DISTRICT COURT, ARAPAHOE COUNTY **STATE OF COLORADO** 7325 S Potomac St #100 Centennial, CO 80112 (303) 649-6355	DATE FILED: December 1, 2017 1:46 PM FILING ID: BBBE61C19C9DB CASE NUMBER: 2017CV32737
KEVIN RAVENSCROFT, Plaintiff, v. **LISA HORTON**, in her official capacity as Municipal Records Supervisor, on behalf of the City of Aurora; **AURORA, COLORADO** Defendants.	**▲ COURT USE ONLY ▲**
Attorneys for Plaintiff: Mari Newman, #30192 Andy McNulty, #50546 KILLMER, LANE & NEWMAN, LLP 1543 Champa Street, Suite 400 Denver, Colorado 80202 (303) 571-1000 mnewman@kln-law.com amcnulty@kln-law.com	Case No: Division:
COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE	

Plaintiff Kevin Ravenscroft, by and through counsel, Mari Newman and Andy McNulty of KILLMER, LANE & NEWMAN, LLP, files this Complaint and Application for Order to Show Cause against Lisa Horton, in her official capacity as Municipal Records Supervisor, on behalf of the City of Aurora, and Aurora, Colorado, and in support alleges as follows:

INTRODUCTION

1. This civil action is brought pursuant to the Colorado Criminal Justice Records Act ("CCJRA") and Colorado Constitution Article XX, Section 6. *See* C.R.S. § 24-72-301, *et seq.*

Plaintiff Kevin Ravenscroft seeks access to certain criminal justice records relating to an incident on June 23, 2016, wherein Aurora Police Officers illegally entered his home and used unreasonable force against him.

2. Mr. Ravenscroft made a request for internal affairs files, which are CCJRA records, relating to the June 23, 2016 incident, including the internal affairs investigation that was conducted by the City of Aurora, Colorado into the officers' conduct on that evening. His request was blanketly denied by Defendant Lisa Horton, Municipal Records Supervisor of the City of Aurora pursuant to Aurora Police Department Directives and Aurora City Charter Section 3-16.

3. Consistent with the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Colorado that all people are entitled to full and complete information regarding the affairs of government, and the official acts and policies of those who represent them as public officials and employees. Colorado's open records acts create a presumption in favor of public access to government records. The maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern.

4. The public has a legitimate and compelling interest in knowing how law enforcement officers behave while doing their jobs. Without such information, the public would be unable to supervise the individuals and institutions it has entrusted with extraordinary authority to arrest and detain persons against their will. With so much at stake, Aurora (and its officials) cannot be permitted to operate in secrecy.

5. Because of Aurora's refusal to provide the requested CCJRA documents on grounds that are arbitrary and capricious, Mr. Ravenscroft seeks an Order compelling Defendant Horton to produce all internal affairs records concerning the June 23, 2016, incident.

6. Also, because Aurora's blanket refusal to provide the requested CCJRA documents was based on a municipal ordinance and official municipal policies that conflict with state law, Plaintiff seeks an order stating that the relied upon Aurora Police Department Directives and Aurora City Charter Section 3-16 are preempted by the CCJRA.

JURISDICTION AND PARTIES

7. This Court has jurisdiction of the claims under § 24-72-305(7) of the CCJRA and Article VI, Section 9 of the Colorado Constitution.

8. Venue is proper in this County under Colorado Rule of Civil Procedure 98(c). Plaintiff's Complaint is challenging the official actions of the City of Aurora, which is located in Arapahoe County, and Plaintiff resides in Arapahoe County.

9. Mr. Ravenscroft, an individual, is a resident of the State of Colorado.

10. Mr. Ravenscroft is a "person" as defined by the CCJRA. C.R.S. § 24-72-302(9).

11. Defendant Lisa Horton is the Municipal Records Supervisor for the City of Aurora and is the "official custodian" of the criminal justice records at issue in this case. *See* C.R.S. § 24-72-302(5), (8).

12. Defendant Aurora, Colorado is a political subdivision of the State of Colorado located within Arapahoe County. Aurora is a home-rule city that was incorporated in 1929.

