

District Court Delta County Combined Court 501 Palmer St. #338 Delta, CO 81416	▲ COURT USE ONLY ▲
Plaintiffs: DELTA COUNTY CITIZEN REPORT, INC., a Colorado Nonprofit Corporation, and JOANN KALENAK, an Individual v. Defendant: ROBBIE LEVALLEY, in her official capacity as the custodian of records for the County Administrator of Delta County, Colorado	
Attorney for Plaintiffs: Schumacher & O’Loughlin, LLC Christopher Mochulsky, Atty. Reg. # 52629 232 W. Tomichi Ave., Ste. 204 Gunnison, Colorado 81230 Phone Number: 970.641.4900 E-mail: chris@gunnisonlaw.net	Case No.: Division: Courtroom:
APPLICATION FOR AN ORDER TO SHOW CAUSE PURSUANT TO THE COLORADO OPEN RECORDS ACT, C.R.S. § 24-72-201, ET SEQ.	

Plaintiffs Delta County Citizen Report, Inc., a Colorado nonprofit corporation, and JoAnn Kalenak, an individual, by and through their undersigned counsel, hereby respectfully submit this Application for an Order to Show Cause Pursuant to the Colorado Open Records Act, § 24-72-201, C.R.S. *et seq.*, (“CORA”), against Robbie LeValley, in her official capacity as the custodian of records for Delta County Colorado, as follows:

I. PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Delta County Citizen Report, Inc., (“DCCR”), a nonprofit corporation under the laws of Colorado, is a media outlet that provides news and information to the public concerning Delta County with an objective of ensuring a transparent and responsive county government.
2. Plaintiff JoAnn Kalenak is the principal of DCCR, and resident of the County of Delta, State of Colorado.
3. Defendant Robbie LeValley is the County Administrator for Delta County, Colorado, and serves as the custodian of records for public records of the County Administrator.
4. This Court has jurisdiction over the subject matter at issue because this is a civil action. Colo. Const. Art. VI, § 9(1).

5. Venue is proper pursuant to C.R.C.P 98(c)(1) because the Defendant resides in Delta County, Colorado and pursuant to C.R.S. § 24-72-204(5)(a), because the records at issue in this case can be found in Delta County, Colorado.

II. BACKGROUND

6. Plaintiffs incorporate by this reference the allegations of paragraphs 1-5 above as if set forth verbatim.
7. In August of 2019, DCCR was informed that Defendant was using her county-issued credit card to purchase products from a business with which she has financial ties.

First CORA Request

8. On September 6, 2019, Ms. Kalenak, on behalf of DCCR, submitted a CORA request to Delta County for “Delta County credit card charge monthly statements with all accounts associated with [Delta County] County Administrator Robbie LeValley... for the period [of Jan. 1, 2015 to Sept. 1, 2019].” **Ex. 1** (“First CORA Request”).
9. Defendants provided DCCR with the requested records from the time frame of November 2018 to September 1, 2019, but denied records prior to November 2018.
10. Defendant’s reasoning for denying records was that she did not have a credit card in her name prior to November 2018.
11. However, the First CORA Request requested “credit card charge monthly statements with *all accounts associated* with County Administrator Robbie LeValley,” and not just credit cards in Ms. LeValley’s name. **Ex. 1** (emphasis added).
12. On information and belief, Ms. LeValley was actively and consistently using county issued credit cards prior to November 2018, and she was therefore “associated with” different county-issued credit cards prior to November 2018.
13. As such, records exist for the credit card “associated with” Ms. LeValley from January 1, 2015 to November 2018, and Defendant denied inspection of those records with regard to the First CORA Request.

Second CORA Request

14. On September 12, 2019, Ms. Kalenak, on behalf of DCCR, submitted an expanded CORA request for “all Delta County credit and/or debit card charge monthly statements with all accounts associated and/or used by County Administrator Robbie LeValley... [from Jan. 1, 2014 to Sept. 1, 2019].” **Ex. 2** (emphasis in original) (“Second CORA Request”).

15. Defendant, through counsel, responded to the Second CORA Request stating that “[t]here are no further documents responsive to the request. Ms. LeValley did not have a County credit card until late 2018.” **Ex. 3.**
16. The Second CORA Request asked for all credit card records “associated with and/or used” by Ms. LeValley. **Ex. 2.**
17. Upon information and belief, Ms. LeValley was associated with county issued credit cards prior to November 2018.
18. Upon information and belief, Ms. LeValley also used county issued credit cards prior to November 2018.
19. As such, records exist for the credit card(s) associated with and/or used by Ms. LeValley from January 1, 2014 to November 2018, and Defendant denied inspection of those records.

