



**TRANSPARENCY OF THE COLORADO
RIVER DROUGHT TASK FORCE**

Megan McCall

Office of Legislative Legal Services



Components of Transparency

1. Open Meetings Law
 - Part 4 of article 6 of title 24, C.R.S.

2. “Colorado Open Records Act” or CORA
 - Part 2 of article 72 of title 24, C.R.S.

Open Meetings

It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.



Open Meetings

“State public body” means any board, committee, commission, or other advisory, policy-making, rule-making, decision-making, or formally constituted body of any state agency ... or the general assembly... (§24-6-402 (1)(d)(I), C.R.S.)

What Constitutes a “Meeting”?



Any kind of gathering,
convened to discuss public business,
in person, by telephone, electronically,
or by other means of communication.

What Meetings Are Covered?

A meeting must be open to the public if two or more members of the task force are present AND:



Public business is discussed;
OR
Formal action may be taken.



SB23-295

Any meeting of the task force or sub-task force must be open to the public.

§37-98-105 (3)(c)(II), C.R.S.

What Meetings Are Covered?

“Meeting” means any kind of gathering, convened to discuss public business, in person, **by telephone, electronically, or by other means of communication.**

By telephone.

Electronically includes
email, texts, or social
media.

Don't use email or other electronic means as a substitute for open meeting discussions.

What Meetings Are Not Covered?

Does not apply to a chance meeting or social gathering at which the discussion of public business is not the central purpose.

“Meeting” means any kind of gathering, **convened to discuss public business**, in person, by telephone, electronically, or by other means of communication.

Notice must be given for any meeting at which:

- The adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs; or
- A majority or quorum of the body is in attendance, or is expected to be in attendance.

And, OML requires **minutes** of task force meetings to be promptly taken and recorded and be open to public inspection.

Likely includes Sub-task force meetings.



Other OML Considerations

What is Open?

- Does not mean public must be able to actively contribute
 - HOWEVER “The task force and sub-task force shall allow public testimony during at least one meeting of the task force and sub-task force.”
§37-98-105 (3)(c)(II), C.R.S.
- Includes audio or video access if meetings are not in person

Are There Any Exceptions?

Just one – the executive session.

A state public body can go into executive session upon a vote of two-thirds of its members to discuss certain topics, such as:

- Purchase or sale of property;
- Discussions with attorneys on pending or imminent court action, or legal advice on specific legal questions;
- Matters required to be kept confidential by state or federal law;
- Security arrangements.

What If The Open Meetings Law Is Not Followed?

Any formal action taken at a meeting that does not comply with the statute is invalid.



CORA

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 in the Colorado Open Records Act (CORA) or as otherwise specifically provided by law.



What Are Public Records?

“Public records” means all writings made, maintained, or kept by the state or any agency, institution, or political subdivision of the state for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.



What Documents Of Yours Are Public Records?

- Only records relating to the task force.
- Certain correspondence, including e-mail, text messages, and messaging through other forms of social media apps; and
- Certain memoranda prepared for members of the task force.
- Notes and drafts.

Don't combine personal and task force emails.



Inspection

- A response is due within three working days from receipt unless there are extenuating circumstances.
- You will likely make a copy of any responsive records and send them to the requester.
- If a digital record is maintained in a searchable or sortable format, you may be required to produce it in a format that is also searchable or sortable.
- If a record is already available in a publicly accessible location, you can refer the requester there.

What Documents May Be Kept Private?



- Work product;
- Records that do not involve the exercise of public functions;
- Records that are subject to nondisclosure pursuant to CORA;
- Confidential pursuant to other law.
- A task force member, sub-task force member, or governmental entity that is participating in the task force or sub-task force is not required to provide any information that is protected from disclosure by applicable law. (§37-98-105 (3)(c)(II), C.R.S.)

****Task force records are unlikely to be excluded.****

Custodian of Records = You

- As a member of the task force, you will be the custodians of your own records.
- Neither the state nor staff will have access to or control over the records you create, receive, and retain.



What to do if you receive a CORA request



1. STOP – do not delete or otherwise destroy or discard any records in any form.



2. Contact the task force administrator as soon as possible to coordinate with you and respond.



3. Working together, you and staff will address case-specific details and respond in a timely manner.



The End