DISTRICT COURT, ELBERT COUNTY, COLORADO Court Address: 751 Ute Ave. Kiowa, CO 80117 **Plaintiffs:** AARON ADELSON, reporter at *KUSA-9 News*; and KUSA-9 NEWS, a division of MULTIMEDIA HOLDINGS CORP. **v.** **Defendant:** MICHELLE M. OESER, in her official capacity as Clerk of the Town of Elizabeth. **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	**COURT USE ONLY** Case Number: 2023CV30082 & 2023CV30088 Division:

PLAINTIFFS' BRIEF

Plaintiffs Aaron Adelson ("Adelson") and Multimedia Holdings Corporation d/b/a KUSA-9 News, an affiliate of the National Broadcasting Company ("NBC"), by and through undersigned counsel, hereby submit this Brief to the Court in support of their Complaint pursuant to CORA § 24-72-204(5), C.R.S. and state as follows:

INTRODUCTION

On August 11, 2023, Plaintiff Aaron Adelson submitted a Colorado Open Records Act ("CORA") request to the Clerk of the Town of Elizabeth ("the Town"), Ms. Michelle Oeser ("Oeser"), seeking access to the disciplinary records of former Town police chief Melvin Berghahn (hereinafter "Plaintiffs' Request"), including but not limited to a memorandum related to Berghahn's disciplinary record (the "Berghahn Memo" or "Memo"). Ms. Oeser wrongly denied Adelson's request for the disciplinary record on the ground that the information was in Mr. Berghahn's "personnel file" and would not be disclosed pursuant to Colorado Open Records Act ("CORA") provisions § 24-72-204(3)(a)(II)(A), C.R.S. and § 24-72-202(4.5), C.R.S. The Berghahn Memo is not an exempt personnel file because that exception only applies to ***personal demographic information***. § 24-72-204(3)(a)(II)(A), C.R.S.; § 24-72-202(4.5), C.R.S. Plaintiffs request that this Court proceed under § 24-72-204(5), C.R.S. of CORA on the grounds that § 24-72-204(6)(a), C.R.S. is inapplicable because, as discussed *infra*, the custodian conclusively denied access by improperly citing to the personnel file section.

BACKGROUND FACTS

Plaintiff Aaron Adelson, a reporter for *KUSA 9News*, submitted a CORA request on August 11, 2023 to Ms. Michelle Oeser, clerk of the Town Of Elizabeth, seeking access to:

> [R]ecords related to the employment of Melvin Bergahn [sic]. We are requesting:
>
> 1) His job application with Elizabeth Police
>
> 2) Any disciplinary history – Including any associated documents
>
> 3) His termination/resignation letter.

Pls.' Compl. Ex. A.

The Town responded to Plaintiffs' Request on August 15, 2023, denying access to Berghahn's disciplinary records and refusing to release the Berghahn Memo, stating:

> The town is able to provide you with [Berghahn's] job application, and attached to this correspondence is a redacted copy of the application. However, the Town is unable to provide you with the remainder of the documents…
>
> The ***additional information you seek, to the extent any such information may exist, is contained in his personnel file, and the Town is prohibited from disclosing such documents*** pursuant to C.R.S. 24-72-204(3)(a)(II)(A) of the Act. Although the Town is prohibited from disclosing information in the personnel files of [former] Town employees, pursuant to C.R.S. 24-72-204(3)(a)(II)(A), his employment application is provided to you because the application is excluded from the definition of "personnel file" pursuant to C.R.S. 24-72-202(4.5), and thus may be disclosed.

Pls.' Compl. Ex. B (emphasis added).

Mr. Adelson appealed the denial on August 23, 2023, stating to Ms. Oeser that the disciplinary records requested were not subject to the "personnel file" exemption of §24-72-204(3)(a)(II)(A), C.R.S., and that "personnel files" are limited to "personal demographic information" and defined "narrowly" under § 24-72-202(4.5), C.R.S. in accordance with the holdings in *Daniels v. City of Commerce City*, 988 P.2d 648, 651 (Colo. App. 1999), and *Jefferson Cnty. Educ. Ass'n v. Jefferson Cnty. Sch. Dist. R–1*, 378 P.3d 835, 839 (Colo. App. 2016). Pls.' Compl. Ex. C. Subsequently, on August 29, 2023, Mr. Adelson received a letter response to his appeal from Deputy Town Clerk Harmony Malakowski which stated, in part:

