DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO Court Address: 1437 Bannock St. Denver, CO 80202 **Plaintiffs:** ASHFORD WORTHAM, an individual; and CORNELIUS CAMPBELL, an individual **v.** **Defendants:** MARY DULACKI, in her official capacity as Records Coordinator for the Department of Safety	▲ **COURT USE ONLY** ▲
Attorneys for Plaintiffs Steven D. Zansberg, #26634 Christopher P. Beall, #28536 Adam M. Platt, #38046 LEVINE SULLIVAN KOCH & SCHULZ, LLP 1888 Sherman St., Suite 370 Denver, Colorado 80203 Tel: (303) 376-2400; Fax: (303) 607-3601 E-mail: szansberg@lskslaw.com cbeall@lskslaw.com aplatt@lskslaw.com In cooperation with the American Civil Liberties Union Foundation of Colorado Mark Silverstein, #26979 Taylor Pendergrass, #36008 American Civil Liberties Union Foundation of Colorado 400 Corona Street Denver, Colorado 80218 Tel: (303) 777-2490; Fax: (303) 777-1773 E-mail: msilver2@worldnet.att.net tpendergrass@aclu-co.org	Case Number: **10-CV-_____** Division: _____

COMPLAINT AND APPLICATION FOR ORDER TO SHOW CAUSE

Plaintiffs, Ashford Wortham and Cornelius Campbell, for their Complaint against the Defendant, Mary Dulacki, in her official capacity as the Records Coordinator for the Denver Department of Safety allege as follows:

INTRODUCTION

Pursuant to the Colorado Criminal Justice Records Act ("CCJRA"), Plaintiffs seek disclosure of records concerning the Denver Police Department's ("DPD") investigation of a citizen complaint filed by Ashford Wortham and Cornelius Campbell alleging that police officers engaged in racial profiling, used excessive force, stopped their vehicle without probable cause, and engaged in other improper conduct such as holding them at gunpoint, searching them without cause, taunting them with racial epithets, and issuing a groundless citation to Mr. Wortham for minor traffic violations on Friday, February 13, 2009.

The police officers involved were Sgt. Perry Speelman, Officer Jesse Campion, and Officer Davis. In 2004, before his promotion to sergeant, Speelman was named in a civil rights lawsuit alleging racial profiling that ultimately led the City of Denver to pay $75,000 to settle with the complainant, Terrill Johnson.

The events of February 13 led Mr. Wortham to file a complaint with the Denver Police Internal Affairs Bureau ("IAB"). Three months later, Mr. Wortham received notice that the charges against the police officers were not sustained. But at a hearing on June 26, 2009, Denver County Court Judge Aileen Ortiz-White dismissed all three charges against Mr. Wortham and expressly found that the "[p]olice conduct was **extreme, profane and racially motivated**," and that Wortham and Campbell were "unlawfully detained for an unreasonable time and without reasonable suspicion."

Thereafter Messrs. Wortham and Campbell made a written request to inspect the IAB file regarding the incident. In a letter dated July 24, 2009, Department of Safety Records Coordinator Mary Dulacki denied their request in its entirety, asserting that disclosure would be "contrary to the public interest." She stated that because the IAB did not sustain the charges against Speelman, Campion and Davis, the officers' privacy interests outweighed the public interest in understanding the basis of the IAB's decision.

In this action, Plaintiffs contend that the contrary is true, that disclosure **promotes** the strong public interest in monitoring the conduct and performance of public officials in discharging their public duties. *See, e.g., Waller v. Georgia*, 467 U.S. 39, 47 (1984) ("The public in general . . . has a strong interest in exposing substantial allegations of police misconduct to the salutary effects of public scrutiny.").

Ms. Dulacki's refusal to produce even a single word contained in the officers' IAB file constitutes an abuse of the discretion vested upon her under the CCJRA, § 24-72-305(5), C.R.S. Moreover, the rationale supporting Ms. Dulacki's denial suffers from two fundamental and fatal flaws: First, it is well established in Colorado that law enforcement officials have **no** reasonable expectation of privacy in records that reflect their on-the-job discharge of official duties; Second, whether or not the IAB sustains charges against a law

enforcement official is irrelevant to the determination of whether disclosure would contravene the public interest.