13. The CCJRA provides that any person who is denied access to inspection of any criminal justice records has the right to apply to the district court in the district where the records

are found for an order directing the custodian of such records to show cause why the custodian should not permit the inspection of the records. *See* C.R.S. § 24-72-305(7).

14. A hearing on such application must be held at the "earliest practical time," and "[u]nless the court finds that the denial of inspection was proper, it shall order the custodian to permit such inspection." *Id*.

FACTUAL ALLEGATIONS

15. On June 23, 2016, Mr. Ravenscroft, his roommates, and a few of their friends were hanging out at Mr. Ravenscroft's home in Aurora.

16. At approximately 11:00 p.m., multiple Aurora police officers arrived at Mr. Ravenscroft's home in response to a mistaken dispatch stating that there were drunk adults near children. There were no children at Mr. Ravenscroft's home.

17. Officer John Gonzalez was one of the officers who was dispatched to Mr. Ravenscroft's home. When Officer Gonzalez arrived at Mr. Ravenscroft's home, he entered Mr. Ravenscroft's open garage without permission.

18. Mr. Ravenscroft was in the garage at the time and Officer Gonzalez confronted him. Officer Gonzalez told Mr. Ravenscroft to place his hands in the air and Mr. Ravenscroft complied. Officer Gonzalez demanded that Mr. Ravenscroft open the door leading from the garage to the house.

19. Mr. Ravenscroft asked Officer Gonzalez if he had a warrant, and Officer Gonzalez falsely told Mr. Ravenscroft that he did, even though Officer Gonzalez did not, in fact, have a warrant. Officer Gonzalez then told Mr. Ravenscroft his reason for being dispatched to Mr. Ravenscroft's home and Mr. Ravenscroft told Officer Gonzalez that he was mistaken, as there were no children present.

20. During the entirety of this conversation, Mr. Ravenscroft was positioned between Officer Gonzalez and the door, with his hand on the door handle.

21. Officer Gonzalez then, without a warrant or Mr. Ravenscroft's consent, threw Mr. Ravenscroft to the ground and opened the door to his home. He placed Mr. Ravenscroft into handcuffs and entered his home. While in the home, Officer Gonzalez told everyone who was present to get down on the ground.

22. Another officer who was knocking on the front door came into the garage and detained another of Mr. Ravenscroft's friends in handcuffs.

23. Subsequently, multiple other officers arrived on-scene. The officers searched Mr. Ravenscroft's home and interrogated Mr. Ravenscroft's friends and roommates in search of evidence that would help them cover-up Officer Gonzalez's unconstitutional actions. They found nothing to indicate that any law had been broken by Mr. Ravenscroft or anyone who was present at the home.

24. During the entirety of this search for cover-up material, Mr. Ravenscroft was handcuffed on the floor of his garage. The incident last over half an hour. Eventually, Mr. Ravenscroft was let go without any charge.

25. Through undersigned counsel, Mr. Ravenscroft made a request for CCJRA records relating to the unlawful entry and use of force on October 17, 2017.

26. Mr. Ravenscroft, through counsel, requested the opportunity to inspect and copy records described as:

1. All disciplinary records for Officer John Gonzalez.

2. All internal records and reports related to the investigation of relating to Aurora Police entering the apartment of Kevin Ravenscroft, Jamie

> Salazar and Nicholas Torres (17771 E. Bails Place Aurora, CO 80017) on June 23, 2016 at approximately 11:00 p.m. that lead to any disciplinary actions against Officer Gonzalez.

27. Defendant Horton responded on October 19, 2017, and blanketly denied Mr. Ravenscroft's CCJRA request. Defendant Horton stated, as grounds for the denial, that:

> The Colorado Open Records Act defines "personnel files" to mean and include "home addresses, telephone numbers, financial information, and *other information maintained because of the employer-employee relationship*, and other documents specifically exempt from disclosure under this part 2 or any other provision of law. ..." C.R.S. § 24-72-202(4.5) (emphasis added).
>
> A police officer has a legitimate expectation of privacy in any materials or information that may exist within his or her personnel and internal affairs file, including the discipline imposed related to a finding of a policy violation. **Section 3-16 of the Aurora City Charter provides for the confidentiality of statements made in an internal affairs investigation. Further, the Aurora Police Department Directives provide that all internal affairs files are confidential, and limits their disclosure not only as to external entities, but also internally.** Courts have addressed the disclosure of disciplinary records, and have recognized restricted disclosure. Colorado and federal case law requires the showing of a compelling state interest prior to requiring the production of internal affairs records. *Denver Policemen's Protective Ass'n v. Lichtenstein*, 660 F.2d 432, 435 (10th Cir. 1981); *Martinelli v. Dist. Court In & For City & Cnty. of Denver*, 612 P.2d 1083, 1092 (Colo. 1980); *People v. Walker*, 666 P.2d 113, 122 (Colo. 1983); *See Am. Civil Liberties Union of Colorado v. Whitman*, 159 P.3d 707, 711 (Colo. App. 2006) ("*Garrity* advisement and a related Denver city charter provision gave the police officers a reasonable expectation of "limited confidentiality."). These are confidential records that will not be disclosed.
>
> Therefore, your request for "1. All Disciplinary records for Officer John Gonzalez. 2. All internal records and reports related to the investigation of relating to Aurora Police entering the apartment of Kevin Ravenscroft, Jamie Salazar and Nicholas Torres (17771 E. Bails Place Aurora, CO 80017) on June 23, 2016 at approximately 11:00 p.m. that lead to any disciplinary actions against Officer Gonzalez." is being denied pursuant to the CCJRA [C.R.S. § 24-72-305(1)(a)] as contrary to state statute, C.R.S. § 24-72-204(3)(a)(II)(A) personnel files.
>
> (emphasis added)

28. Mr. Ravenscroft, through counsel, sent a follow-up request on October 30, 2017, narrowing his request for records to: "all internal records and reports, including internal affairs

files, relating to an incident between Aurora police officers, including John Gonzalez, and our clients, Kevin Ravenscroft, Jamie Salazar, and Nicholas Torres, on June 23, 2016. The incident involved officers entering the home of our clients, which was located at 17771 E. Bails Place Aurora, CO 80017."

29. On November 3, 2017, Defendant Horton responded to undersigned counsel and, again, blanketly denied Mr. Ravenscroft's CCJRA request, stating:

> The APD records you have requested fall under the Colorado Criminal Justice Records Act (CCJRA) since the records were made, maintained and kept by a criminal justice agency. [C.R.S § 24-72-302(3)]. Your request for "all internal records and reports, including internal affairs files, relating to an incident between Aurora police officers, including John Gonzalez, and our clients, Kevin Ravenscroft, Jamie Salazar, and Nicholas Torres, on June 23, 2016" is being denied pursuant to C.R.S. § 24-72-305(5) and pursuant to the discretion provided by the CCJRA as recognized by the Colorado Supreme Court in *Harris v. Denver Post Corp*., 123 P.3d 1166 (Colo. 2005). A police officer has a legitimate expectation of privacy in any materials or information that may exist within his or her personnel and internal affairs file, including the discipline imposed related to a finding of a policy violation. **Section 3-16 of the Aurora City Charter provides for the confidentiality of statements made in an internal affairs investigation. Furthermore, the Aurora Police Department Directives provide that all internal affairs files are confidential, and limits their disclosure not only as to external entities, but also internally.**
>
> (emphasis added)

30. Defendant Horton denied Mr. Ravenscroft's requests based on a blanket policy of the Aurora Police Department and the City of Aurora that provides all internal affairs files are confidential, no matter the facts, circumstances, or interests of each request.

31. Upon information and belief, the relied upon Aurora Police Department Directives' and Aurora City Charter Section 3-16's blanket policy of nondisclosure of internal affairs files has been applied consistently to every request of internal affairs files, regardless of the facts, circumstances, or interests of each request. The has been applied to all requests for internal affairs files, not just Mr. Ravenscroft's.

32. Aurora City Charter Section 3-16(8)(j)(d) codifies that statements made during internal affairs investigations "shall be confidential and neither the statement, any information contained therein not the answers to questions shall be disclosed to anyone except: (1) The statement or information may be disclosed to persons within the member's department on a need-to-know basis as determined by the Chief of the Department; (2) The statement of or information learned from a member not being investigated may be disclosed to representatives of the District Attorney or City Attorney on a need-to-know basis as determined by the Chief of the Department; and (3) The statement or answers may be offered as evidence to the Civil Service Commission in an appeal brought by a member challenging any discipline imposed[.]"

