

<p>DISTRICT COURT, HUERFANO COUNTY, COLORADO</p> <p>Court Address: 200 W. 5th St, Suite 141 Walsenburg, CO 81089</p> <hr/> <p>Plaintiff: THE WORLD JOURNAL,</p> <p>v.</p> <p>Defendant: RICHARD COLANDER, in his official capacity as deputy city clerk and records custodian.</p> <hr/> <p>Attorney for Plaintiffs: 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</p>	<p style="text-align: center;">COURT USE ONLY</p> <hr/> <p>Case Number:</p> <p>Division:</p>
<p style="text-align: center;">APPLICATION FOR ACCESS TO EXECUTIVE SESSION RECORDING, MEETING MINUTES AND FOR <i>IN CAMERA</i> REVIEW UNDER §24-72-204(5) & (5.5), C.R.S.</p>	

Plaintiff, *The World Journal*, by and through undersigned counsel, hereby state as follows:

Introduction

1. By this civil action under the Colorado Open Meetings Law (“COML”), §§ 24-6-401 *et seq.*, and the Colorado Open Records Act (“CORA”), §§ 24-72-201 *et seq.*, C.R.S., Plaintiff seeks access to the recording and meeting minutes of a January 17, 2023 executive session of the Walsenburg City Council (the “Council”) that are in the possession, custody, or control of the custodian, Richard Colander, acting in his official capacity as the deputy city clerk of the City of Walsenburg (“Defendant” or the “City”). Specifically, on March 7, 2023, Plaintiff sought access to the recording of a January 17, 2023 executive session of the Council pertaining to the “Electronic recordings of the Walsenburg City Council 1/17/23 improper executive session regarding David Harriman, [sic] the and possible contract to advise the city” (hereinafter the “January 17 Recording”).

2. Plaintiff seeks an Order from the Court directing Defendant to immediately release the entirety of the January 17 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 January 17 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 the January 17 Recording available to Plaintiff for inspection and copying, subject to redactions the Court deems necessary—if any—following that *in camera* review.

3. *The World Journal* is a newspaper serving the residents of the City of Walsenburg Colorado. Mark Craddock ("Craddock"), a reporter at *The World Journal*, covers local government and has written stories about the Council.

4. On January 23, 2023, in connection with his reporting for *The World Journal*, Craddock submitted a public records request for access to the "improper executive session regarding David Harriman and possible contract to advise the city."

5. Plaintiff's request was wrongly denied by the City on the ground that the City "properly convened and conducted an executive session under C.R.S. § 24-6-402(4)(e) for purposes of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators in regard to a proposal received by Mr. Harriman for a contract for water department related services." Defendant stated it could not release the January 17 Recording "pursuant to C.R.S. § 24-6-402(2)(d.5)(II)(d), because executive session recordings are not subject to public inspection," and therefore, exempt from disclosure.

6. As more fully set forth below, the January 17 meeting—or at a minimum, the majority of it—was not conducted for the purposes of contract negotiations. The Council's action shows that they met in private to discuss an unauthorized topic not subject to any executive session exemption and that they did not announce the *particular* topic of discussion as required by law. Instead, the closed meeting was allegedly about bubbling tensions over the mismanagement of the city's failing water infrastructure and acrimony over whether to utilize Mr. Harriman, the former city water manager, as a resource because of his deep legacy institutional knowledge about the city's water system, in spite of hard feelings regarding his departure from the city. Discussions on topics of great public interest such as the city's poor water infrastructure do not fall under any COML exception that permit a local or state body to convene in executive session.

7. Mr. Craddock attended the January 17 meeting. He observed, and the record shows, *see* Regular Meeting of City Council, <https://perma.cc/8RWE-A65A>, that before the Council met in secret it discussed whether or not it even had the authority to meet in executive session. *Id.* And, two councilmembers, Mr. Greg Daniels and Ms. Carmen Lara stated on the record after the closed session ended that they left the "executive session" before any discussions had ended because it was "outside the scope of their authority" and there was no contract to discuss. *Id.* at 3:33:00.

8. Since it appears that the Council discussed the public's business in secret in violation of the COML., § 24-6-401, C.R.S; *see also Gumina v. City of Sterling*, 119 P.3d 527,

530 (Colo. App. 2004), And these discussions did not meet a recognized exemption that provides for a closed meeting, nor was the notice it gave the public for convening the executive session sufficient properly announced, *see* §§ 24-6-402(3)(a) & (4), C.R.S, the January 17 Recording—including the meeting minutes—must be disclosed to the public. *Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004).

