



Eric Maxfield Law, LLC

3223 Arapahoe Ave., Suite 300
Boulder, CO 80303
Phone: (303) 502-7849
eric@ericmaxfieldlaw.com
www.ericmaxfieldlaw.com

9/14/21

Monument Academy Board of Directors
Ryan Graham, Chair
C/O Attorney Brad Miller
1150 Village Ridge Point
Monument, CO 80132

By email to: brad@millerfarmerlaw.com
rgraham-board@monumentacademy.net

RE: Notice of Intent to file an application with the District Court by Carolyn Bedingfield on Request for Records under the Colorado Open Records Act, § 24-72-204, C.R.S. and Request for mandatory conference under § 24-72-204(5)(a), C.R.S.

Dear Mr. Miller:

I write on behalf of Ms. Bedingfield to follow up on the Board's response to her request for records under the Colorado Open Records Act ("CORA"). The Board's response did not provide the requested records in the requested format (email) as required by law, and rather provided rain-soaked copies well after the due date. As a result, the Board is impermissibly closing to inspection records required to be release by CORA. The records should be immediately released, by email, to Ms. Bedingfield. Relatedly, the Board's policies on fees function as a de facto bar to access to records. Ms. Bedingfield proposes changes to the Board CORA fee policy that will ensure compliance with the law and its transparency mandate. Specifically, the fee charged to Ms. Bedingfield was unreasonable and should be refunded.

This is written statutory notice of intent to file an application with the District Court concerning the Board's denial of right of inspection of public records. § 24-72-204(5)(a), C.R.S. This statute also provides that you shall either meet in person or communicate on the telephone with Ms. Bedingfield, within fourteen days, to determine if the dispute may be resolved without filing an application with the district court. Please contact me so that we may arrange for this meeting, preferably by phone or zoom, with our respective clients. If this dispute remains unresolved, we will ask the Court to Order production of the wrongfully withheld records and a refund of the unreasonable fees.

The following is Ms. Bedingfield's request for records dated 8/17/21.

From: Carolyn Bedingfield <cbagby.bedingfield@gmail.com>

Subject: CORA Request



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Date: August 17, 2021 at 2:21:14 PM MDT
To: mholmes@monumentacademy.net
Cc: rgraham-board@monumentacademy.net

Mr. Holmes,

In accordance to Colorado's Open Records Act, I am requesting all emails to and from Christianna Herrera and the Board of Monument Academy from June 1, 2021 until present day, August 17, 2021.

This information is not being sought for commercial purposes. If there are any fees for searching or copying these records, please inform me if the cost will exceed \$10.00.

Please set and notify me of a date and hour, within three working days following receipt of this email, at which time the records will be made available for inspection, as required by § 24-72-203(2), C.R.S. If access to these records will take longer, please cite the extenuating circumstances and let me know when I should expect copies or the ability to inspect the requested records. I ask that records available in electronic format be transmitted by email to Cbagby.bedingfield@gmail.com.

If you deny any portion of this request, please provide me with a written explanation of the reason(s) for your denial, including a citation to each specific statutory exemption you feel justifies the refusal to release the information, and notify me of the appeal procedures available to me under the law. If you conclude that portions of the records that I request are exempt from disclosure, please release the remainder of such records for inspection and copying, redacting only the portion or portions that you claim are exempt. Thank you for honoring my request.

Sincerely,
Carolyn Bedingfield
Cbagby.bedingfield@gmail.com

The request required the Board to respond within three days, and plainly requested the records electronically. The request likewise asked for a citation to each statutory exemption relied upon by the Board if records were withheld.

Two days later, on August 19, 2021, the COO of Monument Academy, Merlin Holmes, responded that seven more days were needed, and communicated the fee of \$35/hour for 4 hours of work. No justification was provided for a four hour search for emails in a single



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person's account(s) to and from a single other party. The four hour estimate was patently unreasonable:

From: Merlin Holmes <mholmes@monumentacademy.net>
Subject: Re: CORA Request
Date: August 19, 2021 at 4:15:14 PM EDT
To: Carolyn Bedingfield <cbagby.bedingfield@gmail.com>
Cc: Ryan Graham <rgraham-board@monumentacademy.net>

Carolyn Bedingfield,

This CORA request will take significant staff time to complete. With other staff responsibilities, we would need 7 business days to do the work. The cost to you would be \$140.00, with the first hour free, and \$35 dollars and hour for an additional 4 hours. The emails would come with some redactions and removals of privileged and confidential information.

Once we receive your payment for \$140.00 we would start the work to complete your request.

Sincerely,

Merlin Holmes
Monument Academy - COO

However, Mr. Holmes was incorrect about the hourly rate, which under the Board's policy is the maximum allowable under law, \$33.58/hour. Ms Bedingfield responded the same day, providing reference to the policy, rate, and effective date.