33. Upon information and belief, the relied upon Aurora Police Department Directives require the sealing and nondisclosure of all internal affairs files in the City of Aurora.

34. In all of her denials of Mr. Ravenscroft's CCJRA requests, Defendant Horton not balance the factors identified by the Colorado Supreme Court in *Harris v. Denver Post*, 123 P.3d 1116 (Colo. 2005) in accordance with the facts and circumstances of this incident or engage in a factor by factor analysis.

35. In her responses, Defendant Horton did not: (1) "articulate and consider the public's interest in the investigation and [discipline] of a police officer who abused his public responsibilities" or (2) "consider release of a redacted file that would satisfy the CCJRA objectives of disclosure while also addressing privacy concerns involved in the inspection request." *Huspeni v. El Paso Cty. Sheriff's Dep't (In re Freedom Colo. Info., Inc.)*, 196 P.3d 892, 902-03 (Colo. 2008). Instead, Defendant Horton refused to provide any records whatsoever.

LAW APPLICABLE TO PLAINTIFF'S CCJRA CLAIM

36. All records "made, maintained, or kept" by the Aurora Police Department for use in the exercise of official functions are "criminal justice records," as defined by C.R.S. § 24-72-304(4). Internal affairs investigation files, in particular, are "criminal justice records" for purposes of the CCJRA. *See Johnson v. Colo. Dep't of Corr.*, 972 P.2d 692, 694 (Colo. App. 1998); *Huspeni*, 196 P.3d at 901. Unless specifically exempted, such criminal justice records should be made available for public inspection. *See* C.R.S. § 24-72-305.

37. One statutory exemption is that the custodian may deny inspection when "disclosure would be contrary to the public interest." C.R.S. § 24-72-305(5). This is the exception improperly relied upon by Defendant Horton in her second response.

38. "Strong public policy" rationales weigh in favor of releasing internal affairs investigation files as the "public has an interest in knowing how its public law enforcement officers behave in their jobs." *City of Colo. Springs v. ACLU*, 06-CV-2053, slip op. at 4 (El Paso County Dist. Ct. Feb. 5, 2007) (attached hereto as Exhibit 1); *Nash v. Whitman*, Case No. 05-CV-4500, slip op. at 5 (Denver County Dist. Ct. Dec. 7, 2005) (attached hereto as Exhibit 2) (finding that "[o]pen access to internal affairs files enhances the effectiveness of internal affairs investigations, rather than impairing them . . .. Transparency also enhances public confidence in the police department and is consistent with community policing concepts and represents the more modern and enlightened view of the relationship between police departments and the communities they serve."); *Denver Post Corp. v. University of Colorado*, 739 P.2 874, 879 (Colo. App. 1987) (agreeing with the trial court's finding that "any possible danger of discouraging internal review is outweighed by the public's interest in whether the internal review was adequate, whether the actions taken pursuant to that review were sufficient, and whether those who held public office or were employed by the University should be held further

accountable"); *Waller v. Georgia*, 467 U.S. 39, 47 (1984) ("The public in general . . . has a strong interest in exposing substantial allegations of police misconduct to the salutary effects of public scrutiny."); *Garcia v. Harris Cty.*, No. H-16-2134, 2017 U.S. Dist. LEXIS 85337, at *16 (S.D. Tex. June 2, 2017) ("complaints regarding police misconduct are always treated as matter of public concern, so the IAD complaint qualifies as a matter of public concern."); *Skibo v. City of New York*, 109 F.R.D. 58, 61 (E.D.N.Y. 1985) ("Misconduct by individual officers, incompetent internal investigations, or questionable supervisory practices must be exposed if they exist[.]"); *Jones v. Jennings*, 788 P.2d 732, 738-39 (Alaska 1990) ("There is perhaps no more compelling justification for public access to documents regarding citizen complaints against police officers than preserving democratic values and fostering the public's trust in those charged with enforcing the law… We find the public policy considerations of openness, free access to the workings of government, … and preservation of our democratic ideals compelling"); *Cowles Publ'g Co. v. State Patrol*, 748 P.2d 597, 605 (Wash. 1988) ("[M]atters of police misconduct are of legitimate public concern."); *Braun v. City of Taft*, 201 Cal. Rptr. 654, 659 (Cal. App. 1984) ("[A]ccess to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state.").

