

DISTRICT COURT, ARAPAHOE COUNTY, COLORADO 7325 S Potomac St #100 Centennial, CO 80112 (303) 649-6355	DATE FILED: March 19, 2018 3:34 PM FILING ID: EF304D132DB0B CASE NUMBER: 2018CV30632
Plaintiff:  <b>POLICE PROTECTIVE ASSOCIATION OF THE CITY &amp; COUNTY OF DENVER</b> , a Colorado Non-profit Corporation  vs.  Defendants:  <b>CITY OF AURORA, COLORADO</b> , a Municipal corporation, and:  <b>LISA HORTON</b> , in her official capacity as Municipal Records Supervisor, on behalf of the City of Aurora	<hr/> <p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> Case Number:  Div.: _____
<hr/> Attorney for Plaintiff: John H. Davis Davis Law Firm 5290 DTC Parkway, Suite 150 Greenwood Village, CO 80111 Phone Number: 303-708-1842 FAX Number: 303-223-3294 Atty. Reg. #: 18760	
<b>COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE</b>	

Plaintiff Police Protective Association of the City & County of Denver (“DPPA”) by and through counsel, John Davis of the Davis Law Firm this hereby 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, Colorado, and against the City of Aurora, Colorado, and in support thereof, states as follows:

**INTRODUCTION**

1. This civil action brought pursuant to the Colorado Criminal Justice Records Act, C.R.S. §22-72-301, *et seq.*, (“CCJRA”), and seeks to secure access to certain criminal justice records from the custodians of these records, the City of Aurora and Lisa Horton, Municipal Records Supervisor for the City of Aurora (collectively, the “Defendants”). The records relate to an automobile crash on or about 5:00 AM on September 29, 2017 at the approximate location of

16<sup>th</sup> and Yosemite in the City of Aurora, Colorado (the "Incident"). This Incident was assigned Aurora Police Department Case No. 1738296). This Incident involved Denver Police Chief Robert White, who reportedly was involved in a hit-and-run accident and chased or confronted the suspect of that hit-and-run accident. Chief White was operating his City-owned vehicle at the time of the Incident.

2. Plaintiff has attempted to inspect and copy certain Criminal Justice Records in the Defendants' custody, possession, and/or control, more specifically, audio and/or video recordings from one or more body-worn-cameras, worn by on-duty Aurora Police Officers at the scene of the Incident, which depict or contain any statements or actions by Denver Police Chief Robert White at or near the scene of that Incident. Defendants have refused to permit inspection and copying of the requested Criminal Justice Records.

### **JURISDICTION AND PARTIES**

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

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

5. The DPPA is a "person" as defined by the CCJRA. C.R.S. § 24-72-302(9).

6. 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).

7. Defendant City of 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.

### **FACTUAL BACKGROUND**

8. On or about September 29, 2017, Denver Chief of Police Robert White was involved in a hit and run accident in Denver Colorado while operating his city-owned vehicle. According to news reports at the time, the chief's vehicle was hit by minivan driving eastbound on 16th Avenue at about Willow Street in Denver, Colorado. The suspect in the minivan then drove from the scene of the accident, and Chief White followed or pursued the suspect into Aurora, Colorado where, at approximately 6th and Yosemite St., the suspect's minivan struck another vehicle. That crash in Aurora resulted in serious injuries to one or both drivers. Chief White was a witness to that second accident.

9. News reports stated that Chief White was taken to the hospital due to minor injuries sustained in the first crash, then later released from the hospital. The driver of the

minivan was ejected from the minivan during the second crash and was transported to an area hospital where he underwent surgery. A victim of that second crash, from a different vehicle, was also taken to the hospital. Upon information and belief, Chief White made numerous comments to the Aurora police who were present, about his involvement in the first crash, his actions in following or pursuing the minivan, his witnessing of the second crash, and about the conduct of the Aurora Police Department and the Denver Police Department in their response to this Incident.

10. The person alleged to be the driver of the minivan was subsequently charged in Denver with traffic offenses including driving under the influence of alcohol, careless driving, reckless driving, assault and hit & run.