9. Plaintiff respectfully requests that the Court enter an Order directing Defendant to release the January 17 Recording, in its entirety, for inspection and copying. And Plaintiff further requests that the Court review the January 17 Recording *in camera*. Assuming for the sake of argument that, upon an *in camera* review of the January 17 Recording, this Court determines that certain portions are not subject to disclosure, 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 Alstyne 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), C.R.S. of CORA and § 24-6-402, C.R.S. of the COML. On information and belief, the January 17 closed session took place in this judicial district, and the January 17 Recording is a record in the possession, custody and/or control of the Defendant, the custodian of records for the City of Walsenburg, which is also located in this judicial district.

11. *The World Journal* is a print weekly and digital newspaper serving the community of Las Animas and Huerfano counties in Colo. and Colfax county in New Mexico. Mark Craddock, is a reporter and editor at *The World Journal*, and covers city and county government, politics, and special districts, among other things. Its principal place of business is located at 508 Main Street, Walsenburg, CO 81089. *The World Journal* is owned and operated by Animas Del Oeste LLC.

12. Defendant Richard Colander is sued in his official capacity as the deputy city clerk of the City of Walsenburg and custodian of records, including the January 17 Recording sought by Plaintiff that is the subject of this action. The January 17 Recording records are made, maintained, or kept by the City. *See* § 24-72-202, C.R.S.

Facts

The City’s Violation of the COML

13. On January 17, 2023 the Walsenburg City Council held its Regular Meeting of City Council. *See* Regular Meeting of City Council, January 17, 2023 <https://cityofwalsenburg.ompnetwork.org/sessions/260417/january-17-2023-regular-meeting-of-city-council> (last visited June 22, 2023)(hereinafter Jan. 17 City Council Meeting). **Exhibit A.**

14. During that meeting, the city council discussed convening an executive session to discuss multiple items: the “appointment of a city attorney” or “purpose of determining positions,” *id.* at 11:25-13:40; “matters of specific negotiations” about the “law enforcement agreement,” *id.* at 13:45; and “contracted services” for the potential contracted water services of Harriman. *Id.* at 14:01.

15. During the January 17 regular meeting the council discussed whether to convene in executive session to discuss the Harriman matter and one councilmember questioned whether they had “the authority” to go into executive session on that topic. *Id.* at 16:25, 26:36.

16. Mr. Craddock was present for the January 17, 2023 public meeting and objected to the Council meeting in executive session to discuss the Harriman matter. *Id.* at 57:07. Mr. Craddock objected that there was “no exemption under 24-6-402(4)” that permitted the closed meeting. *Id.* at 57:37.

17. Later on in the January 17 regular meeting, Councilmember Rick Daniels moved to go into the first executive session to discuss negotiation strategy for law enforcement service. *Id.* at 22:50, 2:30:10. The topic announced for executive session was: “law enforcement with the county ongoing negotiations with the county,” and Councilmember Daniels stated, “there may be some action taken after” to which a councilwoman interjected saying “no, there will be no action taken after.” *Id.* at 2:30:40. The motion passed with Mayor Pro Tem Jennings voting no.

18. After the vote on the motion for the first executive session, Councilmember Daniels stated that he “cannot make the second motion [for a second executive session to discuss the proposal for Harriman] for the same reasons that the reporter has pointed out this evening.” *Id.* at 2:30:50. And, another councilmember stated: “I’m going to be recusing myself from that [second executive session meeting],” referring to Councilmember Daniels “statements on not wanting to entertain the second executive session item of Mr. Harriman’s proposal.” 2:31:25.

19. Subsequently, Mayor Pro Tem Jennings moved for a second executive session to discuss “determining a position relative to the matter...developing strategy for negotiations under CRS 24-6-402 Mr. Harriman’s proposal.” The motion passed. *Id.* at 2:32:37.

20. Although the Council took two separate votes to have two separate executive sessions, it adjourned into only *one* executive session. After the conclusion of the executive session on January 17, 2023, the Council returned to the public meeting. Once the council reconvened, the legality of the executive session was questioned by several councilmembers. *Id.* at 3:33:00.

