

2018 OCT 4 PM 3 11

<p>DISTRICT COURT, WELD COUNTY, STATE OF COLORADO</p> <p>Court Address: 901 9th Avenue Greeley, CO 80631</p> <p>Plaintiff: PEOPLE OF THE STATE OF COLORADO</p> <p>vs.</p> <p>Defendant: CHRISTOPHER LEE WATTS</p> <p>Non-Party Movants: Colorado Press Association, Colorado Broadcasters Association, Colorado Freedom of Information Coalition</p>	<p>▲ COURT USE ONLY ▲</p>
<p>Attorneys for Movants: Steven D. Zansberg, #26634 BALLARD SPAHR, LLP 1225 17th Street, Suite 2300 Denver, Colorado 80203 Phone: (303) 376-2400 FAX: (303) 376-2401 szansberg@lskslaw.com</p>	<p>Case No. 18-CR-2003</p> <p>Division: 5</p>
<p>CORA RECORDS REQUESTERS' NOTICE THAT THE COURT LACKS SUBJECT MATTER JURISDICTION TO RESOLVE [L] MOTION TO DENY DISCLOSURE OF PUBLIC RECORDS PURSUANT TO C.R.S. § 24-72-204(6)(a) AND REQUEST TO HAVE COUNTY CORONER FILE AN APPROPRIATE PETITION UNDER CORA</p>	

Movants The Colorado Press Association (including member paper *The Greeley Tribune*), The Colorado Broadcasters Association, and the Colorado Freedom of Information Coalition (collectively, the "CORA Requesters"), by and through their undersigned counsel at Ballard Spahr, LLP, respectfully notify the Court that it lacks subject matter jurisdiction to enter that Order, and requests that County Coroner Carl Blesch comply with his obligations under CORA.

1. All of the CORA Requesters are members of the news media who either have already filed requests to inspect public records (three completed autopsy reports), pursuant to the Colorado Open Records Act (“CORA”), from the Weld County Coroner’s Office, or they intend to do so. *See* Order (C-17) at 1 (noting that “*the Weld County Coroner’s Office (WCCO) has received approximately 20 requests*” to inspect these public records pursuant to CORA). There is no pending request for access to records in the possession of the office of the District Attorney, which would be treated under a separate statute.

2. The WCCO is a custodian of the *public* records – the three autopsy reports “made, maintained, or kept” by that office. The WCCO is *not* a “criminal justice agency” subject to the Colorado Criminal Justice Records Act. Nor is the WCCO a party to this criminal prosecution. Thus, the only grounds upon which the autopsy reports in WCCO’s possession can lawfully be withheld from a public records requester is upon the entry of an Order of Court authorizing such withholding, in response to a petition filed pursuant to § 24-72-204(6)(a), C.R.S. *See, e.g., Bodelson v. Denver Pub’g Co.*, 5 P.3d 373, 377 (Colo. App. 2000) (“an official custodian can petition to restrict access to public records that are presumptively subject to disclosure”).

3. Section § 24-72-204(6), C.R.S., provides the substantive standard by which a District Court must resolve a petition by a custodian of public records seeking a court order authorizing non-disclosure.¹ But equally as important, that CORA provision also provides *the exclusive procedure* by which such matters are to be resolved:

[W]e hold that §§ 24-72-204(5) and 24-72-204(6), C.R.S. (1982 Repl. Vol. 10), provide *the exclusive procedures* for persons requesting records and record custodians to resolve disputes concerning record accessibility.

In re A.A.T., 759 P.2d 853, 855 (Colo. App. 1988) (emphasis added) (citation omitted).

4. *In re A.A.T.* also holds that any judicial determination concerning a pending request to inspect public records under the CORA must be presented and resolved in a *separate* legal action. *See id.* (emphases added):

We further hold that these sections *require* that any action filed either by the custodian or the party requesting the record be a *separate, independent action* in

¹ This Court identified that standard in Order (C-14) at 1; *see also Bodelson*, 5 P.3d at 377 (holding that “[t]he custodian of records has the burden to prove [1] an extraordinary situation and [2] that the information revealed would do substantial interest to the public interest”) (citation omitted). However, under § 24-72-204(6)(a), C.R.S., any person who requested access to the coroner’s autopsy reports is statutorily entitled to be personally served, consistent with C.R.C.P. 4(e), by WCCO with notice of the hearing to be conducted *on the Coroner’s petition* and “to appear and be heard” in opposition the Coroner’s effort to meet that substantive standard. To resolve such a petition without granting the records requesters their right to appear and be heard would not only violate the CORA, but also due process.

the appropriate district court and that *the action cannot be filed as part of any ongoing proceeding.*

5. As a result of the above holdings, the Court of Appeals also expressly held:

Intervenors contend that *the trial court lacked subject matter jurisdiction* in this juvenile termination case to rule on any of their Open Records Act requests. *We agree.*

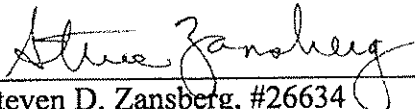
Id. at 854 (emphasis added); *id.* at 855 (“Therefore, we conclude that the trial court here lacked subject matter jurisdiction” and “the trial court’s order . . . is void.”) (emphasis added).

6. Just as in *In re A.A.T.*, this Court, lacks subject matter jurisdiction in this criminal proceeding, “to rule on any . . . Open Records Act requests.” *Id.* at 854. Thus, any order this Court were to enter in this criminal case regarding WCCO’s duties under CORA would be void. *Id.* at 855.

WHEREFORE, the CORA Records Requesters respectfully ask the Court to deny [L] Motion to Deny Disclosure of Public Record Pursuant to C.R.S. § 24-72-204(6)(a) on grounds that the Court lacks subject matter jurisdiction to resolve that motion in the context of this criminal case.

Respectfully submitted this 4th day of October,
2018, by:

BALLARD SPAHR, LLP



Steven D. Zansberg, #26634

Attorneys for CORA Records Requesters

CERTIFICATE OF MAILING

I hereby certify that on this 4th day of October, 2018, a true and correct copy of this **CORA REQUESTERS' NOTICE THAT THE COURT LACKS SUBJECT MATTER JURISDICTION TO RESOLVE [L] MOTION TO DENY DISCLOSURE OF PUBLIC RECORD PURSUANT TO C.R.S. § 24-72-204(6)(a) AND REQUEST TO HAVE COUNTY CORONER FILE AN APPROPRIATE PETITION UNDER CORA** was delivered via FACSIMILE to the attorneys below and was deposited in the U.S. Mail, postage prepaid, correctly addressed to the following:

Michael J. Rourke, Esq., District Attorney
Steve Wrenn, Esq., Chief Deputy District Attorney
Patrick T. Roche II, Esq., Deputy District Attorney
915 Tenth Street
P.O. Box 1167
Greeley, CO 80632

FAX No. (970) 352-8023

John Walsh, Esq.
Kathryn Herold, Esq.
Deputy State Public Defenders
822 7th Street, Ste. 300
Greeley, CO 80631

FAX No. (970) 352-8293

Cynthia D. Henning