The egregiousness of Ms. Dulacki's abuse of discretion is evident from her refusal to disclose either the officers' or Messrs. Wortham and Campbell's own statements provided to the IAB, or these peace officers' IAB Complaint Summaries showing the history of IAB complaints against them and the determinations or outcomes of those complaints. In a similar case filed in 2003, the ACLU sued Denver on behalf of Terrill Johnson, seeking disclosure of the IAB file generated after Johnson's complaint that he was the victim of racial profiling by several Denver police officers, including the later-promoted Sgt. Speelman. Sergeant Speelman's IAB Complaint Summary (now eight years old), which was disclosed by the City in accordance with the Court's order in Mr. Johnson's case, showed that Speelman had been the subject of 17 IAB investigations over the previous ten years, many for "unnecessary force" or "discourtesy." A copy of Sgt. Speelman's IAB Complaint Summary, as produced by the city in 2003, is attached as **Exhibit A.**

Finally, the purported reasoning supporting Ms. Dulacki's denial provides an equally valid (or, more accurately, invalid) basis for the denial of **each and every** other CCJRA request for access to an IAB investigation file where the charges have not been sustained. The flaw in Ms. Dulacki's logic is self-evident: The only way the public can have any confidence that the DPD is properly investigating and punishing police misconduct is by being provided access *to the records that document that investigation.* This is especially true when, as here, the IAB determines no violation occurred, while a judge who heard the sworn testimony in court reached the opposite conclusion.

JURISDICTION AND PARTIES

1. This honorable Court has jurisdiction of the claims herein, pursuant to Section 24-72-305(7) of the Criminal Justice Records Act ("CCJRA"), § 24-72-301, *et seq.*, C.R.S.

2. Plaintiff Ashford Wortham, an individual, is a citizen of the State of Colorado, residing in the City and County of Denver.

3. Plaintiff Cornelius Campbell, an individual, is a citizen of the State of Colorado, residing in the City and County of Denver.

4. Plaintiffs are "persons" as defined in the CCJRA, § 24-72-302(9), C.R.S. (2009).

5. Defendant Mary Dulacki is the Records Coordinator of the Department of Safety of the City and County of Denver, Colorado and is the "official custodian" of the criminal justice records at issue in this case. *See* § 24-72-302(5) & (8), C.R.S. (2009).

APPLICABLE LAW

6. All records "made, maintained, or kept" by the Denver Police Department for use in the exercise of official functions are "criminal justice records," as defined by Section 24-72-302(4), C.R.S. Unless specifically exempt, all criminal justice records should be made available for public inspection pursuant to Section 24-72-305, C.R.S. (2009).

7. A reasonable public law enforcement officer "should expect his actions to be subject to public scrutiny. What he did or did not do in public, in front of witnesses, is not personal and sensitive such that there is a significant public policy in not making them available to the public." *City of Colo. Springs v. ACLU*, 06CV2053, slip op. at 3 (El Paso County Dist. Ct. Feb. 5, 2007) (ordering disclosure of internal affairs investigation files regarding police officer accused of using unnecessary force in effectuating an arrest).

8. Moreover, "strong public policy" rationales weigh in favor of releasing internal affairs investigation files as the "public has an interest in knowing how its public law enforcement officers behave in their jobs." *Id*. at 4. *See also Nash v. Whitman*, Case No. 05-CV-4500 at slip op. at 5 (Denver County Dist. Ct. Dec. 7, 2005) (finding that "[o]pen access to internal affairs files enhances the effectiveness of internal affairs investigations, rather than impairing them . . . . Transparency also enhances public confidence in the police department and is consistent with community policing concepts and represents the more modern and enlightened view of the relationship between police departments and the communities they serve.") (attached).

9. Upon application to the District Court for the district in which the criminal justice records can be found, the Court is to enter an order to show cause "at the earliest practical time" at which time the custodian of records must demonstrate why the denial of inspection was not an abuse of her discretion. *See* § 24-72-305(7), C.R.S. (2009).

10. If the Court finds that the custodian abused her discretion in refusing to permit access to the records at issue, the Court shall order the custodian to permit such access. *Id.*

11. Upon a finding that the custodian's denial of access was arbitrary or capricious (without any legal support), the Court may order the custodian to pay the applicant's court costs and attorneys' fees in an amount to be determined by the Court. *Id.*

FACTUAL CONTEXT GIVING RISE TO THE RECORDS REQUESTS

12. Messrs. Wortham and Campbell are, and by physical appearance are identifiable as, African-American.

13. On the night of February 13, 2009, Messrs. Wortham and Campbell were driving from their homes in Northeast Denver to a club in the Lower Downtown neighborhood ("LoDo"). Although the car belonged to Mr. Campbell, Mr. Wortham was driving because Mr. Campbell was eating.

