

**Policy Brief: Public Access and Application of the Government Edicts  
Doctrine in the State of Colorado**

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Samuelson-Glushko Technology Law  
& Policy Clinic at Colorado Law

Stacey Weber

*Student Attorney*<sup>1</sup>

[tlpc@colorado.edu](mailto:tlpc@colorado.edu)

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## Executive Summary

The Samuelson-Glushko Tech Law & Policy Clinic at Colorado Law School, at the request of Public.Resource.Org, prepared this policy brief on the government edicts doctrine and free and open public access to the law in the State of Colorado.

Despite the Supreme Court’s explicit holding defining government edicts in *Georgia v. Public.Resource.Org*,<sup>2</sup> application of the government edicts doctrine remains incomplete. Impermissible copyright assertions continue to linger in a number of states. As the Court noted, the free access of citizens to the law—which all Americans are responsible for knowing—is a fundamental principle in the United States,<sup>3</sup> and protecting that principle often implicates serious matters of equity.<sup>4</sup>

This policy brief explores the law and policy on government edicts in Colorado and examines the nature of access to government edicts in Colorado today. It identifies areas in which the State of Colorado excels in facilitating public access to government edicts, areas in which it could improve, and areas in which its current practice is at odds with the government edicts doctrine.

While Colorado has admirably demonstrated ongoing dedication to improving public access to government edicts, there remain a few areas of potential improvement.

- The Attorney General could lead efforts to improve the State’s publishing contract with LexisNexis prior to approving it, coordinate inter-government practices in making edicts available in bulk and in the best available format—preferably XML—and advocate for legislative updates that promote complete and even application of the government edicts doctrine and free and open public access to government edicts.
- The legislature could modify the pending contract with LexisNexis and update statutes that most implicate government edicts: CORA and provisions providing for copyright of government edicts.
- The Colorado Supreme Court could amend PAIRR 1 to make judicial government edicts freely available online.
- All government entities responsible for their respective websites could coordinate to provide uniform, centralized databases that are searchable and permit bulk digital downloads in the best

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<sup>2</sup> 140 S. Ct. 1498, 1506 (2020).

<sup>3</sup> *Id.* at 1507.

<sup>4</sup> *Id.* at 1512–13.

available format. The Secretary of State currently leads the way in offering centralized searching and XML-format provision, and could serve as a model for other entities. Similarly, collaboration with non-government groups able to provide robust accessible platforms if the underlying information database were shared could support public accessibility without straining government's limited resources.

We hope this analysis will aid the State in continuing to improve the access of its citizens to the law. Ensuring free, robust access to the law will remove the chilling effects of overly broad copyright assertions and enable a wide range of academic and legal aid endeavors that facilitate access to justice. It will also open the door for competitive, entrepreneurial uses of the law that can be achieved through computational analysis and data-driven innovation.

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## Discussion

### I. The Government Edicts Doctrine and its Application in Colorado Law

Government edicts are the law and legal materials issued in the name of the state by a law-making entity.<sup>5</sup> Under the government edicts doctrine, judges and legislators cannot be considered authors for the purposes of copyright law regarding works produced in the course of their official duties.<sup>6</sup> Rather, these works, issued in the name of the people, remain in the public domain.<sup>7</sup> The doctrine has long been understood to include judicial opinions<sup>8</sup> and other work produced by judges as part of their official duties, such as headnotes.<sup>9</sup> The recent Supreme Court case *Georgia v. Public.Resource.Org*, applying the doctrine to the work of legislators as well, represents an important invitation to re-evaluate the status of public access to government edicts in Colorado.

Colorado has a demonstrated ongoing commitment to open government.<sup>10</sup> That value has spurred rich caselaw, a robust statutory scheme, and generous voluntary government practices. However, Colorado open government policy appears to focus largely on public records. Colorado does not have a single unified approach to government edicts. Rather, it weaves its approach to copyright of and access to government edicts through a variety of statutes, caselaw, and rules. This has led to strong access to government edicts in some areas, while leaving barriers and inconsistencies in other areas. This approach has the effect of extending the more-burdensome terms of access traditionally imposed on public records and imposing them upon access to government edicts as well.

This Part summarizes the government edicts doctrine and traces its application through the various constitutional, judicial, and statutory schemes that implicate government edicts in Colorado. In doing so, it gives a complete

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<sup>5</sup> *Georgia v. Public.Resource.Org.*, 140 S. Ct. 1498, 1504 (2020).

<sup>6</sup> *Id.* at 1513. The Court also noted that the Copyright Office’s stated practice at the time of the case was “largely consistent” with its holding—a practice that declined to grant copyright registration for “a government edict . . . issued by any state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials.” *Public.Resource.Org.*, 140 S. Ct. at 1511, citing U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.6(C)(2) (rev. 3d ed. 2017). In the most recent edition of the Compendium, this section has been updated to expressly discuss *Georgia v. Public.Resource.Org.*, clarifying that “any ‘work that [a] judge or legislator produces in the course of his [or her] judicial or legislative duties is not copyrightable.’” U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §313.6(C)(2) (rev. 3d ed. 2021) (citing *Georgia v. Public.Resource.Org* at 1506).

<sup>7</sup> See *Public.Resource.Org.*, 140 S. Ct. at 1507–08.

<sup>8</sup> *Id.* at 1506, citing *Wheaton v. Peters*, 33 U.S. 591 (1834).

<sup>9</sup> *Id.* at 1506–07, citing *Banks v. Manchester*, 128 U.S. 244 (1888).

<sup>10</sup> See *infra* I.B.–F.

picture of the multifaceted approach to open government in Colorado, with three goals:

1. This complete overview could help explain the practical obstacles to access uncovered in Part II. The scattered official treatment of government edicts, often muddled with other legislative purposes and broader swaths of documents, could contribute to the inconsistencies and shortcomings in public access to government edicts.
2. Considering the overarching statutory scheme highlights specific statutes, discussed in Part III, that provide promising opportunities where amendments could better provide for government edicts.
3. Examining government edicts within the overall context of open government pulls into sharp focus Colorado's longstanding commitment to the overarching values that encompass government edicts.

Situated within this framework, the findings and recommendations of this policy brief are not just consistent with Colorado's active and ongoing prioritization, but are relatively minor initiatives by comparison.

#### **A. The Government Edicts Doctrine**

In *Georgia v. Public.Resource.Org*, the Supreme Court held that works published in the name of the state are not copyrightable.<sup>11</sup> Importantly, this extends to all works by judges and legislators as long as the work is produced in the course of official duty.<sup>12</sup> This is so even if the work produced is non-binding or explanatory,<sup>13</sup> and even if the work is produced by a third (private) party under the direction of the state or state entity.<sup>14</sup> As such, analysis to determine eligibility for copyright follows a two-step process based on authorship, not type of work, asking:

1. whether the work is created by a judge or legislator (including an arm of the legislature), and
2. whether it was produced in the course of official duties.<sup>15</sup>

The material found uncopyrightable in *Public.Resource.Org* consisted of materials ancillary to legislation: the annotations and editors notes published by

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<sup>11</sup> *Public.Resource.Org*, 140 S. Ct. at 1508.

<sup>12</sup> *Id.* at 1507.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at 1508.

<sup>15</sup> *Id.*

the State of Georgia with its state code.<sup>16</sup> Portions of the editorial work and some of the annotations were drafted by LexisNexis under the direction of the state.<sup>17</sup> However, as a work for hire, authorship belonged to the legislature’s Commission responsible for writing statutes<sup>18</sup> and copyright was claimed in the name of the legislature and the state,<sup>19</sup> thus satisfying both prongs of the analysis for the doctrine.<sup>20</sup> For such materials to be copyrightable, they would have to be created by (and credited to) an author lacking authority to speak with the force of law<sup>21</sup>—for example, if LexisNexis had independently developed explanatory materials in its own name.<sup>22</sup>

## **B. Historical Approach to Government Edicts in Colorado in its Constitution and Caselaw**

Colorado generally combines treatment of government edicts with other associated values, notably publication of the laws (a category smaller than government edicts) and open records laws (a category larger than government edicts). This has the effect of suggesting strong support for public access to government edicts, but creates friction where the categories don’t match up well.

Colorado has increasingly recognized the importance of public access to the law and the values of open government.<sup>23</sup> While the Colorado Constitution does

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<sup>16</sup> *Id.* at 1504.

<sup>17</sup> *Id.* at 1505.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 1508–09.

<sup>21</sup> *Id.* at 1510.

<sup>22</sup> *See id.* at 1507; *see also* U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES §313.6(C)(2) (rev. 3d ed. 2021) (“The Office may register annotations or other explanatory materials that summarize or comment upon an edict of government, if they were ‘prepared by a private party, or a non-lawmaking official’ ‘who lack[s] the authority to make or interpret the law,’ and if they contain a sufficient amount of original authorship.” (citing *Public.Resource.Org* at 1507, 1509, 1510; *Callaghan v. Myers*, 128 U.S. 617, 647 (1888)).

<sup>23</sup> For state references to open government in Colorado, *see, e.g.*, Ken Salazar, Colorado Open Records Act Nineteen Frequently Asked Questions, Op. Att’y Gen. No. 01-1 (July 5, 2001), [https://coag.gov/app/uploads/2021/04/AG-Opinion-7\\_5\\_01-Colorado-Open-Records-Act.pdf](https://coag.gov/app/uploads/2021/04/AG-Opinion-7_5_01-Colorado-Open-Records-Act.pdf) (“The thought behind this part of open government in Colorado is a very simple, yet very broad and powerful idea: all public records are open for inspection by any person at reasonable times.”); *Colorado Open Records Requests*, COLORADO DEPARTMENT OF THE TREASURY (2021), <https://treasury.colorado.gov/legal/colorado-open-records-requests> (“In the spirit of open government, the Colorado Open Records Act requires that most public records be available to the public.”). For non-edict state openness projects *see, e.g.*, *Transparency Online Project (TOPS) - State Government Revenue and Expenditures in Colorado*, COLORADO INFORMATION MARKETPLACE, <https://data.colorado.gov/Government/Transparency-Online-Project-TOPS-State-Government-rifs-n6ib> (Nov. 6, 2021). For non-government-entity discussion of and advocacy for open

not contain an explicit provision formally protecting public access to edicts, it does require the General Assembly to publish the laws after each session.”<sup>24</sup> Going further, a 1992 amendment referenced the right of access to public records by obligating a newly instituted governing board to allow access to its meetings and records under rules “no less restrictive” than the state laws governing access to the meetings and records of state agencies.<sup>25</sup>

Colorado courts have recognized the importance of citizens’ access to the law indirectly both through public records jurisprudence and also through general reliance on government edicts in resolving disputes. First, public records caselaw effectively governs much of government edicts access because access to government edicts is largely folded into public records access. Second, by relying on government edicts to resolve disputes, Colorado courts implicitly embrace the underlying principle of the government edicts doctrine: that all citizens should be able to “know the law.”<sup>26</sup>

Regarding access to public records, Colorado caselaw has a rich history of protecting and reinforcing access to public records going back to 1884.<sup>27</sup> In *Bean v. People*, the Colorado State Supreme Court took as its starting point that the county clerk was statutorily obligated to make records available to anyone who wished to examine them, but declined to construe the provision as granting an affirmative right of land relators to unreasonably monopolize the county clerk’s time and facilities.<sup>28</sup> More recently, courts have strongly enforced the right of public access and the permissible extent of restrictions to access under the Colorado Open Records Act (CORA) of 1968.<sup>29</sup>

Colorado caselaw since the passage of CORA has aimed to protect broad access to public records in Colorado and attempted to subject it only to narrow exceptions under the statute.<sup>30</sup> Colorado courts have established a strong

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government in Colorado *see generally*, STEVEN D. ZANSBERG ET. AL., REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS, COLORADO OPEN GOVERNMENT GUIDE (2019), <https://www.rcfp.org/open-government-guide/colorado>; COLORADO FREEDOM OF INFORMATION COALITION, <https://coloradofaic.org> (last visited Nov. 18, 2021) (self-describing organization as “the voice for open government in Colorado”).

