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DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	
Plaintiffs: Todd Shepherd, reporter v. Defendants: COLORADO DIVISION OF INSURANCE; OFFICE OF THE GOVERNOR; Ms. Marguerite Salazar, in her official capacity as Commissioner of the Colorado Division of Insurance	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
<i>Attorneys for Plaintiff:</i> Todd Shepherd, pro se 727 E 16 th Ave, Denver, Colorado 80203 Phone: 303-279-6536 X111 shepherd@i2i.org	Case No: 14CV495 Courtroom: _____
Complaint and Motion for an Order to Show Cause	

I. Introduction and Synopsis

Todd Shepherd is a reporter in Denver, Colorado. In response to an Colorado Open Records Act (CORA) request made by Shepherd to the Colorado Division of Insurance (DOI), the DOI identified 46 documents not produced to the applicant because of the deliberative process privilege. Shepherd has asked DOI to waive privilege on all documents, which DOI has declined to do. Shepherd hereby applies to the court for a motion ordering the DOI to show cause why the deliberative process documents should continue to be withheld.

Complaint

II. PARTIES

1. Plaintiff Todd Shepherd is a reporter in Denver, Colorado.

2. Defendant Colorado Division of Insurance (“DOI”) is an agency of the state of Colorado and is an official custodian of the records sought by Plaintiff. *See* C.R.S § 24- 72-202(1.1) and (2).

3. Defendant Marguerite Salazar (“Salazar”) is the Commissioner of the DOI and is an official custodian of public records sought by Plaintiff. *See* C.R.S § 24- 72-202(1.1) and (2).

4. Salazar is referred to as the “Individual Defendant” in this Complaint.

III. JURISDICTION AND VENUE

5. This court has jurisdiction to hear this case. C.R.S. §24-72-204(5); Colo. Const., Art. VI, §§ 1, 9(1); *Lobato v. State*, 218 P.3d 358, 370 (Colo. 2009) (“Colorado district courts are courts of general jurisdiction.”).

6. Venue is proper in the City and County of Denver because Defendant's refusal to produce the public records occurred in Denver, Colorado. C.R.S. §24-72-204(5); C.R.C.P. 98(b)(2).

7. Plaintiff has exhausted his administrative remedies pursuant to C.R.S. §24-72-201(2)(XIII) and C.R.S. §24-72-201(5).

IV. GENERAL BACKGROUND

8. On May 2, Salazar and the DOI issued a press release and held a press conference announcing that the DOI would allow for one additional year the sale of plans that did not comply with all requirements of the federal “Patient Protection and Affordable Care Act,” (ACA). (Exhibit A)

9. On May 5, the DOI promulgated Bulletin B 4-73, “Continuation of Non-ACA Compliant Non-Grandfathered Health Benefit Plans.”

10. On May 15, Plaintiff filed a CORA request with the Colorado Department of Regulatory Agencies (DORA), seeking:

“writings created between February 1, 2014, to and including May 15, 2014, that estimate, forecast, approximate, or otherwise intend to judge the impact, in any manner whatsoever, of the DORA and/or DOI ruling allowing insurance carriers “to continue through 2015 health insurance plans for individuals and small groups that do not comply with new insurance rules that started in January 2014,” as announced in the press release found at the following link...” (Link attaches to DOI press release of May 2, 2014, Exhibit A). (CORA request by plaintiff is submitted as Exhibit B).

11. Through various phone conversations and emails, Plaintiff and Mike Conway (Conway), representing the DOI, agreed to a method by which DOI could satisfy the CORA request.

12. On May 20, Conway emailed Shepherd and proposed the DOI would search for documents responsive to Shepherd's request, by searching/inquiring with the following ten DOI employees: Tom Abel, Dayle Axman, Peg Brown, Natalie Horbatko, Patrick Knepler, Matt Mortier, Vincent Plymell, John Postolowski, Marguerite Salazar, and Tara Smith.

13. On May 23, Shepherd agreed to the document search method proposed by Conway, and also agreed to the estimated fees.

14. On June 19, DOI delivered responsive documents on compact disc.

15. Also on June 19, DOI also provided an index of documents identified as responsive, but protected by either attorney-client privilege (3 documents), or deliberative process privilege (46 documents). The delivery of documents, and index of withheld documents, was also accompanied by a sworn statement by Steve Giampaolo, Director of Licensing and Investigations for DOI. Giampaolo's statement certified a diligent search by the agency, and asserted that “[d]isclosure of these records would cause substantial injury to the public interest.” (Exhibit C).

16. On July 7, Shepherd asked DOI to waive deliberative process privilege.

17. On July 19, DOI declined to waive the privilege, and continued non-disclosure of the documents.

18. On August 5, Shepherd delivered by email and by hand, a letter informing DOI of his intent to file suit asking a court to apply the “balancing test” to the privilege claimed by DOI.

19. On August 8, Shepherd delivered by email an amended letter of 3-day notice, informing DOI of his intention to argue that 30 of the documents identified as privileged by DOI were “postdecisional.”

20. On August 29, Commissioner Salazar wrote a letter to four members of the General Assembly, informing them that the decision to allow the sale of non-ACA compliant plans “was finalized by the division on Tuesday, April 29th.” (Exhibit D)

21. Documents withheld due to the “deliberative process” privilege numbered 11-19, 22-36, 43-49, are all documents created after Tuesday, April 29. (Exhibit C)

22. Three working days have elapsed and Plaintiff has received no response.

23. Plaintiff provided Defendants with the three-day notice required by C.R.S. § 24-72-204(5) prior to filing this Complaint and Motion to Show Cause.

V. CLAIM FOR RELIEF

24. Plaintiff incorporates by reference all preceding paragraphs.

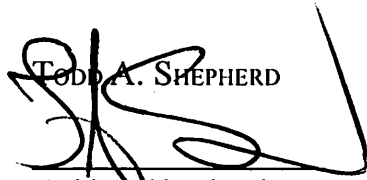
25. For continued non-disclosure of documents identified by DOI, Defendants must meet or exceed burden of proof before a court that disclosure would cause “substantial injury to the public interest” and outweighs “the beneficial effects of public scrutiny upon the quality of governmental decision-making and public confidence therein.” (See C.R.S. § 24-72-204(2)(XIII).

Prayer For Relief

FOR THESE REASONS, the court should:

- a. Promptly issue an order to defendants to show cause why they should not permit inspection of the requested public records; and
- b. Hold a hearing at the earliest practical time; and
- c. Order the custodian to permit inspection promptly;
- d. Award the plaintiff its attorney's fees and costs
- e. Award the Plaintiff all such other and further relief that the court deems just and proper, or appropriate.

Respectfully submitted this ___th day of August 2014,

By: 
Todd A. Shepherd

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