District Court, Boulder County, State of Colorado 1777 6th Street, Boulder, Colorado 80302 (303) 441-3750	
SMB ADVERTISING, Inc. d/b/a YELLOW SCENE MAGAZINE; and ANGELICA JEANNETTE OROZCO *Plaintiffs* v. **CITY OF BOULDER, COLORADO** *Defendant.*	DATE FILED August 12, 2024 6:14 PM CASE NUMBER: 2024CV30320 **▲COURT USE ONLY▲**
	Case Number: **2024CV30320** Division **2** Courtroom **H**

ORDER RE: PLAINTIFFS' MOTION FOR JUDGMENT ON SECOND CLAIM FOR RELIEF

This matter comes before the Court on the parties' briefing regarding Plaintiffs' second claim for relief—declaratory judgment. The parties agreed that this claim involves a purely legal question and requested expedited briefing in accordance with C.R.C.P. 57(m). Following completion of briefing on June 13, 2024, the Court conducted an oral argument on July 11, 2024. Based on the Court's review of the briefing, the arguments advanced at oral argument, and the pertinent legal authorities, the Court issues the following ruling:

I. BACKGROUND

In this case of first impression, the Court is tasked with answering the following question: Does Colorado law authorize Defendant City of Boulder ("Boulder") to require payment of a fee before releasing unedited body-worn camera ("BWC") footage in response to a request made under the Enhance Law Enforcement Integrity Act ("Integrity Act")? Plaintiffs SMB Advertising, Inc.

d/b/a Yellow Scene Magazine ("Yellow Scene") and Angelica Jeannette Orozco ("Ms. Orozco") (collectively "Plaintiffs") maintain that both the plain statutory language and several interpretive aids demonstrate that Boulder's policy of charging fees for the public release of unedited BWC footage violates the Integrity Act. Boulder counters that the Colorado Criminal Justice Records Act ("CCJRA") expressly authorizes the Boulder Police Department to charge research, retrieval, and redaction fees for the requested BWC records.

This case arises from the December 17, 2023, officer-involved shooting death of Jeanette Alatorre. Plaintiffs' counsel Daniel D. Williams filed a police misconduct complaint regarding this incident on February 1, 2024. The next day, counsel filed a written request for all recordings of the incident "pursuant to CRS 24-31-902(2)" (a provision of the Integrity Act). Boulder responded that the estimated charge would be $8,484. Once the request was narrowed to a 13-minute range of BWC footage, Boulder revised the cost to $1,425 and stated that "[t]he requested audio and video footage will only be released if payment is received." [1]

On March 12, 2024, Yellow Scene submitted a similar request for all recordings under the Integrity Act. Boulder responded that the fee for the recordings would be $2,857.50, and stated further that "we are unable to release anything without payment." Likewise, Ms. Orozco, Ms. Alatorre's daughter, also requested the recordings, and was advised that payment would be required before release.

Yellow Scene commenced this action on April 10, 2024, bringing claims for (1) mandamus, and (2) declaratory relief, including a declaration that Boulder "cannot condition its compliance with a qualifying request for BWC video pursuant to the Integrity Act on the requestor's payment of a fee or fulfillment of any other non-statutory requirement." The complaint

[1] The parties have agreed that there are no factual disputes. The recited facts are set forth in the parties' briefing and are alleged in the First Amended Complaint.

was thereafter amended to join Ms. Orozco as a plaintiff under C.R.C.P. 15(a).[2] The parties' joint request for an expedited hearing on the second claim was granted on April 18, 2024.

II. STANDARD OF REVIEW

C.R.C.P. 57 authorizes a court to declare rights, status, and other legal relations whether further relief is or could be claimed. The declaration may be either affirmative or negative in form and effect, and has the force and effect of a final judgment or decree. C.R.C.P. 57(a). Any person whose legal rights are affected by a statute may request a declaration concerning the construction of the statute. C.R.C.P. 57(b). As set forth above, the parties requested an expedited resolution of this claim under C.R.C.P. 57(m). There are no facts in dispute regarding this claim.

