

Adams County District Court 1100 Judicial Center Dr. Brighton, CO 80601	DATE FILED: September 19, 2016 5:40 PM FILING ID: 820734993E4F2 CASE NUMBER: 2016CV31479 COURT USE ONLY
Plaintiffs: Juliet Piccone, Esq. and The Piccone Law Firm, LLC v. Defendant: Board of County Commissioners of Adams County (custodian of records for Adams County)	Case Number Division
Attorney for Plaintiff Juliet R. Piccone The Piccone Law Firm, LLC P.O. Box 472364 Aurora, CO 80047 Phone Number: 720-535-6246 E-mail: juliet@thepicconelawfirm.com FAX Number: 866-409-0499 Atty. Reg. #30934	<p style="text-align: center;">COMPLAINT APPLICATION FOR AN ORDER TO SHOW CAUSE PURSUANT TO COLORADO REVISED STATUTE § 24-72-204(5)</p>

INTRODUCTION

In this civil action, Plaintiffs Juliet Piccone, Esq. and The Piccone Law Firm, LLC seek to secure access, pursuant to the Colorado Open Records Act, to public records – records of communications (electronic, email or otherwise) to or from any county employee regarding a canine known as Adolf/Adolph/Baby Animal ID A100540 and/or regarding Serena Campbell, Richard Jackson and/or Michelle Huffman from September 10, 2014 until March 25, 2016. As more fully set forth below, this public records have been withheld from disclosure by the custodian, defendant Board of County Commissioners of Adams County (“BCCAC”).

JURISDICTION AND PARTIES

1. This Court has jurisdiction over the claims herein under the Colorado Open Records Act (“CORA”), § 24-72-204(5), C.R.S. On information and belief, the public records that are at the center of this action can be found in this judicial district.
2. Plaintiff The Piccone Law Firm, LLC is a limited liability company with its principal place of business in Aurora Colorado. Plaintiff operates as a law firm. Attorney Juliet Piccone is the managing member of the limited liability company and sole employee.

3. Plaintiffs are “persons” as defined by the CORA, § 24-72-202(3), C.R.S., and as such, have standing to bring a claim for access to public records under the CORA.
4. Defendant Board of County Commissioners of Adams County is the “custodian” under the CORA, § 24-72-202, C.R.S., of the records requested by Plaintiffs, as more fully described below. See Exhibit 1, p. 024, incorporated by this reference.

PLAINTIFF’S RECORDS REQUEST AND DEFENDANT’S DENIAL

5. Plaintiffs incorporate the allegations above as if set forth herein.
6. Plaintiffs represent Serena Campbell in federal civil rights litigation filed against the City of Northglenn and Adams County regarding the impoundment of her emotional support dog, Adolf/Adolph/Baby Animal ID A100540, who has been impounded in Adams County Shelter since September 26, 2014.
7. On July 13, 2016 Plaintiffs sent a Colorado Open Records Request to Stephanie Wilde and Kelley Forester, the employees designated by the Adams County Shelter to receive records requests for that entity. See Exhibit 1 p. 001, incorporated by this reference. The Adams County Shelter is a division of Adams County Government, which is run by the BCCAC.
8. Plaintiff requested “Records of all communications (electronic, email or otherwise) to or from any county employee regarding a canine known as Adolf/Adolph/Baby Animal ID A100540 and/or regarding Serena Campbell, Richard Jackson and/or Michelle Huffman from September 10, 2014 until March 25, 2016. See Exhibit 1, p. 002, incorporated by this reference.
9. Plaintiff carbon copied the request to Julie DeMarco, Esq. the Adams County civil attorney defending the federal lawsuit styled Serena Campbell v. The City of Northglenn and Adams County Colorado, case no. 16-cv-651-RBJ in the District of Colorado federal court in Denver, merely as a courtesy. Ms. DeMarco has communicated all decisions regarding the records request on behalf of BCCAC. See Exhibit 1, pp. 001-025, incorporated by this reference.
10. The dates for material requested correspond to the date before the subject canine is alleged to have bitten a mailman and up to the date the federal civil rights lawsuit was filed against the City of Northglenn and Adams County for the illegal seizure and holding of Plaintiff’s emotional support animal, Baby f/k/a Adolf/Adolph.
11. On July 19, 2016 Ms. DeMarco sent an email indicating that the request could not be fulfilled in 3 business days and indicated the requested records would be provided by July 29, 2016.¹ See Exhibit 1, p. 003, incorporated by this reference.
12. On July 28, 2016 Ms. DeMarco sent an email with documents labeled ASCO-SC-000001-ASCO-SC-000119 and stated, “Please note that some documents have been withheld or redacted because

¹ Plaintiffs agreed not to sue over this delay in exchange for Respondent waiving retrieval costs for the archived emails, and this information is given for background only.

they contain materials protected by the attorney-client privilege and the work product doctrine. The County's response to your CORA request is now considered to be complete." See Exhibit 1, p. 006 incorporated by this reference.

