

District Court, Jefferson County, Colorado 100 Jefferson County Parkway Golden, Colorado 80401	DATE FILED October 2, 2026 2:39 PM CASE NUMBER: 2024CV31555 ▲ COURT USE ONLY ▲ Case No: 2024CV31555 Div.: 15 Courtroom: 410
Plaintiff: LENORE HERSKOVITZ, v. Defendant: CITY OF LAKEWOOD.	
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT	

THIS MATTER comes before the Court on Plaintiff Lenore Herskovitz’s (“Plaintiff”) Complaint for Declaratory Judgment against the City of Lakewood (“Defendant” or “City”).

The Court has heard the sworn testimony of Lenore Herskovitz, Paula Nystrom, Glenda Sinks, Jeslin Shahrezaei, Rebekah Stewart, Isabel Cruz, and Allison McKenney-Brown. The Court has considered the file; the law; Plaintiff’s Exhibits 1, 2, 3, 4, 5, 6, 7; and **enters the following Findings and Orders:**

I. BACKGROUND AND FACTS

This case concerns a special meeting of the Lakewood City Council (the “Council”) on August 26, 2024, and an executive session held during that meeting.

The executive session followed litigation between Colorado Christian University (“CCU”) and the City of Lakewood over the City’s zoning regulations’ application to certain university-owned residential property. In 2021, CCU filed suit against the City in Jefferson County District Court, Case No. 21CV30629, challenging the City’s zoning restrictions. Plaintiff Lenore Herskovitz intervened in that litigation. The district court entered judgment in favor of the City. CCU appealed, and on November 22, 2023, the Colorado Court of Appeals affirmed the district court’s judgment in Case No. 22CA1202.

After the appellate decision, members of the public, including Plaintiff, continued to raise concerns about enforcement of the zoning ordinance. The City then scheduled a special Lakewood City Council meeting for August 26, 2024.

Before the meeting, the City posted an agenda that identified Item 4 as a motion to enter executive session “to receive legal advice on specific legal matters pursuant to C.R.S. section 24-6-402(4)(b) and Lakewood Municipal Charter 2.15(c)(4), regarding legal issues and concerns arising out of CCU v. Lakewood, 22CA1202 (2023).”

During the meeting, a City Council member moved to enter executive session for the purpose stated in the agenda. Another member seconded the motion. The motion or announcement

did not include further description of the subject matter. The Council approved the motion unanimously by roll-call vote.

City Attorney Alison McKenney-Brown then stated that the executive session would involve privileged attorney-client communications and therefore would not be recorded. The Council then convened the executive session.

On September 23, 2024, Plaintiff's counsel requested a copy of the recording of the August 26, 2024, executive session from the Lakewood City Clerk. On September 24, 2024, the City Clerk denied the request, stating that no recording existed because the executive session was for privileged attorney-client communication and, under § 24-6-402(2)(d.5)(II)(B), C.R.S., no recording was required.

Plaintiff contends that the notice and public announcement failed to identify the specific matter to be discussed with sufficient specificity under the Colorado Open Meetings Law, and that the executive session therefore did not comply with the statute. Defendant City of Lakewood contends that the notice and announcement complied with the Colorado Open Meetings Law, that the discussion during the executive session remained within the announced subject matter and consisted of privileged attorney-client communications, and that no final action or policy decision was made during the executive session.

Plaintiff filed this action on November 5, 2024. Defendant filed its Answer on July 30, 2025. The Court must determine whether the August 26, 2024, executive session complied with the Colorado Open Meetings Law and, if not, what, if any, relief is appropriate.

II. DISCUSSION AND ANALYSIS

A. Burden of Proof

In the absence of special circumstances not present here, the burden of proof in a civil action is by a preponderance of the evidence. § 13-25-127(1), C.R.S. The burden of proof is on the plaintiff. *Bayly, Martin & Fay, Inc. v. Pete's Satire, Inc.*, 739 P.2d 239, 242–43 (Colo.1987); *Capitol Life Ins. Co. v. Roth*, 191 Colo. 289, 291, 553 P.2d 390, 392 (1976).