14. While still in Northeast Denver, Plaintiffs noticed that they were being closely followed by a DPD Dodge Durango SUV. They later learned that Sgt. Speelman was driving the Dodge Durango.

15. Surmising, based on past experiences driving in East Denver, that the car would soon be pulled over, Mr. Wortham continued driving toward LoDo, but – as he was being tailed by a police car – drove cautiously, ensuring that he obeyed all traffic laws.

16. Mr. Wortham's assumption proved prescient. The pair was soon pulled over by two DPD patrol vehicles – the Dodge Durango and a DPD Crown Victoria, which Plaintiffs later learned to be manned by Officers Campion and Davis. Upon information and belief all three police officers are Caucasian.

17. One officer approached the driver's side and yelled profanely at the men to produce their license, registration and insurance. Sgt. Speelman and the third officer – one with gun drawn and flashlight out – approached Mr. Campbell on the passenger side. The officers pulled Mr. Campbell forcibly out of the car, searched him, and sat him on the curb. The officers then pulled Mr. Wortham out of the car, searched him, handcuffed him, and sat him on the curb next to Mr. Campbell.

18. The men sat on the curb long after they heard DPD dispatch radio back that the Plaintiffs had no outstanding warrants for their arrest. During this time, the officers aggressively insulted the men with racial epithets.

19. Finally, Sgt. Speelman wrote Mr. Wortham a ticket for allegedly failing to wear a seat belt; failing to come to a complete stop before turning right at a red light; and failing to sign his insurance card. The officers then permitted Messrs. Wortham and Campbell to leave. A copy of the Denver Police Department's Traffic Summons and Complaint is attached as **Exhibit B**.

20. Mr. Wortham filed a complaint with the Denver Police IAB about the stop, asserting that he and Mr. Campbell had been the victims of racial profiling. Both men were interviewed by IAB investigators, although neither has ever received a copy of the officer's summaries of their statements.

21. On May 15, 2009, Mr. Wortham received a letter signed by Deborah K. Dilley, Commander of the DPD's Division Six, informing him that the IAB, whose members

are tasked with investigating complaints against their fellow officers, had determined that there was insufficient evidence to sustain the charges, which Commander Dilley characterized as "Discourtesy" or "Racial Harassment": "The account you and your friend gave were in opposition from the one given by the officers involved. Because of the differing accounts, no independent witness and no other evidence confirming the accusations it is not possible to prove or disprove the charges." *See* May 15, 2009 Letter to Ashford Wortham, *attached as* **Exhibit C**.

22. Meanwhile, Mr. Wortham, who had refused to plead guilty in return for an offer of reduced charges, appeared *pro se* before Denver County Court Judge Aileen Ortiz-White on June 26, 2009, and was found not guilty on all charges.

23. Following the full evidentiary bench trial, Judge Ortiz-White entered a Minute Order in which she specifically noted that Sgt. Speelman's "credibility was seriously questioned based on his testimony about the location of the stop and details of the stop." *See* **Exhibit D**, Case Status Summary. Judge Ortiz-White further found that the "[p]olice conduct was extreme, profane and racially motivated," and that Wortham and Campbell, whom she found to have been stopped without probable cause, were "unlawfully detained for an unreasonable time and without reasonable suspicion." *Id*. (emphasis added).

24. In light of the Court's dismissal of charges against Mr. Wortham, the men spoke with Department of Safety Records Coordinator Mary Dulacki to request a copy of the entire IAB file regarding the investigation of their complaint against the officers. In accordance with Ms. Dulacki's directions, they submitted a written CCJRA request on July 6, 2009. *See* Wortham and Campbell's July 6, 2009 Letter to Mary Dulacki, attached as **Exhibit E**.

25. Despite Ms. Dulacki's initial assertion that the pair was entitled to inspect at least a portion of the file, in a letter dated July 24, 2009, she instead denied their request in its entirety. In the letter, she purported to balance the factors enunciated by the Colorado Supreme Court in *Harris v. Denver Post*, 123 P.3d 1116 (Colo. 2005). She concluded that disclosure would be "contrary to the public interest" under Section 24-72-305(5), C.R.S.