III. ANALYSIS & RULING

A. Applicable Statutes

This case requires interpretation of the Integrity Act and the CCJRA. The pertinent provisions and history are set forth below:

1. Integrity Act

The Colorado General Assembly passed the Integrity Act on June 19, 2020. Among other provisions, the Integrity Act imposed a statewide mandate for all local and state law enforcement agencies to enact and use BWCs and mandated the prompt public release of unedited BWC footage and other recordings of any incident following a complaint of police misconduct. *See* ch. 110, sec. 2, § 24-31-902, 2020 Colo. Sess. Laws 455, 456–59. The Integrity Act was amended in 2021.[3]

[2] Ms. Orozco is not, however, a party to the second claim for relief.

[3] The 2021 legislation (1) changed the triggering condition for public release of BWC footage from a complaint of misconduct to a "request for release of the video or audio recordings," (2) deleted the option to redact certain footage, but maintained the provision authorizing the blurring of certain footage that raises substantial privacy concerns for specified third parties who decline to consent to the release of unblurred footage, and (3) provided that the legislation did not permit the removal of any portion of the video. Ch. 458, sec. 2, § 24-31-902(2), 2021 Colo. Sess. Laws 3054, 3056-57 (H.B. 21-1250).

The current version of C.R.S. § 24-31-902(2)(a) provides:

> (2)(a) For all incidents in which there is a complaint of peace officer misconduct by another peace officer, a civilian, or nonprofit organization, through notice to the law enforcement agency involved in the alleged misconduct, the local law enforcement agency or the Colorado state patrol shall release, upon request, all unedited video and audio recordings of the incident, including those from body-worn cameras, dash cameras, or otherwise collected through investigation, to the public within twenty-one days after the local law enforcement agency or the Colorado state patrol received the request for release of the video or audio recordings.

C.R.S. § 24-31-902(2)(a).

Subsection (b) provides additional requirements and exceptions to the general requirement to release unedited video and audio recordings within 21 days.

> (b)(I) All video and audio recordings depicting a death must be provided upon request to the victim's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative, and such person shall be notified of his or her right, pursuant to section 24-4.1-302.5(1)(j.8), to receive and review the recording at least seventy-two hours prior to public disclosure. A person seventeen years of age and under is considered incapacitated, unless legally emancipated.
> (II)(A) Notwithstanding any other provision of this section, any video that raises substantial privacy concerns for criminal defendants, victims, witnesses, juveniles, or informants, including video depicting nudity; a sexual assault; a medical emergency; private medical information; a mental health crisis; a victim interview; a minor, including any images or information that might undermine the requirement to keep certain juvenile records confidential; any personal information other than the name of any person not arrested, cited, charged, or issued a written warning, including a government-issued identification number, date of birth, address, or financial information; significantly explicit and gruesome bodily injury, unless the injury was caused by a peace officer; or the interior of a home or treatment facility, shall be blurred to protect the substantial privacy interest while still allowing public release. Unblurred footage shall not be released without the written authorization of the victim or, if the victim is deceased or incapacitated, the written authorization of the victim's next of kin. A person seventeen years of age and under is considered incapacitated, unless legally emancipated. This subsection (2)(b)(II)(A) does not permit the removal of any portion of the video.

(II)(B) If blurring is insufficient to protect the substantial privacy interest, the local law enforcement agency or the Colorado state patrol shall, upon request, release the video to the victim or, if the victim is deceased or incapacitated, to the victim's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative within twenty days after receipt of the complaint of misconduct. In cases in which the recording is not released to the public pursuant to this subsection (2)(b)(II)(B), the local law enforcement agency shall notify the person whose privacy interest is implicated, if contact information is known, within twenty days after receipt of the complaint of misconduct, and inform the person of his or her right to waive the privacy interest.

(II)(C) A witness, victim, or criminal defendant may waive in writing the individual privacy interest that may be implicated by public release. Upon receipt of a written waiver of the applicable privacy interest, accompanied by a request for release, the law enforcement agency may not redact or withhold release to protect that privacy interest.

