4) [NO CHANGE]

COMMENT: [NO CHANGE]

(5) [NO CHANGE]

COMMENT: The rule is intended to protect the confidential personal information of judges and justices, Judicial Branch employees, and payees. ~~Judges and justices are required to provide periodic financial disclosures to the Secretary of State. §§ 24-6-202, 203, C.R.S. (2015).~~

(6) to (7) [NO CHANGE]

(8) All data and records pertaining to administration of a licensing or certification examination, including application materials, test questions, applicant answers, scoring keys, all grading information and materials, and graded answers.

COMMENT: ~~This provision is not in CORA.~~ The Judicial Branch administers certain licensing and certification examinations, including the bar examination for attorneys. This provision recognizes that disclosure of exam materials or individual application materials may be contrary to the public interest.

(9) Security records, including records regarding security plans developed or maintained by the Judicial Branch, such as:

(A) to (D) [NO CHANGE]

(E) Any record provided by another public entity that contains details of security arrangements or investigations. The Judicial Branch custodian must refer a request to inspect the record to the public entity that provided the record and ~~shall~~must disclose to the requestor the name of the public entity.

This paragraph (9) does not prohibit the custodian from transferring records containing details of security arrangements or investigations to the Division of Homeland Security and Emergency Management in the Department of Public Safety, the governing body of any city, county, or other political subdivision of the state, or any federal, state, or local law enforcement agency. The custodian ~~shall~~must not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is already publicly available.

COMMENT: CORA contains a similar provision. § 24-72-204(2)(a)(VIII), C.R.S. (2015). This rule provides more specific detail on the types of security records maintained by the Judicial Branch.

Notwithstanding any provision to the contrary in this subsection (b), the custodian ~~shall~~must deny inspection of any record that is confidential by federal statute or regulation, state statute, court rule, or court order.

(c) Must Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian must deny inspection of the following records:

(1) [NO CHANGE]

(2) Personnel files. This paragraph (2) does not prevent the person in interest from requesting information from ~~his or her~~the person in interest's own personnel file or from granting written, signed permission for a third party to access specific components of ~~his or her~~the person in interest's personnel file that are subject to inspection by the employee.

(3)(A) Any records of sexual harassment complaints and investigations, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to information necessary to the investigation of such a complaint. This paragraph ~~shall~~does not apply to records of sexual harassment complaints and investigations that are included in court files and records of court proceedings. Disclosure of all or a part of any records of sexual harassment complaints and investigations to the person in interest is permissible to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved. This paragraph ~~shall~~does not preclude disclosure of all or part of the results of an investigation of the general employment policies and procedures of an agency, office, department, or division, to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved.

(B) to (C) [NO CHANGE]

(4) to (6) [NO CHANGE]

(7) Privileged information; confidential legal, commercial, financial, geological, or geophysical data; and confidential personal information. The custodian is not required, however, to redact confidential personal information of the requestor if the requestor is the person in interest.

(8) Names, addresses, ~~e-mail~~email addresses, telephone numbers, and personal financial information of users of public facilities or cultural services that are owned and operated by the

Judicial Branch. This paragraph does not prohibit the publication of such information in an aggregate or statistical form if the identity, location, or habits of individuals are not revealed. This paragraph does not prohibit the custodian from transmitting data to any agent of an investigative branch of a federal agency or any criminal justice agency as defined in section 24-72-302(3), C.R.S. (2015), who makes a request to the custodian to inspect such records and who asserts that the request for information is reasonably related to an investigation within the scope of the agency's authority and duties.

(9) to (12) [NO CHANGE]

(13) Collection files pertaining to a person, including collections investigator files, with the exception that such files ~~shall~~must be available to the person in interest to the extent permitted by federal statute or regulation, state statute, court rule, or court order. Such files must also be available to the Colorado Department of Corrections, a Colorado Community Corrections program, and the Colorado Department of Human Services if the person in interest is in the custody or under the supervision of any one of those entities. Information regarding restitution collections efforts and payment plans ~~shall~~must be available to the victim(s) of the offender's crime(s) after confidential personal information has been redacted. Aggregate or statistical information related to collection files is available for inspection.

