

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiffs: THE INDEPENDENCE INSTITUTE, LLC v. Defendants: THE COLORADO HEALTH BENEFIT EXCHANGE aka CONNECT FOR HEALTH COLORADO, AND LINDY HINMAN, BRYCEN BAKER, PROTEUS DUXBURY, KYLA HOSKINS AND JACOB BAUS, in their official capacities.	
<i>Attorneys for Plaintiff:</i> Geoffrey N. Blue #32684 Scott E. Gessler #28944 Steven A. Klenda #29196 Adroit Advocates, LLC 1624 Market Street, Suite 202 Denver, Colorado 80202 Phone: 720-432-5705 gblue@adroitadvocates.com sgessler@adroitadvocates.com sklenda@adroitadvocates.com	Case No: 2015CV____ Courtroom: ____
DISTRICT COURT CIVIL (CV) CASE COVER SHEET FOR INITIAL PLEADING OF COMPLAINT, COUNTERCLAIM, CROSS-CLAIM OR THIRD PARTY COMPLAINT	

1. **This cover sheet shall be filed with each pleading containing an initial claim for relief in every district court civil (CV) case, and shall be served on all parties along with the pleading.** It shall not be filed in Domestic Relations (DR), Probate (PR), Water (CW), Juvenile (JA, JR, JD, JV), or Mental Health (MH) cases. Failure to file this cover sheet is not a jurisdictional defect in the pleading but may result in a clerk’s show cause order requiring its filing.

2. **Check one of the following:**

This case is governed by Chief Justice Directive (“CJD”) 11-02 and the “Colorado Civil Access Pilot Project Rules Applicable to Business Actions in District Court” because:

- The case is filed within the period of January 1, 2012 through June 30, 2015; *AND*
- The case is filed in a Pilot Project participating jurisdiction (Adams County, Arapahoe County, Denver County, Gilpin County, or Jefferson County); *AND*
- The case is a “Business Action” as defined in CJD 11-02, Amended Appendix A for inclusion in the Pilot Project.

X This case is not governed by the Colorado Civil Access Pilot Project Rules.

NOTE: Cases subject to the Colorado Civil Access Pilot Project must be governed by the Rules in CJD 11-02 (available at http://www.courts.state.co.us/Courts/Supreme_Court/Directives/Index.cfm). The presiding judge will review Item 2 for accuracy. The designation on this initial Cover Sheet will control unless the Court orders otherwise.

3. If this case is not governed by the Colorado Civil Access Pilot Project Rules as indicated in Item 2, check the following:

X This case is governed by C.R.C.P. 16.1 because:

- The case is not a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding; *AND*
- A monetary judgment over \$100,000 is not sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

This case is not governed by C.R.C.P. 16.1 because (check ALL boxes that apply):

The case is a class action, domestic relations case, juvenile case, mental health case, probate case, water law case, forcible entry and detainer, C.R.C.P. 106, C.R.C.P. 120, or other similar expedited proceeding.

A monetary judgment over \$100,000 is sought by any party against any other single party. This amount includes attorney fees, penalties, and punitive damages; it excludes interest and costs, as well as the value of any equitable relief sought.

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Complaint	

Introduction and Synopsis

The Independence Institute seeks emails from Connect for Health Colorado (“CHFC”) under the Colorado Open Records Act (“CORA”). Before filing this suit, the Independence Institute requested documents from three employees over two days, and after CHFC denied that request, it sought documents from those three employees over one day. It then requested emails from two employees over a five-hour period. CHFC has refused to produce any emails, claiming that the requests are overly broad, cause unnecessary interference, are not reasonably limited by topic, and are a “fishing expedition.” These

excuses have no basis in law. CHFC has violated the CORA and must produce responsive emails.

Parties and Jurisdiction

1. The Independence Institute, LLC, is a Colorado Limited Liability Company located in Denver, Colorado.

2. The Independence Institute is a “person” as defined by the CORA, C.R.S. § 24-72-202(3).

3. Todd Shepherd is an Independence Institute employee and sent the CORA requests at issue as part of his regular employee duties and responsibilities.

