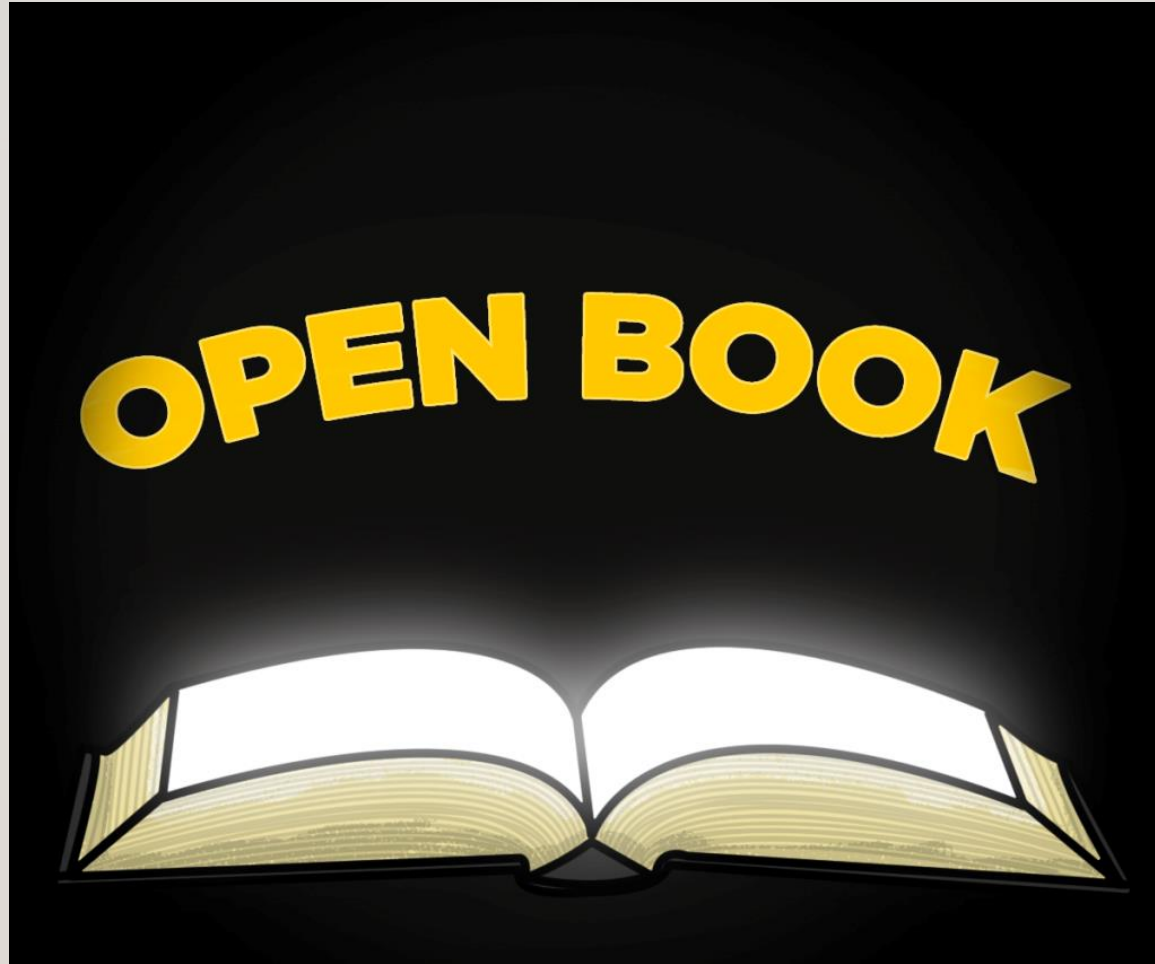


THE COLORADO OPEN RECORDS ACT & THE COLORADO SUNSHINE ACT

AN OVERVIEW OF *CORA* AND *OML* FOR COLORADO'S MUNICIPAL JUDGES

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GOVERNMENT IS* AND SHOULD BE AN...



COLORADO OPEN RECORDS ACT (CORA)

C.R.S. §§24-72-201 – 24-72-206

- Legislative Policy:
 - “All Public Records are open for Inspection by any person at reasonable times”*
 - *unless otherwise provided by CORA or other law.

PUBLIC RECORDS

- DEFINITION of Public Records

- “Public Records” means and includes all **writings** made, maintained, or kept by the state...or political subdivision of the state...and held by any local-government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or **involving the receipt or expenditure of public funds. (emphasis added)**. *C.R.S. 24-72-202(6)(a)(I)*
 - **Usually involves expenditure/receipt of funds or performance of public functions*
- *CORA defines “writings” to include books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.*
 - *Includes digitally stored data, such as **electronic e-mail messages**, but excludes computer software.*

PUBLIC RECORDS (CONTINUED)

- Correspondence of elected officials is specifically designated a public record.
 - Includes mail, courier letters, and e-mail
 - Excludes correspondence without a demonstrable connection to the exercise of functions required or authorized by law or administrative rule and does not involve the receipt or expenditure of public funds.
 - How do you think that's determined? Do you want to have an in-camera review?
- Excludes “work product” – deliberative or advisory in nature, assembled for the benefit of elected officials and communicated for the purpose of assisting elected official in reaching a decision within the scope of their authority - i.e. notes, memos, etc.