21. Upon reconvening to the public meeting, one councilmember stated that “if any person who participated in the executive session feels that any substantial discussion of any matter not included in the motion to go into executive session occurred during executive session or that any improper action occurred during the executive session in violation of the Colorado Open Meetings Law, I would ask you to state your concerns for the record.” *Id.* at 3:33:29. Councilmember Daniels said, “I’ve got my hand up, Mayor Pro Tem. I want to state for the record that I left the [executive session]. Because it “Did not fall under the...executive session

rules and regulations.” Further, Councilmember Carmen Lara stated, “I left the meeting also because it was “outside the scope of our authority. I did object.” *Id.* 3:33:55.

22. Mayor Bryant suggested that due to the fact that the council acted outside the authority and scope of the rules of executive session the Council should release the January 17 Recording if the Council felt strongly that this was an illegal meeting. *Id.* at 3:34:50. The councilmembers gave a resounding “no”. *Id.* at 3:33:00.

23. On January 23, 2023, Craddock filed a CORA request with Defendant. Mr. Craddock requested that “Electronic recordings of the Walsenburg City Council 1/17/23 improper executive session regarding David Harriman and possible contract to advise the city[]” be made available for inspection and copying. **Exhibit B** (“hereinafter the “January 23 Request”)

24. On January 26, 2023, Craddock received a denial of his January 23 Request from Defendant stating, in part, that:

The City cannot release the requested executive session recording pursuant to C.R.S. § 24-6-402(2)(d.5)(II)(d), because executive session recordings are not subject to public inspection.

[The] City Council properly convened and conducted an executive session under C.R.S. § 24-6-402(4)(e) for purposes of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators in regard to a proposal received by Mr. Harriman for a contract for water department related services.

Exhibit C (hereinafter “January 26 Denial”)

25. During the January 17, 2023 City Council meeting, Mayor Bryant discussed an email that he sent to all the Councilmembers regarding the Harriman proposal. Regular Meeting of City Council, <https://cityofwalsenburg.ompnetwork.org/pages/2> (last visited May 31, 2023).

26. On February 10, 2023, Mr. Craddock submitted a CORA request for the email Mayor Bryant referenced at the January 17 meeting. In that request, Mr. Craddock sought:

Any e-mails and subsequent responses from Mayor Charles Bryant to council members regarding possible negotiations with David Harriman regarding consultation on water infrastructure issues. Bryant alluded to the e-mail repeatedly during the Jan. 17 city council meeting so, presumably the e-mail would have been sent that day (Jan. 17) or the previous day, Monday, Jan. 16, 2023.

Exhibit D (hereinafter the “February 10 Request”).

27. On the same day that Mr. Craddock submitted his February 10 Request, Mayor Bryant provided the email to him. A true and correct copy of the February 10, 2023 email from

Mayor Bryant to Mr. Craddock is attached as **Exhibit E** (hereinafter the “February 10 Email”). The February 10 Request also referred to an attachment that was not included in the email Mayor Bryant transmitted to Mr. Craddock.

28. Mr. Craddock’s request was denied on February 14, 2023 by the city. A true and correct copy of the February 14, 2023 denial is attached as **Exhibit F** (hereinafter the “February 14 Denial”).

29. On March 7, 2023, via his counsel, Mr. Craddock sent a letter to the City regarding the denial of access to the January 17 Recording. A true and correct copy of the letter is attached as **Exhibit G** (hereinafter the “March 7 Letter”). However, the request was again denied by the City on March 10, 2023. A true and correct copy of the denial is attached as **Exhibit H** (hereinafter the “March 10 Denial”) and states:

the City cannot release the requested executive session recording pursuant to C.R.S. § 24-6-402(2)(d.5)(II)(d), because executive session recordings are not subject to public inspection. City Council properly convened and conducted an executive session under C.R.S. § 24-6-402(4)(e) for purposes of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and instructing negotiators in regard to a proposal received by Mr. Harriman for a contract for water department related services.

Id.

30. The February 10 Email Mayor Bryant transmitted to Mr. Craddock included an email chain to City Council members that was sent by Mayor Bryant on January 12, 2023 titled “contract proposal.” The email stated, in part:

It is my intent to have this proposal as a topic during our executive session on Tuesday *with a potential action item to follow*. I believe Mr. Harriman will be available to attend the executive session if the board desires. In reviewing the contract, I feel that there are several areas that will require legal review and further negotiation. With that being said, I feel a full approval of the contract as-is next Tuesday would be premature. *I view it more as an opportunity to work out any issues\concerns that the board may identify in the proposal* and if any action be taken it will be to advance the proposal to the formal draft-contract phase with the accompanying legal review by our new attorney(s). We of course will then have to approve [sic] of a finalized contract should the board desire.