From: Carolyn Bedingfield <cbagby.bedingfield@gmail.com>
Subject: Re: CORA Request
Date: August 19, 2021 at 5:45:44 PM EDT
To: mholmes@monumentacademy.net

Mr. Holmes,

The fee for 4 hours of search time is \$134.32. \$33.58 is the amount in MA Policy 1512 which is the correct amount as per statute.



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CRS 24-72-205(6)(a) A custodian may impose a fee in response to a request for the research and retrieval of public records only if the custodian has, prior to the date of receiving the request, either posted on the custodian's website or otherwise published a written policy that specifies the applicable conditions concerning the research and retrieval of public records by the custodian, including the amount of any current fee. Under any such policy, the custodian shall not impose a charge for the first hour of time expended in connection with the research and retrieval of public records. After the first hour of time has been expended, the custodian may charge a fee for the research and retrieval of public records that shall not exceed thirty dollars per hour.

(b) On July 1, 2019, and by July 1 of every five-year period thereafter, the director of research of the legislative council appointed pursuant to section 2-3-304 (1) shall adjust the maximum hourly fee specified in subsection (6)(a) of this section in accordance with the percentage change over the period in the United States department of labor, bureau of labor statistics, consumer price index for Denver-Aurora-Lakewood for all items and all urban consumers, or its successor index. The director of research shall post the adjusted maximum hourly fee on the website of the general assembly.

The \$33.58/hour maximum rate went into effect on July 1, 2019.

I will bring the money to the office soon.

Sincerely,

Carolyn Bedingfield

As referenced above, the Board needed additional time, and stated that it would take an additional seven days to respond. That would make a response due by August 31, 2021. No records were forthcoming by that date, nor by September 7, 2021 when Ms. Bedingfield requested follow up. On September 7, 2021, you responded on behalf of the Board:

On Tue, Sep 7, 2021 at 10:05 AM Brad Miller <brad@millerfarmerlaw.com> wrote:
Ms Bedingfield,

My review was the final part of the CORA recovery process and I went through the documents this weekend.

I will be bringing the set of responsive documents to the West Campus office of Monument Academy in about an hour. You may retrieve them there.

In terms of withholding, there were four email chains that I either partially or completely withheld due to privilege:



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- 1) July 15 exchanges on confidential personnel matter.
- 2) July 1 exchanges with David Kunstle (attorney) regarding negotiations and legal advice regarding Hwy 105 expansion.
- 3) June 29 exchanges with David Kunstle regarding legal analysis of Hwy 105 expansion issues.
- 4) June 25 received email between board member and Christianna regarding negotiations with contractor for services.

Thank you.

Brad Miller
brad@millerfarmerlaw.com
719-338-4189

The September 7, 2021 email from Board counsel did not explain why the documents were not provided in electronic format; were only available if Ms. Bedingfield picked them up, and no citations were provided, as requested and required by CORA, for documents closed to inspection.

Also on September 7, 2021, in response to Ms. Bedingfield noting that the documents were wet and sticking together, you responded for the Board:

On Tue, Sep 7, 2021 at 12:50 PM Brad Miller <brad@millerfarmerlaw.com> wrote:
Hi Carolyn.

Yes, sorry about that. The docs were delivered during a rainstorm. I noticed some stickiness as well.

Brad Miller
719-338-4189

In this response you did not offer to provide undamaged pages, electronic production, or citations in support of record closure.

Ms. Bedingfield inquired:

On Sep 7, 2021, at 12:52 PM, Carolyn Bedingfield <cbagby.bedingfield@gmail.com> wrote:



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Any reason they were not produced electronically? That would have been much easier for everyone.

Carolyn

No response was made by the Board or its counsel.

On September 9, 2021 Ms. Bedingfield followed up with you and with the Board:

From: Carolyn Bedingfield <cbagby.bedingfield@gmail.com>

Subject: Re: CORA Request

Date: September 9, 2021 at 10:45:48 AM EDT

To: Brad Miller <brad@millerfarmerlaw.com>, jroberts@coloradofoic.org, Merlin Holmes <mholmes@monumentacademy.net>, rgraham-board@monumentacademy.net

Cc: KCSomers@lewispalmer.org, schoolboard@lewispalmer.org

Hello Brad,

On September 7th I asked you twice why the documents from my August 17, 2021 CORA request were not sent electronically, as originally requested. The documents requested were emails. It is my understanding that email means electronic mail, and as that is the original format of the requested documents it should be no problem to send a digital copy.

What I picked up at the school on the 7th was around 600 pages of wet and water damaged paper, 500 of those pages were duplicates.

I am requesting a portion of my \$134.32 fee be refunded.

I would like a digital copy sent electronically today, eleven business days have passed since payment was made.

May I remind you of state statute concerning the Colorado Open Records Act.

CRS 24-72-203(3.5)

(I) 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.

(II) 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.

(III) 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.