4. For purposes of the CORA, defendant Connect for Health Colorado is an instrumentality of the state of Colorado.

5. CHFC is a custodian and an official custodian of the records sought by The Independence Institute. *See* C.R.S § 24-72-202(1.1) and (2).

6. CHFC has a budget of \$55,079,721 for fiscal year 2015.

7. Defendants Lindy Hinman, Brycen Baker, Proteus Duxbury, Kyla Hoskins and Jacob Baus (collectively, the “Individual Defendants”) are employees of CHFC.

8. Under the CORA, emails sent or received as part of the Individual Defendants’ work duties are open records, and each Individual Defendant is a custodian of his or her emails. C.R.S § 24-72-202(1.1).

9. As a court of general jurisdiction, this court has jurisdiction to hear this case. C.R.S. §24-72-204(5); Colo. Const., Art. VI, §§ 1, 9(1).

10. Venue is proper in the City and County of Denver, because CHFC’s refusal to produce the public records occurred in Denver, Colorado. C.R.S. §24-72-204(5); C.R.C.P. 98(b)(2).

General Allegations

11. All records “made, maintained, or kept” by defendants CHFC are public records. C.R.S. § 24-72-202(6)(a)(I).

12. All records “made, maintained, or kept” by the Individual Defendants as part of their duties for CHFC are public records. C.R.S. § 24-72-202(6)(a)(I).

13. Unless specifically exempt, public records must be made available for public inspection. C.R.S § 24-72-203.

14. Exceptions to the presumption of disclosure in Colorado’s open records laws are construed narrowly. *See Bodelson v. Denver Pub. Co.*, 5 P.3d 373, 377 (Colo. Ct. App. 2000).

15. Upon application to the District Court for the district in which the records can be found, the court is to enter an order to show cause requiring the custodian of records to demonstrate “at the earliest practical time” why the denial of inspection was not an abuse of discretion. *See* C.R.S. § 24-72-204(5).

16. If the denial is improper, the Court shall order the custodian to permit inspection and shall award court costs and reasonable attorney fees to the applicant” *Id.*

The CORA Requests at Issue

17. On January 28, 2015, Todd Shepherd of the Independence Institute sent a CORA request (the “January 28 CORA Request”) seeking access to the emails of Lindy Hinman, Brycen Baker, and Proteus Duxbury for a two-day time-period. See **Exhibit 1**.

18. CHFC denied the January 28 CORA Request. See **Exhibit 1**.

19. Defendants failed to undertake a legitimate, thorough and reasonable search for documents responsive to the January 28 CORA Request before denying it.

20. On February 11, 2015, Mr. Shepherd sent a second CORA request (the “February 11 CORA Request”) seeking access to the emails of Lindy Hinman, Brycen Baker, and Proteus Duxbury, for a one-day time-period. See **Exhibit 2**.

21. CHFC denied the February 11 CORA Request. See **Exhibit 2**.

22. Defendants failed to undertake a legitimate, thorough and reasonable search for documents responsive to the February 11 CORA Request before denying it.

23. On February 23, 2015, Mr. Shepherd sent a third CORA request (the “February 23 CORA”) to CHRC seeking all emails for two individuals (Kyla Hoskins and Jacob Baus), this time for a five-hour time-period. See **Exhibit 3**.

24. CHFC denied the February 23 CORA Request. See **Exhibit 4**.

25. Defendants failed to undertake a legitimate, thorough and reasonable search for documents responsive to the February 23 CORA Request.

26. The Individual Defendants had personal custody and control of their emails when CHFC received each CORA request.

27. The Independence Institute collectively refers to the January 28 CORA Request, the February 11 CORA Request and the February 23 CORA Request as the “CORA Requests”.

