DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, CO 80401	DATE FILED January 13, 2025 4:49 PM CASE NUMBER: 2023CV193
Plaintiffs: ERIC ST. GEORGE v. **Defendants**: OFFICE OF THE STATE PUBLIC DEFENDER, LAKEWOOD POLICE DEPARTMENT, COLORADO BUREAU OF INVESTIGATION, and JEFFERSON COUNTY DISTRICT ATTORNEY	▲ **COURT USE ONLY** ▲ Case No.: 2023CV193 Division: 11 Courtroom: 140

AMENDED ORDER AND JUDGMENT FOR PENALTIES AGAINST DEFENDANTS COLORADO BUREAU OF INVESTIGATION AND OFFICE OF PUBLIC DEFENDER

THIS MATTER comes before the Court on Plaintiff's Motion For Penalties Against Defendant Colorado Bureau of Investigation and against the Office of State Public Defender as filed on October 21, 2024 (the "Motion"). The Office of Public Defender ("OPD") filed a Response on November 12, 2024. The Colorado Bureau of Investigation ("CBI") did not respond. Plaintiff filed a Reply on December 4, 2024.

I.

Plaintiff is incarcerated. In his Application, Plaintiff alleged that he made record requests, under various statutes, to each of the Defendant governmental agencies for criminal justice records at various times in March to June 2023. The allegation was that the defendant agencies did not respond or the response

was deficient. Plaintiff sought an order to show cause for the failure to produce records and other remedies. *See, e.g.,* C.R.S. § 24-72-303(f); 24-72-204(5). The Court issued the various orders to show cause on February 22, 2024 for defendants to comply and/or appear at a hearing scheduled for April 11, 2024.

Defendants City of Lakewood and Jefferson County District Attorney were eventually dismissed despite objection by Plaintiff after records were produced and for the various reasons as contained in applicable court orders.

At the April hearing, neither CBI nor OPD appeared. For present purposes, Plaintiff presented evidence demonstrating personal service of the Orders to Show Cause on the OPD. The Court then issued its Order to Produce Records requiring the CBI and separately the OPD to produce the requested documents on or before May 10, 2024.

On May 10, 2024, the CBI filed a Motion to Reconsider with the Court. The reconsideration grounds were that CBI was not served properly with the Order to Show Cause but that, nonetheless, CBI served the requested documents the day prior to the hearing. The Certificate of Service stated that Defendant was served with the Motion. Plaintiff did not respond to the Motion and, therefore, it was granted.

Regarding Defendant OPD, again there was no response. Therefore, Plaintiff filed a Motion For Contempt Citation against the OPD. Pursuant thereto, this Court issued a Citation to Show Cause for another hearing on potential remedies for September 12, 2024. The OPD first appeared in this

case by a couple of motions that sought to avoid the hearing for a few reasons, which were denied.

The hearing on September 12, 2024 commenced with Plaintiff in attendance and the OPD represented by the Attorney General's office. At the end of the two-hour hearing, the Court allowed the parties to frame any remaining issues for further briefing. This Order addresses the pending Motion and briefing as noted at the outset.

II.

The gravamen of the pending Motion against the CBI is that the Attorney General falsified the Certificate of Service of its Motion to Reconsider. Plaintiff stated he had never received such Motion until the Court forwarded it to him. Plaintiff stated that the Certificate of Service was misaddressed and therefore would have been returned to the OPD as undeliverable.

It is surprising to this Court that the Attorney General would make such a mistake. But even then, it is concerning that the mistake would not have been corrected by the Attorney General after the mail was returned. Finally, it is disconcerting to this Court that upon receiving pleadings by Plaintiff that accuse the Attorney General's office of negligence, and later neglect, and then seeking sanctions that the Attorney General's office would not even now file a pleading that contests the factual basis for these allegations or otherwise defend the substance of the records request.

The original Application stated that Plaintiff's request "sought a record of any outstanding warrant for arrest and criminal records history" under the

Colorado Open Records Act. At no time has the CBI alleged that the pre-filing letter request was deficient in some manner. The request was ignored until after this lawsuit was filed. The pending Motion complains that the response by CBI cites to a federal regulation to justify that "outstanding warrants involves data held in the CCIC/NCIC systems. . . [which] are prohibited for release by Federal law pursuant to 28 CFR Part 20.21."

