

<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>Plaintiff: STACY LYNNE</p> <p>v.</p> <p>Defendants: CITY OF FORT COLLINS: City Manager City Attorney Carrie Daggett, Rachel Askeland (Acting Records Custodian), Karen Burke (Records Custodian)</p>	<p>COURT USE ONLY</p>
<p>Andrew W. Callahan, #52421 WICK & TRAUTWEIN, LLC P.O. Box 2166 Fort Collins, CO 80522 Phone: (970) 482-4011 Email: acallahan@wicklaw.com</p> <p>John R. Duval, #10185 Christopher Van Hall #50660 FORT COLLINS CITY ATTORNEY'S OFFICE P.O. Box 580 Fort Collins, CO 80522 Phone: (970) 416-2488/(970) 416-2082 Email: jduval@fcgov.com; cvanhall@fcgov.com</p>	<p>Case Number: 2020 CV 116</p> <p>Courtroom: 3C</p>
<p>DEFENDANTS' ANSWER TO PLAINTIFF'S COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE</p>	

COMES NOW, the Defendants, the City of Fort Collins (the “City”), Carrie Daggett, Rachel Askeland and Karen Burke, by and through counsel, The Fort Collins City Attorney’s Office and Wick & Trautwein, LLC, and respectfully submit the following Answer to Plaintiff’s Complaint and Application for Order to Show Cause:

Plaintiff’s Introduction

The untiled and unnumbered introduction section of Plaintiff’s Complaint and Application for Order to Show Cause contains five unnumbered paragraphs and footnotes which include a lengthy narrative involving a prior case brought by Plaintiff against the Larimer County Sheriff’s Office, and which did not involve the City. With regard to these first five unnumbered paragraphs, Defendants admit that Noah Beals is an employee at the City, and that he works in the Zoning Department. Plaintiff has filed two other lawsuits against Noah Beals asserting claims for libel

and slander. The first case was dismissed on sovereign immunity grounds, and the second is still pending. *See Stacy Lynn v. Noah Beals*, Larimer Co. Dist. Ct., Case No. 2020 CV 115.

None of the remaining allegations in the first five paragraphs are directed at Defendants. To the extent a response is necessary to the remaining statements in these paragraphs, Defendants deny the same.

Jurisdiction and Venue

1. In response to paragraph 1, Defendants lack sufficient information to admit or deny that Plaintiff Stacy Lynne is an investigative journalist residing in Fort Collins, Colorado, and therefore deny the same.

2. In response to paragraph 2, Defendants admit that Darin Atteberry, Carrie Daggett, Rachel Askeland and Karen Burks are employees of the City. Defendants deny Plaintiff's characterization of Ms. Askeland as "Acting Records Custodian," but admit that she is likely a custodian as that term is defined under the Colorado Open Records Act.

3. Defendants admit the allegations of paragraphs 3 and 4.

The Parties

4. Defendants are without sufficient information to admit or deny the allegations of paragraph 5 and therefore deny the same.

5. Defendants admit the allegations of paragraph 6.

Statutory Authority

6. Paragraphs 7 through 10 of Plaintiff's Complaint do not contain factual allegations requiring an admission or denial. Rather, these allegations 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 7 through 10 contain any factual allegations, Defendants deny the same.

General Facts and Grounds for Motion to Show Cause

7. In response to paragraph 11, Defendants admit that Plaintiff filed a request for City record under the Colorado Open Records Act (CORA) on or about December 4, 2019.

8. In response to paragraph 12, Defendants deny that Plaintiff's CORA request was denied in total. Defendants produced several categories of documents and information in response to Plaintiff's request for the entire personnel file of Noah Beals. Defendants produced any existing employment applications, employment agreements, performance ratings, compensation, expense allowances and benefits and all department transfers, job title changes, and pay grade changes for Noah Beals from December 2017 through December 2019. Defendants admit that they withheld

Mr. Beals' performance evaluation narratives which the City refers to as "Quarterly Performance Assessments" ("QPA").

