

**DISTRICT COURT, DENVER COUNTY,
COLORADO**

Court Address:
1437 Bannock Street
Denver, CO 80202

Plaintiffs:

THE GAZETTE newspaper,
CHRISTOPHER N. OSHER, reporter at *The Gazette*,
and
THE INVISIBLE INSTITUTE,

v.

Defendant:

ERIK BOURGERIE, in his official capacity as custodian
and The Director of the Colorado Peace Officer Standards
and Training Board

Attorney for Plaintiffs:

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Case Number: _____

Division: _____

**COMPLAINT
(With Application for Order to Show Cause)**

Plaintiffs *The Gazette*, Christopher N. Osher, a reporter and editor at *The Gazette*, and The Invisible Institute (collectively, “Plaintiffs”), by and through undersigned counsel, hereby state as follows:

Introduction

1. In this civil action under the Colorado Open Records Act (“CORA”), §§ 24-72-201 *et seq.*, C.R.S., Plaintiffs seek access to “public records” in the possession, custody, or

control of the custodian Erik Bourgerie, acting in his official capacity as the Director of the Colorado Peace Officer Training and Standards Board (“Defendant”). Specifically, Plaintiffs seek access to the Peace Officer Standards and Training Database (“POST Database”). Plaintiffs seek an order directing the custodian to appear and show cause why he should not make that public record available to the Plaintiffs.

2. Plaintiffs *The Gazette*, Christopher N. Osher, an investigative reporter at *The Gazette*, and The Invisible Institute each submitted separate CORA requests for access to the POST Database. The data in the POST Database, which is maintained in electronic or digitally stored format, is a public record under CORA. § 24-72-202(7), C.R.S.

3. Plaintiffs’ CORA requests were wrongly denied by the POST Board on the basis that (among other reasons) access to the POST Database is not governed by CORA, but rather by the Colorado Criminal Justice Records Act (“CCJRA”).

4. Defendant denied the Plaintiffs’ requests for public access to a “public record” by applying the wrong statute—the CCJRA. The CCJRA governs access to “criminal justice records” which are defined as the records of a criminal justice agency. *See* § 24-72-301, C.R.S.; § 24-72-303(1), C.R.S.

5. As more fully set forth below, the POST Board is *not* a “criminal justice agency” as defined by the CCJRA, as it does not perform “any activity *directly* relating to the detection or investigation of crime.” *See* § 24-72-302(3), C.R.S. (emphasis added). The POST Board’s mission is to “maintain standards” for peace officer trainings, and its primary function is to certify applicants before they are eligible to serve as peace officers.¹ Under statute, the POST Board’s primary duties do not involve any activity *directly* relating to the detection or investigation of crime. *See* § 24-31-303(1)(a)–(q) (Duties, such as, “[t]o develop a community outreach program that informs the public of the role and duties of the P.O.S.T. board; [and to] develop skills training programs, academic curriculums, and P.O.S.T. board rules”)

6. Because the POST Board is *not* a “criminal justice agency,” Plaintiffs’ requests for access to the POST Database are governed by CORA, not by the CCJRA. Under CORA, public records include all “writings” as defined by § 24-72-202(7), C.R.S. which include digitally stored and electronic records, such as the POST Database. Moreover, even if Plaintiffs’ requests for access to the POST Database were governed by the CCJRA—which they are not—Defendant abused its discretion by denying Plaintiffs’ requests.

7. Accordingly, Plaintiffs respectfully request that the Court enter an Order directing Defendant to provide the Plaintiffs access to the entirety of the POST Database—a public record Plaintiffs are entitled to inspect under CORA. The Court should also direct Defendant to waive

¹*See POST Mission*, Colorado Peace Officer Standards and Training, <https://perma.cc/QU88-BDHP> (last visited Apr. 6, 2021); § 24-31-303(1)(a)–(q), C.R.S. (“Duties—powers of the P.O.S.T. board”); *see also Hiring Requirements*, Colorado Peace Officer Standards and Training, <https://perma.cc/8SGE-C8TW> (last visited Apr. 6, 2021).

any costs associated with retrieving the requested records, and award Plaintiffs reasonable costs and attorney's fees associated with this matter, pursuant to § 24-72-204(5), C.R.S. and/or § 24-72-203(3.5)(c), C.R.S.

Jurisdiction & Parties

8. This Court has jurisdiction over the claims herein under section 24-72-204(5) of CORA, §§ 24-72-201 *et seq.*, C.R.S. On information and belief, the POST Database—the “public record” that is the subject of this action—can be found in this judicial district.