<sup>24</sup> COLO. CONST. art XVIII, § 8.

<sup>25</sup> *Id.* at art XXVII § 6(3).

<sup>26</sup> *Georgia v. Public.Resource.Org.*, 140 S. Ct. 1498, 1507 (2020) (citing *Nash v. Lathrop*, 6 N.E. 559, 560 (1886)).

<sup>27</sup> *Bean v. People*, 2 P. 909 (Colo. Dec 1883).

<sup>28</sup> *Id.* at 911.

<sup>29</sup> COLO. REV. STAT. § 24-72-200.1 et seq. (2021).

<sup>30</sup> Although over time some have argued that those exceptions have become overly broad, debates regarding the effectiveness of CORA are beyond the scope of this policy brief. *See, e.g.*, Jeffrey A.



presumption in favor of access<sup>31</sup> that can only be overcome by a specific statutory exception.<sup>32</sup> Generally, statutorily-granted limitations function to maintain reasonableness of demands on custodian resources<sup>33</sup> or to balance competing social values, most notably around privacy.<sup>34</sup> A court must construe exceptions narrowly<sup>35</sup> and weigh the public benefit in making its determination.<sup>36</sup> As such, Colorado courts generally favor a strong right of public records access, tempered by limitations for some sensitive documents and the resources of a records custodian.

This posture should support strong facilitation of access to government edicts, but the results are imperfect. As discussed below, statutorily-granted exceptions

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Roberts, *Fifty Years of the Colorado Open Records Act: 'Terrible, Terribly Piece of Legislation!'*, COLORADO FREEDOM OF INFORMATION COALITION (June 30, 2018), <https://coloradofaic.org/fifty-years-of-the-colorado-open-records-act-terrible-terrible-piece-of-legislation>.

<sup>31</sup> Daniels v. City of Commerce City, 988 P.2d 648, 650–51 (Colo. App. 1999) (noting that exceptions to CORA must be construed narrowly and that when courts do so “[t]he Act’s general presumption in favor of public access must be weighed against the privacy interest at stake”).

<sup>32</sup> Dreyfus, 520 P.2d at 106, 109 (finding that CORA’s legislative declaration provision “clearly eliminates any requirement that a person show a special interest in order to be permitted access to particular public records” and “establish[ing] the basic premise that in the absence of a specific statute permitting the withholding of information, a public official has no authority to deny any person access to public records.”). *But see* Off. State Ct. Adm’r. v. Background Info. Sys., 994 P.2d 420, 432 (Colo. S. Ct. 1999) (finding courts largely not “agencies” for purposes of public records laws absent additional specific statutory mandate).

<sup>33</sup> *E.g.*, Bean, 2 P. at 911 (holding that the statute at issue does not protect ongoing monopolization of clerk’s time and attention for private business’s profit); Mountain-Plains Inv. v. Parker Jordan Metro. Dist., 2013 COA 123, ¶ 46 (finding hourly rate and advance deposit required for records retrieval were reasonable given lack of evidence that requester was unable to pay the deposit and “given the potentially massive volume of the documents requested”).

<sup>34</sup> Eugene Cervi & Co. v Russel, 506 P.2d 748, 750 (Colo. App. 1972) (upholding statutory provision that designates vital statistics records as confidential and finding commercial purposes insufficient to overcome confidentiality to acquire access); Martinelli v. District Court of Denver, 612 P.2d 1083, 1093 (Colo. S. Ct. 1980) (finding language in CORA that provides for statutory and judicial exceptions reflect “legislative intent that a court should consider and weigh whether disclosure would be contrary to the public interest”); Mountain-Plains Inv., 2013 COA at ¶ 17–18 (“[b]y its terms, CORA balances the public interest in access to information about how the government operates against the privacy interests of public officials and employees. Consequently, although the statute generally favors access, CORA does not require public disclosure of all documents in the custody of state employees or agencies.”). *See also* COLO. REV. STAT. § 24-72-204(1) (2021) which sets out the circumstances under which a custodian may or must deny access to various types of records, as well as the appeal process from a denial.

<sup>35</sup> Daniels, 988 P.2d at 650.

<sup>36</sup> Martinelli, 612 P.2d at 1093. Notably, the kinds of records that implicate reasonability or privacy concerns weighty enough to justify an exception—emails, and in massive quantity (*Mountain-Plains*), police personnel records (*Martinelli*), and vital statistics records (*Eugene*)—least resemble government edicts, which are characterized by their public nature and limited scope. *See supra* notes 32–33 and accompanying text.

and custodial discretion abound, opening the door both for practices that passively frustrate access and exceptions that actively inhibit access to broad swaths of government edicts.<sup>37</sup> Similarly, public records caselaw does not necessarily account for changes to terms of access wrought by technology. For example, historically reasonable limitations such as those upheld in *Bean* were premised on in-person access.<sup>38</sup>

Indeed, technology has shifted the burdens associated with in-person access away from custodial resources and transformed it to a barrier to citizen access. More broadly, technology has shifted societal understanding of what constitutes reasonable terms of access—as well as social norms for information gathering—away from primarily in-person models. As a result, exceptions historically upheld by courts no longer balance societal interests. They now create an additional loophole to frustrate free and open public access. The result is a need for Colorado courts to explicitly protect access to government edicts, and in light of the digital age.

Beyond public records caselaw, the practice of courts in utilizing government edicts to resolve cases underscores the important role of government edicts and underscores the need for free and public access.<sup>39</sup> Courts commonly rely on ancillary materials in resolving a wide variety of cases. Such materials have included official comments adopted along with model or uniform acts,<sup>40</sup>

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<sup>37</sup> *E.g.*, under *Background Info. Sys.*, 994 P.2d, court records largely fall outside of CORA and courts determine dissemination of most of their records. Chief Justice Directive (CJD) 05-01, discussed below, is an example of one overbroad limitation that struggles to facilitate access to government edicts while protecting other (sensitive) records, in spite of this strong public records caselaw. Directive Concerning Access to Court Records, Chief Judicial Directive 05-01 (amended Nov. 10, 2021, effective Jan. 4, 2022) [hereinafter CJD 05-01], [https://www.courts.state.co.us/Courts/Supreme\\_Court/Directives/CJD%2005-01%20Amendments%20November%202021,%20effective%20January%204,%202022%20WEB.pdf](https://www.courts.state.co.us/Courts/Supreme_Court/Directives/CJD%2005-01%20Amendments%20November%202021,%20effective%20January%204,%202022%20WEB.pdf).

The directive is issued under a Colorado Court Rule that invokes the exceptions in CORA for Colorado Supreme Court rules and orders. Colo. Pub. Acc. Info. R. 1 (“This rule is intended to be a rule of the Supreme Court within the meaning of the Colorado Public Records Act, including §§ 24-72-204(1)(c) and 24-72-305(1)(b).”). It restricts or denies public access to the vast majority of court documents and filings for familiar principled justifications including privacy. CJD 05-01 § 1.00(a). However, for edicts that remain subject to public access, it does not explain why privacy favors public access via direct request, in-person access, or through a paid subscription service over free and open digital access.

<sup>38</sup> *Bean*, 2 P. at 911.

<sup>39</sup> Annotations in the Colorado Revised Statutes largely consist of cases references and their holdings interpreting statutory provisions, making the annotations themselves rarely cited and the full extent of their use by courts unknown. Other, known, uses are discussed in this section.

<sup>40</sup> *E.g.*, *Great Western Sugar Co. v. Pennant Products, Inc.*, 748 P.2d 1359, 1360–61 (Colo. App. 1987) (relying on official comments adopted with Uniform Commercial Code to find disputed

comments to rules,<sup>41</sup> annotations of implicated laws of other states,<sup>42</sup> and legislative committee reports.<sup>43</sup> This reliance has extended even to criminal law cases<sup>44</sup>— arguably the most serious instances in which citizens have both a responsibility and a right to know the law.

However, the inferred value of access to government edicts by the courts does not translate into improved access. While public records doctrine and reliance on government edicts to resolve cases indirectly support public access to government edicts, explicit judicial and statutory attention remain crucial to achieving complete free and open access to government edicts in Colorado. Until such explicit judicial and statutory treatment is provided, access to government edicts remains mired in public records exceptions and discretions.

### C. Colorado Open Records Act

Colorado public records laws also significantly impact public access to government edicts in Colorado. The Colorado Open Records Act (CORA) sits at the heart of this architecture,<sup>45</sup> opening with an explicit policy statement in the form of a legislative declaration:

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good satisfied identification requirement); *People ex rel. A.C.J.*, 88 P.3d 599, 610–11 (Colo. S. Ct. 2004) (considering comments of Uniform Adoption Act to resolve inter-state custody dispute); *Scott v. Scott*, 136 P.3d 892, 897 (Colo. S. Ct. 2006) (noting comment to Uniform Probate Code supports holding); *Waskel v. Guaranty Nat'l Corp.*, 23 P.3d 1214, 1219 (Colo. App. 2000) (noting comment to corresponding provision of Model Business Corporation Act consistent with other jurisdictions' caselaw and with court's holding).

<sup>41</sup> *E.g.*, *DCP Midstream Ltd. P'ship v. Anadarko Petroleum Corp.*, 2013 CO 36, ¶ 27 (citing comment in Colorado Rules of Civil Procedure to support holding regarding requirements for trial court's management of discovery); *People v. Gray*, 35 P.3d 611, 620 (Colo. O.P.D.J. 2001) (noting that commentary in Colorado Rules of Professional Conduct supports hierarchy of rule application).

<sup>42</sup> *E.g.*, *Burns v. People*, 365 P.2d 698, 701 (Colo. S. Ct. 1961) (relying on annotation in certified Nebraska statute to find a felony in the place of conviction); *People v. Hayden*, 548 P.2d 1278, 1282 (Colo. S. Ct. 1976) (relying on annotation in Texas statute upon which provision at issue was based to distinguish statute).

<sup>43</sup> *E.g.*, *People v. Delgado*, 2019 CO 82, ¶ 29 (noting support for holding based on comment of legislative council).

<sup>44</sup> *Delgado* provides a powerful example. *Id.* Based on the comment of the Legislative Council in its report proposing the criminal provision at issue, the Colorado Supreme Court affirmed the Court of Appeals decision overturning convictions for a single act under two criminal provisions (robbery and theft of a person) with mutually exclusive elements, and ordering a new trial. It also referred to its prior decision, *People v. Warner*, 801 P.2d 1187, 1191 (Colo. S. Ct. 1990), in which it reduced a conviction from a class 5 felony to a class 2 misdemeanor based on the same comment.

