

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO Denver City & County Building 1437 Bannock Street Denver, CO 80202	<p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: DAN CAPLIS v. Defendant: COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT	
Daniel J. Caplis, #13171 Plaza Tower One Penthouse 6400 S. Fiddlers Green Circle, Suite 2200 Greenwood Village, CO 80111 Telephone: 303-770-5551 Fax: 303-770-5552 dan@caplislaw.com	Case Number: Courtroom: Division:
COMPLAINT	

INTRODUCTION AND SYNOPSIS

Dan Caplis (Caplis) seeks emails and other public records from the Colorado Department of Public Health and Environment (“CDPHE”) pertaining to:

All documents (including but not limited to email) pertaining to the issue of whether any or all travelers to Colorado from out of state should be subject to any type of Covid-19 mitigation effort by the state of Colorado or any other agency or entity, including but not limited to a quarantine.

Before filing this suit Caplis served his April 3, 2020 Notice of Intent to Apply to the District Court For a Show Cause Order and cited his factual basis, which includes:

Colorado’s failure to mitigate the flow of travelers into Colorado from Covid-19 hot spots is harming Coloradans on a daily basis. The public records sought are necessary to support the effort to stop that harm as soon as possible.

On April 7, 2020, CDPHE required that Caplis pay \$697.00 before CDPHE would further research the matter or provide any documents. Caplis paid the \$697.00 on April 8, 2020. Despite multiple conferrals by Caplis with CDPHE, it has still not produced any of the requested emails or documents or identified a date certain by which they will be produced.

CDPHE takes the position that it has limited personnel available to respond to CORA requests and that Caplis will have to wait until some unidentified time in the future. It also contends that it has not denied Caplis the right to inspect a record and therefore this suit is premature.

Caplis takes the position that CDPHE has denied him the right to inspect the requested records during the time frame mandated by the CORA statute, and therefore this suit is not premature. Caplis also takes the position that CDPHE has a \$599,000,000 budget and more than 1,000 employees and therefore sufficient resources available to it to respond to this focused request within the time period mandated by CORA. And that during this type of emergency it is more important than ever that CDPHE respond promptly to a request focused on defeating this ongoing threat to the health of the public.

PARTIES AND JURISDICTION

1. Dan Caplis is a radio talk show host. He hosts an afternoon drive radio show Monday to Friday from 4:00 PM to 6:00 PM on 630 KHOW Denver, which is also syndicated to Fort Collins through KCOL and Colorado Springs/Pueblo through KCSJ.

2. In connection with his radio show Caplis engages in investigative reporting. That reporting is often based on information obtained through public records requests. Several of Caplis' CORA based investigations have caused or contributed to important corrective actions being taken by the public agencies which were the subject of his reporting, and have led to national coverage of those government failures.

3. Caplis is also an attorney, who has been a member of the Colorado bar since 1983.

4. Caplis is a "person" as defined by CORA, C.R.S. § 24-72-202(3).

5. For the purposes of CORA defendant CDPHE is an instrumentality of the state of Colorado.

6. CDPHE is a custodian, and an official custodian, of the records sought by Caplis.

7. CDPHE has a budget of \$599,198,241 for fiscal year 2019-2020, and more than 1,000 employees.

8. Under CORA, emails sent or received as part of the Defendant's work duties are public records, and each individual defendant is a custodian of his or her emails. C.R.S. § 24-72-202(1.1).

9. As a court of general jurisdiction, this court has jurisdiction to hear this case. C.R.S. § 24-72-204(5);

10. Venue is proper in the City and County of Denver, because CDPHE'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).

GENERAL ALLEGATIONS

11. All records “made, maintained, or kept” by Defendants CDPHE are public records. C.R.S. § 24-72-202(6)(a)(I).

12. Unless specifically exempt, public records must be made available for public inspection. C.R.S § 24-72-203.

13. Exceptions to the presumption of disclosure in Colorado’s open records laws are construed narrowly. *See Bodelson v. Denver Pub. Co.*, 5 P.3d 373, 377 (Colo. Ct. App. 2000).

14. Upon application to the District Court for the district in which the records can be found, the court is to enter an order to show cause requiring the custodian of records to demonstrate “at the earliest practical time” why the denial of inspection was not an abuse of discretion. *See* C.R.S. § 24-72-204(5).

15. If the denial is improper, the Court shall order the custodian to permit inspection and shall award court costs and reasonable attorney fees to the applicant”*Id.*

THE CORA REQUESTS AT ISSUE

16. On April 2, 2020 Dan Caplis sent a Cora Request and Notice of Need for Expedited Response (April 2 CORA Request) to CDPHE, seeking immediate access to, among other records:

1. All documents (including but not limited to email) pertaining to the issue of whether any or all travelers to Colorado from out of state should be subject to any type of Covid-19 mitigation effort by the state of Colorado or any other agency or entity, including but not limited to a quarantine.

Exhibit 1, April 2 CORA Request.