> The ***Town believes it is statutorily prohibited from releasing such records*** unless directed to do so by the Elbert County District Court, or unless you are able to obtain a waiver from the individual

> whose privacy interest is implicated by your request, Mr. Berghahn.
>
> **…**
>
> Accordingly…**please advise the Town pursuant to C.R.S. § 24-72-204(5)(a) if you intend to apply to the Elbert County District Court for an order regarding your request.**

Pls.' Compl. Ex. D (emphasis added). Mr. Adelson responded on August 30, 2023, stating, again, that the disciplinary files requested are not "personnel files" and that "It is also well established that any *exceptions* to the CORA must be "narrowly construed" in favor of disclosure. *Freedom Newspapers, Inc. v. Tollefson*, 961 P.2d 1150, 1154 (Colo. App. 1998);

Despite Ms. Oeser's unequivocal denial of Plaintiffs' Request, on September 13, 2023, the Town filed a Petition for Judicial Determination Pursuant to § 24-72-204(6)(a), C.R.S. seeking a determination by this Court whether disclosing the Berghahn Memo (and related disciplinary documents in the Town's possession) was prohibited by CORA—a determination Ms. Oeser had already made. *See* Pls.' Compl. Ex. B. That petition, hereinafter the "Town's Petition," is Case No. 2023CV30082 and Plaintiff Adelson is listed on the Town's Petition as an "Interested Part[y]." Although the Town's Petition was filed on September 13, 2023, counsel for Plaintiffs was not retained and could not formally agree to accept service until September 27, 2023.

The Town's Petition included Ms. Oeser's Affidavit where she affirmed ***three times*** that the Town denied Plaintiffs' Request on the ground that the records were personnel files. Pls.' Compl. Ex. E at 19, ¶ 5 ("I . . . withheld the remaining responsive documents because the documents appeared to be 'personnel records' under CORA because those records are part of Mr. Bergahn's personnel file."); *id.* at ¶ 6 ("Believing the responsive records to be "personnel

records," which are prohibited from disclosure under CORA, I withheld those records"); *id*. at 19, ¶ 7 ("Mr. Adelson sent an email challenging ***the Town's denial of those portions of his request*** withheld as 'personnel files' under CORA" (emphasis added)). Nevertheless, Ms. Oeser also averred that she was "unable to determine" if disclosure was prohibited as a "personnel record[]." *Id*.

In a fourth reference to the denial, in the Town's § 24-72-204(6)(a), C.R.S. Petition, the Town alleges: "…the Town believes, ***after exercising reasonable diligence and after reasonable inquiry***, that a request for a portion of a 'personnel file,' as that term is defined in CORA, ***must be denied*** based on the privacy interests of the former employee at issue." *See* Pls.' Compl. Ex. E at ¶ 6 (emphasis added). As such, it can be established that the Town has "already decided" to deny Plaintiffs' Request.

On October 6, 2023, in response to the Town's denial of Plaintiffs' Request and the Town's Petition, Plaintiffs filed a Complaint pursuant to CORA § 24-72-204(5), C.R.S. seeking an order directing Ms. Oeser to appear and show cause why she should not make the Berghahn Memo and related documents available to the public. Plaintiffs' Complaint is Case No. 2023CV30088. Because there is a dispute between the parties as to which statute applies—§ 24-72-204(5), C.R.S. or § 24-72-204(6)(a), C.R.S.—Plaintiffs filed a Motion to Consolidate the two cases, arguing that a proceeding pursuant to § 24-72-204(5), C.R.S. of the CORA is appropriate, that the Court enter an Order directing Defendant to provide Plaintiffs access to the Berghahn Memo in the format requested by Plaintiffs because § 24-72-204(3)(a)(II)(A), C.R.S. is not applicable, and that Plaintiffs are entitled to attorney fees. On December 6, 2023, this Court granted Plaintiffs' Motion to Consolidate.

At a status conference on December 15, 2023, Plaintiffs argued that the granting of the Motion to Consolidate affirmed that the Court would proceed under § 24-72-204(5), C.R.S. as well as grant the relief requested in its motion. However, the Court clarified that it had intended only to grant Plaintiffs' request to consolidate cases into one docket and proceeded under Case No. 2023CV030082. In lieu of a show cause hearing, this Court ordered the parties to submit contemporaneous briefing on (i) which statute applies, §24-72-204(5), C.R.S. or §24-72-204(6)(a), C.R.S. for the purposes of this litigation; and (ii) whether the "personnel files" exception bars disclosure of the Berghahn Memo. As such, Plaintiffs submit this brief to the Court.

