

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>Plaintiff: THE INDEPENDENCE INSTITUTE, A Colorado Nonprofit Corporation v.</p> <p>Defendants: THE COLORADO HEALTH BENEFIT EXCHANGE, AKA CONNECT FOR HEALTH COLORADO; LINDY HINMAN, BRYCEN BAKER, PROTEUS DUXBURY, KYLA HOSKINS AND JACOB BAUS, in their official capacities</p> <hr/> <p>Attorneys for Defendants Matthew Y. Biscan, Esq. Atty Reg #15701 Satriana & Biscan, L.L.C. 720 South Colorado Blvd., Suite 452-S Denver, Colorado 80246 Phone Number: 303-468-5403 Fax #: 303-942-7360 E-mail: biscan@sbattys.com</p>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 2015CV31310 Division: Courtroom: 376</p>
<p>DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND BRIEF IN SUPPORT THEREOF PURSUANT TO C.R.C.P. 56(a) AND (b)</p>	

Defendants, by and through their attorneys, Satriana & Biscan, L.L.C., pursuant to C.R.C.P. 56(a) and (b), move this Court for Summary Judgment as follows:

CERTIFICATION UNDER C.R.C.P. 121(C) §1-15(8)

Counsel for Defendants conferred with counsel for Plaintiff regarding the facts, the legal argument, and the relief sought by this motion. Plaintiff opposes the relief sought herein.

I. INTRODUCTION

Todd Shepherd sought emails from Connect for Health Colorado under the Colorado Open Records Act through a series of communications. Shepherd's requests

were broad, identifying individual employees and requesting “all emails” for certain dates and time periods. Pursuant to its regulations governing such requests, Connect for Health Colorado asked that Mr. Shepherd be more specific in his requests to permit a response by CFHC. Specificity is required to avoid administrative burden to and interference with the regular discharge of the duties of Connect for Health Colorado. Defendants did not otherwise respond to Mr. Shepherd’s requests. The requests did not comply with the reasonably necessary rules established by Connect for Health Colorado for open records requests. Defendants’ refusal to comply with Mr. Shepherd’s requests in the absence of his compliance with the reasonably necessary rules is authorized and permitted and in compliance with the Colorado Open Records Act.

II. UNDISPUTED MATERIAL FACTS FOR PURPOSES OF THIS MOTION

The following material facts are undisputed for purposes of this motion:

1. Connect for Health Colorado (“CFHC”) is a custodian and an official custodian of records for purposes of requests for records under the Colorado Open Records Act, C.R.S. §24-72-101 et seq. First Amended Complaint (“Complaint”) ¶¶ 4 & 5; Defendants’ Answer (“Answer”) ¶ 6.

2. Todd Shepherd (“Shepherd”) is an employee of the Plaintiff, The Independence Institute (“Institute”). Complaint ¶ 3.

3. On January 28, 2015, Shepherd made a CORA request to CFHC seeking: “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 ‘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.”

Complaint ¶ 17 and Complaint Exhibit (“CE”) 1, p. 3; Answer ¶ 13; Defendants’ Counterclaim (“Counterclaim”) ¶ 7; Plaintiff’s Answer to Counterclaim (“AC”) ¶ 7.

4. On February 2, 2015, CFHC asked Shepherd modify his January 28, 2015, CORA request as follows:

“This is in response to your request of Jan. 28, 2105 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 Dusxbury, 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 to 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 that we can determine what records may be responsive.”

CE 1, p. 1.

5. In response to CFHC’s February 2, 2015 request that he modify his January 28, 2015, CORA request, Shepherd responded seeking an estimate of the time and cost needed to fulfill the request as stated. CFHC’s response was:

“My understanding of the Open Records law is that its intent is not to require a public entity to respond to overly expansive requests, particularly when they would cause an unreasonable amount of work and divert resources away from the duties the entity must perform for the public.

I’ve confirmed this with Counsel. Specifically, under 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).

Your request is overbroad and our policy is reasonably necessary. If you would like to narrow your request by specific subject matter, then I will give you an estimate of the time it will take us to provide it.”

Email Exchange, Exhibit 1.

6. Shepherd disagreed with CFHC’s February 2, 2015 request for more specificity in his request and emailed his disagreement on February 4, 2015. This prompted a response from CFHC’s counsel explaining CFHC’s reliance upon the authorization of rules made by the custodian of records in C.R.S. §24-72-203.

Email Exchange, Exhibit 2.

7. On February 11, 2015, Shepherd made a CORA request to CFHC seeking: “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.”

Complaint ¶ 20 and CE 2, p. 4; Answer ¶ 13; Counterclaim ¶ 8; AC ¶ 8.

8. On February 17, 2015¹, CFHC again advised Shepherd of the requirement of specificity, citing the legal authority therefore, as follows:

“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 on 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).**

¹ The written record reflects, and Plaintiff does not plead to the contrary, that all of CFHC’s responses to Shepherd’s requests occurred within three working days. In the case of the February 11, 2015, request two weekend days and a holiday were interposed between it and the February 17, 2015, response.

A request for ‘all emails (inbound, outbound, or deleted)’ is overbroad. Listing one kind of document which is as broad as ‘all emails’ 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.”

CE 2, p. 2.

9. On February 23, 2015, Shepherd made a CORA request to CFHC seeking:

“all emails (inbound, outbound, or deleted) for Kayla Hoskins and Jacob Baus, between the hours of 9 AM and 2:00 PM, for January 23, 2015A (sic). 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.”

Complaint ¶ 23 and CE 3, p. 2; Answer ¶ 13; Counterclaim ¶ 9; AC ¶ 9.

10. On February 24, 2015, CFHC requested that Shepherd modify his CORA

February 23, 2015, request as follows:

“You have requested as follows:

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 Kayla Hoskins and Jacob Baus, between the hours of 9 AM and 2:00 PM, for January 23, 2015A (sic). 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.

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 on 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 emails’ 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.

CE 4. pp. 1-2.

11. After its establishment, whereby the enabling statute made Board members subject to article 72 of title 6 (CRS §10-22-105 (3)(c)), CFHC determined to respond to CORA requests in keeping with statutory requirements and associated case law.

