

DISTRICT COURT, LARIMER COUNTY, COLORADO 201 La Porte Ave. Ste. 100 Ft. Collins, Colorado 80521	
<b>ANIMAL PARTISAN,</b> Plaintiff v. <b>LINDA SCHUTJER,</b> in her official capacity as a Records Custodian of Colorado State University Defendant.	DATE FILED: April 10, 2024 9:06 AM FILING ID: 536B42729468C CASE NUMBER: 2024CV30280  ▲ COURT USE ONLY ▲
Chris Carraway, #46663 2255 E. Evans Avenue Denver, CO 80210 Phone Number: 423.797.6084 E-mail address: CCarraway@law.du.edu	Case Number:  Div:
<b>COMPLAINT</b>	

Plaintiff Animal Partisan, by and through undersigned counsel, brings this action to enforce the right to inspect public records pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.* Animal Partisan, a legal advocacy organization, requested records from Defendant Linda Schutjer, a records custodian of Colorado State University, related to a study conducted at a Colorado slaughterhouse. Ms. Schutjer took 82 working days—far more than statutorily permitted—to respond to Animal Partisan’s simple request. Ms. Schutjer then invoked an exception that she later acknowledged did not truly apply, after which she invoked a different, equally inapplicable exception. Ms. Schutjer finally claimed that the records had been destroyed and offered an inconsistent story to that effect. At every turn, Animal Partisan’s best efforts have been met with obstruction, delay, and outright misrepresentations. As result, Animal Partisan seeks this Court’s intervention, including a declaratory judgment, discovery, and attorney’s fees and costs, to vindicate its rights under Colorado law.

## THE PARTIES

1. Plaintiff Animal Partisan is a legal advocacy organization whose mission is to end the suffering of animals in slaughterhouses, farms, and laboratories by discovering, exposing, and challenging unlawful conduct in all its forms. As part of its mission, Animal Partisan aims to promote transparency in how animals are treated in slaughterhouses, farms, and research institutions.
2. Plaintiff seeks access to certain public records for distribution to the academic and general public. Animal Partisan has relationships with journalists, academics, and activists, all of whom have demonstrated an interest in the treatment of animals used in agriculture and research.
3. Defendant Linda Schutjer is a records custodian of Colorado State University (“CSU”). Ms. Schutjer responded to Animal Partisan’s public records request and is the legal custodian of the records at issue in this lawsuit. Ms. Schutjer is an employee of CSU, a public land-grant research university located in Larimer County, Colorado.

## JURISDICTION AND VENUE

4. This action arises under the Colorado Open Records Act (“CORA”), C.R.S. § 24-72-204.
5. This Court has jurisdiction over the claims herein under the CORA, C.R.S. § 24-72-204(5), and under Article VI, Section 9(1) of the Colorado Constitution.
6. Venue is proper in this district pursuant to C.R.S. § 24-72-204(5).

## STATEMENT OF FACTS

7. In 2019, researchers from CSU conducted a study to determine the reliability of various “mud scoring” systems at a commercial slaughter facility for cows. According to the study, excessive mud on cattle destined for slaughter causes negative impacts such as reduced feed intake, carcass contamination, and plant inefficiencies resulting from additional effort required to remove mud from hides. As part of the study, researchers videotaped cattle at a commercial slaughter facility and then showed the video to individuals who gave “scores” for mud coverage on the cows. The goal of the study was to develop a standardized method of mud scoring to benefit the meatpacking industry. The study was titled “Intraobserver and interobserver reliability of mud scoring systems for use in cattle at slaughter.” It was published in the journal *Meat Science* in February 2021.
8. Since publishing the study in February 2021, the researchers have not used the videos of the cattle in any subsequent scholarship.
9. On July 18, 2023, Will Lowrey, the Legal Counsel for Plaintiff Animal Partisan, submitted a CORA request to CSU. Mr. Lowrey requested: “Photographs, videos, or audio recordings taken in association with a research study entitled ‘Intraobserver and interobserver reliability of mud scoring systems for use in cattle at slaughter’ published by Sage Mijares, Melissa Davis, Jason Ahola, Libby Bigler, Terry Engle, and Lily Edwards-Calaway.” A copy of the CORA request is attached to this Complaint as **Exhibit A**.
10. On August 25, 2023, a paralegal in CSU’s Office of the General Counsel sent a Notice of Extension to Mr. Lowrey, so CSU could take more time to search for responsive records.
11. Mr. Lowrey followed up with CSU again on November 8, 2023—now 113 days since he submitted the CORA request.