COMMENT: [NO CHANGE]

(14) to (23) [NO CHANGE]

(24) 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 within the Judicial Branch, unless the privilege has been waived. In some circumstances, public disclosure of such records may cause substantial injury to the public interest. If any administrative record is withheld pursuant to this paragraph, the custodian must provide a sworn statement describing each record withheld, explaining why each such document is privileged and why disclosure would cause substantial injury to the public interest. If the requestor so requests, the custodian must apply to the district court for an order permitting him or her to restrict disclosure. The application ~~shall~~is be subject to the procedures and burden of proof provided for in subsection (d) of this section. All persons entitled to claim the privilege with respect to the records in issue ~~shall~~must be given notice of the proceedings and ~~shall~~must have the right to appear and be heard. In determining whether disclosure of the records would cause substantial injury to the public interest the court ~~shall~~must weigh, based on the circumstances presented in the particular case, the public interest in honest and frank discussion within government and the beneficial effects of public scrutiny upon the quality of governmental decision-making and public confidence therein.

(25) to (27) [NO CHANGE]

(d) Petition for Order Permitting Restriction.

(1) In addition to any of the foregoing, if in the opinion of the custodian access to the contents of a record would do substantial injury to the public interest, notwithstanding the fact that the

record might otherwise be available for inspection, or if the custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if this rule restricts access to the record, the custodian may petition the district court of the district in which the record or the custodian is located for an order permitting restriction of access to the record or for the court to determine if access to the record is restricted. A hearing on the petition ~~shall~~must be held at the earliest practical time. The person seeking access to the record must be served with notice of the hearing pursuant to the Colorado Rules of Civil Procedure and has the right to appear and be heard.

(2) to (3) [NO CHANGE]

SECTION 4

PROCEDURE TO ACCESS RECORDS

COMMENT: This rule creates a different process than CORA for accessing records but with similar timeframes. Under the rule, the Judicial Branch responds to a request for inspection within three business days of receipt of the request. Certain extenuating circumstances specified in the rule may require additional time for a response. The fees that may be charged are set forth in subsection 4(c) below. ~~The Any fees charged must be consistent with Chief Justice Directive 06-01, but the fees are similar to the fees under CORA.~~

(a) [NO CHANGE]

(b) Response. Within three business days of receipt of a request for inspection (not including the day of receipt), the custodian must provide one or more of the following responses:

(1) The record is available for inspection.

(A) When a record is available for inspection, the custodian must provide access to a record or provide written notice of a time and location for inspection of the record within a reasonable time. Production is subject to payment of any fee required under subsection (c) of this section; and

(B) The custodian may determine whether the record will be provided in print or electronic format. If the requestor is unable to use or access records provided in electronic format, the custodian will provide a copy, printout, or photograph of the record.

(2) The record is not available for inspection.

(A) When a record is not available for inspection, the custodian must provide written notice that:

(i) The record requested is not maintained by the custodian to whom the request was made;

(ii) The request did not provide information sufficient to identify the record sought; ~~or~~

(iii) The record is not available for inspection pursuant to section 3 of this rule; or

(iv) The record is not available for inspection because the custodian or designee cannot access the requested record. If a custodian or designee cannot provide records per this section 4(b)(2)(A)(iv), they must explain why the requested record is inaccessible.

(B) If the custodian denies access to a record, the requestor may request a written statement of the grounds for the denial. Upon receipt the custodian must, within a reasonable time, provide a written statement setting forth the grounds for denial.

(3) The custodian requires an additional seven business days to respond because extenuating circumstances exist. A finding that extenuating circumstances exist must be made in writing by the custodian and provided to the requestor. Extenuating circumstances exist only when:

(A) to (B) [NO CHANGE]

(C) The request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian's obligation to perform other responsibilities; or-

(D) The custodian, or a person who is essential to the process of responding to a request, is not scheduled to work within all or part of the three-day period; but any other employee or designee of the custodian must provide all other available responsive records within the applicable response timeframe.

(c) Fees.

(1) A custodian may impose a fee in response to a record request if the custodian has, before the date of receiving the request, either posted on the custodian's website or otherwise made publicly available a written policy that specifies the applicable conditions and fees for research, retrieval, redaction, and copying, ~~and transmission~~ of a record. ~~Assessment of fees shall be consistent with Chief Justice Directive 06-01. Where the fee for a certified copy or other copy, printout, or photograph of a record is specifically prescribed by federal statute or regulation, state statute, court rule, or court order, the specific fee shall~~ must apply.

A. The maximum fees for research, retrieval, and redaction must be in accordance with the formula set forth in CORA. For each request, the custodian must not charge for the first hour of employee time spent on research, retrieval, and redaction.