<sup>45</sup> COLO. REV. STAT. § 24-72-200.1 et seq. (2021). While the entirety of Article 72 (which has seven parts, including a part on criminal justice records and addenda 72.2, 72.3, and 72.4) governs

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 this part 2 or as otherwise specifically provided by law.<sup>46</sup>

CORA's legislative history reflects a similarly broad commitment to public access. The committee tasked with studying the status of public records in Colorado and that ultimately recommended CORA demonstrated care to address reasonableness and competing values in order to give the Act maximum effect.<sup>47</sup> The report opens with a quote:

Public business is the public's business. The people have the right to know. Freedom of information is their just heritage. Without that the citizens of a democracy have but changed their kings.<sup>48</sup>

Throughout the discussion, while balancing the constitutional principles of freedom of speech, freedom of press, and privacy, the Committee advocated for a robust right of access and emphasized commitment to the legal and social value of the people's right to know.<sup>49</sup>

CORA contains some of the strongest provisions in Colorado law that effectively provide for access to government edicts. First among these is CORA § 203, which sets out the general terms for access to public records, which

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Public (Open) Records, only part 2 is the Colorado Open Records Act, and is the chapter upon which we focused.

<sup>46</sup> COLO. REV. STAT. § 24-72-201 (2021). Interestingly, the annotations to this section largely consist of references to cases that reinforce these liberal policy goals, echoing the minimal limitations provided in caselaw and noting the general presumption in favor of access. *See supra* notes 31–36 and accompanying text.

<sup>47</sup> *See* INTRODUCTION, LEGISLATIVE COUNCIL REPORT TO THE COLORADO GENERAL ASSEMBLY, RESEARCH PUBLICATION NO. 126 (Nov. 1967), <https://www.law.du.edu/forms/library/clcview.cfm?pubno=126> [hereinafter Public Records Investigation Committee Report Part 2] (follow “Part 2” hyperlink and scroll down to thumbnail-view page no. 16 for beginning of Introduction).

<sup>48</sup> Public Records Investigation Committee Report Part 2 at xiii (follow “Part 2” hyperlink and scroll down to thumbnail-view page no. 16) (quoting Harold L. Cross, *The People's Right to Know: Legal Access to Public Records and Proceedings* xiii (1953)).

<sup>49</sup> Other comments on the record powerfully advocate for public access to records, offering arguments at least as applicable—and, possibly moreso—to public access to edicts of government as to public records. *E.g.*, Public Records Investigation Committee Report Part 2 at 18 (thumbnail-view 33) (Statement of Zeke Scher, Asst. City Editor, Denver Post at General Committee Meeting (June 2, 1967): “The threat of our times to democratic government is not communism or corruption. It is secrecy—growing secrecy in government and a resulting inability of the electorate to govern intelligently. [] The need of our times is to make freedom more meaningful so that the public can govern, rather than be governed.”).

encompass government edicts.<sup>50</sup> Section 203(3.5) was updated in 2017 to require custodians to provide requested digital records in searchable and sortable format, where available. However, under this scheme a request must still first be submitted to trigger the provision.<sup>51</sup>

Section 203(1), conversely, does require affirmative action by government, but has not yet been updated to reflect current technological capabilities. It requires that public records be open for inspection and directs the custodian to “[t]ake such measures as are necessary to assist the public in locating...records...and to ensure public access to the public records without unreasonable delay or unreasonable cost.”<sup>52</sup> The current language includes, as an example, setting up viewing stations for microfiche and anticipates “direct electronic access via online bulletin boards or other means.”<sup>53</sup> If the General Assembly did not consider setting up microfiche viewing stations and online postings too burdensome to constitute a necessary measure, the modern equivalent of facilitating complete and convenient public access could be articulated as bulk digital access in the best available format.

Other parts of § 203 also likely require updating to comply with *Georgia v Public.Resource.Org* in its specific treatment of copyright. As mentioned above, Section 203(3.5) now directs custodians to provide digital copies. However, it still limits retains catch-all exceptions for instances where providing a copy would violate a copyright or where redaction would be technologically or practically infeasible or require new or improved software. Similarly, § 203(4) preserves the right of the State to seek copyrights for public records “except that this authorization shall not restrict public access to or fair use of copyrighted materials.”<sup>54</sup> Public records span a wide array of public institutions; these sections should be updated at least to explicitly exclude government edicts from such inapplicable limitations.

Finally, §205(1)(b) briefly notes that email is an acceptable mode for providing a record, but largely focuses on physical copies and printouts.<sup>55</sup> In

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<sup>50</sup> COLO. REV. STAT. § 24-72-203 (2021).

<sup>51</sup> *Id.* at §203(3.5) (2021). Arguably, such an obligation is better treated in the statutes regulating publication of the Colorado Revised Statutes, COLO. REV. STAT. § 2-5-101 et seq (2021), discussed below. However, it bears highlighting here is that the resulting scheme fails a Goldilocks-style test: CORA governs a category larger than government edicts, while the publication provisions address a smaller category. No article or chapter in the Colorado Revised Statutes squarely addresses government edicts as a category, resulting in a lack of statutory, appropriately-tailored, terms of access for that category.

<sup>52</sup> COLO. REV. STAT. § 24-72-203(1)(b)(II) (2021)

<sup>53</sup> *Id.*

<sup>54</sup> COLO. REV. STAT. § 24-72-203(4) (2021).

<sup>55</sup> COLO. REV. STAT. § 24-72-205(1)(b) (2021).

addition to shifting the burden of affirmative obligation to government in the context of government edicts, explicit recognition of the benefit of digital databases would further Colorado's open government goals and improve its treatment of government edicts as we progress further in the digital age.

Despite promoting public access generally, and access to public records specifically, CORA functions in practice as a drag on open access to government edicts. In tailoring its application to the needs of public records' larger scope, sensitivity, and diversity, CORA reasonably places the burden on a requester to access records, names numerous government officials and entities as custodians, and grants broad discretion to custodians in setting the terms of access to public records. In the context of public records, this burden on citizens, broad dispersal of authority, and relatively open discretion could make sense; in the public records scheme it provides reasonableness limitations,<sup>56</sup> and workability.<sup>57</sup>

However, applied to government edicts, this burden functions to relieve the government of an affirmative obligation to provide cohesive and consistent access to the law. Worse, in some provisions CORA puts the state out of compliance with the government edicts doctrine.

Looking beyond CORA's text, the only Attorney General Opinion addressing CORA, issued by Attorney General Ken Salazar in 2001, explicitly and incorrectly echoes the notion that public records may be subject to copyright.<sup>58</sup> In the intervening two decades since this opinion, local and state lawmakers have not attended consistently to updating CORA, much less ensuring proper and even application of the government edict doctrine through and beyond CORA. An approach that continues to categorically lump government edicts in with public records is untenable. At best, it will continue to cause confusion and, at worst, it will lead to refusal to provide government edicts in violation of applicable law. A new opinion from the Attorney General providing explicit guidance regarding the application of the government edicts doctrine throughout state and local

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<sup>56</sup> See COLO. REV. STAT. § 24-72-202(6), -204 (2021).

<sup>57</sup> Custodian is defined quite broadly, compounding the permissiveness for custodian discretion. COLO. REV. STAT. § 24-72-202(1.1), (2) (2021). See also OFFICE OF LEGISLATIVE LEGAL SERVICES, LAW SUMMARY: COLORADO OPEN RECORDS ACT - "CORA," 1 (Oct. 28, 2020), <https://leg.colorado.gov/sites/default/files/colorado-open-records-act-cora.pdf>. But see COLO. REV. STAT. § 24-72-203 and 204 (2021), setting out relatively short time periods requiring a custodian to provide the record, meet a short extension, issue a denial, or otherwise contact the requester. At issue, then, is not records subject to a request, but records not made publicly available (particularly online) without requiring a request.

<sup>58</sup> Salazar, *supra* note 23 at n.9 ("[r]equests to copy government documents can raise copyright questions. For example, some as-built drawings or other architectural drawings in government files might be protected by a copyright. While the custodian may allow inspection of such copyrighted materials, the custodian ordinarily will not copy such materials or allow others to copy them.").

government, and particularly addressing its intersection with CORA, would go far to provide sorely needed direction.

#### **D. Other Statutory Provisions and Rules Regulating Public Access to Government Edicts**

Several other laws that further open government and public access in Colorado have already embraced widespread digital open access. These include Colorado’s Sunshine Law and the adopted Uniform Electronic Materials Act (UELMA). Other scattered state, judicial, and county provisions reveal a more closed approach to access. Each of these continues the pattern of an approach that is either too broad—and ultimately burdensome—or too narrow—and therefore incomplete—for facilitating access to government edicts. Together, however, these reinforce the conclusion that a structure for free and open access to government edicts in Colorado would be consistent with the values of the state, and is overdue.

Colorado’s Sunshine Law informs optimal treatment of government edicts by demonstrating the State’s high priority of open, digital access. In particular, it requires that meeting notices and minutes must be publicly posted.<sup>59</sup> It reflects the ongoing transition in Colorado to provide government edicts and other works online<sup>60</sup>—even to the point of including “electronically, or by other means of communication” in the<sup>61</sup> This assertive approach, requiring prompt online posting of even a text message or email discussing pending legislation, stands in stark contrast to the absence of any unified requirement for online access to government edicts. It suggests that access to government edicts fits squarely within the values of open government, but has gotten lost in the shuffle of tackling areas like public records and legislative dealings.

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<sup>59</sup> COLO. REV. STAT. § 24-6-101 et seq. (2021).

<sup>60</sup> COLO. REV. STAT. § 24-6-402(2)(C)(II)(A) (2021) (“[i]t is the intent of the general assembly that local governments transition from posting physical notices of public meetings in physical locations to posting notices on a website, social media account, or other official online presence of the local government to the greatest extent practicable.”); COLO. REV. STAT. § 24-6-402(2)(C)(II)(E) (2021) (“[i]t is the intent of the general assembly to closely monitor the transition to providing notices of public meetings online over the next two years and, if significant progress is not made, to bring legislation mandating in statute that all notices be posted online except in very narrow circumstances that are beyond the control of a local government.

<sup>61</sup> COLO. REV. STAT. § 24-5-402(1)(b) (2021). *See also* ZANSBERG ET AL., *supra* note 23, at Open Meetings I(D)(3), which notes that email, text messages, and social media could all qualify as a “meeting” that must comply with online notice requirements.

Similarly, UELMA requires public access<sup>62</sup> to limited legal materials (the state constitution, session laws, revised statutes, and agency rules)<sup>63</sup> that are “designated as official . . . and first published electronically on or after March 31, 2014.”<sup>64</sup> Even when the Act was adopted in 2012, Colorado and other states recognized the growing importance of public access to electronic records. The official comment to the Uniform Act reflects this goal shared among numerous states:

Our democratic system of government depends on an informed citizenry . . . . To exercise their rights to participate in our democracy, citizens must have reasonable access to all legal material... Permanent public access to official electronic legal material allows citizens to stay informed of legal developments and carry out their democratic responsibilities.<sup>65</sup>

Nearly ten years later, only agency rules fall under UELMA in Colorado because only the Colorado Code and Register have designated official electronic versions.<sup>66</sup> Like CORA and Colorado’s Sunshine law, Colorado’s adoption of UELMA reflects Colorado’s commitment to values that animate the government edicts doctrine. However, like the other laws discussed, its design and application has also proven ill-fitting with the government edicts doctrine. Further, its scope is narrower than government edicts, making it a poor candidate for modification to further access to government edicts. Rather, as one more piece to the myriad puzzle of government edicts in Colorado’s open government scheme, it underscores the need for direct and independent treatment of government edicts.