28. The CORA Requests all sought public records as defined by C.R.S. § 24-72-202(6)(a)(I).

29. Defendants refused to inform the Independence Institute how many documents were responsive to the CORA Requests.

30. Defendants refused to inform the Independence Institute the time and cost needed to fulfill the CORA Requests.

31. Defendants unlawfully denied The Independence Institute an opportunity to inspect public records.

32. The Independence Institute provided Defendants with the three-day notice required by C.R.S. § 24-72-204(5) prior to filing this Complaint. See **Exhibit 5**.

CHFC’s Basis for Denying the CORA Requests

33. CHFC asserts the CORA Requests were overbroad.

34. By limiting the CORA Requests to specific employees and specific timeframes – ranging from five hours to two days – the CORA Requests were not overbroad.

35. CHFC asserts the CORA Requests were overly burdensome.

36. For Fiscal Year 2014-2015, CHFC has a budget of \$55,079,721.

37. As an organization with a \$55,079,721 budget, CHFC has ample resources to respond to the CORA Requests.

38. CHFC asserts that responding to the CORA Requests would have caused “unnecessary interference” in the regular discharge of the duties of the custodian. See **Exhibit 5**.

39. Under Colorado law, custodians of public records must comply with CORA requests as part of their regular duties.

40. The CORA Requests do not cause unnecessary interference with the regular discharge of the duties of the custodian.

41. CHFC's cites its alleged CORA policy as a basis for refusing to provide access to responsive documents. CHFC has not provided the Independence Institute with its CORA policy. See **Exhibits 1, 2 and 4**.

42. CHFC's CORA policy is not "reasonably necessary for the protection of records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian."

43. CHFC refuses to respond to the CORA Requests because they were not limited to a "reasonably specific topic." See **Exhibits 1, 2 and 4**.

44. Colorado law does not allow a custodian to impose a "specific topic" requirement before fulfilling CORA requests.

45. CHFC asserts the Independence Institute may not use the CORA to engage in a "fishing expedition." See **Exhibit 1, 2 and 4**.

46. The Independence Institute has never characterized its CORA Requests as a "fishing expedition."

47. CHFC has characterized the CORA Requests as a "fishing expedition" because the Independence Institute did not provide what CHFC considers a "reasonably specific topic."

48. CHFC may not deny a CORA request because CHFC's custodian does not agree with what it claims is the purpose of a CORA request.

First Claim for Relief
The January 28 CORA Request

49. The Independence Institute incorporates by reference all previous allegations.

50. Defendants' refusal to allow the Independence Institute to inspect documents responsive to the January 28 CORA Request is a violation of the CORA.

51. The Independence Institute is entitled to an order directing Defendants to preserve all documents responsive to the January 28 CORA Request.

52. The Independence Institute is entitled to an order directing Defendants to show cause "at the earliest practical time" why Defendants should not permit access to all of the records responsive to the January 28 CORA Request. C.R.S. § 24-72-204(5).

53. The Independence Institute is entitled to an order directing the custodian of records to provide the Independence Institute with access to all documents responsive to the January 28 CORA Request. C.R.S. § 24-72-204(5).

54. The Independence Institute is entitled to an award of its court costs and reasonable attorney fees incurred in bringing this lawsuit to obtain access to the documents responsive to the January 28 CORA Request.

Second Claim for Relief
The February 11 CORA Request

55. The Independence Institute incorporates by reference all previous allegations.

56. Defendants' refusal to allow the Independence Institute to inspect documents responsive to the February 11 CORA Request is a violation of the Colorado Open Records Act.

57. The Independence Institute is entitled to an order directing Defendants to preserve all documents responsive to the February 11 CORA Request.

58. The Independence Institute is entitled to an order directing Defendants to show cause "at the earliest practical time" why Defendants should not permit access to all of the records responsive to the February 11 CORA Request. C.R.S. § 24-72-204(5).

59. The Independence Institute is entitled to an order directing the custodian of records to provide the Independence Institute with access to all documents responsive to the February 11 CORA Request. C.R.S. § 24-72-204(5).

