

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO

Court Address: 7325 South Potomac Street
Centennial, Colorado 80112

Plaintiff: **KEVIN RAVENSCROFT**

vs.

Defendant: **LISA HORTON; and THE CITY OF
AURORA, COLORADO**

Case Numbers:

2017 CV 32737

Div.: 21

ORDER – Re: Plaintiff’s Motion to Show Cause – Preliminary Order on Remand

Having reviewed plaintiff’s “Complaint and Application for Order to Show Cause,” including the Answer, and the “Hearing Brief” and Response filed by the parties, and having conducted a telephone Status Conference on January 23, 2018, with counsel present, and being otherwise advised of the current status of the issues, the Court rules as follows:

A. Factual and Procedural Background.

1. The following facts are undisputed and are relevant to the request of the plaintiff that the defendant The City of Aurora, Colorado (“Aurora”) and defendant Lisa Horton, Municipal Records Supervisor of Aurora (“Horton”) show cause why a detailed analysis not be provided to plaintiff’s request for internal affairs investigation reports on the June 23, 2016 incident involving the plaintiff and the Aurora Police Department (“APD”):

a. On October 17, 2017, plaintiff requested the production of (1) “all disciplinary records for Officer John Gonzalez,” and (2) internal affairs investigation records of the 6/23/16 incident involving the plaintiff [Def. Brief at 3, ¶ 3].

b. On October 19, 2017, Horton (on behalf of Aurora) denied plaintiff’s request based upon: (1) C.R.S. § 24-72-202(4.5) regarding personnel files; (2) an expectation of privacy; (3) Section 3-16 of the Aurora City Charter regarding confidentiality; and (4) limitations on disclosure under APD Directives [*id.* at 3, ¶ 5].

c. On October 30, 2017, plaintiff limited the request to Aurora to the production of only internal affairs investigation records of the 6/23/16 incident involving the plaintiff, not including personnel files [*id.* at 3, ¶ 6].

d. On November 3, 2017, Horton denied the 10/30/17 request for the internal affairs investigation reports based on the same objections cited in the 10/19/17 response, plus Aurora's discretionary authority under C.R.S. § 24-72-305(5) and **Harris v. Denver Post Corp.**, 123 P.3d 1166 (Colo. 2005) [*id.* at 3, ¶ 7].

e. The parties agree that neither response by Horton for Aurora on October 19 or November 3, 2017, is "an articulation of the custodian's balancing of the public and private interests in the record," as required under C.R.S. § 24-72-305(6), as interpreted in **Harris** and **In Re Freedom Colorado Information, Inc., and Dennis Huspeni v. El Paso County Sheriff's Department**, 196 P.3d 892 (Colo. 2008) (hereinafter, "**Huspeni**") [Def. Brief at 5, ¶ 12].

f. On December 1, 2017, plaintiff filed his "Complaint and Application for Order to Show Cause" requesting:

(1) An Order directing Aurora to show cause at a hearing why the internal affairs investigation reports should not be produced;

(2) An award of attorneys' fees pursuant to C.R.S. § 24-72-305(9);

(3) An Order declaring that the APD Directives and Section 3-16 of the Aurora City Charter are preempted under Art. XX, § 6 of the Colorado Constitution; and

(4) A permanent injunction against the defendants preventing any further action under the APD Directives and Section 3-16 of the Aurora City Charter regarding withholding internal affairs investigation reports [Complaint at 17-18].

B. Legal Analysis.

2. In 2008, the Colorado Supreme Court addressed a factual and legal situation very similar to the issues presented by the parties in this case in **Huspeni**, *supra*:

a. In **Huspeni**, a sheriff's deputy was the subject of six internal affairs investigations, and the Denver Post filed a request with the Sheriff to inspect these records in the context of an ongoing criminal prosecution. The Sheriff denied the request based on the alleged confidentiality of the reports in general and on specific privacy concerns raised by the deputy. When the Post sought legal relief, the trial judge sealed the records in the ongoing criminal cases finding that the criminal defendants' rights to privacy outweighed the public's interest in reviewing those records concerning the deputy. **Huspeni**, 196 P.3d at 896.

b. After a second request for the records was filed, a second trial judge denied the request based on the balancing test set forth in the venerable **Martinelli v. District Ct.**, 612 P.2d 1083 (1980). **Huspeni** at 896-897.

c. The Supreme Court rejected these approaches holding that, under the Colorado Criminal Justice Records Act, C.R.S. § 24-72-305(6) (“CCJRA”), before the trial court can assess whether the denial of a criminal records custodian to produce such records is “arbitrary or capricious” under § 24-72-305(7) (and thereby determine whether the records will be produced), the trial court must remand with instructions to the records custodian to issue a detailed, written analysis balancing the three factors identified under **Harris**:

Accordingly, under an abuse of discretion standard for reviewing the CCJRA custodian's determination, the district court does three things. First, the court reviews the criminal justice record at issue. Second, the court takes into account the custodian's balancing of the interests and articulation of his or her determination. Lastly, the court decides whether the custodian has properly determined to: (1) allow inspection of the entire record, (2) allow inspection of a redacted version of the record, or (3) prohibit inspection of the record. If the custodian has failed to engage in the required balancing of the interests or has not articulated his or her rationale, then the trial court should remand the case to the custodian to do so in order to enable judicial review.

Huspeni, 196 P.3d at 900 (footnote omitted); **Harris**, 123 P.3d at 1175.

3. Based upon this standard and the undisputed facts in the case, the Court rules as follows:

a. The parties admit that the Aurora records custodian has not issued a written determination analyzing the plaintiff's request under the **Harris** and **Huspeni** standard.

b. The Court REMANDS proceedings to Aurora – specifically, to the APD and the custodian of the internal affairs investigation records – for a written analysis and determination balancing the pertinent factors identified in **Harris** and **Huspeni** which will be forwarded to plaintiff and filed with the Court.

c. Based on representations by counsel at the January 23, 2018 Status Conference, counsel for the defendants have agreed to provide the written **Harris** analysis no later than February 2, 2018.

d. The Court has scheduled a hearing on plaintiff's Complaint and Motion to Show Cause for March 9 and 12, 2018 commencing at 9:00 a.m. each day.

By Order of the Court this 24th day of January, 2018.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

John L. Wheeler
District Court Judge

Cc: All parties