### **E. Publication of the Colorado Revised Statutes**

Central to government edicts, publication of the Colorado Revised Statutes is mandated by the Colorado Constitution<sup>67</sup> and governed by statute.<sup>68</sup> As a result, both the statutes and the publishing contract should be harmonized with the

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<sup>62</sup> COLO. REV. STAT. § 24-71.5-108 (2021).

<sup>63</sup> COLO. REV. STAT. § 24-71.5-102(2) (2021).

<sup>64</sup> COLO. REV. STAT. § 24-71.5-104 (2021).

<sup>65</sup> COLO. REV. STAT. § 24-71.5-108 off. cmt. (2021).

<sup>66</sup> . *Colorado Code of Regulations*, COLO. SEC’Y STATE (Nov. 10, 2021), <https://www.coloradosos.gov/CCR/Welcome.do>; *Colorado Register*, COLO. SEC’Y STATE, <https://www.coloradosos.gov/CCR/RegisterHome.do> (last visited Nov. 18, 2021).

<sup>67</sup> COLO. CONST. art XVIII, § 8.

<sup>68</sup> COLO. REV. STAT. §§ 2-5-101–118, 24-70-223 (2021).



government edicts doctrine and with Colorado's value of public access in support of open government.

Of particular importance, C.R.S. § 2-5-115 reserves copyright in the statutes and ancillary materials to the state.<sup>69</sup> It is also specifically invoked in the current publishing contract copyright.<sup>70</sup> *Both the statute and the contract provision directly contradict the government edicts doctrine.*

Publication of the statutes hold particular importance at the time of writing this policy brief because the State is currently negotiating the next publishing contract with LexisNexis. Ideally, the current publishing contract should comply with *Georgia v. Public.Resource.Org* and improve public access to the Colorado Revised Statutes and other hosted edicts; regardless, the statute should be updated to do so as well. Under C.R.S. § 2-5-109, multiple parties, including the Attorney General and the controller, must approve the publication contract, providing an opportunity to address the provisions that implicate public access.<sup>71</sup> The Attorney General must approve the legality of the contract, and the controller must approve the contract as designee of the governor; the chairman must execute the contract on behalf of the state.<sup>72</sup>

#### **F. Current Developments in Copyright and Public Access**

Colorado continues to gradually liberalize free and public access to government edicts and minimize its copyright assertions regarding them. By statute, the Committee on Legal Services (or its designee) originally was required to register a copyright in the statutes and ancillary works,<sup>73</sup> and is still permitted to register copyrights in the name of the state.<sup>74</sup> Historically, such registration was

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<sup>69</sup> COLO. REV. STAT. § 2-5-115 (2021)

<sup>70</sup> Contract for Publication of the Colorado General Assembly's Session Laws and Colorado Revised Statutes, X.A. (2012), [hereinafter Colorado Publications Contract 2012 Final], <https://law.resource.org/pub/us/case/ftc/Supplementary%20Exhibits/Exhibit%2012%20-%20Colorado%20Publications%20Contract%202012%20FINAL.pdf> Extension/modification of contract

<sup>71</sup> COLO. REV. STAT. § 2-5-109 (2021). This window is unique at least partially because it is relatively rare: the contract spans 5 years, with a statutory option for one renewal of an additional five years. *Id.*

<sup>72</sup> COLO. REV. STAT. § 2-5-109 (2021).

<sup>73</sup> S.B. 261, 68th Gen. Assembly, Reg. Sess. (Colo. 2011), <https://legiscan.com/CO/text/SB261/id/276081>. See also, Submission of Public.Resource.Org., Inc. to the Fed. Trade Comm'n, Supplementary Exhibit 16 - Colorado Records Request (last updated Nov. 18, 2021) [hereinafter Colorado Records Request], <https://law.resource.org/pub/us/case/ftc/Supplementary%20Exhibits/Exhibit%2016%20-%20Colorado%20Records%20Request.pdf> (scroll down to thumbnail-view page 38).

<sup>74</sup> COLO. REV. STAT. § 2-5-115 (2021).

therefore a term of the State’s publication contract with LexisNexis.<sup>75</sup> However, the Committee decided to suspend this practice starting in 2016, and amended its next publication contract to indicate that any ancillary work in the public domain “may” be copyrighted by the Committee on behalf of the State—although the permissive right still explicitly lists non-copyrightable material such as annotations and editors notes.<sup>76</sup>

Public access to statutes, session laws, and other materials also continues to become more quickly and easily accessible. The Colorado Revised Statutes and Session Laws can be purchased from LexisNexis in either a book and DVD bundle, or e-book format, for \$486,<sup>77</sup> or viewed freely online via the LexisNexis online platform.<sup>78</sup> LexisNexis has also recently begun publishing session laws “continuously” in the online platform rather than at the conclusion of each session.<sup>79</sup> Similarly, C.R.S. § 2-5-118 permits the Legislative Committee to provide a statutory database for additional distribution in digital format<sup>80</sup> and the Lexis landing page directs interested parties to contact the Office of Legislative Legal services.<sup>81</sup> Recently, in April 2021, the State and LexisNexis also agreed to eliminate the limitation upon users to print only the greater of ten pages or one full section of the statutes.<sup>82</sup> Currently, individual users can print the provisions or request digital copies of portions of the Statutes from the Office of Legislative Legal Services via a link on the Lexis landing page(although only for specified

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<sup>75</sup> Colorado Publications Contract 2012 Final, *supra* note 70 at X.A.

<sup>76</sup> Extension and Modification of Contract: Publication of the Colorado General Assembly’s Session Laws and Colorado Revised Statutes, III.A. (June 23, 2017) [https://law.resource.org/pub/us/case/ftc/Supplementary%20Exhibits/Exhibit%2013%20-%20Colorado%20Publications%20Contract%202017%20Extension%20\[signed\].pdf](https://law.resource.org/pub/us/case/ftc/Supplementary%20Exhibits/Exhibit%2013%20-%20Colorado%20Publications%20Contract%202017%20Extension%20[signed].pdf).

<sup>77</sup> *Colorado Revised Statutes*, LEXISNEXIS STORE, <https://store.lexisnexis.com/categories/shop-products/statutes-271/colorado-revised-statutes-skuusSku330002> (last visited Nov. 18, 2021).

<sup>78</sup> *Colorado Legal Resources*, LEXISNEXIS, <https://advance.lexis.com/container?config=0345494EJAA5ZjE0MDIyYy1kNzZkLTRkNzktYTtxMS04YmJhNjBLNWUwYzYKAFBvZENhdGFsb2e4CaPI4cak6laXLCWylBO9&crd=b15a5b16-99c8-4b33-9f94-47e374ad74ba> (last visited Nov. 18, 2021).

<sup>79</sup> Colorado Records Request, *supra* note 73 at 31–32.

<sup>80</sup> COLO. REV. STAT. § 2-5-118(1)(b)(III) (“the committee...[m]ay...provide the statutory database containing the official text of the statutes, ith or without original ancillary publications prepared by the general assembly or its staff, for the additional publication, reprinting, and distribution of the statutes in print, electronic, or other digital format by another person, agency, or political subdivision.”).

<sup>81</sup> *Colorado Legal Resources*, *supra* note 78. See Appendix A for Lexis platform instructions and terms of use.

<sup>82</sup> Colorado Records Request *supra* note 73 at 25 (referencing Colorado Publications Contract 2012 Final, *supra* note 70, at VI.E.4(d)).

selections and in Word or PDF formats)<sup>83</sup> Finally, the Office of Legislative Legal Services has described exciting ongoing efforts to provide in-house publishing of the statutes online, and in XML format<sup>84</sup>

## II. Survey of Government Edicts in Colorado

Our survey of the government edicts in Colorado<sup>85</sup> reveals that edicts are largely available for public access in some form but subject to some striking constraints. Specific constraints upon access include in some cases requiring a direct request and purchase of a physical copy, piecemeal access that requires manual iterative accumulation, and/or aggressive assertions of copyright.

Our survey revealed two general trends.

- Multiple limitations operate upon almost all edicts, cumulatively impeding access to a degree that likely makes access too labor-intensive for the public to fully realize the potential benefits of even the edicts that are available online. In particular, few edicts are centrally located and

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<sup>83</sup> *Colorado Legal Resources*, *supra* note 78; Colorado Revised Statutes Printout Request, Google Form, <https://docs.google.com/forms/d/e/1FAIpQLSfFgUIyX6zfYdgD69WjG8-3lYlpfMl3wg7udqUBVOLxnKnGYw/viewform> (last visited Nov. 18, 2021).

<sup>84</sup> Colorado Records Request *supra* note 73, at 9–12. *See also* Office of Legislative Legal Services, Inquiries and Answers Related to the 2021 Publications RFP at Section 2.5 Question 1, <https://leg.colorado.gov/sites/default/files/images/olls/publications-rfp-inquiries-and-answers-web.pdf> (last visited Nov. 18, 2021) (“*Will the bidder be hosting [the online public access] for the term of the contract, or turning it over to the State to host? At this point, the new contractor should anticipate hosting the online public access for the term of the contract.*”).

<sup>85</sup> Our research methodology took an iterative approach. We began by developing a set of search terms and questions, and used two secondary materials, Harvard Library on Copyright, *Colorado, COPYRIGHT AT HARVARD LIBRARY*, <https://copyright.lib.harvard.edu/states/colorado> (last visited Nov. 18, 2021), and the Colorado Open Records Guide, *supra* note 23, to identify key starting sources in caselaw, the state constitution, and statutes. We then worked through the annotations and headnotes that each source cited in turn, working back and forth between statutes, cases, and other secondary materials that surfaced. We also conducted two other, parallel courses of research. One consisted of a LexisNexis search for cases that relied on government edicts such as statutory annotations to be resolved. The other focused on directly navigating governmental websites. For those we worked through state- and locally-sponsored governmental websites to develop familiarity with navigating the sites, following all major links and using a site-wide search if to determine what edicts were hosted on each site. This step, in particular, presented challenges since many of the state’s websites contain a rich variety of resources across multiple sets of subpages. We therefore decided to develop cross-checks to make sure we uncovered all of the resources available, including use of Google searches and cross-entity searches such as the Supreme Court Library website, to see if it might uncover edicts contained in a site that we did not uncover. However, this remains a preliminary survey and we do not purport to have developed an exhaustive catalogue of all government edicts, nor a perfect catalogue of each state website.

searchable as a whole; even fewer are available in data-rich formats; and, none are available in bulk from a government website.<sup>86</sup>

- The degree of accessibility varied most significantly by the branch or entity that hosted the edicts. Despite some cross-coordination efforts such as consistent prominent links to public records requests and the Colorado Revised Statutes across entities' websites, these organizational quirks significantly impact the accessibility of edicts, for reasons that appear to arise from chance more than anything else.

This Part summarizes our review of the availability of government edicts in Colorado, gathering information regarding five characteristics of edict availability: background information regarding location of the source, formal limitations upon access, structural limitations upon access, other notable terms or features, and comparison to non-official sources. Because of the variation in the availability of data, edicts below are grouped by organizing entity for clarity.