Defendants’ Response to Plaintiff’s Interrogatory No. 4, Exhibit 3.

12. Since its establishment CFHC has required specificity in CORA requests. Examples of CORA requests meeting the specificity requirement that have been responded to include requests that:

- a. Identify emails from a specific person to another specific person, dated between a specific time period, and involving a particular subject;
- b. Name a specific category of documents for specific calendar years;
- c. Identify specific documents on specific subjects;
- d. Identify a specific employee or contractor category, requesting specific information about that category, within specific dates.

Affidavit of Luke Clarke, Exhibit 4; Connect for Health Colorado Open Records Policy, Exhibit 5.

13. CFHC's requirement for specificity of CORA requests (including but not necessarily limited to subject matter) permits a reasonable and timely determination of records sought under CORA and permits a determination of whether there are any restrictions or prohibitions upon the production of those documents in response to the CORA request. Specificity permits more accurate inquiry into sources of documents within CFHC. A lack of specificity in the CORA request prohibits an informed response, and otherwise causes administrative burden to, and interference with, the regular discharge of the duties of CFHC, by among other things, resulting in the risk of inaccurate or inefficiently overbroad searches for documents, increased expenditure of resources to review documents for restrictions on disclosure imposed by C.R.S. § 24-72-201 et. seq. or other legal authority, and delay in response to requests.

Defendants' Response to Plaintiff's Interrogatory No. 12, Exhibit 3; Exhibit 4.

14. On March 10, 2015, Shepherd made a CORA request to CFHC as follows:

“all writings*, including emails (inbound, outbound, or deleted) from 8:00 am, March 9, 2015, to and including 3:00 pm, March 10, 2015, for the persons named below, that mentions (sic) or makes references (sic) the March 09, 2015 board meeting of the Colorado health exchange Connect for Health Colorado, or references or makes mention of Medicaid, or references or makes mention of the Colorado Department of Health Care Policy and Financing (HCPF), or makes mention or reference to any employee of HCPF.

For the following individuals: Gary Drews, Linda Kanamine, Gerald Clarke, Myung Oak Kim, Proteus Duxbury

all documents and writings* transmitted by, written by, or received by Interim CEO Gary Drews, that summarizes, analyzes, or details the effect of allowing non-ACA compliant plans to be sold in 2014 as allowed by the state Division of Insurance in Bulletin B-4.73”

CFHC produced writings, including emails, to Mr. Shepherd in response to this request which complied with CFHC's requirements for CORA requests. Exhibit 4; Email exchange, Exhibit 6.

15. On November 20, 2015, Shepherd made a CORA request to CFHC as follows:

“all writings*, including emails (inbound, outbound, or deleted) from 8:00 am, November 19, 2015, to and including 3:00 P.M., November 20, 2015, created or received by the persons named below, that mentions or makes reference to ‘United Health Group’ and/or ‘UnitedHealth Group’ and/or ‘United.’

For the following individuals**: Kevin Patterson, Kyla Hoskins (Manager of Consumer Operations), Jessica Rosenthal (Eligibility and Enrollment Coordinator), David Coren (Director of Marketplace Finance), and Marsha Benshoof (Chief Sales and Strategy Officer)

** , if in the event any of the above named individuals are no longer employed with Connect for Health Colorado, please conduct a search for the individual that currently holds the position enumerated. I.e., if Marsha Benshoof is no longer with C4HC, please conduct the document search (sic) for the new Chief Sales and Strategy Officer.”

CFHC produced writings, including emails, to Mr. Shepherd in response to this request which complied with CFHC's requirements for CORA requests. Exhibit 4; Email exchange, Exhibit 7.

III. LEGAL AUTHORITY

1. “All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but 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 or the custodian's office.” C.R.S. §24-72-203(1)(a).

2. The custodian of records is entitled, under CORA, to deny the right of inspection of certain records. C.R.S. §24-72-204(2)(a). The custodian “shall” deny access to certain other records, including health records, privileged information, personal financial information, and social security numbers. C.R.S. §24-72-204(3)(a).

3. “C.R.S. §24-72-203(1)(a) expressly authorizes *regulatory* limitations on the public’s right of inspection. Moreover, this provision reserves to the custodian the determination of what *form* such regulatory limitations shall take.” *Tax Data Corp. v. Hutt*, 826 P.2d 353, 357 (Colo. App. 1991) (emphasis in original.) In *Tax Data* the court concluded that a plaintiff corporation was not entitled to circumvent the regulations of the City Department of Revenue regarding the manner of obtaining records. The trial court concluded that restrictions imposed by the custodian that prevented the plaintiff from inspecting the records as “it had requested” were not arbitrary and capricious. The trial court’s ruling in favor of the custodian was upheld by the Court of Appeals, which found that there was evidentiary support that the regulations were necessary for the protection of records and the prevention of unnecessary interference with the duties of the custodian. *Id.* at 355 and 358.

4. CORA “strikes a balance between the statutory right of members of the public to inspect and copy public records and the administrative burdens that may be placed upon state agencies in responding to such requests.” *Black v. Southwestern Water Conservation Dist.*, 74 P.3d 462, 471 (Colo. App. 2003), citing *Pruitt v. Rockwell*, 886 P.2d 315 (Colo. App. 1994) (upholding regulation of custodian imposing fees for response to CORA request).

5. “[R]equiring specificity in records requests, spelling out reasonable procedures, and providing that such requests will not take priority over [the custodian’s] previously scheduled work activities” is a CORA policy that “is consistent with the statutory authorization in C.R.S. §24-72-203(1)(a) and with *Pruitt*’s recognition of the need for a balance between the public’s right to inspect public records and the administrative burdens that may be placed on [the custodian] responding to such requests. *Citizens Progressive Alliance v. Southwestern Water Conservation Dist.*, 97 P.3d 308, 312 (Colo. App. 2004). In this case, the custodian had determined that the CORA request was “impossibly broad” and sought a declaration that it was not required to respond to the request or alternatively had an additional 60 days in which to respond to the request. *Id.* at 310. The Court of Appeals concluded that there was no provision of the policy what could be read as a denial of access. *Id.*

6. The public policy permitting regulation by the custodian of CORA requests is so strong that the Court of Appeals has ruled that a regulation promulgated after a CORA request is made is effective and does not violate CORA. *Mountain-Plains Inv. Corp. v. Parker Jordan Metro. Dist.*, 312 P.3d 260, 268 (Colo. App. 2013).

