District Court, Boulder County, Colorado 1777 6th Street Boulder, CO 80302 (303) 441-3750	DATE FILED: February 14, 2017 CASE NUMBER: 2017CV215
Plaintiff: Kristin Bjornsen v. **Defendants:** Board of County Commissioners of Boulder County and Frank Alexander, ex-officio executive director of the Boulder County Housing Authority,	**COURT USE ONLY**
Kristin Bjornsen 4818 Brandon Creek Drive Boulder, CO 80301 bjornsenk@yahoo.com	Case No. 17CV 215 Division: 2
COMPLAINT	

COMES NOW, Plaintiff, Kristin Bjornsen, for her complaint against the Board of County Commissioners of Boulder County (herein, "the Board") and Frank Alexander, ex-officio executive director of the Boulder County Housing Authority, and alleges as follows:

I. INTRODUCTION

1. This civil action seeks injunctive and declaratory relief to redress the failure of the Board, which also serves ex-officio as the Board of the Boulder County Housing Authority, to fulfill the guarantee of public access enshrined in the Colorado Open Meetings Law (herein, "COML"). This action comes in light of the Board's persistent pattern of conducting improper closed-door discussions of public business, violating the procedural requirements for convening an executive session. See § 24-6-402(4), C.R.S.
2. In particular, this case seeks to end the practice, as a violation of state law, of the Board holding unauthorized executive sessions and then retroactively authorizing them, after the closed-door meetings have occurred; failing to identify the particular matter to be discussed in as much detail as possible; failing to hold executive sessions during regular or special meetings; and failing to record executive sessions.
3. Plaintiff also seeks, under the Colorado Open Records Act (herein "CORA") §§ 24-72-201, et seq., C.R.S., access to public records being withheld or redacted

by Defendants without a statutory basis.

4. As more fully set forth below, Defendants have withheld these public records, asserting that they are protected as "work product" under § 24-72-202(6.5), C.R.S., or under other privileges. Defendants' assertion is not supported in fact or law. As a result, the documents have been wrongfully withheld from public disclosure. The records should be ordered released.
5. In addition to such equitable relief, Plaintiff also seeks recovery of her filing and serving costs, under the provisions of the COML, § 24-6-402(9), C.R.S., and pursuant to C.R.S. § 24-72-204(5).

II. PARTIES, JURISDICTION AND VENUE

6. Plaintiff, Kristin Bjornsen, is a citizen of the City of Boulder and resides in the Gunbarrel subcommunity. Some areas of Gunbarrel are incorporated into the City and some areas are unincorporated.
7. Plaintiff is a "citizen" under the COML, § 26-6-402(9), C.R.S., and a "person" under the CORA, § 24-72-202(3), C.R.S., and, as such, has standing to bring a claim for access to public meetings and records under the COML and CORA.
8. The Board is the governing body of a political subdivision of the State of Colorado; The Board's meetings are subject to requirements of advance notice and public access, see §§ 24-6-402(1)(a), (2)(b) and (2)(c), C.R.S. All the records it makes, maintains or keeps for use in the exercise of official functions are open to the public unless an exemption applies, see §§ 24-72-202(5)-(6)(a)(1), 24- 72-203(1)(a), C.R.S. Defendants are also the custodians of the public records that are the subject of this action.
9. Frank Alexander is the Boulder County Housing and Human Services director and the ex-officio executive director of the Boulder County Housing Authority (herein, the "Housing Authority"). Defendant is sued in his capacity as the custodian of some of the public records that Plaintiff seeks to inspect.
10. This Court has jurisdiction under article VI, section 9(1) of the Colorado Constitution; under § 24-6-402(9), C.R.S. of the COML; and under §§ 24-72-204(5) and -204(5.5), C.R.S. of the CORA.
11. With respect to the jurisdictional requirement for providing notice of intent to sue under Section 204(5) of the CORA, Plaintiff provided notice to the Boulder County Attorney's Office (herein, "Attorney's Office") by electronic mail, on September 26, 2016. See Exhibit 1.
12. Venue is proper in this district under Rules 98(b)(2) and (c)(1) of the Colorado Rules of Civil Procedure; under § 24-6-402(9), C.R.S. of the COML; and under §§ 24-72-204(5) and -204(5.5), C.R.S. of the CORA.

III. GENERAL BACKGROUND AND ALLEGATIONS

13. The County of Boulder (herein, "County") and the City of Boulder (herein, "City") are currently amending the Boulder Valley Comprehensive Plan (herein, "Comprehensive Plan"). Section II of the Comprehensive Plan states that the Comprehensive Plan "is a joint policy document that is adopted by the City of

Boulder and Boulder County in their legislative capacities. Any amendment to the plan is also legislative in nature."

14. One proposed amendment to the Comprehensive Plan involves three parcels of land near the Twin Lakes in Gunbarrel (herein, the "Twin Lakes parcels"). The County and City are considering changing the Twin Lakes parcels' land-use designations in the Comprehensive Plan.
15. To change the Twin Lakes parcels' land-use designations, four governing bodies (the Board, the Boulder County Planning Commission, the Boulder City Council, and the City Planning Board) must all four vote to approve any change.
16. The Housing Authority owns one of the Twin Lakes parcels and has expressed interest in buying the other two.
17. During the Comprehensive Plan update process, many County citizens have questioned the impartiality of County officials regarding the proposed amendment for the Twin Lakes parcels. Citizens also have questioned County officials' adherence to the Boulder County Personnel and Policy Manual.
18. Plaintiff is deeply interested in the proposed land-use changes for the Twin Lakes parcels because of the potential harm to wildlife and environmental quality. Plaintiff has been trying to stay informed as the proposed amendment moves through the legislative process.
19. During the last year, Plaintiff became increasingly aware of the opaque manner in which the Board conducts its executive sessions.
20. Troubled by the secrecy, Plaintiff began to research Colorado laws governing executive sessions and, as more fully set forth in the next section, was startled to learn that the Board routinely enters executive sessions in a manner that conflicts with the COML.
21. Plaintiff also has encountered significant difficulty obtaining public records through CORA requests. The Comprehensive Plan process has generated a great volume of information on the Twin Lakes parcels and other land parcels of interest to Plaintiff.
22. When submitting CORA requests, Plaintiff has encountered an exasperating pattern of Defendants and their Attorney's Office breaching, either in letter or in spirit, the CORA. To provide three overarching examples, this includes:
    - Defendants and their Attorney's Office multiple times refusing or failing to inform Plaintiff of the existence of records they were withholding. Plaintiff learned about these withheld records only through second-hand sources or indirect means. *See* **Exhibit 2a** for one example.
    - The Attorney's Office several times assessing fees from Plaintiff that seemed out of proportion to the records being requested. Plaintiff was perplexed, for example, as to why it would take 2.5 hours (for a total of $75 charged) to electronically forward four readily accessible, department-wide County e-newsletters. (*See* **Exhibit 2b**.)
    - Defendants and their Attorney's Office multiple times failing to return documents within the three-day window stipulated by the CORA. Pursuant to § 24-72-203(3)(b) C.R.S., "The date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request. As used in this subsection (3), a

