

<b>DISTRICT COURT, ARAPAHOE COUNTY, COLORADO</b>	DATE FILED: May 23, 2022 4:09 PM FILING ID: DB248A912DF62 CASE NUMBER: 2022CV30927
Court Address: 7325 S. Potomac St. Centennial, CO 80112	<b>COURT USE ONLY</b>
<b>Plaintiff:</b> THE SENTINEL COLORADO,  v.	
<b>Defendant:</b> KADEE RODRIGUEZ, city clerk, in her official capacity as records custodian	
<b>Attorney for Plaintiffs:</b> Rachael Johnson, #43597 Reporters Committee for Freedom of the Press c/o Colorado News Collaborative 2101 Arapahoe Street Denver, CO 80205 Telephone: (970) 486-1085 Facsimile: (202) 795-9310 rjohnson@rcfp.org	Case Number:  Division:
<b>APPLICATION FOR ACCESS TO EXECUTIVE SESSION RECORDING AND MEETING MINUTES AND FOR IN CAMERA REVIEW UNDER §24-72-204(5.5), C.R.S.</b>	

Plaintiff, *The Sentinel Colorado* (“*The Sentinel*”), by and through undersigned counsel, hereby state as follows:

**Introduction**

1. By this civil action under the Colorado Open Records Act (“CORA”), §§ 24-72-201 *et seq.*, C.R.S., and the Colorado Open Meetings Law (“COML”), §§ 24-6-401 *et seq.*, Plaintiff seeks access to the recording and meeting minutes of a March 14, 2022 executive session of the Aurora City Council (the “Council”) that are in the possession, custody, or control of the custodian, Kadee Rodriguez, acting in her official capacity as the City Clerk of the City of Aurora (“Defendant” or the “City”). Specifically, Plaintiff seeks access to the recording of a

March 14, 2022 executive session of the Council pertaining to the censure of Councilwoman Danielle Jurinsky (hereinafter the “March 14 Recording”).

2. Plaintiff seeks an Order from the Court directing Defendant to immediately release the entirety of the March 14 Recording to Plaintiff because, *inter alia*, the Council’s actions, as set forth below, violated the COML. Alternatively, if the Court finds it necessary to review the March 14 Recording *in camera*, pursuant to § 24-72-204(5.5), C.R.S. & § 24-6-402(d.5)(I)(C), C.R.S., Plaintiff seeks an order from the Court directing the custodian to make March 14 Recording available to Plaintiff for inspection and copying, subject to redactions the Court deems necessary—if any—following that *in camera* review.

3. *The Sentinel* is a newspaper serving the residents of the City of Aurora, Colorado. Max Levy (“Levy”), a reporter at *The Sentinel*, covers politics and has written several stories about the Council.

4. On March 18, 2022, in connection with his reporting for *The Sentinel*, Levy submitted a public records request for access to the “recording of the section of the Aurora City Council’s March 14 executive session pertaining to the censure of Danielle Jurinsky.”

5. Plaintiff’s request was wrongly denied by the City on the ground that the recording is a privileged attorney/client communication and exempt from disclosure pursuant to section § 24-6-402(d.5)(II), C.R.S.

6. In its denial, the City directed Levy to submit an application to the district court showing grounds to support a reasonable belief that the City engaged in discussions not permitted by the COML, under § 24-6-402, C.R.S.

7. As more fully set forth below, the March 14 Recording—or at a minimum, the majority of it—is not attorney-client privileged. The action taken in the March 14 executive session regarding Councilwoman Jurinsky’s censure did not involve attorney-client communications or the provision of legal advice. Based on Levy’s reporting<sup>1</sup>—which includes on-the-record comments from two councilmembers who were present at the March 14 executive