11. On or about October 3, 2017 the DPPA submitted a records request to the Defendants, pursuant to the CCJRA and the Colorado Open Records Act (“CORA”). The DPPA asked that it be allowed to inspect and copy “all body camera footage of all Aurora Police Department officers on scene at the time of an accident occurring approximately 0500 hours at the intersection of approximately 16th and Yosemite, September 29, 2017, (Aurora Police Department Case No. 1738296).”

12. On or about October 15, 2017, the Aurora Chief of Police responded to the DPPA request and stated he was forwarding the request to the police legal advisor.

13. On or about October 19, 2017, the DPPA was contacted by Lisa Horton, Municipal Records Supervisor for the City of Aurora. Ms. Horton told the DPPA that that the October 3<sup>rd</sup> request was being denied is being denied “pursuant to the discretion permitted under C.R.S. § 24-72-3034(1). Based on the information presented in the request, the request is from/on behalf of a person who is not a subject of the video, and privacy interests of the citizens involved in this matter outweigh disclosure.”

14. Although it felt the Defendants’ claimed concern of privacy interests was not compelling or valid, on or about December 20, 2017, the DPPA attempted to address the Defendants’ claims of privacy concerns by submitted a narrower request pertaining to the same incident, in which it requested “all audio and/or video recordings of any statements or actions by Denver Police Chief Robert White, including all interactions between Chief White and Aurora Police personnel....”

15. The Defendants did not respond to that request, and the DPPA made the request again on January 1, 2018.

16. On January 16, 2018, when no response had been received from Defendants, legal counsel for the DPPA sent a request to the City of Aurora asking the City to provide a response to the request.

17. On January 19, 2018, the City of Aurora, through the office of the Aurora City Attorney, responded to DPPA legal counsel and stated that

“On behalf of the custodian of records, Request #4133 for body worn camera footage will also be denied per APD’s policy on BWC disclosure. Disclosure is not permitted to individuals who are not a subject matter of the video. The City realizes that Request #4133 was designed to obtain only the statements or actions of Chief White. However, the APD does not have redaction software to utilize in this circumstance. Further, some of that footage involves individuals whose privacy interests outweigh disclosure.”

### **GENERAL ALLEGATIONS**

18. Through its Chief of Police, the City of Aurora issues body worn cameras to some officers of the Aurora Police Department.

19. The City of Aurora requires that Aurora Police Officers who are issued body-worn cameras operate those cameras during certain specified circumstances while the officers are performing their official duties.

20. The Aurora Police Department uses body-worn cameras to accurately capture statements and events during the course of an incident.

21. The Aurora Police Department uses body-worn cameras to enhance an officer’s ability to review and document statements and actions for reports.

22. Some or all of the Aurora Police Officers present at scene of the Incident described in this Complaint were wearing body worn cameras during their response to, and investigation of, the Incident.

23. The Defendants are in possession of body worn camera video and audio recordings depicting interactions between Aurora Police Department Officers and Denver Police Chief Robert White at the scene of the Incident.

24. The City of Aurora is responsible for the actions, policies and procedures of the Aurora Police Department.

25. 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 Colorado law.

26. Body-worn camera video and audio recordings obtained by Aurora Police Officers in the performance of their official duties and during or related to the investigation of

criminal offenses, traffic violations and motor vehicle accidents are "criminal justice records," as defined by Colorado law.

27. Colorado law provides that the custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis that such inspection would be contrary to any state statute; that such inspection is prohibited by rules promulgated by the supreme court or by the order of any court, or; on the ground that disclosure would be contrary to the public interest.

28. The inspection of records sought by the DPPA would not be contrary to any state statute and would not be prohibited by rules promulgated by the Supreme Court or the orders of any court.

29. There is a legitimate public interest in the actions and statements of the Denver Police Chief when he is involved a motor vehicle accident involving public property or occurring at the scene of a police investigation in which he is involved as a witness or participant.

30. The Defendants denied inspection of the requested records based on an Aurora Police Department policy of only providing body-worn camera footage to persons depicted in the footage.

31. The Defendants denied inspection of the requested records based on a claim of the privacy rights of persons who may be depicted in body-worn camera footage.

