

<p>DISTRICT COURT, LARIMER COUNTY, COLORADO  Larimer County Justice Center  201 Laporte Avenue, Suite 100  Fort Collins, CO 80521-2761  (970) 498-6100</p> <hr/> <p><b>Plaintiff: STACY LYNNE</b></p> <p><b>v.</b></p> <p><b>Defendant: THE CITY OF FORT COLLINS; DARIN ATTEBERRY; CARRIE DAGGETT; CHRISTOPHER HALL</b></p>	<p>COURT USE ONLY</p>
<p>Kimberly B. Schutt, #25947  WICK &amp; TRAUTWEIN, LLC  P.O. Box 2166  Fort Collins, CO 80522  Phone: (970) 482-4011  Email: <a href="mailto:kschutt@wicklaw.com">kschutt@wicklaw.com</a></p> <p>John R. Duval, #10185  FORT COLLINS CITY ATTORNEY'S OFFICE  P.O. Box 580  Fort Collins, CO 80522  Phone: (970) 221-6520  Email: <a href="mailto:jduval@fcgov.com">jduval@fcgov.com</a></p>	<p>Case Number: 2018 CV 172</p> <p>Courtroom: 4C</p>
<p style="text-align: center;"><b>DEFENDANTS' ANSWER</b></p>	

**COMES NOW**, the Defendants, City of Fort Collins (“City”), Darin Atteberry, Carrie Daggett and Christopher Hall, by and through their counsel, the Fort Collins City Attorney’s Office and Wick & Trautwein, LLC, and respectfully submit the following Answer to the Plaintiff’s Complaint and Application for Order to Show Cause [“Complaint”]. In support thereof, the Defendants answer, aver and state as follows:

1. The Defendants are without sufficient information and belief to either admit or deny the allegations of Paragraph 1 of the Complaint as to Plaintiff’s residence, and therefore must deny the same.
2. The Defendants admit the allegations of Paragraph 2 of the Complaint.

3. The Defendants admit the allegations of Paragraphs 3 of the Complaint that the named individual defendants are all public employees of the City of Fort Collins.

4. The Defendants admit the allegations of Paragraphs 4 and 5 of the Complaint that jurisdiction and venue are properly in the Larimer County District Court.

5. Defendants state that the narrative set forth in Paragraph 6 does not make factual allegations actually requiring a legal response in the way of an admission or denial, but instead contains irrelevant and argumentative statements regarding investigative journalism which has no bearing on the issues which the Court must decide in this challenge under the Colorado Open Records Act [“CORA”]. Plaintiff’s status as an alleged investigative journalist or otherwise is irrelevant to the Court’s determination here. The extensive narrative contained in Paragraph 6 is not a short and plain statement of the claim and is thus improper under Rule 8 of the Colorado Rules of Civil Procedure, and should be stricken. Notwithstanding those objections and without waiving the same, the Defendants are without sufficient information and belief to either admit or deny whether Plaintiff is a resident of Fort Collins, Colorado, whether she is an investigative reporter or daily news reporter, or any of the other allegations of Paragraph 6, and therefore must deny the same in their entirety.

6. With regard to the allegations of Paragraph 7 of the Petition, the Defendants admit the individual defendants are hired and not elected employees of the City of Fort Collins and that the City has a council-manager form of government. The Defendants also admit the Plaintiff’s Complaint purports to allege claims against them in their official capacities as employees of the City of Fort Collins.

7. Paragraphs 8 through 11 of the Complaint do not contain factual allegations requiring an admission or denial on the part of the Defendants, but rather consist of a listing of statutes and citations to case law. The statutory sections and legal authority cited speak for themselves. To the extent Paragraphs 8 through 11 contain any other allegations, the Defendants deny the same.

