

<p><b>DISTRICT COURT, JEFFERSON COUNTY, COLORADO</b></p> <p>Jefferson County Parkway Golden, CO 80401 Telephone: (720) 772-2751</p>	<p>DATE FILED: February 1, 2024 5:30 PM FILING ID: EDA4FF6FA7870 CASE NUMBER: 2024CV30008</p>
<p><b>Ion Media Networks, Inc. d/b/a Scripps News</b></p> <p>Plaintiff,</p> <p>v.</p> <p><b>Kirsten West</b>, in her official capacity as the Records Manager of the Police Department, for the City of Lakewood, Colorado, a political subdivision of the State of Colorado</p> <p>Defendant.</p>	<p>▲ COURT USE ONLY ▲</p>
<p><i>Attorneys for Plaintiffs:</i></p> <p>Steven D. Zansberg (#26634) ZANSBERG BEYLKIN, LLC 100 Fillmore Street, Suite 500 Denver, Colorado 80206 Telephone: 303-564-3669 Facsimile: 720-650-4763 <a href="mailto:steve@zansberglaw.com">steve@zansberglaw.com</a></p> <p>Rachael Johnson (#43597) Reporters Committee for Freedom of the Press c/o Colorado News Collaborative 2101 Arapahoe Street Denver, CO 80205 Telephone: (970) 486-1085 Facsimile: (202) 795-9310 <a href="mailto:rjohnson@rcfp.org">rjohnson@rcfp.org</a></p>	<p>Case No.: 2024CV30008</p> <p>Ctrm./Div.: 9</p>
<p align="center"><b>FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND APPLICATION FOR ORDER TO SHOW CAUSE UNDER THE COLORADO CRIMINAL JUSTICE RECORDS ACT</b></p>	

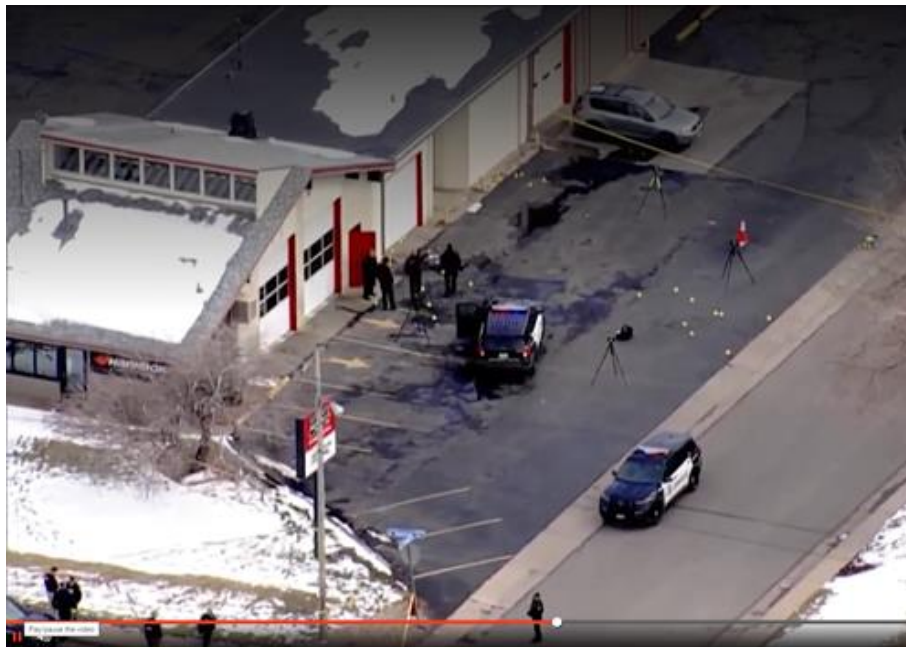
Plaintiff, Ion Media Networks, Inc. d/b/a Scripps News, and by and through its undersigned counsel, for its complaint for declaratory and injunctive relief, and application for order to show cause, hereby state as follows:

### INTRODUCTION

1. This is a civil action seeking the entry of a declaration of the parties' respective rights and obligations under a statute, specifically § 24-31-902, C.R.S. which was named Enhance Law Enforcement Integrity Act, passed into law in the immediate aftermath of the murder of George

Floyd by Minneapolis police officers. The Act requires all law enforcement agencies in the state to release to any member of the public, within 21 days of receiving a request, all body worn camera footage capturing an interaction between officers and any member of the public in which any complaint has been lodged with respect to the officer's conduct. To the extent that any legitimate (cognizable) privacy interests of individuals are implicated by the request, the agency must release the footage with the face or faces of those individuals blurred (unless those subjects or their authorized agents waive such privacy interests).

