

COLORADO OPEN RECORDS ACT POLICY



INTRODUCTION

The Colorado Department of Education is committed to transparency and open government. The following policy specifies how the Colorado Open Records Act (CORA) (Colorado Revised Statutes § 24-72-201, et seq.) will be applied in a uniform and reliable manner to ensure CDE complies with CORA in all respects and meets all statutory duties. This policy is intended to inform the public and also serve as a guide for employees of the Colorado Department of Education and State Board of Education. It applies to any request for public records for which CDE or the State Board are the custodian.

Other state agencies and departments may have different CORA policies.

DEPARTMENT PROCEDURE FOR HANDLING RECORDS REQUESTS

Any CDE employee or office/unit receiving a request under the Colorado Open Records Act by mail, fax, courier, or email shall immediately forward the request to the Communications Department. As soon as possible thereafter, employees and departments with responsive records (i.e., records that meet the definition of that which has been requested) must provide those records to CDE's Communications Division.

CDE will only accept records requests made in writing. Records request made via social media shall not be accepted and must be submitted through the appropriate means. CDE will treat a records request that cites the federal Freedom of Information Act as though it were made pursuant to the Colorado Open Records Act.

A request is considered "received" by CDE the day an e-mail, fax or letter containing a request is opened. A request received after 4:30 p.m. or any day CDE is officially closed will be considered received as of the following working day. CDE shall make every effort to respond within three working days, as provided by § 24-72-203(3)(b), C.R.S. The department may extend its response period up to seven working days if it finds extenuating circumstances exist and communicates that finding to the requestor in writing, as described in § 24-72-203(3)(b), C.R.S. The three working-day response time begins the first working day following receipt of the request.

If records are stored in paper format, CDE staff will work with the requestor to schedule a time to inspect the records in person. The department is open from 8 a.m. to 5 p.m. Monday through Friday. CDE may require that members of the public or press only view copies of documents when the custodian of records determines that allowing access to originals could interfere with the regular discharge of duties of CDE or its staff or that the review of original records could jeopardize the condition of the records.

CDE will not be responsible for conducting analysis of records on behalf of a requestor.



PROTECTION OF CONFIDENTIAL INFORMATION

CDE staff will never assume a record is exempt from CORA and will always consult CDE's Communications Division before making a determination to not provide a record. Any redactions or removal of information that CDE is legally required or allowed to withhold, pursuant to § 24-72-204, C.R.S., may not be done without prior approval from the Communications Division and the advice of counsel, if needed.

CDE shall not provide any student's personally identifiable information that is confidential pursuant to state or federal law. Colorado's Student Data Transparency and Security Act protects the confidentiality of "information that, alone or in combination, personally identifies an individual student or the student's parent or family, and that is collected, maintained, generated, or inferred by a public education entity..." See § 22-16-101, et. seq., C.R.S. Similarly, the federal Family Educational Rights and Privacy Act (FERPA) protects the confidentiality of student's identifiable information that is maintained in education records and includes direct identifiers, such as a student's name or identification number, indirect identifiers, such as a student's date of birth, race/ethnicity, disability status or other information which can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information. See 34 CFR §99.3. When it may be possible to determine a student's personally identifiable information from a record by using simple calculations, CDE will mask the data to the extent necessary to protect student privacy. See below, for information on potential costs that may be incurred by requestor.

CDE is also required to protect the confidentiality of licensed personnel evaluations, in accordance with § 22-9-109, C.R.S.

Finally, under CORA, CDE may deny a request for any of the reasons outlined in § 24-72-204, C.R.S. For a complete list of the types of records that CDE may withhold, please refer to that section of statute. A general list of the types of protected records applicable to CDE is below:

- Any investigatory files compiled for any law enforcement purpose;
- Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination;
- The specific details of bona fide research projects being conducted by a state institution;
- Electronic mail addresses provided by a person to an agency, institution, or political subdivision of the state;
- Specialized details of security arrangements or investigations;
- Medical, mental health, sociological, and scholastic achievement data on individual persons¹;
- Personnel files²;
- Letters of reference;
- Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data;
- Library and museum material contributed by private persons;
- Addresses and telephone numbers of students in any public elementary or secondary school;
- Library records disclosing the identity of a user;
- Any records of sexual harassment complaints and investigations; or
- Records protected under the common law governmental or "deliberative process" privilege.

¹ Scholastic achievement data on individuals includes, but is not limited to a student's grade level, course taking, and state assessment data, including content, readiness, and language proficiency assessments.

² CORA defines "personnel files" to include home addresses, telephone numbers, financial information, and other information maintained because of the employer-employee relationship. See § 24-72-202(4.5), C.R.S.



FORMAT FOR RECORDS PRODUCED

If a public record is stored in a digital format, whether searchable, sortable, or neither, CDE will provide that record in the format in which it is stored.

CDE may modify the format of digital records if:

- Providing the records in their current format would violate copyright, the terms of a licensing agreement, or would result in the release of a third-party’s proprietary information;
- Using the current format, it is not technologically or practically feasible to remove information that CDE is allowed or required to withhold.

FEEES FOR DOCUMENT RETRIEVAL, REVIEW AND COPIES OF RELEASE OF RECORDS

The first hour of staff time researching and retrieving requested records and up to 25 pages of printing will be provided for free. CDE will charge the requestor for all copying expenses in excess of 25 pages and actual costs associated with research and retrieval in excess of one hour, in accordance with §§ 24-72-205(5)(a) and (6)(a), C.R.S.. If a records request requires more than mere retrieval of records—such as technical expertise to synthesize or reconfigure data or legal expertise from attorneys in order to identify how to comply with confidentiality requirements—CDE will charge the requestor for such costs, in accordance with the guidelines below. Any costs charged to a requestor shall not exceed the actual cost of producing the records, in accordance with § 24-72- 205(5)(a), C.R.S.

Prior to producing requested records, CDE will provide an estimate of the costs of production to the requestor. If the requestor does not wish to pay the fees, CDE can provide the requestor with information on how the request can be modified to reduce or eliminate the fees. After a requestor has agreed to the costs of production, CDE will keep the requestor informed if any additional costs are anticipated and will not incur any additional costs without the requestor’s prior consent. After producing the requested records, CDE will provide an invoice to the requestor. Costs must be paid in full before CDE provides the records unless alternative arrangements have been made through the Communications Division.

CDE will charge for the actual costs of a request based on the following guidelines:

Type of Request	Actual costs based on the below rates
Records request that exceeds 25 pages	\$0.25 per page for all documents photocopied
Requests that require more than one hour of staff time for retrieval of records	\$30 per hour, after the first hour
Requests that require more than mere retrieval of records, such as technical expertise to synthesize or reconfigure data, apply unique suppression rules to remove identifiability and/or legal expertise to determine how to comply with confidentiality requirements	Hourly rate of staff member (based on salary), attorney billable hourly rate, or contractor hourly rate, as applicable

For more information, or to submit a CORA, please contact Adam Baptista, Baptista_A@cde.state.co.us or 303-866-6250.