B. A custodian may charge up to \$.25 per page for documents produced in a hard-copy format.

i. The per- page fee for documents produced must be waived for: the State of Colorado, all state or Judicial agencies, including the Department of Law, Office of the State Public Defender, Office of the Alternate Defense Counsel and its contract attorneys, Office of Respondent Parents' Counsel and its contract attorneys, and Office of the Child's Representative and its contract attorneys, or other representatives of any of the above listed

entities or contract attorneys, institutions, and political subdivisions thereof. A “political subdivision” of the state means any governmental organization formed and operating under the laws of this state and includes every county; city and county; city; town; district, including any special district, school district, fire protection district, or improvement district; and authority, including any highway authority, regional transportation authority, housing authority within this state, or a Colorado district attorney’s office. The waiver above does not apply unless the requestor identifies themselves as an attorney or other representative of one of the above-listed entities at the time of the request.

ii. The custodian need not waive fees for any other reason, including for claims of indigence.

(2) Before performing any services necessary to respond to a request, the custodian may require the requestor to pay a deposit representing a portion or the full amount of the estimated fees that will be charged by the custodian per the custodian’s written policy. In circumstances in which a full deposit is required for the estimated fees, the records requested must be made available within three business days from the date of the receipt of the deposit, unless extenuating circumstances exist as set forth in Section 4(b)(3) of this rule.

(32) If t~~The custodian does not receive full payment as set forth in Section 4(c)(2), the custodian~~ may notify the requestor that a copy of the record is available but will only be produced once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records research, retrieval, redaction, and copying, ~~and transmission~~, and for all other fees lawfully imposed.

SECTION 5

RESOLUTION OF DISPUTES

(a) [NO CHANGE]

(1) Unless the court finds that the denial of the right of inspection was proper, it ~~shall~~must order the custodian to permit such inspection and ~~shall~~must award court costs and reasonable attorney fees to the prevailing requestor in an amount to be determined by the court. No court costs and attorney fees may be awarded to a person who is a party engaged in litigation with a Judicial Branch agency and who petitions the court for an order pursuant to this section 5 for access to a record of the Judicial Branch agency if the court finds that the record sought is related to the pending litigation and is discoverable pursuant to applicable rules of procedure.

(2) If the court finds that the denial of the right of inspection was proper, the court ~~shall~~must award court costs and reasonable attorney fees to the custodian if the court finds that the petition was frivolous, vexatious, or groundless.

(b) In defense against a petition for an order permitting inspection, the custodian may raise any issue that could have been raised and is not limited by any response under sections 3 or 4 of this rule.

CHAPTER 38

PUBLIC ACCESS TO INFORMATION AND RECORDS

Rule 2. Public Access to Administrative Records of the Judicial Branch

[NO CHANGE]

SECTION 1

DEFINITIONS

For purposes of Chapter 38, Rule 2, the following definitions apply:

(a) [NO CHANGE]

(b) “Confidential personal information” means a person's home address, telephone number, social security number, birth date, bank account information, tax identification number personal email addresses, or similar unique identifying information other than a person's name.

COMMENT: [NO CHANGE]

(c) [NO CHANGE]

(1) For Colorado State Courts and Probation, the custodian is the Chief Justice. The Chief Justice has delegated custodial authority to the following: the chief judge in each judicial district; the chief judge of the court of appeals; and the presiding judge of the Denver Probate and Denver Juvenile courts in their respective courts. Each chief judge or presiding judge may delegate authority to the court executive, clerk of court, chief probation officer, or other designee.

(2) For the Office of the State Court Administrator, the custodian is the State Court Administrator or the State Court Administrator’s designee.

(3) For the Office of the Presiding Disciplinary Judge, the custodian is the Presiding Disciplinary Judge or the Presiding Disciplinary Judge’s designee.

(4) For the Office of Judicial Performance Evaluation, the custodian is the Executive Director of the Office of Judicial Performance Evaluation or the Director’s designee.

(5) For the Office of Attorney Regulation Counsel and the Office of Attorney Registration, the custodian is the Attorney Regulation Counsel or the Attorney Regulation Counsel’s designee.

(6) For the Colorado Lawyer Assistance Program, the custodian is the Executive Director of the Colorado Lawyer Assistance Program or the Director’s designee.

(7) For the Colorado Attorney Mentor Program, the custodian is the Executive Director of the Colorado Attorney Mentor Program or the Director’s designee.