Plaintiff specifically requested a record of any warrants outstanding for his arrest. Nothing in the 20 CFR 20.21 appears to prohibit the disclosure to a person of such warrants or similar information merely because it is placed in CCIC/NCIC systems. Instead, 20 CFR 20.21 affirms an "individual's right to access and review criminal history information for purposes of accuracy and completeness…." 20 CFR 20.21(f). So, without more, the substantive response by CBI appears arbitrary or capricious.

Despite CBI's procedural and substantive transgressions, the current Motion undermines such a conclusion of law. The Motion concedes that "Plaintiff St. George does not have any outstanding warrants. The request was made entirely as an intellectual exercise as part of a professional/business writing lesson that Mr. St. George was teaching to a class of fellow prisoners." (emphasis in original). Therefore, after considering the totality of the circumstances, this Court will not find that the "intellectual exercise" of his records request to the CBI rises to the level of culpability that denial is "arbitrary or capricious" to justify an award of fees, costs and penalties as requested by Plaintiff.

However, to clear the record completely, the Colorado Bureau of Investigation is ORDERED to send again the documents requested in the Application as it represented in its Motion to Reconsider.

III.

Plaintiff St. George was charged with criminal acts in 2016 and convicted in 2018 in case 2016CR2509 by another division in this judicial district court . For several months he was represented by an attorney in the Public Defender's Office. Eventually, Mr. St. George sought dismissal of his public defender, which was approved by the court in June 2017. A substantial ground for his motion was Mr. George's access to discovery material, but there were other issues as reported in the appellate opinion issued in 2018CA962. (Months later, Mr. St. George tried the criminal case *pro se* with the assistance of advisory counsel.)

Plaintiff St. George's request to the regional office in Golden, Colorado of the state OPD under the CCRJA was for the "office's official policy under which the employees of that office deny discovery files to those they represent whom are held in [Jefferson County] pre-trial detention [jail]." The Application/Complaint here stated there were three written letter requests before filing this action. The head of the Golden PD responded to the third letter stating that he was not "able to determine what document(s) are…requested." Plaintiff followed with a fourth letter providing specific details and noting that the Public Defender appointed for Mr. St. George, and who was

employed in the Golden OPD office, cited in June 2017 to that specific policy during the representation dispute in the criminal case.

After a couple case management hearings, the Court issued an Order To Show Cause to the OPD. The Return of Service on the OPD indicated the Golden OPD refused service of the Application and the Order to Show Cause, and that the process server also served the Attorney General on March 25, 2024. The Order to Show Cause required on appearance at a court hearing scheduled for April 11, 2024.

At the hearing, the OPD did not appear. Instead, testimony was received from the process server to confirm service of process. At the Golden PD Office, a receptionist, another person and a lawyer were all offered formal service of the pleadings that they refused to "accept." Instead, a copy of the pleadings was left with them and the process server retained her "original." The process server then traveled downtown to the state Attorney General's office and handed the documents to its representative (Matthew Serban) who used a "Received" stamp to indicate delivery on March 25, 2024 at 4:00 p.m.

Based on that testimony and the failure to appear, the Court issued an Order to Produce Records for the policy requested. *See generally* C.R.S. § 24-72-305. The Court order was sent to the Golden Office of the OPD. The deadline for such production was May 10, 2024. As noted above, the unrepresented OPD also did not respond to this Order to Produce Records.

Plaintiff then filed a Motion for Contempt Citation and Sanctions on May 22, 2024, which was also sent to the Golden OPD by mail and email. OPD did

not respond to this Motion. The Court noted some procedural deficiencies with the Motion in an Order sent to Plaintiff and to the OPD.

Plaintiff St. George filed a revised Motion for Contempt Citation on July 22, 2024. Pursuant thereto, the Court issued its Citation to Show Cause that set a contempt hearing on September 12, 2024 (which this Court also sent to the Golden OPD). The Attorney General filed a response to this Order to Show Cause stating that he was never forwarded any pleadings by his client, the OPD, in this case until August 28, 2024. The Response asked that the contempt hearing be vacated, which the Court denied.