60. The Independence Institute is entitled to an award of its court costs and reasonable attorney fees incurred in bringing this lawsuit to obtain access to the documents responsive to the February 11 CORA Request.

Third Claim for Relief
The February 23 CORA Request

61. The Independence Institute incorporates by reference all previous allegations.

62. Defendants' refusal to allow the Independence Institute to inspect documents responsive to the February 23 CORA Request is a violation of the Colorado Open Records Act.

63. The Independence Institute is entitled to an order directing Defendants to preserve all documents responsive to the February 23 CORA Request.

64. The Independence Institute is entitled to an order directing Defendants to show cause “at the earliest practical time” why Defendants should not permit access to all of the records responsive to the February 23 CORA Request. C.R.S. § 24-72-204(5).

65. The Independence Institute is entitled to an order directing the custodian of records to provide the Independence Institute with access to all documents responsive to the February 23 CORA Request. C.R.S. § 24-72-204(5).

66. The Independence Institute is entitled to an award of its court costs and reasonable attorney fees incurred in bringing this lawsuit to obtain access to the documents responsive to the February 23 CORA Request.

Prayer For Relief

FOR THESE REASONS, the court should:

a. Order Defendants to show cause “at the earliest practical time” why Defendants should not permit access to all of the records responsive to the January 28, February 11, and February 23 CORA Requests.

b. Order Defendants to preserve all emails responsive to the January 28, February 11 and February 23 CORA Requests.

c. Order Defendants to conduct a legitimate, thorough and reasonable search for all documents responsive to the January 28, February 11 and February 23 CORA Requests;

d. Order CHFC and the Individual Defendants to make the requested emails available for inspection by the Independence Institute;

e. Order Defendants to pay the Independence Institute’s court costs and reasonable attorneys’ fees; and

f. Award the Independence Institute all such other and further relief that the court deems just and proper.

[REDACTED]

[REDACTED]

From: Linda Kanamine <LKanamine@connectforhealthco.com>
Subject: RE: CORA request
Date: February 2, 2015 at 1:38:50 PM MST
To: Todd Shepherd <shepherd@i2i.org>
Cc: Alan Schmitz <ASchmitz@connectforhealthco.com>

Todd,

This is in response to your request of Jan. 28, 2015 under the Colorado Open Records Act (CORA), Colo. Rev. Stat. § 24-72-101 to 24-72-402, for access to “all emails for Lindy Hinman, Brycen(sic) Baker, and Proteus Duxbury, for the dates of January 26 and January 27, 2015.”

The volume of records requested is potentially substantial and administratively burdensome requiring each e-mail be reviewed for privileged information regardless of subject matter. Please narrow the request to an identifiable subject matter that is not overly broad in and of itself (e.g. all e-mails regarding information technology) so we can determine what records may be responsive.

Thank you,
Linda Kanamine

Linda Kanamine
Chief Marketing Officer



Connect for Health Colorado
3773 Cherry Creek North Drive, Suite 1025
Denver, CO 80209
office: 720-496-2568
LKanamine@ConnectforHealthCO.com



From: Todd Shepherd [<mailto:shepherd@i2i.org>]
Sent: Wednesday, January 28, 2015 11:25 AM
To: Linda Kanamine
Subject: CORA request

Ms. Kanamine:

New CORA request pasted below my email signature.

Please don't hesitate to contact me if I can be of any assistance.

ts

Todd Shepherd
shepherd@i2i.org

727 E. 16th Ave
Denver, CO 80203

303-279-6536 X111
405-274-2800 cell

January 28, 2015

Connect for Health Colorado
3773 Cherry Creek Dr., Suite 1025
Denver, CO, 80209

To Connect for Health Colorado,

Pursuant to the Colorado Open Records Act (CORA), Colo. Rev. Stat. § 24-72-101 to 24-72-402, I write to request access to (reserving the right to photocopy) the following writings* for inspection:

- all emails (inbound, outbound, or deleted) for Lindy Hinman, Brycen Baker, and Proteus Duxbury, for the dates of January 26 and January 27, 2015. Please do not include any emails which are the product of a “clipping service” or a “news service” or would be considered a “news clipping,” unless any of the named individuals create an email based on the “clipping service” or “news service” email. If the above search yields email "threads," please only produce the last email of the thread, provided all other emails are duplicated within the last email. If the search yields duplicate emails between any of the listed employees, please only produce one copy.

