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DISTRICT/COUNTY COURT  
EL PASO COUNTY, COLORADO

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DISTRICT COURT, EL PASO COUNTY, COLORADO 270 South Tejon, Colorado Springs, CO 80903 PO Box 2980, Colorado Springs, CO 80901-2980	
Plaintiff: CITY OF COLORADO SPRINGS, a Home Rule City and Colorado Municipal Corporation,  v.  Defendants: THE AMERICAN CIVIL LIBERTIES UNION OF COLORADO, Inc.	
Attorney for Plaintiff: PATRICIA K. KELLY, CITY ATTORNEY/ CHIEF LEGAL OFFICER Gregory Garland, Staff Attorney P.O. Box 1575, Mail Code 510 30 South Nevada Avenue, Suite 501 Colorado Springs, CO 80901 Telephone: (719) 385-5909 Fax number: (719) 385-5535 Atty. Reg. # 017147	<input type="checkbox"/> COURT USE ONLY <input type="checkbox"/>  Case Number: <b>06CV2053</b> Div: Crim.:  <b>DIV 5</b>
<b>COMPLAINT</b>	

COMES NOW Plaintiff, the City of Colorado Springs, in behalf of its agency the Colorado Springs Police Department, by and through the Office of the City Attorney, and for its complaint against Defendant hereby states and alleges as follows:

**PARTIES, JURISDICTION AND VENUE**

1. This is an action for declaratory judgment under §24-72-204(6), C.R.S., and Rule 57, C.R.C.P., and relief related thereto.

2. The City of Colorado Springs ("City") is a home rule city and a Colorado municipal corporation organized under the laws of the State of Colorado.

3. The American Civil Liberties Union of Colorado (ACLU Colorado, Inc.) 400 CORONA ST, DENVER, CO 80218, is a corporation registered in good standing with the Secretary of State of Colorado. The agent registered or service of process with the Secretary of State at that address is Robert Mosher.

4. This Court has subject matter jurisdiction over this case pursuant to Colo. Const. Art. VI, §9; §§13-51-106, and 24-72-204(6), C.R.S., and Rule 57, C.R.C.P.

5. Venue for this case is proper in this Court pursuant to Rule 98(b) C.R.C.P, and §24-72-204(6)(a), C.R.S. in that the records sought are kept in El Paso County, Colorado.

6. There is a justiciable controversy between the parties in this matter.

### **GENERAL ALLEGATIONS**

7. The City hereby incorporates by reference herein ¶¶1-6 of the complaint.

8. By letter dated May 15, 2006, The Defendant ACLU of Colorado, Inc. (American Civil Liberties Union) requested of the Colorado Springs Police Department permission to inspect and copy all writings relating to an incident of June 2, 2005 involving Delvikio Faulkner. Among the documents sought by the ACLU were documents generated by the "Internal Investigations Bureau." A copy of this letter is attached for the Court's convenience as Exhibit "A".

9. The City has provided the Defendant copies of all of the documents in its possession requested under the open records act(s) other than the contents of the Internal Affairs file, which it may not disclose. The City has notified the Defendant that it is prohibited from disclosing the contents of the Internal Affairs file, as it is a personnel file. Further it is not in the public interest for the Custodian of Records to expose himself to potential criminal liability under §24-72-206.

10. The contents of the files maintained by the Internal Investigations division of the Colorado Springs Police Department are created and maintained by the Department for use in disciplining employees of the Department. These files are personnel files as defined at §24-72-202(4.5), C.R.S. In no way are the files of the Internal Affairs Division "Criminal Justice Records" within the meaning of §24-72-302, C.R.S.

11. By letter dated June 6, 2006, the ACLU sent its notice of intent to sue, or "3 day letter" as required under the Colorado Open Records Act, §24-72-204(6) C.R.S., thus making this issue ripe for determination by the Court. In this letter the ACLU states that the internal affairs file is not in fact a personnel file, but rather a Colorado Criminal Justice Records Act document.

12. The Custodian of Records for the Colorado Springs Police Department, in good faith, after exercising due diligence, and after reasonable inquiry, cannot determine whether disclosure of the Internal Affairs file requested by the Defendant is proper and legal, and seeks an order of the Court to determine if disclosure is prohibited.

13. The Custodian of Records is faced with vexation due to the potential of criminal prosecution should he willfully or knowingly disclose the contents of the Internal Investigation file as requested by the Defendant, since the contents of the file are created and maintained by virtue of the employer/employee relationship between the City and the subject employee, and are otherwise "personnel files" which the custodian is prohibited from disclosing under the authority of §24-72-204((3)(a)(II), C.R.S. See Section 24-72-206 C.R.S.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory Judgment)**

1. The City hereby incorporates by reference herein ¶¶1-10 of the complaint.
12. Pursuant to C.R.C.P. 57(b), a declaratory judgment may be sought to have determined a question of validity or construction of a statute.
13. Pursuant to §24-72-204(6), it is proper to seek a declaratory judgment in the District Court where the subject records are maintained, to determine whether disclosure of the contents of the Internal Affairs file requested by the defendant is appropriate in this manner. Section 24-72-204(6)(a) C.R.S. states that hearing on the matter of disclosure will be held at the "earliest practical time."