7. In an analogous case regarding public access to the records of the Colorado Courts, the Supreme Court addressed a request for the release of bulk data containing very particularized information about individuals. *Office of the State Court Administrator v. Background Info. Servs., Inc.*, 994 P.2d 420, 422 (Colo. 1999). Although the Court concluded that the court system was not a public agency for all purposes of CORA, it addressed the issues before it under C.R.C.P. 121, which creates a presumption of public access to records. The Court also relied on Chief Justice Directive

98-05 which announced that release of electronic information would be addressed on a request-by-request basis. *Id.* at 429 – 430. Bulk data, to the extent it would be released, would not contain personal information, such as social security numbers and financial information. *Id.* at 430. The Court recognized that “[t]here is a qualitative difference between obtaining information from a specific docket or on a specified individual, and obtaining docket information on every person against whom criminal charges are pending....” *Id.* at 430. The Court noted that “[t]here is no statute directing the release of the bulk records at issue,” and went on to cite the caveat of CORA, C.R.S. §24-72-305(5), the “Inspection may be denied on grounds that it would be contrary to the public interest.” *Id.* at 431.

8. Attorney General Formal Opinion No. 01-1 (Salazar, July 5, 2001) offers this instruction to the public regarding CORA requests: “Your request to see records...should be as clear and specific as you can make it. That way the agency knows what you want to see....” Formal Opinion No. 01-1, Conclusion 2, 2001 Colo. AG LEXIS 1, *10 - *11.

IV. ARGUMENT

The statutory and case law cited above confirm that CFHC is authorized to create a rule regarding the specificity of CORA requests. Here CFHC applied the rule to Shepherd’s requests appropriately. CFHC complied with CORA’s provision at C.R.S. §24-72-204(4). Shepherd was informed of CFHC’s policy requiring more specificity. He was informed of both the specific provision of CORA allowing the custodian to impose regulations on record requests and of *Citizens Progressive* which authorizes a requirement of particular specificity.

As applied to Shepherd’s multiple request for “all emails” the regulation imposed by CFHC is manifestly reasonable and necessary. In an age where individuals, much less employees of a health insurance exchange, receive hundreds of emails of various types every day, the burden of responding to such a broad request is obvious, even where a limited number of individual emailers are specified and a limited period of days or times is provided. A request for “all emails (inbound, outbound, or deleted)” from even one particular person is fundamentally different from a request for “all emails (inbound, outbound, or deleted)” on a particular subject from even one person. As the Supreme Court has recognized, there is a qualitative difference between “bulk” requests and specific requests in the context of open records laws.

The identification and segregation of the emails is just the first step.

Then each of the emails at issue must be reviewed to determine if there is information which should properly be withheld under CORA. Additionally, other statutes addressing confidentiality and non-disclosure of information must be considered, for instance, the Federal Privacy Rule under the Health Insurance Portability and Accountability Act applicable to personally identifiable health information (45 CFR Part 160 and subparts A and E of Part 164) and the Graham-Leach-Bliley Act addressing privacy in the insurance and financial services marketplace and protection of consumer information (See, e.g. 15 U.S.C. §6801).

Assuming that “all emails” are searched for whether inspection is permitted by CORA, they must then be evaluated for whether any other privilege, such as attorney client privilege, might attach.²

² One of the persons from whom Shepherd sought emails is an attorney on CFHC Appeals Team.

Here, the employees of CHFC who were the subject of Shepherd's CORA requests are in various and not necessarily related positions in roles as diverse as Chief Information Officer and legal counsel on conflicts and appeals. Counterclaim, ¶ 10. The breadth and depth of email correspondence to and from CFHC under these circumstances is literally limitless. As Mr. Clarke attests, the imposition of such breadth upon the CORA responsibilities "prohibits an informed response, and otherwise causes administrative burden to, and interference with, the regular discharge of the duties of CFHC, by among other things, resulting in the risk of inaccurate or inefficiently overbroad searches for documents, [and] increased expenditure of resources to review documents for restrictions on disclosure."

The appellate courts of Colorado have made it clear that the risk to the custodian of administrative burden is to be weighed against the burden to the public's right to inspect public records. Applied here, the weight of authority is in favor of CFHC's rule requiring specificity.

First, Colorado's Attorney General has advised the public to be as specific as possible in their CORA requests.

Second, the Court of Appeals has expressly approved of custodian regulations that require specificity.

Third, there is absolutely no burden imposed upon the Plaintiff by a regulation requiring more specificity than a request for "all emails" from particular persons over the course of days or hours. That this is so is exemplified by Shepherd's successful CORA requests for emails on March 10, 2015 and November 20, 2015. Having supplied sufficient detail Shepherd's CORA requests were responded to with responsive records.

All Shepherd was asked to do was to identify the subject matter of the emails he sought to inspect. This is a reasonable request that is necessary to avoid undue administrative burden on CFHC. No provision of CORA has been violated by CFHC. There is no duty on the part of CFHC to produce records in response to a CORA request that does not comply with its reasonable and necessary regulation.

VI. CONCLUSION

WHEREFORE, the material undisputed facts establish that the Defendants are entitled to summary judgment under C.R.C.P. 56(b) on Plaintiff's Amended Complaint and under C.R.C.P. 56(a) on the Counterclaim. Defendants move this Court for an order dismissing Plaintiff's Amended Complaint with prejudice, granting Defendants' Counterclaim for declaratory relief, awarding attorney fees and costs as permitted by law, and for such other and additional relief as the Court deems just and proper.

Dated this 3rd day of March, 2016.

