

District Court, Larimer County, State of Colorado 201 LaPorte Avenue, Suite 100 Fort Collins, CO 80521-2761 (970) 494-3500	DATE FILED: April 21, 2022 11:35 AM CASE NUMBER: 2021CV183
<b>Plaintiff:</b> Michele Dipietro  v.  <b>Defendants:</b> Delynn Coldiron, et. al.	<p style="text-align: center;"><b>▲ COURT USE ONLY ▲</b></p> Case Number: 2021CV183  Courtroom: 5B
<b>ORDER REGARDING ATTORNEY-CLIENT PRIVILEGE CLAIM</b>	

Plaintiff brought this case to review a denial of requests she made under the Colorado Open Records Act, (“CORA”). C.R.S. §24-72-201, et seq.

The Court has reviewed twenty-two emails submitted by the City of Loveland for in-camera review. The City asserts that they are privileged and therefore, exempt from the CORA request. See §24-72-204(3)(a)(IV).

Typically, documents falling under attorney-client privilege are protected for very good reasons. The privilege is “rooted in the principle that candid and open discussion by the client to the attorney without fear of disclosure will promote the orderly administration of justice.” See *Law Offices of Bernard D. Morley, P.C. v. MacFarlane*, 647 P.2d 1215, 1221 (Colo. 1982) (quoting *A. v. District Court*, 550 P.2d 315, 324 (Colo. 1976)).

Protecting confidential communications between an attorney and a client “not only facilitates the full development of facts essential to proper representation of a client but also encourages the general public to seek early legal assistance.” *National Farmers Union Property & Cas. Co.*, 718 P.2d 1044, 1047 (Colo. 1986).

Despite the strong policy reasons that give rise to the privilege, the attorney-client privilege is not absolute, and when the social policies underlying the privilege conflict with other prevailing public policies, the attorney-client privilege must give way. See *Bernard D. Morley, P.C.*, 647 P.2d at 1220.

The Courts have addressed the privilege in the context of a CORA request. "...[B]ecause the General Assembly has specifically authorized denial of inspection of "privileged information" in § 24-72-204(3)(a)(IV), C.R.S., we conclude that the privileges for attorney-client communication and attorney work product established by common law have been incorporated into the Open Records Act. See *Denver Post Corp. v. University of Colorado*, 739 P.2d 874, 880 (Colo. App. 1987).

Generally, attorney-client privileged documents are not available to a requesting party; however, the legislature made specific exception for a person in interest.

The statute's language is both unambiguous and mandatory. "...[T]he custodian shall make any of the following records...available to the person in interest...." *Id.* "Privileged information" is listed in subsection (3)(a)(IV).

The Court concludes that these emails fall within the attorney-client privilege; however, because Plaintiff is a person in interest, she is entitled to those records.

The Court invited the filing of a motion for protective order in the Court's March 28, 2022. No such motion has been filed to date; however, Defendants may still file such a motion.

Dated: April 21, 2022.

BY THE COURT:

  
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Gregory M. Lammons  
District Court Judge