26. Specifically, Ms. Dulacki contended that because Denver IAB declined to sustain the charges against Speelman, Campion and Davis, the officers' privacy interests outweigh the public interest – or apparently Messrs. Wortham and Campbell's interests – in understanding the basis of the IAB's decision. A copy of Ms. Dulacki's July 24, 2009 letter is attached as **Exhibit F**.

FIRST CLAIM FOR RELIEF
(Order to Show Cause and Award of Reasonable Attorneys' Fees)
§ 24-72-305, C.R.S.

27. The Plaintiffs incorporate by reference as if fully set forth here the preceding paragraphs of this Complaint and Application.

28. In *Freedom Colorado Information, Inc. v. El Paso County Sheriff's Department*, 196 P.3d 892 (Colo. 2008), the Colorado Supreme Court determined that internal affairs investigation files concerning law enforcement officers are "criminal justice records" that *are* available for inspection under the Criminal Justice Records Act, § 24-72-301, *et seq.*, C.R.S., in the exercise of discretion by the criminal justice records custodian.

29. The Criminal Justice Records Act "favors making the record available for inspection," and the Supreme Court has noted that "the General Assembly has underscored its preference for disclosure of criminal justice records subject to the sound discretion of the custodian . . . ." *Freedom Colo. Info., Inc.*, 196 P.3d at 899. Thus, the Court directed the El Paso County Sheriff, on remand, to exercise his discretion in determining what portion of the internal affairs investigation files should be disclosed. *Id.* And, on remand, the El Paso County Sheriff did disclose a redacted version of the internal affairs file in that case.

30. Importantly, the *Freedom Colorado* Court said that "[b]y providing the custodian of records with the power to redact names, addresses, social security numbers, and other personal information, disclosure of which may be outweighed by the need for privacy, the legislature has given the custodian an effective tool to provide the public with *as much information as possible*, while still protecting privacy interests when deemed necessary." *Id.* at 900 n.3 (emphasis added). Finally, the Court directed that when determining how much of an internal affairs investigation report should be disclosed "a custodian *should redact sparingly* to promote *the CCJRA's preference for public disclosure*." *Id.* (emphasis added).

31. In addition, the Colorado Supreme Court held that in reviewing a criminal justice records custodian's decision, a court should apply the abuse of discretion standard both ***with respect to the amount of information redacted***, as well as to her balancing of the applicable public and private interests. *Id*. (emphasis added).

32. Accordingly, in this case the records in the IAB file *are* subject to disclosure under binding Colorado Supreme Court precedent, which also requires that the records custodian's power of redaction be used "sparingly."

33. Notably, even before the Colorado Supreme Court's most recent decision in *Freedom Colorado,* numerous other courts throughout the state had previously ordered police departments to disclose internal affairs investigation files and to redact only highly

personal and private information unrelated to an officer's discharge of official duties or the department's investigation of the officer's conduct.

34. Particularly here, where the IAB found no wrongdoing but the trial court judge found the officers' conduct to be "extreme, profane and racially motivated," the public is entitled to know the facts (as determined by the department's investigation) that serve as the basis for its conclusion and official position. *See ACLU of Colo. v. City and County of Denver*., Case No. 97-CV-7170 (Order of April 7, 1998) at 4 ("The public knows what started the IAB investigation and it knows the results thereof. It is entitled to know what happened in between these two events.") (attached).

35. Because the IA investigation file that Plaintiffs have requested to inspect concerns only the official, on-duty conduct of public law enforcement officers acting within the scope of their authority, the reports are not "highly personal and sensitive." *See City of Colo. Springs* at 3; *Doe v. Myers*, Case No. 09-CV-3555 (El Paso County Dist. Ct. Nov. 23, 2009) (attached).

36. The public has a significant "interest in knowing how its public law enforcement officers behave in their jobs." *See City of Colo. Springs* at 4.