'reasonable time' shall be presumed to be three working days or less. Such period may be extended if extenuating circumstances exist. However, such period of extension shall not exceed seven working days. A finding that extenuating circumstances exist shall be made in writing by the custodian and shall be provided to the person making the request within the three-day period." When responding to Plaintiff's CORA requests, Defendants and their Attorney's Office have exceeded the three-day window multiple times. *See* **Exhibit 2c** for one example. On three occasions, these delays created problems for Plaintiff. In the case of Exhibit 2c, the delay prevented Plaintiff from submitting a public-hearing comment before the deadline for comments.

- The Attorney's Office *correctly* redacting private email addresses in responsive records returned to Plaintiff, pursuant to §24-72-204(2)(a)(VII), C.R.S. but then the County inexplicably (i) publishing Plaintiff's private email address (and other citizens' email addresses) online for anyone to see and (ii) mandating Plaintiff and other citizens agree to the release of their private email addresses as a supposed requirement of the CORA. Specifically, before being allowed to submit public comments on the Comprehensive Plan, Plaintiff and other citizens had to check an online "Open Records Notification" box acknowledging that "my submission is considered an item of public record and must be made available by request under the Colorado Open Records (CORA). Information may include my name, email address, or other identifying information."

23. More grievously to Plaintiff, however, Defendants have denied Plaintiff the right to inspect several records without any statutory basis. As more fully set forth in the following sections, Plaintiff is seeking access to some of these redacted or withheld public records.

IV. COLORADO OPEN MEETINGS LAW

24. Under the COML, the Board is a "local public body," as that term is defined in the statute, because it is a governing body of a political subdivision of the State of Colorado. It is therefore subject to all requirements of the COML applicable to local public bodies. See §§ 24-6-402(1)(a), -402(2), -402)(4), -402(7), -402(8), and -402(9), C.R.S.
25. The People of Colorado enacted by initiative the COML in 1973. The COML declares that public business "may not be conducted in secret." It is declared to be a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret. § 24-6-401, C.R.S.
26. The COML's "underlying intent" is to ensure that the public is not "deprived of the discussions, the motivations, the policy arguments and other considerations which led to the discretion exercised by the [public body]." *Van Alstyne v. Housing Auth.*, 985 P.2d 97, 101 (Colo. App. 1998).
27. The Colorado Court of Appeals has declared that "[t]he purpose of the OML, as

declared in § 24-6-401, C.R.S. 2006, is to afford the public access to a broad range of meetings at which public business is considered; to give citizens an expanded opportunity to become fully informed on issues of public importance, and to allow citizens to participate in the legislative decision-making process that affects their personal interests." *Walsenburg Sand & Gravel Co. v. City Council*, 160 P.3d 297, 299 (Colo. App. 2007) (citation omitted) (emphasis in original).

28. Under the COML, all exemptions from the default rule that a public body's meetings must be open to the public must be narrowly construed, ensuring as much public access as possible. *Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004) ("In our view, this rule [of a presumption in favor of public access] applies with equal force to the executive session exception carved out in the Open Meetings Law."); *Zubeck v. El Paso County Ret. Plan*, 961 P.2d 597, 600 (Colo. App. 1998) (construing both the COML and the CORA in harmony and requiring narrow construction of any exemption limiting public access); *see also Cole v. State*, 673 P.2d 345, 349 (Colo. 1983) ("As a rule, [the Open Meetings Law] should be interpreted most favorably to protect the ultimate beneficiary, the public.").
29. Under the COML, a public body must "strictly" comply with the requirements for convening and conducting executive sessions in order to enter such a meeting. Colorado's Court of Appeals has held, on at least three separate occasions, that when a public body fails to "strictly" comply with announcement prerequisites prior to convening an executive session, the subsequent closed-door meeting is an illegally closed meeting (not an "executive session" at all), and the recording of that illegally closed meeting is a public record, open for inspection. *See Zubeck v. El Paso Cnty. Retirement Plan*, 961 P.2d 597 (Colo. App. 1998); *Gumina*, 119 P.3d at 530 (cert denied, Aug. 22, 2005); *WorldWest LLC v. Steamboat Springs Sch. Dist. RE-2 Bd. of Educ.*, No. 07-CA-1104, 37 Media L. Rep. (BNA) 1663 (Colo. App. Mar. 26, 2009).
30. Under the COML, the pertinent procedural requirements for conducting an executive session include the following (§§ 24-6-402(2), -402(4) C.R.S.):
    - The public body "may hold an executive session only at a regular or special meeting" and for the sole purpose of considering matters in the COML. The regular or special meeting must be properly noticed with at least 24-hours notice.
    - Prior to the executive session, the public body must announce to the public "the topic for discussion in the executive session, including specific citation to the provision" of the COML that permits that particular topic to be discussed in closed-door session;
    - Prior to the executive session, the public body must announce to the public "the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized";
    - The public body must approve a motion to go into executive session by a vote of two-thirds of the quorum present.
    - The public body must electronically record executive-session discussions with the exception of privileged attorney-client communication. (For attorney-client discussions, the electronic record or a sworn affidavit by the

attorney should reflect the fact that no further record or electronic recording was kept of the discussion.)

