

STATE OF COLORADO

DISTRICT COURT

COUNTY OF [NAME]

[NUMBER] JUDICIAL DISTRICT
Case Type: Other Civil

[Student Name],

Court File No. _____

Plaintiff,

Judge _____

v.

[Colorado State Agency Custodian],

Defendant.

COMPLAINT

This is a lawsuit seeking to enforce the right to inspect public data pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.* Plaintiff [Student Name], a Colorado journalist, requested data from Defendant, [Colorado State Agency Custodian], relevant to [description of issue]. [Describe the issue’s importance]. Through [his/her] reporting, [Student Name] seeks to inform the public about [description of events that caused the issue]. Regrettably, [Colorado State Agency Custodian] has met [Mr./Ms.] [Student Last Name]'s requests for data with obstruction, delay, and at times outright misrepresentations. Fully [#] months after [Mr./Ms.] [Student Last Name] first requested the public data necessary for [his/her] reporting, Defendant [Colorado State Agency Custodian] continues without lawful justification to withhold data that indisputably are subject to timely production under the Colorado Open Records Act (“CORA”). This Court’s intervention, and the sanction of an award of attorney fees and costs, are consequently required.

JURISDICTION AND VENUE

This action arises under the authority vested in this Court by virtue of C.R.S. § 24-72-204(5). Venue is proper in this Court pursuant to C.R.S. § 24-72-204(5).

PARTIES

1. Plaintiff [Student Name] is a journalist, and was [title] of the student newspaper at [college or university], [newspaper name], during most of the events at issue in this lawsuit. [Description of Plaintiff's work as a journalist]. [Mr./Ms.] [Student Last Name] is a resident of [Name] County, Colorado.
2. Defendant [Custodian] is the custodian of [Colorado State Agency] [description of agency's role in state, including why it maintains the relevant data]. [Custodian] is the legal custodian of the data at issue in this lawsuit. Defendant [Custodian] maintains [his/her] primary place of business at [address], is a legal resident of [Name] County, Colorado, and is amenable to service of process in [Name] County.

FACTUAL ALLEGATIONS

3. [Custodian] is an agent of the State of Colorado, and as such, is governed by the public disclosure requirements of the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.*
4. [Custodian] is the custodian at [Colorado State Agency]. Under the Act, [s/he] is designated as a responsible authority to receive and respond on behalf of the [Colorado State Agency] to requests for public data made pursuant to the Colorado Open Records Act.

[Mr./Ms.][Student Last Name]'s CORA Request to [Colorado State Agency]

5. On [date], Plaintiff [Student Name] submitted a written CORA request to [Custodian] seeking the disclosure of [#] categories of public data. (A copy of [Student Last Name]'s request letter is attached to this Complaint as Attachment [letter].)
6. By electronic mail dated [date] (attached as Attachment [letter]), [Custodian] responded to [Student Last Name] that fulfilling the request would cost [\$] for [list of services]. The letter asserted that some documents would not be produced because [classification claimed].
7. [Student Last Name] visited [Colorado State Agency] on [date] asking for access to the documents, only to be told that no documents were available.
8. [Use additional space to detail any further communication on this issue in chronological order, e.g. custodian's written statement detailing grounds for denial of request, custodian's response if records were not in his custody or control, custodian's response to request for time/hour inspection. If there has been a partial production of documents, use the following two paragraphs in the appropriate place in the timeline:]
9. It was not until [date], nearly [#] months after [Student Last Name]'s initial request, that [Custodian] provided the first batch of responsive documents to [Student Last Name]. This initial production represented only a partial response to the [#] enumerated requests in [Student Last Name]'s original CORA request letter of [date]. [Note any further production of documents on later dates.]
10. [Student Last Name] sent at least [#] follow-up emails to [Custodian] asking when he could expect to receive the balance of documents, but received no reply.

11. Defendant's production remains incomplete and does not encompass all documents in Defendant's custody or control that are subject to the CORA. In particular, Plaintiff knows, or believes based on the best available information, that Defendant possesses documents responsive to items [#]s from the original request letter] that [s/he] has yet to produce.

[Mr./Ms.][Student Last Name]'s CORA Request to [another Colorado State Agency]

12. [Using the same format above, explain any communication with a different agency regarding the same information.]

CLAIMS FOR RELIEF

Count One: Violation of the Colorado Open Records Act (CORA)

13. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.
14. The Colorado Open Records Act, C.R.S. § 24-72-201, declares that it is the public policy of the State of Colorado that "all public records shall be open for inspection by any person at reasonable times," unless specifically excepted by statute, and there is a general presumption in favor of public access to records. [*See Daniels v. City of Commerce City*, 988 F.2d 648, 650-51 (Colo. App. 1999).]
15. [If records were not in custodian's custody or control] CORA provides, C.R.S. § 24-72-203(2)(a), that if the requested records are not in the custody or control of the person to whom application is made, such person must notify the applicant of this fact and state in detail: (1) the reason for the absence of the records from the person's custody or control; (2) the location of the records; and (3) what person then has custody or control of the records.