WHEREFORE, the City prays for a declaratory judgment determining the construction of the Colorado Open Records Act and a determination of the obligation of the Custodian of Records for the Colorado Springs Police Department with respect to disclosure of the contents of an Internal Affairs file maintained by virtue of the employee employer relationship between the Police Department and the subject employee, and for such other and further relief as is proper under the circumstances.

Dated this 12<sup>th</sup> day of June, 2006.

Respectfully submitted,



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Gregory S. Garland, Staff Attorney  
Attorney for Plaintiff



Cathryn L. Hazouri, Executive Director • Mark Silverstein, Legal Director

May 15, 2006

Chief Luis Velez  
Colorado Springs Police Department  
705 S. Nevada Ave.  
Colorado Springs, Colorado, 80903

Re: Delvikio Faulkner

Dear Sir or Madam:

On behalf of Mr. Faulkner and the American Civil Liberties Union of Colorado, I am sending you this written request to inspect and copy public records, pursuant to the Colorado Open Records Act and the Colorado Criminal Justice Records Act.

I respectfully request that you permit me to inspect and copy all writings that relate to the Colorado Springs Police Department's contact with Mr. Faulkner on or about June 2, 2005. Please find enclosed a copy of an Authorization for Release executed by Mr. Faulkner on May 3, 2006.

This request specifically includes all writings related to any and all witness interviews, officer reports, photographs, summary narrative reports, and other documents of any kind generated that reflect any investigation, administrative or criminal, by the Colorado Springs Police Department, including the Internal Affairs Bureau, concerning the conduct of any public officers or employees involved in any way in the decision to contact Mr. Faulkner, including employees involved with Mr. Faulkner's arrest, treatment at the scene, taking into custody, transportation, interrogation, custodial handling, and/or any interaction of any other kind.

The term "writings" refers to those records defined by C.R.S. §§ 24-72-202(7) & 24-72-302(1) & (4), and includes but is not limited to all documents, books, papers, maps, photographs, cards, tapes, recordings, digitally stored data or records, electronic mail messages, or other documentary materials, regardless of physical form or characteristics, and every other means of recording upon any tangible thing for every form of communication or representation.

If you deny this request for records in whole or in part, I ask that you provide forthwith a written statement of the reasons for the denial that cites the law or regulation that you rely on. C.R.S. §§ 24-72-204(4) & 24-72-305(6). If any of the requested records are in active use, in storage or otherwise unavailable at this

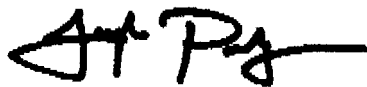


time, I likewise request that you provide forthwith a written statement and that the custodian set a date and hour at which time the records will be available for inspection. C.R.S. §§ 24-72-203(3)(a) & 24-72-303(3).

I look forward to inspecting or receiving copies of these records at your earliest convenience, and no later than three working days as required by Colorado law. If you need any additional information, you may reach me directly at 303-777-5482, ext. 104.

Thank you in advance for your time and assistance.

Very truly yours,

A handwritten signature in black ink, appearing to read "T. Pendergrass", with a long horizontal stroke extending to the right.

Taylor Pendergrass  
Staff Attorney

Enc.

cc. Faulkner

**AUTHORIZATION FOR RELEASE**

**TO:** Colorado Springs Police Department

**RELEASE TO:** Mark Silverstein, Taylor Pendergrass, or other representative of the American Civil Liberties Union Foundation of Colorado, 400 Corona Street, Denver, CO 80218.

I, Delvick D. Faulkner, by this release or a photocopy or facsimile transmission thereof, authorize and request you to release to Mark Silverstein, Taylor Pendergrass, and/or their designated representatives at the American Civil Liberties Union Foundation of Colorado (collectively hereafter the "ACLU of Colorado Attorneys"), any and all files, information and/or records related to me, including but not limited to law enforcement reports, medical records, mental health records, psychiatric records, and records related to alcohol and substance abuse. This release also authorizes my attorneys and former attorneys to release documents and information connected with their representation of me in any criminal cases or other legal cases.

This document also authorizes you to discuss any otherwise confidential information. In consideration of such disclosure, I hereby release you (in your individual and/or institutional capacity) from any and all liability arising from the disclosure of otherwise confidential information.

You are specifically authorized and requested to photocopy these records and to release copies of them to the ACLU of Colorado Attorneys. I am allowing the release of these records to the ACLU of Colorado Attorneys to help them provide possible legal services to me. I understand that once the records are released, the ACLU of Colorado Attorneys may disclose these records to other parties and organizations, there is potential that they may be disclosed to others and no longer protected under federal privacy law. I allow the ACLU of Colorado Attorneys to share these records with experts and consultants as needed in his provision of legal services to me. I understand that the ACLU of Colorado Attorneys will disclose the contents of these records only in order to advance the investigation of my possible case or claims.

This authorization shall expire upon the termination of my relationship with the ACLU of Colorado Attorneys. I understand that I can withdraw this authorization. To do so, I understand that I must send a written request addressed to Mark Silverstein or Taylor Pendergrass at the ACLU of Colorado.

Name (print):

Delvick D. Faulkner

Date of Birth:

[REDACTED]

Address:

[REDACTED]

Social Security:

[REDACTED]

City:

[REDACTED]

Signature:

Delvick D. Faulkner

Date:

05/03/00