Respectfully submitted,

By: s/ Matthew Y. Biscan

In accordance with C.R.C.P. 121, §1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via E-filing and/or U.S. Mail this 3rd day of March, 2016 upon the following:

Geoffrey N. Blue
Scott E. Gessler
Steven A. Klenda
Adroit Advocates, LLC
1624 Market Street, Suite 202
Denver, CO 80202
720-432-5705
gblue@adroitadvocates.com
sgessler@adroitadvocates.com
sklenda@adroitadvocates.com

s/ Matthew Y. Biscan

REDACTED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Linda Kanamine <LKanamine@connectforhealthco.com>
Subject: RE: CORA request
Date: February 2, 2015 at 4:19:32 PM MST
To: Todd Shepherd <shepherd@i2i.org>

Todd,
My understanding of the Open Records law is that its intent is not to require a public entity to respond to overly expansive requests, particularly when they would cause an unreasonable amount of work and divert resources away from the duties the entity must perform for the public.

I've confirmed this with Counsel. Specifically, under 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).*

Your request is overbroad and our policy is reasonably necessary. If you would like to narrow your request by specific subject matter, then I will give you an estimate of the time it will take us to provide it.

Best,
Linda

EXHIBIT
tabbies
1

From: Todd Shepherd [<mailto:shepherd@i2i.org>]
Sent: Monday, February 02, 2015 1:57 PM
To: Linda Kanamine
Subject: Re: CORA request

Ms. Kanamine:

By my knowledge, I am not obligated by any statute or case law to narrow my request.

Can you please provide an estimate of the time and cost needed to fulfill the CORA as it currently stands.

ts

Todd Shepherd
shepherd@i2i.org

727 E. 16th Ave
Denver, CO 80203

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

On Feb 2, 2015, at 1:38 PM, Linda Kanamine <LKanamine@connectforhealthco.com> wrote:

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

REDACTED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

From: Alan Schmitz <ASchmitz@connectforhealthco.com>
Subject: RE: CORA request
Date: February 4, 2015 at 11:36:12 AM MST
To: Todd Shepherd <shepherd@i2i.org>, Linda Kanamine <LKanamine@connectforhealthco.com>

Mr. Shepard:

I disagree. 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 – limit the scope of the request to a reasonably specific topic.

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

CONNECT  **HEALTH**
COLORADO

From: Todd Shepherd [mailto:shepherd@i2i.org]
Sent: Wednesday, February 04, 2015 10:53 AM
To: Linda Kanamine
Cc: Alan Schmitz
Subject: Re: CORA request

Ms. Kanamine:

My CORA request of January 28 is sufficiently narrow because it names 1) only one specific kind of document, 2) it lists three persons, and no more, so the search for responsive documents can be reasonably contained and performed, and 3) it lists only two specific days. Furthermore, I believe the burden of proof is on your agency to show why a request is burdensome. To meet that burden, you should identify how many emails are at issue and how much time it would take for you to review for privilege/exclusions.

Please note that I consider this email my obligation under C.R.S. § 24-72-204(5), which requires I give you three day's notice before filing a lawsuit under CORA.

As I indicated to you on Feb 2, please ensure all appropriate actions have been taken to ensure none of the potentially responsive documents have been deleted or destroyed in any way.

Best,

ts

Linda Kanamine <LKanamine@connectforhealthco.com> , 2/2/2015 1:38 PM:

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]

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:

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DISTRICT COURT, DENVER COUNTY
STATE OF COLORADO
1437 Bannock Street
Denver, CO 80202

Plaintiff: THE INDEPENDENCE INSTITUTE, LLC.

v.

Defendants: THE COLORADO HEALTH BENEFIT EXCHANGE, AKA CONNECT FOR HEALTH COLORADO; LINDY HINMAN, BRYCEN BAKER, PROTEUS DUXBURY, KYLA HOSKINS AND JACOB BAUS, in their official capacities

Attorneys for Defendants
Matthew Y. Biscan, Esq. Atty Reg #15701
Satriana & Biscan, L.L.C.
720 South Colorado Blvd., Suite 452-S
Denver, Colorado 80246
Phone Number: 303-468-5403
Fax #: 303-942-7360
E-mail: biscan@sbattys.com

▲ COURT USE ONLY ▲

Case Number: 2015CV31310
Division: Courtroom: 376

DEFENDANTS' RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR ADMISSIONS AND REQUESTS FOR PRODUCTION OF DOCUMENTS

Defendants (collectively referred to below as CFHC), by and through their attorneys, Satriana & Biscan, L.L.C., respond to Plaintiff's First Set of Discovery as follows:

INTERROGATORIES

Interrogatory No. 1 (C.R.C.P. Form 20, Pattern Interrogatory 15.1).
Identify each denial of a material allegation and each affirmative defense in your pleadings and for each:

- (a) state all facts upon which you base the denial or affirmative defense;
- (b) state the names, addresses, and telephone numbers of all persons who have knowledge of those facts;
- (c) identify all documents and other tangible things which support your denial or affirmative defense, and state the name, address, and telephone number of the person who has each document.



RESPONSE: Mr. Shepherd's CORA requests were broad and non-specific. Mr. Shepherd's CORA requests were not in compliance with CFHC's CORA policy. Mr. Shepherd did not submit more specific requests in compliance with the rules and regulations of CFHC regarding such requests. CFHC's rules and regulations regarding CORA requests are specifically authorized by C.R.S. § 24-72-203(1)(a). See *Tax Data Corp. v. Hull*, 826 P.2d 353, 356 (Colo. App. 1991). CFHC thus undertook no efforts to identify documents responsive to Mr. Shepherd's broad and non-specific CORA requests, but instead reasonably requested, repeatedly, that he submit more specific requests in compliance with CFHC's CORA rules and regulations regarding CORA requests.

Interrogatory No. 4. Explain the process by which CHFC developed its CORA policy, including the personnel involved and evidence relied upon.

RESPONSE: Objection. Interrogatory No. 4 is irrelevant to any claim or defense in this action. No good cause exists to permit discovery into the general subject matter of the action. C.R.C.P. 26(b)(1). *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 303 P.3d 1187, 1190 & 1194 (Colo. 2013). Interrogatory No. 4 calls for a narrative and thus is improperly overbroad and vague. Interrogatory No. 4 also intrudes upon the deliberative process privilege insofar as it seeks discovery of the deliberations and deliberative process of developing CHFC's CORA policy. It therefore seeks information that is deliberative and pre-decisional and so is privileged from disclosure. *City of Colorado Springs v. White*, 967 P.2d 1042, 1052 – 1053 (Colo. 1998). See also, C.R.S. §13-90-107(1)(e); *Saucerman v. Saucerman*, 461 P.2d 18, 20 (Colo. 1969). Interrogatory No. 4 seeks information protected by the attorney client privilege to the extent that counsel for CFHC, whether in-house or outside, were involved in the development of CFHC's CORA policy.