2. On March 27, 2023, three uniformed officers of the Lakewood Police Department pursued a suspect in response to a report of armed robbery. One officer chased after the seventeen year old suspect, Mariana Martinez, who was wearing a hoodie (obviously, her face could not be seen from behind). Having cornered the suspect against a set of closed garage bay doors at a Grease Monkey shop, the three officers observed Ms. Martinez draw a firearm from the pocket of her hoodie and point it at them.



3. All three officers discharged their service firearms, hitting Ms. Martinez ten times, and killing her. The gun she had wielded was recovered on the scene. At a press conference that same day, Lakewood police announced that Martinez had fired her weapon at the officers. However, later in the day, the Department withdrew that statement, saying she had only pointed the gun at them.

4. One member of Lakewood's City Council, Anita Springsteen, spoke to the press and called for a full investigation and for release of the body worn camera recordings.

See <https://kdvr.com/news/local/17-year-olds-killing-by-police-raises-questions-for-councilor/kdvr.com> Ms. Springsteen noted that when a 14-year old (Jordell Richardson) was shot dead in Aurora, in June 2023, the officers' body worn camera footage was publicly released (with the youth's face blurred) that same week. See <https://www.youtube.com/watch?v=eK1FQGqCeO8> [youtube.com]; <https://www.youtube.com/watch?v=G0uE3llQjMc> [youtube.com].<sup>1</sup>

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<sup>1</sup> Indeed, other jurisdictions in Colorado (in addition to Aurora) have released body worn

5. As state protocol requires, a Critical Incident Response Team conducted an investigation and presented it to the District Attorney for the First Judicial District, to determine whether any of the officers involved should be charged with any crime. Upon reviewing statements of the officers and of other witnesses, the evidence gathered at the scene, and, as stated in her report, the footage obtained from all three officers' body worn cameras, the District Attorney concluded that all three officers had acted properly and could not be charged with any crime.

6. After the family of the deceased filed a formal notice of a claim, calling into question the officers' conduct, Lori Jane Gliha, a reporter for Scripps News, submitted a request with Lakewood Police Department (on **September 26, 2023**), for a copy of the body worn camera footage of the officers' interaction with Ms. Martinez.

7. The City Attorney's office had earlier (on August 19) contacted Ms. Martinez' surviving family members and notified them that the city's position was that "under [The Children's Code], bodycam footage involving a juvenile *cannot be released* unless/until the family gives consent."

8. It appears that the City's Attorney's Office did *not* ask the surviving family members if they wished to waive whatever privacy rights they, or their deceased daughter, may have – which are none – by authorizing the City *not to blur her face* in those discreet portions of the footage where it is visible. Instead, it asked whether the family wished to have the footage released to the media "for use in news reports," and declared that the City would not do so without their consent. Not surprisingly, the family members stated that they did not wish to have the video depicting the shooting death of their loved one released to the media.

9. The City has refused to provide Ms. Gliha with *any* of the body worn camera footage as required by the Enhancing Law Enforcement Integrity Act. The City maintains that surviving family members and/or their deceased daughter have cognizable privacy rights in the footage which prohibits the City from releasing *any* of the footage. The Plaintiffs maintain that they are entitled by the Act to obtain a copy of the body worn camera footage (whether with Ms. Martinez's face blurred or not), and that under the Act that footage should have been provided to Ms. Gliha no later than October 17, 2023.

10. This action is brought to bring about a swift and expeditious resolution of a genuine dispute between the parties as to the City of Lakewood's obligations, and the Plaintiffs' rights, under the law. Plaintiffs respectfully request that this Court enter a declaratory judgment declaring those respective obligations and rights, and further that it speedily enter an Order commanding the City of Lakewood to comply *immediately* with its disclosure obligations under the Enhancing Law Enforcement Integrity Act. *Cf. Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 126-27 (2d Cir. 2006) (where public has a constitutional, not statutory, right of access to records, "each passing day

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camera recordings capturing the arrest and/or shooting of teenagers, both before and since passage of the Enhancing Law Enforcement Integrity Act. *See, e.g.*, <https://www.kktv.com/video/2024/01/06/cspd-releases-body-camera-footage-officer-involved-shooting/> (Colorado Springs police shooting of a 16-year old carjacking suspect in December 2023); <https://youtu.be/liUfEpyeAwE?si=Xn1RYLrJn77IOM0C&t=688> (Loveland Police arresting 14-year old girl on June 15, 2020); *see also* <https://www.kktv.com/2021/08/27/graphic-video-shows-officer-shoot-colorado-teen-holding-knife/> (Loveland police officer shooting a 19-year old, whose face is blurred, at approximately 7:10 into clip).