16. [Describe custodian's response to request for records that were not in his custody and control. For example, the custodian notified Plaintiff that the requested records were not in his custody or control, but failed to identify [in detail] the reason why the records were not in his custody or control, the location of the records, or what person had custody or control of the records.]
17. [If documents are not readily available at the time of application] CORA provides, C.R.S. § 24-72-203(3), that if the requested public records are in the custody and control of the person to whom the application is made but are in active use, in storage, or otherwise not readily available at the time an applicant asks to examine them, the custodian must immediately notify the applicant of this fact. Further, if requested by the applicant, the custodian must set a date and hour at which time the records will be available for inspection. The date and hour set for the inspection must be within three working days of the request, unless the seven-day extension applies due to extenuating circumstances.
18. [Describe custodian's response to request for documents not readily available. Describe the delay [if any] in: (1) receiving a response that records are not readily available; (2) receiving a response to request for a date and hour for inspection; (3) notification of extenuating circumstances; and/or (4) denial of access.] For example, Defendant did not inform Plaintiff that the requested documents were not in his custody and control until [#] days from the date of the request. Defendant did not produce the first document responsive to [Student Last Name]'s [date] request until [#] days from the date of the request.

19. CORA, C.R.S. § 24-72-205(5), authorizes a custodian to charge a fee [not to exceed twenty-five cents per standard page for a copy of a public record] or [not to exceed the actual cost of providing a copy, printout, or photograph of a public record in a format other than a standard page.] [Further, a custodian may only assess nominal research and retrieval fees. *See Black v. Sw. Water Conservation Dist.*, 74 P.3d 462, 471-72 (Colo. App. 2003); *see also* C.R.S. § 24-72-203(1)(a).]
20. [Describe how agency charged more than the allowable charges.]
21. [If custodian made rules limiting inspection] CORA, C.R.S. § 24-72-203(1)(a), provides that the custodian may make rules regarding the inspection of public records that are “reasonably necessary” to protect the records and to prevent unnecessary interference with the duties of the custodian or the custodian’s office.
22. [Describe custodian’s rules and how they were not “reasonably necessary” for the protection of the records and the prevention of unnecessary interference with the custodian’s duties, or how they were unduly burdensome.]
23. [Describe communications with custodian and his/her response if request was denied and applicant requested statement of grounds for the denial.] For example, Defendant denied access to the requested records and Plaintiff requested a written statement of the grounds for denial, but Defendant failed to [provide a written statement] or [cite the law or regulation]. *See* C.R.S. § 24-72-204(4).
24. In refusing to timely produce data, Defendant relied on [classification: *see* C.R.S. § 24-72-204 for grounds on which custodian may deny inspection request]. [Describe why that classification is not applicable to the requested documents.]

25. By [his/her] refusal to provide timely compliance with the Act, by [his/her] reliance on fictitious classification, by [his/her] assessment of charges and fees beyond those allowed under the statute, by [his/her] continuing willful refusal to provide documents responsive to [#] of [Student Last Name]'s [#] requests, and by [his/her] production of only a partial subset of the documents in [his/her] custody responsive to the remaining [#] requests, Defendant violated the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.*, and thereby caused [Student Last Name] to obtain legal counsel to obtain the desired relief.

Count Two: Violation of the Colorado Open Records Act (CORA) (another Colorado state agency)

26. The allegations set forth in the foregoing paragraphs are incorporated herein by reference.

27. Paragraphs 2 and 3 of Count 1 are specifically incorporated herein by reference.

28. [Using the same format as above, describe how the second agency violated the CORA.]

29. By [his/her] refusal to provide timely compliance with the Act, by [his/her] reliance on fictitious classification, by [his/her] assessment of charges and fees beyond those allowed under the statute, by [his/her] continuing willful refusal to provide documents responsive to [#] of [Student Last Name]'s [#] requests, and by [his/her] production of only a partial subset of the documents in [his/her] custody responsive to the remaining [#] requests, Defendant violated the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.*, and thereby caused [Student Last Name] to obtain legal counsel to obtain the desired relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully pray that this Court:

a. Assume jurisdiction over this action;

- b. Enter an order directing Defendant to show cause why [s/he] should not permit the inspection of the requested records;
- c. Enter an injunction against Defendant directing Defendant to comply fully and without further delay with the Colorado Open Records Act and to furnish Plaintiff all public documents meeting the description in [his/her] requests;
- d. Enter an injunction directing that, because Defendant's delay in complying with [his/her] obligations under the CORA was without substantial justification, Defendants must waive all fees and charges associated with Plaintiff's requests;
- e. Award Plaintiff reasonable attorney fees and costs as authorized by C.R.S. § 24-72-204(5); and
- f. Order such additional relief as the Court may deem just and proper.

DATED this the ____ day of [month], [year].

Respectfully submitted,

Plaintiff's Lawyer, Esq.
(Colorado Bar No. [#])

Lawyer's Firm
Street Address
City, State Zip
Phone
Email