#### **A. Edicts Provided by the Colorado General Assembly**

The great majority of edicts provided by the General Assembly are hosted by LexisNexis.<sup>87</sup> The accessibility of edicts hosted by LexisNexis implicates some of the most significant limitations, and upon a large number of important government edicts. Importantly, the next several months pose a unique window to remedy some of these limitations because the State is currently negotiating a new publishing contract with Lexis Nexis.<sup>88</sup> The contract should, at minimum, be updated to conform to the government edicts doctrine. Beyond strict legality, several additional terms that have significant chilling effects through formal assertions, inconsistency with prior contract terms, and overly-restricted navigation should also be addressed.

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<sup>86</sup> As discussed *infra*, Internet Archive makes jury instructions and regulations available in bulk. This poses an important opportunity for government: even if providing some edicts in bulk XML is too burdensome for government, there are other organizations that would do so if the state shared the relevant contents of its underlying databases.

<sup>87</sup> *Colorado Legal Resources*, *supra* note 78.

<sup>88</sup> Under COLO. REV. STAT. § 2-5-105, the State awards a five-year contract for publication of the state laws. It may renew the contract once, then must put the contract out to bid again at least every ten years. LexisNexis won the contract, and was awarded renewal, in the 2002 and 2012 bidding cycles. Colorado Records Request *supra* note 73 at 7. It also recently won the 2022 bid. Hearing Summary Document, Committee Discussion and Selection of Contractor, Meeting of Committee on Legal Services (Sept. 15, 2021), <https://leg.colorado.gov/content/540b4e6dcb2f2a2587258751005fd5b0-hearing-summary>. LexisNexis has closely collaborated with the Office of Legislative Legal Services over the years and has largely enjoyed a good reputation in light of its favorable pricing and attentive customer service. Colorado Records Request *supra* note 73 at 7–12, 47–54.

*Background.* LexisNexis hosts an online Colorado Legal Resources portal that provides unofficial versions of the Colorado Revised Statutes, Colorado State Constitution, and twenty-two other sets of local, state, and federal court rules.<sup>89</sup>

*Formal Limitations.* Navigating the LexisNexis portal entails navigating three different sets of terms of use and multiple copyright assertions. Upon first accessing the portal each session, the user must click through a warning banner accepting the terms of use of the portal, some of which are displayed in the banner, and which includes a copyright assertion.<sup>90</sup>

Notably, the contours of the copyright assertion could confuse users into thinking that LexisNexis has a copyright interest in the contents it hosts rather than in the platform itself, and for two reasons. First, LexisNexis only disclaims from its terms and conditions the text and numbering of the statutes, constitution, and court rules it hosts. It does not disclaim ancillary materials also covered by the government edicts doctrine such as annotations and cross-references. Second, even if these materials were copyrightable LexisNexis could not claim the copyright. They are formally reserved to the State in its contract with LexisNexis<sup>91</sup> and, as a practical matter, the ancillary materials are authored exclusively by the Office of Legislative and Legal Services and LexisNexis plays no contributory work-for-hire role. The result is a confusing and chilling layering of copyright claims asserted to users both as a term of entrance to the platform and underlying its usage.

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<sup>89</sup> *Colorado Legal Resources*, *supra* note 78. The platform hosts viewing access to the Colorado Revised Statutes Annotated, Session Laws, the Colorado Constitution, and Local, State, and Federal Court Rules (the Colorado Rules of Civil Procedure, Colorado Rules of County Court in Civil Procedure, Colorado Rules of Procedure for Small Claims Courts, Colorado Rules of Probate Procedure, Colorado Rules of Juvenile Procedure, Colorado Rules of Criminal Procedure, Colorado Rules Governing Public Defender, Colorado Rules for County Court Traffic Violations Bureaus, Colorado Rules for Traffic Infractions, Colorado Municipal Court Rules of Procedure, the Colorado Rules of Jury Selection and Service, Colorado Appellate Rules, Colorado Rules of Evidence, Rules for Reapportionment Commission Proceedings, Colorado Rules for Magistrates, Uniform Local Rules for All State Water Court Divisions, Rules Governing the Commissions on Judicial Performance, Public Access to Information and Records, United States District Court for the District of Colorado Local Rules, Electronic Case Filing Procedures for the District of Colorado, United States Bankruptcy Court for the District of Colorado, Local Rules of the First Judicial District of Colorado [Gilpin and Jefferson Counties], and Local Rules of the County Court of the City and County of Denver).

<sup>90</sup> *Colorado Legal Resources*, *supra* note 78. “Your use of this services is subject to the attached *Terms and Conditions* associated with LexisNexis’s proprietary interests. LexisNexis reserves the right to claim and defend its copyright on copyrightable portions of the site. **The *Terms and Conditions* do not apply to the text and numbering of the statutes, constitutional provisions, or court rules in the content of the site.**” (emphasis in original). See Appendix A.

<sup>91</sup> Prior Contract text; floated text to conform to *GA v PRO*

The site provides two other sets of terms of use: instructions as part of the Colorado Legal Resources Public Access landing page, and one in its full terms and conditions.<sup>92</sup> The Colorado Legal Access landing page directs users to contact the Office of Legislative Legal Services for electronic copies of portions of the statutes, subject to fees for certification, paper or CD-ROM copy, or inclusion of editorial material including source notes and annotations.<sup>93</sup>

Finally, explicit copyright assertions and registration reflect the ongoing struggle to apply *Georgia v. Public.Resource.Org*. As noted above, the State suspended its practice of attempting to register copyrights in 2016. After that time, it appears that LexisNexis mistakenly filed some copyrights on behalf of the state.<sup>94</sup> While this problem was addressed, the registrations appear not to have been withdrawn.<sup>95</sup> However, a copyright assertion in the name of the “Colorado Revised Statutes” remains in a banner across the bottom of each individual provision.

*Structural Limitations.* Navigation of the portal after initial click-through entry remains onerous. After clicking through the banner and accepting the terms of use, the user must also click through a CAPTCHA anti-crawling wall the first time they click into a specific provision.<sup>96</sup> This places an extra roadblock before the user at the start of each session and prevents use of programs that could use

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<sup>92</sup> *Colorado Legal Resources*, *supra* note 78; LexisNexis Terms and Conditions §§ 1.1(e)–(f), 1.2, 1.4, <https://www.lexisnexis.com/en-us/terms/general/default.page> (last visited Nov. 18, 2021) (asserting copyright in the online services and materials and describing permissible uses).

<sup>93</sup> *Colorado Legal Resources*, *supra* note 78.

<sup>94</sup> This attention was brought to the attention of the state, and appears to have ceased since then. Colorado Records Request *supra* note 73 at 36. No copyrights by or on behalf of the state appear to have been registered since *Georgia v. Public.Resource.Org*.; other copyrights in edicts that have been filed through 2020 by the state (or on its behalf by LexisNexis) include the Colorado School Laws, Colorado Tax Code, and the Colorado Real Estate Manual Supplement. *Advanced Search*, Copyright Public Records System (Nov. 18, 2021), <https://publicrecords.copyright.gov/advanced-search> (searched for “claimant” + “contains” + “State of Colorado” and filtered to 1/1/2015 to 11/18/2021).

<sup>95</sup> *Id.*

<sup>96</sup> Attempting to directly link to any provision will route the user through an acknowledgement and the CAPTCHA validation (users with an existing Lexis account will be routed to a login page, but can access the public platform through a different browser or incognito window). *E.g.*, COLO. REV. STAT. § 24-72-201 (2021), [https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=387dae7b-5ad3-42b4-a4cd-0ec25b8c2928&nodeid=AAAYAAOABAACAAD&nodepath=/ROOT/AAAY/AAAYAAO/AAAYAAOAB/AAAYAAOABAAC/AAAYAAOABAACAAD&level=5&haschildren=&populated=false&title=24-72-201.%20Legislative%20declaration.&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=/shared/document/statutes-legislation/urn:contentItem:61P5-WVF1-DYDC-J45Y-00008-00&ecomp=g1\\_9kk&prid=dc4fb035-f945-4938-ac29-828b0c3d46f2](https://advance.lexis.com/documentpage/?pdmfid=1000516&crd=387dae7b-5ad3-42b4-a4cd-0ec25b8c2928&nodeid=AAAYAAOABAACAAD&nodepath=/ROOT/AAAY/AAAYAAO/AAAYAAOAB/AAAYAAOABAAC/AAAYAAOABAACAAD&level=5&haschildren=&populated=false&title=24-72-201.%20Legislative%20declaration.&config=014FJAAyNGJkY2Y4Zi1mNjgyLTRkN2YtYmE4OS03NTYzNzYzOTg0OGEKAFBvZENhdGFsb2d592qv2Kywlf8caKqYROP5&pddocfullpath=/shared/document/statutes-legislation/urn:contentItem:61P5-WVF1-DYDC-J45Y-00008-00&ecomp=g1_9kk&prid=dc4fb035-f945-4938-ac29-828b0c3d46f2).

automation to relieve the burden of manually clicking through each individual provision a user would examine in the course of complete research.

Most strikingly, when viewing each individual provision, the edict is viewable only in a flat, printer-friendly view.<sup>97</sup> A user desiring to access the edict after the session expires without navigating to it again from scratch may not download it but, at best, must open and physically print each desired provision individually, or print to PDF (violating the terms of use of the Colorado portal permitting printing but not electronic copies), or request it from the State.<sup>98</sup>

Finally, these requirements for assent—to enter the cite, and then to proceed to any individual provision—are imposed at the start of every new session. Although the contract between the State and LexisNexis addressing functionality and features specifically provides for direct linking, such direct linking is only available once a new session has been started; entering a direct link to start a session will route the user to the banner entering the home landing page, losing the direct link in the process.<sup>99</sup>

*Other Features.* LexisNexis does provide a number of features that support public access. First and foremost, the edicts it provides are largely centralized and easily searchable (although the logo-link to return to the main page with the Colorado Revised Statutes from any of the rules is broken and does not return to the landing resource page). The Office of Legislative Legal Services has also consistently worked closely with LexisNexis over the years to improve access on the Colorado Legal Resources portal.<sup>100</sup> Notably, this has included “continuous publication” of session laws that makes developments available on a near-current basis rather than only at the end of each legislative session.<sup>101</sup>

*Comparison to Non-official Sources.* Many of the edicts hosted on LexisNexis are available from other sources, often under more accessible terms. Most notably, Public.Resource.Org makes the Colorado Revised Statutes available in HTML.<sup>102</sup> The Colorado Bar Association posts a free unofficial version of the Colorado Rules of Professional Conduct.<sup>103</sup> COBAR provides those rules both in

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<sup>97</sup> *E.g., id.*

<sup>98</sup> *Colorado Legal Resources, supra* note 78. See Appendix A.

<sup>99</sup> Colorado Publications Contract 2012 Final, *supra* note 70 at VI.E.4(c).

<sup>100</sup> Colorado Records Request *supra* note 73 at 7–9.

<sup>101</sup> *Id.* at 31–32.

<sup>102</sup> *Structured html State Codes of Colorado (CO)*, <https://unicourt.github.io/cic-code-co> (last visited Nov. 18, 2021).