31. Under the COML, the burden is on the public body that conducted an executive session to demonstrate that the closed meeting was proper. *Cf.*, 961 P.2d at 600.
32. Under the COML, a public body may not deny public access to a record of a meeting that failed to comply with the requirements of the executive session provisions; such records or audio recordings are necessarily public records subject to public access. *See Gumina*, 119 P.3d at 532; *WorldWest*, slip op. at 18 and 20 (attached in accompanying Appendix).
33. Set forth below is a factual background on four of the Board's executive sessions in the past year. Exhibit 3a provides factual background on 37 other executive sessions from April 1, 2016, through November 1, 2016, all of which were improperly convened. (After that point in time, Plaintiff informed the Attorney's Office for the second and third time about her concerns regarding the Board's executive sessions and set to work writing this Complaint.)
    a) **June 30, 2016, between 10:32-10:56 a.m.:** Board retroactively authorizes a closed-door meeting that had already occurred that morning. No one says where or with whom the meeting took place. No one gives the statutory citation for the topic until after the vote occurs. Notably, Boulder County Commissioner Elise Jones states that this method of approval, far from being anomalous, is "typically" how the Board approves executive sessions.
        - **Minutes from meeting (item #17):** "Items Amended to the Agenda. County Attorney's Office: Authorization for to enter [sic] into Executive Session at 9:45 a.m. June 30, 2016 with Ben Pearlman for the purpose of receiving legal advice regarding Docket SU-15-0001 pursuant to CRS-24-6-402(4)(b) Legal Advice. Presenter: Kathy Parker, Assistant County Attorney ACTION Commissioner Domenico moved approval of Item No. 17. Commissioner Gardner seconded the motion. VOTE:JONES, aye; DOMENICO, aye; GARDNER, aye. Motion carried 3-0."
        - **Transcript of audio recording for item #17:**
          Assistant County Attorney Kathy Parker: "That [executive session] relates to the docket that is coming up at 11 o'clock and we'll discuss that during that docket. Does that work?"
          Commissioner Elise Jones: "I think we just typically approve executive sessions [Parker: Here?] even retroactively.
          Parker: At the business meeting? That's fine. So I want to give notice that an executive session happened this morning at 9:45 a.m. regarding the Colorado real estate holdings special use site specific development plan docket. I don't have the docket number right in front of me. And I'm requesting that you all vote to ratify entering that executive session."
          [Commissioner Cindy Domenico moved approval of Item No. 17. **Commissioner Deb Gardner** seconded the motion.]

Commissioner Elise Jones: "And just to clarify that's docket SU-15-0001" [Vote takes place and motion passes 3-0.]
Commissioners' staff Cecilia Lacey: "And that was for legal advice or?"
Parker: "Yes, C.R.S.-24-6-402(4)(b)."

b) **July 12, 2016, between 10:30–10:57 a.m.:** For item 23a, the Board authorizes an executive session for no subject matter at all but on the "odd chance" they find a subject they want to discuss. For item 23b, the Board authorizes another executive session without stating the subject matter. For both items 23a and 23b: Citizens have no way of knowing whether the executive sessions will be on a subject matter that concerns or interests them; and the executive sessions occur outside a regular or special meeting. For item 23b, the Attorney's Office has been very vague about whether the closed-door meeting was recorded, as COML requires for this statutory topic. The verified lack of recordings for other executive sessions indicates perhaps it was not recorded.

- **Minutes from meeting (item #23):** "Authorization for the Board to go into Executive Session on Tuesday, July 12
  a. 12:45 p.m. with Ben Pearlman, County Attorney, pursuant to CRS 24-6-402(4)(b) Legal Advice.
  b. 1:30 p.m. with Ron Stewart, Parks and Open Space Director, pursuant to CRS 24-6-402(4)(a) Real or Personal Property Acquisitions and Sales."
  Presenter: Ben Pearlman, County Attorney
  ACTION Commissioner Gardner moved approval of Item No. 23a. Commissioner Domenico seconded the motion.
  VOTE: JONES, excused; DOMENICO, aye; GARDNER, aye. Motion carried 2-0.
  ACTION Commissioner Gardner moved approval of Item No. 23b for the purpose of discussing. Commissioner Domenico seconded the motion.
  VOTE: JONES, excused; DOMENICO, aye; GARDNER, aye. Motion carried 2-0.
- **Transcript for the audio recording of Item 23a:**
  County Attorney Ben Pearlman: "At this point, we do not have any item, but I would ask that you authorize it on the odd chance that we might find something generated [Commissioner Cindy Domenico interjects: "It could still happen"] and we will cancel it most likely."

c) **July 19, 2016, between 12:30–12:44 p.m.:** The Board authorizes two executive sessions (item 17a and 17b). For both, no one gives a subject matter. In fact, for item 17b, the Board appears to have no subject matter in mind: Parks and Open Space Director Ron Stewart says that they will "get those legal advice topics on the record, hopefully at the next business meeting." Note further that Stewart calls the topics

"legal advice topics" even though the statutory citation was Real or Personal Property Acquisitions and Sales. Citizens have no way of knowing what the subject matter will be or what COML provision is accurate. Both executive sessions occur outside a regular or special meeting. For item 17b, the Attorney's Office has, again, been vague about whether this closed-door meeting was recorded, as COML requires for this statutory topic. The verified lack of recordings for other executive sessions indicates perhaps it was not recorded.

- **Minutes from meeting (item 17):** "Authorization for the Board to go into Executive Session on Wednesday, July 20
  a. 10:15 a.m. with Ben Pearlman, County Attorney, pursuant to CRS 24-6-402(4)(b) Legal Advice;
  b. 12:30 p.m. with Ron Stewart, Parks and Open Space Director, pursuant to CRS 24-6-402(4)(a) Real or Personal Property Acquisitions and Sales."
  ACTION Commissioner Gardner moved approval of Item No. 17. Commissioner Jones seconded the motion.
  VOTE:JONES, aye; DOMENICO, excused; GARDNER, aye. Motion carried 2-0.
- **Transcript for the audio recording of item 17b post-approval:**
  Parks and Open Space Director Ron Stewart: "And we will contact the county attorney to get those legal advice topics on the record, hopefully at the next business meeting."

d) **October 20, 2016, between 10:33–10:59 a.m.:** The Board, sitting as the Board of the Housing Authority, retroactively authorizes one executive session (item 2)—or in the words of Assistant County Attorney Ben Doyle, "after the fact." The closed-door session had already occurred on October 19, 2016. Later in the meeting, the Board, sitting as the Board, authorizes another executive session (item 21) for 3 p.m. that day, saying it relates to the Twin Lakes parcels. Immediately thereafter, the Board authorizes another executive session (item 22) for the Board of the Housing Authority—but the Board forgets to convene as the Board of the Housing Authority while approving the session. Also, the Board approves the Housing Authority executive session for the same time as the Board's executive session, 3 p.m. that day. After the motion passes, County Attorney Ben Pearlman clarifies that the Board was sitting as the Board of the Housing Authority for that vote. (Exhibit 3a contains more details on items 21 and 22.) All three of these executive sessions were held outside of a regular or special meetings.

- **Minutes from meeting (item 2):** "Authorization, after the fact, for the Board to go into Executive Session at 10:15 a.m. on Wednesday, October 19 with Ben Pearlman, County Attorney, pursuant to CRS 24-6-402(4)(b) Legal Advice on options for structuring the acquisition and financing of affordable

housing."
Presenter: Ben Doyle, Assistant County Attorney
ACTION Commissioner Gardner moved approval of Item No. 2. Commissioner Jones seconded the motion.
VOTE:JONES, aye; DOMENICO, excused; GARDNER, aye. Motion carried 2-0.

