

DISTRICT COURT, LAS ANIMAS COUNTY 200 E. 1 st Street, Suite 304 Trinidad, CO 81082	DATE FILED: April 17, 2019 2:21 PM FILING ID: 832C2A89D3EDA CASE NUMBER: 2019CV30024
Plaintiff: STEPHEN HAMER, individually and as publisher of the on-line newspaper, All Things 81082, v. Defendant: DOMINIC VERQUER, in his capacity as Coroner of Las Animas County, State of Colorado	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Counsel for Plaintiff: Thomas B. Kelley, Atty Reg. # 1971 KILLMER LANE & NEWMAN LLP 1543 Champa St., Ste. 400 Denver, CO 80202 Phone: (303) 571-1000 Fax: (303) 571-1001 Email: tkelley@kln-law.com	Case Number: Division: Courtroom:
COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE RE: INSPECTION AND COPYING OF DOCUMENTS	

For his Complaint and Application For Order To Show Cause, directing the Defendant to show cause why he should not permit inspection of certain Public Records as requested by the plaintiff, all pursuant to the Colorado Open Records Act, Section 24-72-201 et seq. (CORA), Plaintiff alleges:

1. The Plaintiff is an individual who is a citizen of the State of Colorado and publisher of All Things 81082, an on-line newspaper published primarily in Las Animas County, Colorado. The Plaintiff is a "person" for purposes of Sec. 24-72-202(3), 203(1)(a), 204(1) and (5)(a).
2. The Defendant, Dominic Verquer, is the Coroner for the County of Las Animas, State of Colorado, and is an Official Custodian, or, in the alternative, a Custodian of the Public Record that is the subject of this action under CORA.

STATUTORY FRAMEWORK

3. CORA extends to any person, upon request to a Custodian of any Public Record, the right to inspect and copy such Record, subject to limited and specifically described exemptions. Coroners' Autopsy Reports are Public Records and subject to no exemption from the disclosure requirements under CORA. *Denver Publishing Co. v. Dreyfus*, 184 Colo. 288, 520 P.2d 104 (1974); *Freedom Newspapers, Inc. v. Bowerman*, 739P.2d 881, 883 (Colo. App. 1987).

4. When a records Custodian denies a request to inspect any Public Record, CORA authorizes the person requesting inspection to "apply to the District Court of the district wherein the record is found for an order directing the custodian of such record to show cause why the custodian should not permit the inspection of such record," provided that the person who requested the record provides the custodian at least fourteen days advance notice of his intent to so proceed. Sec. 24-72-205(5)(a).

5. CORA directs the court to convene a hearing on the Application "at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and shall award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court..." Sec. 24-72-204(5)(b).

PLAINTIFF'S REQUEST TO INSPECT PUBLIC RECORDS AND THE DEFENDANT'S DENIALS

6. The killing of Michael J. Dufour has become the subject of a criminal prosecution in this court. On March 22, 2019 at 9:20 PM, by e-mail communication, the Plaintiff sent a request under CORA to Defendant to inspect and copy, inter alia, the Coroner's Autopsy Report prepared by his office with respect to the death of Michael J. Dufour, 46, DOB; 06-25-72, whose body was discovered by police in an apartment in Trinidad Colorado on or about February 13, 2019. A true and correct copy of that email communication is attached as **Exhibit 1**.

7. On March 27, 2019, at 12:19 PM the Defendant, through the District Attorney for the Third Judicial District, State of Colorado, Henry Solano, by email communication, denied the Plaintiff's request. As grounds for the denial, the Defendant asserted that the requested Coroner's Autopsy Report was not a Public Record but Instead a Criminal Justice Record covered by the Colorado Criminal Justice Records Act, Sec. 24-72-203 et seq. (CCJRA) and subject to disclosure to the public only at the discretion of the Custodian who, under CCJRA, is authorized to determine that disclosure would be contrary to the public interest. The denial did not mention Colorado case law, cited in the Plaintiff's request, that holds that Coroners' Autopsy

Reports are not Criminal Justice Records under CCJRA, but instead are Public Records subject to mandatory disclosure under CORA. As factors considered, Defendant cited “the integrity of a fair prosecution,” the “constitutional rights of the accused,” that “any release could taint the jury pool,” and prior reporting, including criticism of the prosecution, published by the Plaintiff in All Things 81082. A true and correct copy of the Defendants communication of denial is attached as **Exhibit 2**.

8. On April 1, 2019, at 2:16 PM, the undersigned, by email communication, sent to the Defendant a request to reconsider his denial of the Plaintiff’s request, citing the clear holdings of Colorado appellate courts that Coroners’ Autopsy Reports are not Criminal Justice Records but are Public Records subject to mandatory disclosure under CORA. A true and correct copy of that communication is attached as **Exhibit 3**. By this communication, the Plaintiff communicated his intent to file this action, pursuant to Sec. 24-72-205(5)(a), C.R.S. The Plaintiff offered to communicate to resolve the dispute and requested a response by April 15, 2019. No further communication from the Defendant has been forthcoming.

CORA VIOLATION

9. Defendant’s reliance on CCJRA in denying the Plaintiff’s request was clearly in error, and the Defendant has asserted no grounds for refusing the Plaintiff’s request under CORA. The Plaintiff is entitled to inspect and copy the Autopsy Report, and the Defendant violated CORA by denying the Plaintiff the right to do so.

PRAYER FOR RELIEF

Wherefor, the Plaintiff prays for judgment in its favor and against the Defendant, and that the Court afford the plaintiff relief as follows:

- a. Order, that Defendant show cause why he should not permit inspection and copying of the Autopsy Report of the death of Michael J. Dufour.
- b. Set a hearing at the earliest practical time.
- c. Order the Defendants to permit the Plaintiffs to inspect and copy the Dufour Autopsy Report.
- d. Order the defendant to pay the Plaintiff his court costs and reasonable attorney fees.
- e. Order such further relief as the Court deems proper.

Respectfully submitted this 17th day of April 2019.

s/ Thomas B. Kelley

Thomas B. Kelly, Reg. # 1971

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