If the document exists in a spreadsheet, all data in the spreadsheet should be transmitted unless there is a legal, statutory exemption that allows for that information to be withheld. If any of the named individuals have left their employment with Connect for Health, please produce all emails for the individual who replaced the person that has left.

If the document(s) already exist in electronic format, please transmit them via email.

If these documents are not in your custody or control, please notify me and state in detail to the best of your knowledge the reason for the absence of the records, their location, and what person or persons has custody or control of the records, as required by CRS §24-72-203.

I agree to pay any reasonable copying and postage fees of not more than \$50.00. If the cost would be greater than this amount, please notify me. Please provide an itemized receipt indicating the cost for each individual charge included in the final dollar total for the above request.

If you choose to deny any single document within the request for any reason, please identify the document and provide a written explanation as required by CRS §24-72-204(4) for the denial, **including a reference to the specific statutory reasons and/or exemption(s) upon which you rely as the grounds for your denial.** When referencing the statute, please include the full statute numerical listing, and the full and complete wording (please no shorthand, no excerpts, no rubrics) of the title, article, section, or subsection of statute upon which the premise for your denial resides.

Thank you for your assistance.

Sincerely,

Todd A Shepherd

727 E 16th Ave

Denver, CO, 80203

303-279-6536 X111

*Writings is defined by state statute as "...all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. 'Writings' includes digitally stored data, including but without limitation electronic mail messages, but does not include computer software."

[REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

From: Todd Shepherd <shepherd@i2i.org>
Subject: Re: new CORA request 2-11-2015
Date: February 23, 2015 at 1:55:20 PM MST
To: Linda Kanamine <LKanamine@connectforhealthco.com>
Cc: ASchmitz@connectforhealthco.com

Mr. Schmitz:

Consistent with my inquiries, I would advise you that I am in the process of conferring with legal counsel with regards to your previous denial. Therefore, please take all possible steps to ensure none of the named documents are deleted or destroyed.

Regards,

ts

Todd Shepherd
shepherd@i2i.org

727 E. 16th Ave
Denver, CO 80203

303-279-6536 X111
405-274-2800 cell



On Feb 23, 2015, at 1:44 PM, Linda Kanamine <LKanamine@connectforhealthco.com> wrote:

Mr. Schmitz did respond to you on Feb. 17.

From: Alan Schmitz
Sent: Tuesday, February 17, 2015 5:23 PM
To: Todd Shepherd; Linda Kanamine
Subject: RE: new CORA request 2-11-2015

Mr. Shepard:

Consistent with my previous responses to these types of inquiries:

Pursuant to CRS 24-72-203(1)(a) the official custodian of any public records may make such rules with reference to the inspection of such records as are *reasonably necessary* for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian.

By requiring *specificity in records requests and spelling out reasonable procedures* an entity subject to CORA is acting consistent with the statutory authorization for “reasonably necessary” rules and the recognized need to balance the public right of inspection and the administrative burden placed on such entities. **Citizens Progressive Alliance v. S.W. Water Conservation District, 97 P.3d 308 (Colo. App. 2004).**

A request for “all emails (inbound, outbound, or deleted)” is overbroad. Listing one kind of document which is as broad as “all e-mails” is a limit in name only. It is not reasonable to review “all e-mails” on all topics for even one individual, much less three. The public policy behind CORA is not to promote fishing expeditions. This is exactly why “the official custodian may make rules as are reasonably necessary to prevent unnecessary interference” in CRS 24-72-203.

The solution is quite simple – please limit the scope of the request to a reasonably specific topic.

