



Office of the Eagle County Attorney

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January 4, 2023

Brittany Freeman
Executive Producer
Investigative Journalism
Rocky Mountain PBS
Vial email to: brittanyfreeman@rmpbs.org

RE: December 21, 2022 Request for Eagle County Sheriff Records

Dear Ms. Freeman,

The Eagle County Sheriff's Office (ECSO) is in receipt of your request for "[a]ll internal affairs investigation reports, disciplinary actions, and complaints received involving the following individuals . . . Jessie Porter (CO-138024) [and] David Proctor (CO102505)" (the "Records Request"). This Records Request falls under both the Colorado Criminal Justice Records Act at C.R.S. § 24-72-301, *et. seq.* ("CCJRA") and the Colorado Open Records Act at C.R.S. § 24-72-201 *et. seq.*

General non-law enforcement personnel files are records covered under CORA, and the custodian is required to protect such records from public inspection pursuant to C.R.S. § 24-72-204(3)(a)(II),

Certain aspects of law enforcement personnel files are covered under CCJRA. In particular, C.R.S. 24-72-303(4)(a) provides an exception to the CORA prohibition on inspection of personnel files regarding internal investigation of alleged misconduct of an in-uniform or on-duty deputy involving a member of the public.

We've done an initial review of files related to Jessie Porter and David Proctor, and can now provide the following information in response to the Records Request:

Jessie Porter

Jessie Porter was employed as the ECSO Administrative Manager/Public Information Officer. While Ms. Porter was apparently given a certification number by POST, she never worked as an ECSO deputy, and did not perform any law enforcement services. Therefore, there were no internal affairs investigations, disciplinary actions or complaints falling under the gambit of C.R.S. § 24-72-303(4)(a) (i.e., there could be no allegations, complaints or investigations regarding Ms. Porter's in-uniform or on-duty alleged misconduct involving a member of the public because Ms. Porter's job duties did not include law enforcement work). Ms. Porter resigned during a general employment investigation concerning compliance with Eagle County leave policies. Her personnel file is protected from public disclosure under CORA at C.R.S. § 24-72-204(3)(a)(II).

Therefore, there are no public records available for inspection or production in response to the Records Request related to Jessie Porter.

David Proctor

David Proctor was an Eagle County Sheriff's Deputy from April 1995 through October 2020. We are aware of one ECSO internal affairs investigation occurring in October, 2020, with associated records, for David Proctor (the "2020 Proctor IA"). The 2020 Proctor IA did not arise from any allegation that Mr. Proctor engaged in any sort of misconduct related to contact with any member of the public. Nor was any such finding made. Instead, the 2020 Proctor IA relates to ECSO internal policies and rules of conduct regarding truthfulness in official reports, memos, investigations, testimony, or conversations related to an internal training. Therefore, records related to the 2020 Proctor IA are not automatically open for public inspection under C.R.S. § 24-72-303(4)(a). Instead, a balancing test for general CCJRA records must be employed before the records may be made available for public inspection. In conducting that balancing test, the Sheriff must consider factors including: the privacy interests of individuals who may be impacted by a decision to allow inspection; the agency's interest in pursuing ongoing investigations or protecting the security of the jail and tactical operations of his deputies; the public purpose to be served in allowing inspection; and any other pertinent considerations relevant to the circumstances of the particular request. *Harris v. Denver Post Corp.*, 123 P.3d 1166, 1174 (Colo. 2005).

In weighing the *Harris* factors with respect to the 2020 Proctor IA, the Sheriff has determined that the public interest in disclosure is outweighed by Mr. Proctor's privacy interests and therefore, he must deny your request to inspect these records. The 2020 Proctor IA did not relate to any contact with the public, and ultimately resulted in Mr. Proctor's resignation from employment with the ECSO. These investigatory records are akin to personnel files, which are strictly prohibited from public disclosure pursuant to C.R.S. § 24-72-204(3)(a)(II)(A). For the same reason personnel files would be deemed personal and private by the person in interest, these files would be deemed personal to Mr. Proctor, who may be impacted by the public disclosure or public dissemination of such materials. Since they do not relate to any alleged misconduct involving members of the public, and Mr. Proctor is no longer employed by ECSO, no substantial public purpose is served by making the 2020 Proctor IA available for public inspection.

In order to determine whether there may be any additional records of internal affairs investigations, disciplinary actions and/or complaints regarding Mr. Proctor during the 25 years Mr. Proctor was employed by the ECSO, additional research of paper files and at least two different electronic data bases must be undertaken. Once any such records are identified, the Sheriff must identify whether such records fall under C.R.S. § 24-72-303(4)(a) and may be immediately disclosed, or alternatively, conduct the *Harris* balancing test for any such record.

Eagle County Government requires advanced payment for responses to CORA and CCJRA requests at the rate of \$.25/page and \$33.38 per hour for each hour after the first hour for

research/retrieval time. We've already used the first hour for the initial review of records as described above. We estimate at least eight (8) additional hours will be necessary to research over 25 years of personnel files for Mr. Proctor. As such, a deposit of \$267.04 is required before further search of ECSO records will be undertaken.

If you would like to proceed with the Records Request related to Mr. Proctor, please contact Tracy Stowell, Executive Legal Assistant, at (970) 328-8685 to arrange for payment of the deposit. Upon receipt of the deposit, the records will be retrieved and produced for inspection where appropriate, with a final reconciliation of actual costs. Please do not hesitate to contact me directly with any questions or concerns.

Sincerely,

Christina Hooper

Cc: Dan Loya, Eagle County Undersheriff