39. Police internal affairs files are "not protected by the right to privacy when the documents simply relate[] to the officers' work as police officers." *Stidham v. Peace Officer Stds. & Training*, 265 F.3d 1144, 1155 (10th Cir. 2001) (internal quotations omitted); *Denver Policemen's Protective Ass'n v. Lichtenstein*, 660 F.2d 432, 435 (10th Cir. 1981) (holding that police officers have no legitimate privacy expectation with respect to "documents related simply to the officers' work as police officers."); *Mangels v. Pena*, 789 F.2d 836, 839 (10th Cir. 1986) (rejecting an assertion of a privacy interest in Internal Affairs investigation file where the City of

Denver had given assurances of confidentiality to the officers involved: "The legitimacy of an individual's expectations [of privacy] depends… upon the intimate or otherwise personal nature of the material which the state possesses, and the performance of such duties, particularly where misconduct has occurred, is not of such a nature… Accurate information concerning… unlawful activity is not encompassed by any right of confidentiality, and therefore it may be communicated to the news media."); *Flanagan v. Munger*, 890 F.2d 1557, 1570-71 (10th Cir. 1989) ("The [police officers'] right to privacy claim can be disposed of under the first prong of the *Martinelli* test. Our cases provide no absolute right to privacy in the contents of personnel files. Only highly personal information is protected… We are unwilling to hold that a reprimand of a public employee is of a highly personal nature and creates a constitutional expectation of privacy."); *Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786-87 (3d Cir. 1994) ("[P]rivacy interests are diminished when the party seeking protection is a public person subject to legitimate public scrutiny."); *Chasnoff v. Mokwa*, 466 S.W.3d 571 (Mo. Ct. App. 2015) (holding that "police officers have no right [relating to privacy or otherwise] under the Sunshine Law, the U.S. or Missouri Constitutions, common law, or Missouri statutes to compel closure of public records regarding the officers' substantiated misconduct in the performance of their official duties").

40. Policies that blanketly deny requests for inspection of records contained in an internal affairs investigation file constitute an abuse of discretion under the CCJRA. *See Krantz v. Dulacki*, Case No. 14CV34756, at * 4 (Colo. Dist. Apr. 30, 2015) (attached hereto as Exhibit 3).

41. Under *Harris*, the custodian must consider: (1) whether the privacy interests of individuals who may be impacted by a decision to allow inspection; (2) the agency's interest in keeping confidential information confidential; (3) the agency's interest in pursuing ongoing

investigations without compromising them; (4) the public purpose to be served in allowing inspection; and (5) any other pertinent consideration relevant to the circumstances of the particular request. *Harris*, 123 P.3d at 1174.

42. The Colorado Supreme Court has stated that "[b]y providing the custodian of records with the power to redact names, addresses, social security numbers, and other personal information, disclosure of which may be outweighed by the need for privacy, the legislature has given the custodian an effective tool to provide the public with *as much information as possible*, while still protecting privacy interests when deemed necessary." *Huspeni*, 196 P.3d at 900, n.3 (emphasis added).

43. District courts should apply an abuse of discretion standard with respect to the record custodian's balancing of the applicable public and private interest. *Id*. at 900.

44. If this Court finds that Defendant Horton abused her discretion in refusing to permit access to the records at issue, the Court shall order Defendant Horton to permit such access. *See* C.R.S. § 24-72-305(7).

45. Upon a finding that Defendant Horton's denial of access to the requested records was arbitrary or capricious, this Court may order her to pay Mr. Ravenscroft's court costs and attorneys' fees. *Id*.

CLAIM ONE
Order to Show Cause and Award of Reasonable Attorneys' Fees and Costs
(C.R.S. § 24-72-305)

46. Mr. Ravenscroft hereby incorporates by reference all preceding paragraphs of this Complaint and Application as if fully set forth herein.