Notwithstanding this objection, and without prejudice to it or waiver thereof, CFHC states that after its establishment, whereby the enabling statute made Board members subject to article 72 of title 6 (CRS §10-22-105 (3)(c)), the leadership in place determined to respond to CORA requests in keeping with statutory requirements and associated case law. Individuals involved in developing the Exchange's CORA policy since the inception of the Exchange are:

- Myung Oak Kim – communications director (former)
- Cammie Blais – CFO (former)
- Linda Kanamine – communications director (former)
- Luke Clarke – communications director (current)
- Alan Schmitz – general counsel (current)

effort from its employees and the expenditure of physical and financial resources. Those resources must be used to identify documents responsive to the request, and then, at a minimum, to review the documents to determine whether the information therein is subject to disclosure or prohibited from disclosure pursuant to C.R.S. § 24-72-201 et. seq. or other legal authority.

Interrogatory No. 11. Describe the activities of all outside contractors who have reviewed CORA requests from January 1, 2014, until the present.

RESPONSE: Objection. Interrogatory No. 11 is irrelevant to any claim or defense in this action. No good cause exists to permit discovery into the general subject matter of the action. C.R.C.P. 26(b)(1). *DCP Midstream, LP v. Anadarko Petroleum Corp.*, 303 P.3d 1187, 1190 & 1194 (Colo. 2013). Interrogatory No. 11 calls for a narrative and incorporates an unqualified description of “the activities of all outside contractors” who have “reviewed CORA requests” for over a year, and thus is improperly overbroad, vague, burdensome, and harassing. To the extent that “all outside contractors” can be construed to include outside counsel, Interrogatory No. 11 seeks information protected by the attorney client privilege to the extent that counsel for CFHC are involved in responding to CORA requests or in implementing CFHC’s CORA policy.

Notwithstanding this objection, and without prejudice to it or waiver thereof, CFHC states that it has never used outside contractors, excluding outside legal counsel, to respond to, or otherwise take charge of responses to, CORA requests.

Interrogatory No. 12. Describe in detail how requiring the inclusion of the subject as part of a CORA request for emails assists CHFC in protecting records.


RESPONSE: Defendant responds to Interrogatory No. 12 by incorporating herein by reference, as if set forth in full, C.R.S. § 24-72-201 et. seq. and the Connect for Health Colorado Open Records Policy previously disclosed. In the context of the applicable statute and that policy, requiring specificity from CORA requests (including but not necessarily limited to subject matter) permits a reasonable and timely determination of records sought under CORA and permits a determination of whether there are any restrictions or prohibitions upon the production of those documents in response to the CORA request. Specificity permits more accurate inquiry into sources of documents within CFHC. A lack of specificity in the CORA request prohibits an informed response, and otherwise causes administrative burden to, and interference with, the regular discharge of the duties of CFHC, by among other things, resulting in the risk of inaccurate or inefficiently overbroad searches for documents, increased expenditure of resources to review documents for restrictions on disclosure imposed by C.R.S. § 24-72-201 et. seq. or other legal authority, and delay in response to requests.

In accordance with C.R.C.P. 121, §1-26(9), a printed copy of this document with original signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.

VERIFICATION


State of Colorado)
) ss
County of Denver)

Brian Braun, Chief Financial Officer, Connect for Health Colorado, states that he has read the foregoing answers and responses and the same are true and correct to the best of his information and belief. The answers are based on information secured from his personal knowledge.



Brian Braun
Chief Financial Officer
Connect for Health Colorado

Subscribed and sworn to before me this 18th day of February, 2016, by
Brian Braun.



Notary Public

My commission expires: 10-15-17



DISTRICT COURT, DENVER COUNTY
STATE OF COLORADO
1437 Bannock Street
Denver, CO 80202

Plaintiff: THE INDEPENDENCE INSTITUTE, LLC.

v.

Defendants: THE COLORADO HEALTH BENEFIT EXCHANGE, AKA CONNECT FOR HEALTH COLORADO; LINDY HINMAN, BRYCEN BAKER, PROTEUS DUXBURY, KYLA HOSKINS AND JACOB BAUS, in their official capacities

Attorneys for Defendants
Matthew Y. Biscan, Esq. Atty Reg #15701
Satriana & Biscan, L.L.C.
720 South Colorado Blvd., Suite 452-S
Denver, Colorado 80246
Phone Number: 303-468-5403
Fax #: 303-942-7360
E-mail: biscan@sbattys.com

▲ COURT USE ONLY ▲

Case Number: 2015CV31310
Division: Courtroom: 376

AFFIDAVIT OF LUKE CLARKE

I, Luke Clarke, upon oath duly sworn, state as follows:

1. I have been known as Luke Clarke for the entirety of my professional career. I sign my correspondence, emails, and official documents Luke Clarke. My full given name is Gerald L. Clarke. I am the Director of Communications for Connect for Health Colorado, a Defendant in the action captioned above.
2. I am of lawful age and competent to testify.
3. I have personal knowledge of the facts stated herein and am authorized to state these facts on behalf of Connect for Health Colorado.
4. Pursuant to Connect for Health Colorado's Open Records Policy, attached hereto as Exhibit A, I am the contact to which Colorado Open Records Act ("CORA") requests are to be addressed. I am further charged with assuring response to CORA requests.



5. Since its establishment CFHC has required specificity in CORA requests. Examples of CORA requests meeting the specificity requirement that have been responded to include:

- a. Identify emails from a specific person to another specific person, dated between a specific time period, and involving a particular subject;
- b. Name a specific category of documents for specific calendar years;
- c. Identify specific documents on specific subjects;
- d. Identify a specific employee or contractor category, requesting specific information about that category, within specific dates.