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<sup>1</sup> See Max Levy, *City of Aurora confirms closed-door council decision to end censure of Jurinsky*, *The Sentinel* (March 24, 2022), <https://sentinelcolorado.com/news/metro/city-of-aurora-confirms-closed-door-council-decision-to-end-censure-of-jurinsky/>; Max Levy, *Aurora lawmakers end censure action against council member during ‘flagrant’ open meetings violation*, *The Sentinel* (March 21, 2022), <https://sentinelcolorado.com/news/metro/aurora-lawmakers-end-censure-action-against-council-member-during-flagrant-open-meetings-violation/>; Max Levy, *Aurora lawmakers bicker, bolt over chaotic censure ordeal — pay Jurinsky’s lawyer \$16K*, *The Sentinel* (March 30, 2022), <https://sentinelcolorado.com/news/metro/aurora-lawmakers-bicker-bolt-over-chaotic-censure-ordeal-pay-jurinskys-lawyer-16k/>; Max Levy, *EDITORIAL: Dubious calls in Jurinsky censure debacle demand release of Aurora secret meeting tapes*, *The Sentinel* (April 3, 2022), <https://sentinelcolorado.com/opinion/editorial-dubious-calls-in-jurinsky-censure-debacle-demand-release-of-aurora-secret-meeting-tapes/>.

session—the Council improperly called the executive session under the guise of receiving legal advice when it actually met to discuss, and vote on, ending Councilwoman Jurinsky’s censure process. Indeed, the City has confirmed<sup>2</sup> that the closed-door Council meeting involved the decision to end Councilwoman Jurinsky’s censure process.

8. By taking formal action in the form of a roll call vote in a closed session, the Council violated the COML. *See* § 24-6-402(3)(a) & (4), C.R.S. The discussion leading to the vote, and the vote itself, are of public interest, and the “public’s business,” and should have occurred in a public meeting. Not only did the Council take illegal formal action in that improper executive session, but the notice it gave the public for convening the executive session in the agenda was merely “legal advice”—which is insufficient; the COML requires notice of the *particular* topic of discussion. Because the Council unlawfully convened an executive session, the Court must open the records of that session—including the recording and minutes—to public inspection. *Gumina v. City of Sterling*, 119 P.3d 527, 532 (Colo. App. 2004).

9. Plaintiff respectfully requests that the Court enter an Order directing Defendant to release the March 14 Recording, in its entirety, for inspection and copying. Assuming for the sake of argument that, upon an *in camera* review of the March 14 Recording, this Court determines that certain portions are attorney-client privileged, Plaintiff requests that such footage/portions be redacted, and the remainder released to Plaintiff. The Court also should direct Defendant to waive any costs associated with retrieving (or redacting) the requested records, and award Plaintiff reasonable costs and attorney’s fees associated with litigating this matter, which are mandatory under the COML and the CORA. *See* § 24-6-402(9), C.R.S.; *Van Alstein v. Housing Auth.*, 985 P.2d 97, 99-100 (Colo. App. 1998).

### **Jurisdiction & Parties**

10. This Court has jurisdiction over the claims herein under § 24-72-204(5.5) of CORA and § 24-6-402(d.5)(I)(C) of the COML. On information and belief, the March 14 executive session took place in this judicial district, and the March 14 Recording is a record in the possession, custody and/or control of the City, which is also located in this judicial district.

11. *The Sentinel* is an award-winning print weekly and digital daily newspaper serving the greater Aurora, Colorado-area and surrounding region. Its principal place of business is located at 3033 S Parker Rd, Suite 208, Aurora, CO 80014. *The Sentinel* is owned by Aurora Media Group.

12. *The Sentinel* is a leading news source for Colorado, breaking news, business, sports, health, arts & entertainment, politics, education, and more. It reaches roughly 12,000 print readers each week, and 66,000 digital readers.

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<sup>2</sup> Max Levy, *City of Aurora confirms closed-door council decision to end censure of Jurinsky*, *The Sentinel*, (March 24, 2022), <https://sentinelcolorado.com/news/metro/city-of-aurora-confirms-closed-door-council-decision-to-end-censure-of-jurinsky/>.

13. Defendant Kadee Rodriguez is sued in her official capacity as the City Clerk and custodian of records for the City of Aurora, including the March 14 Recording sought by Plaintiff that is the subject of this action. § 24-72-204, C.R.S.