Third CORA Request

20. On March 24, 2021, DCCR submitted a third CORA Request for “all Delta County credit and/or debit card charge monthly statements with all accounts associated and/or used by County Administrator Robbie LeValley... [from Jan. 1, 2014 to March 24, 2021].” **Ex. 4** (emphasis in original) (“Third CORA Request”).
21. Defendant acknowledged the existence of responsive records and stated that it would take 187 hours (over three full business weeks) to locate and redact those records and that “the total cost will be between \$4170 and \$4620” for the records. **Ex. 5.** Defendant demanded up-front payment of half that amount before any work would commence on retrieving the records requested. *Id.*
22. The time and cost Defendants associated with the Third CORA Request contained no explanation or justification for the exorbitant cost.

New Information Comes to Light

23. On July 20, 2021, the Colorado Independent Ethics Commission (“IEC”) held a hearing on an ethics complaint filed by DCCR against Ms. LeValley based on what was revealed in the First CORA Request.
24. During the IEC hearing, Mark Roeber, who served as a Delta County Commissioner and Ms. LeValley’s boss from 2012-2021, testified under oath that Ms. LeValley had a county issued credit card prior to November 2018.

Fourth CORA Request

25. Based on information provided by Mr. Roeber, On November 11, 2021, DCCR submitted a fourth CORA request for “all Delta County credit and/or debit card expense statements for all accounts associated with and/or used by County Administrator Robbie LeValley from Oct. 1, 2012 to Nov. 13, 2018.” **Ex. 6** (“Fourth CORA Request”).
26. On November 22, 2021, seven working days after the request was submitted, Defendant reached out to Plaintiffs’ counsel with regard to the request.
27. At no time between November 11, 2021 and November 22, 2021 did Defendant notify Plaintiffs of an extenuating circumstances.
28. On December 1, 2021, DCCR sent Delta County a notice of intent to sue for four CORA violations. **Ex. 7.**
29. On December 2, 2021, fourteen working days after the Fourth CORA Request was submitted, Delta County formally responded to the Fourth CORA Request, through counsel. **Ex. 8.**
30. The formal response admitted that records existed for credit cards associated with and/or used by Ms. LeValley prior to November 2018, despite having twice previously denied that such records exist.
31. Further, the formal response quoted a cost of \$750.00 for the requested records – less than 1/5th of the original quoted cost of “between \$4170 and \$4620.”¹ **Ex. 8.**
32. On December 8, 2021, eighteen working days after DCCR submitted the Fourth CORA Request, Defendants provided records to DCCR, for a total cost of \$99.00 – 1/50th of the original quoted cost of “between \$4170 and \$4620.”
33. The records provided on December 8, 2021 were not responsive to the Fourth CORA Request, and only contained three records of charges authorized (but not made) by Ms. LeValley over a six year period.
34. The records provided on December 8, 2021 show that Ms. LeValley, on three occasions, requested software purchases from the IT department using the IT department’s credit card.
35. For over two-years, Defendant has exhibited a pattern and practice of conduct of denying records requests, falsely claiming that no responsive records exist and demanding

¹ The quoted cost for the Third CORA Request of between \$4,170.00 and \$4,620.00 was for records for a timeframe of approximately 7 years and 3 months (from January 1, 2014 to March 24, 2021). The quoted cost for the Fourth CORA Request of \$750.00 was for records for a timeframe of approximately 6 years and 2 months (from October 1, 2012 to November 13, 2018). Even though the timeframe for the Third CORA Request was longer than the Fourth CORA Request, Defendant had already provided records from November 2018 to September 1, 2019 in the First CORA Request. So, while the timeframes for records requested are different in the Third and Fourth CORA Request, they are not so substantial to justify the more than 1/5th reduction in quoted cost.

exorbitant costs that bear no relationship to the actual time required to search and retrieve responsive records.

CLAIMS FOR RELIEF

COUNT 1: FIRST VIOLATION OF CORA, § 24-72-201, C.R.S. ET SEQ.

36. Plaintiffs incorporate by this reference the allegations of paragraphs 1-35 above as if set forth verbatim.
37. The First CORA Request requested “credit card charge monthly statements with *all* accounts *associated* with County Administrator Robbie LeValley” from January 1, 2015 to September 1, 2019. **Ex. 1** (emphasis added).
38. Ms. LeValley was associated with a credit card from January 1, 2015 to September 1, 2019.
39. However, Defendant denied to Plaintiffs records of credit card statements that Ms. LeValley was associated with prior to November 2018.
40. Plaintiffs were denied their right to inspect public records, and request that Defendant show cause as to why she was not required to provide the requested records pursuant to § 24-72-204(5)(a), C.R.S.