12. Finally, on November 13, 2023—118 days (or 82 working days) since the initial request—the CSU paralegal emailed Mr. Lowrey a letter from Defendant Linda Schutjer in response to the CORA request. Ms. Schutjer’s letter stated: “After careful review of the specific items listed on your request, CSU has determined that we do not have any documents that can be produced in response to your request.” The response did not provide a written statement of the grounds for denial. The response is attached to this Complaint as **Exhibit B**.

13. Upon a request for clarification from Mr. Lowrey, Ms. Schutjer cited CRS § 24-72-204(2)(a)(III) as justification for the denial of the CORA request. CRS § 24-72-204(2)(a)(III) provides that:

The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest: . . . The specific details of bona fide research projects being conducted by a state institution, including, without limitation, research projects undertaken by staff or service agencies of the general assembly or the office of the governor in connection with pending or anticipated legislation.

Ms. Schutjer’s response to Mr. Lowrey’s emailed request for clarification is attached to this Complaint as **Exhibit C**.

14. On December 12, 2023, a letter was sent to Ms. Schutjer requesting to confer about the denial of the CORA request. The letter also gave notice to Ms. Schutjer that Plaintiff intended to file a lawsuit to enforce its rights under CORA if the matter could not be resolved by conferral.

15. Ms. Schutjer scheduled a conferral meeting for December 19, 2023, with Plaintiff. Ms. Schutjer also invited one of the researchers who published the “mud scoring” study, Lily Edwards-Callaway, to join the meeting.

16. The morning of December 19, 2023, Ms. Schutjer suddenly emailed a new development.

She wrote:

Hi, in anticipation of our discussion I asked Lily [the researcher] to take a look at the images she had. Unfortunately they are corrupted or missing. Our IT people are working on figuring out what happened and where they are. They were on a Google drive and so not on the CSU servers. This is the first time I have had this happen here so not sure what else we can do. If they are found, our withholding them would still be on the basis that the facilities are very careful about letting any images be shared with the public and require NDAs for any work done there. Given the various animal rights activists activities we have seen, it is not surprising. We are happy to talk about this later today but wanted to give you a heads up.

Notably, Ms. Schutjer's explanation for withholding the records had now changed. The rationale for withholding records—if records existed—was no longer ongoing “bona fide research” but a concern for NDAs and the reputation of the commercial slaughter facilities.

17. Later that day, during the conferral meeting, Ms. Edwards-Callaway, the researcher, claimed that she stored the files responsive to Plaintiff's CORA request on her personal Google Drive. In her telling, all the responsive records were destroyed when Google reduced their free storage space. Ms. Edwards-Callaway stated that she had not looked at the files in three or four years and admitted that she was not engaged in ongoing research involving the photos and videos at issue.

18. Also during the conferral meeting, Ms. Schutjer explained that CSU is very concerned about releasing the videos at issue because it would anger the commercial slaughter facilities. Ms. Schutjer stated that the facilities are reluctant to permit videotaping, even by researchers, due to concern about reputational harm and security breaches from animal activists. She expressed concern that the release of the videos would substantially damage CSU's relationship with the slaughter facilities and jeopardize future research. She said that if the ongoing research exception did not cover the records, she would ask the slaughter

facilities to intervene and invoke the “specialized details of . . . security arrangements” exception to disclosure (C.R.S. § 27-72-204(2)(a)(VII)(A)).

19. At Plaintiff’s request, Defendant obtained a notarized affidavit from Tyson Claffey, the Director of Information Technology at CSU’s College of Agricultural Sciences. Because the files were stored on Ms. Edwards-Callaway’s personal Google drive, Mr. Claffey averred that “the extent of our support capability is limited.” He otherwise parroted Ms. Edwards-Callaway’s story:

Google notified users starting in June 2021 that if they were above 15 Gb storage, Google would start deleting files, photos, etc. from Google Drive and a few other associated applications in two years’ time (starting June 2023). Dr. Edwards-Calaway did not recall receiving any emails about this from Google. However, it is our opinion after speaking to Dr. Edwards-Calaway and being unable to locate the files, that these files were deleted by Google in accordance with their announced plan.

Mr. Claffey’s conclusion was based solely on his conversation with Ms. Edwards-Callaway and the fact that the files were no longer findable in her Google Drive. At no point in his affidavit does Mr. Claffey state definitively that the files were unilaterally deleted by Google rather than by Ms. Edwards-Callaway herself. The full affidavit is attached to this Complaint as **Exhibit D**.