6. CORA requests require the identification and location of responsive records. This requires the identification of likely locations and of individuals who may have created or maintained the records in the course of employment that is not primarily centered on responding to CORA requests. Additionally, responsive records must be reviewed and evaluated for potential denial of the right of inspection and provided by CORA or other governing law. Given the nature of the work done by CFHC, involving personally identifiable health, insurance, and financial information, such a review is particularly important.

7. CFHC's requirement for specificity of CORA requests permits a reasonable and timely determination of records sought under CORA and permits a determination of whether there are any restrictions or prohibitions upon the production of those records in response to the CORA request. Specificity permits more accurate inquiry into sources of documents within CFHC. A lack of specificity in the CORA request prohibits an informed response, and otherwise causes administrative burden to, and interference with, the regular discharge of the duties of CFHC, by among other things, resulting in the risk of inaccurate or inefficiently overbroad searches for documents, increased expenditure of resources to review documents for restrictions on disclosure imposed by C.R.S. § 24-72-201 et. seq. or other legal authority, and delay in response to requests. Legal counsel also must often be involved in responding to a CORA request to address statutory requirements and issues of privilege.

8. Todd Shepherd made a specific CORA request on March 10, 2015, that complied with the specificity requirements of CFHC and CFHC responded to that request.

9. Todd Shepherd made a specific CORA request on November 20, 2015, that complied with the specificity requirements of CFHC and CFHC responded to that request.

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 3rd day of March, 2016.

Connect for Health Colorado

OPEN RECORDS POLICY

Connect for Health Colorado was created by an act of the Colorado Legislature as a public, non-profit entity. Connect for Health Colorado complies with the Colorado Open Records Act, C.R.S. §524-72-201 *et seq.* ("CORA" or "the Act"). CORA strikes a balance between the statutory right of the public to inspect and copy public records in the custody and control of Connect for Health Colorado and the administrative burdens that are imposed by requests made to Connect for Health Colorado under the Act.

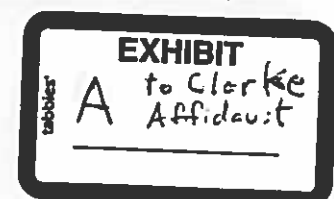
CORA authorizes Connect for Health Colorado to "make such rules with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or the custodian's office." C.R.S. §24-72-203.

To expedite inquiries for documents or other information, Connect for Health Colorado encourages reference to its website before making a request under CORA. Many documents having to do with the structure of Connect for Health Colorado, its finances, and its work (such as annual reports and audits) are made available to the public on the website.

Informal inquiries to the Director of Communications can save the requestor and Connect for Health Colorado time and money if the records sought are available by means other than a CORA request. If an informal inquiry is made before a CORA request, the requestor should work with Connect for Health Colorado to: 1) define the scope of information sought, what record(s) would contain it, and the time frame in which the information is desired; 2) determine if the record(s) sought exists; 3) the manner in which to identify and describe relevant and responsive records; 4) and the potential costs associated with retrieval and production of the records.

PROCEDURES FOR MAKING A CORA REQUEST

1. All requests must be in writing to Luke Clarke, Director of Communications, Connect for Health Colorado, 3773 Cherry Creek Drive North, Denver, CO 80209; LClarke@Connectforhealthco.com.
2. Requests must be either mailed via U.S. Mail or emailed. Requests to anyone other than the Director of Communications will not be accepted.
3. Submission of a request by e-mail constitutes the requestor's acknowledgement and consent to any delays caused by spam filters, technology failures, inactive or incorrect e-mail accounts, or other technology related delays.
4. All requests for records must be specific as to the records sought and the relevant dates covered by the request. Requests for correspondence of any type, including e-mails, must identify the parties to the correspondence. In the event that a request is submitted that is determined by Connect for Health Colorado to be vague or broadly stated, the requestor may be required to submit a more specific request before a response is made.



By way of non-exhaustive examples demonstrating the specificity required, Connect for Health Colorado has responded to CORA requests that:

- Identify emails from a specific person to another specific person, dated between a specific time period, and involving a particular subject
- Name a specific category of documents for specific calendar years
- Identify specific documents on specific subjects
- Identify a specific employee or contractor category, requesting specific information about that category, within specific dates

5. Responses to CORA requests that comply with this policy shall be governed by the following time limit regulations:

a. A response shall normally be made within three (3) working days, beginning on the first business day after the CORA request is received by Connect for Health Colorado

b. The three (3) working day response time may be extended by Connect for Health Colorado upon its determination that extenuating circumstances exist. Absent agreement of the requestor, such extensions shall not normally exceed seven (7) working days. Connect for Health Colorado shall inform the requestor of the extension within the three (3) day normal response time.

c. The response time shall begin to run on the business day following receipt of the request.

d. The time between the provision of an estimate of costs to the requestor and the requestor's response to the estimate (as called for in paragraph 6. d. below), shall not be counted against the time period for responding to a CORA request.

e. The response times defined in this policy shall not apply to requests that are not made in compliance with this policy, to requests that are vague, broad, or burdensome to the extent that they interfere with the regular work and duties of Connect for Health Colorado and its employees and contractors, or if the requestor fails to pay the charges associated with compliance to the request.

6. The requestor shall pay the following fees associated with CORA requests:

a. Search and location of responsive documents, and evaluation of whether such documents are subject to production under CORA (i.e. whether they are "public records" under the Act or are privileged by law): first two hours shall be free; thereafter requestor shall pay Twenty Dollars (\$20.00) per hour.

b. Any paper copies of documents made pursuant to the direction of the requestor shall be billed to the requestor at Twenty-five Cents (\$0.25) per page.

c. For electronic copies, requestor shall pay the actual cost of any media provided by Connect for Health Colorado. There shall be no charge for email of documents from Connect for Health Colorado to the requestor.

d. If charges are anticipated to exceed Twenty-five Dollars (\$25.00) Connect for Health Colorado, at its discretion, may require a deposit from the requestor. Connect for Health Colorado will in that event provide an estimate of costs to the requestor prior to production. If requestor desires to proceed the requestor must respond in writing, and by so doing acknowledges in writing the agreement by requestor to pay all fees associated with the request, including any attorney fees or costs incurred by Connect for Health Colorado in collecting any fees from requestor. In the event that the requestor later withdraws, abandons, or reduces the scope of the request, the requestor shall remain liable for any costs associated with the request.

e. No documents will be produced or copied unless payment for copying and retrieval costs is received by Connect for Health Colorado.

