

II. EXEMPTIONS AND OTHER LEGAL LIMITATIONS.

B. Other statutory exclusions.

A number of Colorado statutes specifically provide that certain designated records are not public records subject to the Open Records Act and are to be kept confidential. Most of these exemptions from the Open Records Act pertain to records involving children and juveniles and to health records. These and other specific exemptions are discussed below.

1. Juvenile Records.

a. Juvenile Delinquency Records.

i. Court records. Court records in juvenile delinquency proceedings or proceedings concerning a juvenile charged with the violation of any municipal ordinance except a traffic ordinance are open to inspection by various parties, including the juvenile, the juvenile's parent or guardian, any attorney of record, the juvenile probation department, any Colorado law enforcement agency, any person conducting a custody evaluation, and the state department of human services. Colo. Rev. Stat. § 19-1-119(1)(a). In addition, with the consent of the court, such records may be inspected by any other person having a legitimate interest in the proceedings. Colo. Rev. Stat. § 19-1-119(1)(b).

ii. Arrest and criminal records.

The public has access to arrest and criminal records information that concerns a juvenile who is adjudicated a juvenile delinquent or is subject to a revocation of probation for committing the crime of possession of a handgun by a juvenile, an act that would constitute a class 1, 2, 3, or 4 felony, or an act that would constitute any crime that involves the use or possession of a weapon if such act were committed by an adult. Colo. Rev. Stat. § 19-1-119(1)(b.5)(II)(A). In addition, the public has access to arrest and criminal records information that concerns a juvenile charged with any such act. Colo. Rev. Stat. § 19-1-119(1)(b.5)(II)(B).

The public also has access to arrest and criminal records information concerning a juvenile between the ages of 14 and 18 years who is charged with the commission of an offense that would constitute a violent crime if committed by an adult. Colo. Rev. Stat. § 19-1-119(5).

All other records of law enforcement officers concerning juveniles are not open to public inspection except to the juvenile, the juvenile's parent or guardian, any attorney of record, and to other law enforcement agencies who have a legitimate need for such information, and under certain circumstances, including when the court orders that the juvenile be tried as an adult criminal or when

the juvenile has escaped from an institution to which such juvenile has been committed. Colo. Rev. Stat. § 19-1-119(2)(a).

Probation records. A juvenile probation officer's records are not open to inspection except to certain parties, including persons who have consent of the court, the juvenile's parent or guardian, any attorney of record, any person conducting a custody evaluation, the state department of human services, and law enforcement officers and fire investigators, who have access to limited information. Colo. Rev. Stat. § 19-1-119(1)(c).

iii. Juvenile Facilities.

All records prepared or obtained by the department of human services are confidential and privileged, and may be disclosed only to the parents, legal guardian, or attorney for the juvenile, to the extent necessary to make claims on behalf of the juvenile who is eligible to receive aid, insurance, or medical assistance, and for research or evaluation purposes. Colo. Rev. Stat. § 19-2-1104.5.

2. Children's Matters.

a. Child Abuse Records.

i. Reports of child abuse or neglect received by the Department of Social Services or a law enforcement agency, including the name and address of the child, family or informant, along with any other identifying information, are declared confidential and not open to the public under Colo. Rev. Stat. § 19-1-120(1)(a).

ii. This confidentiality provision covers the entire contents of a child abuse report and related records. Consequently, such records cannot contain any "non-confidential" information that may be subject to public disclosure. *Gillies v. Schmidt*, 38 Colo. App. 233, 556 P.2d 82 (1976).

iii. Disclosure of reports is not prohibited when there is a death of a suspected victim of abuse or neglect and the death becomes a matter of public record, and the subject of an arrest and formal criminal charge. Colo. Rev. Stat. § 19-1-120(1)(b).

iv. Disclosure of confidential child abuse records by any person is a class 2 petty offense, subject to a \$300 fine. Colo. Rev. Stat. § 19-1-120(1)(c).

b. Child Care Centers. Records regarding children and all facts learned about children and their relatives that are required to be kept by licensed

child care facilities are declared confidential by Colo. Rev. Stat. § 26-6-107(3).

c. Child Custody Records. Written reports and evaluations concerning custodial arrangements for children made in child custody proceedings are considered confidential and are not available for public inspection. Colo. Rev. Stat. § [14-10-127\(1\)\(a\)\(II\)](#); Colo. Rev. Stat. § [14-10-126\(2\)](#).

d. Adoption Records. Records and proceedings in adoption are confidential and not open to public inspection. Colo. Rev. Stat. § 19-1-308. The confidentiality provision applies to adult adoptions as well as to children's adoptions. *W.D.A. v. City and County of Denver*, 632 P.2d 582 (Colo. 1981).

