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March 13, 2023

VIA FIRST CLASS MAIL
VIA E-MAIL: rjohnson@rcfp.org

Rachael Johnson
Reporter's Committee for Freedom of the Press
2101 Arapahoe Street
Denver, Colorado 80205

Re: Request for Records from Montrose Police Department under Colorado Criminal Justice Records Act ['CCJRA']

Dear Ms. Johnson:

We write in response to your letter dated March 7th, 2023, related to the records request from Ms. Brittany Freeman of Rocky Mountain Public Broadcasting Service. This request read as follows: "All internal affairs investigation reports, disciplinary actions, and complaints received involving RUBEN TRUJILLO, PID #CO-6743-5118."

In three separate communications on January 5th, 2023 and January 18th, 2023 [telephone call and email], the Montrose Police Department stated it will provide the investigative summary of the investigation file of the only record conforming to the request, IA 21-002, pursuant to C.R.S. § 24-72-303(4), bearing the redactions required by and as authorized by other provisions of that law. Please consider this communication as a fourth invitation: the Montrose Police Department will provide an investigative summary of the investigation file under C.R.S. § 24-72-303(4)(a), bearing the redactions required by and as authorized by statute, and open to public inspection during reasonable times pursuant to C.R.S. § 24-72-303(4)(a) and C.R.S. § 24-72-304(1) during regular business hours, with Fridays and weekends also potential open times for scheduling. As discussed with Ms. Freeman over the telephone, we will provide the public inspection to an agent, colleague or affiliated person with Rocky Mountain PBS at Ms. Freeman's identification and direction, if that is what she wishes. There is no requirement she personally come to Montrose. The assertion we have denied public inspection of the record in any way is without merit.

In past communications, we were asked whether the record in IA 21-002 was a record of an official action. The definitions carrying through all provisions of the CCJRA state "[a]s used in this part 3, unless the context otherwise requires: . . . (7) "Official action" means an arrest; indictment; charging by information; disposition; pretrial or post trial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate



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probation, parole, or participation in correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.” C.R.S. § 24-72-302. No criminal charges arose from the subject of the internal investigation in IA 21-002, against any party. As none of the categories for official action are met as a matter of law, the record is not an official action as defined by the CCJRA. The record would instead be properly categorized as a ‘criminal justice record’ as defined, C.R.S. § 24-72-302(4).

Your letter requests a detailing in writing of redactions, citing C.R.S. § 24-72-303(4)(c)(II). The records in IA 21-002 implicate redaction categories listed in C.R.S. § 24-72-303(4)(b)(II),¹ C.R.S. § 24-72-303(4)(b)(V);² C.R.S. § 24-72-303(4)(b)(VI);³ C.R.S. § 24-72-4(c)(I)(A);⁴ and C.R.S. § 24-72-303(4)(c)(I)(C),⁵ the latter for the video depiction of the interior of a private dwelling. The general subject matter of IA 21-002 was dishonesty in the handling and destruction of evidence. It involved a call for response at a private home within the municipal limits of the City of Montrose. Then-Officer Ruben Trujillo responded to the call, entered with consent the home of the reporting party and interviewed the reporting party in a bedroom within. During this interview, recorded on body worn camera video, the witness describes that her juvenile daughter walked in on another occupant of the residence consuming suspected illegal drugs. The witness then described confronting this person. The witness uses language describing the prior substance use history of this person on video. Though the minor’s name is omitted from the written police report and from the investigative summary excerpting the report, her address and surname are apparent from the record. Suspected drug paraphernalia was collected by then-Officer Trujillo in the bedroom and placed into an evidence locker, but not booked into evidence. Then-Officer Trujillo, four days after the contact, is seen throwing the evidence consisting of the scrapings of the suspected illegal narcotics away into a trash receptacle. During his compelled interview, he claimed a personal medical condition by way of explanation. He was determined to be deceptive about the conduct and of not reporting the evidence as lost, resulting in termination of employment, a *Brady* notification, and the reporting to the P.O.S.T. database pursuant to C.R.S. § 24-31-303(1)(r)(I).

¹ “Any identifying or contact information related to confidential informants, witnesses, or victims;” C.R.S. § 24-72-303(4)(b)(II).

² “Any medical or mental health information;” C.R.S. § 24-72-303(4)(b)(V).

³ “Any identifying information related to a juvenile;” C.R.S. § 24-72-303(4)(b)(VI).

⁴ “Any compelled statements made by peace officers who are the subject of a criminal investigation or a filed criminal case directly related to conduct underlying the internal investigation;” C.R.S. § 24-72-4(c)(I)(A).

⁵ “Any video or photograph that raises substantial privacy concerns for criminal defendants, victims, witnesses, or informants, including video reflecting nudity, a medical emergency, a mental health crisis, a victim interview, or the interior of a home or treatment facility. Whenever possible, the video should be redacted or blurred to protect the privacy interest while still allowing public release.” C.R.S. § 24-72-303(4)(c)(I)(C); *accord* C.R.S. § 24-31-902(2)(b)(II)(A).



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The Montrose Police Department as a records custodian is obligated to follow the plain language of the provisions of the CCJRA, which is to be construed as a whole without adding or subtracting from the statutory language.⁶ We as records custodian may not ignore redaction categories the law mandates or allows, applicable to the record at bar. Nor may we follow an interpretation of the statute C.R.S. § 24-72-306 that, for criminal justice records of this kind, the records custodian is mandated without exception to furnish physical copies or allow for copying of the record. This misreads C.R.S. § 24-72-306, a statute on the recoupment of reasonable fees and costs. This reads into C.R.S. § 24-72-303(4)(a) language that does not appear there – “is open for public inspection **by providing physical or digital copies of the record in a format requested by the applicant** upon request.” This interpretation also reads language in C.R.S. § 24-72-304(1) authorizing the custodian of records to make rules and regulations for the procedure of inspection of criminal justice records as a nullity.

We hope this is responsive to your letter inquiry. Again, we extend the invitation to your client or her designee to make an appointment to conduct an in-person viewing of this disclosure with records custodian Professional Standards Sergeant Courtney Jones. Please feel free to respond via email to schedule an appointment.

Respectfully,



Matthew Magliaro
Assistant City Attorney

⁶ See, e.g., *People v Cross*, 127 P.3d 71, 73 (Colo. 2006)(“We look first to the plain text of the statute, reject interpretations that render words and phrases superfluous, and harmonize potentially conflicting provisions, if possible. We do not add or subtract statutory words that contravene the legislature’s obvious intent.”)(internal citation omitted).