<sup>103</sup> *Rules of Professional Conduct*, COLO. BAR ASSOC. (Sept. 10, 2020), <https://www.cobar.org/rulesofprofessionalconduct>.

links broken out by rule (which also contain the option to download or print a searchable PDF) and in a single, complete, searchable PDF (although an older version).<sup>104</sup>

The General Assembly also provides scattered links to additional edicts directly from various subpages across its website:

- The “Laws” subpage includes links to an authenticated PDF image file of the Colorado State Constitution and session laws.<sup>105</sup>
- Publications under the Office of Legislative Legal Services subpage<sup>106</sup> include links to most of these as well as to the Red Book and other publications.<sup>107</sup>
- The “Publications” subpage from the greater General Assembly website offers a variety of reports, brief, staff publications, and other resources authored by legislative officials.<sup>108</sup> Generally, each high-level link gives way to numerous sublinks based on the year available, document sought, and provision, typically ultimately resulting in a series of single-provision PDF.
- Other publications, such as the Rules of Civil Procedure, can be found by searching on commercial search engines and following links to the 2018 rules on the General Assembly site<sup>109</sup> and subsequent rule changes on the Colorado Judicial Branch website.<sup>110</sup> While generally these result in a slightly more friendly edict format—a searchable PDF—navigation caters to particularized searching rather than a holistic database.

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<sup>104</sup> *Rules of Professional Conduct*, COLO. BAR ASSOC. (Apr. 6, 2016), [https://www.cobar.org/Portals/COBAR/repository/rules\\_of\\_prof\\_conduct.pdf](https://www.cobar.org/Portals/COBAR/repository/rules_of_prof_conduct.pdf).

<sup>105</sup> *Laws*, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/laws> (last visited Nov. 18, 2021).

<sup>106</sup> *Office of Legislative Legal Services*, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/agencies/office-of-legislative-legal-services> (last visited Nov. 18, 2021).

<sup>107</sup> *Office of Legislative Legal Services: Publications*, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/agencies/office-legislative-legal-services/publications> (last visited Nov. 18, 2021).

<sup>108</sup> *Publications*, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/content/publications> (last visited Nov. 18, 2021).

<sup>109</sup> Colo. R. Civ. Pro. (July 1, 2018), <https://leg.colorado.gov/sites/default/files/images/olls/crs2018-court-rules.pdf> (we were unable to navigate to the rules directly through the site, but found them through a general internet search).

<sup>110</sup> *Supreme Court: Adopted & Proposed Rule Changes*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/Supreme\\_Court/Rule\\_Changes.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Rule_Changes.cfm) (last visited Nov. 18, 2021).



## B. Edicts Provided by the State Judicial Branch

The Colorado Judicial Branch most limits the edicts it provides, due to the private information contained in court records. The edicts it provides include docket information, proposed court rules changes (the complete court rules, including the rules of procedure and professional conduct, are available via the Colorado Lexis platform), jury instructions, instructional documents and rules for individual courts, published opinions of the Colorado Court of Appeals and Colorado Supreme Court, and Chief Justice Directives. It provides ample information to assist citizens navigating the courts, but sparse and disparate access to overarching edicts like court and procedural rules. It strictly limits access to records, including government edicts such as rulings, for any particular case. Notably, a bill that would have required all judicial opinions to be accessible online did not make it out of the Senate Committee in May 2020.<sup>111</sup>

As a result, edicts from the judicial branch are most difficult to access, most limited in what is accessible at all, and provided in varied formats. Potentially due to the great variety of records and the difficulty of providing edicts around its court-centric structure, it is the most difficult site to navigate in search of rules, which are more centrally accessible via Colorado's Lexis platform with the Colorado Revised Statutes. Additional case information, including all trial court documents and most judicial opinions, must be specifically requested from the court in which the documents were filed.

*Background.* Cases and basic docket information<sup>112</sup> are easily accessible and broken out by court type and level. For example, county and district court dockets are searchable together, while water courts, the Denver probate and juvenile courts, and the Court of Appeals and Supreme Court also have dedicated pages.<sup>113</sup> Jury instructions, can be found under the respective committee within the Supreme Court subpage. Recent Orders and Opinions of Interest are provided via the Media menu, while a complete list of complete case announcements and published opinions are available for both the Colorado Supreme Court and Court of Appeals; unpublished opinions of the Court of Appeals may be requested.

*Formal Limitations.* Except for the areas addressed by CORA (largely regarding criminal records) and other statutes, provision of judicial edicts falls

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<sup>111</sup> *H.B. 20-1130: Online Availability of Judicial Opinions*, COLO. GEN. ASSEMBLY, <https://leg.colorado.gov/bills/hm20-1130> (last visited Nov. 18, 2021) (indefinitely postponed in committee).

<sup>112</sup> *Colorado's State Court System*, COLO. JUD. BRANCH, <https://www.courts.state.co.us/Courts/Index.cfm> (last visited Nov. 18, 2021).

<sup>113</sup> *Id.*

under the direction of the Supreme Court, primarily via Chief Judicial Directives (CJDs). Of particular import, CJD 05-01 sets out the framework for access to court records under the Public Access to Information and Records Rules (PAIRR).<sup>114</sup> Public access to information about specific cases online is restricted to district and county docket information.<sup>115</sup> The Court of Appeals<sup>116</sup> and Supreme Court<sup>117</sup> subpages provide case announcements and some oral arguments archives. Beyond these, specific records must be requested from the court of filing, possibly for a fee, or via a commercial provider,<sup>118</sup> but never bulk data.<sup>119</sup>

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<sup>114</sup> Public records laws under Title 24, Article 72, COLO. REV. STAT., provide near-total exceptions for court rules and orders under both the civil and criminal chapters of the public records laws, which fall instead under CJD 05-01. COLO. REV. STAT. §§ 24-72-204(1)(c), -305(1)(b). *See supra* note 37. CJD 05-01 permits remote access to some edicts of government such as court judgments, orders, and decrees. CJD 05-01 § 4.20. However, only the published opinions of the Colorado Court of Appeals and the Colorado Supreme Court are accessible freely online. *Supreme Court Case Announcements*, COLO. JUD. BRANCH (Nov. 22, 2021), [https://www.courts.state.co.us/Courts/Supreme\\_Court/Case\\_Announcements/Index.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Case_Announcements/Index.cfm); *Court of Appeals Case Announcements*, COLO. JUD. BRANCH (Nov. 18, 2021), [https://www.courts.state.co.us/Courts/Court\\_Of\\_Appeals/Case\\_Announcements/Index.cfm](https://www.courts.state.co.us/Courts/Court_Of_Appeals/Case_Announcements/Index.cfm). All other judicial edicts in cases must be sought through the court's e-filing system (limited to law firms, government agencies, private agencies partnered with a law firm, out of state practicing attorneys, or pro se parties), a paid subscription service, or via visit or request to the court of filing. *Court Records Search*, COLO. JUD. BRANCH, <https://www.courts.state.co.us/Administration/Program.cfm?Program=11> (last visited Nov. 18, 2021); *Create an Account*, COLO. CTS. E-FILING, <https://www.jbits.courts.state.co.us/efiling/web/register.htm> (last visited Nov. 18, 2021). Some compiled or aggregated data are available and may be requested, § 4.40, and bulk data is never released, CJD 05-01 § 4.30. Other judicial edicts, such as court rules, are scattered across the judicial branch cite, for example on local court or Supreme Court committee subpages, and hosted on the LexisNexis state platform.

Various efforts have been made to increase access to judicial branch records and edicts, with limited success. *See, e.g., Office of the State Court Administrator v Background Infor. Services, Inc.*, 994 P.2d 420 (Colo. S. Ct. 1999) (finding courts not agencies for many purposes of public records act and upholding denial of bulk data); Jeffrey A. Roberts, *Judicial Branch CORA Bill Finally Makes Progress, but Now Only Affects Sexual Harassment Records*, COLO. FREEDOM OF INFO. COALITION (Apr. 5, 2018), <https://coloradofoic.org/judicial-branch-cora-bill-finally-makes-progress-now-affects-sexual-harassment-records>.

<sup>115</sup> *E.g., Adams County*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/County/Index.cfm?County\\_ID=55&submit=Go](https://www.courts.state.co.us/Courts/County/Index.cfm?County_ID=55&submit=Go) (last visited Nov. 18, 2021). *But see* CJD 05-01 § 4.20.

<sup>116</sup> *Colorado Court of Appeals*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/Court\\_Of\\_Appeals/Index.cfm](https://www.courts.state.co.us/Courts/Court_Of_Appeals/Index.cfm) (last visited Nov. 18, 2021).

<sup>117</sup> *Colorado Supreme Court*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/Supreme\\_Court/Index.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Index.cfm) (last visited Nov. 18, 2021).

<sup>118</sup> *Court Records Search*, *supra* note 114.

<sup>119</sup> CJD 05-01 § 4.40.

Copyright assertions appear occasionally in edicts provided by the state judicial website. For example, the criminal pattern jury instructions are headed by an expanded copyright assertion delineating between commercial and non-commercial uses.<sup>120</sup> Conversely, the page for civil jury instructions contains no copyright assertion.<sup>121</sup>

*Structural Limitations.* Some information, such as dockets, are displayed on a flat page that directs a user to contact the court for more information.<sup>122</sup> Most available edicts are split into small sectional PDFs (such as by chapter for the jury instructions), with the occasional word document, although jury instructions are provided in both PDF and Word formats.<sup>123</sup> The other rules committees pages, such as the Rules of Criminal Procedure Committee, contain agendas, memos, draft rules, and meeting minutes but not links to the rules themselves.<sup>124</sup>

Non-edict information—like docket information—is easy to locate.<sup>125</sup> Edicts, however, like jury instructions, are apparent only upon deep subpage exploration. For example, jury instructions can be located once the user enters the Supreme Court Committees subpage,<sup>126</sup> which lists various rules committees including the civil and criminal jury instructions committees. The website structure caters best to edicts in the form of particular rules and mandates in effect at a particular court, visible on its subpage.<sup>127</sup> If a user is uncertain what category any other edict falls under, they must click through multiple layers of links and sublinks

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<sup>120</sup> *Model Criminal Jury Instructions Committee*, COLO. JUD. BRANCH (2020), [https://www.courts.state.co.us/Courts/Supreme\\_Court/Committees/Committee.cfm?Committee\\_ID=9](https://www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm?Committee_ID=9).

<sup>121</sup> *Pattern Civil Jury Instructions Committee*, COLO. JUD. BRANCH, [HTTPS://WWW.COURTS.STATE.CO.US/COURTS/SUPREME\\_COURT/COMMITTEES/COMMITTEE.CFM?COMMITTEE\\_ID=18](HTTPS://WWW.COURTS.STATE.CO.US/COURTS/SUPREME_COURT/COMMITTEES/COMMITTEE.CFM?COMMITTEE_ID=18) (last visited Nov. 18, 2021).

<sup>122</sup> *E.g., Court Docket Search*, COLO. JUD. BRANCH (Nov. 22, 2021), <https://www.courts.state.co.us/dockets/index.cfm#results>.

<sup>123</sup> *See supra* notes 115–16.

<sup>124</sup> *Rules of Criminal Procedure Committee*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/Supreme\\_Court/Committees/Committee.cfm?Committee\\_ID=22](https://www.courts.state.co.us/Courts/Supreme_Court/Committees/Committee.cfm?Committee_ID=22) (last visited Nov. 18, 2021).

<sup>125</sup> From the home judicial branch page, <https://www.courts.state.co.us>, by clicking the “Courts” link at the top left and either selecting from the dropdown or the new menu that appears along the left side of the window, or by clicking “Public Records” along the left menu and then selecting “Docket Search.”

<sup>126</sup> *Supreme Court Committees*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/Supreme\\_Court/Committees/Index.cfm](https://www.courts.state.co.us/Courts/Supreme_Court/Committees/Index.cfm) (last visited Nov. 18, 2021).