7. Requests to inspect available records on the premises of Connect for Health Colorado shall be by appointment only during normal working hours of Connect for Health Colorado. Inspection of records shall be supervised by an employee or contractor of Connect for Health Colorado and charges for the employee or contractor time may be charged to the requestor at the rate of Twenty-five Dollars (\$25.00) per hour.

8. CORA and other Colorado and Federal laws prohibit the release of certain types of information. While Connect for Health Colorado is committed to transparent operations and compliance with CORA, it will comply with the law and withhold from any response documents and information that are not public records or which are otherwise not subject to disclosure under law.

Connect for Health Colorado

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c. The response time shall begin to run on the business day following receipt of the request.

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e. No documents will be produced or copied unless payment for copying and retrieval costs is received by Connect for Health Colorado.

7. Requests to inspect available records on the premises of Connect for Health Colorado shall be by appointment only during normal working hours of Connect for Health Colorado. Inspection of records shall be supervised by an employee or contractor of Connect for Health Colorado and charges for the employee or contractor time may be charged to the requestor at the rate of Twenty-five Dollars (\$25.00) per hour.

8. CORA and other Colorado and Federal laws prohibit the release of certain types of information. While Connect for Health Colorado is committed to transparent operations and compliance with CORA, it will comply with the law and withhold from any response documents and information that are not public records or which are otherwise not subject to disclosure under law.

Attachments:

Noncompliant plans emails.pdf; 3.9.3.10 gary.pdf; 3.9.3.10 gerald.pdf; 3.9.3.10 linda.pdf; 3.9.3.10 proteus.pdf; Eligibility Screens Overview with Service Calls as of 1-13-2014.pdf

From: Linda Kanamine
Sent: Friday, March 20, 2015 10:46 AM
To: Todd Shepherd
Cc: Alan Schmitz
Subject: RE: CORA request rec'd 3/10/15

Todd,

This is in response to your request under the Colorado Open Records Act of March 10 for:

- all writings*, including emails (inbound, outbound or deleted) from 8:00 A.M., March 09, 2015, to and including 3:00 P.M., March 10, 2015, for the persons named below, that mentions or makes references the March 09, 2015 board meeting of the Colorado health exchange Connect for Health Colorado, or references or makes mention of Medicaid, or references or makes mention of the Colorado Department of Health Care Policy and Financing (HCPF), or makes mention or reference to any employee of HCPF.
- For the following individuals: Gary Drews, Linda Kanamine, Gerald Clarke, Myung Oak Kim, Proteus Duxbury
- all documents and writings* transmitted by, written by, or received by Interim CEO Gary Drews, that summarizes, analyzes, or details the effect of allowing non-ACA compliant plans to be sold in 2014 as allowed by the state Division of Insurance in Bulletin B-4.73.

Please note that where emails are redundant (the exact same string), I have included the last comment in the string rather than each individual send. As they are time-stamped, I assume this is acceptable.

Attached are:

1. All emails and writings to/from Gary Drews with regard to allowing non-ACA compliant plans to be sold.
2. All writings dates March 9 and March 10 with regard to the March 9 Board meeting, or anything involving HCPF/Medicaid/employees thereof for Gary Drews, Linda Kanamine, Gerald Clarke and Proteus Duxbury
3. One document relating to an email from Proteus Duxbury on March 9 referencing a Monad GAP analysis of MAGI questions
4. There are no writings for Myung Oak Kim that are responsive to your request
5. There are no texts from any government-issued phones, as exchange is not a government entity, nor are there any exchange-issued phones used by staff
6. I previously sent you this week a link to any "writings" or documents prepared for the March 9 Board Meeting
7. After querying and reviewing our systems, I am not aware of any other documents or writings that constitute a final work product responsive to your request

Let me know if you have other questions.
Thanks and have a good weekend,

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, March 18, 2015 2:39 PM
To: Linda Kanamine
Subject: Re: CORA request rec'd 3/10/15

Ms. Kanamine:

My accountant is in the office on Thursdays, so I should be able to have the check written and in the mail tomorrow. I would then expect it would be delivered to your offices absolutely no later than Saturday.

Besides the note of making the payment out to "Colorado Health Benefit Exchange," shall I also address the mailing to your attn?

Regards,

ts

Todd Shepherd
shepherd@i2i.org

727 E. 16th Ave
Denver, CO 80203

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

On Mar 18, 2015, at 11:17 AM, Linda Kanamine <LKanamine@connectforhealthco.com> wrote:

Todd,

I have the emails gathered and am going through them but it is taking time, particularly given other responsibilities and deadlines. I plan to have your response ready in full tomorrow. Right now, it looks like combined we've spent a company total of 7 hours (email and document searches) – 5 of which would be billed to you at \$100. I would anticipate payment promptly, made out to Colorado Health Benefit Exchange for time/resources allocated to fulfilling components of your Colorado Open Records Act request outlined below.

Best,
Linda

From: Alan Schmitz
Sent: Wednesday, March 11, 2015 10:33 AM
To: Todd Shepherd
Cc: Linda Kanamine
Subject: RE: CORA request rec'd 3/10/15

We ARE assembling....(sorry for the omission)

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: Alan Schmitz
Sent: Wednesday, March 11, 2015 10:32 AM
To: 'Todd Shepherd'
Cc: Linda Kanamine
Subject: CORA request rec'd 3/10/15

Mr. Shepard:

We assembling the materials associated with the following inquiry:

- all writings*, including emails (inbound, outbound or deleted) from 8:00 A.M., March 09, 2015, to and including 3:00 P.M., March 10, 2015, for the persons named below, that mentions or makes references the March 09, 2015 board meeting of the Colorado health exchange Connect for Health Colorado, or references or makes mention of Medicaid, or references or makes mention of the Colorado Department of Health Care Policy and Financing (HCPF), or makes mention or reference to any employee of HCPF.
- all documents and writings* transmitted by, written by, or received by Interim CEO Gary Drews, that summarizes, analyzes, or details the effect of allowing non-ACA compliant plans to be sold in 2014 as allowed by the state Division of Insurance in Bulletin B-4.73.
- For the following individuals: Gary Drews, Linda Kanamine, Gerald Clarke, Myung Oak Kim, Proteus Duxbury

We estimate seven business days to assemble the information and review and redact communications that fall within the scope of the request but also contain consumer personal financial/health information (required to be maintained confidential). Also, with respect to fees – we have instituted a charge of \$20/hour to respond to requests that encompass greater than 2 hours. This is necessary in that we operate on public funds and would need to divert staff time away from publicly funded tasks to assemble the information.