9. Defendants admit the allegations of paragraphs 13.

10. In response to paragraph 14, Defendants deny that Ms. Burke is the "Records Custodian for the City of Fort Collins." Defendants admit the remainder of the allegations in this paragraph.

11. Defendants admit the allegations of paragraphs 15.

Claim for Relief

12. In response to paragraph 16, Defendants restate their above responses as if fully contained herein.

13. In response to paragraph 17, Defendants admit that a portion of Plaintiff's December 4, 2019 record request encompassed public records as defined in C.R.S. §24-72-202(6)(a)(I). However, Defendants deny that Mr. Beals' QPAs are public records subject to disclosure, and affirmatively state that they were properly withheld.

14. Defendants deny the allegations of paragraphs 18 and 19.

15. In response to paragraph 20, Defendant's deny that Plaintiff is entitled to any fees or costs, because Defendants property withheld Mr. Beals' QPAs from public disclosure.

Application for Order to Show Cause

16. Defendants deny the allegations contained in paragraphs 21 and 22.

AFFIRMATIVE DEFENSES

1. Mr. Beals' QPAs were lawfully withheld by Defendants are personnel files as that term is defined in C.R.S. §24-72-202(4.5). Pursuant to C.R.S. §24-72-405(3)(a)(II), personnel files are not subject to public disclosure under a CORA request.

2. Mr. Beals' QPAs were lawfully withheld by Defendants under the deliberative process privilege exception to disclosure under CORA. The deliberative process exception is a common law exception which provides that certain information will not be subject disclosure under CORA. *See, City of Colorado Springs v. White*, 967 P.2d 1042 (Colo. 1998). The City uses QPAs to encourage the frank exchange of opinions and evaluations by public employees and their direct supervisors, in order to assist in the ongoing decision-making process with regard to public employees' positions, assignments, responsibilities, compensation and future employment. Disclosure of QPAs to the public would discourage an open and honest evaluation by both

employer and employee, and thus these documents were properly withheld. *See, Martinelli v. District Court in and for City and County of Denver*, 612 P.2d 1083 (Colo. 1980).

3. Mr. Beals' QPAs were lawfully withheld by Defendants under C.R.S. §24-72-204(6)(a) because disclosure of these documents would do substantial injury to the public interest. The City's employees, and in particular those individuals who are currently employed by the City, have a legitimate expectation that their QPAs will not be publicly disclosed. This legitimate interest outweighs any public interest in accessing the QPAs for active City employees, and there is no way to limit the infringement of the employee's legitimate expectation of non-disclosure through a partial production. *See, Todd v. Hause*, 371 P.3d 705 (Colo. App. 2015); *Denver Post Corp. v. University of Colorado*, 739 P.2d 874 (Colo. App. 1987). "Indeed, the court believes that in most cases, the privacy interests of the public employee in maintaining the privacy of performance narratives will outweigh the public's right to disclosure." *Stacy Lynne v. Dionne Sund, et al.*, Case No. 2018-CV-198 (Larimer Co. Dist. Ct., Order, Feb. 8, 2019).

4. Plaintiff's Complaint fails to state a claim upon which relief may be granted.

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

WHEREFORE, Defendants respectfully request this Court enter judgment in favor of Defendants and against Plaintiff, denying Plaintiff's application for an order to show cause, for judgment in favor of Defendants awarding attorney's fees and costs incurred herein, and for such other relief as is just and reasonable.

Respectfully submitted this 27th day of March, 2020.

WICK & TRAUTWEIN, LLC

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and

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CERTIFICATE OF ELECTRONIC FILING

The undersigned hereby certifies that a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFF COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE** was filed via the Colorado Courts E-Filing System and served this 27th day of March, 2020, on the following:

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

Served via email to stacy_lynne@comcast.net & U.S. Mail.

s/ Jody L. Minch

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