47. The records requested by Mr. Ravenscroft are "criminal justice records," as defined by the CCJRA. C.R.S. § 24-72-304(4).

48. Defendant has refused to provide access to criminal justice records pursuant to Plaintiff's request.

49. Defendants' denial of access to the records sought by Plaintiff violates the CCJRA.

50. Under the CCJRA, "all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times . . .." C.R.S. § 24-72-304(1).

51. Mr. Ravenscroft has a significant personal interest in inspecting the requested CCJRA records.

52. Defendant Horton's withholding of the sought-after evidence interferes with Mr. Ravenscroft's ability to enforce his legal rights.

53. Other legal requirements make it necessary for Mr. Ravenscroft to receive the evidence currently in the sole possession of Denver. Both Fed. R. Civ. P. 11 and Colo. R. Civ. P. 11 prohibit Mr. Ravenscroft's counsel from filing papers in court without certifying that the factual contentions have adequate evidentiary support. Mr. Ravenscroft is unable to fully consider his legal claims without reviewing the evidence that Aurora has in its sole possession and refuses to disclose. Thus, Mr. Ravenscroft, who suffered the invasion of his home and assault at the hands of law enforcement, is being deprived of his federally and state protected rights.

54. Defendant Horton abused her discretion in blanketly denying, in accordance with Aurora Police Department Directives and Aurora City Charter Section 3-16, access to the criminal justice records requested, particularly the objective evidence relating to the June 23,

2016, unlawful entry and assault, and has wrongfully withheld such records from Mr. Ravenscroft. C.R.S. § 24-72-304(5).

55. Defendant Horton has denied the requested CCJRA records solely because Aurora Police Department Directives dictate that all internal affairs investigation files are confidential and are not to be disclosed to the public.

56. Defendant Horton's boilerplate assertions show no consideration of the particular facts of this case.

57. Exposing police misconduct is not contrary to the public interest. Rather, it is keeping such abuse hidden from public scrutiny, as Aurora is attempting to do, that is contrary to the public interest. Defendant Horton has not articulated or considered the public's interest in the internal affair investigation files. There is a strong and compelling public interest in the disclosure of information relevant to official misconduct by government officials, such as the misconduct of the Aurora police officers who unlawfully entered Mr. Ravenscroft's home and subjected him to unreasonable force.

58. Internal affairs investigation files are not confidential, and Defendant Horton has no interest in keeping that information confidential. And, given that the official actions of law enforcement officers performing their jobs is manifestly a matter of public concern, none of the police officers could have any privacy interests that would be impacted by a decision to allow inspection.

59. Defendant Horton's denial is also arbitrary and capricious because she has blanketly refused to disclose these documents that show official misconduct and her denial indefinitely deprives the public of documentation of misconduct by public officials. *See Krantz*, Case No. 14-CV-34756, slip op. at 5 (Ex. 3). Blanket policies denying the disclosure of records,

without consideration of other relevant facts, such as the Aurora Police Department Directives relied upon by Defendant Horton in her denial of Mr. Ravenscroft's request have been found to be arbitrary and capricious. *Id.*

60. The arbitrariness of Defendant Horton's denial is further demonstrated by her shifting rationale for not disclosing the CCJRA records. First, Defendant Horton refused to disclose the CCJRA records on the basis that disclosure was contrary to state statute C.R.S. §24-72-204(3)(a)(II)(A) (stating that personnel files are confidential and not subject to disclosure under the Colorado Open Records Act), despite the fact that the Colorado Supreme Court has directly held that internal affairs files are not personnel files. *See Huspeni*, 196 P.3d at 892; *see also Johnson*, 972 P.2d at 694. Defendant Horton's first response made no mention of C.R.S. § 24-72-305(5). Then, in her second response, Defendant Horton stated that she was refusing to disclose the CCJRA records on the basis of C.R.S. § 24-72-305(5). Each of Defendant's shifting explanations was erroneous.

61. There was no good faith basis or ground to support Defendant Horton's refusal to follow the CCJRA and produce the requested records, particularly in light of the clear, direct, and unambiguous direction of those provisions. Accordingly, denial of the requested records was arbitrary and capricious, thereby entitling Plaintiff to an award of attorney fees and costs.