Best regard, Alan

Alan J. Schmitz
General Counsel
Connect for Health Colorado
3773 Cherry Creek Drive North, Suite 1025
Denver, CO 80209
(720) 496-2531 ~ direct
(720) 496-2530 ~ main
<image001.png>

From: Todd Shepherd [<mailto:shepherd@i2i.org>]
Sent: Wednesday, February 11, 2015 4:36 PM

To: Linda Kanamine; Alan Schmitz
Subject: new CORA request 2-11-2015

Ms. Kanamine and Mr. Schmitz:

Pasted below my email signature is a new CORA request.

Please don't hesitate to contact me if I can be of assistance.

Regards,

ts

Todd Shepherd
shepherd@i2i.org

727 E. 16th Ave
Denver, CO 80203

303-279-6536 X111
405-274-2800 cell

Feb 11, 2015

Connect for Health Colorado

3773 Cherry Creek Dr., Suite 1025

Denver, CO, 80209

To Connect for Health Colorado,

This letter constitutes a formal notice that a request is being made to inspect the public records identified in this document. Therefore, none of the records requested may be destroyed by the agency or custodian to which this request is directed while the request is pending. Accordingly, **please take immediate steps to prevent the deletion** of any electronic information, or the destruction of any other records which are or may be responsive in any manner to this request.

Pursuant to the Colorado Open Records Act (CORA), Colo. Rev. Stat. § 24-72-101 to 24-72-402, I write to request access to (reserving the right to photocopy) the following writings* for inspection:

- all emails (inbound, outbound, or deleted) for Lindy Hinman, Brycen Baker (unsure of correct spelling, but Mr. Baker is a data analyst) and Proteus Duxbury, for the full day of Tuesday, February 11. Please do not include any emails which are the product of a “clipping service” or a “news service” or would be considered a “news clipping.” If the above search yields email "threads," please only produce the last email of the thread, provided all other emails are duplicated within the last email. If the search yields duplicate emails between any of the listed employees, please only produce one copy.

If the document(s) already exist in electronic format, please transmit them via email.

If these documents are not in your custody or control, please notify me and state in detail to the best of your knowledge the reason for the absence of the records, their location, and what person or persons has custody or control of the records, as required by CRS §24-72-203.

I agree to pay any reasonable copying and postage fees of not more than \$100.00. If the cost would be greater than this amount, please notify me. Please provide an itemized receipt indicating the cost for each individual charge included in the final dollar total for the above request.

If you choose to deny any single document within the request for any reason, please identify the document and provide a written explanation as required by CRS §24-72-204(4) for the denial, **including a reference to the specific statutory reasons and/or exemption(s) upon which you rely as the grounds for your denial.** When referencing the statute, please include the full statute numerical listing, and the full and complete wording (please no shorthand, no excerpts, no rubrics) of the title, article, section, or subsection of statute upon which the premise for your denial resides.

Thank you for your assistance.

Sincerely,

Todd A Shepherd

727 E 16th Ave

Denver, CO, 80203

303-279-6536 X111

*Writings is defined by state statute as "...all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. 'Writings' includes digitally stored data, including but without limitation electronic mail messages, but does not include computer software."

[REDACTED]

[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]
[REDACTED] [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]

[REDACTED]

From: Todd Shepherd <shepherd@i2i.org>
Subject: new CORA request
Date: February 23, 2015 at 1:58:43 PM MST
To: ASchmitz@connectforhealthco.com, Linda Kanamine
<LKanamine@connectforhealthco.com>

New CORA request pasted below.

Please take immediate action to ensure none of the documents listed are destroyed or deleted.

Regards,

ts

Todd Shepherd
shepherd@i2i.org

727 E. 16th Ave
Denver, CO 80203

303-279-6536 X111
405-274-2800 cell



Feb 23, 2015

Connect for Health Colorado

3773 Cherry Creek Dr., Suite 1025

Denver, CO, 80209

To Connect for Health Colorado,

This letter constitutes a formal notice that a request is being made to inspect the public records identified in this document. Therefore, none of the records requested may be destroyed by the agency or custodian to which this request is directed while the request is pending. Accordingly, **please take immediate steps to prevent the deletion** of any electronic information, or the destruction of any other records which are or may be responsive in any manner to this request.