ARGUMENT

A. This Court must proceed under § 24-72-204(5), C.R.S. as the Town cannot meet its burden to show that it was "unable, in *good faith*, . . . to determine" if disclosure of the Berghahn Memo was permitted pursuant to § 24-72-204(6)(a), C.R.S.

A petition under § 24-72-204(6)(a), C.R.S., which the Town filed, is only to be used in circumstances in which a custodian is, in "***good faith***", "***unable to determine***" if disclosure of the public record is permitted. *Id*. Here, Defendant has already made a determination that it will not release the Berghahn Memo on the asserted basis that the record is a "personnel file," a claim which Plaintiffs dispute. As detailed *supra*, the Town confirmed that it denied Plaintiffs' Request on ***four*** separate occasions. Subsection (6)(a) is intended for situations where a custodian not only asserts it is unable to determine if the record can be disclosed, but does so in good faith. *Colo. Republican Party v. Benefield*, 337 P.3d 1199, 1208 (Colo. App. 2011) (the custodian asserts that he or she is "unable, ***in good faith***, after exercising reasonable diligence . . . ") (emphasis added). Here, the Town decided not to disclose, and denied Plaintiffs

access to the Memo, on multiple occasions ***before*** applying to this Court for a determination under 24-72-204(6)(a). This is not an exercise of good faith. Thus, the procedure under § 24-72-204(6)(a), C.R.S. is inapplicable and the proper procedure to resolve the parties' dispute is under § 24-72-204(5)(a)–(b), C.R.S.

B. The record at issue is a "public record" under CORA and the Town cannot meet its burden to prove that the "personnel file" exception applies.

Under CORA, there is a strong presumption in favor of public access. *See* § 24-72-201, C.R.S. (it is the General Assembly's stated intent that "all public records shall be open for inspection by any person at reasonable times."); *Daniels*, 988 P.2d at 650–51 (explaining that CORA creates strong presumption in favor of public disclosure). Accordingly, unless a specific exemption applies, a "public record" is open to public inspection and copying. § 24-72-202(6)(a)(I), C.R.S.; § 24-72-203(1)(a), C.R.S. (mandating that public records "made, maintained, or kept" by . . . any agency . . . of the state are open to the public unless a specific exception applies). Moreover, any exception to CORA's disclosure mandate must be narrowly construed. *City of Westminster v. Dogan Const. Co., Inc.*, 930 P.2d 585, 589 (Colo. 1997). Because the Berghahn Memo was made, maintained, and kept by the Town for use in the exercise of the custodian's official function of documenting Berghahn's disciplinary history while acting in his official capacity as a police chief or police officer, the Memo meets the definition of a "public record." § 24-72-202(6)(a)(I), C.R.S. Indeed, the Town has not disputed that the Memo at issue is a public record, but instead seeks to apply an exemption to preclude its release. Thus, the Town bears the burden to prove that the Memo cannot be disclosed. *Denv. Publ'g Co. v. Bd. of Cmty. Comm'rs of Cnty. of Arapahoe*, 121 P.3d 190, 199 (Colo. 2005) ("The burden then shifts to the public agency to show that the records are public or non-public.").

The Town cannot meet its burden of proof because the Memo is not an exempt "personnel file." The personnel files exception to CORA only applies to ***personal demographic information***. §24-72-204(3)(a)(II)(A), C.R.S. Indeed, CORA defines "personnel files" to include only "home addresses, telephone numbers, financial information, a disclosure of an intimate relationship filed in accordance with the policies of the general assembly, [and] other information maintained because of the employer-employee relationship." For this reason, Colorado courts interpret this provision narrowly and limit it ***only*** to preclude disclosure of "personal demographic information" or information similar in nature. *Daniels*, 988 P.2d at 651 (interpreting "maintained because of the employer-employee relationship" to be the same type of information as the demographic information that is exempt from disclosure); *Jefferson Cnty. Educ. Ass'n*, 378 P.3d at 839. Thus, it is immaterial if such records are contained in a folder marked "personnel file" or if they are housed outside any such folder. *Daniels*, 988 P.2d at 651.