- **Transcript of audio recording for item 2:**
  Assistant County Attorney Ben Doyle: "This had been noticed on the Tuesday business meeting for a Wednesday executive session but then the Tuesday business meeting was canceled, so that's why we're here after the fact to request authorization."

e) **November 1, 2016, between 10:33–10:40 a.m.:** The Board retroactively authorizes an executive session that had already occurred the day before. The executive session was held outside of a regular or special meeting. The Board failed to electronically record the meeting, as required by COML.

- **Minutes from the meeting (item 10):** "Authorization for the Board to go into Executive Session at 3:00 pm. on Monday, October 31, 2016 with Eric Lane, Parks and Open Space Director, regarding the Mayhoffer property pursuant to CRS 24-6-402(4)(a)."
  Presenter: Cecilia Lacey, Commissioners' Staff
  ACTION Commissioner Gardner moved approval of Item No. 10. Commissioner Domenico seconded the motion.
  VOTE:JONES, aye; DOMENICO, aye; GARDNER, aye. Motion carried 3-0.
- **Transcript of the audio recording for item 10:**
  Commissioners' staff Cecilia Lacey: "We had an executive session yesterday on Monday, October 31, and it was with the Parks and Open Space Director, Eric Lane, and I don't know what time that took place [other voice interjects, possibly Commissioner Elise Jones: "3 o'clock"], at 3 p.m., and it was regarding the Mayhoffer property and that is for C.R.S. 24-6-402(4)(a), real or personal property acquisition and sales."

34. In sum, from April 1, 2016, through November 1, 2016, three closed-door meetings took place without any authorization at all; the Board retroactively approved these secret meetings as executive sessions after the fact. Comments by Commissioner Elise Jones at the June 30, 2016, meeting (see section 'a)' above), along with the frequency of retroactive approval, suggest this practice is routine.
35. Furthermore, all of the 42 executive sessions listed above and in Exhibit 3a were authorized during public meetings but then convened at a time outside of regular or special meetings. This violates COML's requirement that executive sessions occur "only at a regular or special meeting." § 24-6-402(4), C.R.S.
36. To Plaintiff's knowledge, at least three of the non-legal executive sessions were never electronically recorded: specifically, the closed-door meetings on August

31, 2016, September 1, 2016, and October 31, 2016. See Exhibit 3b (regarding the August 31, 2016, and September 1, 2016, executive sessions) and Exhibit 3c (regarding the October 31, 2016, executive session). COML requires executive sessions (except for privileged attorney-client-communication portions) to be recorded. Plaintiff asked the Attorney's Office if the Board electronically records its executive sessions, and paralegal specialist Jill Coil replied that she would ask the staff recorder (see Exhibit 3c), but Plaintiff never received a direct answer to that question. At other times when Plaintiff asked about the existence of recordings, the Attorney's Office has given vague answers, never directly answering the question. This suggests that the Board has been only sporadically, if ever, electronically recording executive sessions.

37. When authorizing the closed-door meetings from April 1, 2016, through November 1, 2016, the Board fifteen times never identified the "particular matter" that it intended to discuss beyond merely citing the topic and corresponding statutory provision. In some cases, the Board didn't even know what subject matter was going to be discussed. For many of the other executive sessions during that timespan, the Board gave insufficient details on the subject matter. See #33(a)–(e) above and Exhibit 3a.
38. Colorado courts have held that a local public body must do more than merely "parrot" the statutory category of a COML exemption. Prior to the executive session, the public body must describe with particularity the specific matters to be discussed behind closed doors in as much detail as possible without compromising the purpose of the executive session. *See Gumina*, 119 P.3d at 531; *WorldWest*, 2009 WL 783330, 37 Media L. Rep. at 1668 (copy attached); *see also White v. Brush Sch. Dist. RE-2(j)*, Morgan County District Court, "Order re: Def.'s M. to Dismiss [etc.]," at 9 (slip op. Mar. 31, 2010) ("Announcing the topic of an executive sessions without providing any detail contravenes the legally protected right of the public to be notified of the particular matter to be discussed in an executive session in as much detail as possible.").
39. Even with the Board's "attorney conferences," the COML does not grant a broad blanket of secrecy for general discussion. The COML's narrow exemption allows for an executive session "for purposes of receiving legal advice on specific legal questions." See § 24-6-402(4)(b), C.R.S. This provision only applies to the receipt of legal advice on a specific legal question. See id. Moreover, a local public body may not use the "[m]ere presence or participation" of the body's attorney at a closed-door meeting as the basis for excluding the public from observing the discussion. See id.
40. On information and belief, Plaintiff alleges that it was possible for the Board to identify more particularly the specific matters that it would be discussing behind closed doors in the executive sessions without compromising the purpose for which the executive session was being called.
41. From April 1, 2016, through November 1, 2016, the Board identified no subject matter for fifteen executive sessions, only the statutory citation. It strains credibility that fifteen executive sessions had to be fully cloaked in secrecy. For many of the other executive sessions during this timespan, the Board gave insufficient details on the subject matter.

42. Based on (i) the Board's pattern of failing to identify the subject matter and (ii) multiple admissions by County officials that no subject matter even existed at the time some executive sessions were authorized, Plaintiff alleges that the Board could have identified the subject matter without compromising the purpose for the executive session.
43. Three times Plaintiff has voiced concern to the Attorney's Office about the manner in which the Board approves executive sessions. The first time was on July 18, 2016. *See* Exhibit 3d. Doherty replied that the Board was correctly following the COML. The final time was in a December 28, 2016, email from Plaintiff to County Attorney Ben Pearlman and Doherty, outlining the various ways that Plaintiff believed the Board was violating the COML. See Exhibit 3e. Doherty replied on January 13, 2017, denying any errors in the Board's executive-session practices and saying that the Board follows the prescribed statutory process for holding executive sessions.
44. Furthermore, executive sessions convened after Doherty's reply continued to evince the same errors Plaintiff identified in the December 28, 2016, email. This made clear to Plaintiff that the Board's COML violations would continue and that the courts were her only recourse.
45. On information and belief, Plaintiff alleges that the Board has failed to "strictly comply" with the statutory requirements for convening an executive session for the closed-door meetings described in this Complaint, as well as in Exhibit 3a. Accordingly, these closed-door meetings are public meetings and are "subject to the public disclosure requirements of the [COML]." *Gumina*, 119 P.3d at 532
46. On information and belief, Plaintiff alleges that the Board habitually participates in illegal closed-door meetings and, thus, habitually discusses public business in secret.
47. Because the Board has deprived Plaintiff of so much information regarding its executive sessions, it is impossible to know whether the Board has been adopting policies or taking formal actions during its closed-door discussions. The COML stipulates that a public body may not adopt "any proposed policy, position, resolution, rule, regulation or formal action" during a closed-door meeting, other than the approval of minutes of a prior closed-door meeting. See § 24-6-402(3)(a), C.R.S.
48. The Colorado Supreme Court has held that even informal decision-making is prohibited during closed-door discussions. *See Hanover Sch. Dist. No. 28 v. Barbour*, 171 P.3d 223, 228 (Colo. 2007); *see also Van Alstyne*, 985 P.2d at 101 ("[A] public body's meeting is not in compliance with the Open Meetings Law if it is held merely to 'rubber stamp' previously decided issues."); *cf. Bagby v. School Dist. No. 1*, 186 Colo. 428, 434, 528 P.2d 1299, 1302 (Colo. 1974) (same, under prior version of statute); *Walsenburg Sand & Gravel*, 160 P.3d at 300 (same, under COML).
49. By convening and conducting executive sessions in the illegal manner described above, the Board denied Plaintiff the opportunity to observe "the discussions, the motivations, the policy arguments and other considerations which led to the discretion exercised by the [Board]." *See Van Alstyne*, 985 P.2d at 101.
50. On information and belief, Plaintiff alleges that the Board has no intention to alter