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Carolyn Bedingfield

Ms. Bedingfield, by this follow up, was asking for electronic copies, and a refund of her fee, as the fee appears to have been imposed for the time and copies, roughly 5/6 of which were duplicates, and therefore unnecessary. To the extent that the fees were for hard copies, the fees were unjustified. To the extent the fees were for time in excess of one hour of work, the fees were unreasonable. Ms. Bedingfield also attended the Board meeting, where she reiterated what had happened. No response from the Board was made.

Per § 24-72-303(3.5)(c), C.R.S.,

“If a custodian is not able to comply with a request to produce a public record that is subject to disclosure in a requested format specified in subsection (3.5)(a) of this section, the custodian shall produce the record in an alternate format or issue a denial under section 24-72-204 and shall provide a written declaration attesting to the reasons the custodian is not able to produce the record in the requested format. If a court subsequently rules the custodian should have provided the record in the requested format, attorney fees may be awarded only if the custodian's action was arbitrary or capricious.”

The Board, despite requests to counsel and directly at a public meeting, has failed to provide a declaration explaining the reasons it did not provide electronic records and instead provided rain soaked, damaged records. Such conduct violates CORA and meets the arbitrary and capricious standard. Moreover, the requirement for email provision of records is straightforward: “Upon request for records transmission by a person seeking a copy of any public record, the custodian shall transmit a copy of the record by United States mail, other delivery service, facsimile, or electronic mail. No transmission fees may be charged to the record requester for transmitting public records via electronic mail.” § 24-72-205(1)(b), C.R.S. The Board has failed to transmit the records by email, has unreasonably required Ms. Bedingfield to travel to pick up the documents, and has provided damaged, wet documents that stuck together. The Board's conduct is a failure to provide timely and full access to public records.

At this point, due to the Board's lack of response to Ms. Bedingfield's effort to obtain documents and a refund of her paid fee, it is unclear whether the Board could not produce the documents in electronic format, or simply would not do so, in spite of clear, repeated, lawful requests. In either event, the Board is unlawfully denying Ms. Bedingfield's right of inspection of public records.

Per § 24-72-204(4), C.R.S., “if the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.” The



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Board, having ignored Ms. Bedingfield's request for the statement with citation, has effectively denied her request as to the closed records, without justification required by statute.

Additionally, "the date and hour set for the inspection of records not readily available at the time of the request shall be within a reasonable time after the request." § 24-72-203(3)(b), C.R.S. The provision of the rain-soaked documents was late by seven days, after the Board took an additional statutory seven day extension to run a simple search of one person's email, and it is now nearing a month since the request was made for the Board to provide undamaged records in electronic format. Such delay is not reasonable under any reading of CORA.

The Board's CORA Policy provides:

"The effort to recover requested records exceeding one hour of staff time shall be \$33.58 per hour, paid in advance of such efforts based upon a reasonable estimate of the required effort. The calculation of staff time shall be cumulative on a monthly basis regardless of the number of requests an individual or entity makes in a calendar month. For example, once one hour of staff time has been expended in a calendar month on behalf of the same individual or entity, the \$33.58 per hour fee will be assessed immediately for all subsequent requests in the same month."

There is no support in CORA for this approach. According to § 24-72-205(6)(a), C.R.S., "A custodian may impose a fee in response to a request for the research and retrieval of public records only if the custodian has, prior to the date of receiving the request, either posted on the custodian's website or otherwise published a written policy that specifies the applicable conditions concerning the research and retrieval of public records by the custodian, including the amount of any current fee. Under any such policy, the custodian shall not impose a charge for the first hour of time expended in connection with the research and retrieval of public records. After the first hour of time has been expended, the custodian may charge a fee for the research and retrieval of public records that shall not exceed thirty dollars per hour."

There is no temporal quality to the statute, and the Board cannot add one where it wishes. The fees are another unreasonable barrier to transparency of the Board's business. Therefore, the Board should refrain from charging for what should be a no-charge hour upon a request made within a month.

The Board, by requiring CORA applicants to come into the office to pay a fee, creates another unnecessary barrier to record access. And likewise, the Board, by charging unreasonable fees, creates still another unnecessary barrier to record access. The Board, by requiring that an applicant come in to pick up hard copies, creates a further unnecessary barrier to record access.



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Ms. Bedingfield requests that each of these policies and approaches be changed in favor of providing the public and press easier access to open, public records.

Ms. Bedingfield repeats her request that the requested records be provided, promptly, by email, in electronic format. She repeats her request that other closed records be either provided, or that the Board provide citation to the grounds it relies on to close the records to inspection. Ms. Bedingfield requests that her \$134.32 fee be refunded in full.

Please be aware that CORA provides that a successful applicant be awarded her costs and reasonable attorney fees.

Ms. Bedingfield also requests that the Board alter its policies on fees and no-charge hour of research, on requiring applicants to come to the office to pay a fee, and to come to the office to pick up documents.

Please let me know when we can set a time to discuss this notice and request to discuss Ms. Bedingfield's records request.

Sincerely,

Eric Maxfield
eric@ericmaxfieldlaw.com
303-502-7849