(III) Any video that would substantially interfere with or jeopardize an active or ongoing investigation may be withheld from the public; except that the video shall be released no later than forty-five days from the date of the allegation of misconduct; except that in a case in which the only offenses charged are statutory traffic infractions, the release of the video may be delayed pursuant to rule 8 of the Colorado rules for traffic infractions. In all cases when release of a video is delayed in reliance on this subsection (2)(b)(III), the prosecuting attorney shall prepare a written explanation of the interference or jeopardy that justifies the delayed release, contemporaneous with the refusal to release the video. Upon release of the video, the prosecuting attorney shall release the written explanation to the public.

C.R.S. § 24-31-902(b).

2. CCJRA

The CCJRA is a comprehensive open records statutory scheme that authorizes public access to certain criminal justice records. The statute defines a "criminal justice record" broadly, applying to "all books, papers, cards, photographs, tapes, recordings, or other documentary materials, regardless of form or characteristics, that are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule." C.R.S. § 24-72-302(4). Section 306 expressly authorizes criminal justice

agencies to charge research, retrieval, and redaction fees for requested criminal justice records. In particular, this provision provides:

> Criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and redaction of criminal justice records requested pursuant to this part 3 and may waive fees at their discretion.
>
> C.R.S. § 24-72-306(1).

B. The Plain Text of the Statutes Does Not Authorize Boulder to Charge Fees for the Mandatory Release of Certain BWC Footage to the Public When the Request is Made in Accordance with the Integrity Act.

In interpreting statutes, courts "seek to ascertain and give effect to the legislature's intent," looking "first to the plain language of the statute." *People v. Sprinkle,* 2021 CO 60, ¶ 22. If the statutory language is clear, courts must apply it as written. *Id.* If the plain language is unambiguous, no further analysis is needed, and the statute must be applied as written. *Nieto v. Clark's Market, Inc.*, 2021 CO 48, ¶ 12.

The Integrity Act mandates that for "all incidents in which there is a complaint of peace officer misconduct," a law enforcement agency "shall release, upon request, all unedited video and audio recordings of the incident . . . to the public within twenty-one days after . . . receiv[ing] the request for release of the video or audio recordings." C.R.S. § 24-31-902(2)(a). Critically, the Act is silent about fees. There is no language authorizing a law enforcement agency to impose fees, and likewise, there is no language providing that payment of fees is a prerequisite to the release of BWC footage. Thus, the plain language of the Integrity Act does not authorize Boulder to impose a fee for producing unedited BWC footage pursuant to a request made under the Integrity Act.

In support of its position, Boulder relies on the CCJRA. It is undisputed that the BWC footage requested here constitutes a "criminal justice record" under the CCJRA. Under section 306, the public records custodian may charge a fee for criminal justice records "requested pursuant to" the CCJRA. Critically, the CCJRA does not cross-reference the Integrity Act. And likewise, the Integrity Act does not cross-reference the CCJRA.

In accordance with CCJRA § 306, a law enforcement agency may impose a fee when the request is made "pursuant to" the CCJRA. Under this plain language, the agency is without authority to impose a fee when, as here, a request for BWC footage is made under the Integrity Act. Had the legislature intended for law enforcement agencies to charge a research or retrieval fee in response to an Integrity Act request for BWC footage, it easily could have included such a provision in the Integrity Act. Or, the legislature could have included a cross-reference to § 306 in the Integrity Act, such as "a request made under this section 902 is subject to C.R.S. § 24-72-306." In the alternative, the CCJRA could have been amended to provide that § 306 also applies when there is a request for records pursuant to the Integrity Act. In the absence of any such language, the plain language of the statutes does not authorize Boulder to impose a fee when BWC footage is properly requested under the Integrity Act. *See Mook v. Board of County Commissioners of Summit County*, 2020 CO 12, ¶ 35 (just "as important as what the statute says is what the statute does not say") (citations omitted).