20. In his affidavit, Mr. Claffey cited two articles from Google that explained Google’s storage downsizing policy. The articles contradict Ms. Edwards-Callaway’s account in two important ways. First, Google states that: “Any photos or videos you’ve backed up in High quality or Express quality before June 1, 2021 will not count toward your Google Account storage.” The full article is attached to this Complaint as **Exhibit E**. The videos and photos for the “mud scoring” study were taken in 2019 and the study was published in February 2021—well before the June 1, 2021, cutoff date for Google’s downsizing policy. Second,

Google states that: “We will notify you multiple times before we attempt to remove any content so you have ample opportunities to take action.” The full article is attached to this Complaint as **Exhibit F**. In other words, Google must have notified Ms. Edwards-Callaway of the imminent deletion of her files several times, contrary to Ms. Edwards-Callaway’s recollection.

#### APPLICABLE LAW

21. The Colorado Open Records Act (“CORA”), C.R.S. § 24-72-201, declares that it is the public policy of the State of Colorado that “all public records shall be open for inspection by any person at reasonable times,” unless specifically excepted by statute, and there is a general presumption in favor of public access to records. *See Daniels v. City of Commerce City*, 988 F.2d 648, 650-51 (Colo. App. 1999).
22. Under CORA, a public record is defined as any “writing” that is “made, maintained or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state.” C.R.S. § 24-72-202(6)(a)(I). “‘Writings’ means and includes all . . . photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. ‘Writings’ includes digitally stored data.” C.R.S. § 24-72-202(7).
23. A public record is one that is “made, maintained *or* kept” by a state employee, so even records stored privately can be public records if they were “made” or “maintained” in an official capacity. C.R.S. § 24-72-202(6)(a)(I) (emphasis added); *Wick Commc’ns Co. v. Montrose Cnty. Bd. of Cnty. Comm’rs*, 81 P.3d 360, 364 (Colo. 2003) (holding that if a document is “held” by a government employee in their official capacity, then it qualifies

as a public record).

24. If a document constitutes a “public record,” the custodian may deny access only if there is a specific exemption that requires or permits the withholding of that record. *See* C.R.S. § 24-72-203(1)(a). All exemptions to the statutory mandate of public access must be construed narrowly. *See Sargent Sch. Dist. No. RE-33J v. W. Servs. Inc.*, 751 P.2d 56, 60 (Colo. 1988).
25. “Readily available” records must be provided immediately, and records that are “not readily available,” must be provided “within a reasonable time after the request.” C.R.S. § 24-72-203(3)(b). CORA presumes a “reasonable time” to be three working days or less. *Id.* To extend the three-working-day response period by no more than seven working days (for a total of 10), a records custodian must provide the requester—during the initial three-working-day period—with a written explanation of “extenuating circumstances.” *Id.* Such circumstances mostly concern broadly stated and large requests. C.R.S. § 24-72-203(3)(b)(I)-(III). “In no event can extenuating circumstances apply to a request that relates to a single, specifically identified document.” C.R.S. § 24-72-203(3)(c).
26. It is an unstated but implicit requirement of CORA that a records custodian must conduct a reasonable and adequate search of the relevant writings in the agency’s possession, custody, or control in a good faith effort to locate, identify, and produce all public records that are responsive to the records request. *See, e.g., Weisberg, v. U.S. Dept. of Justice*, 745 F.2d 1476, 1485 (D. C. Cir. 1984) (holding, under the federal FOIA<sup>1</sup>, that an “agency must demonstrate that it has conducted a ‘search reasonably calculated to uncover all relevant documents’”) (citation omitted); *Baker & Hostetler LLP v. Dept. of Commerce*, 473 F.3d

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<sup>1</sup> Colorado courts have relied on decisions interpreting the federal FOIA to interpret analogous provisions of CORA because “the intent is the same.” *Wick Commc’ns Co.*, 81 P.3d at 362–63.