9. Plaintiff *The Gazette* is a Pulitzer Prize-winning daily newspaper with its principal place of business at 30 E. Pikes Peak Avenue, Suite #100, Colorado Springs, CO 80903. *The Gazette* is owned by Clarity Media Group LLC, a wholly owned subsidiary of the Anschutz Corporation.

10. Plaintiff Christopher N. Osher is a senior investigative reporter and editor employed by *The Gazette*. Mr. Osher is a citizen of the State of Colorado.

11. Mr. Osher has written numerous investigative stories reporting on, among other things, Colorado government, COVID-19 outbreaks in the prison system,² allegations of police officer misconduct,³ and, in an ongoing series, Colorado's criminal justice system.⁴

12. Mr. Osher has also written a series of articles about Colorado police officers migrating from police department to police department within the state despite having records of conduct that would bar them from law enforcement employment in other states. True and correct copies of these articles are attached, collectively, as **Exhibit A**.

13. As an investigative reporter, Mr. Osher frequently uses statistical and demographic data in various formats to gather information and report on issues of concern to the public. Such data can be used as a source for long-form or short-form articles, and/or to create maps, charts, graphs, and other kinds of visualizations to convey information to the public.

14. Plaintiff The Invisible Institute is a journalism organization on the South Side of Chicago that works to enhance the capacity of citizens to hold public institutions accountable. The Invisible Institute's principal place of business is 6100 S. Blackstone Avenue, Chicago, IL 60637.

² Olivia Prentzel, Lance Benzel, and Christopher Osher, *El Paso County Jail Staff, Inmates Cite Lack of Masks in COVID-19 Outbreak that Became One of the Largest in the State*, *The Gazette* (Nov. 14, 2020), <https://perma.cc/5RET-96VT>.

³ Christopher Osher, *Cloud of Suspicion: Allegations of Ties Between Gangs and Denver Sheriff's Department Were Never Fully Investigated*, *The Gazette* (Oct. 15, 2020), <https://perma.cc/2SXA-WUSH>.

⁴ Christopher Osher, *Criminal Injustice: The Gazette Launches Ongoing Look at Colorado's Criminal Justice System*, *Colorado Politics* (Apr. 5, 2020), <https://perma.cc/Y5VJ-UWBF>.

15. The Invisible Institute likewise relies on access to data for its investigative reporting, including through its Citizen Police Data Project, which relies on police misconduct data from the City of Chicago. Through its access to such publicly available data, The Invisible Institute has uncovered, tracked, and reported on instances of police misconduct nationwide—an issue of fundamental importance to the public.⁵

16. The Invisible Institute, among other things, has utilized certification and decertification records of police officers across the country in connection with its reporting. For example, The Invisible Institute found that in Chicago, from 1988–2021, there have been nearly a quarter of a million allegations of police officer misconduct, yet only seven percent of those allegations have resulted in the accused officer being disciplined or decertified.⁶

17. At least 23 states have released police certification information or provided access to their equivalent of Colorado’s POST Database in response to public records requests by The Invisible Institute. *See Exhibit A1.*

18. Defendant Erik Bourgerie, the director of the POST Board, is sued in his official capacity as the custodian of the POST Database—the public record requested by Plaintiffs that is the subject of this action. *See § 24-72-202, C.R.S.*

Facts

Plaintiffs’ CORA Requests and Defendant’s Denials of Access

A. The Invisible Institute Request

19. On or about August 15, 2019, Rebecca Boorstein, then a reporter with The Invisible Institute, sent a CORA request on behalf of The Invisible Institute to Erik Bourgerie, director of the Colorado Peace Officer Standards and Training Board. That CORA request, a true and correct copy of which is attached hereto as **Exhibit B** and incorporated by reference herein, requested:

Any data maintained by your agency sufficient to show all officers who have been certified by the state, dating back as far as is maintained, year-by-year, showing as much of the following information as is maintained:

- a. First name
- b. Middle name or initial
- c. Last name
- d. Badge/star number

⁵ *An Introduction to the Citizens Police Data Project*, The Invisible Institute, <https://perma.cc/G5BS-33G5> (last visited April 6, 2021).

⁶ *See Citizens Police Data Project: Chicago 1988–2021*, The Invisible Institute <https://beta.cpdp.co> (last visited April 6, 2021).

