

DISTRICT COURT, COUNTY OF EAGLE,
STATE OF COLORADO

Court address: 0885 Chambers Ave. (P.O. Box 597)
Eagle, CO 81631

Phone No.: 970/328.6373

Plaintiffs: COLORADO MOUNTAIN NEWS
MEDIA COMPANY, a Nevada
corporation d/b/a THE VAIL DAILY

Defendants: GARY WARD in his capacity as the
acting Chief for the Town of Eagle Police
Department; and DWIGHT
HENNINGER as the Chief for the Town
of Vail Police Department

Attorney:

For Plaintiff:

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FILED IN THE
COMBINED CLERKS OFFICE

JUL 14 2003

EAGLE COUNTY, COLORADO
BY _____

▲ COURT USE ONLY ▲

Case No.
03 CV 465

Division: _____

Courtroom: _____

COMPLAINT AND REQUEST FOR ORDER TO SHOW CAUSE

Plaintiff, Colorado Mountain News Media Company ("CMNMC"), for its Complaint against the defendants, Gary Ward and Dwight Henninger, alleges as follows:

INTRODUCTION

This action is brought pursuant to the Colorado Criminal Justice Records Act ("CCJRA") seeking disclosure of all police dispatch records for the twelve month period immediately preceding July 9, 2003 for the address of [REDACTED], Eagle, Colorado which dispatch records originated with the Town of Vail Police Department and which were responded

to by the Town of Eagle Police Department.

In response to Plaintiff's requests for access to the dispatch records, acting Chief Ward has denied access, citing that he "has determined that it is not appropriate to release {the records}...the matter...is currently under investigation." (July 10, 2003 letter from Sgt. Gary L. Ward, Acting Chief of Police, Eagle Police Department to Cindy Ramunno, a reporter for the *Vail Daily*. Exhibit "A", attached hereto: *see*, p. 2, ¶ 2.)

In response to Plaintiff's request for access to the dispatch records, Chief Henninger has failed to disclose the documents requested and has failed to provide a written reply within 72 hours of Plaintiff's request for the same as provided for under §24-72-305 (6), C.R.S.

Because the *Vail Daily* respectfully disagrees that it is inappropriate to disclose these records, it asks this Court to Order that the dispatch records for the relevant period of time be immediately disclosed.

GENERAL ALLEGATIONS: JURISDICTION AND PARTIES

1. This honorable Court has jurisdiction of the claims herein pursuant to §24-72-305(7) of the CCJRA, §24-72-301, *et. seq.*, C.R.S.
2. The plaintiff, Colorado Mountain News Media Company, is a Nevada corporation and is the owner and publisher of the *Vail Daily* newspaper.
3. Plaintiff is a "person," as defined by the CCJRA (§24-72-302(9) C.R.S.) entitled to inspect and copy the records further described in this Complaint and Application.
4. The defendant, Gary Ward, is the acting Chief of the Town of Eagle Police Department and is the "... 'custodian' of the Town's 'criminal justice records' as those terms are defined in Section 24-72-302, C.R.S...." (Exhibit "A" at p. 1, ¶1) and, accordingly, is, on information and belief, the official custodian of the public records requested by this Complaint, for purposes of the CCJRA. *See*, §24-72-302(7), C.R.S.
5. Dwight Henninger is the Chief of the Town of Vail Police Department and, pursuant to "...an intergovernmental agreement... {between the towns of Vail and Eagle}..." is the custodian of police dispatch records pertaining to the Town of Eagle. (*Id.* at p. 1, ¶ 3) and, accordingly, is, on information and belief, the official custodian of the public records requested by this Complaint, for purposes of the CCJRA. *See*, §24-72-302(7), C.R.S.

APPLICABLE LAW

6. All records "made, maintained, or kept" by the Town of Eagle Police Department and the Town of Vail Police Department are "criminal justice records" as defined by §24-72-302(4), C.R.S. Unless specifically exempt, all criminal justice records should be made available

for public inspection pursuant to §24-72-305, C.R.S.

