District Court, Gunnison County, State of Colorado 200 E. Virginia Ave Gunnison, CO 81230 Telephone: (970) 642-8300, ext. 0	DATE FILED: May 16, 2022 9:39 AM CASE NUMBER: 2022CV30017
Plaintiff: ANDREW BROOKHART, in his official capacity as the Executive Director and Custodian of Records of the Gunnison County Library District v. Respondent: MARK REAMAN, in his capacity as the Editor of the Crested Butte News	▲ **COURT USE ONLY** ▲
	Case No: 2022CV30017 Div.: 2
ORDER ON APPLICATION FOR PUBLIC RECORDS	

This is an action brought by the Gunnison County Library District (hereinafter "Library") pursuant to C.R.S. §24-72-204(6)(a). It relates to a public records request by the Crested Butte News and its Editor, Mark Reamon (hereinafter collectively, "CB News"). They seek determination as to whether to release the information, release with redaction or not release the information.

The issue relates to a request for "all Requests for Reconsideration Forms" filed with the Library since January 1, 2022. The request forms include sections providing personal identifying information. There have been four such requests in this time period.

The Library argues that C.R.S. §24-90-119 concerning disclosure of user records states that "a publicly supported library shall not disclose any record that identifies a person as having used the library" and doing so is a civil infraction such that they seek this Court order.

The CB News argues that the requests are for public records, are not "user documents," were submitted to the Library, a public entity, requesting removal or relocation of material in the Library and are a matter of public policy, interest or concern. They contend anonymity prevents transparency and accountability.

The parties agreed that the facts were not in dispute and that the Court should rule based on the pleadings. The Court was informed the Library did not intend to file a reply to the Response of CB News. Accordingly, the matter is fully briefed.

Analysis

Pursuant to C.R.S. §24-72-204(6)(a), the Court must determine whether disclosure of the information would do substantial injury to the public interest and whether disclosure is prohibited.

Regarding disclosure of personal information, C.R.S. §24-90-119(2) permits a library to disclose such personal information pursuant to a subpoena, upon court order, or where otherwise required by law.

C.R.S. §24-72-204(3)(VII) directs libraries to deny the right of inspection of the following records unless otherwise provided by law.

"VIII. Library records disclosing the identity for a user as prohibited by section 24-90-119."

This statutory framework does not define "user." The Court notes a Court of Appeals decision in a CORA dispute, *Bodelson v. City of Littleton,* 36 P.3d 2014 (Colo. App. 2001) at p.216:

> When interpreting a statute, we attempt to implement the intent of the General Assembly. To discern that intent, we look first to the plain language of the statute and interpret statutory terms in accordance with their commonly accepted meanings. *Sears v. Romer,* 928 P.2d 745 (Colo.App.1996). If the words used are plain and unambiguous, our task is accomplished by giving effect to their commonly accepted meanings. *Brock v. Nyland,* 955 P.2d 1037 (Colo.1998). We must avoid a strained or forced construction of a statutory term, and we must look to the context in which a statutory term is employed. *Miller v. Byrne,* 916 P.2d 566 (Colo.App.1995). And, when statutes on the same subject are potentially conflicting, we must reconcile the statutes, if possible, to avoid an inconsistent or absurd result. *In re Marriage of Ford,* 851 P.2d 295 (Colo.App.1993).
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> The general purpose of CORA, § 24–72–201, et seq., C.R.S.2001, is to allow disclosure of records to the public. Exceptions to CORA must be narrowly construed. *Sargent Sch. Dist. No. RE–33J v. Western Services, Inc.,* 751 P.2d 56 (Colo.1988); *Bodelson v. Denver Publ'g Co.,* 5 P.3d 373 (Colo.App.2000).

Martinelli v. District Court, 612 P.2d 1083 (Colo.1980) established a test for balancing privacy interests and requests for information as it related to personnel files of police officers for purposes of a civil lawsuit. The analysis must weigh the interest in disclosure and the interest in confidentiality. The Colorado Supreme Court identified a three-part analysis.