8. Pages 6 through 9 of the Complaint, under the heading “Background and Summary of the Case,” contain numerous paragraphs which are not numbered and which are narrative and argumentative in nature, rather than concise factual allegations to support the Plaintiff’s claims under CORA. The extensive narrative contained under this heading is not a short and plain statement of the claim and is thus improper under Rule 8 of the Colorado Rules of Civil Procedure, and should be stricken. Notwithstanding those objections and without waiving the same, the Defendants further state:

(a) they are without sufficient information and belief to either admit or deny Plaintiff’s statements regarding her alleged investigations or her alleged hearsay discussions with business owners, and therefore must deny the same. The Defendants further state that the Plaintiff’s alleged investigations, hearsay discussions with business owners and her reasons for requesting records under CORA are irrelevant to the issues to be determined by this Court.

(b) With regard to the narrative paragraphs on page 7, under the section “August 7, 2018,” the Defendants admit that Assistant City Attorney Christopher Van Hall had email communications with the Plaintiff; those email communications are attached to the Complaint and speak for themselves. The Defendants further admit that the City has withheld limited records from production in response to Plaintiff’s request under CORA on the grounds that they are attorney-client privileged, at the same time providing the Plaintiff with extensive records responsive to her request. The Defendants assert that the City’s withholding of the limited amount of records on the grounds of privilege is proper under CORA. The Plaintiff’s remaining assertions under this heading are argumentative rather than making factual allegations requiring an admission or denial; the cited legal authority speaks for itself.

(c) To the extent pages 6 through 9 of the Complaint contain any further allegations, the Defendants deny the same

9. Paragraphs 12 through 33 of the Complaint, though contained under a heading called “General Facts and Grounds for Motion to Show Cause,” do not contain actual factual allegations but merely contain a listing and description of the 22 exhibits attached to the Complaint, along with legal argument in Paragraph 33. Accordingly, said paragraphs do not require an admission or denial from the Defendants; said exhibits and cited legal authority speak for themselves; the Defendants generally deny the Plaintiff’s legal arguments. To the extent Paragraphs 12 through 33 contain any other factual allegations, the Defendants deny the same.

10. With regard to the allegations of Paragraph 34 of the Complaint, the Defendants admit that the City withheld from production certain limited documents on the grounds of the attorney-client privilege, and assert that said withholding was proper. The Defendants deny that CORA requires them to provide a privilege log for documents withheld on this basis. To the extent Paragraph 34 contains any further allegations, the Defendants deny the same.

11. In answer to paragraph 35 of the Plaintiffs’ Complaint, the Defendants incorporate herein by reference the answers set forth above in paragraphs 1 through 10 of this Answer.

12. The Defendants admit the allegations of Paragraph 36 of the Plaintiff’s Complaint, but deny any implication of Paragraph 36 that the Plaintiff’s requested records were subject to public inspection under CORA.

13. The Defendants deny the allegations of Paragraphs 37 through 39 of the Complaint.

14. With regard to the allegations of Paragraph 40 of the Complaint, the Defendants admit on information and belief that the Plaintiff is not an attorney. The Defendants deny that she is entitled to an award of fees and costs for seeking records, which records have been properly withheld from production on the grounds of the attorney-client privilege.

15. The Defendants deny the allegations of Paragraphs 41 and 42, and specifically deny the Plaintiff's claims that she is entitled to a privilege log under CORA for documents withheld on the grounds of attorney-client privilege; that she is entitled to an Order to Show Cause; or that Judge Devin Odell's order in a different Larimer County District Court case provides relevant or controlling legal authority for this case. To the extent Paragraphs 41 and 42 contain any further factual allegations, the Defendants deny the same.

16. The Defendants hereby deny each and every allegation of the Plaintiff's Complaint not expressly admitted hereinabove.

### **AFFIRMATIVE DEFENSES**

1. The Complaint fails to state a claim upon which relief can be granted.

2. The City provided the Plaintiff with extensive documentation responsive to her CORA request, and withheld certain limited documents on the grounds of attorney-client privilege. Said documents were properly withheld on the basis of the attorney-client privilege as "privileged information" under C.R.S. §24-72-204(3)(a)(IV), as they reflect matters communicated in the course of gaining legal counsel, advice, or direction with respect to the client's rights or obligations, and in circumstances giving rise to a reasonable expectation that the communications would be treated as confidential.