PUBLIC RECORDS (CONTINUED)

- Creators
 - Who creates Public Records?
 - Have you created Public Records?
- Custodians v. Official Custodians
 - Custodians have personal custody and control over the record.
 - Most of the obligations rest here.
 - Official Custodians (defined by the act) are officers or employees of the public entity who are responsible for the maintenance, care and keeping of public records, regardless of whether such records are in their actual personal custody and control.

PUBLIC RECORDS (CONTINUED)

- Issues with record retention

CORA REQUESTS

- Responses
 - In Writing* from Official Custodian
- Timing
 - “Reasonable Time” - Statutory Presumption of 3 Working days or less
 - Extenuating Circumstances (i.e. Records not readily available) = 7 additional days

CORA REQUESTS (CONTINUED)

- Denials
 - Permissive – “May Deny”
 - Records of sheriff, prosecuting attorney and police departments
 - Records concerning licensing, employment and academic examinations
 - Real Estate Appraisals
 - Specialized details of security arrangements or investigations

CORA REQUESTS (CONTINUED)

- Mandatory – “Must Deny”
 - Medical, psychological, sociological and scholastic achievement data
 - Personnel file – Home addresses, telephone numbers, financial information
 - Doesn’t include employment applications, agreements, performance ratings, compensation paid or benefit or amount paid in connection with a termination
 - Letters of reference
 - Deliberative process – privileged materials
 - Sexual Harassment investigation records
 - Election records (signatures, birthdates, etc), libraries/museums donated materials with restrictions/conditions
 - Users of Public Utilities
 - Materials submitted by certain applicants for executive positions

CORA REQUESTS (CONTINUED)

- Custodian may apply for an order from the district court permitting nondisclosure of a public record if the custodian feels that disclosure would cause “substantial injury to the public interest”.
 - Hearing held with participation from Custodian and Applicant
 - Heavy burden on the Custodian

CORA REQUESTS (CONTINUED)

- Costs – CORA Policies, Retrieval, Copy and other Fees
- Penalties:
 - Attorneys' fees awarded to losing side
 - Criminal liability for willful and knowing violations
- Safeguard:
 - Custodian may apply to District Court for ruling if Custodian is “unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited.”

CASE STUDIES & ISSUES

- Phones/Texts
- Nextdoor, Facebook, etc.
 - Custodial/retention issues
- Town/City Emails v. Personal Accounts

GOVERNMENT HAS* AND SHOULD HAVE AN...



THE COLORADO OPEN MEETINGS LAW

C.R.S. §24-6-401 *ET SEQ.*

“It is declared to be a matter of statewide concern and the policy of the state that **the formation of public policy is public business** and **may not be conducted in secret.**” (*emphasis added*)

OPEN MEETINGS – POLICY

C.R.S. §24-6-402(2)(b)

- “All meetings of a quorum, or three or more members of a local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times”

OPEN MEETINGS – DEFINITIONS

C.R.S. §24-6-402(1)(a) & (b)

- **Local Public Body:** includes any board, commission, taskforce, authority or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state ... to which a political subdivision, or an official thereof, has delegated a governmental decision-making function but does not include persons on the administrative staff (manager, attorney, clerk, etc.) of the local public body.
- **Meeting:** any kind of gathering, convened to discuss public business, in person, by telephone, or by other means of communication.

OPEN MEETINGS – MEETINGS

- Notice
 - Full and Timely – Statute does not specify or limit what is full and timely, but does provide an example as posting notice of the meeting in a designated public place 24 hours before the meeting.
- Minutes (PUBLIC RECORD!)
 - Clerk, or other official, must take minutes of any meeting at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur.
- Public Voting – No Secret Ballots*

OPEN MEETINGS – EXCEPTIONS: EXECUTIVE SESSIONS

- Executive Sessions (requires 2/3 quorum present):
 - Property Transactions
 - Attorney Conferences
 - Negotiations
 - Personnel Matters
 - Security Arrangements
 - Discussion of documents protected under CORA
 - Confidential matters under state or federal law

OPEN MEETINGS – EXCEPTIONS: EXECUTIVE SESSIONS (CONTINUED)

- No decisions made / No action taken / No adoption of policy
- May direct staff
- Action after Executive Session

OPEN MEETINGS - VIOLATIONS

- Penalties
- Invalidation of “decision”

CASE STUDIES & ISSUES

- Phones/Texts
- Nextdoor, Facebook, etc.
 - Custodial/retention issues
- Town/City Emails v. Personal Accounts

- **** (NOTE: This is the same slide from Open Records – notice the same issues) ****

CASE STUDIES & ISSUES (CONTINUED)

- What is/is not a meeting? BBQs, chance meetings/social gatherings
- Emergency meetings
- Curing Open Meetings Law Violations
- COVID
- Openness Issues
- Retreats – (calling meetings by different names)





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