COUNT 2: SECOND VIOLATION OF CORA, § 24-72-201, C.R.S. ET SEQ.

41. Plaintiffs incorporate by this reference the allegations of paragraphs 1-40 above as if set forth verbatim.
42. The Second CORA Request requested “all Delta County credit and/or debit card charge monthly statements with all accounts associated and/or used by County Administrator Robbie LeValley” from January 1, 2014 to September 1, 2019. **Ex. 2.**
43. Defendant was associated with, and used, county-issued credit cards from January 1, 2014 to September 1, 2019.
44. However, Defendant denied to Plaintiffs records of credit card statements that Ms. LeValley was associated with, and used, prior to November 2018.
45. Plaintiffs were denied their right to inspect public records, and request that Defendant show cause as to why she was not required to provide the requested records pursuant to § 24-72-204(5)(a), C.R.S.

**COUNT 3:
THIRD VIOLATION OF CORA, § 24-72-201, C.R.S. ET SEQ.**

46. Plaintiffs incorporate by this reference the allegations of paragraphs 1-45 above as if set forth verbatim.
47. The Third CORA Request requested “all Delta County credit and/or debit card charge monthly statements with all accounts associated and/or used by County Administrator Robbie LeValley” from January 1, 2014 to March 24, 2021. **Ex. 4.**
48. Defendant, through other county officials, estimated that it would take nearly 23.5 working days to produce the requested records, at a cost of between \$4,170.00 and \$4,620.00.
49. The cost estimate of \$4,170.00 and \$4,620.00 is not reasonable – as shown by the final cost of the Fourth CORA Request of \$99.00 – and constituted an effective denial of the records request.
50. Plaintiffs were effectively denied records by Defendant’s unreasonable cost estimate, and request that Defendant show cause as to why she should not have provided the public records to Plaintiffs, pursuant to § 24-72-204(5)(a), C.R.S.

**COUNT 4
FOURTH VIOLATION OF CORA, § 24-72-201, C.R.S. ET SEQ.**

51. Plaintiffs incorporate by this reference the allegations of paragraphs 1-50 above as if set forth verbatim.
52. The Fourth CORA Request requested “all Delta County credit and/or debit card expense statements for all accounts associated with and/or used by County Administrator Robbie LeValley from Oct. 1, 2012 to Nov. 13, 2018.” **Ex. 6.**
53. The Fourth CORA Request was submitted on November 11, 2021.
54. Under CORA, Defendant was required either to provide the requested records within three working days or less, or to notify DCCR of her need for an extension which “shall not exceed seven working days.” § 24-72-203(3)(b),C.R.S. If an extenuating circumstance exists which requires an additional seven days to fulfill the request, Defendant is required to notify DCCR in writing of her need for an extension. *Id.*
55. Defendant, through counsel, first contacted Plaintiffs on November 22, 2021, seven working days after the CORA Request was submitted.

56. On December 2, 2021, fourteen working days after the Fourth CORA Request was submitted, Defendant, through counsel, formally responded in writing to the Fourth CORA Request, and notified Plaintiffs of extenuating circumstances.
57. Defendant violated CORA by not providing records within a reasonable time.
58. Further, when Defendant did provide records on December 8, 2021, the records provided were not responsive to the Fourth CORA Request.
59. As such, DCCR has been denied the right to inspect records within a reasonable time as provided in § 24-72-203(3)(b), C.R.S., and has been denied records responsive to the Fourth CORA Request, and requests that Defendant show cause as to why she should not have provided the public records to Plaintiffs, pursuant to § 24-72-204(5)(a), C.R.S.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray that the Court:

- (a) promptly issue and Order to Show Cause commanding Defendant appear and show cause why the public records Plaintiffs sought should not have been made available to them for inspection;
- (b) following such a hearing, enter judgment against Defendant for her improper denial of access to public records;
- (c) enter a judgment awarding the Plaintiffs their reasonable attorney's fees and court costs in this action pursuant to § 24-72-204(5)(b), C.R.S.; and
- (d) such other and further relief as this Court may deem just and proper.

Respectfully submitted this 8th day of February, 2022.

SCHUMACHER & O'LOUGHLIN, LLC

/s/ Chris Mochulsky
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