312, 318 (D.C. Cir. 2006) (An agency must “make[] a good faith effort to conduct a search . . . using methods which can reasonably be expected to produce the information requested.”) (internal quotations and citation omitted); *Utahamerican Energy, Inc. v. Mine Safety & Health Admin.*, 725 F. Supp. 2d 78, 84 (D.D.C. 2010) (holding that MSHA did not conduct an adequate search because it failed to search for emails containing an alternate term to which the particular mine site was sometimes referred: “omitting from the search an alternative name by which the subject of the search is known renders the search inadequate, even if [other] search terms . . . were likely to reveal many emails responsive to [plaintiff’s] request.”); *Negley v. FBI*, 658 F. Supp. 2d 50, 57-61 (D.D.C. 2009) (holding that the FBI’s search for records was not adequate where plaintiff established the likelihood that responsive records existed in other databases the FBI had not searched; the FBI’s refusal to search other databases “actually reflects a distressing active disregard of its obligations under FOIA,” and the court noted that the FBI “challenged Plaintiff’s efforts at every turn”); *Pub. Citizen, Inc. v. Dept. of Educ.*, 292 F. Supp. 2d 1, 8 (D.D.C. 2003) (finding agency’s search for responsive records, using only keyword searches of database records, was inadequate: “While a computerized search may well be far more efficient and less costly than a manual search of paper . . . files, . . . it is apparent that only the more cumbersome procedure is likely to turn up the requested information.”).

27. CORA imposes an obligation on public institutions to preserve records once they receive a CORA request. *See, e.g., Wadelton v. Dep’t of State*, 106 F. Supp. 3d 139, 147 (D.D.C. 2015) (“[T]he agency *is* under an obligation not to destroy records after it receives a FOIA request.”).

COUNT I:  
VIOLATION OF THE COLORADO OPEN RECORDS ACT (CORA)

28. This Count realleges and incorporates by reference all of the preceding paragraphs. All documents referenced in this Complaint are incorporated by reference as if set forth fully herein.
29. Defendant violated CORA by failing to conduct a timely, adequate search; invoking an inapplicable exception to prevent disclosure; and failing to preserve documents after a CORA request was made.
30. Defendant failed to conduct an adequate search within a reasonable time after the request. CORA requires a response within three working days, or no more than ten working days if the request is overly broad. Defendant took 82 working days to respond to Plaintiff, even though Plaintiff's request was narrow and specific.
31. Defendant also violated CORA by claiming a specious exemption, namely that the records could not be disclosed because they were "[t]he specific details of bona fide research projects being conducted by a state institution." CRS § 24-72-204(2)(a)(III). Defendant later conceded that this exception did not apply because the research was not "being conducted"—it had been conducted years earlier and in fact been published. The researcher had not looked at the records again in several years.
32. Defendant further violated CORA by invoking an additional specious exemption during the meet-and-confer with Plaintiff, namely that the records could not be disclosed because they would reveal "specialized details of . . . security arrangements." C.R.S. § 27-72-204(2)(a)(VII)(A). This exception is wholly inapplicable. Defendant pivoted to this exception when it became clear that the ongoing research exception did not apply. Defendant's goal was to thwart disclosure no matter the law or facts.

33. Finally, Defendant violated CORA by failing to preserve public records after receiving a CORA request. Defendant claims that the records were deleted by Google before Defendant received Plaintiff's CORA request. But Defendant's story is inconsistent. First, Defendant took 82 working days to complete the request, and in her response, Defendant represented that she had conducted a "careful review of the specific items listed on your request." At a minimum, a "careful review" that lasts 82 working days would entail contacting the researcher about the existence and content of the records. Yet after her "careful review," Defendant did not claim the documents no longer existed but rather that an exception barred their disclosure. Second, Defendant claims that Google unilaterally deleted the records and never notified the researcher. But the articles cited in Defendant's own IT affidavit assert that Google did not delete photos backed up before June 1, 2021, and that Google would notify users "multiple times" before removing files. Finally, Defendant has repeatedly stated that the CORA request is inconvenient for CSU and its fulfillment may anger its agricultural research partners. Defendant had ample incentive to make the request go away and tried to do exactly that—first by stalling, then by claiming two inapplicable exceptions, and finally, when all else had failed, by destroying the records or simply refusing to acknowledge their existence.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

- (1) Declare Defendant's failure to comply with CORA to be unlawful;
- (2) Order Defendant to take every measure reasonably possible to retrieve the responsive records;
- (3) Order Defendant to show cause why she should not permit the inspection of the requested records if the records can be retrieved;
- (4) Order Defendant to comply fully and without further delay with CORA and to furnish Plaintiff all public records meeting the description in their request if the records can be retrieved;
- (5) Order discovery to determine when records were destroyed if documents cannot be retrieved;
- (6) Grant Plaintiff their costs and reasonable attorney's fees associated with the preparation, initiation, and maintenance of this action, as mandated by C.R.S. § 24-72-204(5);
- (7) Grant Plaintiff such other and further relief as the Court deems proper and just.