Information provided to the state registrar of vital statistics concerning information about birth parents and adoptees shall not be disclosed under any public records law or Freedom of Information Act. Colo. Rev. Stat. § 25-2-113.5(9).

e. Relinquishment Proceedings. All records and proceedings in any action for relinquishment of a child by natural parents are confidential and open to inspection by court order for good cause shown. Colo. Rev. Stat. § 19-1-122.

f. Paternity Proceedings. All papers and records of proceedings in actions to establish paternity of a child are confidential and not subject to inspection except with consent of the court and all interested parties or upon court order for good cause shown. Colo. Rev. Stat. § 19-1-121.

3. Health Records.

a. Alcohol Treatment Records. The registration and other records of alcohol treatment facilities concerning alcoholics and intoxicated persons are confidential under Colo. Rev. Stat. § 25-1-312(1).

However, information from patients' records may be made available for purposes of research into causes and treatment of alcoholism if patients' names or other identifying information is not disclosed. Colo. Rev. Stat. § 25-1-312(2).

b. Prescription Drug Records. Records of prescriptions, orders, and stocks of controlled substances kept by pharmacists are confidential and not available for public inspection. Colo. Rev. Stat. § 12-22-320.

c. Tuberculosis Reports. Laboratories performing diagnostic services are required to report the names of persons whose specimens reveal the

presence of tuberculosis, but such reports and records are confidential under Colo. Rev. Stat. § 25-4-505.

d. AIDS Tests. Reports concerning positive tests for Acquired Immune Deficiency Syndrome (AIDS) that are required to be submitted to the State Department of Health by Colo. Rev. Stat. §§ 25-4-1402 and 25-4-1403 are declared to be strictly confidential by Colo. Rev. Stat. § 25-4-1404(1). Any physician, state employee or any other person who makes confidential AIDS information public is guilty of a misdemeanor and subject to a \$5,000 fine and 2 years in jail. Colo. Rev. Stat. 25-4-1409(2).

e. Mental Illness Records. Mental health records of patients of mental health facilities are declared confidential by Colo. Rev. Stat. § 27-10-120(1).

An exception to confidentiality exists for information concerning observed criminal behavior of a mental patient while receiving treatment. Colo. Rev. Stat. § 27-10-120(2).

Court-ordered mental health evaluations are deemed confidential records by Colo. Rev. Stat. § 27-10-106(5).

f. Peer Review Records. Medical records produced for use in any review of a physician, surgeon or registered professional nurse by a hospital governing board, state board of medical examiners, state board of nursing, peer review committee, or other review organization do not become public records by virtue of such use. Colo. Rev. Stat. § 13-90-107(2); *see also* Colo. Rev. Stat. §§ 12-35-118(7), 12-36-118(10), and 12-38-120(10).

4. Miscellaneous statutory confidentiality provisions.

a. Accident Reports. Accident reports made by any driver, owner, or person involved in any motor vehicle accident are confidential and not public records. Colo. Rev. Stat. §§ 42-4-1610, 42-4-206. *See Clark v. Reichman*, 130 Colo. 329, 275 P.2d 952 (1954).

However, statements made by persons involved in an accident to law enforcement officers and contained in official reports are not confidential under Colo. Rev. Stat. § 42-4-1610. *People v. Reyes*, 42 Colo. App. 73, 589 P.2d 1385 (1979).

b. Agricultural Records. Statistical reports concerning farm operations, crop production, etc., made to the Commissioner of Agriculture are confidential. Colo. Rev. Stat. § 35-2-106. Disclosure by a state employee is a misdemeanor punishable by a \$500 fine and 1 year in jail.

Information obtained as a result of fruit and vegetable inspections by the State Agricultural Commission are not open to public inspection. Colo. Rev. Stat. § 35-23-115.

Information concerning agricultural markets prepared for the Board of Marketing Control is confidential and not subject to public disclosure. Colo. Rev. Stat. § 35-28-119(2).

c. Arson Investigations. Information received by an insurance company or agency concerning arson investigations is confidential. Colo. Rev. Stat. § 10-4-1004(1).

d. Banking Records. Information from records of the State Division of Banking is not open to public inspection. Colo. Rev. Stat. § 11-2-111(1).