Colorado Courts have thus concluded that disciplinary records and the like are not "personnel files" because they are not the type of "personnel demographic information" that the legislature sought to protect from disclosure. For example, courts have held that documents or communications concerning an employee's job performance are not exempt. *Guy v. Whitsitt*, 469 P.3d 546, 554 (Colo. App. 2020) (personnel files exemption does not protect "performance ratings" from disclosure); *Denv. Post Corp. v. Univ. of Colo.*, 739 P.2d 874, 878 (Colo. App. 1987) (explaining the General Assembly intended a blanket protection for all personnel files except applications for employment and performance ratings); *Daniels*, 988 P.2d at 651 (holding only information akin to an employee's home address, telephone number and personal financial

information is properly classified as "personnel file."). As such, disciplinary files, which relate to an employee's performance and not exempt demographic information, must be disclosed.

C. There is no privacy interest in the Berghahn Memo that would exempt it from disclosure.

The Town wrongly alleges that "the Town Clerk determined Mr. Berghahn has a legitimate expectation of privacy with regard to any disciplinary history or documents or resignation letters." Town Pet. at 12. While CORA contains no exception for disclosure of information that may violate an individual's privacy interest, *Todd v. Hause*, 371 P.3d 705, 711 (Colo. App. 2015), Colorado courts have construed §24-72-204(6)(a), C.R.S. to include, "under appropriate circumstances," protection of information collected by the government, the disclosure of which would violate an individual's constitutional right to privacy. *Id.* Here, however, there is no cognizable privacy interest in the Berghahn Memo that would exempt it from disclosure.

To determine whether the disclosure of a record under CORA invades an employee's privacy interest such that its disclosure results in a substantial injury to the public interest, the Court must consider three factors: "(1) whether the individual has a legitimate expectation of nondisclosure; (2) whether disclosure nonetheless is required to serve a compelling public interest; and (3) if so, how disclosure may occur in the least intrusive manner with respect to the individual's privacy right)." *Todd*, 371 P.3d at 712 (citing *Denv. Post Corp.*, 739 P.2d at 879; *Martinelli v. Dist. Ct. in & for City & Cnty. of Denv.*, 612 P.2d 1083, 1091 (Colo. 1980). Colorado Courts and public agencies applying this standard routinely release the disciplinary records of public employees. *See, e.g., Tollefson*, 961 P.2d at 1150; *City of Boulder v. Avery*, No. 01CV1741, 2002 WL 31954865, at *3 (Dist. Colo. Mar. 18, 2002) (The substantial injury to

public interest exception did not prohibit disclosure of a city judge's performance evaluations.); Order Regarding Application Pursuant to C.R.S. 24-72-204(6)(a) of the Colorado Open Records Act, *Bd. of Cnty. Comm'rs of Larimer Cnty. v. BizWest Media, LLC*, No. 2022CV30489 (Larimer Cnty. Dist. Ct. Sept. 6, 2022) (ordering disclosure of the performance narratives section of a county director and assistant director's disciplinary record upon finding such disclosure would not cause substantial injury to the public interest). Importantly, the substantial injury exception is only to be used in "extraordinary" circumstances "which the General Assembly could not have identified in advance." *Bodelson v. Denv. Publ'g Co.*, 5 P.3d 373, 377 (Colo. App. 2000); *see also Freedom Newspapers, Inc. v. Bowerman*, 739 P.2d 881 (Colo. App. 1987); *Denver Publ'g Co. v. Dreyfus*, 520 P.2d 104 (Colo. 1974). The Colorado Supreme Court has articulated only one narrow instance—"perhaps the most *extraordinary event* in the history of this community"—that justified withholding a record under the substantial injury to the public interest exception. *Bodelson*, 5 P.3d at 378–79 (emphasis added) (finding that circumstances surrounding the aftermath of the Columbine High School shooting constituted "extraordinary" circumstances justifying withholding victims' autopsy records). A public employee's interest in their disciplinary record is not such an extraordinary circumstance.