In support of its proffered interpretation, Boulder relies heavily on the *pari materia* rule of statutory construction. "Statutes concerning the same subject matter must be construed in *pari materia* to ascertain legislative intent and to avoid inconsistencies. In other words, such statutes should be construed together and reconciled if possible, so as to give effect to each statute." *People v. Carillo*, 2013 COA 3, ¶ 13 (citations omitted); *see also A.S. v. People*, 2013 CO 63, ¶ 12 ("when

possible" courts endeavor to reconcile potential conflicts between statutes that regulate the same conduct). This rule "requires that statutes relating to the same subject matter be construed together in order to gather the legislature's intent from the whole of the enactments." *People v. Jones*, 2020 CO 45, ¶ 59 (citations omitted). Here, the Integrity Act and the CCJRA generally relate to the same subject matter.

The Court concludes that the doctrine of *pari materia* does not support the interpretation advanced by Boulder for two reasons, however. First, although the statutes both govern requests for certain criminal justice records, the statutory language manifests differing intent and aims. The statutes operate independently of each other. The Integrity Act, enacted in 2020, is set forth in Article 31, part 9 and includes no textual linkage to the CCJRA. This Act is broader in scope than the CCJRA, addressing law enforcement issues beyond public access to criminal justice records. Unlike the CCJRA, the Integrity Act generally mandates that a law enforcement agency "shall release" unedited video and audio recordings upon request to the public when there is a citizen complaint of misconduct. C.R.S. § 24-31-902(2)(a). In contrast, the CCJRA provides that all criminal justice records that are not records of official actions nor specifically excluded "at the discretion of the official custodian, may be open for inspection by any person at reasonable times." C.R.S. § 24-72-304(1). Public records custodians therefore have more discretion in response to a CCJRA request. *See People v. Jones*, 2020 CO 45, ¶ 60 (declining to read statutes in *pari materia* without a cross-reference or specific incorporation).

Second, as Yellow Scene argues in Reply, Boulder's interpretation does not result in a harmonious reading of the two statutes. The absence of a fee provision and the manifest intent of the Integrity Act is to mandate prompt disclosure of BWC footage upon request when a police misconduct claim is filed. Requiring payment of significant fees as a condition of release—in this

case thousands of dollars—thwarts this purpose through the application of CCJRA § 306, which by its plain language, is confined to criminal justice records requested "pursuant to this part 3."

To be sure, as noted by Boulder in oral argument, this interpretation could lead to a "magic words test." A request for BWC footage made solely under the CCJRA could be subject to fees, while a valid request made under the Integrity Act would not be. This result is, however, mandated by the plain language used by the legislature in both statutes. Moreover, unlike a CCJRA request, a request for BWC footage under the Integrity Act must be preceded by a complaint of police misconduct.

And here, the Court concludes that Yellow Scene's request for the subject BWC footage was made pursuant to the Integrity Act. Yellow Scene's request plainly states "[b]ecause our request is being made pursuant to CRS 24-31-902(2), the police department is not authorized to charge us for the release of these videos to the public." Answer Brief, Exhibit A, p. 2; *see also Id.* at p. 5 ("[t]his request is made pursuant to CRS 24-31-902(2) requiring release of the BWC and other recordings to the public if a complaint has been made and within 21 days of a request."). The fact that Boulder's online submission form includes a records release acknowledgment that the requester agree to not use the information for solicitation of business for monetary/pecuniary gain and that such a violation would constitute a class 3 misdemeanor under C.R.S. § 24-72-309 does not transform the request made "pursuant to CRS 24-31-902(2)" into a request made under the CCJRA. *Id.*, p. 6.

In short, the plain language of the Integrity Act and CCJRA supports the interpretation advanced by Plaintiffs.

C. Interpretive Aids Support Plaintiffs' Interpretation.

When statutes are reasonably susceptible to more than one interpretation, courts may look to other interpretive aids to discern legislative intent. *Nieto*, 2021 CO 48, ¶ 13. Here, the Court has determined that the statutes are not reasonably susceptible to more than one interpretation, and therefore not ambiguous. However, even if the statutes were deemed ambiguous, application of interpretive aids fully supports the plain reading of the statutes. Relevant aids include the purpose or object sought to be attained by the legislature, circumstances under which the statute was enacted, consequences of a particular construction, and legislative history. C.R.S. § 2-4-203(1).