Dated this 10th day of April, 2024.

Respectfully submitted,

**ANIMAL ACTIVIST LEGAL DEFENSE  
PROJECT, STURM COLLEGE OF LAW**



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Chris Carraway  
2255 E. Evans Avenue  
Denver, Colorado 80210  
(423) 797-6084  
CCarraway@law.du.edu

Attorney for Plaintiff

DATE FILED: April 10, 2024 9:06 AM  
FILING ID: 536B42729468C  
CASE NUMBER: 2024CV30280

# EXHIBIT A

**CORA Request**



11357 Nucklos Road, #138, Glen Allen, Virginia 23059  
info@animalpartisan.org | www.animalpartisan.org

July 18, 2023

*Submitted via email to operations@colostate.edu*

Brendan Hanlon  
Vice President of University Operations  
Division of University Operations  
Colorado State University  
318 Administration Building  
6001 Campus Delivery  
Fort Collins, CO 80523

Dear Mr. Hanlon,

Pursuant to the Colorado Open Records Act § 24-72-201 et seq., I am requesting public records as follows:

- **Photographs, videos, or audio recordings taken in association with a research study entitled “Intraobserver and interobserver reliability of mud scoring systems for use in cattle at slaughter” published by Sage Mijares, Melissa Davis, Jason Ahola, Libby Bigler, Terry Engle, and Lily Edwards-Calaway<sup>1</sup>**

If there are any fees for searching or copying these records, please inform me if the cost will exceed \$50. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public’s understanding of the treatment of animals during animal research. This information is not being sought for commercial purposes.

If you deny any or all of this request, please cite each specific exemption you feel justifies the refusal to release the information and notify me of the appeal procedures available to me under the law.

Thank you for considering my request. If you have any questions on this request, please contact me at wlowrey@animalpartisan.org or (804) 307-4102. Thank you in advance for your assistance with this matter.

A handwritten signature in black ink, appearing to read 'Will Lowrey', is written over a horizontal line.

Will Lowrey

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<sup>1</sup> Individuals listed are or were affiliated with the university’s College of Veterinary Medicine and Biomedical Science or Department of Animal Science.

Legal Counsel  
Animal Partisan



cc:

Jason Johnson  
Fort Collins Branch of General Counsel  
01 Administration Building  
Campus Delivery 0006  
Fort Collins, CO 80523



DATE FILED: April 10, 2024 9:06 AM  
FILING ID: 536B42729468C  
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# **EXHIBIT B**

**CSU Response to CORA Request**





**BOARD OF GOVERNORS *of the***  
**COLORADO STATE UNIVERSITY SYSTEM**

OFFICE OF THE GENERAL COUNSEL

01 Administration Building • 0006 Campus Delivery  
Fort Collins, Colorado 80523-0006  
Phone: (970) 491-6270 • Fax: (970) 491-2118

November 13, 2023

*Via Electronic Mail:*



Will Lowrey  
Legal Counsel  
Animal Partisan

Re: Colorado Open Records Request

Dear Mr. Lowrey:

The Office of the General Counsel sent you an electronic mail on August 25, 2023 in regards to your letter dated July 18, 2023, in which you included a request under the Colorado Open Records Act, C.R.S. § 24-72-201 et seq. ("CORA"). Specifically, you requested "Photographs, videos, or audio recordings taken in association with a research study entitled "Intraobserver and interobserver reliability of mud scoring systems for use in cattle at slaughter" published by Sage Mijares, Melissa Davis, Jason Ahola, Libby Bigler, Terry Engle, and Lily Edwards-Calaway".

We apologize for the delay in responding and have appreciated your patience.

Please be advised that, as allowed by CORA and the Colorado State University Systems CORA policy, CSU may charge reasonable costs associated with responding to your request, including a research retrieval fee of \$30 per hour (no charge for the first hour). See, e.g., C.R.S. § 24-72-204(3)(a)(II)(A).

After careful review of the specific items listed on your request, CSU has determined that we do not have any documents that can be produced in response to your request.

Sincerely,

A handwritten signature in blue ink, appearing to read "L S".