**BACKGROUND EVENTS GIVING RISE TO PLAINTIFF'S
REQUEST TO INSPECT PUBLIC RECORDS**

7. On or about July 4, 2003 Kobe Bryant, a well-known athlete who plays basketball for the Los Angeles Lakers, was processed in Eagle County pursuant to an arrest warrant issued by the Eagle County Sheriff. The warrant stated grounds of alleged sexual assault by Mr. Bryant against an Eagle County resident while he was visiting the Eagle County area.

8. The Bryant matter has attracted considerable national media attention. The alleged victim has not been named by the *Vail Daily* notwithstanding that her identity has been known to the *Vail Daily* for several days. The *Vail Daily* has no present intention to release the identity of the alleged victim.

9. The address cited in the Plaintiff's public records request is the address where the alleged victim resides along with other persons believed to be her family members. The address has no direct connection to the investigation into this matter and is not the site where the alleged incident is alleged to have transpired.

**PLAINTIFF'S REQUEST FOR, AND DEFENDANTS' DENIAL
OF ACCESS TO CRIMINAL JUSTICE RECORDS**

10. By two letters dated July 9, 2003, Cindy Ramunno, a reporter for the *Vail Daily*, requested that acting Chief Ward disclose, pursuant to the CCJRA the dispatch logs and/or records for the twelve months immediately preceding that date for [REDACTED] in Eagle, Colorado.

11. Also on that date, Mrs. Ramunno made the same request to acting Chief Ward by presenting in person to the Town of Eagle Police Department.

12. At that time and place, acting Chief Ward stated that he had possession of the documents requested but refused to provide them to Mrs. Ramunno and failed and refused to provide her any explanation as to why he was refusing to disclose them.

13. On July 10, 2003 at approximately 8:15 a.m., Mrs. Ramunno returned to the Town of Eagle Police Department and verbally renewed her request for disclosure of the documents. Acting Chief Ward again refused to provide them and again failed and refused to offer any explanation as to why he was refusing to disclose them.

14. By letter dated July 10, 2003 (Exhibit "A"), acting Chief Ward offered his reasons for failing and refusing to disclose the public records requested. The grounds of his refusal were "...the matter...is currently under investigation." (Id. at p. 2, ¶ 2).

15. By letter dated July 10, 2003, Mrs. Ramunno made a similar request to the Town

of Vail, by delivering a letter in person to Town of Vail Attorney Matt Mire.

16. Chief Henninger and/or the records custodian for the Town of Vail failed to disclose the documents and failed to provide a written explanation for such failure to disclose as specifically requested in the records request submitted by the *Vail Daily* and as required under §24-72-305(6).

17. Contrary to the positions and/or actions (or failure to act) taken by acting Chief Ward and Chief Henninger, the dispatch records are not records of investigations conducted by any law enforcement agency. *See, Cincinnati Enquirer v. Hamilton City*, 662 N.E. 2d 334 (Ohio 1996) and, in fact, pre-date any investigation. Their disclosure to the public under the CCJRA would not be contrary to the public interest. Id.

18. Plaintiff is entitled to an Order directing the defendants to Show Cause "at the earliest practical time" why the defendants should not permit access to the records which are the subject of this Complaint. §24-72-305(7), C.R.S.

WHEREFORE, pursuant to §24-72-305(7), C.R.S., the plaintiff, Colorado Mountain News Media Company d/b/a the *Vail Daily*, prays that this honorable Court enter an Order directing the defendants to show cause why they should not permit inspection and copying of the records "made, maintained, or kept" by the Town of Eagle Police Department and the Town of Vail Police Department which are the subject of this Complaint, and to conduct a hearing pursuant to such Order "at the earliest practical time."

Respectfully submitted this 14th day of July, 2003.