its practices of holding unauthorized closed-door sessions and then retroactively approving them; failing to adequately identify the subject matters to be discussed in as much detail as possible without compromising the executive session; holding executive sessions outside of a regular or special meeting; and failing to electronically record some (or all) executive sessions required to be recorded.

V. COLORADO OPEN RECORDS ACT

51. Along with having concerns about the Board's executive sessions, Plaintiff has experienced significant difficulty obtaining public records from Defendants, who are denying Plaintiff access to several public records without any proven statutory basis. These questionably redacted/withheld records are far too numerous for Plaintiff to address in this Complaint, so Plaintiff will address only four records. They are described more fully in the following subsections.

"Gunbarrel_Zoning Notes" Document

52. The first withheld document is titled "Gunbarrel_Zoning Notes." On March 1, 2016, Plaintiff submitted a CORA request for "BCHA correspondence & documents with city Office of Planning & Development in 2012-2013 regarding 6655 Twin Lakes Road." *See* Exhibit 4a.
53. On March 8, 2016, Lauren Le Roy, Boulder County paralegal specialist, emailed Plaintiff saying, "Please note that one document labeled 'Gunbarrel_Zoning Notes' is being withheld under the Attorney Client Privilege. It was drafted by Ben Doyle, Assistant County, for his client, Housing Authority." See Exhibit 4b.
54. Plaintiff replied on March 8, 2016, asking, "Regarding the withheld document, may I ask when it was sent and who received it at the Housing Authority?" (Also in Exhibit 4b.)
55. On March 9, 2016, Le Roy replied, "Because the document is legal advice provided by an attorney to a county department, when it was provided and who it was provided to is irrelevant." (Exhibit 4b.) Plaintiff found the use of the word "irrelevant" particularly troubling.
56. On August 22, 2016, after learning about the importance of privilege logs, Plaintiff wrote to Assistant County Attorney Mark Doherty, saying, "After researching things more, I'm hoping to circle back to the attached redacted emails and the withheld 'Gunbarrel_Zoning' document. With the latter, I'd like to respectfully ask again for information on all authors, senders, and recipients of this document; the time of those transmissions; and the general subject matter." *See* Exhibit 4c.
57. On August 24, 2016, Le Roy replied, "As for the document titled "Gunbarrel_Zoning," which was withheld as part of your request made on March 1, 2016, that document was drafted by an assistant county attorney imparting legal advice to a county client and its contents are protected under the attorney-client privilege." *See* Exhibit 4d.
58. The Attorney's Office (which represents the Housing Authority and Defendant

Frank Alexander) refuses to provide Plaintiff with a privilege log. Colorado courts have held that parties are entitled to a privilege log for documents being withheld as an open-record exception. *Doe v Bennett* (Larimer Cty. D.Ct. 2011), Slip Op

59. *Doe v Bennett* (Larimer Cty. D.Ct. 2011), Slip Op at 23 held that the privilege log should follow the same standards as federal FOIA standards. ("In the absence of controlling Colorado authority on this issue, it is appropriate under existing precedent to apply the standards developed in the federal courts in FOIA litigation.")
60. Standards developed in the federal courts in FOIA litigation state that parties may request the title of the withheld document, its date, the identity of the author and its recipients, and as detailed a factual description as possible. "Under FOIA, federal courts have held that a requesting party, in the face of information that an agency is withholding documents pursuant to a FOIA exception, may move for an index of documents withheld pursuant to an exception including the title of the document or category of documents withheld, the date of the document, the identity of the author and its recipients, and as detailed a factual description as possible without revealing the exempt material, and the statutory exemption claimed for that item or category." *Id.* at 25-26 (citing *Vaughn v. Rosen*, 484 F.2d 820, 826-27 (D.C.Cir. 1973)).
61. Yet the County refuses to provide Plaintiff a complete privilege log, including a list of all people who have received the document; the date of the document; dates of transmission; and as factual a description as possible without revealing the exempt material.
62. Such information is necessary for determining whether the attorney-client privilege applies. For example, did third parties without a common interest receive the document, thus, waiving the privilege? And was the attorney acting in a business role instead of a legal role, which would prevent establishment of the privilege?
63. One treatise explained the importance of privilege logs thusly: "The indexing function serves three important policy roles. It forces the agency to evaluate carefully each page or document withheld. Also it enables the court to fulfill its duty to rule on the applicability of the exemption. Third, it gives the requester as much information as possible so that the requester can make a more useful presentation of argument." James T. O'Reilly, 1 FED. INFO. DISCL. § 8:16; see also *Alcon v. Spicer*, 113 P.3d 735, 742 (Colo. 2005) (adopting privilege logs and federal procedure for discovery requests involving claims of privilege for medical records and discussing benefits of approach)
64. The Colorado Court of Appeals has held "[t]he burden of proving the applicability of a privilege rests with the claimant of the privilege." *Black v. Southwestern Water Conservation District*, 74 P.3d (Colo. App. 2003). *Doe v Bennett* (Larimer Cty. D.Ct. 2011), Slip Op at 27 reaffirmed this, holding, "Under Wick Communications, the burden is on the District—not the Does—as the custodian of the records to show that the requested documents are not public records" (citing 81 P.3d at 363).
65. The Attorney's Office is aware of the need to provide privilege logs and has provided them to other requestors. (See Exhibit 4e and Exhibit 4f, an affidavit and

privilege log, respectively, that the Attorney's Office provided to Jeffrey Cohen, Esq., in 2015.)