Please let me know if you have any questions.

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: Friday, November 20, 2015 3:00 PM

To: Luke Clarke <LClarke@connectforhealthco.com>; Linda Kanamine <LKanamine@connectforhealthco.com>; Kevin Patterson <KPatterson@connectforhealthco.com>

Cc: Alan Schmitz <ASchmitz@connectforhealthco.com>

Subject: CORA request

November 20, 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 to which this request is directed while the request is pending. **Accordingly, please take immediate steps to prevent the deletion of any email or other 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 writings*, including emails (whether inbound, outbound, deleted, or double deleted) from 8:00 A.M., November 19, 2015, to and including 3:00 P.M., November 20, 2015, created by or received by the persons named below, that mentions or makes reference to “United Health Group” and/or “UnitedHealth Group” and/or “UnitedHealth” and/or “United.”
- For the following individuals**: Kevin Patterson, Kyla Hoskins (Manager of Consumer Operations), Jessica Rosenthal (Eligibility and Enrollment Coordinator), David Coren (Director of Marketplace Finance), and Marsha Benshoof (Chief Sales and Strategy Officer)
- **, if, in the event any of the above named individuals are no longer employed with Connect for Health Colorado, please conduct the search for the individual that currently holds the position enumerated. I.e., if Marsha Benshoof is no longer with C4HC, please conduct the document search for the new Chief Sales and Strategy Officer.

Please note, bullet point 1 would include any handwritten notes, electronic chats, text messages, bulletin board postings, recorded “GoToMeeting” conferences, recorded audio and/or teleconferences, voicemails, or voicemails on a cell phone paid for by Connect for Health Colorado.

Please note, for bullet point 1, a thorough search of records would include a search of the person's “trash can” or “deleted folder,” as well as their email “sent” folder.

Please note, for bullet point 1, a thorough search of records would include a search of the email server for “latent” data in the event the individual has deleted emails and also deleted their “trash can” or “recycle bin” or trash folder, etc.

Please note, for bullet point 1, a thorough search of records would include any spreadsheets or financial documents or financial analysis that takes into account UnitedHealth.

If the document(s) already exist in electronic format, please transmit them via email. If the documents can be converted to and transmitted in electronic format, please do so.

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 \$60.00. 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."**

Todd Shepherd
shepherd@i2i.org

727 E. 16th Ave
Denver, CO 80203

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

<p>DISTRICT COURT, DENVER COUNTY STATE OF COLORADO 1437 Bannock Street Denver, CO 80202</p> <hr/> <p>Plaintiff: THE INDEPENDENCE INSTITUTE, LLC.</p> <p>v.</p> <p>Defendants: THE COLORADO HEALTH BENEFIT EXCHANGE, AKA CONNECT FOR HEALTH COLORADO; LINDY HINMAN, BRYCEN BAKER, PROTEUS DUXBURY, KYLA HOSKINS AND JACOB BAUS, in their official capacities</p> <hr/>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> <p>Case Number: 2015CV31310 Division: Courtroom: 376</p>
<p>PROPOSED ORDER RE MOTION FOR SUMMARY JUDGMENT</p>	

THE COURT, upon consideration of Defendants' motion for summary judgment pursuant to C.R.C.P. 56(a) and (b), and being fully advised thereof,

FINDS that the material facts of the case are undisputed as follows:

Plaintiff's employee Shepherd submitted Colorado Open Records Act ("CORA") requests that were broad, identifying individual employees and requesting "all emails" for certain dates and time periods.

Connect for Health Colorado ("CFHC") requested that Mr. Shepherd be more specific in his requests to permit a response by CFHC, so as to avoid administrative burden to and interference with the regular discharge of the duties of Connect for Health Colorado.

CFHC's policy regarding CORA requests requiring specificity in the request is reasonable and necessary as applied to Mr. Shepherd's requests identifying individual employees and requesting "all emails" for certain dates and time periods.

THE COURT FURTHER FINDS AS A MATTER OF LAW that "C.R.S. §24-72-203(1)(a) expressly authorizes *regulatory* limitations on the public's right of inspection. Moreover, this provision reserves to the custodian the determination of what *form* such regulatory limitations shall take." *Tax Data Corp. v. Hutt*, 826 P.2d 353, 357 (Colo. App.

1991) (emphasis in original.) “[R]equiring specificity in records requests, spelling out reasonable procedures, and providing that such requests will not take priority over [the custodian’s] previously scheduled work activities” is a CORA policy that “is consistent with the statutory authorization in C.R.S. §24-72-203(1)(a) and with *Pruitt’s* recognition of the need for a balance between the public’s right to inspect public records and the administrative burdens that may be placed on [the custodian] responding to such requests. *Citizens Progressive Alliance v. Southwestern Water Conservation Dist.*, 97 P.3d 308, 312 (Colo. App. 2004).

IT IS ORDERED THAT Plaintiff’s Amended Complaint is dismissed with prejudice and judgment on the Amended Complaint shall enter for Defendants. Defendants shall submit a bill of costs and attorney fees within 15 days of the date of this order.

IT IS FURTHER ORDERED AND DECLARED THAT JUDGMENT ENTER FOR DEFENDANTS ON THE COUNTERCLAIM AS FOLLOWS:

CFHC does not have to supply emails in response to a CORA request that does not identify the general subject matter of the emails sought.

CFHC does not have to supply emails in response to CORA request for emails that does not comply with CFHC policies.

CFHC does not have to supply emails that are not public records as defined by CORA.

CFHC does not have to supply emails that are exempt from production under CORA by Federal or Colorado law or are otherwise subject to privileges.

Dated this _____ day of _____, 2016.

BY THE COURT:

District Court Judge