(8) For the Office of Alternate Defense Counsel, the custodian is the Director of the Office of Alternate Defense Counsel or the Director's designee.

(9) For the Office of the Child's Representative, the custodian is the Executive Director of the Office of the Child's Representative or the Director's designee.

(10) For the Office of the State Public Defender, the custodian is the State Public Defender or his or her designee.

(11) For the Office of the Respondent Parents' Counsel, the custodian is the Executive Director of the Office of the Respondent Parents' Counsel or the Director's designee.

(12) For the Office of Bridges of Colorado, the custodian is the Executive Director of the Office of Bridges of Colorado or the Director's designee.

(d) to (e) [NO CHANGE]

COMMENT: [NO CHANGE]

(f) to (h) [NO CHANGE]

SECTION 2

ACCESS TO ADMINISTRATIVE RECORDS

(a) All Judicial Branch administrative records must be available for inspection by any person at reasonable times, except as provided in this rule or as otherwise provided by federal statute or regulation, state statute, court rule, or court order. The custodian of any administrative record must make policies governing the inspection of administrative records that are reasonably necessary to protect the records and prevent unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office.

(b) to (c) [NO CHANGE]

SECTION 3

EXCEPTIONS AND LIMITATIONS ON ACCESS TO RECORDS.

(a) Exceptions and Limitations on Access to Records. The custodian of any administrative record must allow any person to inspect a record or any portion thereof except based on the following grounds or as provided in subsection (b) or (c):

(1) to (4) [NO CHANGE]

(b) May Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian may deny inspection of the following records on the ground that disclosure would be contrary to the public interest:

(1) Information related to research projects conducted by or in affiliation with the Judicial Branch.

(2) Email addresses provided by a person to the Judicial Branch for the purpose of future electronic communications to the person from the Judicial Branch.

(3) Email addresses of any person currently or formerly associated with the Judicial Branch by virtue of employment, internship, volunteer position, contracting, or appointment to a board, commission, or committee.

COMMENT: CORA does not have a similar provision governing email addresses of employees. This provision is intended to protect against improper ex parte contacts and to protect personal and Judicial Branch email from being subject to phishing, marketing, or other security risks.

(4) [NO CHANGE]

COMMENT: [NO CHANGE]

(5) [NO CHANGE]

COMMENT: The rule is intended to protect the confidential personal information of judges and justices, Judicial Branch employees, and payees.

(6) to (7) [NO CHANGE]

(8) All data and records pertaining to administration of a licensing or certification examination, including application materials, test questions, applicant answers, scoring keys, all grading information and materials, and graded answers.

COMMENT: The Judicial Branch administers certain licensing and certification examinations, including the bar examination for attorneys. This provision recognizes that disclosure of exam materials or individual application materials may be contrary to the public interest.

(9) Security records, including records regarding security plans developed or maintained by the Judicial Branch, such as:

(A) to (D) [NO CHANGE]

(E) Any record provided by another public entity that contains details of security arrangements or investigations. The Judicial Branch custodian must refer a request to inspect the record to the public entity that provided the record and must disclose to the requestor the name of the public entity.

This paragraph (9) does not prohibit the custodian from transferring records containing details of security arrangements or investigations to the Division of Homeland Security and Emergency Management in the Department of Public Safety, the governing body of any city, county, or other political subdivision of the state, or any federal, state, or local law enforcement agency. The custodian must not transfer any record received from a nongovernmental entity without the prior written consent of the entity unless such information is already publicly available.

COMMENT: CORA contains a similar provision. § 24-72-204(2)(a)(VIII), C.R.S. (2015). This rule provides more specific detail on the types of security records maintained by the Judicial Branch.

Notwithstanding any provision to the contrary in this subsection (b), the custodian must deny inspection of any record that is confidential by federal statute or regulation, state statute, court rule, or court order.

(c) Must Deny Inspection. Unless otherwise provided by federal statute or regulation, state statute, court rule, or court order, the custodian must deny inspection of the following records:

(1) [NO CHANGE]

(2) Personnel files. This paragraph (2) does not prevent the person in interest from requesting information from the person in interest's own personnel file or from granting written, signed permission for a third party to access specific components of the person in interest's personnel file that are subject to inspection by the employee.