Please consider the forwarded proposal as an executive session item enclosure and handle appropriately. I feel that our executive session conversation regarding this issue will be the most productive if we initially have a discussion amongst only ourselves (elected officials) prior to discussing the proposal with the administrator.

We will also be discussing the topic of our new attorney during the executive session with *a potential action item to follow*.

Id. (emphasis added).

31. According to the agenda for the January 17 public meeting, the “Harriman contract proposal” was noticed as an item under the “executive session for the purpose of.” It was noticed without detail as to what the particular topic related to § 24-6-402(4)(e) “negotiations, developing strategy for negotiations” would include. A true and correct copy of the January 17, 2023 Agenda is attached as **Exhibit I** (hereinafter the “January 17 Agenda”).

32. News reports regarding Mr. Harriman’s decision to resign as a city employee was reported in an article by *the World Journal*. See *The World Journal*, E.E. Mullens, *Long time Walsenburg staffer, DPW Director David Harriman resigns*, <https://perma.cc/JF3X-VEBE> (last visited June 12, 2023). Included in the article was reference to a copy of Mr. Harriman’s resignation letter; the resignation letter was sent to Greg Sund, the city administrator and a copy was made available by the City to *the World Journal*. *Id.*

33. In his resignation letter dated August 21, 2020, Mr. Harriman stated “I have worked for the City of Walsenburg over twenty-five years and unfortunately find it is time to part ways *due to conflicting views with some members of the City Council*.” (emphasis added). A true and correct copy of the August 21, 2020 resignation letter is attached as **Exhibit J** (hereinafter the “Harriman resignation letter”).

34. On February 14, 2023, despite the fact that Bryant had already disclosed the February 10 Email to Craddock on that same day, Defendant denied the February 10 Request, stating:

Pursuant to C.R.S. § 24-72-204(1)(a), I am required to deny your request for inspection of said records. More specifically, [sic] §24-72-204((1)(a) authorizes the denial of inspection of records if “[s]uch inspection would be contrary to any state statute.” Here, the City cannot release the request documents because they were provided to the City Council in conjunction with an executive session pursuant to C.R.S. §24-6-402(4)(e)(I)...

Exhibit F.

35. In Plaintiff’s March 7 Letter in response to Defendant’s January 26, 2023 Denial, the Letter provided the requisite notice of intent to file an application under § 24-72-204(5.5), C.R.S. **Exhibit G.**

36. On June 1, 2023, Plaintiff notified Defendant in writing that it intended to file a complaint regarding access to the January 17 Recording pursuant to 24-72-204(5)(a), C.R.S. A true and correct copy of that Notice of Intent is attached hereto as **Exhibit K** and incorporated by reference herein. The parties met and conferred via Zoom on June 13, 2023 to no avail. Subsequently, Plaintiff filed this complaint.

Applicable Law

37. 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).

38. 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.”

39. 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.

40. Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, can only be held after full and timely notice to the public. 24-72-402(2)(a)(c)(I), C.R.S. Thus, full and timely notice of the meeting must be posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. *Id.*

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

42. 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).

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

44. 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.

45. Section 24-6-402(4)(e)(I), C.R.S. permits a local body to meet in private for the purposes of “determining positions on matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators,” so long as the subject of the executive session was properly announced by “identifying the particular matter to be discussed in as much

detail as possible,” includes the “specific citation” to the subsection authorizing the body to meet, and two-third of the quorum is present.

46. Even if an executive session has been properly announced and voted upon in a public meeting, “[u]pon 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 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(2)(d.5)(I)(C), C.R.S.

47. “Any person seeking access to the record of an executive session meeting of . . . 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 . . . local public body engaged in substantial discussion of any matters not enumerated in section § 24-6-402. . . (4) or that the . . . 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.

48. Upon filing an Application for judicial review of a records custodian’s decision to withhold access to one or more public records, the Court is required to set a hearing “at the earliest practical time” at which the records custodian must show cause why she should not make the particular public record(s) at issue available to Applicant(s). § 24-72-204(5), C.R.S. If, at the conclusion of that Show Cause hearing, the custodian has not established either (a) that the record at issue is not a public record, or (b) that an exemption from disclosure of the public record makes her withholding decision “proper,” the Court shall order the custodian to disclose the public record(s) to the Applicant(s).