62. Mr. Ravenscroft is entitled to an Order directing Defendant Horton to show cause "at the earliest practical time" why Aurora should not permit access to the records at issue in this Complaint. *See* C.R.S. § 24-72-305(7).

63. Upon hearing this matter on an Order to Show Cause, Mr. Ravenscroft is entitled to a further Order making the Order absolute and directing Defendant Horton to provide Mr.

Ravenscroft with access to all of the requested records on the grounds that Defendant Horton's decision to deny access constituted an abuse of discretion. *See* C.R.S. § 24-72-305(7).

64. Upon finding that Defendant Horton's withholding of the records at issue was arbitrary or capricious, the Court should enter an Order awarding Mr. Ravenscroft his reasonable attorneys' fees and costs under C.R.S. § 24-27-305(7).

CLAIM TWO
Preemption Under Article XX, Section 6 of the Colorado Constitution

65. Mr. Ravenscroft hereby incorporates by reference all preceding paragraphs of this Complaint and Application as if fully set forth herein.

66. Article XX, Section 6 of the Colorado Constitution grants home-rule municipalities "the full right of self-government in both local and municipal matters." Colo. Const. XX, § 6. However, "[i]f the matter is of statewide concern . . . home-rule cities may legislate in the area only if the [Colorado] constitution or [Colorado] statute authorizes the legislation. Otherwise, state statutes take precedence over home-rule actions." *Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 37 (Colo. 2000).

67. The maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern, and therefore Aurora Police Department Directives and Aurora City Charter Section 3-16 are preempted by state law.

68. The purpose of CCJRA is stated as follows: "The General Assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern and that, in defining and regulating those areas, only statewide standards in a state statute are workable." C.R.S. § 24-72-301(1).

69. The General Assembly enumerated not just "access and dissemination" but "sealing" of criminal justice records as "matters of statewide concern." C.R.S. § 24-72-301(1).

70. Because the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern, and because neither the Colorado Constitution nor state law authorize home-rule municipalities to legislate in this area, Aurora Police Department Directives and Aurora City Charter Section 3-16 are preempted are preempted under Article XX, Section 6 of the Colorado Constitution by the CCJRA.

71. All necessary parties under C.R.C.P. 57(j) are before this Court.

72. Pursuant to the Colorado Uniform Declaratory Judgments Law, C.R.S. § 13-51-101 *et seq.*, and C.R.C.P. 57, Mr. Ravenscroft is entitled to a declaration that Aurora Police Department Directives and Aurora City Charter Section 3-16 are preempted under Article XX, Section 6 of the Colorado Constitution because it legislates on a matter of statewide concern without specific constitutional or statutory authority.

73. Pursuant to C.R.C.P. 65, this Court should issue an injunction prohibiting enforcement of Aurora Police Department Directives and Aurora City Charter Section 3-16.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kevin Ravenscroft, pursuant to C.R.S. § 24-72-305(7) and Article XX, Section 6 of the Colorado Constitution, respectfully requests that this Court enter judgment in his favor and against Defendants and award him all the relief as allowed by law, including but not limited to the following:

(a) The Court enter an Order directing Defendant Horton to show cause why she should not permit inspection and copying of the requested criminal justice records described above (a proposed order is attached with this Complaint as Exhibit 4);

(b) The Court conduct a hearing pursuant to such Order "at the earliest practical time," at which time the Court should make the Order to show cause absolute;

(c) The Court enter an Order directing Defendant Horton to pay Mr. Ravenscroft's court costs and reasonable attorneys' fees, as provided by C.R.S. § 24-72-305(9);

(d) Declare that Aurora Police Department Directives and Aurora City Charter Section 3-16 are preempted under Article XX, Section 6 of the Colorado Constitution by the CCJRA;

(e) Enter a permanent injunction prohibiting Defendant Aurora, and all persons and entities acting under its direction or on its behalf, from taking any further actions to enforce Aurora Police Department Directives and Aurora City Charter Section 3-16; and

(f) The Court award any other and further relief that the Court deems just and proper.

Respectfully submitted this 1st day of December 2017.

KILLMER, LANE & NEWMAN, LLP

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