32. The Defendants denied the DPPA inspection request on the ground that granting the request would be contrary to the public interest.

33. Under Colorado law, when a request to inspect Criminal Justice Records is denied by a custodian of records on the basis of public interest, that custodian of records is required to engage in a balancing test.

34. Under Colorado law, the custodian is to take into account and balance the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request.

35. The Defendants did not engage in a balancing test prior to denying the inspection request by the DPPA, or engaged in a purely perfunctory balancing test.

36. The DPPA's request is for records that contain information of legitimate public interest and include information pertaining to the actions of a public official, and that public interest outweighs any claimed privacy interests.

37. Disclosure to the DPPA of the records requested by the DPPA is not contrary to the public interest.

38. The denial of the DPPA inspection request was made pursuant to a policy or rule of the Aurora Police Department.

39. The rule or policy that was used to deny the DPPA request is a general or blanket policy that does not provide for any balancing of interests of the person requesting the records and other competing interests.

40. There is a very limited right to privacy in a person's appearance or statements when in public view and not in a place or in circumstances where a person has a reasonable expectation of privacy.

41. A member of the public has no recognized right of privacy in their outward appearance when in public or in their statements to police officers in a public setting at the scene of a crime, except in very limited circumstances, none of which apply to the materials at issue here.

42. The records sought by the DPPA do not contain or depict any conduct or statements that are subject to a reasonable expectation of privacy by the persons depicted therein.

43. As a public official subject to legitimate public scrutiny, Denver Police Chief Robert White has a diminished privacy in regard to his actions as a public official.

44. The Defendants have the ability to redact material if appropriate to protect the privacy of members of the public.

45. 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 v. El Paso Ctny. Sheriff's Dep't*, 196 P.3d 892, 900 n.3 (Colo. 2008). The Supreme Court directed that custodians “should redact sparingly to promote the CCJRA’s preference for public disclosure.” *Id.*

46. The Defendants abused their discretion in denying the inspection request made by the DPPA.

47. The Defendants’ denial of the DPPA inspection request was arbitrary and capricious.

48. The Aurora Police Department’s general or blanket policy or rule that body-worn camera audio and video footage will only be provided to persons who are subjects of the footage contravenes state law and is an abuse of discretion.

49. The Defendants' decision to deny the DPPA request is subject to judicial review under an abuse of discretion standard.

50. 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.

51. A hearing on such application must be held at the earliest practical time, and unless the Court finds that the denial of inspection was proper, the Court shall order the custodian to permit such inspection.

52. Upon a finding that Defendants' denial of access to the requested records was arbitrary or capricious, the Court may order Defendants to pay Plaintiff's court costs and attorneys' fees and assess a statutory penalty.

**First Claim for Relief**  
**Violation of the Colorado Criminal Justice Records Acts**  
(Against Both Defendants)

53. Plaintiff incorporates as though set forth fully herein the allegations in paragraphs 1 through 52 above.

54. Defendants abused their discretion in denying access to the criminal justice records requested and wrongfully withheld criminal justice records from Plaintiff. This denial was arbitrary and capricious.

55. Defendants failed to engage in the legally required balancing of interests prior to denying the Plaintiff's request.

56. Any balancing of interests engaged in by Defendants was perfunctory and speculative at best, and not in conformity with their legal duty.

57. Disclosure of the records sought by Plaintiff would not cause undue adverse effects upon the legally recognized privacy interests of any individual.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff, pursuant to C.R.S. § 24-72-305(7), asks that this Court:

(a) Enter an Order directing Defendants to show cause why they should not permit inspection and copying of the requested criminal justice records described above (a proposed order is attached with this Complaint);

(b) 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) Enter an Order directing Defendants to pay Plaintiff's court costs and reasonable attorneys' fees, as provided by C.R.S. § 24-72-305(9); and

(d) Award any other and further relief that the Court deems just and proper.

Respectfully submitted this 19<sup>th</sup> day of March, 2018

DAVIS LAW FIRM

BY: /s/ John H. Davis  
John H. Davis #18760

Plaintiff's Address:  
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