

<p>DISTRICT COURT, DOUGLAS COUNTY, COLORADO Douglas County Justice Center 4000 Justice Way Castle Rock, CO 80109 (720) 437-6200</p> <hr/> <p><b>TEGNA, INC. d/b/a/ KUSA- TV and KYLE CLARK,</b>  Plaintiffs</p> <p>v.</p> <p><b>IOANA MARTIN,</b> in her official capacity as the Public Records Manager for the Douglas County School District,  Defendant</p> <hr/> <p><b>Attorney for Plaintiffs:</b> Steven D. Zansberg, #26634 Law Office of Steven D. Zansberg, LLC 100 Fillmore Street, Suite 500 Denver, CO 80206 <a href="mailto:steve@zansberglaw.com">steve@zansberglaw.com</a></p>	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> <hr/> <p>Case Number: 2022-cv-_____</p> <p>Division:</p>
<p><b>COMPLAINT AND APPLICATION FOR AN ORDER TO SHOW CAUSE PURSUANT TO § 24-72-204(5), C.R.S.</b></p>	

Plaintiffs TEGNA, Inc. d/b/a/ KUSA-TV and Kyle Clark, by and through their undersigned counsel, for their Complaint and Application for Order to Show Cause, hereby states as follows:

**INTRODUCTION**

This is a civil action under the Colorado Open Records Act (“CORA”). The Plaintiffs, KUSA-TV/9News and its employee Kyle Clark are joint Applicants seeking an Order to Show Cause directed to the custodian of public records for the Douglas County School District (DCSD) to appear and to show cause why public record that the Applicants have requested to inspect should not be made available for inspection.

## **JURISDICTION AND PARTIES**

1. This Court has jurisdiction over the claims herein under §§ 24-72-204(5) and - 204(5.5) of CORA, § 24-72-201, *et seq.*, C.R.S (2020). On information and belief, the public record that is the focus of this action can be found in this judicial district.

2. Plaintiffs TEGNA, Inc. (owner and operator of television station KUSA-TV) (hereinafter “KUSA-TV/9News) and Kyle Clark are both “person(s)” as defined by § 24-72-202(3), C.R.S..

3. Defendant Iona Martin is the Public Records Manager for DCSD and is a custodian of the public record that is the subject of the Plaintiffs’ CORA request.

4. Venue for this civil action is proper in this District under Rules 98(b)(2) and (c)(1) of the Colorado Rules of Civil Procedure and under § 24-72-204(5), C.R.S.

## **APPLICABLE LAW**

5. Under the CORA, any person may request to inspect and/or obtain a copy of a public record. *See* § 24-72-203(1)(a), C.R.S. CORA guarantees access to records of public business so that “the workings of government are not unduly shielded from the public eye.” *Int’l Bhd. of Elec. Workers Local Union 68 v. Denver Metro. Major League Baseball Stadium Dist.*, 880 P.2d 160, 165 (Colo. App. 1994).

6. A public record is any “writing” that is “made, maintained or kept by . . . any . . . political subdivision of the state . . . *for use* in the exercise of functions required or authorized by law or administrative rule.....” *See* § 24-72-202(6)(a)(I), C.R.S. (emphasis added).

7. Under the CORA, a custodian is required to provide access to a public record unless “[s]uch inspection would be contrary to any state statute” or is otherwise exempted from disclosure by one of the narrow exemptions in Section 204(3)(a) of the CORA. *See* § 24-72-204(1)(a), C.R.S.