13. None of the documents were redacted insofar as Plaintiff can tell (unless the redactions were unmarked) and Plaintiff has no way of knowing what materials were withheld.
14. Less than 45 minutes after receiving the documents, Plaintiffs responded by stating that a number of emails that had been produced by The City of Northglenn in response to an identical CORA request had not been included, and Plaintiffs asked Ms. DeMarco to find out if there were deleted or archived emails. See Exhibit 1, p. 008, incorporated by this reference.
15. Ms. DeMarco did not respond to Plaintiffs' request for supplementation for 11 days. On August 8, 2016 Ms. DeMarco admitted that archived emails had not been searched and she was waiting for a cost estimate to retrieve backups. See Exhibit 1, p. 010 incorporated by this reference.
16. On August 15th, Ms. DeMarco finally provided an estimate for \$500 to retrieve the archived emails and stated the money had to be paid before retrieval would begin. See Exhibit 1, p. 011, incorporated by this reference.
17. The Plaintiff and Ms. DeMarco debated this until August 17th when Plaintiff agreed not to sue the County for violation of the Colorado Records Act for the delays in providing records in exchange for the County waiving the retrieval fee. See Exhibit 1, pp. 013-014, incorporated by this reference. Plaintiff is not claiming damages for any delay up to August 25, 2016, but is including this as background information.
18. On August 25, 2016 Ms. DeMarco Ms. DeMarco sent an email with documents labeled ASCO-SC-000120-ASCO-SC-000148 and stated, "Please note that some documents have been withheld or redacted because they contain materials protected by the attorney-client privilege and the work product doctrine. The County's response to your CORA request is now considered to be complete." See Exhibit 1, p. 016, incorporated by this reference.
19. None of the documents were redacted insofar as Plaintiff can tell (unless the redactions were unmarked) and Plaintiff has no way of knowing what materials were withheld.
20. Less than a half hour after receiving the documents, Plaintiff sent an email to Ms. DeMarco stating, "Attorney client privilege and work product doctrine do not apply to CORA requests, see CRS 24-72-204. Please identify exactly what documents you are refusing to provide and the statutory basis for refusing to provide them (CRS 24-72-2014(4).)" See Exhibit 1, p. 021, incorporated by this reference.
21. Ms. DeMarco stated that case law supported the denial. See Exhibit 1, p. 020, incorporated by this reference; she supplemented with 2 cases upon further inquiry. See Exhibit 1, p. 018, incorporated by this reference.
22. On August 25, 2016 Plaintiff let the custodian of record know that it intended to apply for an order

to examine the records per CRS Sec. 24-72-204 (5). Plaintiff further stated that, “even if the content was privileged, you would still have to provide the redacted emails showing who they were sent from and who they were sent to and the date and time of the email.” See Exhibit 1, p. 019, incorporated by this reference.

23. More than 3 days have passed since providing this notice. No additional documentation has been provided by the custodian of records.

APPLICABLE LAW

24. Under the CORA, any person may request to inspect and/or obtain a copy of a public record. *See* § 24-72-203(1)(a), C.R.S.
25. Under the CORA, a public record is any writing that is “made, maintained or kept by . . . any . . . political subdivision of the state . . . for use in the exercise of functions authorized or required by law or administrative rule. . . .” *See* § 24-72-202(6)(a)(I), C.R.S.
26. Under the CORA, the custodian of a public record may not deny access to a public record unless there is a specific exemption that permits the withholding of that record. *See* § 24-72-203(1)(a), C.R.S. If no such exemption applies, the custodian may nevertheless establish to the Court that, because of circumstances the General Assembly could not have foreseen, disclosure of the public record in these unique circumstances would cause “substantial injury to the public interest.” § 24-72-204(6)(a), C.R.S.
27. Defendant has denied access to public records “because they contain materials protected by the attorney-client privilege and the work product doctrine.”
28. Defendant has not attempted to provide any factual justification for refusing to provide the requested communications other than listing a blanket “attorney client” and “work product” privilege.
29. The federal lawsuit was filed on March 25, 2016. Plaintiffs’ request specifically excluded any communications from the date of the federal lawsuit forward.
30. The attorney client privilege extends only to matters communicated by or to the client in the course of gaining counsel, advice, or direction with respect to the client's rights or obligations.
31. The attorney client privilege is fact specific and can only be evaluated by knowing who the communications were between, when the communications occurred and what the purpose of the communications were for.
32. The burden of establishing the applicability of the attorney-client privilege rests with the claimant of the privilege.
33. Communications between an attorney and client that are disclosed to third parties outside of the attorney-client relationship are not protected.