1. Purpose, Circumstances, and Consequences

These three interpretive aids are grouped together because Boulder does not dispute that the Integrity Act's purpose, circumstances surrounding its enactment, and consequences of the parties' competing interpretations support the conclusion that the legislature did not intend to allow agencies to charge fees for compliance with the Act.

First, the objective of the Integrity Act was to enhance integrity, transparency, and accountability in policing. This objective must be considered in determining whether the legislature intended to condition compliance with the public release provisions on payment of a fee not mentioned in the Act. Second, the Integrity Act was passed in June 2020, the month following the death of George Floyd and the year following the death of Elijah McClain. These circumstances and widespread bipartisan support for enhanced transparency in law enforcement must be considered. Third, the public release of BWC footage promptly after a police misconduct claim enhances accountability and public transparency, two key goals of the Integrity Act. As this case demonstrates, the imposition of significant fees as a predicate for public release thwarts these twin objectives.

2. Legislative History

The legislative history of the Integrity Act also supports Plaintiffs' interpretation. First, the 2020 original version of the Act mandated automatic release of BWC footage "to the public" without a request "within twenty-one days after the [agency] received the complaint of misconduct." Ch. 110, sec. 2, § 24-31-902(2)(a), 2020 Colo. Sess. Laws. 445, 448. Thus, when the Act was initially enacted, there was no conceivable payor of fees. When the Act was amended in 2021 to require a triggering request for information, and thus a potential source of fees, the legislature did not add a fee provision or cross-reference the CCJRA fee-shifting provision.

Second, in the 2024 legislative session, Representative Leslie Herod, one of the Integrity Act's drafters and prime sponsors, introduced H.B. 24-1460 shortly after this litigation was filed. Among many other provisions, this bill would have added the following language to the Integrity Act: a "law enforcement agency shall not charge a fee to the requestor related to releasing the unedited video and audio recordings of the incident." H.B. 24-1460, 74th General Assembly, 2d Sess. § 4, https://leg.colorado.gov/sites/default/files/documents/2024A/bills/2024a_1460_01.pdf. Representative Herod stated that this proposed amendment was sought to clarify that the Integrity Act was never intended to authorize agencies to charge fees for releasing BWC footage to the public. Hearing on H.B. 24-1460 before H. Judiciary Comm., 74th General Assembly, 2d Sess. (Apr. 23, 2024).[4] Although H.B. 24-1460 was not enacted over concern about the broadened

[4] Statement of Rep. Herod at https://sg001-harmony.sliq.net/00327/Harmony/en/PowerBrowser/PowerBrowserV2/20240423/-1/15979?mediaStartTime=20240423160438&mediaEndTime=20240423160520&viewMode=3&globalStreamId=4 (audio excerpt from 4:04:38 to 4:05:20 p.m.).

whistleblower protections,[5] the legislative history provided to the Court reveals support for the clarifying language and no substantive opposition to this portion of the bill.[6]

While the testimony of a bill's sponsor is not conclusive, when made contemporaneously, it is "powerful evidence of legislative intent." *Sprinkle*, at ¶ 22; *Mesa County Land Conservancy, Inc. v. Allen*, 2012 COA 95, ¶¶ 17-18 (statements made in committee hearings revealed intent was to clarify the law); *City of Thornton v. Bijou Irrigation Co.*, 926 P.2d 1, 85 (Colo. 1996) (contemporaneous statements by legislators may evidence legislative intent). Here, while Representative Herod's statement was made four years after S.B. 20-217 was enacted, when made by a primary bill sponsor and drafter, it provides some additional insight into legislative intent.

The legislative history of S.B. 20-217, H.B. 21-1250, and H.B. 24-1460 therefore also supports Plaintiffs' interpretation.