The Response also affirmatively stated the OPD has no record of Plaintiff's record requests. This general statement does not address the specific the pre-filing letters or the post-filing pleadings and Court orders. In any case, the denial is not credible and is directly controverted by the record. The head of the Golden OPD responded by letter to Plaintiff's third letter. Further, the detailed testimony of the process server described discussions with at least three persons at the Golden OPD office. Finally, this Court sent its orders to the Golden OPD as it does in a multitude of cases. An unrepresented party receives all pleadings directly to that party until counsel appears. In any case, at no time during this proceeding was there any evidence presented, in affidavit form or at a hearing, to substantiate the contention that the OPD did not know of Plaintiff's record requests by letter or by proceedings in this lawsuit.

At the hearing on September 12, 2024, counsel for OPD admitted there was a specific written policy as requested by Mr. St. George. The policy was two

or three paragraphs in length and was contained in a longer administrative document. The policy was used by and contained with the Golden PD office. The written policy was developed using citations to a rule of criminal procedure and a rule of professional conduct. The policy was also time relevant, as it was dated April 20, 2017. The policy was a revision of an earlier policy but the OPD did not produce the earlier policy (that covered the first several months of the criminal case). The OPD could not state if the quoted policy paragraphs were new or were contained in, or modifications of, a prior policy.

The document itself was not produced. Instead, counsel for the OPD reproduced the language of the policy in a filed Addendum submitted the day after the hearing. There is no information as to the title of the administrative document in which the language appears. There is no specific claim that the entire administrative document is not a public record or a record that addresses criminal justice topic. There is no citation to a disclosure exception under the Open Records Act or the CCRJA or other relevant law or regulation justifying denial of access. Apparently to avoid this obligation, counsel insists that OPD was not complying with the Acts but was providing the language as a "mere courtesy."

OPD states that the entirety of the Colorado Criminal Justice Records Act and the Open Records Act do not apply to the OPD. The contention is the OPD a not a criminal justice agency. The Court finds this statement to be substantially groundless. The OPD is "established as an agency of the judicial department of state government." C.R.S. § 21-1-101(1). The OPD is involved in

criminal justice in this state, to state the obvious. *See, e.g.,* C.R.S. § 21-1-104(1). The CCRJA applies to "…any agency of the state…." *Id.* § 24-72-302(3).

Notwithstanding the reality of its daily function, OPD claims that it is not intended to be within the CCRJA definition of the "criminal justice agency." No citation, collateral authority or legislative history is provided for this reasoning. *See, e.g.,* Paragraphs 11 and 12 of the Response. Instead, OPD argues that the criminal justice activities described specifically include the word "prosecution" but not "defense," and that does not fall within the other described entities for law enforcement. For example, OPD contends it does detect or investigate crimes and does not apprehend or supervise its clients.

Plucking those words from the statute is a haphazard form of statutory construction. In a similar vein, however, the OPD does "perform an activity" that is "directly related to" other enumerated activities, such as "pre-trial release, post-trial release…of accused persons or criminal offenders." The important work by OPD is "directly related" to the "prosecution" of accused persons by providing a defense and/or resolution in the same courtroom during the course of that prosecution. There is nothing in the definition of "criminal justice agency" that makes clear the "intent" was to exclude the activities of the OPD as a state agency in the criminal justice process. A public defender counsel and defends their clients, such as Plaintiff, charged with a criminal offense "at every stage of the proceeding following arrest, detention or service of process" including appeals. C.R.S.§ 21-1-104(1).

The OPD's sophistry is further contradicted by the Colorado Supreme Court who has decided that the OPD is subject to the Open Records Act and CCRJA. The Judicial Department includes the OPD within its interpretation of the CCJRA and, in fact, has established a separate set of "rules" regarding disclosure of its records. *See* Colorado Supreme Court, Chapter 38, P.A.I.R.R. 2, Section 1, paragraph (10); *see generally* C.R.S. § 24-72-305(1); 24-72-203(1).

Thus, the Court concludes that the record here indicates such a generic response to be an abuse of discretion and does not in good faith implement the open records disclosure of these two acts. *See Gazette v. Bougerie*, 533 P.3d 597, 603-04 (Colo. App. 2023).