34. In its denial, Defendant did not allege that any of the communications were sent/received from a client to an attorney specifically for legal advice.
35. In its denial, Defendant did not allege that any of the communications were sent/received from an attorney specifically providing legal advice to a client.
36. In the alternative, if there was any attorney client privilege, it has been waived by the communications regarding the subject matter between attorneys working for Adams County that were shared with non-client employees of the City of Northglenn.
37. Furthermore, to the extent Adams County District Attorneys' office was involved in a criminal case related to Ms. Campbell's dog from 2014 to 2015, if the District Attorney's office communicated with other county employees about the subject matter, it was not to provide legal advice because the district attorneys do not provide legal advice to the county, they prosecute criminal offenses. In addition, any privilege has been waived by Adams County's production of emails from the District Attorney directing the shelter to release Plaintiff's dog.
38. The work product privilege is only applicable to some types of documents produced in response to specific litigation. Communications cannot be "work product". Furthermore, Adams County Animal Shelter was not involved in litigation regarding Serena Campbell's dog until March 25, 2016.
39. Under the CORA, any person whose request for access to a public record is denied may apply to the District Court, in the District in which such record can be found, for an "Order to Show Cause" directing the custodian of the public record to show cause why the record should not be made available for public inspection. *See* § 24-72-204(5), C.R.S. Prior to filing such suit, the Plaintiff must provide the records custodian with three days advance written notice in order to be eligible to recover his or her attorneys' fees. *Id.* Under the CORA, upon the filing of such an Application, the Court must schedule the hearing on an Order to Show Cause at the "earliest time practical." *See id.*
40. Under the CORA, following the Show Cause Hearing, if the Court finds that denial of access was not proper, it *shall* order that the public record be made available for public inspection; moreover, in such circumstances, the Court *must* award the Plaintiff his or her reasonable attorney's fees in connection with the effort to obtain access to the public record. *See id.*

**APPLICATION FOR ORDER TO SHOW CAUSE WHY CUSTODIAN SHOULD NOT
PERMIT INSPECTION OF COLORADO OPEN RECORDS PURSUANT TO C.R.S.
SEC. 24-72-204 (5)**

41. Plaintiff incorporates the allegations above as if set forth herein.
42. On July 28th and again on August 23, 2016, Adams County attorney Julia DeMarco, Esq., on behalf of the records custodian BCCAC, responded to requests from Plaintiff and denied the Plaintiff's request to inspect the Public Records based on attorney client privilege and work

product privilege.

43. Because Defendant has denied a valid request under the CORA for inspection of the Public Records, Plaintiffs are entitled to entry of an Order directing Defendant to show cause “at the earliest practical time” they should not be permitted to inspect the requested Public Records. *See* § 24-72-204(5), C.R.S.

WHEREFORE, pursuant to § 24-72-204(5), C.R.S., Plaintiffs pray that:

- A. The Court enter an Order directing the Defendant to show cause why he should not permit inspection and copying of the requested public records as described in this Complaint and Application for Order to Show Cause;
- B. The Court conduct a hearing pursuant to such Order “at the earliest practical time” at which the Court may make the Order to Show Cause absolute;
- C. At the conclusion of the hearing on the Order to Show Cause, the Court enter an order directing the Defendant to disclose some or all of the Public Record to Plaintiffs;
- D. At the conclusion of the hearing on the Order to Show Cause, the Court enter and order directing the Defendant to pay the Plaintiffs their reasonable attorneys’ fees and costs incurred in securing access to the Public Record, and
- E. Enter such further and additional relief as the Court deems just and proper.

Respectfully submitted this 19th day of September, 2016

THE PICCONE LAW FIRM, LLC
Original signature on file

/s/ Juliet R. Piccone
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 19th day of September, 2016, a true and correct copy of the foregoing **COMPLAINT APPLICATION FOR AN ORDER TO SHOW CAUSE PURSUANT TO COLORADO REVISED STATUTE § 24-72-204(5)** was filed and served in the manner indicated below:

Via ICCES:
Adams County District Court
1100 Judicial Center Dr.
Brighton, CO 80601

Original signature on file

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