8. Any person whose request for access to a public record is denied may apply to the District Court, in the District in which such record can be found, for an “Order to Show Cause” directing the custodian of the public record to show cause why the record should not be made available for public inspection. *See* § 24-72-204(5), C.R.S. Prior to

filing such suit, the applicant must provide the records custodian with advance written notice (either fourteen days or three days, if the need for speedy resolution is justified through a factual recitation) in order to be eligible to recover attorneys' fees. *Id.*

9. Under the CORA, upon the filing of such an Application, the Court must schedule the hearing on an Order to Show Cause at the "earliest time practical." *See id.*

10. In a CORA show cause proceeding, once the requester establishes a *prima facie* basis for concluding that the requested record is a "public record," the burden shifts to the custodian of the record to demonstrate why the refusal to provide access to the requested record is not "improper." *See Denver Publ'g Co. v. Bd. of Cty. Comm'rs*, 121 P.3d 190, 199 (Colo. 2005).

11. Under the CORA, following a Show Cause Hearing, if the Court finds that the requested public record and/or recordings should be made available for public inspection, it *shall* order that those records be made available for public inspection; moreover, in such circumstances, the Court *must* award the applicant his or her reasonable attorneys' fees in connection with the effort to obtain access to the public record. *See Denver Publ'g Co.*, 121 P.3d at 199.

### PLAINTIFFS' REQUEST AND DEFENDANT'S DENIAL

12. On or about February 15, 2022, someone (whose identity has not yet been publicly disclosed) submitted a request, under CORA, to DCSD for a list of all DCSD teachers and staff who had called in sick on February 3, 2022 (hereinafter "**the original CORA Request for sick leave participants**"). On information and belief, that CORA request was submitted on the official [CORA Request form](https://www.dcsdk12.org/about/our_district/departments/legal_counsel/open_records_requests_cora) that DCSD provides on its official webpage: [https://www.dcsdk12.org/about/our\\_district/departments/legal\\_counsel/open\\_records\\_requests\\_cora](https://www.dcsdk12.org/about/our_district/departments/legal_counsel/open_records_requests_cora)

13. Notably, on the date **the original CORA Request for sick leave participants** was filed, that same web page notified all potential requesters, in ALL CAPS red font, that

PLEASE BE ADVISED THAT AS OF JANUARY 1, 2022, WE WILL NO LONGER REDACT NAMES OF THE PERSONS THAT SUBMIT CORA REQUESTS. WE WILL REDACT ONLY PERSONAL INFORMATION, SUCH AS PHONE NUMBER, ADDRESS OR EMAIL ADDRESS.

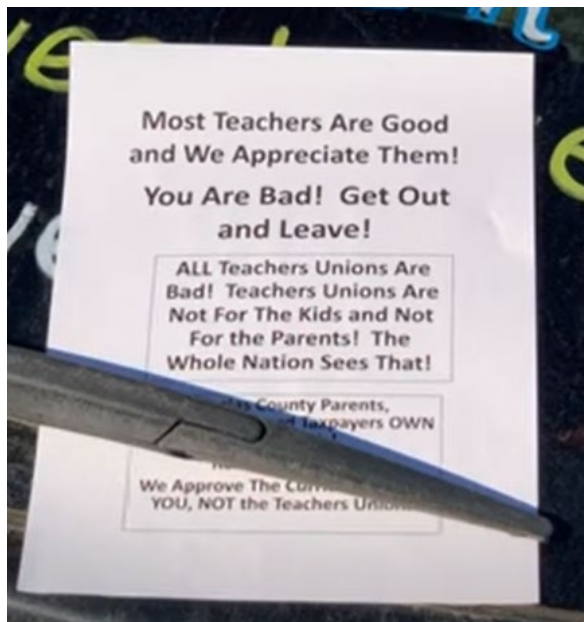
*Id.* Thus, the person who submitted was on clear notice that the CORA request itself is a "public records" that the District was committed to release, upon request, without redacting the name of the requestor.

14. Following the submission of **the original CORA Request for sick leave participants**, in response thereto, on February 15, 2022, DCSD sent an email to all teachers and staff announcing that **the original CORA Request for sick leave participants** had been

submitted, and the District intended to honor/fulfill that request by providing the records requester the list of names.