- e. Employee number
- f. Date of certification
- g. Date of decertification (if applicable)
- h. Department
- i. Rank
- j. Gender
- k. Race
- l. Year of birth
- m. Date of separation from department if applicable
- n. Reason for separation (e.g., termination, resignation, retirement), if applicable
- o. Unique identifier, certification number, badge, and/or employee number

See **Exhibit B** (hereinafter “The Invisible Institute Request”).

20. The Invisible Institute Request included a request for a fee waiver, stating: “Because this goal concerns information regarding the safety, welfare, and legal rights of the public, a fee waiver is in the public interest.” *See id.*

21. On or about August 21, 2019, Ms. Boorstein received a response letter from Mr. Lawrence Pacheco denying The Invisible Institute’s Request. A true and correct copy of that letter dated August 21, 2019 is attached hereto as **Exhibit C** and incorporated by reference herein (hereinafter the “August 21, 2019 Denial”).

22. The August 21, 2019 Denial stated: “Your request is governed by the Colorado Criminal Justice Records Act.” **Exhibit C**. The August 21, 2019 Denial further stated:

Our office does not maintain a record that is responsive to your request. To produce the requested information would require us to manipulate the database where information regarding all peace officers is stored. Under Colorado law, criminal justice agencies are not required to manipulate data in order to create a new record upon request of a member of the public. In our discretion, we decline to manipulate the requested data in response to your request.

See id. (citations omitted).

B. The First Osher Request

23. On or about June 4, 2020, Mr. Osher sent a CORA request to Mr. Pacheco via email. A true and correct copy of that CORA request is attached hereto as **Exhibit D** and incorporated by reference herein (hereinafter the “First Osher Request”). The First Osher Request requested the following:

I request that you make available for inspection and copying the following public records: the POST database tracking certification, training, and personnel changes of law enforcement officers in Colorado; any POST database tracking decertification of law enforcement officers in Colorado. I request these records in their native digital/electronic form, or as a database export file.

See Exhibit D.

24. The First Osher Request identified Mr. Osher as “a reporter for *The Gazette* in Colorado,” stated that the “request is related to news-gathering purposes” and included a request for a fee waiver, stating “that [the] disclosure of the requested information is in the public interest and will contribute significantly to the public’s understanding of DOC operations and safety.” *See id.*

25. On or about June 22, 2020, Mr. Osher received a response letter from Mr. Pacheco denying the First Osher Request. A true and correct copy of the letter from Mr. Pacheco to Mr. Osher, dated June 22, 2020, is attached hereto as **Exhibit E** and incorporated by reference herein (hereinafter the “June 22, 2020 Denial”).

26. The June 22, 2020 Denial stated: “Your request is governed by the Colorado Criminal Justice Records Act.” *See id.* The June 22, 2020 Denial also stated:

Under Colorado law, criminal justice agencies are not required to manipulate data in order to create a new record upon request of a member of the public. In our discretion, we decline to manipulate the requested data in response to your request.

See id. (citations omitted)

27. On or about June 30, 2020, Mr. Osher sent an email to Mr. Pacheco requesting reconsideration of the denial of the First Osher Request on the ground that the POST Board is not a “criminal justice agency” as defined by the CCJRA because it does not “perform[] any activity directly relating to the detection or investigation of crime.” *See* § 24-72-302(3), C.R.S. A true and correct copy of that email is attached hereto as **Exhibit F** and incorporated by reference herein.

28. On or about July 10, 2020, Mr. Pacheco responded via email reiterating the denial of the First Osher Request. A true and correct copy of that email, which is attached hereto as **Exhibit F** and incorporated by reference herein, states, in part:

POST is a unit of the Criminal Justice Section of the Colorado Attorney General’s Office, which investigates and prosecutes crime throughout the state. The Attorney General, who is a designated peace officer with law enforcement authority, serves as chairperson of the POST Board. *See* C.R.S.

§§ 16-2.5-128, 24-31-302(3). As an agency, POST establishes and maintains certification and training requirement for peace officers who investigate crime and apprehend criminal offenders on a daily basis. The training funded by POST covers various policing issues including crime investigation and arrests. Because POST performs activities “directly relating to the detection or investigation of crime; the apprehension . . . of accused persons or criminal offenders; [and] criminal identification,” it meets the definition of “criminal justice agency” under C.R.S. § 24-72-302(3).

See Exhibit F.

