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PROPOSED ACCESS TO RECORDS RULE

The Commission is authorized to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing Article XXIX and any other standards of conduct and reporting requirements as provided by law. Colo. Const. Art. XXIX, § 5(1). The purpose of this rule is to clarify for the public the Commission's practices and procedures pertaining to open records.

The Commission is not a state agency. See *Ethics Watch v. Indep. Ethics Comm'n*, 369 P.3d 270, 272 (Colo. 2016). The Colorado Open Records Act ("CORA") applies to state agencies. § 24-72-202(6)(A)(I), C.R.S.; *Gleason v. Judicial Watch, Inc.*, 292 P.3d 1044 (Colo. App. 2012). The Commission is thus authorized to adopt a public records policy that deviates from CORA.

The Commission seeks to adopt a policy that favors public disclosure and transparency of its records. Accordingly, the Commission incorporates by reference and expressly adopts the provisions of CORA, § 24-72-200.1 *et seq.*, C.R.S., with the following exceptions and additions:

- (1) In defense against a petition for an order permitting inspection, the custodian may raise any issue that could have been raised in responding to the records request, and is not limited by any response previously made under section § 24-72-204, C.R.S.
- (2) A custodian must deny access to records in accordance with § 24-72-204(3)(a), C.R.S., if such records include (a) any draft or record of an investigation completed pursuant to Section 5(3)(c) of Article XXIX that has not been provided to the parties; or (b) work product, including advisory or deliberative materials.
- (3) A custodian may deny access to records in accordance with § 24-72-204(2)(a) if such records include written communication that is, or might relate to, a frivolous complaint or a complaint that has not yet been deemed non-frivolous; including communications requesting assistance with filing a complaint and responses from Commission staff to such communications.