Linda Schutjer  
Senior Legal Counsel

DATE FILED: April 10, 2024 9:06 AM  
FILING ID: 536B42729468C  
CASE NUMBER: 2024CV30280

# EXHIBIT C

**Linda Schutjer Response to Will Lowrey Email**



Will Lowrey <wlowrey@animalpartisan.org>

# Re: [Colorado State University Office of the General Counsel] Notice of Extension on Response to CORA Request - Will Lowrey

Schutjer,Linda [redacted] Tue, Nov 14, 2023 at 11:18 AM  
To: Will Lowrey [redacted], "Sanroma I Escude,Ari" [redacted]

Hi, the statutory reference is: CRS 24-72-204(2)(a)(III).

Linda Schutjer  
Senior Legal Counsel  
Colorado State University

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**From:** Will Lowrey [redacted]  
**Sent:** Monday, November 13, 2023 3:43 PM  
**To:** Sanroma I Escude,Ari [redacted]  
**Cc:** Schutjer,Linda [redacted]  
**Subject:** Re: [Colorado State University Office of the General Counsel] Notice of Extension on Response to CORA Request - Will Lowrey

**\*\* Caution: EXTERNAL Sender \*\***

Good evening. Thank you for the response.

The language of the final sentence is unclear to me as to whether you are indicating you have no records or you are declining to provide them. Pursuant to C.R.S. 24-72-204(4), I request a written statement of the grounds for denial. Thank you in advance.

Will Lowrey  
Legal Counsel  
[redacted]  
[animalpartisan.org](http://animalpartisan.org)



On Mon, Nov 13, 2023 at 5:11 PM Sanroma I Escude,Ari [redacted] wrote:

Hello Mr. Lowrey,

Please find attached to this email Colorado State University's final response to your CORA request.

Sincerely,

**Ari Sanromà** *She/ her*

Paralegal

**Office of the General Counsel**

**Colorado State University**

**01 Administration Building, Fort Collins, CO 80523-0006**



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**From:** Will Lowrey [Redacted]  
**Date:** Wednesday, November 8, 2023 at 9:04 AM  
**To:** Sanroma I Escude, Ari [Redacted]  
**Cc:** Schutjer, Linda [Redacted]  
**Subject:** Re: [Colorado State University Office of the General Counsel] Notice of Extension on Response to CORA Request - Will Lowrey

**\*\* Caution: EXTERNAL Sender \*\***

Good morning. I am emailing to check on the status of this request. Any updates are greatly appreciated.

Will Lowrey

Legal Counsel



[animalpartisan.org](http://animalpartisan.org)



On Fri, Aug 25, 2023 at 6:12 PM Sanroma I Escude, Ari [Redacted] wrote:

Dear Mr. Lowrey,

I hope this email finds you well.

In response to your CORA request dated July 18, 2023, please find attached to this email a Notice of Extension on the response to your request.

We will be in touch with you in the coming days. In the meantime, please let me know if you have any questions or concerns.

All the best,

**Ari Sanromà** *She/ her*

Paralegal

**Office of the General Counsel**

**Colorado State University**

**01 Administration Building, Fort Collins, CO 80523-0006**



**COLORADO STATE UNIVERSITY**

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DATE FILED: April 10, 2024 9:06 AM  
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# EXHIBIT D

**Affidavit of Tyson Claffey**

**AFFIDAVIT OF TYSON CLAFFEY**

I, Tyson Claffey, have been employed as the Director of Information Technology for the College of Agricultural Sciences at the Colorado State University since August 1, 2023. My duties include, among other things, training and supervising our helpdesk technicians (both full-time and student technicians), and providing oversight to technical issues when elevated support is needed.

On December 19, 2023 Ag Helpdesk Support received a request for assistance from Lily Edwards-Calaway. We were advised by Dr. Edwards-Calaway that she had saved images on a personal google account outside of the CSU network and was unable to locate them. Since the files were stored in a personal google account, the extent of our support capability is limited. We are only able to provide information about what we believe happened, and were unable to locate the files when we looked through her Google Drive account with her.

Google notified users starting in June 2021 that if they were above 15 Gb storage, Google would start deleting files, photos, etc. from Google Drive and a few other associated applications in two years' time (starting June 2023). Dr. Edwards-Calaway did not recall receiving any emails about this from Google. However, it is our opinion after speaking to Dr. Edwards-Calaway and being unable to locate the files, that these files were deleted by Google in accordance with their announced plan. Google does not have any hidden file storage or any ability to recover those files that we are aware of.

I have linked the articles from Google's official support page that explains this below.