### Facts

#### **The City's Violation of the COML**

14. As *The Sentinel* has reported, on January 27, 2022, Councilwoman Danielle Jurinsky appeared on the Steffan Tubbs talk radio show to discuss public safety in Aurora. During that media appearance she referred to the former Aurora Police Chief Vanessa Wilson as “trash[,]” and described a meeting with Wilson where she encouraged Wilson to replace Aurora Police Deputy Chief Darin Parker. See **Exhibit A** (hereinafter the “January 28 Article”).

15. Based on Councilwoman Jurinsky's statements on that talk radio show, Councilman Juan Marcano initiated the censure process on January 28, 2022. In a formal letter, Councilman Marcano accused Councilwoman Jurinsky of violating the City Charter and Council rules based on her comments. That formal letter also was provided to City Attorney Dan Brotzman, Mayor Mike Coffman, and other City Councilmembers. See **Exhibit A**.

16. On February 24, 2022, as *The Sentinel* reported, Councilwoman Jurinsky's attorney, David Lane, threatened to take legal action against the City if the censure process was not stopped before March 4, 2022. See **Exhibit B** (hereinafter the “February 24 Article”). That same day, the City issued a statement to *The Denver Post*<sup>3</sup> about the status of the censure process, which said, in part that “(a) public hearing on the matter has been set for Mar. 30 in the City Council chamber at 6:30 p.m.” The City shared that same statement with *The Sentinel*. See **Exhibit B**.

17. On March 14, 2022, an executive session was convened ahead of the Aurora City Council's regular meeting. *The Sentinel* reported that Councilmembers Marcano and Alison Coombs, and Lane—all of whom were present at the March 14 executive session with Councilwoman Jurinsky—stated that a majority of the councilmembers voted in the executive session to end the censure proceedings pending against Councilwoman Jurinsky and settle the matter with Lane. See **Exhibit C** (hereinafter the “March 21 Article”).

18. Additionally, according to Councilmembers Coombs and Marcano, Mayor Mike Coffman asked individual members if they were for or against continuing the censure process against Councilwoman Jurinsky. See **Exhibit C**. After the majority of councilmembers said that they did not agree with continuing the censure process, formal action was taken to end the censure process against Councilwoman Jurinsky. See *id.*

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<sup>3</sup> See Saja Hindi, *Aurora City Council faces lawsuit if it moves forward with investigation of council member, attorney warns*, *The Denver Post*, (Feb. 24, 2022, 6:00AM), <https://www.denverpost.com/2022/02/24/danielle-jurinsky-juan-marcano-lawsuit-threat-aurora-council/>

19. When asked whether the Council had reached a decision regarding censure, Ryan Luby, a spokesman for the City, stated that the City Attorney’s Office plans to deliver “an update” on the censure process during the Council’s March 21 study session. *See id.*

20. On March 21, 2022, the Aurora City Council held a regularly scheduled study session, which included an update about the censure proceeding from City Attorney Daniel Brotzman. As *The Sentinel* reported, during that March 21 study session, City Attorney Brotzman publicly acknowledged the decision to halt the censure process made at the March 14 executive session, saying the Council “gave direction” to City staffers to reach a settlement with Councilwoman Jurinsky’s attorney, Lane, that would address the scope of the investigation, how attorney’s fees will be paid, and other topics. *See Exhibit D* (hereinafter the “March 24 Article”).

21. The public agenda for the March 14 executive session does not mention the censure process pertaining to Councilwoman Jurinsky. Items 4.c and 4.d of the agenda merely say “legal advice C.R.S. 24-6-402(4)(b)<sup>4</sup>” and provide a time estimate. A true and correct copy that agenda is attached hereto as **Exhibit E** (hereinafter the “March 14 Agenda”).