49. A prevailing “applicant” or plaintiff under the COML or the CORA is entitled, as of right, to recover all reasonable attorney’s fees and costs incurred in litigating the matter. *See* § 24-6-402(9), C.R.S.; § 24-72-204(5), C.R.S.; *Van Alstyne*, 985 P.2d at 99-100.

First Claim for Relief

Request for Access to Recording of a Public Meeting
That Was Unlawfully Closed to the Public
(§ 24-72-204(5), C.R.S.)

50. 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.

A. The Walsenburg City Council did not properly announce the particular topic of discussion for executive session.

51. The Walsenburg City Council did not properly announce the closed-door meeting of January 17, 2023, which renders it an unlawfully closed public meeting, and the recording thereof a public record.

52. 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 quorum present of the local public body. §§ 24-6-402 (4), C.R.S.

53. Additionally, any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, can only be held after full and timely notice to the public. 24-72-402(2)(a)(c)(I), C.R.S. Thus, full and timely notice of the meeting must be posted in a designated public place within the boundaries of the local public body no less than twenty-four hours prior to the holding of the meeting. *Id.* The notice of the executive session was not provided by the city council until the meeting took place on January 17, 2023.

54. Under § 24-6-402(4), C.R.S an executive session must also be publicly announced at least 24-hours in advance. Here, it appears that the council gave no public notice regarding their decision to hold a meeting in executive session in advance of their public meeting.

55. The City Council did not announce the particular topic that it was to discuss in executive session. The January 17 Agenda merely states that the Council would go into executive session for the “purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, under C.R.S. Section 24-6-402(4)(e).” **Exhibit I.** No mention of the Harriman contract proposal or anything related to water infrastructure was denoted in the topic for discussion.

56. Indeed, based on the objections from councilmembers before agreeing to the motion to go into executive session, and the objections from the councilmembers after leaving executive session, it is evident that the Council failed to announce the particular topic for which it convened the executive session during the public meeting. *See* Regular Meeting of City Council, <https://cityofwalsenburg.ompnetwork.org/pages/2> (last visited May 31, 2023); *id.* at 3:33:55 (Councilmember Lara stated that what was discussed in executive session was “out of the scope of their authority”).

57. As such, Plaintiff is entitled to an Order from the Court directing Defendant to release the January 17 Recording or review it *in camera* to determine the illegality because the executive session was improperly announced in violation of the COML.

B. The Walsenburg City Council did not convene to determine positions on matters that may be subject to negotiations, develop strategies or instruct negotiators pursuant to § 24-6-402(4)(e)(I), C.R.S.

58. The COML permits a public body to meet in executive session to determine a position on matters that may be subject to negotiation, develop strategies or instruct negotiators,

so long as the subject of the executive session was properly announced by “identifying the particular matter to be discussed in as much detail as possible,” includes the “specific citation” to the subsection authorizing the body to meet, and two-third of the quorum is present.

59. Here, two councilmembers, Mr. Greg Daniels and Ms. Carmen Lara stated that they left the executive session, before the conclusion of the Council’s discussions. Regular Meeting of City Council, <https://cityofwalsenburg.ompnetwork.org/pages/2> (last visited May 31, 2023) at 3:33:00-3:33:55. Councilmember Daniels left after only a few minutes of the executive session. Councilmember Lara explained that the closed session was “outside the scope of our authority. I did object [to the session].” *Id.* And Councilmember Daniels left with the understanding that there was no Harriman “contract” negotiations or strategy to discuss in executive session. Furthermore, Mayor Bryant asked if any councilmember would like to make a motion to agree to release the executive session recording to the public because their meeting was improper. *Id.* at 3:34:50.

60. Based on these facts, the discussion in the executive session was not solely, if at all, about Mr. Harriman’s contract negotiations, strategy development, or the like. Instead, it concerned the mismanagement of the city’s failing water infrastructure and acrimony over whether to utilize Mr. Harriman, the former city water manager, as a resource because of his deep legacy institutional knowledge about the city’s water system, in spite of hard feelings regarding his departure from the city. *See* the Harriman resignation letter, **Exhibit J**.

61. Because it appears that there were no contract negotiations or strategy to discuss under 24-6-402(4)(e)(I), C.R.S., the Council did not have the authority to meet in executive session because they discussed the public’s business in secret, in violation of the COML, § 24-6-401, C.R.S.; *see also Gumina v. City of Sterling*, 119 P.3d 527, 530 (Colo. App. 2004), and their meeting was illegal.

