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MEMORANDUM

TO: Executive Committee of the Legislative Council

FROM: Dan L. Cartin, Office of Legislative Legal Services

DATE: July 20, 2012

SUBJECT: CORA Legislative Policies revisions

During the 2009 legislative session, following the recommendation of the Committee on Legal Services ("COLS"), the Executive Committee of the Legislative Council approved the "Legislative Policies Related to Public Records and E-Mail" ("Policies"). The General Assembly's members and staff have been utilizing the Policies in connection with responding to requests made under the Colorado Open Records Act ("CORA") for more than three years.

Based on our experience in responding to CORA requests during this time, it is our opinion that several provisions of the Policies merit revision and certain additions to the Policies are advisable. **On March 22, 2012, the COLS approved, modified, and forwarded these revisions to the Executive Committee with a favorable recommendation.** Attached is a draft of the Policies containing the recommended revisions, with the changes reflected in strike-type and caps.

The following describes each of these recommended revisions and additions, together with a brief explanation for the change.

1. Submission of requests.

Persons to whom request is submitted. Currently, CORA requests of legislators must be submitted both to the member and to either the Chief Clerk of the House, if a House member, or to the Secretary of the Senate, if a Senate member. The suggested change is to require submission of requests to the member and, instead of to the Chief Clerk or Secretary, to the Director of the Office of Legislative Legal Services.

- **Reason for change:** CORA requests of members that are also submitted to the Chief Clerk or the Secretary are in nearly every case delivered to the OLLS for review. The proposed change will remove the Chief Clerk and the Secretary as the "middle man" in receiving and responding to these requests. [Policies,

section II. C. 2.]

Means of submission. Currently, CORA requests may be submitted by U.S. mail, fax, or hand-delivery. The recommended change adds electronic mail to these means of submitting CORA requests. A new addendum contains contact information. [Policies, section II. C. 4.]

- **Reason for change.** Notwithstanding the means of submission currently specified, an increasingly large percentage of CORA requests are nonetheless submitted by electronic mail, and typically the requests have been accepted. This proposed change will formalize the acceptability of this means of submission, and conform to the current practice typically used.

Receipt of request. The current Policies provide that, for purposes of determining when the 3-day response period begins for responding, a CORA request is considered made upon actual receipt by the person to whom the request is made. The suggested change clarifies that a request submitted to a member and the OLLS is considered made upon actual receipt by the member or upon notification to the member by the OLLS of the request, whichever is earlier. [Policies, section II. C. 5.]

- **Reason for change.** Provides further direction on when the 3-day response period begins.

Former members. A new provision addresses CORA requests for records of a former member by indicating the limited scope of records in the custody of staff agencies, that requests will be responded to as fully as possible, and that certain records of former members are not maintained by the General Assembly. [Policies, section II. C. 3.]

- **Reason for change.** Clarifies the response process for a segment of requests where the custodian is absent and no longer directly associated with the General Assembly.

2. Inspection.

Hours of inspection. Currently the Policies require the custodian to make records available for inspection from 8:30 to 4:30. The proposed revision sets the hours for inspection as 8:00 to 5:00. [Policies, section II. D. 1.]

- **Reason for change.** Conforms the Policies with actual practice. Notwithstanding the stated current time period, records have been made available between 8:00 and 5:00.

Period of availability. A provision is added specifying that, upon notice to the applicant that the records requested are available, the records will be available for 30 calendar days from the date of that notice. Further, if the applicant does not inspect the records within that 30-day period, the records will be dealt with pursuant to the custodian's records and retention policy. [Policies, section II. D. 2. b.]

- **Reason for change.** There have been instances when the requestor does not appear and inspect the requested records. The proposed change clarifies the process in those circumstances.

Retention after inspection. Records will be retained for 30 days after the date of inspection, after which time the CORA request will be deemed closed and the records dealt with pursuant to the custodian's records and retention policy. [Policies, section II. D. 2. c.]

- **Reason for change.** This puts a requestor on notice that the records made available for inspection are subject to relevant correspondence and document maintenance processes after 30 days, at which time the custodian may retain or dispose of the materials.

3. Fees for Record Requests.

Fees for search and retrieval. Under the current Policies, the custodian may charge a "nominal" hourly fee for requests requiring more than one hour of staff time for search and retrieval. The Policies direct the custodian to utilize administrative or clerical staff for search and retrieval of records and to charge a requestor no more than \$30 an hour for that task. Practically, members have charged \$30 an hour and, as time has passed and experience grown, do so in nearly every case where more than one hour of staff time has been utilized.

The proposed revision formalizes that the custodian will charge an hourly fee of \$30 per hour for search and retrieval where it is estimated that more than one hour of staff time will be utilized for search and retrieval. This drives a conforming amendment of eliminating the current provisions on utilizing clerical staff and the maximum nominal charge of \$30 per hour. It also specifies that in circumstances where a deposit is required for the search and retrieval fee, the 3-day or 10-day period within which the records must be made available for inspection commences upon the date the deposit is received. [Policies, section II. E. 2. a.]

- **Reason for change.** Sets the hourly charge at \$30 instead of the somewhat ambiguous or open-ended "nominal" charge. For purposes of consistency in responding to requests, the change also removes the custodian's discretion in connection with charging a fee for requests involving over an hour of staff time by directing assessment of that charge.