Here, the Town has not argued that releasing the Memo will cause substantial injury to the public interest, but instead that releasing the record will invade Mr. Berghahn's right to privacy. *See* Town Pet. At 1–6. Plaintiffs disagree. As a police chief, Mr. Berghahn is a public employee entitled to only a narrow and limited privacy interest in the records at issue, for which there is plainly no extraordinary public interest in protection. *Tollefson*, 961 P.2d at 1156 ("An employee has at least a minimal privacy interest in his or her employment history and job

performance evaluations, and further, public employees have a ***narrower expectation*** of privacy than other citizens." (emphasis added)). And, any claimed privacy interest must be weighed in ***favor of disclosure***. *Denver Post Corp.*, 739 P.2d at 879 ("Against the privacy interests at stake must be weighed the Act's general presumption in favor of public access."). Moreover, while some courts have recognized that public employees have a narrow legitimate expectation of privacy in their "personnel files," *Whitsitt*, 469 P.3d at 554, such expectation is inapplicable in this case because, as discussed *supra*, disciplinary records, akin to performance narratives, are not personnel files as that term is used in CORA. In the context of public records, "'[e]xpectations of privacy are legitimate if the information which the state possesses is highly personal or intimate,'" *Todd*, 371 P.3d at 713 (quoting *Nilson v. Layton City*, 45 F.3d 369, 372 (10th Cir. 1995), which is not the case for disciplinary records tied to job performance. *Avery*, 2002 WL 31954865, at *2–3 (job performance evaluations are not "intimate, personal information at all"). Thus, how a public employee performs in his job, especially when interacting with the public, is not highly personal or intimate information.

For example, in releasing the performance evaluations of the Chief Judge of a municipality, the *Avery* Court reasoned that a judge

> is a person with a direct impact on the lives of a great many people in the community. When that person abruptly resigns there is a valid, civic-based curiosity about why that occurred. It is not a matter of unwarranted or gossip-driven interest. Given that there can be ***only a miniscule***, legitimate expectation of privacy about how one performs in such a public position and given that there is a legitimate and compelling public interest in the same topic, the balance here favors disclosure.

Avery, 2002 WL 31954865, at *3 (emphasis added). Similarly, the Court in *Whitsitt* concluded that a town manager lacked a cognizable privacy interest in his employment contract as well as his conduct as a public employee. *Whitsitt*, 469 P.3d at 554.

Likewise, Mr. Berghahn, a police chief who resigned from his public position, *see* Press Release, Town of Elizabeth, Resignation of Chief of Police (last visited Jan. 19, 2024) https://www.townofelizabeth.org/townclerk/page/press-release-town-elizabeth-resignation-chief-police [https://perma.cc/8PYU-D65W] (press release stating that Berghahn resigned from his post as chief of police), retains minimal, if any, expectation of privacy, in records related to his job performance. Notably, the Town sites no specific expectation of privacy that Mr. Berghahn holds in the Memo, and instead states only generally that it "contains information that implicates Mr. Berghahn's privacy interests, the release of which could have an impact on his current or future employment." Town Pet. ¶ 14. The speculative future impact on an individual's future is insufficient to establish more than a *de minimis* privacy interest. *Tollefson*, 961 P.2d at 1157 (claimed threat of injury to future employment weighed against compelling public interest tips in favor of disclosure). Thus, the Town has not and cannot meet its burden to prove that Mr. Berghahn has an expectation of privacy in his disciplinary records. Since no reasonable expectation of privacy exists in the disciplinary records of Mr. Berghahn, the inquiry ends here, and the Memo must be released to the Plaintiffs. *Todd*, 371 P.3d at 713. ("If no legitimate expectation of nondisclosure exists, the inquiry ends, and disclosure of the requested information is required under CORA.").

Arguendo, even if the Court finds a legitimate expectation of privacy in the Berghahn Memo—which there is not—the remaining factors demand disclosure. The second factor—

whether the disclosure of the record is required to serve a compelling public interest—weighs in favor of disclosure. Here, there is a compelling public interest in understanding why a police chief was disciplined or resigned. *See also* Christopher Osher, *4 Recent Murders: Colorado's Troubled Family Court System Ignores Children In Peril*, The Gazette (January 11, 2024), https://gazette.com/colorado-watch/4-recent-murders-colorados-troubled-family-court-system-ignores-children-in-peril/article_2c6b022e-ae63-11ed-843f-03bc8d0021ee.html [https://perma.cc/2LF8-QKZE] (reporting that Mr. Berghahn resigned from his post as police chief). Colorado courts recognize that "the public has an interest in knowing . . . employee work performance," *Whitsitt*, 469 P.3d at 554, and "a legitimate interest in knowing how law enforcement officers behave while doing their jobs." *Freedom Colo. Info., Inc. v. El Paso Cnty. Sheriff's Dep't*, 196 P.3d 892, 897 (Colo. 2008) (citation omitted). Indeed, the public interest in a public employee's job performance is even stronger when individuals, in elected positions of leadership, or a high-visibility positions, such as Mr. Berghahn, who polices a community and is compensated with taxpayers' dollars, resigns. *Avery*, 2002 WL 31954865, at *2. Thus, given the compelling public interest in access to work performance records of a highly visible police chief, the second prong of the *Todd* test favors disclosure.