#### **Plaintiff’s CORA/COML Request and Defendant’s Denial of Access**

22. On or about March 18, 2022, Levy sent a CORA/COML request to the City. A true and correct copy of that request—which is attached hereto as **Exhibit F** and incorporated by reference herein—sought:

Recording of the section of the Aurora City Council’s March 14 executive session pertaining to the censure of Danielle Jurinsky

**Exhibit F** (hereinafter the “CORA/COML Request”).

23. On or about March 22, 2022, Levy received an email response from Rodriguez denying his request. A true and correct copy of that denial, dated March 22, 2022, is attached hereto as **Exhibit G** and incorporated by reference herein (hereinafter the “March 22 Denial”).

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<sup>4</sup> In an April 3 editorial, *The Sentinel* Editorial Board noted that during the March 14 executive session, outside counsel for the City reportedly reviewed a fact-finding report on whether actions by Councilwoman Jurinsky warranted censure. *The Sentinel* is informed and believes that the fact-finding report discussed in the executive session was not attorney-client privileged material, and it is *The Sentinel*’s position that any fact-finding discussions, which would have been recorded, should be made available to the public. *See* Max Levy, *EDITORIAL: Dubious calls in Jurinsky censure debacle demand release of Aurora secret meeting tapes*, *The Sentinel* (April 3, 2022), <https://sentinelcolorado.com/opinion/editorial-dubious-calls-in-jurinsky-censure-debacle-demand-release-of-aurora-secret-meeting-tapes/>. Indeed, according to Councilmembers Coombs and Marcano, Councilwoman Jurinsky cut the attorneys off before they were able to present any of their findings.

24. The March 22, 2022 Denial stated in pertinent part:

The record being sought is privileged attorney/client communication and is exempt from disclosure, pursuant to C.R.S. 24-6-402(d.5)(II).

Pursuant to C.R.S. 24-72-204(5.5), an application may be submitted to District Court showing grounds to support a reasonable belief that the local public body engaged in substantial discussion of matters not enumerated in C.R.S. 24-6-402. The Court may then consider an in-camera review of the executive session recording to determine whether it should be turned over and/or award attorney's fees if said application is found frivolous or vexatious.

***See Exhibit G.***

25. Plaintiff sent Defendant a demand letter on April 13, 2022 in response to Defendant's March 22 Denial. A true and correct copy that letter is attached hereto as **Exhibit H** (hereinafter the "April 13 Demand Letter"). The April 13 Demand Letter provided the requisite notice of intent to file an application under § 24-72-204(5.5), C.R.S.

26. On May 5, 2022, the parties convened for the requisite meet and confer pursuant to § 24-72-204(5), C.R.S. Based on those discussions, Defendant secured a limited waiver of the attorney-client privilege from the City for the Court to review the recording of the March 14 executive session *in camera*, if necessary.

**Applicable Law**

27. The policy underlying the state's Sunshine Law, or COML, is that "the formation of public policy is public business and may not be conducted in secret." § 24-6-401, C.R.S.; *see also Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004).

28. The COML, § 24-6-402(2)(a), C.R.S., requires that "all meetings attended by two or more members of any state board, commission, committee, or other body at which any public business is discussed or at which any formal action may be taken are declared public meetings open to the public at all times."

29. Under the COML, minutes of any meeting of a local public body at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or could occur shall be taken and promptly recorded, and such records shall be open to public inspection. The minutes of a meeting during which an executive session authorized under subsection (4) of this section is held shall reflect the topic of the discussion at the executive session. § 24-6-402(d)(II), C.R.S.

30. The CORA likewise defines meeting minutes as public records. § 24-6-402(2)(d)(I) and(II).

31. Under the CORA, a public record “means and includes *all writings* made, maintained, or kept by the state, any agency, institution, a nonprofit corporation incorporated pursuant to section 23-5-121(2), C.R.S., or political subdivision of the state, or that are described in section 29-1-902, C.R.S., and held by any local-government-financed entity for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.” § 24-72-202(6)(a)(I), C.R.S. (emphasis added).

32. All “writings” include “recordings.” § 24-72-202(7), C.R.S.

33. Under the COML, an executive session may be held only at a regular or special meeting, and only after the announcement to the public of the *particular topic* for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the state public body or two-thirds of the quorum present of the local public body. §§ 24-6-402(3)(a) & (4), C.R.S.