Google Drive Storage Policy Update: <https://blog.google/products/photos/storage-policy-update/>

Google Drive Storage Help Article: <https://support.google.com/googleone/answer/9312312#activity>

Under penalty of perjury, I hereby declare and affirm that the above stated facts, to the best of my knowledge, are true and correct.

 1/23/24

**Tyson Claffey**

**Director of Information Technology**  
College of Agricultural Sciences  
Colorado State University

The foregoing was subscribed and sworn to before me in the County of Larimer, State of Colorado, this 23<sup>rd</sup> day of January, 2024.

 SEAL  
Notary Public

My Commission Expires: 11/10/2026

**Ariadna Sanroma | Escude**  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID# 20224043098  
MY COMMISSION EXPIRES 11/10/2026

DATE FILED: April 10, 2024 9:06 AM  
FILING ID: 536B42729468C  
CASE NUMBER: 2024CV30280

# EXHIBIT E

**Google Storage Policy: “How your Google storage works”**



# How your Google storage works

Each Google Account includes 15 GB of storage, which is shared across Gmail, Google Drive, and Google Photos. To add to your storage quota, you can purchase a Google One membership, where available. Occasionally, you may receive more storage from a special promotion or related purchase. Learn how to clean up space or upgrade and [how you use your storage](#) .

## What affects your Google Account storage

### What counts towards your storage quota

- [Original quality photos and videos backed up to Google Photos](#).
- High quality (now named Storage saver) and Express quality photos and videos backed up to Google Photos after June 1, 2021. Any photos or videos you've backed up in High quality or Express quality before June 1, 2021 will not count toward your Google Account storage. [Learn more about this change](#).
- Gmail messages and attachments, which includes your Spam and Trash folders.
- Files in Google Drive, which includes PDFs, images, and videos.
- Meet call recordings.
- Files created or edited in collaborative content creation apps like Google Docs, Sheets, Slides, Drawings, Forms, Recorder, and Jamboard.
  - Files created or edited after June 1, 2021 count against your quota.
  - Files uploaded or last edited before June 1, 2021 don't count against your quota.

**Tip:** WhatsApp backups on Android will soon count toward your Google Account storage. [Learn more about WhatsApp backup](#) .

### What happens when you're over quota

When you're over quota, it means you use more storage space than you have available. If you go over your storage quota:

- You can't upload new files or images to Google Drive.
- You can't back up any photos and videos to Google Photos.
- Your ability to send and receive email in Gmail can be impacted.
- You can't create new files in collaborative content creation apps like Google Docs, Sheets, Slides, Drawings, Forms, and Jamboard. Until you reduce your storage usage, nobody can edit or copy your affected files.
- You can't back up new Recorder files.
- **Note:** You can still sign into and access your Google Account.

**If you're over your quota for 2 years or longer:** If you don't free up or purchase more space to get back under quota, all of your content may be removed from Gmail, Google Photos, and Google Drive (this includes Google Docs, Sheets, Slides, Drawings, Forms, and Jamboard files).

Before your content is removed, we:

- **Give you notice using email and notifications** within the Google products. We will contact you at least three months before content is eligible for deletion.
- **Give you the opportunity to avoid deletion** (by paying for additional storage or removing files)
- **Give you the opportunity to download your content** from our services. Learn more about [how to download your Google data](#).

### How to go back under quota

We provide access to storage management tools that help you identify ways to free up storage space. Another option to free up space is to download your files to your personal device and then delete them from your cloud storage.

If you want more storage space for Gmail, Drive, and Photos, you can upgrade to a larger storage plan with Google One.

## Frequently asked questions

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[Do these policies apply to G Suite/Workspace accounts as well as consumer accounts?](#)

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[Do these policies apply to Google Sites, Google Keep & other creation apps not listed here? What about Blogger & YouTube content?](#)

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[I'm over my quota. How long do I have until my content gets deleted?](#)

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[Are you going to tell me before my data is deleted?](#)

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[How do I preserve content from a loved one when they pass away?](#)

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# EXHIBIT F

**Google Storage Policy: “An update to storage policies across your Google Account”**



DRIVE

# An update to storage policies across your Google Account

Nov 11, 2020 · 4 min read

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**Jose Pastor**  
Vice President, Google  
Workspace



**Shimrit Ben-Yair**  
Vice President, Google  
Photos

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Over the past decade, Gmail, Google Drive and Google Photos have helped billions of people securely store and manage their emails, documents, photos, videos and more. Today, people are uploading more content than ever before—in fact, more than 4.3 million GB are added across Gmail, Drive and Photos every day.