66. Plaintiff requests that the County provide a full privilege log to Plaintiff for the "Gunbarrel_Zoning Notes" document to show that the document was created and maintained as confidential legal advice. Only in this manner can the Defendants meet the burden of establishing the elements of the privilege.
67. Furthermore, courts have held that failure to provide sufficient detail in a privilege log waives any claim to privilege for the documents. In the handbook "Protecting Confidential Legal Information: A Handbook for Analyzing Issues Under The Attorney-Client Privilege And The Work Product Doctrine" (Jenner & Block LLP, 2015), David M. Greenwald and Michele L. Slachetka cite nine cases where records lost privilege because of insufficient privilege logs (full quotation in footnote).[1]
68. In light of the fact that Colorado and federal courts have ruled on the necessity of providing complete privilege logs and that the Attorney's Office (who represents Defendants) has provided privilege logs to other parties, it is perplexing that the Attorney's Office refuses to provide a complete privilege log to Plaintiff after two direct requests for one. Instead the Attorney's Office answered that such information was "irrelevant." Plaintiff asks whether the refusal of Defendants and

[1] "Where parties log document-by-document, failure to provide sufficient detail in privilege logs may have severe consequences, including waiver of the privilege. For example, in *In re General Instrument Corp. Securities Litigation*, 190 F.R.D. 527, 532 (N.D. Ill. 2000), the court ordered defendant to produce 396 documents that defendant claimed were privileged. The court's decision to compel the production of those documents was based on the fact that defendant's privilege log contained "sketchy, cryptic, often mysterious descriptions of subject matter" that were insufficient to fulfill the defendant's burden of establishing the elements of the privilege for each document. *Id.* at 531-32; *see also McNamee v. Clemens*, No. 1:09-cv-01647-SJ-CLP, 2013 WL 6572899, at *2 (E.D.N.Y. Sept. 18, 2013) (holding privilege was waived due to an insufficient privilege log which failed to sufficiently describe the bases for asserted privileges and protections); *Nordock Inc. v. Sys. Inc.*, No. 11-C-118, 2012 WL 4760784, at *7 (E.D. Wis. Oct. 5, 2012) (where the court held that a party's failure to timely log counsel's opinion letters waived otherwise applicable privileges); *Acosta v. Target Corp.*, 281 F.R.D. 314, 323-25 (N.D. Ill. 2012) (ordering the production of certain documents listed on privilege log where defendant had failed to provide supporting factual material showing the documents were created and maintained as confidential legal advice); *Viet. Veterans of Am. v. CIA*, No. 09-cv-0037 CW (JSC), 2012 WL 1156398, at *2-4 (N.D. Cal. Apr. 6, 2012) (holding that Department of Veterans Affairs had waived privilege over documents after lengthy and unexplained delay in producing privilege log); *In re Chevron Corp.*, 749 F. Supp. 2d 170, 180-85 (S.D.N.Y. 2010)(an attorney's failure to provide a privilege log prior to the return date of a subpoena, an intentional strategic delay, resulted in waiver of any privilege because, while FRCP 26(b)(5) does not explicitly state when a privilege log must be provided, FRCP 45, which applies to subpoenas, requires that a person objecting to a subpoena must serve either written objections or move to quash within the earlier of the time fixed for compliance or fourteen days after service and, if withholding subpoenaed material on grounds of privilege, provide a privilege log); *Feltham Enters. (Cayman) Ltd. v. Certain Underwriters at Lloyds*, No. Civ. A. 02-3588 C/W 0, 2004 WL 2360159, at *3 (E.D. La. Oct. 19, 2004) (finding a waiver where defendant failed to produce a timely privilege log and the log it ultimately produced failed to sufficiently describe withheld documents); *B.F.G. of Ill., Inc. v. Ameritech Corp.*, No. 99 C 4604, 2001 WL 1414468, at *2, 5-8 (N.D. Ill. Nov. 13, 2001) (court ordered hundreds of documents produced and imposed sanctions where party failed to provide adequate privilege log and, based on *in camera* review, improperly asserted privilege); *ConAgra, Inc. v. Arkwright Mut. Ins. Co.*, 32 F. Supp. 2d 1015, 1018 (N.D. Ill. 1999) (directing defendant to produce 54 documents withheld and 10 additional documents initially produced in redacted form because defendant failed to include sufficient descriptions of the documents in its privilege log to establish the privilege)."

their Attorney's Office to provide a complete privilege log has waived privilege for the entire document.

"Your Opinion Matters" Emails

69. The second group of withheld records pertains to an email Defendant Frank Alexander, executive director of the Housing Authority, sent to members of the public on August 5, 2016. The email's subject line was "Twin Lakes Affordable Housing: Your Opinion Matters." The email asks people to attend an upcoming open house and public hearings regarding the Twin Lakes parcels. See Exhibit 5a.
70. On August 14, 2016, Plaintiff submitted a CORA request asking for "1) All records related to HHS' [Housing and Human Services'] 'Twin Lakes Affordable Housing: Your Opinion Matters' email (e.g., correspondence re. its drafting, list of names it went to) 2) list of names that HHS' email 'Update and Next Steps for Proposed Twin Lakes Development' went to." See Exhibit 5b.
71. On August 23, 2016, Lauren Le Roy, paralegal specialist in the Attorney's Office responded to Plaintiff that email correspondence regarding the "Your Opinion Matters" email and early drafts of that email were being withheld as work product under 24-72-202(6.5) C.R.S. See Exhibit 5c.
72. Plaintiff alleges that this email correspondence falls outside the definition of work product for several reasons. First, the Housing Authority never prepared the "Your Opinion Matters" email for elected officials. Pursuant to § 24-72-202(6)(b)(II) C.R.S., the privilege extends to work product prepared for elected officials: "'Public records' does not include…(II) Work product prepared for elected officials."
73. Re-enforcing the "elected official" element: § 24-72-202(6.5)(a) C.R.S. further defines work product as "all intra- or inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority."
74. Defendant Frank Alexander is an appointed employee, not an elected official. So the materials were not assembled for the benefit of elected officials, as the CORA requires, but for an appointed official. It also bears to mention that Frank Alexander sent the "Your Opinion Matters" email to members of the public, not elected officials. Based on other CORA-requested records Plaintiff has received, the Board never received the "Your Opinion Matters" email or the associated correspondence, which was internal among employees.
75. Moreover, the "Your Opinion Matters" email correspondence was never "communicated for the purpose of assisting such elected officials in reaching a decision." No elected official received it, and no elected official was making a decision regarding the "Your Opinion Matters" email.
76. Furthermore, the Housing Authority had already sent several similar emails to the public, so no position or decision was, in fact, being taken by anyone, as the email expressed the longstanding position and decision of the Housing Authority in support of the proposed land-use-change amendment