B. Colorado Open Meetings Law

The Colorado Open Meetings Law (“COML”) declares it to be “a matter of statewide concern and the policy of this state that the formation of public policy is public business and may not be conducted in secret.” § 24-6-401, C.R.S. COML therefore generally requires meetings of a local public body at which public business is discussed or formal action may be taken to be open to the public. § 24-6-402(2)(b), C.R.S. Because COML protects important public interests, its provisions are interpreted favorably to protect the public. *Weisfield v. City of Arvada*, 2015 COA 43, ¶ 14, 361 P.3d 1069, 1072.

COML nevertheless permits a local public body to meet in executive session for certain enumerated purposes. As relevant here, a public body may convene an executive session for

“[c]onferences with an attorney for the local public body for the purposes of receiving legal advice on specific legal questions.” § 24-6-402(4)(b), C.R.S. The executive-session provisions are exceptions to COML’s general requirement of openness, and a local public body must strictly comply with the statutory requirements for invoking them. *Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004).

Before entering an executive session, the public body must publicly announce the topic to be discussed, specifically cite the statutory provision authorizing the executive session, and identify “the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.” § 24-6-402(4), C.R.S. The body must also obtain the affirmative vote of two-thirds of the quorum present. *Id.*; see *Bjornsen v. Bd. of Cnty. Comm’rs*, 2019 COA 59, ¶ 16, 487 P.3d 1015, 1020.

The requirement to identify the “particular matter” demands more than simply reciting one of COML’s statutory categories for executive sessions. In *Guy v. Whitsitt*, the court held that an announcement identifying only “legal advice” did not satisfy § 24-6-402(4). 2020 COA 93, ¶¶ 11, 21, 27, 469 P.3d 546, 550–52. The public body must provide information concerning the subject matter on which legal advice will be sought, to the extent it can do so without compromising the purpose of the executive session. *Id.* The attorney-client privilege ordinarily does not prevent disclosure of the general subject matter of the attorney-client communication. *Id.* at ¶ 21.

The Colorado Supreme Court later confirmed that distinction in *Sentinel Colorado v. Rodriguez*, 2025 CO 58, 577 P.3d 48. The Court explained that *Guy* required the public body to provide more information about the topic of the legal advice without revealing the substance of privileged communications. The Court distinguished between the substance of attorney-client communications, which may remain privileged, and underlying facts such as the fact of the communication, the identity of counsel, the subject discussed, and details concerning the meeting, which ordinarily are not privileged. *Id.* at ¶¶ 40–43. Thus, COML permits and requires disclosure of the subject of the anticipated legal advice while preserving the confidentiality of the advice itself.

COML also generally requires executive-session discussions to be electronically recorded. § 24-6-402(2)(d.5)(II)(A), C.R.S. An exception applies to portions of an executive session that constitute privileged attorney-client communications if the statutory requirements for invoking the privilege are satisfied. See § 24-6-402(2)(d.5)(II)(B), C.R.S. The attorney-client privilege protects the substance of communications made for the purpose of obtaining or providing legal advice, but it does not protect otherwise unprivileged underlying facts merely because those facts were communicated to counsel. *Sentinel Colorado* at ¶¶ 36–39.

C. Analysis

The Court finds that the Lakewood City Council is a local public body subject to COML and that a quorum was present when the Council voted to enter executive session. The issue is whether the Council sufficiently identified the specific matter to be discussed before entering executive session.

The public agenda stated that the Council would consider “[a] motion to go into an executive session to receive legal advice on specific legal matters pursuant to C.R.S. § 24-6-402(4)(b) and Lakewood Municipal Charter § 2.15(C)(4), regarding legal issues and concerns arising out of CCU v. Lakewood, 22CA1202 (2023).” The motion made during the public meeting contained a substantially similar description.

The Court recognizes that this announcement provided more information than the announcement deemed insufficient in *Guy v. Whitsitt*. In *Guy*, the Town Council identified only general statutory categories, including “legal advice,” without specifying the subject matter of that advice. 2020 COA 93 at ¶11. Here, the Council identified a specific lawsuit and appellate proceeding to which the anticipated legal advice related.