34. The COML authorizes a public body to conduct an executive session for purposes of receiving legal advice on *specific* legal questions.<sup>5</sup> However, the mere presence or participation of an attorney at an executive session does not automatically make communications during that executive session attorney-client privileged or exempt them from disclosure. *See* § 24-6-402(4)(b), C.R.S. Moreover, the COML *expressly* prohibits a local body from adopting “*any* proposed policy, position, resolution, rule, regulation, or formal action” while the public body is meeting in an executive session. *See* 24-6-402(4), C.R.S. (emphasis added).

35. Simply put, under the COML, a public body may conduct an “executive session,” *i.e.*, a closed-door meeting, *only* if it “strictly complies” with the requirements for announcing and conducting such a session. *See* §§ 24-6-402(3)(a) & (4), C.R.S.; *see also Gumina*, 119 P.3d at 532. If an executive session is not convened properly in accordance with these requirements, *then the meeting and the recorded minutes are open to the public. Id.* at 530 (City council’s failure to “strictly comply” with the requirements of the statute rendered its meeting open and the terminated city employee had the right to inspect the minutes); *Zubeck v. El Paso County Ret. Plan*, 961 P.2d 597, 600 (Colo. App. 1998).

36. “Upon a finding that sufficient grounds exist to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive

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<sup>5</sup> In *Guy v. Whitsitt*, the Court of Appeals held that a town council’s failure to identify, with “as much detail as possible” and “to describe *at least* the ‘subject matter’” of the legal advice to be discussed in an executive session violated the COML. 469 P.3d 546, 549, 553 (Colo. App. 2020) (“The Town Council’s failure to provide any information beyond the statutory citation authorizing an executive session for ‘legal advice’ did not comply with the statutory requirement of identifying ‘a particular matter in as much detail as possible without compromising the purpose for which an executive session was called.’”)

session in contravention of section 24-6-402(3)(a) or (4), the court shall conduct an *in camera* review of the record of the executive session to determine whether the state public body or local public body engaged in substantial discussion of any matters not enumerated in section 24-6-402(3) or (4) or adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session. . . .” §24-72-204(5.5)(b)(1), C.R.S.; § 24-6-402(d.5)(I)(C), C.R.S.

37. “Any person seeking access to the record of an executive session meeting of a state public body or a local public body recorded pursuant to section § 24-6-402(2)(d.5) shall, upon application to the district court for the district wherein the records are found, show grounds sufficient to support a reasonable belief that the state public body or local public body engaged in substantial discussion of any matters not enumerated in section § 24-6-402(3) or (4) or that the state public body or local public body adopted a proposed policy, position, resolution, rule, regulation, or formal action in the executive session. . . .” § 24-72-204(5.5)(a), C.R.S.

38. A court may award attorney’s fees to the prevailing party who is entitled to recover all reasonable attorney’s fees and costs incurred in litigating the matter, which is mandatory under the COML and the CORA. *See* § 24-6-402(9), C.R.S.; § 24-72-204(5), C.R.S.; *Van Alstein v. Housing Auth.*, 985 P.2d 97, 99-100 (Colo. App. 1998).

### **First Claim for Relief**

Request for Access to Recording of Executive Session Held in Violation of the COML  
(§ 24-72-204(5.5), C.R.S.)

39. Paragraphs 1 through 38 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

40. The March 14 executive session violated the COML in two ways; either violation independently entitles Plaintiff to an Order from the Court directing Defendant to disclose the March 14 Recording .

A. The Aurora City Council took formal action at the March 14 executive session in violation of the COML.

41. The COML expressly prohibits a public body from adopting “*any* proposed policy, position, resolution, rule, regulation, or formal action” while the public body is meeting in an executive session. *See* 24-6-402(4), C.R.S. (emphasis added); *see also Hanover Sch. Dist. No. 28 v. Barbour*, 171 P.3d 223, 228 (Colo. 2007). Any meeting in which a formal action (or a position) is taken, or “public business” is discussed is a public meeting and must be open to the public at all times. § 24-6-402(2)(a), C.R.S.