As to the final prong—how disclosure may occur in the least intrusive manner with respect to the individual's privacy right— a court may review the material at issue *in camera* to determine if its disclosure is appropriate. *Martinelli*, 612 P.2d at 1092. If information contained in the public record is of a highly-sensitive nature, the court may order redactions. *See, e.g.*, *Freedom Colo. Info., Inc.*, 196 P.3d at 900 n.3 (in redaction, "the legislature has given the custodian an effective tool to provide the public with as much information as possible, while still

protecting privacy interests when deemed necessary," but "[a] custodian should redact sparingly"); *Land Owners United, LLC v. Waters*, 293 P.3d 86, 99 (Colo. App. 2011) (holding that District Court has "discretion to direct redaction of specific confidential information"). This Court is empowered to make such an assessment before ordering that the Memo be released.

D. Plaintiffs are entitled to attorney fees under either their Complaint pursuant to § 24-72-204(5), C.R.S., or the Town's Petition pursuant to § 24-72-204(6)(a), C.R.S.

Plaintiffs are unclear as to why the Town sought relief from this Court under §24-72-204(6)(a), C.R.S. instead of waiting for Plaintiffs to file an action after Plaintiffs' Request was denied. Perhaps the Town is seeking an order from this Court in the form of an advisory opinion to prohibit future requests for disciplinary records from the public, or perhaps the Town wrongly assumed it could avoid the possibility of attorney fees under § 24-72-204(5)(a)–(b), C.R.S. by filing preemptively under subsection (6)(a). However, even under subsection (6)(a), if the Town does not meet its burden of proving that it was "unable to determine" whether disclosure is prohibited, it is well-established that a court must award mandatory attorney fees. § 24-72-204(6)(a), C.R.S.; *Benefield*, 337 P.3d at 1208–09; *see also Reno v. Marks*, 349 P.3d 248, 249 (Colo. 2015) ("We hold that where an official custodian seeks an order prohibiting or restricting disclosure under section 24-72-204(6)(a), a prevailing records requestor is entitled to costs and attorney fees in accordance with section 24-72-204(5). Under section 24-72-204(5), a prevailing records requestor is entitled to costs and attorney fees unless the district court finds that the denial of the right of inspection was proper.").

That the Town cannot employ § 24-72-204(6)(a), C.R.S. to avoid potential attorney fees is grounded in both statutory construction and public policy.

> Because subsection (5) requires a records requestor to give the custodian written notice at least three business days before filing an application in district court to challenge the custodian's denial of inspection, § 24-72-204(5), a custodian could immunize herself from any potential liability for attorney fees simply by filing an action under subsection (6)(a) first. Thus, such an interpretation could create a "race to the courthouse" that the custodian would always win. This result would render CORA's fee-shifting scheme meaningless.

Reno, 349 P.3d at 256. Thus, Plaintiffs would be entitled to seek attorney fees if they prevail under either their Complaint pursuant to § 24-72-204(5), C.R.S., or the Town's Petition pursuant to § 24-72-204(6)(a), C.R.S.

CONCLUSION

For the reasons herein, Plaintiffs respectfully requests that the Court find that the disciplinary records are not "personnel files", and that the disclosure of these records will not invade Mr. Berghahn's privacy interests. Thus, the records in this case are public records and the Court must release them to the Plaintiffs for inspection and copying.

Respectfully submitted this 19th day of January 2024.

By /s/*Rachael Johnson*

Rachael Johnson
Reporters Committee for Freedom of the Press
Attorney for Plaintiffs Aaron Adelson & KUSA-9 News/Multimedia Holdings Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of January 2024, a true and correct copy of the foregoing **PLAINTIFFS' BRIEF** 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*
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