That distinction, however, does not resolve the statutory inquiry. Section 24-6-402(4), C.R.S. requires a public body to identify “the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized.” The relevant question is therefore not simply whether the public could identify the litigation generally associated with the executive session, but whether the Council identified the particular legal matter underlying that litigation with as much specificity as reasonably possible.

Here, the announcement identified only unspecified “legal issues and concerns arising out of” CCU v. Lakewood. It did not specify which legal issue or concern arising from that litigation the Council intended to discuss. Although identifying the appellate case narrowed the potential subject matter, it did not inform the public whether the Council intended to receive legal advice on enforcement of the zoning ordinance, the legal effect of the appellate decision, potential land-use issues, amendment of the ordinance, future litigation, or some other matter.

Ms. Herskovitz testified that she did not understand from the announcement which issue the Council intended to discuss and was therefore unable to prepare public comment on that issue. The Court does not treat Ms. Herskovitz’s subjective understanding as dispositive of whether COML was violated. Her testimony, however, illustrates the limited information conveyed by the announcement.

The Court is also mindful that COML does not require a public body to disclose the substance of confidential legal advice before receiving it. The statute itself accommodates that interest by requiring disclosure only to the extent possible without compromising the purpose of the executive session. But identifying the general legal subject to be discussed is different from disclosing counsel’s advice on that subject. Nothing in the record establishes that identifying the particular legal issue or concern arising from the CCU litigation would itself have revealed a privileged attorney-client communication or otherwise compromised the purpose of the executive session.

The Council could have provided additional information about the subject of the legal advice while preserving the confidentiality of the advice itself. For example, it could have identified the legal issue as involving enforcement of the zoning ordinance, the continuing legal effect of the appellate decision, potential land-use implications, or any other discrete legal question

the Council intended to address, without disclosing counsel's analysis, recommendations, or conclusions.

Accordingly, the Court finds that the statement that the Council would discuss "legal issues and concerns arising out of CCU v. Lakewood, 22CA1202 (2023)" failed to identify the specific matter to be discussed in as much detail as required by § 24-6-402(4), C.R.S. The Council therefore did not strictly comply with COML's requirements for convening the August 26, 2024, executive session.

Having found that the City failed to comply with the notice requirements of § 24-6-402(4), the Court must determine the appropriate relief.

COML authorizes a court to issue injunctions to enforce the purposes of the statute. § 24-6-402(9)(b), C.R.S. It also provides that no resolution, rule, regulation, ordinance, or formal action of a local public body is valid unless adopted at a meeting that complies with the statute. § 24-6-402(8), C.R.S.

The record here does not establish that the Council took any formal action during the August 26, 2024, executive session. Accordingly, there is no action for the Court to invalidate under § 24-6-402(8), C.R.S.

Nor can the Court order the production of a recording of the executive session because none was made. The Court further finds that the City did not waive the attorney-client privilege applicable to privileged communications between the City Council and its attorneys. A violation of COML's requirements for convening an executive session does not, standing alone, constitute a waiver of the attorney-client privilege. *See Sentinel Colorado v. Rodriguez*, 2025 CO 58, ¶42.

III. CONCLUSION

The Court declares that the Lakewood City Council violated § 24-6-402(4), C.R.S. by failing to identify, to the extent possible without compromising the purpose of the executive session, the particular matter to be discussed during the August 26, 2024, executive session. Beyond that declaration, the Court finds no additional injunctive or disclosure relief warranted by the present record.

Because Plaintiff prevailed in establishing a violation of COML, she is entitled to an award of her costs and reasonable attorney fees pursuant to § 24-6-402(9)(b), C.R.S. The amount of those fees and costs shall be determined upon appropriate motion and supporting documentation.

SO ORDERED on this 2nd day of October, 2026.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'Andrew Carl Poland', is written on a light purple rectangular background.

Andrew Carl Poland
District Court Judge