77. In light of these facts, there is no statutory basis for withholding the "Your Opinion Matters" email correspondence. Defendants are attempting to rewrite the CORA legislation, by severing the connection of work product with elected officials. But that is the province of the General Assembly. Pursuant to § 24-72-201 C.R.S.: "Official is unauthorized to deny access in absence of specific statutory provision. This section establishes the basic premise that in the absence of a specific statute permitting the withholding of information, a public official has no authority to deny any person access to public records." *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974).
78. Under Defendants harmfully broad interpretation of work product, any record, except for those already published to the public, could be deemed work product. This is contrary to the CORA's mandate that exceptions be "narrowly construed." § 24-72-201, C.R.S.: "Open records act creates a general presumption in favor of public access to government documents, exceptions to the act must be narrowly construed, and an agreement by a governmental entity that information in public records will remain confidential is insufficient to transform a public record into a private one." *Daniels v. City of Commerce City*, 988 P.2d 648 (Colo. App. 1999).
79. By withholding these records, the Attorney's Office is also reversing its previous position regarding work product. In February 2016, the Attorney's Office explicitly agreed that very similar email correspondence and draft emails were not work product and were open to the public.
80. Specifically, on January 19, 2016, the Housing Authority sent an email with the subject line "We Need Your Help for Affordable Housing!" to members of the public. (It was signed by then–Deputy Directory of the Housing Authority Willa Williford.) This email is very similar to the "Your Opinion Matters" email, as both involved the Twin Lakes parcels and both asked people to attend upcoming meetings. (See Exhibit 5d).
81. On January 25, 2016, Plaintiff submitted a CORA request (see Exhibit 5e) asking for email correspondence related to part of the "We Need Your Help for Affordable Housing!" email (the survey hyperlinked inside).
82. Senior paralegal Jaclyn Hamilton in the Attorney's Office initially withheld the responsive email correspondence and the draft messages contained therein, citing work product privilege. On February 13, 2016, Plaintiff emailed Hamilton saying, "This survey was not being prepared for elected officials and were not communicated for the purpose of assisting elected officials in reaching a decision." On February 16, 2016, Hamilton replied, "I reviewed your email with Mark Doherty [assistant county attorney] and conferred further with the Housing Authority concerning the request. We agree that the documents I originally identified as work product should be produced." See Exhibit 5f. The Attorney's Office then released these public records.
83. On information and belief, Plaintiff alleges that the Attorney's Office and Housing Authority are arbitrarily and capriciously applying the work-product exemption, perhaps to fit their own convenience, and incorrectly denying Plaintiff access to public records.

"Commissioner Emails -_Redacted.pdf"

84. The third group of withheld records lies within a County-generated PDF file named "Commissioner Emails - _Redacted.pdf" (herein, "Commissioner Emails"). This 303-page PDF is a concatenation of many emails into one document.
85. On September 9, 2016, Plaintiff submitted a CORA request for all correspondence in 2015 and 2016 from the Commissioners regarding the Twin Lakes parcels (see Exhibit 6a). The Attorney's Office returned the "Commissioner Emails" PDF, along with other smaller documents. For many of the emails in the PDF, the Attorney's Office redacted all or a portion of the message bodies, claiming work product privilege under § 24-72-202 6.5(a) C.R.S.
86. For many of the redacted/withheld records, the Board and Attorney's Offce gives no indication of why the emails meet the definition of work product. "The burden of proving the applicability of a privilege rests with the claimant of the privilege." *Black v. Southwestern Water Conservation District*, 74 P.3d (Colo. App. 2003)
87. To the contrary, many of the redacted email bodies appear to fall outside the work-product privilege, based on their subject lines, recipients, and date of transmission. They do not seem to be "advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority" (§ 24-72-202 6.5(a) C.R.S.). For many of the redacted emails, nothing indicates that the purpose of these emails was to assist elected officials in a decision or even that a decision was being made.
88. For the sake of all involved, Plaintiff will forebear from enumerating all of these questionably redacted emails and will mention just a few from the "Commissioner Emails" PDF. They are included in Exhibit 6b.
    - **Page 54:** In an email dated June 11, 2015 (subject line: "RE: Development in Gunbarrel"), Commissioner Elise Jones writes an email to Commissioners Deb Gardner and Cindy Domenico and two County employees. A large portion of the message is redacted as work product.
        i. A quorum of the Board was on these emails. This creates an interesting situation. If the Commissioners were discussing public business or pending legislation, these emails are subject to the COML and should be disclosed. Pursuant to § 24-6-402(2)(d)(III), C.R.S., "If elected officials use electronic mail to discuss pending legislation or other public business among themselves, the electronic mail shall be subject to the requirements of this section. Electronic mail communication among elected officials that does not relate to pending legislation or other public business shall not be considered a 'meeting' within the meaning of this section."
        ii. And if the Commissioners were *not* discussing public business, then these emails cannot be considered work product and should still be released.
    - **Pages 57, 69, 108, and 109:** The redacted emails on these pages similarly involve a Commissioner discussing unknown public business with one or two other Commissioners. For the same reasons described for page 54,

these records should be released either because they are subject to open meeting laws or, conversely (if no public business was discussed), are not work product.

- **Page 8:** In a November 23, 2015, email, Commissioner Jones writes a message to Ron Stewart (then County Parks and Open Space director) with the subject line "annexation question." The message body is redacted as alleged work product. But there was no annexation-related legislation, petitions, or decisions pending at that time—nor have there been such in the year-plus since that email. Also, Jones was sending the email to an employee, not vice versa, which likewise raises doubts about a work-product claim. On its face, this email seems like it was a general discussion, not work product.

"RE_Ron's gift_Redacted"

89. On October 28, 2016, the Attorney's Office returned to Plaintiff the PDF titled "RE_Ron's gift_Redacted." It contains emails between the Board's deputy, Michelle Krezek, and Boulder County Public Health Director Jeff Zayach. Part of a sentence is redacted at the bottom, with the words "redacted – not responsive." No statutes are cited to support the redaction. See Exhibit 7a.
90. On October 28, 2016, Plaintiff asked under which statute that document was being redacted. On October 28, 2016, County paralegal specialist Jill Coil replied, "The redacted portion was a personal comment and not related to County business. We redacted the information that contained private matters under Denver Publishing Company vs Board of County Commissioners, 121 P.3d 190 (Colo. 205)." See Exhibit 7b.
91. Nothing in the emails indicates the redacted portion relates to a private matter. To the contrary, the emails' contents suggest that the redacted portion relates to public business. Such indicators include:
    - The redacted portion occurs in the middle of a sentence about public business ("Sorry I am so late, but I will be at BOCC this afternoon for the Twin Lakes hearing and REDACTED - NOT RESPONSIVE – will you be around?" The County hasn't met its burden of proof to establish that the discussions suddenly shifted from public matters to private matters and that the privilege applies.
    - The subject line "RE_Ron's gift_Redacted" suggests this email may relate to a gift to, or from, a government employee (possibly then Parks and Open Space Director Ron Stewart). If the Board's deputy and another County employee are discussing gifts to a department head, this seems within the scope of public interest, as recognized by Colorado Constitution Article XXIX's restrictions on gifts to and from government employees, officials, and agencies, and, hence, an open record.
92. Plaintiff asks for an in camera review to determine if the redacted portions of this email are appropriately being redacted or if they are public record.