[where access is denied] may constitute a separate and cognizable infringement of the First Amendment.”); *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (same; “[t]he newsworthiness of a particular story is often fleeting. To delay or postpone disclosure undermines the benefit of public scrutiny and may have the same result as complete suppression.”).

## **JURISDICTION & PARTIES**

11. This Court has jurisdiction over the controversy herein under § 13-51-106, C.R.S. The public records that are the subject of the Plaintiff’s request can be found in this judicial district.

12. Plaintiff Ion Media Networks, Inc. d/b/a Scripps News is a journalism organization with operations included in the State of Colorado.

13. Plaintiff Lori Jane Gliha is a reporter on the investigative team for Scripps News.

14. Defendant Kirsten West is the Records Manager for Police Department of the City of Lakewood, Colorado, (“The City”), and is a custodian of the criminal justice records (body worn camera recordings) at issue in this case. The City is a political subdivision of the State of Colorado.

## **OPERATIVE FACTS**

### **A. Underlying Events**

15. On March 27, 2023, three on-duty and uniformed officers of Lakewood Police Department confronted a 17-year-old, Mariana Martinez who was reported to have engaged in armed robbery. All three officers discharged their firearms, fatally wounding Ms. Martinez.

16. At the time of the above confrontation, all three officers were wearing Body Worn Cameras (“BWC”), that recorded their pursuit of the suspect, confrontation at the Grease Monkey facility, their firing their weapons upon her, and the immediate aftermath thereof.

17. On June 12, 2023, Jefferson County Coroner John D. Carver signed the report of the autopsy he’d performed on Ms. Martinez on March 28, 2023. The autopsy report has been released to the public. The cause of death was determined to be multiple gunshot wounds (“each [officer] fired an estimated 9-10 times”) and the manner of death was homicide. The report, which includes Ms. Martinez’s full name, date of birth, etc., also states that Ms. Martinez’s accomplice in the armed robbery was her 13-year old sister and “The decedent’s family reported that [Ms. Martinez] suffered from depression and expressed suicidal ideation.”

18. On August 16, 2023, certain members of Ms. Martinez’s family notified the City, through legal counsel, of its intention to file a civil claim against the City premised on the actions of the Lakewood Police Officers in the killing of Ms. Martinez.

19. On August 19, 2023, Deputy City Attorney Alex Dorotik contacted the attorney who filed the notice of claim that “Lakewood is getting media inquiries (and inquiries from a Lakewood Councilmember) requesting release of the bodycam [recordings]” and “*It is our position that, under Title 19, bodycam footage involving a juvenile cannot be released unless/until the family gives consent.*” (emphasis added).

20. On August 24, 2023, the family members, along with their attorney, were shown the BWC recordings at police headquarters. The family members indicated they did not want the footage released to the public.

21. On September 4, 2023, the District Attorney for First Judicial District transmitted to the Chief of Police (and also publicly released) her final report concluding the Critical Incident Response Team investigation into the officers' conduct that had caused Ms. Martinez's death. *See Exhibit 1.* **That report, which also included Ms. Martinez's full name,** concluded that all three officers were justified in using deadly force and that no criminal charges could be pursued against them. The District Attorney based her conclusion on several pieces of evidence she had reviewed, "including [footage from the officers'] body worn cameras." *Id.* at 6.