3. With only one exception, C.R.S. §24-72-204 does not require a public entity to provide a privilege log for all documents withheld from production under the exceptions enumerated under Section 24-72-204(3)(a). The only "privilege log" requirement is contained in one specific subpart to Section 24-72-204(3)(a), namely 24-72-204(3)(a)(XIII), which protects documents under a "deliberative process" privilege. That subpart (3)(a)(XIII), which was added to CORA by amendment in 1999, requires the custodian to provide the applicant with a sworn statement specifically describing each document withheld under this privilege, explaining why each such document is privileged, and why disclosure would cause substantial injury to the public interest. That sworn statement requirement is only found in that specific statutory subpart relating to documents withheld under the deliberative process privilege, not the attorney-client privilege protected by subpart (3)(a)(IV), nor any of the other exceptions embodied in Section 24-72-204(3)(a).

4. Plaintiff's claims may be barred by the doctrine of waiver and/or estoppel. Notwithstanding the fact CORA does not require the City to provide a privilege log for documents withheld under the attorney-client privilege, the City offered to provide one in exchange for Plaintiff's payment of a \$75 fee. That fee was based on the estimated staff time

needed to complete the offered log and was reasonable. The imposition of a fee for generating a privilege log which does not presently exist was consistent with City policies in place at the time of the request, with CORA and with other applicable Colorado legal authority. Plaintiff declined to pay the reasonable fee properly charged by the City for production of such a privilege log and instead filed this suit.

5. Plaintiff's Complaint consists largely of lengthy and irrelevant narrative, as well as legal arguments and conclusions, rather than a short and plain statement of the factual allegations supporting her claim. The Complaint is thus contrary to the general pleading requirements set forth in Rule 8 of the Colorado Rules of Civil Procedure. As stated above, the Defendants are not required to admit or deny said narrative summaries and legal arguments and conclusions under the general rules of pleading, and the Defendants generally deny the Plaintiff's narratives and legal arguments. The Defendants reserve the right to submit their own legal arguments on the issues raised in the Complaint.

6. The Defendants are not required to admit or deny each and every statement contained in the twenty-two exhibits attached to the Complaint and incorporated by reference in Paragraphs 12 through 33 of the Complaint.

7. The Plaintiff's Complaint is frivolous, groundless and vexatious, entitling the Defendants to an award of their actual costs and attorney's fees.

8. The Defendants reserve the right to add or delete affirmative defenses based on information gathered in the further investigation of this case.

WHEREFORE, Defendants respectfully pray that the Court hold the Plaintiff's Complaint for naught and enter judgment in their favor and against the Plaintiff, and to award the Defendants their reasonable attorney's fees, costs and such further relief as the Court shall deem just and proper.

DATED this 30<sup>th</sup> day of August, 2018.

WICK & TRAUTWEIN, LLC

By: *s/Kimberly B. Schutt*  
Kimberly B. Schutt, #25947  
Attorneys for Defendant

And

FORT COLLINS CITY ATTORNEY'S OFFICE

By: s/John R. Duval  
John R. Duval, #10185  
Attorneys for Defendant

*[This document was served electronically pursuant to C.R.C.P. 121 §1-26. The original pleading signed by defense counsel is on file at the offices of Wick & Trautwein, LLC and the Fort Collins City Attorney's Office]*

**CERTIFICATE OF ELECTRONIC FILING**

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANTS' ANSWER** was filed via the Colorado Courts E-Filing System and served this 30<sup>TH</sup> day of August, 2018, on the following:

Stacy Lynne  
305 W. Magnolia Street #282  
Fort Collins, CO 80521

A courtesy copy was also emailed to Ms. Lynne at *stacy\_lynne@comcast.net*

s/ Jody L. Minch

*[The original certificate of electronic filing signed by Jody L. Minch is on file at Wick & Trautwein, LLC)*