

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock Street Denver, Colorado 80202	
Plaintiff: COLORADO ETHICS WATCH v. Defendant: COLORADO INDEPENDENT ETHICS COMMISSION	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> Case Number: 2008CV _____ Division: Courtroom:
Attorneys for Defendant: Chantell Taylor, # 33059 Luis Toro, #22093 Colorado Ethics Watch 1630 Welton Street, Suite 415 Denver, Colorado 80202 Telephone: (303) 626-2100 Fax: (303) 626-2101 E-mail: ctaylor@coloradoforethics.org; ltoro@coloradoforethics.org	
COMPLAINT	

Colorado Ethics Watch (“Ethics Watch”), for its complaint against the Colorado Independent Ethics Commission (“IEC”) alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Ethics Watch is a nonprofit corporation, qualified to conduct business in Colorado, that uses legal tools to hold public officials and organizations accountable for unethical activities that undermine the integrity of state and local government.
2. The IEC is a constitutional commission, created by Article XXIX of the Colorado Constitution, independent from both the executive and legislative branches.
3. This Court has jurisdiction over the IEC and venue is proper in this Court.

GENERAL ALLEGATIONS

4. Pursuant to Colo. Const. art. XXIX, § 5, the purpose of the IEC “shall be to hear complaints, issue findings, and assess penalties, and also to issue advisory opinions, on ethics issues arising under this article and under any other standards of conduct and reporting requirements as provided by law.”

5. Ethics Watch has been deeply involved in following the activities of the IEC since its inception. Among other things, Ethics Watch operates Eye on the IEC (<http://www.coloradoforethics.org/node/26368>), a website designed to provide the public with detailed information about the IEC.

6. In addition, Ethics Watch has publicly questioned the Attorney General's representation of the IEC based on his inherent conflicts of interest. By law, the IEC operates independently of the executive and legislative branches and exercises jurisdiction over elected officials and employees in both of those branches. This includes the Attorney General and his staff, who are members of the executive branch. And yet, in a public statement before the IEC on May 19, 2008, the Attorney General rejected Ethics Watch's analysis of his conflicts and stated instead that any conflicts could be analyzed on a case-by-case basis. The Attorney General's position on conflicts makes it imperative that the public be well advised of the subject matter of complaints and requests for letter rulings and advisory opinions so that the propriety of Attorney General representation of the IEC in such matters can be evaluated on a case-by-case basis.

7. On August 27, 2008, Ethics Watch made a Colorado Open Records Act ("CORA") request on the IEC seeking the following documents:

Any and all requests for letter rulings, complaints and requests for advisory opinions, including any and all related responses and correspondence (non-privileged) from or on behalf of the IEC or any of its commissioners. [Emphasis in original.]

A copy of Ethics Watch's CORA request is attached as Exhibit A.

8. By letter dated September 1, 2008 (copy attached as Exhibit B), the IEC stated that it had to "devote all or substantially all of its resources to meeting deadlines and dealing with a period of peak demand," and therefore, it anticipated responding to Ethics Watch's request by the end of that week (i.e., September 5, 2008).

9. The IEC did not respond to the CORA by September 5. Instead, on the afternoon of September 9, the IEC's director advised Ethics Watch by telephone that the IEC was filing an application with this Court to block disclosure of the documents (Case No. 2008CV7995), and e-mailed to Ethics Watch a letter dated September 8, 2008, a copy of which is attached as Exhibit C. The IEC's counsel has advised Ethics Watch that the IEC hopes to establish a precedent that it need not make public documents regarding pending complaints, requests for advisory opinions and requests for letter rulings.

10. To date, the IEC has not made any documents responsive to Ethics Watch's CORA request available for inspection and copying.

11. The IEC's blanket refusal to produce documents responsive to Ethics Watch's CORA request is contrary to law. The Colorado Constitution requires the IEC to preserve the confidentiality of complaints that are deemed frivolous, however, this requirement does not extend to correspondence with persons who file complaints. In

addition, C.R.S. § 24-18.5-101(4)(b)(IV) provides that the IEC shall redact the identity of persons who requested letter rulings, but unambiguously does not require the IEC to redact the identity of persons who request advisory opinions. Thus, persons seeking requests for advisory opinions have no reasonable expectation of confidentiality as a matter of law.

12. In sum, nothing in the Colorado Constitution or statute allows the IEC to deny Ethics Watch the right to inspect non-frivolous complaints, requests for advisory opinions or requests for letter rulings, and correspondence related to such filings, with appropriate redactions to protect the identity of persons requesting letter rules or named parties in complaints.

**CLAIM FOR RELIEF
(Violation of CORA)**

13. Ethics Watch repeats Paragraphs 1 – 12 above.

14. CORA provides in pertinent part as follows:

[A]ny person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court

C.R.S. § 24-72-204(5).

15. The IEC has denied Ethics Watch its right to inspect public records subject to its August 27 CORA request.

16. At least three days prior to the filing of this complaint and application, Ethics Watch notified Defendants, through their counsel, that it intended to apply to the Court for an order compelling Defendants to produce the documents subject to Ethics Watch's CORA request. See Letter from Luis Toro, Senior Counsel, Colorado Ethics Watch to James F. Carr, September 17, 2008 (attached as Exhibit D).

17. Pursuant to C.R.S. § 24-72-204(5), Ethics Watch is entitled to an order compelling the IEC to allow Ethics Watch to inspect and copy public records subject to Ethics Watch's CORA requests and an award of its reasonable attorneys' fees and costs.

WHEREFORE, Plaintiff Colorado Ethics Watch respectfully requests that the Court enter judgment in its favor and against Defendant, the Colorado Independent Ethics Commission, compelling Defendant to permit Plaintiff to inspect and copy public records pursuant to its August 27, 2008 Colorado Open Records Act request and September 17, 2008 notice of intent to file suit, award Plaintiff its reasonable attorneys' fees and costs, and grant such further relief as the Court deems proper.

DATED: October 8, 2008.

COLORADO ETHICS WATCH

[Original Signature On File]
Luis Toro, #22093

Address of Plaintiff:
1630 Welton Street, Suite 415
Denver, CO 80202