C. The Second Osher Request

29. On or about August 18, 2020, Mr. Osher sent a second CORA request to Mr. Pacheco via email. A true and correct copy of that CORA request is attached hereto as **Exhibit G** and incorporated by reference herein (hereinafter the “Second Osher Request”). The Second Osher Request requested the following:

When any person is appointed or separated as a certified peace officer, as per Rules 10, 11 and 12, of P.O.S.T. such agency shall submit an update through the POST portal within fifteen (15) days of such appointment or separation. I request that you provide in its native digital format all such notifications, including the peace officer name, made by each agency since January 1, 2020.

See Exhibit G.

30. The Second Osher Request also identified Mr. Osher as “a reporter for *The Gazette* in Colorado,” stated that the “request is related to news-gathering purposes” and included a request for a fee waiver, stating “that [the] disclosure of the requested information is in the public interest and will contribute significantly to the public’s understanding of DOC operations and safety.” *See id.*

31. On or about September 9, 2020, Mr. Osher received a response letter from Mr. Pacheco denying the Second Osher Request. A true and correct copy of the letter from Mr. Pacheco to Mr. Osher, dated September 9, 2020, is attached hereto as **Exhibit H** and incorporated by reference herein (hereinafter the “September 9, 2020 Denial”).

32. The September 9, 2020 Denial stated: “Your request is governed by the Colorado Criminal Justice Records Act.” **Exhibit H.** The September 9, 2020 Denial also stated:

Because the requested records do not fall within the definition of official action, the decision whether to grant the request is consigned to the exercise of the custodian’s sound discretion. In order to produce the information in the format requested, it would require our office to manipulate digital data within the current POST database to create a new, customized record listing the names of individuals appointed and

separated from January 1, 2020 to the date of your request. Under Colorado law, criminal justice agencies are not required to manipulate digital data to create a new record upon the request of a member of the public. In our discretion, we decline to create this record in response to your request. *Background Info. Servs., Inc. v. Office of State Ct. Adm'r*, 994 P.2d 420, 431 (Colo. 1999)

Publicly disclosing the names of peace officers in response to your request threatens harm to ongoing investigations and to the safety of peace officers. POST is not privy to the names of officers who may be working undercover or who otherwise may have their safety compromised if POST releases the requested information.

See id. (citations omitted).

33. Plaintiffs sent Defendant a notice of intent to file an application pursuant to § 24-72-204(5)(a), C.R.S. on December 15, 2020. **Exhibit I.**

Applicable Law

34. The Colorado Open Records Act (“CORA”), §§ 24-72-201 *et seq.*, C.R.S., declares that it is the public policy of the State of Colorado that “all public records shall be open for inspection by any person at reasonable times,” unless specifically excepted by statute, and that there is a general presumption in favor of public access to records. *See Daniels v. City of Commerce City*, 988 P.2d 648, 650–51 (Colo. App. 1999); § 24-72-203(1)(a), C.R.S.

35. Under CORA, a public record “means and includes *all writings* made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local-government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.” *See* § 24-72-202(6)(a)(I), C.R.S. (emphasis added).

36. “Writings” are defined under CORA to include “all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics. ‘Writings’ includes digitally stored data, including without limitation electronic mail messages, but does not include computer software.” *See* § 24-72-202(7), C.R.S. Databases consisting of digitally or electronically stored data are included in the definition of a “writing” for purposes of CORA’s definition of public records.⁷

⁷ Metadata is electronic or digitally stored data; thus, it is a public record under CORA. *See e.g., Lake v. City of Phoenix*, 222 Ariz. 547, 550, 218 P.3d 1004, 1007 (2009) (holding that not only are electronic records subject to the state’s public records law, but also that the embedded data within an electronic record is also disclosable, and stating, “[w]hen a public officer uses a computer to make a public record, the metadata forms part of the document as much as the words

37. CORA requires that “[i]f a public record is stored in a digital format that is neither searchable nor sortable, the custodian shall provide a copy of the public record in a digital format. If a public record is stored in a digital format that is searchable but not sortable, the custodian shall provide a copy of the public record in a searchable format. If a public record is stored in a digital format that is sortable, the custodian shall provide a copy of the public record in a sortable format.” See § 24-72-203(3.5)(a)(I)–(III), C.R.S.

38. Altering an existing public record, *or* excising fields of information to remove information that the custodian is either required or permitted to withhold, does not constitute the creation of a new public record under CORA. See § 24-72-203(3.5)(d), C.R.S.

39. If the custodian of public records denies access, and the requesting entity seeks a court order directing the custodian to allow access, the custodian under CORA *must* pay the requesting party’s reasonable costs and attorney’s fees unless the court determines that denial of access was proper. See § 24-72-204(5)(a)–(b), C.R.S.