Disclosure of information acquired by the banking board and the bank commissioner concerning banks is prohibited by Colo. Rev. Stat. § 11-2-111.5.

e. Court Decisions. Decisions of a court record are confidential until publicly announced. Colo. Rev. Stat. § 13-1-128(1). Disclosure is a class 6 felony under Colo. Rev. Stat. § 13-1-128(4).

f. Education Records. Department of Education records containing personal information about employment applicants, holders of teachers' certificates or letters of authorization, and pupil test scores are confidential and may not be disclosed except with written consent of the person in interest. Colo. Rev. Stat. § 22-2-111(3); *see also* Colo. Rev. Stat. §§ 24-72-204(3)(a)(II), (III), and (VI).

g. Employer Records. Information contained in reports furnished by employer and employees to the Division of Labor is considered confidential and is not open to the public. Colo. Rev. Stat. § 8-1-115(1). Disclosure of confidential information by a division of labor employee is punishable by a \$1,000 fine and disqualification from state employment. Colo. Rev. Stat. § 8-1-115(2). This includes information required to be furnished by employers to the Division of Labor under the Workers' Compensation Act. Colo. Rev. Stat. § 8-47-202. However, records of the State Compensation Insurance Authority, the state workers' compensation insurance fund, are public. *Dawson v. State Compensation Ins. Auth.*, 811 P.2d 408 (Colo. App. 1990).

h. Inquest Verdicts. If it is found in an inquest into the death of a person that a crime has been committed on the deceased, and the report names the person who the jury believes committed the crime, the inquest is not to be

made public until after the suspect has been arrested. Colo. Rev. Stat. § 30-10-613.

i. Judicial Discipline Records. The record of an investigation of a judge conducted by the Commission on Judicial Discipline, including all papers filed and all proceedings, is confidential. [Colo. Const. Art. VI § 23\(g\)](#); Colo. Rev. Stat. [§ 24-72-401](#); *see* Colo. R. Jud. Discip. 6(a). *See also* Wehmhoefer, "The Confidentiality of Judicial Disciplinary Proceedings," 17 Colorado Lawyer 1043 (June 1988).

However, the Commission's recommendation for removal, censure, discipline, suspension, or retirement of a judge is not confidential after it is filed with the Supreme Court. Colo. R. Jud. Discip. 6(a). *See* Colo. Rev. Stat. § 24-72-401.

Willful disclosure of the contents of papers filed with or proceedings before the judicial discipline commission is a misdemeanor punishable by a \$500 fine. Colo. Rev. Stat. [§ 24-72-402](#).

j. Library User Records. Any record or other information of a public library which identifies a person as having requested or obtained specific materials or having otherwise used the library is confidential under Colo. Rev. Stat. § 24-90-119(1), and is excluded from the Open Records Act by Colo. Rev. Stat. § 24-72-204(3)(a)(VII).

Any library employee who discloses user information commits a class 2 petty offense and is subject to a \$300 fine. Colo. Rev. Stat. § 24-90-119(3).

k. Parole Records. Records containing information on parolees maintained by the Department of Corrections are not public records and are confidential. Confidential information may not be made public. Colo. Rev. Stat. § 17-2-104.

l. Public Securities Records. Records of ownership of or security interests in registered public obligations (municipal or special district bonds, etc.), are not subject to public inspection or copying under the Open Records Act. Colo. Rev. Stat. § 11-57-105.

m. Public Utility Property Schedules. Schedules required to be filed with the Department of Revenue by public utilities containing information about property owned by a public utility are considered private documents available only to tax officials. Colo. Rev. Stat. § 39-4-103(2).

n. Savings and Loan Records. Information acquired by the state commissioner of savings and loan institutions in the discharge of official

duties concerning savings and loan institutions is not to be divulged. Colo. Rev. Stat. § 11-44-107.

o. Securities Records. Colo. Rev. Stat. § 11-51-703(2) of the Colorado Securities Act of 1981 provides that the securities commissioner or any of his officers or employees are not authorized to disclose information concerning securities transactions filed with the commissioner and not made public. Although records of a securities broker-dealer filed with the securities commissioner do not qualify as public records under Colo. Rev. Stat. § 24-72-204(3)(a)(IV) because they contain confidential commercial or financial information, the securities commissioner may disclose such records to other government agencies for purposes of law enforcement. *Griffin v. S.W. Devanney & Co.*, 775 P.2d 555 (Colo. 1989).

p. Tax Records. Income tax returns, documents, reports, and information obtained from tax investigations are not to be divulged by the Department of Revenue. Colo. Rev. Stat. § 39-21-113(4)(a). Violation is a misdemeanor punishable by a \$1,000 fine, and if the offender is an officer or employee, he or she shall be dismissed from office under Colo. Rev. Stat. § 39-21-113(6).

Gift tax returns are declared confidential by Colo. Rev. Stat. § 39-25-114. Disclosure is unlawful.

Inheritance tax applications are declared confidential by Colo. Rev. Stat. § 39-23-168. Disclosure is unlawful.