**B. Plaintiffs' Request to Inspect and Defendant's Denial**

22. On September 26, 2023, Lori Jane Gliha, on behalf Scripps News, requested a copy of the above referenced BWC footage from the Lakewood Police Department, pursuant to § 24-31-902(2), C.R.S. (2023). *See Exhibit 2.*

23. On September 26, 2023, the City denied Ms. Gliha's request, citing both § 24-31-902(2), and 19-1-304, C.R.S. as the statutory grounds for its blanket denial. Deputy City Attorney Patrick Freeman concluded his denial message stating "If you have any questions regarding our denial of your request, feel free to contact me." *See Exhibit 3.*

24. When Ms. Gliha followed up and asked for an explanation for the City's denial decision, Deputy City Attorney Patrick Freeman stated "**I have cited the specific statutes that apply to your request. I will not be providing you with my legal analysis of those statutes.**" *See Exhibit 4.*

25. On October 25, 2023, in-house counsel for Scripps News emailed a letter to the City Attorney's Office, asking that the City reconsider its blanket denial. That letter explained that the Enhancing Law Enforcement Integrity Act mandates release of BWC recordings with any privacy interests addressed through facial blurring, and further urged the City to explain the basis for concluding that none of the footage should be released. *See Exhibit 5.*

26. On October 25, 2023, Mr. Dorotik contacted the family members' attorney to say the City had received additional requests for release of the BWC footage, including threats of litigation. Mr. Dorotik's message stated "We do not intend to release. Can you please confirm that there is no change in your clients' position concerning release of the video and/or if you wish to discuss in any way?" The attorney indicated he no longer represented the family, so the City Attorney's Office could communicate directly with the family members.

27. Later that day, Deputy City Attorney Patrick Freeman contacted one of Ms. Martinez's family members and stated:

We are in receipt of a number of requests from media outlets to release the body worn camera footage *for them to use in news stories*. Our interpretation of this request is, and has been, that [Mariana's] privacy interests are vested with you, her family, and *you can ultimately decide whether you want the video footage released to the media* and made public. When we discussed this issue with [redacted] in August he told us that you did not want to release this footage to the media or anyone else. We have denied a number of requests to release the video footage but have continued to receive requests from media outlets to release the footage. We wanted to make sure that *it was still your position that we should not release or make the footage publicly available* as it had been a few months since we last discussed this issue. I appreciate your time and attention to this matter.

(italics added).

28. The family member confirmed that the family did not wish Lakewood Police to release the BWC footage to the public.

29. On October 26, 2023, after speaking by phone with Scripps News' inside counsel, Deputy City Attorney Freeman emailed her and reiterated that the Lakewood Police would not release any of the BWC recordings Ms. Gliha had asked to inspect, because "specific statutory authority . . . necessitates the denial of [her] requests. Accordingly, when there is *a specific statute* on point that *bars disclosure* of records or BWC footage, a full analysis of *weighing privacy interests versus discretionary disclosures* is not only superfluous, it is *legally improper*." See **Exhibit 6**. He repeated his view that *the City lacks authority to exercise any discretion* in determining whether to disclose any portion of the subject records:

[T]he [*Huspeni*] case calls for any records custodian to analyze discretionary disclosures and weigh them against privacy interests. As I previously noted, *the law in this area* does not make any of Ms. Gliha's requests discretionary disclosures, in fact it *bars disclosure*, therefore, the case cited by Ms. Craig doesn't even stand for the proposition she claimed it did, and certainly *wasn't applicable* to the current situation.

*Id.* (emphasis added).

30. On November 17, 2023, Lakewood's Police Department released to Ms. Gliha a number of criminal justice records concerning the shooting death of Ms. Martinez and the officers involved therein. Included in that set of released materials was a 136 page investigation file for a robbery, Incident No. LK23009003, which concerned an adult female and several juveniles, including Ms. Martinez. All identifying information of the juveniles contained in those criminal justice records was redacted therefrom.<sup>2</sup>

31. On December 12, 2023, undersigned counsel asked the City Attorney's Office to reconsider its position and to provide Ms. Gliha with the BWC recordings she had requested in September, or Plaintiffs would be compelled to initiate this action. See **Exhibit 7**.

32. As of this date, the Defendant has refused to release the BWC recordings at issue to the Plaintiffs.

**FIRST CLAIM FOR RELIEF**  
For Declaratory Judgment  
(§ 13-51-106, C.R.S.; C.R.C.P. 57)

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<sup>2</sup> *But see* § 19-1-304(2)(a) C.R.S. ("Except as otherwise provided by subsection (1)(b.5) of this section and otherwise authorized by section 19-1-303, *the records of law enforcement officers concerning juveniles*, including identifying information, must be identified as juvenile records and *must not be inspected by or disclosed to the public*") (emphasis added). Of course, had Ms. Martinez survived the shooting, she would have been charged with a "crime of violence," and all "arrest and criminal records information" about her would be required to be made publicly available pursuant to § 19-1-304(5), C.R.S. "Arrest and criminal records information" includes "the name, birth date, last-known address, and sex of an accused person." § 24-72-302(1), C.R.S.