62. Further, because the Council appears to have not discussed the Harriman contract and “negotiations” or “relevant strategy” in executive session (based on the accounts of the councilmembers Lara and Daniels, and Mayor Bryant) the Council could not have “identif[ied] the *particular* matter to be discussed *in as much detail as possible*,” § 24-6-402(4)(e)(I), C.R.S. & §§ 24-6-402(3)(a) & (4), C.R.S., upon announcing the reason for convening in executive session.

63. Additionally, the February 10 Email suggests that the executive session was intended to concern matters beyond the topic the Council planned to announce:

It is my intent to have this [Harriman’s] proposal as a topic during our executive session on Tuesday **with a potential action item to follow...**

I view [the executive session] more as an opportunity *to work out any issues\concerns* that the board may identify in the proposal.

See **Exhibit E**.

64. The “issues/concerns the board wants to identify in the proposal” is not a recognized basis to meet in executive session under the COML.

65. Because the Council’s January 17 executive session discussions did not conform to a recognized basis for a closed meeting, Plaintiff respectfully requests that the Court review the January 17 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 January 17 Recording are not disclosable, Plaintiff requests that those portions be redacted, and the remainder be disclosed.

Second Claim for Relief

The January 17 Recording is a Public Record under CORA
(§ 24-6-402(2)(d)(I); and § 24-72-202(6)(a)(I), C.R.S.)

66. Paragraphs 1 through 64 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

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

68. 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 reasons stated above, the electronically recorded “discussions” in the January 17 executive session should have occurred in a public meeting and recorded as the Council’s meeting minutes. As such, those meeting minutes, or the January 17 Recording, are public records that must be disclosed to Plaintiff.

69. 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.

70. Thus, the Plaintiff is entitled to an Order from the Court directing the Defendant to release the January 17 Recording because it is a public record, and barring an exception, must be disclosed to the public.

Third Claim for Relief

The February 10 Request regarding Mayor Bryant’s email attachment
Is a Public Record under CORA
(§ 24-72-202(6)(a)(I), C.R.S.)

71. Paragraphs 1 through 69 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

72. On February 10, 2022, Mr. Craddock requested access to the email attachment from the February 10 Request. Mayor Bryant provided an email to Mr. Craddock in response to his CORA request, but did not include the attachment. *See Exhibit E.*

73. Access to the attachment was denied by the City for the same reasons that the City denied access to the executive session recording. However, the City did not deny the February 10 Request under a permissible CORA exemption. *Id.*

74. CORA defines the email attachment—and the correspondences of an elected, public officials, § 24-72-202(6)(a)(II), C.R.S.—as a “public record” because it was made, maintained, or kept by the city for use in its functions as required by law. § 24-72-202(6)(a)(I), C.R.S.

75. Thus, the email attachment is a public record and barring an exception to CORA must be disclosed. The Plaintiff is entitled to an Order from the Court directing the Defendant to release the February 10 Request attachment on these grounds.

Prayer for Relief

WHEREFORE, pursuant to § 24-72-204(5.5), C.R.S. and § 24-72-204(5), C.R.S. Plaintiff prays that:

- a. The Court enter an Order to Show Cause, pursuant to § 24-72-204(5), C.R.S., directing Defendant to appear “at the earliest practical time,” and show cause why he should not make the January 17 Recording available to Plaintiff;
- b. At the conclusion of that hearing, enter an Order directing Defendant to make the January 17 Recording, in its entirety, available to the Plaintiffs or, alternatively,
- c. If the Court finds it necessary, conduct an *in camera* review of the January 17 Recording and, thereafter, enter an Order directing Defendant to release the entirety of the January 17 Recording or, if the Court determines that a portion or portions of the January 17 Recording should not properly be disclosed, enter an Order directing Defendant to redact such portion(s), and release the remainder of the recording to Plaintiff;
- d. The Court enter an Order directing Defendant to release the February 10 Request attachment, in its entirety, to the Plaintiffs under CORA.
- e. 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
- f. The Court award such other and further relief as the Court deems proper and just.

Respectfully submitted this 22nd day of June 2023.

By /s/Rachael Johnson

Rachael Johnson
Reporters Committee for
Freedom of the Press
Attorney for Plaintiff,
The World Journal

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of June 2023, a true and correct copy of the foregoing **APPLICATION FOR ACCESS TO EXECUTIVE SESSION RECORDING, MEETING MINUTES, AND FOR *IN CAMERA* REVIEW UNDER §24-72-204(5) & (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:

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/s/Rachael Johnson
Rachael Johnson