

<p>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</p> <p>1437 Bannock Street Denver, CO 80202</p> <hr/> <p>THE COLORADO INDEPENDENT ETHICS COMMISSION,</p> <p>Applicant,</p> <p>And Concerning COLORADO ETHICS WATCH,</p> <p>Interested Party.</p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p>
<p>CYNTHIA H. COFFMAN, Attorney General LISA BRENNER FREIMANN * First Assistant Attorney General KYLE DUMLER * Senior Assistant Attorney General Ralph L. Carr Colorado Judicial Center 1300 Broadway, 8<sup>th</sup> Floor Denver, CO 80203 Freimann Tel: 720-508-6385 Dumler Tel: 720-508-6415 FAX: 720-508-6037 lisa.freimann@state.co.us kyle.dumler@state.co.us Registration Numbers: 31175, 18777 *Counsel of Record</p>	<p>Case No.</p> <p>Courtroom:</p>
<p style="text-align: center;"><b>COLORADO INDEPENDENT ETHICS COMMISSION’S APPLICATION FOR AN ORDER REGARDING DISCLOSURE OF RECORDS UNDER CORA</b></p>	

Applicant, the Independent Ethics Commission (“IEC, Commission or commission”) and pursuant to section 24-72-204(6)(a), C.R.S., requests an order from this Court determining whether the IEC must disclose records under the Colorado Open Records Act (“CORA”) requested by Colorado Ethics Watch’s (“Ethics Watch“). As grounds for this request, the Commission states as follows.

## **JURISDICTION AND VENUE**

1. Pursuant to section 24-72-204(6)(a), C.R.S., jurisdiction and venue are proper in the district where the record in dispute is located. The custodian of records and the records in question are located in the City and County of Denver.

## **FACTUAL BACKGROUND AND GROUNDS FOR APPLICATION**

2. Applicant is an independent ethics commission composed of five members created on November 7, 2006, by the enactment of Article XXIX, § 5, of the Colorado Constitution. The IEC was created to, among other things, hear complaints on ethics issues arising under Article XXIX.

3. If the IEC determines that a written complaint is “frivolous,” it may dismiss the complaint without conducting a public hearing. “Complaints dismissed as frivolous shall be maintained as confidential by the commission.” Colo. Const. Art. XXIX, § 5(3)(b) (emphasis added).

4. The Constitution also states the IEC “shall have authority to adopt such reasonable rules as may be necessary for the purpose of administering and enforcing the provisions of this article and any other standards of conduct and reporting requirements as provided by law.” Colo. Const. Article XXIX, § 5(1).

5. IEC Rule of Procedure 7.F, a copy of which is attached as Exhibit 1 and adopted by the IEC pursuant to the Colorado Administrative Procedures Act, states:

The Commission may determine whether a complaint is frivolous based on the face of the complaint itself. Alternatively, the

Commission in its discretion may defer a frivolous determination until after a preliminary investigation of the complaint by the staff of the Commission. The Commission shall exercise care to the extent practicable not to disclose the contents of the complaint as part of the preliminary investigation. If after a preliminary investigation the Commission is unable to determine whether or not a complaint is frivolous, the Commission may disclose the complaint to the individual who is the subject of the complaint for their response in order to aid the Commission in rendering a frivolous determination.

#### **CORA Request**

6. On May 14, 2015, Ethics Watch filed a CORA request with the IEC.

The request asked for the following records:

**All documents collected, reviewed or generated in connection with the “preliminary investigation” of Complaint 14-07, except the Complaint itself.”**

A copy of the May 14, 2015 CORA request is attached as Exhibit 2.

7. On May 15, 2015, Amy DeVan, the Executive Director of the IEC, sent the following response to Ethics Watch: “As you are aware, complaint 14-07 was authorized by the commission for a preliminary investigation prior to the making of the frivolousness determination, pursuant to IEC Rule 7.F. Following review of the information gathered, the commission determined by a vote of 3-2 on May 11, 2015, to find the complaint frivolous. Therefore, pursuant to Article XXIX, section 5(3)(b)

of the Colorado Constitution, the Commission shall maintain all the documents responsive to your request as confidential. As a result, your request is hereby denied.” A copy of the response is attached as Exhibit 3.

8. On May 19, 2015, Ethics Watch sent a letter [dated May 18, 2015] to the IEC with notice of intent to seek a district court order compelling the IEC to make the previously requested documents available for inspection. A copy of this letter is attached as Exhibit 4.

### **Complaint 14-07**

9. On April 14, 2014, the IEC met in executive session to review Complaint 14-07. The Commission voted to stay the matter pursuant to IEC Rule 7.H.1 (An action on the same subject of the complaint is pending before another body with concurrent jurisdiction may be stayed by the IEC).

10. On March 9, 2015, the IEC entered into executive session again to consider Complaint 14-07. While continuing to maintain the confidentiality, the Commission voted to authorize staff to conduct a preliminary investigation of Complaint 14-07. The Commission held over a vote on whether the matter was frivolous or non-frivolous until after the preliminary investigation was completed.

11. On May 11, 2015, the IEC met and considered Complaint 14-07 in executive session. Subsequently, the IEC publicly voted to dismiss complaint 14-07 as frivolous pursuant to IEC Rule 7.G.1, with three commissioners voting in favor of dismissal and two voting against.

12. Ethics Watch contends that the constitution bars disclosure solely of the complaint, but not the results of the preliminary investigation. The IEC disagrees. Section 5(3)(b) of the Colorado Constitution requires that the IEC maintain the confidentiality of all frivolous complaints. The IEC created Rule 7.F in order to aid the commission in its determination of the frivolousness (or not) of a complaint, in a manner that maintains the confidentiality of the complaint as to everyone, except the person against whom the complaint was filed.

13. Release of the preliminary investigation in Complaint 14-07 would disclose the name of the complainant, the name of the respondent and the alleged misconduct even though the IEC ruled that the complaint was frivolous.

14. Because of this dispute, the custodian of records for the IEC is unable, in good faith, after exercising reasonable diligence, and after reasonable inquiry, to determine if disclosure of the public record is prohibited.

### **REQUEST FOR RELIEF**

Based on the above, the records custodian for the IEC requests that this Court enter an order determining whether the IEC is barred from disclosing its records regarding Complaint 14-07 which was dismissed as frivolous.

Respectfully submitted this 22nd day of May, 2015.

CYNTHIA H. COFFMAN  
Attorney General

*/s/ Kyle Dumler*

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Commission