(3)(A) Any records of sexual harassment complaints and investigations, whether or not such records are maintained as part of a personnel file; except that, an administrative agency investigating the complaint may, upon a showing of necessity to the custodian of records, gain access to information necessary to the investigation of such a complaint. This paragraph does not apply to records of sexual harassment complaints and investigations that are included in court files and records of court proceedings. Disclosure of all or a part of any records of sexual harassment complaints and investigations to the person in interest is permissible to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved. This paragraph does not preclude disclosure of all or part of the results of an investigation of the general employment policies and procedures of an agency, office, department, or division, to the extent that the disclosure can be made without permitting the identification, as a result of the disclosure, of any individual involved.

(B) to (C) [NO CHANGE]

(4) to (6) [NO CHANGE]

(7) Privileged information; confidential legal, commercial, financial, geological, or geophysical data; and confidential personal information. The custodian is not required, however, to redact confidential personal information of the requestor if the requestor is the person in interest.

(8) Names, addresses, email addresses, telephone numbers, and personal financial information of users of public facilities or cultural services that are owned and operated by the Judicial Branch. This paragraph does not prohibit the publication of such information in an aggregate or statistical form if the identity, location, or habits of individuals are not revealed. This paragraph does not prohibit the custodian from transmitting data to any agent of an investigative branch of a federal agency or any criminal justice agency as defined in section 24-72-302(3), C.R.S. (2015), who makes a request to the custodian to inspect such records and who asserts that the request for

information is reasonably related to an investigation within the scope of the agency's authority and duties.

(9) to (12) [NO CHANGE]

(13) Collection files pertaining to a person, including collections investigator files, with the exception that such files must be available to the person in interest to the extent permitted by federal statute or regulation, state statute, court rule, or court order. Such files must also be available to the Colorado Department of Corrections, a Colorado Community Corrections program, and the Colorado Department of Human Services if the person in interest is in the custody or under the supervision of any one of those entities. Information regarding restitution collections efforts and payment plans must be available to the victim(s) of the offender's crime(s) after confidential personal information has been redacted. Aggregate or statistical information related to collection files is available for inspection.

COMMENT: [NO CHANGE]

(14) to (23) [NO CHANGE]

(24) 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 within the Judicial Branch, unless the privilege has been waived. In some circumstances, public disclosure of such records may cause substantial injury to the public interest. If any administrative record is withheld pursuant to this paragraph, the custodian must provide a sworn statement describing each record withheld, explaining why each such document is privileged and why disclosure would cause substantial injury to the public interest. If the requestor so requests, the custodian must apply to the district court for an order permitting him or her to restrict disclosure. The application is be subject to the procedures and burden of proof provided for in subsection (d) of this section. All persons entitled to claim the privilege with respect to the records in issue must be given notice of the proceedings and must have the right to appear and be heard. In determining whether disclosure of the records would cause substantial injury to the public interest the court must weigh, based on the circumstances presented in the particular case, the public interest in honest and frank discussion within government and the beneficial effects of public scrutiny upon the quality of governmental decision-making and public confidence therein.

(25) to (27) [NO CHANGE]

(d) Petition for Order Permitting Restriction.

(1) In addition to any of the foregoing, if in the opinion of the custodian access to the contents of a record would do substantial injury to the public interest, notwithstanding the fact that the record might otherwise be available for inspection, or if the custodian is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if this rule restricts access to the record, the custodian may petition the district court of the district in which the record or the custodian is located for an order permitting restriction of access to the record or for the court to determine if access to the record is restricted. A hearing on the petition must be

held at the earliest practical time. The person seeking access to the record must be served with notice of the hearing pursuant to the Colorado Rules of Civil Procedure and has the right to appear and be heard.

(2) to (3) [NO CHANGE]

SECTION 4

PROCEDURE TO ACCESS RECORDS

COMMENT: This rule creates a different process than CORA for accessing records but with similar timeframes. Under the rule, the Judicial Branch responds to a request for inspection within three business days of receipt of the request. Certain extenuating circumstances specified in the rule may require additional time for a response. The fees that may be charged are set forth in subsection 4(c) below. The fees are similar to the fees under CORA.

(a) [NO CHANGE]

(b) Response. Within three business days of receipt of a request for inspection (not including the day of receipt), the custodian must provide one or more of the following responses:

(1) The record is available for inspection.

(A) When a record is available for inspection, the custodian must provide access to a record or provide written notice of a time and location for inspection of the record within a reasonable time. Production is subject to payment of any fee required under subsection (c) of this section; and

(B) The custodian may determine whether the record will be provided in print or electronic format. If the requestor is unable to use or access records provided in electronic format, the custodian will provide a copy, printout, or photograph of the record.

