

<b>DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO</b> Court Address: 1437 Bannock Street Denver, CO 80202	
<b>Petitioner:</b> AMERICAN CIVIL LIBERTIES UNION OF COLORADO, Inc.  v.  <b>Respondents:</b> CITY AND COUNTY OF DENVER; CHIEF OF POLICE, GERRY WHITMAN	<b>▲ COURT USE ONLY ▲</b>  Case Number:  Div.:                      Ctrm.:
Attorney or Party Without Attorney: Name:                      A. Bruce Jones Address:                      HOLLAND & HART LLP 555 Seventeenth Street, Suite 3200 Post Office Box 8749 Denver, CO 80201-8749 Phone Number:              (303) 295-8232 Fax Number:                (303) 975-5385 E-mail:                        bjones@hollandhart.com Atty.Reg.#:                  11370	
<b>VERIFIED PETITION AND APPLICATION FOR ORDER TO SHOW CAUSE UNDER THE COLORADO OPEN RECORDS ACT AND/OR CRIMINAL JUSTICE RECORDS ACT</b>	

Pursuant to the Colorado Open Records Act, C.R.S. § 24-72-204(5), and/or the Criminal Justice Records Act, C.R.S. § 24-72-305, Petitioner American Civil Liberties Union of Colorado (“ACLU of Colorado”) seeks access to records withheld from public inspection by the City and County of Denver and its Chief of Police, Gerry Whitman. The ACLU of Colorado requests that an order to show cause be directed to Respondents as to why inspection should not be permitted. As grounds therefor, Petitioner states as follows:

1. The ACLU of Colorado is the state affiliate of a nationwide, non-partisan, non-profit organization dedicated to protecting and advancing the federal and state constitutional and civil rights of all Americans. The Colorado affiliate is a registered non-profit corporation, with offices at 400 Corona Street, Denver, Colorado 80218. The ACLU of Colorado was founded in 1952, and has over 6,000 members.

2. Recently, the ACLU of Colorado was involved in the so-called “spy files” litigation against the City and County of Denver. This federal civil rights class action lawsuit challenged the practice of the Denver Police Department’s Intelligence Unit of monitoring and keeping files on peaceful protest activities of Denver-area residents who have no involvement in criminal activity. In a settlement agreement approved by the federal district court in May 2003, the City and County of Denver pledged itself to a wholesale reform of the police department’s intelligence unit. As part of the settlement, Denver adopted a new intelligence policy that expressly forbids the collection of information about how individuals exercise their First Amendment rights, unless there are facts connecting the individual to criminal activity and the information about First Amendment activities is relevant to that criminal activity.

3. The settlement agreement, however, does not directly address how the new intelligence policy applies to the activities of Denver intelligence officers who are assigned to work full time for the Federal Bureau of Investigation as Denver’s contribution to the FBI’s Joint Terrorism Task Force (“JTTF”). The Denver JTTF, one of over five dozen similar task forces around the country, is commanded by the FBI and includes full-time agents contributed by participating federal, state, and local law enforcement agencies. On information and belief, Denver contributes two officers from its Intelligence Unit who work full-time for the FBI task force.

4. On information and belief, the Denver JTTF has been collecting information on peaceful political activities that have no connection with terrorism or any other criminal activity. This is the same kind of information that the Denver Police Department is now prohibited from collecting pursuant to the Spy Files settlement. Documents evidencing such political intelligence-gathering on the part of the JTTF have been posted on the ACLU of Colorado web site, [www.coloradoaclu.org](http://www.coloradoaclu.org). Because such political surveillance is prohibited by Denver’s new intelligence policy, but not by the FBI, the ACLU of Colorado has raised the question whether Denver intelligence officers are bound by Denver’s policy when they are working full time with the FBI.

5. At a public hearing before the Denver Public Safety Review Commission in May 2003, then City Attorney Wallace Wortham stated that Denver police officers were not bound by Denver’s new intelligence policy when they were working for the Joint Terrorism Task Force. At the same hearing, Denver Police Chief Gerald Whitman contended that Denver police officers must abide by the restrictions of the new intelligence policy even when their work is being directed by the FBI. In a report issued on August 21, 2003, the Public Safety Review Commission noted this discrepancy and said that it raises concerns. *See* Exhibit A.

6. On April 25, 2003, the ACLU of Colorado, through its Legal Director, Mark Silverstein, sought to inspect and copy a “Memorandum of Understanding or

similar document that deals with the City's participation in the Joint Terrorist Task Force." The request was directed to Chief of Police Whitman. *See* Exhibit B.

7. When Chief Whitman did not respond within 72 hours, as required by Colorado law, Mr. Silverstein made another written inquiry on May 3, 2003. Exhibit C.

8. On May 13, 2003, Assistant City Attorney Stan Sharoff responded on behalf of Chief Whitman, stating that the "Denver Joint Terrorist Task Force Memorandum of Understanding" is a criminal justice record as defined in C.R.S. § 24-72-303(4), and that disclosure of the document would be contrary to the public interest. As reflected in the attached Exhibit D, the City failed to explain why the release of the Memorandum would be contrary to the public interest.

9. On July 25, 2003, the ACLU of Colorado gave notice pursuant to C.R.S. § 24-72-204(5) of its intent to file an application with the district court requiring production of the Memorandum. Exhibit E.

10. Whether governed by the Open Records Act or the Criminal Justice Records Act, the Memorandum should be released to the public and the ACLU of Colorado.

11. In further support of this Petition, the ACLU of Colorado submits its Memorandum of Law.

12. The ACLU of Colorado is entitled to a show cause order and a hearing on its application at the earliest practical time.

WHEREFORE, Petitioner prays for the following relief:

1. That a show cause order be issued to Respondents as to why the document in question should not be available to the public for inspection;

2. That a hearing be scheduled at the earliest practical time on the order to show cause;

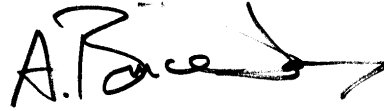
3. That the Court issue an order pursuant to said hearing directing that inspection be allowed;

4. That Petitioner be awarded court costs and attorneys fees in an amount to be determined by the Court; and

5. For such other relief as the Court deems proper.

Dated October 15, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "A. Bruce Jones". The signature is stylized with a large initial "A" and a long, sweeping horizontal stroke at the end.

A. Bruce Jones, #11370  
HOLLAND & HART LLP  
Attorneys For Petitioner

**VERIFICATION**

STATE OF COLORADO        )  
  ) ss.  
COUNTY OF DENVER        )

I, Mark Silverstein, being first duly sworn, state that I have read the foregoing Verified Petition and Application, that I understand its contents, and that the facts contained therein are true and correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
Mark Silverstein

Subscribed and sworn to before me this \_\_\_\_\_ day of October 2003, by Mark Silverstein.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public