42. The Council took formal action by ending the censure process for a public official while in a closed-door, executive session. Specifically, a roll-call vote was improperly taken that ended the censure process as to Councilwoman Jurinsky. Mayor Mike Coffman asked individual councilmembers if they were for or against continuing the censure process against Councilwoman Jurinsky. And, after the majority of councilmembers said that they did not agree



with continuing the censure process, formal action was taken to halt the censure process against Councilmember Jurinsky. The Council’s vote, and discussions that led to that vote, consisted of the “public’s business”; the Council took formal action—or at minimum, took a position—in an executive session rather than in a public meeting in violation of the COML. § 24-6-402(3) & (4), C.R.S.

43. Further, City Attorney Brotzman publicly acknowledged the decision to stop the censure process, saying that the Council “gave direction”<sup>6</sup> to City staffers to reach a settlement with Councilwoman Jurinsky’s attorney that would address the scope of the investigation, how attorney’s fees will be paid, and other topics. **Exhibit D**

44. Plaintiff has shown grounds sufficient under § 24-72-204(5.5), C.R.S. to support a reasonable belief that formal action—or, at minimum, a position—was taken by the Council in its decision not to move forward with the censure process against Councilwoman Jurinsky in a closed, executive session. Thus, the Court should issue an Order making the March 14 Recording open for inspection and copying by members of the public.

B. The March 14 executive session was not properly noticed in violation of the COML.

45. Under the COML, an executive session may be held only at a regular or special meeting, and only after the announcement to the public of the *particular topic* for discussion in the executive session and the affirmative vote of two-thirds of the entire membership of the state public body or two-thirds of the quorum present of the local public body. §§ 24-6-402(3)(a) & (4), C.R.S. (emphasis added).

46. Providing notice that a general topic, such as “legal advice,” is to be discussed in an executive session is insufficient. *See Guy*, 469 P.3d at 549, 553 (holding that a town council’s failure to identify, with “as much detail as possible” and “to describe at least the ‘subject matter’” of the legal advice to be discussed in an executive session violated the COML).

47. Here, only the phrase “legal advice” and the relevant statutory section were included in the March 14 agenda in violation of the COML. **Exhibit E**

48. Because the City violated the COML by not properly noticing the subject of the executive session, the Court should issue an Order making the March 14 Recording open for inspection and copying by members of the public.

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<sup>6</sup> The Court of Appeals has held that directing the members of a public body to take action during an executive session constitutes “secret action” prohibited by the COML. *See Barbour v. Hanover Sch. Dist. No. 28.*, 148 P.3d 268, 273 (Colo. App. 2006).

### **Second Claim for Relief**

(In the Alternative) Request for In Camera Review  
(§ 24-72-204(5.5)(b)(1), C.R.S.; § 24-6-402(d.5)(I)(C), C.R.S.)

49. Paragraphs 1 through 48 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

50. Plaintiff is informed and believes, including based on public statements made by councilmembers and staff who attended the March 14 executive session, that the March 14 executive session was not convened for the purpose of obtaining legal advice, nor can Defendant show that formal legal advice was offered<sup>7</sup>.

51. Instead, Defendant took formal action in an executive session under the guise of receiving “legal advice.” While the COML authorizes a public body to conduct an executive session for purposes of receiving legal advice on *specific* legal questions, the COML *expressly* prohibits a local body from adopting “*any* proposed policy, position, resolution, rule, regulation, or formal action” while the public body is meeting in an executive session. *See* 24-6-402(4), C.R.S. (emphasis added). This violation entitles Plaintiff to the immediate release of the entire March 14 Recording.

52. Because the City cannot demonstrate that any portion of the March 14 Recording is attorney-client privileged, the Court should enter an Order directing their immediate release. In the alternative, should the Court find it necessary to review the March 14 Recording *in camera*, pursuant to §24-72-204(5.5)(b)(1), C.R.S.; § 24-6-402(d.5)(I)(C), C.R.S., based on the Defendant’s unfounded assertion of attorney-client privilege, Plaintiff respectfully requests that the Court review the March 14 Recording *in camera* and thereafter issue an Order disclosing it in its entirety to Plaintiff. If, following an *in camera* review, the Court finds that portions of March 14 Recording are attorney-client privileged, Plaintiff requests that those portions be redacted, and the remainder be disclosed.