VI. FIRST CLAIM FOR RELIEF

Violation of the COML

93. Plaintiff incorporates the allegations of previous paragraphs of this Complaint as though fully set forth herein.
94. Plaintiff is a "citizen of this State" under the COML, § 24-6-402(9), C.R.S., and as such, has standing to bring a claim for declaratory and injunctive relief under the COML.
95. Plaintiff has suffered an injury in fact through the acts and omissions of the Board with respect to the Board's pattern of holding executive sessions before authorizing them; failing to publicly announce prior to the executive session the particular matter to be discussed behind closed doors, in as much detail as possible without compromising the executive session; failing to hold executive sessions during a regular or special meeting; and failing to electronically record executive sessions. These failures are illegal under the COML.
96. The Board has established a pattern of improperly convening and conducting executive sessions, as revealed by an examination of 42 of the Board's executive sessions from April 1, 2016, through November 1, 2016.
97. Boulder County Assistant Attorney Mark Doherty has opined that the Board's practice for convening and conducting executive sessions is not a violation of the COML.
98. On information and belief, Plaintiff alleges that the Board intends to continue to enter executive sessions before they are authorized; fail to announce the particular matters to be discussed, in as much detail as possible; fail to hold executive sessions during a regular or special meeting; and fail to record executive sessions.
99. In light of the foregoing, there is an actual case or controversy concerning the legality under COML of the Board's past and anticipated future practice of convening executive sessions.
100. Plaintiff has suffered irreparable harm as a result of the Board's practice described herein, by depriving her of information on when executive sessions were occurring and the particular matters being discussed behind closed doors. Without this knowledge, Plaintiff cannot intelligently exercise her rights to freedom of speech, petition, or association, which the COML guarantees.

VII. SECOND CLAIM FOR RELIEF
Violation of the CORA

101. Plaintiff incorporates by reference all preceding paragraphs as if stated fully herein. The 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 . . . ." § 24-72-204(5) C.R.S. Plaintiff is applying to this district court for an order directing the custodians of such records

to show cause why the custodians should not permit the inspection of such records.

102. Defendants have denied Plaintiff the right to a privilege log and the right to inspect several public records with no demonstrated basis in fact or law. Defendants have been unable to establish that the public records sought by Plaintiff are exempt from Plaintiff's right of inspection established by § 24-72-205(1), C.R.S.

103. Plaintiff gave Defendants at least three days notice, pursuant to § 24-72-204(5), C.R.S., of her intent to file this Complaint seeking documents subject to Plaintiff's CORA requests. Plaintiff is entitled to an award of her reasonable costs filing and serving this Complaint to enforce her right of public access to these public records.

104. Because Defendants have denied a valid request for inspection of public records, Plaintiff is entitled to, and this Court should enter, an order directing the Board to turn over the aforementioned documents to allow Plaintiff to inspect public records subject to Plaintiff's requests. See § 24-72-204(5), C.R.S.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kristin Bjornsen respectfully prays for the following relief and judgment:

A. Declaratory relief

The Court should enter a declaratory judgment finding the following as a matter of fact and law: The Board of County Commissioners of Boulder County violated the COML by improperly convening closed-door meetings on the following dates:

- June 30, 2016
- July 12, 2016
- July 19, 2016
- October 20, 2016
- November 1, 2016

Reinforcing the pattern of the above closed-door meetings are tkother closed-door meetings the Board conducted between April 1, 2016, through November 1, 2016, that are described in Exhibit 3a.

B. Injunctive relief

The Court should enter injunctive relief against Defendants, and all of its members, in their official capacities, and all of their officers, agents, representatives, attorneys, and employees, requiring that the Board of County Commissioners of Boulder County must henceforward:

- Ensure that all executive sessions are authorized before they occur (not retroactively, after the fact)
- Ensure that all executive sessions are held during a regular or special meeting that is properly noticed and convened.
- Ensure that prior to entering an executive session the Board must identify

the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is being called. By way of example (and non-exhaustively), the Board must identify at least the following aspects of the anticipated closed-door discussion:

- For "real or personal property acquisitions and sales" conferences, what kind of acquisition is being discussed, i.e., a "purchase" or a "lease" or a "sale." Particular projects or sales of County property also should be announced.
- For "legal advice" conferences, the particular case to be discussed; a notice or threat of potential litigation to be discussed; or the specific legal issue being discussed. (Exempt from this is potential exposure the County has discovered for itself but has not received notice about).

- Ensure that executive sessions are electronically recorded (with the exception of attorney-client communications). For attorney-client communications, the electronic record or a sworn affidavit by the attorney should reflect the fact that no further record or electronic recording was kept of the discussion.
- Direct that if any person requests access to any of the records or recordings of the closed meetings found herein to have been in violation of the COML, that such records or recordings must be made available for inspection and/or copying without regard to the provisions of § 24-6-402(2)(d.5)(II)(D), C.R.S., of the COML.

C. Violation of the CORA and Order to Show Cause

The Court should:

- forthwith enter an Order directing the Board to show cause why they should not allow inspection of the requested records as described in this Complaint and Application for Order to Show Cause;
- conduct a hearing pursuant to such Order "at the earliest practical time," at which time the Court may make the Order to Show cause absolute;
- enter an order directing Defendants to provide access to and/or copies of withheld and redacted public records requested by Plaintiff;
- enter a declaratory judgment finding that the requested public records are subject to disclosure and not exempt under the CORA or any other law, and they are subject to public access pursuant to Plaintiff's valid request under the CORA.

D. Attorney's fees and costs

The Court should award Plaintiff her reasonable costs in filing and serving this civil action pursuant to § 24-6-402(9), C.R.S. and C.R.S. §24-72-204(5).

E. Other orders

The Court should enter such other and further relief as the Court deems proper and just.

Respectfully submitted to the Court this
14th day of February 2017
By Plaintiff Kristin Bjornsen

Kristin Bjornsen, Plaintiff