

March 14, 2016

**VIA E-MAIL**

Tustin Amole  
Director of Communications  
Cherry Creek School District  
4700 S. Yosemite St.  
Greenwood Village, CO 80111  
tamole@CherryCreekSchools.org

**Re: CORA Request of KUSA-TV**

Dear Mr. Amole:

This law firm represents 9News/KUSA-TV. Kevin Vaughan, an investigative reporter at 9News, has forwarded to me his correspondence with you surrounding his request to inspect records under the Colorado Open Records Act (“CORA”) concerning District employees:

- Constance Sennoff
- Kenneth L. Sablich
- Sharon K. Boggess
- Robert L. Shouse
- Dawn R. Jesperson
- Michael M. Portales

In response to Mr. Vaughn’s letters, the School District denied his request to inspect certain public records, asserting that they constitute “personnel files” under § 24-72-204(3)(a)(II)(A), C.R.S. I write to respectfully ask that you reconsider these denials of Mr. Vaughn’s requests in light of the authorities set forth below.

First, with respect to records the District has withheld under the auspices of the “personnel files” exemption, which include records showing failure of any public employee (school bus driver) to perform any of his/her official duties adequately, including any disciplinary actions taken – I respectfully submit that you have misread the applicable law construing the scope of the “personnel files” exemption. While Mr. Vaughan’s letter pointed

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only to the *Daniels v. City of Commerce City* decision from 1998, the Colorado Court of Appeals just last month reaffirmed its holding in *Daniels*, and made absolutely clear that the phrase “other information maintained because of the employer-employee relationship” applies, in its *narrowest sense*, to all records made, maintained, or kept by a government entity that contain “information maintained because of the employer-employee relationship,” whether or not such records are formally housed in an old-fashioned manila folder, or other filing system (whether “bricks and mortar,” digital, or virtual) designated as a particular employee’s “personnel file.” See *Jefferson Cnty. Educ. Ass’n v. Jefferson Cnty. Sch. Dist. R-1*, 2016 COA 10 ¶ 42. In *Jefferson Cnty. Educ. Ass’n*, the Court of Appeals made clear that *Daniels*’ holding – that only information of the *same general nature* as the specific statutory examples provided at the outset of that provision – “home address, telephone number, or financial information” – can properly be classified as subject to the “personnel files” exemption, applies to all information maintained by a government, regardless of its physical location. In other words, “the general term of ‘other information maintained because of the employer-employee relationship’ *only applies* to those things which are of the same general kind or class as *personal demographic information*.” *Jefferson Cnty. Educ. Ass’n*, 2016 COA 10 ¶ 20 (emphasis added).

Thus, as authoritatively construed by the Court of Appeals in January, the information the School District has withheld in response to Mr. Vaughan’s CORA request, concerning the on-duty performance of a public employee and the official steps taken by the School District in response to evaluating that performance, are quite simply outside the parameters of the “personnel files” exemption, which the Court of Appeals again re-affirmed, must be construed narrowly. *Id.* The Court of Appeals’ ruling is completely consistent with the numerous trial court findings, across the state, that have uniformly rejected the argument that the “personnel files” exemption applies to internal affairs investigations into the on-duty conduct of public employees, including law enforcement agents, or that it shields from public inspection the disciplinary sanctions that have been imposed upon public employees as a result of such investigations into their official conduct. Attached hereto as Ex. 1 is a merely illustrative sampling of such rulings. Attached hereto as Ex. 2 is a merely illustrative sampling of news reports that have included such information produced by other government agencies in response to requests under the CORA.

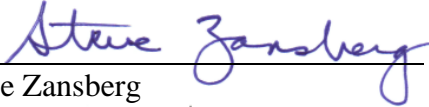
For the reasons stated above, we respectfully urge the Cherry Creek School District to reconsider its denials of Mr. Vaughn’s requests under the CORA for the records discussed above. Should the School District choose not to produce those records to Mr. Vaughan, 9News/KUSA-TV hereby expressly reserves its right to seek relief through an application to the District Court three days following your receipt of this letter.

Please do not hesitate to contact me if you wish to discuss this further.

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Sincerely,

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By:   
Steve Zansberg

SDZ/cdh

cc: Kevin Vaughan, 9News