(2) The record is not available for inspection.

(A) When a record is not available for inspection, the custodian must provide written notice that:

(i) The record requested is not maintained by the custodian to whom the request was made;

(ii) The request did not provide information sufficient to identify the record sought;

(iii) The record is not available for inspection pursuant to section 3 of this rule; or

(iv) The record is not available for inspection because the custodian or designee cannot access the requested record. If a custodian or designee cannot provide records per this section 4(b)(2)(A)(iv), they must explain why the requested record is inaccessible.

(B) If the custodian denies access to a record, the requestor may request a written statement of the grounds for the denial. Upon receipt the custodian must, within a reasonable time, provide a written statement setting forth the grounds for denial.

(3) The custodian requires an additional seven business days to respond because extenuating circumstances exist. A finding that extenuating circumstances exist must be made in writing by the custodian and provided to the requestor. Extenuating circumstances exist only when:

(A) to (B) [NO CHANGE]

(C) The request involves such a large volume of records that the custodian cannot reasonably prepare or gather the records within the three-day period without substantially interfering with the custodian's obligation to perform other responsibilities; or

(D) The custodian, or a person who is essential to the process of responding to a request, is not scheduled to work within all or part of the three-day period; but any other employee or designee of the custodian must provide all other available responsive records within the applicable response timeframe.

(c) Fees.

(1) A custodian may impose a fee in response to a record request if the custodian has, before the date of receiving the request, either posted on the custodian's website or otherwise made publicly available a written policy that specifies the applicable conditions and fees for research, retrieval, redaction, and copying, of a record. Where the fee for a certified copy of a record is specifically prescribed by federal statute or regulation, state statute, court rule, or court order, the specific fee must apply.

A. The maximum fees for research, retrieval, and redaction must be in accordance with the formula set forth in CORA. For each request, the custodian must not charge for the first hour of employee time spent on research, retrieval, and redaction.

B. A custodian may charge up to \$.25 per page for documents produced in a hard-copy format.

i. The per- page fee for documents produced must be waived for: the State of Colorado, all state or Judicial agencies, including the Department of Law, Office of the State Public Defender, Office of the Alternate Defense Counsel and its contract attorneys, Office of Respondent Parents' Counsel and its contract attorneys, and Office of the Child's Representative and its contract attorneys, or other representatives of any of the above listed entities or contract attorneys, institutions, and political subdivisions thereof. A "political subdivision" of the state means any governmental organization formed and operating under the laws of this state and includes every county; city and county; city; town; district, including any special district, school district, fire protection district, or improvement district; and authority, including any highway authority, regional transportation authority, housing authority within this state, or a Colorado district attorney's office. The waiver above does not

apply unless the requestor identifies themselves as an attorney or other representative of one of the above-listed entities at the time of the request.

ii. The custodian need not waive fees for any other reason, including for claims of indigence.

(2) Before performing any services necessary to respond to a request, the custodian may require the requestor to pay a deposit representing a portion or the full amount of the estimated fees that will be charged by the custodian per the custodian's written policy. In circumstances in which a full deposit is required for the estimated fees, the records requested must be made available within three business days from the date of the receipt of the deposit, unless extenuating circumstances exist as set forth in Section 4(b)(3) of this rule.

(3) If the custodian does not receive full payment as set forth in Section 4(c)(2), the custodian may notify the requestor that a copy of the record is available but will only be produced once the custodian either receives payment or makes arrangements for receiving payment for all costs associated with records research, retrieval, redaction, and copying and for all other fees lawfully imposed.

SECTION 5

RESOLUTION OF DISPUTES

(a) [NO CHANGE]

(1) Unless the court finds that the denial of the right of inspection was proper, it must order the custodian to permit such inspection and must award court costs and reasonable attorney fees to the prevailing requestor in an amount to be determined by the court. No court costs and attorney fees may be awarded to a person who is a party engaged in litigation with a Judicial Branch agency and who petitions the court for an order pursuant to this section 5 for access to a record of the Judicial Branch agency if the court finds that the record sought is related to the pending litigation and is discoverable pursuant to applicable rules of procedure.

(2) If the court finds that the denial of the right of inspection was proper, the court must award court costs and reasonable attorney fees to the custodian if the court finds that the petition was frivolous, vexatious, or groundless.

(b) In defense against a petition for an order permitting inspection, the custodian may raise any issue that could have been raised and is not limited by any response under sections 3 or 4 of this rule.