37. The public also has a compelling interest in seeing that credible allegations of police officer misconduct are investigated thoroughly, fairly, and diligently, and that the department's conclusions –whether any violation of official departmental policies occurred, and if so, whether an appropriate level of disciplinary sanction was imposed – are well supported. *See, e.g., Welsh v. City & County of San Francisco*, 887 F. Supp. 1293, 1302 (N.D. Cal. 1995) ("[T]he public has a strong interest in assessing the truthfulness of allegations of official misconduct, and whether agencies that are responsible for investigating and adjudicating complaints of misconduct have acted properly and wisely."); *Hawk Eye v. Jackson*, 521 N.W.2d 750, 754 (Iowa 1994) ("[T]here can be little doubt that allegations of leniency or cover-up with respect to the disciplining of those sworn to enforce the law are matters of great public concern."); *Skibo v. City of New York*, 109 F.R.D. 58, 61 (E.D.N.Y. 1985) ("Misconduct by individual officers, incompetent internal investigations, or questionable supervisory practices must be exposed if they exist."); *see also City of Loveland v. Loveland Publ'g Corp.*, No. 03CV513, slip op. at 4 (Larimer County Dist. Ct. June 16, 2003) ("[T]he public does have a legitimate and compelling interest in ensuring that its police officers properly perform their official duties and honestly investigate complaints from citizens related to the performance of those duties.") (attached).

38. As a result, providing Plaintiffs with access to the criminal justice records sought herein would *promote* the public interest and would not, as the Defendant contends, be "contrary to the public interest." Defendant's *complete* denial of access to *any portion* of

the criminal justice records sought by Plaintiffs herein therefore constitutes an abuse of discretion in violation of the CCJRA.

39. The mere fact that the IAB concluded that the two men's complaints against the three police officers who arrested them were not sustained is not, and cannot be, a legally sufficient basis to withhold access to the criminal justice records that served as the basis for that determination. *See, e.g., Gekas v. Williamson*, 912 N.E.2d 347, 585 (Ill Ct. App. 2009) ("That a complaint against a deputy sheriff is 'unfounded' is nothing more than a conclusion of the sheriff's office: in response to the complaint, the public body investigated itself, of 'self-monitored.' . . . If the [Public records] Act allowed a public body to deny access to complaints that it deemed to be unfounded, defeating the Act would be as easy as declaring a complaint to be unfounded.").

40. Plaintiffs are entitled to an Order directing Defendant to show cause "at the earliest practical time" why the City should not permit access to the records which are the subject of this Complaint. *See* C.R.S. § 24-72-305(7).

41. Upon hearing this matter on an Order to Show Cause, Plaintiffs are entitled to a further order making the order absolute and directing the custodian of records to provide Plaintiffs with access to all of the requested records on the grounds that Defendant's decision to deny access constituted an abuse of discretion. *See* C.R.S. § 24-72-305(7).

42. Upon finding that Defendant's withholding of the records at issue was arbitrary or capricious, the Court should enter an Order awarding Plaintiffs their reasonable attorneys' fees under C.R.S. § 24-27-305(7).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs Ashford Wortham and Cornelius Campbell, pursuant to §§ 24-72-305(7) pray that:

(a) The Court enter an order directing the Defendant to show cause why she should not permit inspection and copying of the requested criminal justice records described above (a proposed order is attached with this Complaint);

(b) The Court conduct a hearing pursuant to such order "at the earliest practical time," at which time the Court should make the order to show cause absolute;

(c) The Court enter an order directing Defendant to pay Plaintiffs' court costs and reasonable attorneys' fees, as provided by § 24-72-305(7), C.R.S. (2009); and

(d) The Court award any other and further relief that the Court deems just and proper.

Respectfully submitted this 14th day of April, 2010.

LEVINE SULLIVAN KOCH & SCHULZ, LLP

By: *s/ Steven D. Zansberg*
Steven D. Zansberg, #26634
Christopher P. Beall, #28536
Adam M. Platt, #38046
In cooperation with the American Civil Liberties Union Foundation of Colorado

Mark Silverstein, #26979
Taylor Pendergrass, #36008
American Civil Liberties Union Foundation of Colorado

Attorneys for Plaintiffs
ASHFORD WORTHAM and CORNELIUS CAMPBELL

Address of Plaintiffs:

Ashford Wortham & Cornelius Campbell
c/o American Civil Liberties Union Foundation of Colorado
400 Corona Street
Denver, CO 80218-3915

COMPLAINT AND APPLICATION WAS FILED WITH THE COURT THROUGH THE COURTLINK ELECTRONIC FILING PROCEDURES, UNDER C.R.C.P. 121(C), § 1-26.

AS REQUIRED BY THOSE RULES, THE ORIGINAL SIGNED COPY OF THIS PLEADING IS ON FILE WITH LEVINE SULLIVAN KOCH & SCHULZ, LLP.