

DISTRICT COURT, CITY AND COUNTY OF DENVER, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED February 26, 2026 4:19 PM CASE NUMBER: 2025CV34491 Δ COURT USE ONLY Δ
Plaintiff: MARISELA ESTRADA v. Defendant: KATHLEEN PHELAN	Case No.: 2025CV34491 Division: 209
ORDER RE: SHOW CAUSE HEARING	

This matter came before the Court on February 25, 2026 for show cause hearing pursuant to C.R.S. § 24-72-305(7). Plaintiff Marisela Estrada appearing by counsel, Felipe Bohnet-Gomez and Aria Vaughn of Rathod Mohamedbhai, LLC, and Defendant Kathleen Phelan appearing by counsel, Andrew Oh-Willeke of the Denver City Attorney’s Office. At the hearing, the Court heard testimony from Kathleen Phelan and Catherine Vorhies. Exhibits D, HH, JJ, S, V, 2, and 1 were admitted at the hearing. The Court, having considered the evidence and applicable legal authority, makes the following order:

APPLICABLE LAW

1. The Colorado Criminal Justice Records Act (“CCJRA”) provides “[t]he custodian of criminal justice records may allow any person to inspect such records or any portion thereof.” C.R.S. § 24-72-305(1).

2. The CCJRA further provides:

On the ground that disclosure would be contrary to the public interest . . . the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

C.R.S. § 24-72-305(5).

3. In determining whether to deny a records request, the custodian is to conduct a balancing test of the following factors:

the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in keeping confidential information confidential; the agency's interest in pursuing ongoing investigations without compromising them; the public purpose to be served in allowing inspection; and any other pertinent consideration relevant to the circumstances of the particular request.

Freedom Colorado Info., Inc. v. El Paso Cty. Sheriff's Dep't, 196 P.3d 892, 899 (Colo. 2008).

4. If an individual is denied access to inspect any criminal justice record, they have the right to appeal this denial to the district court. C.R.S. § 24-72-305(7).

5. “The district court reviews the custodian’s determination for abuse of discretion.” *Freedom Colorado Info.*, 196 P.3d at 897.

6. “[A]n abuse of discretion occurs when the . . . decision is manifestly arbitrary, unreasonable, or unfair. A misapplication of the law would also constitute an abuse of discretion.” *Id.* at 899 (internal citations omitted).

7. A reviewing court should look to see if the custodian

has misconstrued or misapplied applicable law or whether the decision under review is not reasonably supported by competent evidence in the record. Lack of competent evidence occurs when the . . . decision is so devoid of evidentiary support that it can only be explained as an arbitrary and capricious exercise of authority.

Id. at 899-900 (internal citations omitted).

8. The reviewing court should not substitute its judgment for that of the custodian’s and “should not redo the custodian’s balancing of interests.” *Id.* at 900.

9. The court’s review of the custodian’s denial is a three-step process. “First, the court reviews the criminal justice record at issue. Second, the court takes into account the custodian’s balancing of the interests and articulation of his or her determination. Lastly, the court decides whether the custodian has properly determined to . . . prohibit inspection of the record.” *Id.*

10. “If the custodian has failed to engage in the required balancing of the interests or has not articulated his or her rationale, then the trial court should remand the case to the custodian to do so in order to enable judicial review.” *Id.*

11. Additionally, the court

shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay the

applicant's court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount not to exceed twenty-five dollars for each day that access was improperly denied.

C.R.S. § 24-72-305(7).

ANALYSIS

12. Plaintiff Marisela Estrada, an individual, is a resident of the State of Colorado, and is a “person” as defined by the CCJRA. *See* C.R.S. § 24-72-302(9).

13. The Denver Police Department (“DPD”) is a public entity subject to CCJRA.

14. Estrada first requested DPD’s investigative records on or about April 11, 2025, then again on May 2, 2025 and July 2, 2025.

15. These records requests were initially denied on the grounds DPD’s investigation was still ongoing.

16. Estrada again requested DPD’s investigative records on July 23, 2025. That records request was again denied on July 30, 2025. DPD stated although its own investigation was completed, the records could not be released because of the “internal investigation” of the Denver Sheriff’s Department (“DSD”).

17. Estrada once again sought DPD’s investigative records on December 10, 2025. DPD again denied the records request, claiming the records “can not be released at this time” because DSD’s investigation was still “open.”

18. DPD asserted release of the records was contrary to the public interest because “[i]n our analysis, the pertinent factor is in the public’s best interest that the integrity of the investigation be maintained with complete and significant investigation with all agencies prior to release of records in this in-custody death.”

19. While DPD’s custodian of records testified she conducted a balancing test, there was no evidence in the records she did so. Rather, the evidence in the record supports the conclusion and the Court holds that while she diligently asked if there was an open investigation, when told there was, she decided it was not in the public interest to release the records based on that factor alone.

20. There is zero evidence other than her self-serving testimony she did any balancing test. And despite testifying she took the lead from the investigators on the import of the investigation and the potential for the investigation being compromised, there was not a single document presented to the Court where an investigator told her releasing the records would compromise its investigation. In other words, her analysis began and ended with the question of whether there was an ongoing investigation. This is contrary to *Freedom Colorado Info.*, 196 P.3d at 897.

21. Further, the representative from DSD testified DSD never advised or directed DPD it could not or should not release the requested records. Rather, the only question ever asked of DSD was whether the investigation was ongoing and the timing

for resolution. In other words, the determination was made solely on DSD's report there was a pending investigation.

22. Two months after this lawsuit was filed, and a week before the hearing on this matter, DPD produced a redacted version of requested files. There was no evidence that anything had changed (after Estrada requesting the records for ten months) other than the upcoming hearing and there was no evidence as to what was still being withheld other than DSD was withholding all files generated from DSD. There was no evidence presented a proper balancing test was conducted prior to this production other than a suggestion the City Attorney, who did not testify, must have done a balancing test.

23. Further, there was evidence DPD was withholding information on the bases the information came from the DSD, when the DSD had previously released the same information.

24. The Court holds based on the above, DPD abused its discretion in failing to do the required balancing test before denying Estrada's requests under CCJRA. The Court specifically holds it is antithetical to a balancing test to let one factor override all others in every circumstance. This does not mean a pending investigation could be determinative, it just means DPD is required to balance the other facts pursuant to the Colorado Supreme Court's directive. The Court further finds despite producing a redacted version prior to hearing, the Court cannot conclude DPD cured its abuse of discretion, because there was no evidence put forth of a balancing test taking place prior

to the belated production. As such, the Court remands to DPD's custodian to do the analysis she failed to do in the first instance.

25. Finally, the Court holds DPD's failure to engage in a balancing test but instead relying on one factor to deny Estrada access to the records she requested was arbitrary and capricious and Estrada is entitled to her attorneys' fees and costs in having to file this action.

DATED: February 26, 2026.

BY THE COURT:



Sarah B. Wallace
District Court Judge