33. Paragraph Nos. 1 through 22 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

34. A genuine controversy exists between the Plaintiffs and the Defendant with respect to their respective rights and responsibilities under the various statutes that apply, or may apply, to the BWC recordings at issue herein.

35. Plaintiffs are entitled to an Order declaring their right to receive the BWC recordings at issue from Defendant.

### **SECOND CLAIM FOR RELIEF**

For Injunctive Relief

(§ 13-51-112, C.R.S., C.R.C.P. 65)

36. Paragraph Nos. 1 through 25 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

37. The Enhancing Law Enforcement Integrity Act plainly and express mandates that Defendant make the BWC recordings at issue available to Plaintiffs, no later than October 17, 2023.

38. Plaintiffs are suffering, and will continue suffering, irreparable harm, not compensable by monetary damages, as a proximate result of the Defendant's denial of the Plaintiffs' statutory right of access to the BWC recordings at issue.

39. Plaintiffs are entitled to an injunction commanding Defendant to provide access, forthwith, to the BWC recordings at issue.

### **THIRD CLAIM FOR RELIEF**

Application for Order to Show Cause under CCJRA

(§ 24-72-301, C.R.S., *et seq.*)

40. Paragraph Nos. 1 through 29 above are incorporated herein by reference and made a part hereof with the same force and effect as if fully set forth herein.

41. The BWC recordings at issue constitute "writings" that are "made, maintained or kept" by the Lakewood Police Department for use in exercise of official functions authorized by law or administrative rule and are therefore criminal justice records under the Colorado Criminal Justice Records Act (CCJRA). *See* § 24-72-302(4), C.R.S.

42. Because Defendant has denied Plaintiffs' valid request under the CCJRA for inspection and copying of the requested criminal justice records, apparently pursuant § 24-72-305(1) (a), C.R.S., Plaintiffs are entitled to an Order directing Defendant to

show cause “*at the earliest practical time*” why the criminal justice records at issue should not be made available to the Plaintiffs. *See* § 24-72-305(7), C.R.S. (emphasis added)

43. In the event the Court finds that Defendant’s denial of access was arbitrary or capricious, Plaintiffs would be entitled to an award of their reasonable attorney’s fees pursuant to § 24-72-305(7), C.R.S.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that:

- a. The Court forthwith enter an Order to Show Cause directing Defendant to appear before it and show cause why the BWC recordings that Plaintiffs have requested under the CCJRA should not be made available to them;
- b. At the conclusion of the hearing on the Order to Show Cause, the Court enter an Order directing Defendant to provide Plaintiffs access to BWC recordings at issue;
- c. The Court enter an Order declaring the Plaintiffs have a legal right, under the Enhancing Law Enforcement Integrity Act, to obtain copies of the BWC recordings at issue;
- d. The Court enter an Order commanding Defendant to provide the Plaintiffs access, forthwith, to the BWC recordings at issue;
- e. The Court, upon finding that the Defendant’s improper withholding of the criminal justice records at issue was arbitrary or capricious, enter an Order awarding Plaintiffs their costs and reasonable attorney’s fees associated with the preparation, initiation, and maintenance of this action, as mandated by § 24-72-304(5)(b), C.R.S.;

and

- f. The Court award such other and further relief as the Court deems proper and just and proper.

Dated this \_\_\_\_ day of January, 2023.

ZANSBERG BEYLKIN, LLC

*s/ Steven D. Zansberg*  
Steven D. Zansberg

REPORTERS COMMITTEE FOR  
FREEDOM OF THE PRESS



Rachael Johnson

*Attorney for Plaintiffs*

Plaintiffs' Address:

c/o KMGH-TV  
123 E. Spear Boulevard  
Denver, Colorado 80203

**CERTIFICATE OF SERVICE**

I hereby certify that on this 1<sup>st</sup> day of February 2024, a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND APPLICATION FOR ORDER TO SHOW CAUSE UNDER THE COLORADO CRIMINAL JUSTICE RECORDS ACT** as served on the following counsel through the Colorado Courts E-File & Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

*/s/Rachael Johnson*  
Rachael Johnson

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