1. Is there a legitimate expectation of privacy.
2. Is the disclosure required to serve a compelling state interest; and
3. Is the disclosure in the least intrusive manner.

This Court was reversed in *Wick Communications Company v. Montrose County Board of County Commissioners,* 81 P.3d 360 (Colo. 2003) in ordering the production of the county manager's diary which he had used in a public hearing in order to confirm the date of a meeting with the airport manage who was terminated. The Colorado Supreme Court stated at p.365:

> Generally, the intent behind CORA is stated in the legislative declaration: "It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times...." § 24–72–201. CORA limits disclosure requirements, however, to public records, which the Act defines: " 'Public records' " means and includes all writings made, maintained, or kept by the state, ... or political subdivision of the state ... for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds." § 24–72–202(6)(a)(I).
> Although generally CORA favors broad disclosure, the General Assembly recognized that not all documents should be subject to public disclosure. First, the definition of "public record" limits which documents are subject to disclosure under the statute. Further, that definition is limited by exceptions for certain documents that the General Assembly deemed inappropriate for disclosure such as work product, criminal justice records, and trade secrets. § 24–72–202(6)(a)(II), (6)(b);

Finally, the Court has considered *Tattered Cover, Inc. v. City of Thornton,* 44 P.3d 1044 (Colo. 2002) regarding a search warrant requested by law enforcement to the Tattered Cover Bookstore. The purpose of the search warrant was to determine if books were purchased by certain individuals, specifically "how to" books for drug laboratories. The Colorado Supreme Court noted the right to receive information and ideas and the importance of "anonymity" for the uninhibited exercise of First Amendment rights. It stated at pp. 1052-53:

> Bookstores are places where a citizen can explore ideas, receive information, and discover myriad perspectives on every topic imaginable. When a person buys a book at a bookstore, he engages in activity protected by the First Amendment because he is exercising his right to read and receive ideas and information. Any governmental action that interferes with the willingness of customers to purchase books, or booksellers to sell books, thus implicates First Amendment concerns.

Anonymity is often essential to the successful and uninhibited exercise of First Amendment rights, precisely because of the chilling effects that can result from disclosure of identity. The Supreme Court has recognized this principle numerous times in various contexts. For instance, in *McIntyre v. Ohio Elections Commission,* the Court stated, “Anonymity is a shield from the tyranny of the majority. It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society.” 514 U.S. 334, 357, 115 S.Ct. 1511, 131 L.Ed.2d 426 (1995) (citation omitted).
The need to protect anonymity in the context of the First Amendment has particular applicability to book-buying activity. As was explained in *United States v. Rumely,* governmental inquiry and intrusion into the reading choices of bookstore customers will almost certainly chill their constitutionally protected rights:

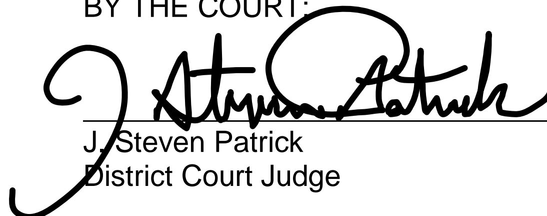
Here the Court is faced with the following:

1. An individual’s statutory protection from disclosure of “use” of a library.
2. The public interest in a free press, including public records of issues such as in what section certain books are located. And further, what requests and for what books and by which persons have been made for removal or relocation.
3. The *Martinelli* balancing tests of legitimate expectation of privacy, the public interest in disclosure and whether it is the least restrictive alternative.

The Court concludes that the request should be disclosed, finding that the public is entitled to this on balancing tests 1 and 2, however the name and any other identifying information shall be redacted, as being the least drastic alternative, and preserving the anonymity discussed in *Tattered Cover*. The Court concludes that user in the statute under this analysis is not limited to someone who reads material in the library, or, checks out material, but inclusive of any person “using” library services.

Dated this 16th day of May 2022.

BY THE COURT:



J. Steven Patrick
District Court Judge

cc: e-filed to parties of record