

CHAPTER 66

PUBLIC RECORDS—RESTORATION AND EVIDENCE

INSPECTION, COPYING OR PHOTOGRAPHING

[Tentative placement, 113-2-1 et seq.]

(Senate Bill No. 3. By Senators Scott, Stockton, Armstrong, Jackson, Rockwell, and Williams; also Representatives Strahle, Friedman, Gebhardt, Grimshaw, Gustafson, Knox, Koster, Lamm, McCormick, Monfort, Schubert, Singer, Sonnenberg, Strickland, and Wilder.)

A N A C T**PROVIDING FOR INSPECTION OF PUBLIC RECORDS AND FOR THE COPYING OR PHOTOGRAPHING OF SUCH RECORDS.**

Be it enacted by the General Assembly of the State of Colorado:

Section 1. Declaration of 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, except as provided herein or as otherwise specifically provided by law.

Section 2. Definitions.—(1) As used in this act:

(2) The term "public records" means and includes all writings made, maintained or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.

(3) The term "writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

(4) The term "political subdivision" means and includes every county, city and county, city, town, school district, and special district within the state.

(5) The term "official custodian" means and includes any officer or employee of the state or any agency, institution, or political subdivision thereof, who is responsible for the maintenance, care and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(6) The term "custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(7) The term "person" means and includes any natural person, corporation, partnership, firm, or association.

(8) The term "person in interest" means and includes the person who is the subject of a record or any representative designated by said person,

except that if the subject of the record is under legal disability, the term "person in interest" shall mean and include his parent or duly appointed legal representative.

Section 3. Public records open to inspection.—(1) All public records shall be open for inspection by any person at reasonable times, except as provided in this act or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as shall be reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification he shall state in detail to the best of his knowledge and belief the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage, and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the records will be available for inspection.

Section 4. Allowance or denial of inspection—grounds—procedure—appeal.—(1) (a) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

(b) Such inspection would be contrary to any state statute;

(c) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law; or

(d) Such inspection is prohibited by rules promulgated by the supreme court, or by the order of any court.

(2) (a) (i) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

(ii) Records of investigations conducted by, or of intelligence information or security procedures of, any sheriff, district attorney, police department, or any investigatory files compiled for any other law enforcement purpose;

(iii) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to civil service, or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(iv) The specific details of bona fide research projects being conducted by a state institution; and

(v) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision, except

that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner thereof who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which he has obtained relative to the proposed acquisition of the property.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection is allowed to any officer or employee of any newspaper, radio station, television station or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law, provided that any of the following records shall be available to the person in interest under this subsection:

(b) Medical, psychological, sociological, and scholastic achievement data on individual persons, exclusive of coroners' autopsy reports, provided, that either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(c) Personnel files, except applications and performance ratings, provided that such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise his work;

(d) Letters of reference;

(e) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person; and

(f) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied, and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this act may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. Hearing on such application shall be held at the earliest practical time. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. In such action the burden of proof shall be upon the custodian.

The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Colorado Rules of Civil Procedure and shall have the right to appear and be heard.

Section 5. Copies, print-outs, or photographs of public records.—(1) In all cases in which a person has the right to inspect any public record, he may request that he be furnished copies, print-outs, or photographs of such record. The custodian may furnish such copies, print-outs, or photographs for a reasonable fee to be set by the official custodian, not to exceed one dollar and twenty-five cents per page unless actual costs exceed that amount. Where fees for certified copies or other copies, print-outs, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(2) If the custodian does not have facilities for making copies, print-outs, or photographs of records which the applicant has the right to inspect, then the applicant shall be granted access to the records for the purpose of making copies, print-outs, or photographs. The copies, print-outs, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, print-out, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, print-outs, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing-out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

Section 6. Violation—penalty.—Any person who willfully and knowingly violates the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not to exceed one hundred dollars, or by imprisonment in the county jail not to exceed ninety days, or by both such fine and imprisonment.

Section 7. Article 3 of chapter 138, Colorado Revised Statutes 1963, as amended, is amended BY THE ADDITION OF A NEW SECTION 138-3-74 to read:

138-3-74. Inheritance tax applications confidential.—Except in the case of judicial proceedings or in accordance with proper judicial order, or except with the written consent of the applicant, personal representative, or attorney for the estate, or except in classified or statistical form without identification of particular taxpayers or distributees, or except for the proper cooperation with federal or state tax authorities in the determination of gift or death taxes, or with local authorities with regard to the value of property on the tax rolls, or except as otherwise provided by law, it shall be unlawful for the commissioner, attorney general, or any deputy, or any other person, to disclose any particulars contained in any inheritance tax application or its attendant information or correspondence required under this article, or the amount of tax that is assessed.

Section 8. Effective date.—This act shall take effect July 1, 1968.

Section 9. Safety clause.—The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 23, 1968.