D. Unfunded Mandate

Lastly, Boulder maintains that if the Court accepts the statutory interpretation advanced by Plaintiffs, the unfunded mandate statute transforms the Integrity Act's mandatory requirement into an optional requirement. C.R.S. § 29-1-304.5(1) provides:

> No new state mandate or an increase in the level of service for an existing state mandate beyond the existing level of service required by law shall be mandated by the general assembly or any state agency on any local government unless the state provides additional moneys to reimburse such local government for the costs of such new state mandate or such increased level of service. In the event that such additional moneys for reimbursement are not provided, such mandate or increased level of service for an existing state mandate shall be optional on the part of the local government.

[5] The bill was favorably referred by the House Judiciary Committee and passed on second reading in the House, but voted down on third reading due to criticism of the whistleblower provisions and desire for more stakeholder input. Opening Brief, p. 5, footnote 3.

[6] The subject legislative debate and testimony is cited in detail in footnotes 2 & 3 of Plaintiffs' Opening Brief.

Boulder asserts that Yellow Scene's interpretation imposes an unfunded mandate on local governments, as section 17 of S.B. 20-217 appropriated funds to the Colorado State Patrol and Department of Law but not local governments. Answer Brief, p. 9. Although there is no Colorado appellate authority invalidating a state mandate based on the unfunded mandate statute, the Colorado Court of Appeals has noted the potential applicability of this statute. *Gessler v. Doty*, 2012 COA 4, ¶ 16 (rejecting Arapahoe County's argument that the unfunded mandate statute made the requirement to provide drop-off boxes for mail-in ballots optional because the relevant statute provided that "the cost of conducting general, primary, and congressional vacancy elections . . . shall be a county charge."). The legislature is presumed to act with full knowledge of existing decisional and statutory law. *Sullivan v. People*, 2020 CO 58, ¶ 17. Thus, Boulder reasons that in not providing funding to local law enforcement agencies, the legislature acknowledged that law enforcement agencies can treat the requirement to provide BWC footage as optional.

This argument is unavailing for two reasons. First, as noted by Plaintiffs, the mandate is not unfunded. In 2020, the legislature provided an appropriation of $2,000,000 for a "body-worn camera grant program . . . to award grants to law enforcement agencies to purchase body-worn cameras, for associated data retention and management costs, and to train law enforcement officers on the use of body-worn cameras." C.R.S. § 24-33.5-519(1)(a); *see* ch. 110, sec. 2, § 24-31-902(1)(a)(I), 2020 Colo. Sess. Laws. 445, 446 ("Law enforcement agencies may seek funding pursuant to section 24-33.5-519"); ch. 458, sec. 18, § 24-33.5-519(2)(c)(I), 2021 Colo. Sess. Laws 3054, 3069 ("The general assembly shall appropriate two million dollars in fiscal year 2021-22 for the grant program."). While the mandate may arguably be *under*funded, the statutes and legislative history reveal that it is not *un*funded so as to trigger C.R.S. § 29-1-304.5(1).

Second, interpreting the statutory provisions to render Boulder's obligation to provide BWC footage upon request optional is contrary to the plain and manifest intent of the legislature to make compliance with the Integrity Act mandatory. *See* C.R.S. § 24-31-902(2)(a) (requiring compliance through use of the word "shall"). This intent overrode concerns about increased cost of compliance. Under these circumstances, applying the unfunded mandate statute to transform the requirement to produce BWC footage upon request to an option at the election of the law enforcement agency would be contrary to the plain language and intent of the Integrity Act and yield an absurd result. *See Educhildren, LLC v. County of Douglas Board of Education,* 2023 CO 29, ¶ 27 (courts are to avoid statutory construction that yields illogical or absurd results).

IV. CONCLUSION

WHEREFORE the Court enters judgment in favor of Yellow Scene on its claim for declaratory relief. In accordance with C.R.C.P. 57, Boulder may not condition its compliance with a qualifying request for BWC footage pursuant to the Integrity Act on the requester's payment of a fee or fulfillment of any other non-statutory requirement.

SO ORDERED this 12th day of August, 2024.

BY THE COURT

Robert R. Gunning
District Court Judge