This is especially true when the OPD admits it has such a policy and that, among other things, specifically addresses criminal case discovery files provided to OPD lawyers regarding crimes alleged against their clients. A "criminal justice record" is any document kept by a criminal justice agency "for use in the exercise of its functions required or authorized by law…" The Addendum on Behalf of the OPD filed on September 13, 2024 describes the policy and cites a Colorado Rule of Criminal Procedures and a Colorado Rule of Professional Conduct as authority. To be clear, this policy (and not specific case records) was the type of document requested. No confidential information was requested. The Court finds that this administrative record regarding the procedures within the OPD qualifies as a criminal justice record as defined in the CCRJA and the Open Records Act.

For whatever other unarticulated reason, the OPD has not produced, or even offered to produce, the policy prior to April 10, 2017. Therefore, Plaintiff St. George challenged the completeness of the disclosure at the September 12, 2024 hearing as he had previously. The Court provided additional time for OPD to obtain this information. The Response of OPD filed on November 12, 2024 did not provide or even discuss this missing information. *See generally* C.R.S. § 24-72-307. No statutory exception is invoked. There is no explanation available for this Court to "review the custodian's decision for an abuse of discretion." *Madrigal v. City of Aurora*, 340 P.2d 297, 299 (Colo. App. 2014).

After considering the totality of the circumstances regarding the procedure and substance of the responses, and in light of the Open Records Act and the CCRJA, the Court finds and holds that the response by the Golden OPD denial of the existence or understanding of the disclosure was not proper. *See* C.R.S. § 24-72-305. Rather, before and during this proceeding, OPD's employees and lawyer ignored or refused process of service and ignored subsequent court orders. No motions to quash or other filings were made, such as by other defendants to resolve notice issues. At no time during this proceeding has OPD contradicted with particularity the fact allegations contained in the Application that addressed its conduct, for example, receipt of Plaintiff's letters to the OPD prior to suit.

The OPD was provided an evidentiary hearing on September 12, 2024 to present any admissible evidence or otherwise contest the Contempt Citation based on the Application. *See* Order (August 29. 2024). The OPD presented no

affidavits or testimony or other evidence at the hearing. (Counsel for OPD read the entirety of the now-disclosed policy into the record.) The OPD pleadings contained few if any citations or authority for its legal position. The Court finds that, after considering the intent of the Open Records Act and the CCRJA and the circumstances here, the OPD's actions were arbitrary and capricious.

IV.

The remaining issue is the remedy. Plaintiff is *pro se* and filing fees were waived by indigency, so an award of attorney fees and costs is not applicable or requested. Rather, Plaintiff St. George requests the statutory penalty of "$25.00 for each day that access was improperly denied." C.R.S. § 24-72-305(7). Plaintiff notes that inspection or denial is presumed three days after the request. *See* C.R.S. 24-72-203(3)(b); 24-72-305(6).

The requests to OPD were sent by Plaintiff via USPS mail. The Application states the first letter was sent on March 7, 2023, the second letter was sent on April 7, 2023 and the third letter was sent on May 8, 2023. The third letter was sent via certified mail, which USPS receipt was signed as received on May 15, 2023. From the latter communication, the Court reasonably infers those seven days were needed for a letter mailed by Plaintiff to reach the Golden OPD. Using that time, the first letter mailed would have been received on March 14, 2023, which was a Tuesday. The inspection or denial was due within three days -- on or before Friday, March 17, 2023. Instead of offering a physical inspection, a responsive letter enclosing the administrative policy document(s) would have been appropriate (the

communication means used by other defendants) considering Plaintiff's incarceration.

Thus, there are 546 days from March 17, 2023, the response date, to September 13, 2024 when the Addendum pleading was sent to Mr. St. George in this case. Therefore, the Court enters JUDGMENT in favor of Plaintiff Eric St. George and against the **Office of Public Defender** in the amount of $13,650.00 as the prescribed statutory penalty. The amount shall be paid to Mr. St. George on or before February 3, 2025.

It is FURTHER ORDERED that the **Colorado Bureau of Investigation** send the documents requested in the Application again to Eric St. George, c/o FCF – 180161, P.O. Box 999, Canon City, CO 80215-0999.

IT IS SO ORDERED.

DATED: January 10, 2025.

BY THE COURT:

Todd L. Vriesman
District Court Judge