40. CORA states, “[p]ublic records’ does not include . . . [c]riminal justice records that are subject to the provisions of part 3 of this article . . .” § 24-72-202(6)(b)(I), C.R.S. Criminal justice records are restricted to those “made, maintained, or kept by any criminal justice agency.” § 24-72-302(4), C.R.S.

41. A “criminal justice agency” under the CCJRA, “means any court with criminal jurisdiction and any agency of the state . . . or law enforcement authority *that performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.*” See § 24-72-302(3), C.R.S. (emphasis added).

42. The POST Board is *not* a “criminal justice agency” as statutorily defined because it does not perform “any activity directly relating to the detection or investigation of crime.” See *id.* The POST Board’s function is similar to that of any other state licensing board tasked with providing uniformity of practice and training across a profession.⁸ By its own description, the Board’s function is limited exclusively to “documenting and managing the certification and training of all active peace officers and reserve peace officers working for Colorado law

on the page”); *O’Neill v. City of Shoreline*, 170 Wash. 2d 138, 148, 240 P.3d 1149, 1154 (2010) (when the record itself is a public record, there is “no doubt” that “its embedded metadata is also a public record and must be disclosed”).

⁸ In 1992, the Colorado General Assembly enacted the Peace Officers Standards and Training Act (“POST Act”) which created the Peace Officers Standards and Training Board (“POST Board”) to establish certification standards and to certify qualified peace officers. 1992 Colo. Sess. Laws ch. 167, §§ 24-31-302, -303, at 1093 (codified at sections 24-31-302, -303, C.R.S.); see also *Fraternal Order of Police, Colo. Lodge No. 27 v. City & Cty. of Denver*, 926 P.2d 582, 585 (Colo. 1996).

enforcement agencies.” See **Exhibit J**. The Board does not play *any* role (much less a “direct” one) in investigating, arresting, charging, prosecuting, sentencing, imprisoning or paroling a single criminal suspect. See *id.* In fact, for example, the Board’s meeting minutes and agendas show that they do not discuss or address the *actual* investigation, arrest, or prosecution of any suspected criminal. See **Exhibits K, L**. The Board’s duties are therefore of the same kind and nature as those of *any other state licensing and certification authority*, such as the Colorado Dental Board or the Department of Motor Vehicles—namely, to issue or revoke licenses of regulated professionals or the broader community.

43. Because the POST Board does not conduct any activities “directly relating” to “the detection or investigation of crime” nor “the apprehension, pretrial release, posttrial release, prosecution, correctional supervision, rehabilitation, evaluation, or treatment of *accused persons or criminal offenders*,” it does not fall within the CCJRA’s definition of “criminal justice agency.” Accordingly, all “writings” the Board makes, maintains or keeps for use in the exercise of official functions—regardless of their physical form or electronic format—constitute “public records,” as defined by CORA. See § 24-72-302(3), C.R.S. (emphasis added).

First Claim for Relief

Request for Access to Public Records under CORA (§ 24-72-204(5), C.R.S.)

44. Paragraph Nos. 1 through 43 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

45. Under CORA, a public record is defined as any “writing” that is “made, maintained, or kept by . . . any agency . . . of the state.” See § 24-72-202(6)(a)(I), C.R.S.

46. “Writings” includes “digitally stored data,” such as databases and metadata. See § 24-72-202(7), C.R.S.

47. Under CORA, any person may request access to inspect and obtain a copy of any public record. See § 24-72-203(1)(a), C.R.S.

48. The POST Database is maintained by the POST Board (or on its behalf by an outside vendor) for use in the exercise of its official functions, namely tracking the certification and decertification of peace officers.

49. CORA expressly mandates that if “a public record is stored in a digital format that is neither searchable nor sortable, the custodian *shall* provide a copy of the public record *in a digital format*.” See § 24-72-203(3.5)(a)(I)–(III), C.R.S. (emphasis added).

50. A simple querying of the POST Database could produce the records requested by Plaintiffs in the First Osher Request and The Invisible Institute Request. See **Exhibit B; Exhibit D**. Therefore, the extraction of those records from a computer database system does not amount

to a manipulation of data and the creation of a new record. *See* § 24-72-203(3.5)(d), C.R.S. (“Altering an existing public record . . . does not constitute the creation of a new public record.”)

51. Because Defendant has not cited any statutory exemption contained in CORA, Defendant is required to provide the public records requested by Plaintiffs in the First Osher Request and The Invisible Institute Request in a searchable or sortable format. *See* § 24-72-203(3.5)(a)(I)–(III) & (d), C.R.S.; *see also* § 24-72-202(7), C.R.S.