### **Third Claim for Relief**

**The March 14 Recording is a Public Record under CORA**  
(§ 24-6-402(2)(d)(I); and § 24-72-202(6)(a)(I), C.R.S.)

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<sup>7</sup> Section § 24-6-402(2)(d.5)(I)(B), C.R.S. of the COML provides an exception to the requirement that all executive sessions must be recorded; it allows an attorney representing a public body to determine that a portion of an executive session constitutes a privileged attorney-client communication and thus, that “*no record need be kept thereof and any written minutes shall contain a signed statement by the attorney attesting to the privilege.*” § 24-6-402(2)(d.5)(I)(B), C.R.S. (emphasis added). Here, the entire executive session was recorded. Further, as reported in the March 21 Article (**Exhibit D**), Councilwoman Jurinsky and her attorney were present for the March 14 executive session. Their presence, alone, would destroy any attorney-client privilege as to communications providing legal advice regarding a dispute with Councilwoman Jurinsky.

53. Paragraphs 1 through 52 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

54. The CORA defines meeting minutes as public records. § 24-6-402(2)(d)(I) & (II).

55. “Discussions” in an executive session must be electronically recorded, per § 24-6-402(d.5)(II)(A), and a local body must electronically record its public meeting minutes which shall be open to the public for inspection. *Id.* Here, because the City violated the COML for the reason stated above, the electronically recorded “discussions” in the March 14 executive session should have occurred in a public meeting and recorded as the Council’s meeting minutes. As such, those meeting minutes, or the March 14 recording, are public records that must be disclosed to plaintiffs.

56. Under the CORA, a public record “means and includes *all writings* made, maintained, or kept by the state, any agency ... for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds.” § 24-72-202(6)(a)(I), C.R.S. (emphasis added). All “writings” include “recordings.” § 24-72-202(7), C.R.S.

57. Thus, the Plaintiff is entitled to an Order from the Court directing the Defendant to release the March 14 Recording because it is a public record, and barring an exception, must be disclosed to the public.

### **Prayer for Relief**

WHEREFORE, pursuant to § 24-72-204(5.5), C.R.S., Plaintiff prays that:

- a. The Court enter an Order directing Defendant to release the entirety of the March 14 Recording to Plaintiff because the March 14 executive session violated COML; or, alternatively
- b. If the Court finds it necessary, conduct an *in camera* review of the March 14 Recording and, thereafter, enter an Order directing Defendant to release the entirety of the March 14 Recording or, if the Court determines that a portion or portions of the March 14 Recording is attorney-client privileged, enter an Order directing the Defendant to redact the privileged portion(s), and release the remainder of the recording to the Plaintiff;
- c. The Court enter an Order that the March 14 Recording is a public record not exempt from disclosure under CORA and direct Defendant to immediately disclose it in its entirety to Plaintiff;
- d. The Court enter an Order awarding Plaintiff costs and reasonable attorney’s fees associated with the preparation, initiation, and maintenance of this action, as mandated by § 24-72-204(5), C.R.S., and § 24-6-402(9) C.R.S.; and

e. The Court award such other and further relief as the Court deems proper and just.

Respectfully submitted this 23<sup>rd</sup> day of May 2022.

By 

Rachael Johnson  
Reporters Committee for Freedom of the Press  
*Attorney for Plaintiff*  
*The Sentinel Colorado*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 23<sup>rd</sup> day of May 2022, a true and correct copy of the foregoing **APPLICATION FOR ACCESS TO EXECUTIVE SESSION RECORDING AND MEETING MINUTES AND FOR IN CAMERA REVIEW UNDER §24-72-204(5.5), C.R.S.** was served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

Corey Y. Hoffmann  
Hoffmann, Parker, Wilson & Carberry, P.C.  
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Rachael Johnson