LAW OFFICES OF ROHN K. ROBBINS



Rohn K. Robbins, # 15510
Attorney for Plaintiff, Colorado Mountain
News Media Company, d/b/a the *Vail Daily*

Address of Plaintiff:

P.O. Box 81
Vail, CO 81658



The Town of Eagle

Box 609 • Eagle, Colorado 81631
(970) 328-6354 • Fax 328-5203

Meetings:
2nd and 4th Tuesdays

July 10, 2003

Cindy Ramunno
Vail Daily
Colorado Mountain News Media, Inc.
P.O. Box 81
Vail, CO 81658

SUBJECT: Public Records Request

Dear Ms. Ramunno,

Please be advised that I am in receipt of your first written request for public records received by the Eagle Police Department on July 9, 2003, as well as your second written request for public records also received on July 9, 2003. Please be further advised that as Acting Police Chief of the Eagle Police Department, I serve as "custodian" of the Town's "criminal justice records" as those terms are defined in Section 24-72-302, C.R.S.

Your request for information requests any and all records regarding any and all "dispatches" to [REDACTED], Colorado for the past twelve (12) months to the present. Your request is governed by part 3 of Article 72 of Title 24, C.R.S. Please note that because your request is for "criminal justice records", your request is not governed by part 2 of Article 72 of Title 24, C.R.S. pursuant to Section 24-72-302(6)(b)(I), C.R.S.

The Town of Eagle Police Department does not maintain any dispatch records. Pursuant to an intergovernmental agreement with the Town of Vail, the Town of Eagle Police Department receives dispatch services from the Town of Vail. Any request for dispatch logs, tape recordings and similar information should be directed to the Town of Vail's dispatch services.

In addition, please be advised that the Town of Eagle Police Department does not have in its possession any "arrest and criminal records information" as defined in Section 24-72-302(1), C.R.S. nor any records of "official actions" as defined in Section 24-72-302(7), C.R.S. regarding any offenses committed at [REDACTED] during the last twelve (12) months nor, to the best of the Police Department's knowledge, concerning any individuals residing at that location.

Exhibit A

 2 pages


The Town of Eagle Police Department may possess other "criminal justice records", as defined in Section 24-72-303(4), C.R.S., regarding the address of [REDACTED], Eagle, Colorado, or persons residing at that location during the last twelve months. However, pursuant to Section 24-72-304(1), C.R.S., "except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any persons at reasonable times, except as otherwise provided by law." (Emphasis added).

Please be advised that in my discretion I have determined it is not appropriate to release "criminal justice records" that need not be released pursuant to law regarding your inquiry at this time. As you well know, the matter that you are inquiring about is currently under investigation by the Eagle County Sheriff's Department and the District Attorney. That investigation has not been completed. Any "criminal justice records" that the Town of Eagle Police Department may have regarding this subject matter have been turned over to the Eagle County Sheriff's Department and the District Attorney's office for review, and are now part of their investigation files.

In addition, Section 24-72-305(1.5), C.R.S. prohibits the disclosure of "criminal justice records" if such disclosure would be contrary to the public interest. As you well know, Section 24-72-304(4), C.R.S. absolutely prohibits the release of the name of any victim of a sexual assault or of an alleged sexual assault. I believe it is contrary to the public interest to disclose any criminal justice records that need not be disclosed pursuant to part 3 of Article 72 of Title 24, C.R.S., which would in any way contain identifying information regarding the victim of the alleged sexual assault at this time. The victim of the alleged sexual assault, by and through her attorney and victim's rights advocates who are assisting her, have specifically requested that any such records not be disclosed at this time.

If you have any additional questions regarding the legal basis for my discretionary decision not to disclose the records you have requested, please contact the Eagle Town Attorney, Ed Sands, at (970) 625-1075. Thank you for your understanding in this matter.

Yours Truly,


Sgt. Gary L. Ward, Acting Chief of Police
Eagle Police Department

cc: Robin Robbins, Esq.