<sup>127</sup> *E.g., Adams County*, COLO. JUD. BRANCH, [https://www.courts.state.co.us/Courts/County/Index.cfm?County\\_ID=55&submit=Go](https://www.courts.state.co.us/Courts/County/Index.cfm?County_ID=55&submit=Go) (last visited Nov. 18, 2021).

across both the top and side menus on the judicial branch page and navigate through numerous pages, some of which fall under intuitive links and others of which are more easily found by searching a commercial search engine and choosing a promising search result.

*Other Features of Note.* The separation by court and court category facilitates quick navigation and information to find basic information regarding a case or particular court or courthouse. Each page prominently displays links of import, such as directives regarding mask mandates or remote appearance on the respective county and district court pages.<sup>128</sup> Both pages and subpages also contain site-wide links along the bottom to assist users, such as FAQ, other government entities or projects, and public records requests.<sup>129</sup>

*Comparison to Non-Official Sources.* Platforms such as Internet Archive have recently made Colorado Jury Instructions publicly available.<sup>130</sup> The Internet Archive provides the jury instructions via digital scans of the book publications as well as 18 other formats spanning from JPEG to PDF to XML to SQL.<sup>131</sup> It also makes the instructions accessible in bulk (per volume, two total).<sup>132</sup> Similarly, the Colorado Bar association posts Colorado Supreme Court published opinions and case announcements for the public for six months from publication, and beyond that for members through Casemaker.<sup>133</sup>

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<sup>128</sup> *E.g., id.*

<sup>129</sup> *E.g.,* COLO. JUD. BRANCH, <https://www.courts.state.co.us> (last visited Nov. 18, 2021).

<sup>130</sup> *Jury Instructions*, INTERNET ARCHIVE, <https://archive.org/details/JuryInstructions?query=Colorado> (last visited Nov. 18, 2021).

<sup>131</sup> *E.g., Colorado Jury Instructions - Civil, Vol. 1*, INTERNET ARCHIVE (2021), [https://archive.org/details/coloradojuryinst01unse\\_0](https://archive.org/details/coloradojuryinst01unse_0).

<sup>132</sup> *Id.*

<sup>133</sup> *Colorado Supreme Court Published Opinions & Announcements*, COBAR, <https://www.cobar.org/For-Members/Opinions-Rules-Statutes/Colorado-Supreme-Court-Opinions> (last visited Nov. 18, 2021).

### C. Edicts Provided by the Secretary of State

The Colorado Secretary of State website provides the most centralized organization,<sup>134</sup> central database search function,<sup>135</sup> and most friendly formats.<sup>136</sup> While it does not provide access to the underlying bulk data, the edicts it provides are the most easily publicly accessible. In addition to providing edicts including the Colorado Code of Regulations,<sup>137</sup> eDocket,<sup>138</sup> and Colorado Register,<sup>139</sup> it also contains election rules and audits<sup>140</sup> and business registration,<sup>141</sup> as well as other pages containing information going beyond government edicts, such as efforts supporting and open and transparent government.<sup>142</sup>

*Background.* The Secretary of State website provides links to all Administrative Rules of State Agencies in a single subpage<sup>143</sup> and all election-related edicts in a single subpage.<sup>144</sup> The organization of links and landing pages makes navigation intuitive.

*Formal Limitations.* The Code does contain a copyright assertion and terms of use for the website at large, which leaves unclear whether the assertion purports to extend to government edicts. The terms of use state that “some of the publications made available on this website are the intellectual property of the

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<sup>134</sup> The main navigation pages are organized as launch pages with groups of related links, and other menus reflect the same organization and link to the same pages, supporting differing research styles without creating an fragmentation in navigation. Centralized organization - grouped links. COLO. SEC'Y STATE, <https://www.coloradosos.gov> (last visited Nov. 18, 2021).

<sup>135</sup> The two main searches relevant for this policy brief, the Colorado Code of Regulations and the Colorado Register, each have a single and comprehensive base page that facilitates browsing and/or searching. *Colorado Code of Regulations*, COLO. SEC'Y STATE (Nov. 10, 2021), <https://www.coloradosos.gov/CCR/Welcome.do>; *Colorado Register*, COLO. SEC'Y STATE, <https://www.coloradosos.gov/CCR/RegisterHome.do> (last visited Nov. 18, 2021).

<sup>136</sup> *E.g.*, *Colorado Register*, *supra* note 135, offers both HTML and single-file searchable PDFs.

<sup>137</sup> *Colorado Code of Regulations*, *supra* note 135.

<sup>138</sup> *Colorado Code of Regulations eDocket Search*, COLO. SEC'Y STATE, <https://www.coloradosos.gov/CCR/eDocketCriteria.do> (last visited Nov. 18, 2021).

<sup>139</sup> *Colorado Register*, *supra* note 135.

<sup>140</sup> *Elections & Voting*, COLO. SEC'Y STATE, <https://www.coloradosos.gov/pubs/elections/main.html> (last visited Nov. 18, 2021).

<sup>141</sup> *Business Organizations*, COLO. SEC'Y STATE, <https://www.coloradosos.gov/pubs/business/businessHome.html?menuheaders=2> (last visited Nov. 18, 2021).

<sup>142</sup> COLO. SEC'Y STATE, see *supra* note 134.

<sup>143</sup> *Administrative Rules of State Agencies*, COLO. SEC'Y STATE, <https://www.coloradosos.gov/pubs/CCR/CCRHome.html?menuheaders=8> (last visited Nov. 18, 2021).

<sup>144</sup> *Elections & Voting*, *supra* note 140.

Colorado Secretary of State, and are protected by applicable law and may not be reproduced, in whole or in part, without the prior written permission of the Colorado Secretary of State.”<sup>145</sup> Copyright is asserted in the name of the State of Colorado.<sup>146</sup>

*Structural Limitations.* The Secretary of State site structure largely facilitates public access. The Administrative Rules page contains links to the Colorado Code of Regulations and the eDocket to participate in rulemaking, as well as the Colorado Register.<sup>147</sup> The Code, Register, and eDocket are all clearly designated as official publications.<sup>148</sup> Current and historical versions of Code provisions are available in downloadable pdf,<sup>149</sup> while the Register is also available in HTML.<sup>150</sup> The greatest limitation is that the Code PDFs are split out per rule, per version, similar to the short PDFs provided on other sites.<sup>151</sup> The Colorado Register, however, is provided in both HTML and PDF, and in larger segments (by issue).<sup>152</sup>

The Secretary of State page regarding elections and audits includes a link to a subpage for all Election Laws, Rules, & Resources.<sup>153</sup> That page contains links to all applicable election law in Colorado, including both state and federal constitutions, laws, rules, rulemaking, and the state bipartisan election advisory commission. By way of example, the Colorado election rules are provided in downloadable pdfs by rule number, and the link title includes the Colorado Code of Regulations citation so that the rules can also be found in the Code.<sup>154</sup>

*Other Features of Note.* Like the other entity websites, the Secretary of State site includes clear efforts to facilitate user navigation in the most-sought areas.

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<sup>145</sup> *Terms and Conditions*, COLO. SEC’Y STATE, [https://www.coloradosos.gov/pubs/info\\_center/terms.html](https://www.coloradosos.gov/pubs/info_center/terms.html) (last visited Nov. 18, 2021).

<sup>146</sup> *Id.* Notably, the last registered copyright for the Colorado Register was in 2016, *Supra* note 94.

<sup>147</sup> *Supra* note 143.

<sup>148</sup> *Supra* notes 135, 138.

<sup>149</sup> *Supra* note 135.

<sup>150</sup> *Id.*

<sup>151</sup> *Colorado Code of Regulations, Browse Results*, COLO. SEC’Y STATE (Nov. 10, 2021), <https://www.coloradosos.gov/CCR/NumericalDeptList.do>.

<sup>152</sup> *Supra* note 135.

<sup>153</sup> *Election Laws, Rules, & Resources*, COLO. SEC’Y STATE, <https://www.coloradosos.gov/pubs/elections/lawsRulesResources.html?menuheaders=5> (last visited Nov. 18, 2021).

<sup>154</sup> *Election Rules*, COLO. SEC’Y STATE, [https://www.coloradosos.gov/pubs/rule\\_making/CurrentRules/8CCR1505-1Elections.html](https://www.coloradosos.gov/pubs/rule_making/CurrentRules/8CCR1505-1Elections.html) (last visited Nov. 18, 2021).

This includes prominent site-wide links to records requests and the government spending transparency project (TOPS).<sup>155</sup>

*Comparison to Non-official Sources.* Other groups also provide access to state regulations. Notably, Public Resource, Fastcase, Justia, and the Cornell Legal Information Institute are working together to facilitate easy access to every state's regulations, including Colorado. Fastcase provides the regulations quarterly, Internet Archive hosts the bulk data,<sup>156</sup> and Justia<sup>157</sup> and Cornell<sup>158</sup> make it available on pages viewable by rule.

#### **D. Attorney General Opinions**

The Attorney General website provides Attorney General Opinions and other useful non-edict resources in a straightforward arrangement. While additional formatting and bulk availability would be desirable, the accessibility of materials falls within the range of ease and utility of the other branches.

*Background Information.* The Attorney General website provides Attorney General Opinions from 1994 to present and directs users to the Colorado Supreme Court library for the complete list of Attorney General Opinions.<sup>159</sup>

*Formal Limitations.* The Attorney General's website is not subject to formal limitations, and the only copyright assertion is a non-specific banner at the bottom of the webpage throughout the website.<sup>160</sup> The site's privacy policy explains the site's collection and use of data, what constitutes personally identifiable information, and how that information may be incorporated into public record.<sup>161</sup>

*Structural Limitations.* Attorney General opinions are arranged by year, then opinion, with each opinion downloadable individually as a searchable PDF.<sup>162</sup>

*Other Features of Note.* The Attorney General website provides a number of other resources supporting open government in Colorado. Like the other branches

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<sup>155</sup> *Supra* note 134.

<sup>156</sup> *State Regulations Available in Bulk*, INTERNET ARCHIVE (May 12, 2021), <https://archive.org/details/state.regulations.bulk>

<sup>157</sup> *US Regulations & Administrative Codes*, JUSTIA, <https://regulations.justia.com> (last visited Nov. 18, 2021)

<sup>158</sup> *State Regulations*, LEGAL INFO. INST., <https://www.law.cornell.edu/regulations>

<sup>159</sup> *Attorney General Opinions*, COLO. ATT'Y GEN., <https://coag.gov/attorney-general-opinions> (last visited Nov. 18, 2021).

<sup>160</sup> *Id.*

<sup>161</sup> *Privacy Policy*, COLO. ATT'Y GEN., <https://coag.gov/website-privacy-policy> (last visited Nov. 18, 2021).