Pursuant to the Colorado Open Records Act (CORA), Colo. Rev. Stat. § 24-72-101 to 24-72-402, I write to request access to (reserving the right to photocopy) the following writings* for inspection:

- all emails (inbound, outbound, or deleted) for Kyla Hoskins and Jacob Baus, between the hours of 9 AM and 2:00 PM, for January 23, 2015A. Please do not include any emails which are the product of a “clipping service” or a “news service” or would be considered a “news clipping.” If the above search yields email "threads," please only produce the last email of the thread, provided all other emails are duplicated within the last email. If the search yields duplicate emails between any of the listed employees, please only produce one copy.

If the document(s) already exist in electronic format, please transmit them via email.

If you choose to deny this request for any reason, I must advise you I will confer with legal counsel to explore all of my legal remedies against your denial. For that reason, please take all immediate actions and steps to ensure none of the listed documents are deleted or destroyed in any fashion.

If these documents are not in your custody or control, please notify me and state in detail to the best of your knowledge the reason for the absence of the records, their location, and what person or persons has custody or control of the records, as required by CRS §24-72-203.

I agree to pay any reasonable copying and postage fees of not more than \$100.00. If the cost would be greater than this amount, please notify me. Please provide an itemized receipt indicating the cost for each individual charge included in the final dollar total for the above request.

If you choose to deny any single document within the request for any reason, please identify the document and provide a written explanation as required by CRS §24-72-204(4) for the denial, **including a reference to the specific statutory reasons and/or exemption(s) upon which you rely as the grounds for your denial.** When referencing the statute, please include the full statute numerical listing, and the full and complete wording (please no shorthand, no excerpts, no rubrics) of the title, article, section, or subsection of statute upon which the premise for your denial resides.

Thank you for your assistance.

Sincerely,

Todd A Shepherd

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*Writings is defined by state statute as "...all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. 'Writings' includes digitally stored data, including but without limitation electronic mail messages, but does not include computer software."

records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian.

By requiring specificity in records requests and spelling out reasonable procedures an entity subject to CORA is acting consistent with the statutory authorization for “reasonably necessary” rules and the recognized need to balance the public right of inspection and the administrative burden placed on such entities. *Citizens Progressive Alliance v. S.W. Water Conservation District*, 97 P.3d 308 (Colo. App. 2004).

A request for “all emails (inbound, outbound, or deleted)” is overbroad – simply reducing the time frame without listing a topic is not sufficiently limiting. Further, listing one kind of document which is as broad as “all e-mails” is a limit in name only. It is not reasonable to review “all e-mails” on all topics for even one individual. The public policy behind CORA is not to promote fishing expeditions. This is exactly why “the official custodian may make rules as are reasonably necessary to prevent unnecessary interference” in CRS 24-72-203.

The solution is quite simple – please limit the scope of the request to a reasonably specific topic.

Alan J. Schmitz
General Counsel
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(720) 496-2530 ~ main



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From: Todd Shepherd [<mailto:shepherd@i2i.org>]
Sent: Tuesday, April 07, 2015 2:07 PM
To: Linda Kanamine; Alan Schmitz
Subject: renewed request of production of documents - 3 CORA requests

Dear Ms. Kanamine and Mr. Schmitz,

I am renewing my requests for emails, requests that I sent to you on January 28, February 11 and February 23rd. I don't think Connect for Health Colorado may require me to limit my requests to a specific subject matter and you really should produce the emails I have asked for. I am hoping that you may have changed your mind.

If you do not produce the emails, please accept this email as warning that I will confer with counsel about filing suit following the expiration of the three day notice period.

ts

Todd Shepherd
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