Personal property schedules, along with accompanying exhibits or statements, filed with the tax assessor are private and confidential documents. Colo. Rev. Stat. § 39-5-120.

q. Trade Secrets. Under the Uniform Trade Secrets Act, Colo. Rev. Stat. § 7-74-101, *et seq.*, a court in which an action for misappropriation of a trade secret is pending is to preserve the secrecy of a trade secret by reasonable means, including protective orders, sealed records, and gag orders. Colo. Rev. Stat. § 7-74-106.

Information furnished by employers to the Division of Labor that contains a trade secret, or information obtained through inspections or other proceedings by the Division of Labor that might reveal a trade secret is confidential information not to be divulged by the Division of Labor under Colo. Rev. Stat. § 8-1-115.

Information relating to trade secrets or secret processes concerning water quality control furnished to the State Water Quality Control Commissioner

is confidential. Colo. Rev. Stat. § 25-8-405(2). However, this section does not prohibit full disclosures of effluent (pollution) data.

r. Welfare and Public Assistance Records. Disclosure of names or of any information concerning persons applying for or receiving public assistance and welfare is unlawful under Colo. Rev. Stat. § 26-1-114(3)(a), and is punishable by a \$500 fine and 3 months in jail. Colo. Rev. Stat. § 26-1-114(5).

However, this right of privacy is surrendered when a welfare recipient becomes a criminal defendant charged with or convicted of a crime involving violation of welfare laws. *Lincoln v. Denver Post*, 31 Colo. App. 283, 501 P.2d 152 (1972).

s. Wills. Wills deposited with a court for safekeeping during the lifetime of the person who made the will are to be kept confidential. Colo. Rev. Stat. § 15-11-515.

Request for confidentiality by person in interest

1. Effective January 1, 1992, and pursuant to the procedures set forth in Colo. Rev. Stat. § 24-72-204(3.5), any person may request that the following records containing that person's address be kept confidential and exempt from public disclosure:
 - a. Voter registration records;
 - b. Motor vehicle registration and driver's license records; and
 - c. Records pertaining to disclosures required to be made by public officials pursuant to Colo. Rev. Stat. § 24-6-202.
2. The person requesting confidentiality must apply with the county clerk where the voter or motor vehicle records are located, or, in the case of records of disclosures by public officials, with the secretary of state, pay a fee of \$5.00, and sign the following sworn statement: "I swear or affirm, under penalty of perjury, that I have reason to believe that I, or a member of my immediate family who resides in my household, will be exposed to criminal harassment, or otherwise be in danger of bodily harm, if my address is not kept confidential." Colo. Rev. Stat. § 24-72-204(3.5)(b). The request for confidentiality is itself confidential and exempt from public disclosure. Colo. Rev. Stat. § 24-72-204(3.5)(f).
3. If the above application for confidentiality has been made, the custodian of records shall deny the right of inspection of the person's address contained in such records on the ground that disclosure would be contrary to the public interest. Colo. Rev. Stat. § 24-72-204(3.5)(c).

4. The following persons are authorized by Colo. Rev. Stat. § 24-72-204(3.5)(c) to inspect records containing the person's address notwithstanding the request for confidentiality:

- a. The person in interest, or any person authorized in writing by such individual;
- b. Criminal justice agencies;
- c. State or federal governmental agencies;
- d. Persons required to obtain the individual's address in order to comply with state or federal law or regulations;
- e. Insurance companies authorized to transact business in Colorado;
- f. Licensed collection agencies;
- g. Supervised lenders, banks, trust companies, savings and loan associations, credit unions, and securities brokers-dealers;
- h. Attorneys licensed to practice in Colorado; and
- i. Vehicle manufacturers for the purpose of giving notice of product recalls or advisories.

5. News Media Exception. A duly accredited representative of the news media may request the custodian of records to verify the address of any individual whose address is otherwise protected from disclosure. Verification is limited to the custodian confirming or denying that the person's address as known to the representative of the news media is the address as shown by the records. Colo. Rev. Stat. § 24-72-204(3.5)(d).

Professional review board records

Closed. Records of the following Professional Review Committees concerning disciplinary actions, hearings, investigations, and reports are declared confidential and/or exempt from the Open Records Act: State Board of Dental Examiners, Colo. Rev. Stat. § 12-35-118(7); State Board of Medical Examiners, Colo. Rev. Stat. § 12-36-118(10); State Board of Nursing, Colo. Rev. Stat. § 12-38-120(10); State Board of Psychologist Examiners, Colo. Rev. Stat. § [12-43-705](#)(4); State Board of Registration for Professional Engineers & Professional Land Surveyors.

Complaints and results of investigation are closed to public inspection during the investigatory period. Colo. Rev. Stat. §§ 12-25-109(2) **[now repealed]**, 12-25-209(2) **[also repealed, eff. August 4, L. 2006]**. Otherwise, the board's records and papers are subject to Colo. Rev. Stat. §§ 24-72-203 and 24-72-204.