To continue providing everyone with a great storage experience and to keep pace with the growing demand, we're announcing important upcoming storage changes to your [Google Account](#). These changes will apply to Photos and Drive (specifically Google Docs, Sheets, Slides, Drawings, Forms and Jamboard files) and will enable us to continue investing in these products for the future. We're also introducing new policies for consumer Google Accounts that are either inactive or over their storage limit across Gmail, Drive (including Google Docs, Sheets, Slides, Drawings, Forms and Jamboard files) and Photos, to bring our policies more in line with industry standards.

These storage policy changes won't take effect until June 1, 2021. However, we wanted to let you know well in advance and give you the resources to navigate these changes. Google Workspace subscribers, and

G Suite for Education and G Suite for Nonprofits customers should refer to our [Google Workspace Updates post](#) to understand how these changes may affect them.

As always, every Google Account will continue to come with 15 GB of free storage across Gmail, Drive and Photos, which we estimate should last the majority of our users several years. Because the content you store with these apps is primarily personal, it's [not used](#) for advertising purposes. We'll also continue to give you visibility and [control over your storage](#), and [provide tools](#) to help you easily manage it.

## New content that will count toward your Google Account storage

Beginning June 1, any **new** photo or video uploaded in [High quality](#) in Google Photos will count toward your free 15 GB storage quota or any additional storage you've purchased as a [Google One](#) member. To make this transition easier, we'll exempt all High quality photos and videos you back up before June 1. This includes all of the High quality photos and videos you currently store with Google Photos. Most people who back up in High quality should have years before they need to take action—in fact, we estimate that 80 percent of you should have at least three years before you reach 15 GB. You can learn more about this change in our [Google Photos post](#).

Also starting June 1, any **new** Docs, Sheets, Slides, Drawings, Forms or Jamboard file will begin counting toward your free 15 GB of allotted storage or any additional storage provided through [Google One](#). Existing files within these products will not count toward storage, unless they're modified on or after June 1. You can learn more in our [Help Center](#).

## A new policy for accounts that are inactive or over storage limit

We're introducing new policies for consumer accounts that are either inactive or over their storage limit across Gmail, Drive (including Google Docs, Sheets, Slides, Drawings, Forms and Jamboard files) and/or Photos to better align with common practices across the industry. After June 1:

- If you're inactive in one or more of these services for two years (24 months), Google may delete the content in the product(s) in which you're inactive.
- Similarly, if you're over your storage limit for two years, Google may delete your content across Gmail, Drive and Photos.

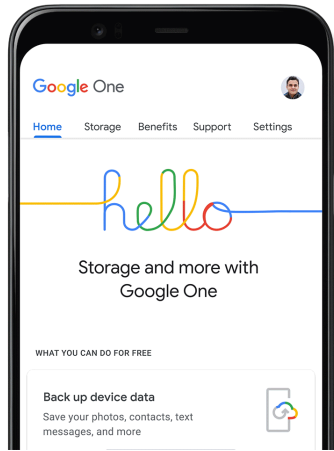
We will notify you multiple times before we attempt to remove any content so you have ample opportunities to take action. The simplest way to keep your account active is to periodically visit Gmail, Drive or Photos on the web or mobile, while signed in and connected to the internet.

The [Inactive Account Manager](#) can help you manage specific content and notify a trusted contact if you stop using your Google Account for a certain period of time (between 3-18 months). Note that the new two year inactive policy will apply regardless of your Inactive Account Manager settings.

You can learn more about these changes in our [Help Center](#).

## How to manage your storage

To help you manage your Google Account storage, anyone can use the free storage manager in the [Google One app](#) and [on the web](#), which gives you an easy way to see how you're using your storage across Gmail, Drive and Photos. You can keep the files you want, delete the ones you no longer need and make room for more—all in one place.



If you need more than your free 15 GB of storage, you can upgrade to a larger storage plan with [Google One](#). You can choose from plans starting at 100 GB of space that also include additional member features like access to Google experts, shared family plans and more.

In addition to helping us meet the growing demand for storage, these changes align our storage policies across products. As always, we remain committed to providing you a great experience and hope to continue to serve you in the future. You can learn more about this change in our [Help Center](#).

#### POSTED IN:

[Drive](#)[Photos](#)[Gmail](#)