17. On April 3, 2020 Caplis wrote to CDPHE to confer about the CORA and to give the formal 3 day notice of his intent to file with the District Court as required by C.R.S. § 24-72-304(5). **Exhibit 2, April 3 letter from Caplis to CDPHE.**

18. On April 7, 2020 CDPHE sent a letter to Caplis informing Caplis that CDPHE had conducted a preliminary review of email records and that it would take approximately 24.25 hours of time to retrieve and review the requested records. **Exhibit 3, April 7 letter from CDPHE to Dan Caplis.**

19. In its April 7 letter Defendant told Mr. Caplis that it would not move forward with his records request unless Mr. Caplis first paid CDPHE \$697.00. **Exhibit 3.**

20. On April 8 Caplis paid CDPHE the \$697.00 required by CDPHE. To this date CDPHE has not produced even one of the public records requested by Caplis. In addition, CDPHE has not provided Caplis with a date certain by which the public records will be produced.

21. Before filing this Complaint Caplis made multiple attempts to confer and resolve these issues with CDPHE and its counsel, including:

- a. 4/3/2020 letter from Caplis to CDPHE, **Exhibit 2.**
- b. 4/9/2020 letter from Caplis to counsel for CDPHE, **Exhibit 4.**
- c. 4/13/2020 conference call with counsel for CDPHE, **Exhibit 5.**
- d. 4/14/2020 email from Caplis to counsel for CDPHE, **Exhibit 6.**
- e. 4/15/2020 email from Caplis to counsel for CDPHE, **Exhibit 7.**

CDPHE'S BASIS FOR DENYING THE RIGHT TO INSPECT THE PUBLIC RECORD

22. CDPHE asserts that it has not denied Caplis the right to inspect a record, and therefore this action is premature. **Exhibit 8, April 8 letter to Caplis.**

23. By continuing to refuse to provide Caplis with the opportunity to inspect any of the subject records for fourteen days (ten working days) following submission of the CORA, Defendant CDPHE has, in fact, denied Caplis the right to inspect the public records in the time frame mandated by CORA.

24. CDPHE asserts that because of the COVID -19 emergency it is unable to respond to the Caplis CORA within any certain time period. **Exhibit 8, April 8 letter to Caplis.**

25. The CORA statute requires that the public records must be produced within a reasonable time after the request, which is presumed to be three working days or less. C.R.S. § 24-72-203(3)(b).

26. CORA provides that the time period for a response may be extended "if extenuating circumstances exist. However, such period shall not exceed seven working days". C.R.S. § 24-73-203(3)(b).

27. It has now been ten working days since the April 2, 2020 public records request, and CDPHE has not allowed Caplis to inspect a single public record and has not offered Caplis a date certain by which the records will be produced.

28. CDPHE has the resources necessary to promptly respond to the April 2 CORA Request. For fiscal year 2019-2020 CDPHE has a budget of \$599,198,241. According to the most recent information available CDPHE has in excess of 1,200 employees.

29. Under Colorado law custodians of public records must comply with CORA requests as part of their regular duties.

30. As stated in Caplis' April 2, 2020 CORA request to CDPHE, because of the Covid-19 emergency it's vital that CDPHE produce the requested public records immediately. Immediate production is necessary so that the people of Colorado have the information they need to try to reverse the Governor's dangerous decision to allow travelers from COVID-19 hot spots to enter into Colorado's population centers unchecked and without any type of quarantine. Every day that goes by with that fatally flawed policy in place results in the importation of more COVID -19 into Colorado, risking more preventable infections, hospitalizations and deaths.

31. CDPHE should not be permitted to violate CORA and delay access to public records in order to protect the Governor and CDPHE from criticism and public pressure to change a dangerous policy and practice.

FIRST CLAIM FOR RELIEF
The April 2, 2020 CORA

32. All previous allegations are incorporated herein by reference.

33. Defendants refusal to make the requested documents available for inspection is a violation of CORA.

34. Caplis is entitled to an order directing Defendant to show cause "at the earliest practical time" why Defendant should not permit access to all of the records responsive to the April 2, 2020 CORA request. C.R.S. § 24-72-204(5)

35. Caplis is entitled to an order directing the custodian of records to provide Caplis with access to all documents responsive to the April 2, 2020 CORA Request. C.R.S. § 24-72-204(5).

36. Caplis is entitled to an award of his court costs and reasonable attorney fees that incurred in bringing this lawsuit to obtain access to the to the documents responsive to the April 2 CORA request.

PRAYER FOR RELIEF

FOR THESE REASONS, Plaintiff respectfully requests that the Court:

a. Order Defendants to show cause "at the earliest practical time" why Defendant should not permit access to all of the records responsive to the April 2 CORA Request.

b. Order Defendant to preserve all emails and other public records responsive to the April 2 CORA Request.

c. Order Defendant to conduct a legitimate, thorough and reasonable search for all documents responsive to the April 2 CORA Request.

d. Order CDPHE to make the requested emails and other records available for inspection by Caplis.

e. Order Defendant to pay the plaintiff's court costs and reasonable attorney's fees.

f. Award the Plaintiff all such other and further relief that the Court deems just and proper.

Respectfully submitted this 17th day of April 2020.

/s/ Daniel J. Caplis _____

Daniel J. Caplis, #13171

This document was filed electronically pursuant to Rule 121 § 1-26(7).
The original signed document is on file in counsel's office.