15. On February 15, 2022, Plaintiff KUSA-TV/9News, acting through its reporter and anchor Kyle Clark requested, under CORA, that DCSD produce for him a copy of **the original CORA Request for sick leave participants**.

16. The morning of February 16, 2022, many teachers in DCSD found fliers on the windshields of their cars:



17. On the evening of February 16, 2022, the Board of Education of DCSD convened a Special Meeting at which it voted, at the start of the meeting, to conduct an Executive Session to receive legal advice concerning **the original CORA Request for sick leave participants** and also to discuss specialized security matters that had arisen since the District announced its intention to release the teachers' names. *See* <https://www.youtube.com/watch?v=-qUHwAohoC8&t=4810s>

18. The Executive Session on February 16, 2022 lasted approximately 70 minutes. Immediately upon its completion, the Board of Education convened back in a public meeting. Board President Michael Peterson announced that the Board would not be releasing the names of teachers and staff who called in sick on February 3, 2022 (apparently because **the original CORA Request for sick leave participants** had been withdrawn).

19. Subsequently, on or about March 10, 2022, DCSD notified Mr. Clark that it would not make available to him **the original CORA Request for sick leave participants** on grounds that **the original CORA Request for sick leave participants** had been withdrawn and the District believed it was therefore no longer a public record.

20. On March 11, 2022, undersigned counsel provided written notice to CDHS of the Plaintiffs' intent to file this Application for an Order to Show Cause pursuant to § 24-72-204(5),

C.R.S. **Exhibit 1** to this Application is a true and correct copy of that written notice.

**FIRST CLAIM FOR RELIEF**  
(Application for Order to Show Cause)

21. Plaintiffs incorporate by reference all of the allegations and statements in the foregoing Paragraphs.

22. Pursuant to § 24-72-204(5), C.R.S., the Plaintiffs are entitled to – and hereby formally apply for – the entry of an Order to Show Cause, directing that the Defendant to appear and show cause why the public record that was sought by the Plaintiffs under the CORA should not be disclosed to them.

23. As required by the CORA, the Court should set the date of the show cause hearing at “the earliest time practical.”

24. Upon completion of the hearing on the Order to Show Cause, the Court should enter and order directing the Defendant to provide the Plaintiffs with the public records they requested to inspect.

25. The proposed form of an Order to Show Cause is attached hereto.

**Prayer For Relief**

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

- A. The Court enter an Order directing the Defendant to show cause why DCSD should not permit inspection and copying of the requested Public Record as described in this Complaint and Application for Order to Show Cause;
- B. The Court conduct a hearing pursuant to such Order “at the earliest practical time” at which the Court may make the Order to Show Cause absolute;
- C. At the conclusion of the hearing on the Order to Show Cause, the Court enter an order directing the Defendant to disclose **the original CORA Request for sick leave participants** to Plaintiffs;
- D. At the conclusion of the hearing on the Order to Show Cause, the Court enter an order directing the Defendant to pay Plaintiffs their reasonable attorneys’ fees and costs, pursuant to § 24-72-204(5), C.R.S.;
- E. Enter such further and additional relief as the Court deems just and proper.

Dated: April 6, 2022

By                     /s/ Steven D. Zansberg                      
Steven D. Zansberg  
LAW OFFICE OF STEVEN D. ZANSBERG, LLC  
*Attorneys for Plaintiffs*

Plaintiffs' Addresses:  
KUSA-TV/9News  
500 East Speer Blvd.  
Denver, CO 80203

THIS COMPLAINT AND APPLICATION FOR AN ORDER TO SHOW  
CAUSE WAS FILED WITH THE COURT THROUGH THE ICCES  
ELECTRONIC FILING PROCEDURES, UNDER C.R.C.P. 121(c), §  
1-26.

AS REQUIRED BY THOSE RULES, THE ORIGINAL SIGNED COPY OF  
THIS PLEADING IS ON FILE WITH THE  
LAW OFFICE OF STEVEN D. ZANSBERG, LLC.