<sup>162</sup> *E.g., 2021 Formal AG Opinions*, COLO. ATT'Y GEN., <https://coag.gov/attorney-general-opinions/2021-formal-ag-opinions> (last visited Nov. 18, 2021).

of state government, it includes prominent links to records requests at the bottom of the page.<sup>163</sup> It also contains a page dedicated to CORA<sup>164</sup> and links to outside resources including the Colorado Revised Statutes, Code of Colorado Regulations, and TOPS.<sup>165</sup>

*Comparison to Non-Official Sources.* Internet Archive provides Attorney General Opinions going back to 1975.<sup>166</sup> HeinOnline also provides access through its subscription service.<sup>167</sup>

## E. Municipal Ordinances

We also surveyed municipal ordinances for a rough idea of the accessibility of municipal edicts, particularly edicts that could implicate copyright issues such as the adoption of trade standards as formal codes. Municode contained municipal ordinances for over 140 Colorado municipalities, including Denver, Fort Collins, and Boulder,<sup>168</sup> while Amlegal contained the code for nine additional municipalities including Colorado Springs.<sup>169</sup> Some of these, such as the municipal code of Fort Collins, were included directly on municode.<sup>170</sup> Others, such as Denver, listed the adopted and amended codes and referred users to the Denver Code including file date and clerk file number.<sup>171</sup> Each city, however, provided PDFs of both the adopted codes (copyrighted by the authoring entity, often the International Code Council)<sup>172</sup> and local amendments (not copyrighted

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<sup>163</sup> COLO. ATT'Y GEN., <https://coag.gov> (last visited Nov. 18, 2021).

<sup>164</sup> *Colorado Open Records Act & Colorado Criminal Justice Records Act*, COLO. ATT'Y GEN. (Sept. 19, 2018) <https://coag.gov/media-center/colorado-open-records-act-cora>.

<sup>165</sup> *Resources*, COLO. ATT'Y GEN., <https://coag.gov/attorney-general-opinions/2021-formal-ag-opinions> (last visited Nov. 18, 2021).

<sup>166</sup> *Files for r71.2020.08.01*, INTERNET ARCHIVE (Aug. 13, 2020), <https://archive.org/download/gov.co.crs.bulk/r71.2020.08.01>.

<sup>167</sup> *State Attorney General Reports and Opinions*, HEINONLINE, <https://archive.org/download/gov.co.crs.bulk/r71.2020.08.01> (last visited Nov. 18, 2021).

<sup>168</sup> *Colorado*, MUNICODE, <https://library.municode.com/co> (last visited Nov. 18, 2021).

<sup>169</sup> *Colorado*, AMERICAN LEGAL PUBL'G, <https://codelibrary.amlegal.com/regions/co> (last visited Nov. 18, 2021).

<sup>170</sup> *E.g., Fort Collins Municipal Code*, MUNICODE (Oct. 6, 2021), [https://library.municode.com/co/fort\\_collins/codes/municipal\\_code?nodeId=CH1GEPR](https://library.municode.com/co/fort_collins/codes/municipal_code?nodeId=CH1GEPR).

<sup>171</sup> *E.g., Denver, Colorado - Code of Ordinances, §10-16 - Building and Fire Code Adopted*, MUNICODE, (Sept. 21, 2021), [https://library.municode.com/co/denver/codes/code\\_of\\_ordinances?nodeId=TITIIREMUCO\\_CH1OBUBURE](https://library.municode.com/co/denver/codes/code_of_ordinances?nodeId=TITIIREMUCO_CH1OBUBURE).

<sup>172</sup> *E.g., Denver Building and Fire Code*, DENVERGOV, <https://www.denvergov.org/Government/Agencies-Departments-Offices/Community-Planning-and-Development/Building-Codes-Policies-and-Guides#section-1> (last visited Nov. 18, 2021).



by the city).<sup>173</sup> City websites also provided access to adopted ordinances and resolutions.<sup>174</sup>

## F. Archives

The Colorado State Archives and the Colorado Supreme Court Library also provide valuable resources in accessing government edicts. Though most resources require in-person access, each website also offers access to some government edicts online. In addition to non-edict records, the archives contain historical versions of legislation such as House and Senate Bills.<sup>175</sup> The Supreme Court Library provides a resource links page that can give users a sense of an overarching scheme to accessing the edicts from various entities.<sup>176</sup>

## III. Assessment and Recommendations

Colorado has an historically strong commitment to open government and has updated both government practices and a robust statutory scheme to develop and support various aspects of that value over time. Many of the initiatives it has undertaken for open government, including both government transparency and public access, have resulted in impressive achievements. Similarly, bodies such as the Office of Legislative Legal Services demonstrate an ongoing, thoughtful dedication to authoring clear and richly notated resources and making them as widely and easily available as possible. Even tangentially-related efforts, such as Colorado's Sunshine Law, its TOPS initiative, and cross-coordination across government websites for commonly-needed links such as the Colorado Revised Statutes or entity-specific procedures for a Public Records Request reflect the State's creative, digitally-aware, and comprehensive commitment to the values that animate the government edicts doctrine.

Colorado's commitment to facilitate public access is laudable, both in its vast application and consistent attentiveness, reflected in ongoing statutory amendments and non-statutory initiatives. This Part traces a handful of suggestions for statutory updating, non-statutory changes in practice, and targeted actions in updating the publishing contract and other by government actors' initiatives. This list is intended as a menu of options to encourage short-

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<sup>173</sup> E.g., *Buildings Services Codes and Standards*, CITY OF FORT COLLINS, <https://www.fcgov.com/building/codes> (last visited Nov. 18, 2021).

<sup>174</sup> E.g., *Denver City Council Legislative Search*, DENVER.LEGISTAR, <https://denver.legistar.com/Legislation.aspx> (last visited Nov. 18, 2021)

<sup>175</sup> *Legislative Records*, COLORADO STATE ARCHIVES, <https://archives.colorado.gov/collections/legislative-records> (last visited Nov. 18, 2021).

<sup>176</sup> *Colorado Legal Resources*, COLO S. CT LIBRARY, <https://cscl.colibraries.org/colorado-legal-resources> (last visited Nov. 18, 2021).

and long-term improvements and consistent free and open public access to edicts of government across branches and at both state and local levels.

- Pursuant to his role of approving the legality of the new statutory publication contract with LexisNexis, the Attorney General could require the contract be updated to fully comply with *Georgia v. Public.Resource.Org* regarding its copyright provision, and negotiate improved user access such as digital downloads.
- The Attorney General could issue an advisory opinion clarifying the state of the law under *Georgia v. Public.Resource.Org* and clarifying the doctrine's application under statutes like CORA that encompass government edicts.
- The Attorney General could lead cross-government coordination to make government edicts provided by each branch centrally located on each entity's website, searchable, and downloadable in bulk in the best available format, and develop a process for government entities to build out the underlying databases.
- The legislature could correct the copyright provision in the forthcoming publication contract with LexisNexis, disclaiming copyright by either party in government edicts under *Georgia v. Public.Resource.Org*.
- The legislature could provide for improved rights of access in the forthcoming publication contract with LexisNexis, specifically digital downloading in bulk and a choice of formats that includes xml.
- The legislature could amend C.R.S. §§ 2-5-115 and 24-72-203(4) to omit copyright assertions in government edicts.
- The legislature could provide for bulk access and best available format for all edicts of government through a new bill, by adding a government edicts provision to C.R.S. § 24-72-203, or by updating § 24-72-203(1) to require affirmative bulk digital access in the best available format.
- The legislature could revive HB20-1130 to publish and make Colorado Supreme Court and Colorado Court of Appeals opinions freely available online, or consider a new statute providing free online access to all judicial edicts.
- The Chief Justice could revise CJD 05-01, to provide centralized, free digital access to judicial edicts such as court rules and case rulings.

\* \* \*

Thanks to its expansive and longstanding dedication to open government, Colorado has the opportunity to build on the good work it has done and to even the playing field for Colorado citizens lacking legal or practical access to edicts of

government. By taking advantage of both progress in technological development and adoption and its own work to date that has already uniquely positioned it to generate materials or platforms for access from the state level,<sup>177</sup> Colorado could achieve the comprehensive, consistent access to government edicts that feeds access to justice, social equality, and entrepreneurial innovation.

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<sup>177</sup> "The other alternative is that you either create all this work in house, which I think there's only one state that does that at a comparable level, Colorado. They have a staff of 30 people that just do that in house." Statement of Anders Ganten, LexisNexis Corporation before the Arkansas Code Revision Commission, Arkansas Code Revision Meeting (Sept. 29, 2021), <https://law.resource.org/pub/us/case/ftc/Declaration%2001/Exhibit%20R-9.ACRC%20Transcript%202021-09-29.pdf>.

**Appendix A: LexisNexis Platform Banner, Landing Page Information, and  
Terms of Use**

# Colorado Statutes Annotated

## Colorado Statutes Annotated - Free Public Access

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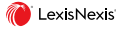


Colorado Revised Statutes Annotated

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**7.1** All notices and other communications hereunder shall be in writing or displayed electronically in the Online Services by LN. Notices shall be deemed to have been properly given on the date deposited in the mail, if mailed; on the date first made available, if displayed in the Online Services; or on the date received, if delivered in any other manner. Legal notices to LN should be sent to LexisNexis, Attn: Head of Legal – North America, 9443 Springboro Pike, Miamisburg, OH 45342.

**7.2** The failure of you, LN, or any third-party supplier of Materials to enforce any provision hereof shall not constitute or be construed as a waiver of such provision or of the right to enforce it later.

**7.3** Neither you nor any Authorized User may assign your rights or delegate your duties under this Subscription Agreement without the prior written consent of LN, which consent shall not be unreasonably conditioned, delayed or withheld. This Subscription Agreement and any amendment thereto shall be binding on and will inure to the benefit of the parties and their respective successors and permitted assigns.

**7.4** This Subscription Agreement shall be governed by and construed in accordance with the laws of the State of New York regardless of the law that might otherwise apply under applicable principles of conflicts of law.

**7.5** This Subscription Agreement will be enforced to the fullest extent permitted by applicable law. If any provision of this Subscription Agreement is held to be invalid or unenforceable to any extent, then (a) such provision will be interpreted, construed, and reformed to the extent reasonably required to render it valid, enforceable and consistent with its original intent and (b) such invalidity or unenforceability will not affect any other provision of this Subscription Agreement.

**7.6** Where applicable, each affiliated company of LN and each third-party supplier of Materials has the right to assert and enforce the provisions of this Subscription Agreement directly on its own behalf as a third-party beneficiary.

**7.7** This Subscription Agreement constitutes the entire agreement of the parties with respect to its subject matter and replaces and supersedes any prior written or verbal communications, representations, proposals, or quotations on that subject matter.


Supplemental Terms for Specific Materials (</sites/en-us/terms/supplemental.page>)

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 **ONLINE FORM (/SITES/EN-US/CONTACT-US/CONTACT-US-REP.PAGE)**

**CONTACT SUPPORT**

 **800-543-6862 (TEL:800-543-6862)**

 **SUPPORT PAGE (//LEXISNEXIS.CUSTHELP.COM/APP/ANSWERS/ANSWER\_VIEW/A\_ID/1089006)**

**SECURITY FREEZE**

 **800-456-6004 (TEL:800-456-6004)**

 **SERVICE PORTAL (HTTPS://CONSUMER.RISK.LEXISNEXIS.COM/FREEZE)**

Please visit our **Training & Support Center** (<https://www.lexisnexis.com/en-us/training/default.page>) or **Contact Us** (<https://www.lexisnexis.com/en-us/contact-us/contact-us-rep.page>) for assistance

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- [Careers at LexisNexis \(/en-us/about-us/careers.page\)](#)
- [News & Events \(/en-us/about-us/media/overview.page\)](#)
- [Our Values \(/en-us/about-us/corporate-responsibility.page\)](#)
- [Advancing the Rule of Law \(/en-us/rule-of-law/default.page\)](#)

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- [Training on the Go \(/en-us/training/default.page\)](#)
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- [Consumer Access \(/privacy/\)](#)
- [Terms & Conditions \(/terms/\)](#)

**PRODUCT SIGN-IN**

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