Second Claim for Relief

Request for Access to Public Records under CORA
(§ 24-72-204(5), C.R.S.)

52. Paragraph Nos. 1 through 51 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

53. Defendant states that the appointment and separation data sought by the Second Osher Request is obtainable by querying the POST Database to produce the requested records. *See Exhibit H*. Querying the existing system to obtain the information is not a manipulation of data. Therefore, the extraction of those records from a computer database system does not amount to a manipulation of data and the creation of a new record. *See* § 24-72-203(3.5)(d), C.R.S. (“Altering an existing public record . . . does not constitute the creation of a new public record.”)⁹

54. Because Defendant has not cited any statutory exemption contained in CORA, Defendant is required to provide the public records requested in the Second Osher Request in a searchable or sortable format. *See* § 24-72-203(3.5)(a)(I)–(III) & (d), C.R.S.; *see also* § 24-72-202(7), C.R.S.

Third Claim for Relief

(In the Alternative) Defendant’s Failure to Fulfill Plaintiffs’ Requests Was an Abuse of Discretion
(§§ 24-72-303(1), 24-72-304, 24-72-305(7), C.R.S.)

55. Paragraph Nos. 1 through 54 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

56. Pursuant to Colorado Rule of Civil Procedure 8(e)(2), and without conceding that the CCJRA is applicable to Plaintiffs’ requests, Plaintiffs present the following argument in the alternative:

⁹ *See The Tennessean v. Elec. Power Bd. of Nashville*, 979 S.W.2d 297, 304 (Tenn. 1998) (“[I]t makes little sense to implement computer systems that are faster and have massive capacity for storage, yet limit access to and dissemination of the material by emphasizing the physical format of a record.”)

57. Except for “records of official actions,” which must be available for inspection, all other criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law. *See* § 24-72-304(1), C.R.S. and § 24-72-302(7), C.R.S.

58. The Colorado Supreme Court has held that a custodian must balance the public and private interests involved in the inspection request and determine whether to allow full disclosure, redacted disclosure, or no disclosure of the criminal justice record. *See Harris v. Denver Post Corp.*, 123 P.3d 1166, 1174–75 (Colo. 2005) (“In granting such discretion, the legislature *intended* the custodian to consider and balance the public and private interests relevant to the inspection request.” (emphasis added)); *see also Freedom Colo. Info., Inc. v. El Paso Cty. Sheriff’s Dept.*, 196 P.3d 892, 897 (Colo. 2008) (citing *Harris*, 123 P.3d at 1174–75). Here, the custodian did not balance the public and private interests involved or determine whether to allow some access.

59. In *Harris*, a test requires that the custodian 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. A decision to allow or not allow inspection of the record is subject to judicial review under an abuse of discretion standard.

Harris, 123 P.3d at 1174–75 (citing *People v. Bushu*, 876 P.2d 106, 107 (Colo. App. 1994)).

60. Because Defendant failed to balance the public and private interests involved before denying Plaintiffs’ requests for access to the POST Database, Defendant’s denial of Plaintiffs’ right to inspect the record constituted an abuse of discretion.

Prayer for Relief

WHEREFORE, pursuant to § 24-72-204(5), C.R.S., Plaintiffs pray that:

- a. The Court forthwith enter an Order directing Defendant to show cause why he should not allow the Plaintiffs to inspect the requested public records as described in this Complaint and Application for Order to Show Cause;
- b. The Court, at the conclusion of the Show Cause Hearing, enter an Order declaring that the POST Board is not a criminal justice agency and, therefore, access to the POST Database is governed by CORA and not the CCJRA;

- c. The Court enter an Order directing Defendant to provide the Plaintiffs access to the POST Database in a searchable and sortable format, at no cost; and
- d. The Court enter an Order awarding the Plaintiffs their costs and reasonable attorney's fees associated with the preparation, initiation, and maintenance of this action, as mandated by § 24-72-204(5), C.R.S.; and
- e. The Court award such other and further relief as the Court deems proper and just.

Respectfully submitted this 14th day of May 2021.

By 

Rachael Johnson
Reporters Committee for Freedom of the Press
Attorney for Plaintiffs
The Gazette, Mr. Christopher Osher,
and The Invisible Institute

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of May 2021, a true and correct copy of the foregoing **COMPLAINT (WITH APPLICATION FOR ORDER TO SHOW CAUSE)** as served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

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