

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, Colorado 80202	
IN RE THE APPLICATION OF THE COLORADO INDEPENDENT ETHICS COMMISSION	COURT USE ONLY
JOHN W. SUTHERS, Attorney General JAMES F. CARR, Senior Assistant Attorney General* Registration Number 9343 1525 Sherman Street, 5th Floor Denver, Colorado 80203 (303) 866-5266 Fax: 303-866-5395 E-mail: <a href="mailto:jim.carr@state.co.us">jim.carr@state.co.us</a> *Counsel of Record	Case Number: 08CV7995 08CV7995 Ctrm.:
<b>APPLICATION FOR ORDER DISALLOWING DISCLOSURE</b>	

Applicant, the Colorado Independent Ethics Commission (“IEC”) pursuant to C.R.S. § 24-72-204(6)(a), hereby applies to this Court for the entry of an Order determining that access to requests submitted to the IEC for an Advisory Opinion or a Letter Ruling shall be restricted and disclosure disallowed, as such disclosure would do substantial injury to the public interest. As grounds therefor, Applicant states as follows:

**JURISDICTION AND VENUE**

1. Pursuant to C.R.S. § 24-72-204(6)(a), jurisdiction and venue are proper in this Court inasmuch as the IEC and documents that it is custodian for are located in the City and County of Denver. Therefore the District Court in and for the City and County of Denver has jurisdiction to entertain this application because it is the District Court for the jurisdiction where documents are located.

## **FACTUAL BACKGROUND AND GROUNDS FOR APPLICATION**

2. Applicant, the IEC is an independent commission created by the provisions of Article XXIX of the Colorado Constitution to handle complaints, advisory opinions, and letter rulings related to ethical obligations of and violations by public employees and officials in Colorado.

3. The IEC was created through the passage of Amendment 41 on November 7, 2006. The Commission adopted rules that were effective on September 1, 2008 and the Commission is now, for the first time, in a position to entertain complaints, requests for advisory opinions, and requests for letter rulings.

4. Among the most important functions of a government ethics body is the rendering of ethics advice through written opinions such as the advisory opinion and letter ruling provided in Colorado law. The IEC has received a request for disclosure of all requests for advisory opinions and letter rulings. Due to the nature of the subject matter, the IEC is concerned that disclosing such information, pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201, et. seq., will have a chilling effect on future requests for advisory opinion or letter ruling. Many affected persons have neither the ability to interpret ambiguous laws, nor the resources to freely consult with a lawyer. Free and accessible ethics advice helps guide honest public employees and officials, as well as protecting them from unwarranted allegations of misconduct. Knowledge of ethical requirements obtained through the IEC's advisory opinions and letter rulings will help public employees and officials make the appropriate choice in a grey area so that they are able to identify and avoid situations where the propriety of conduct may be at issue.

5. The IEC has a significant concern regarding the confidentiality of requests it receives for advisory opinions and letter rulings. It has received information from similar bodies in other states and local jurisdictions throughout the country that confidentiality of such requests is critical to the effective operation of an ethics commission. Further, the IEC has information that in jurisdictions that do not preserve confidentiality of requests for advisory opinions or letter rulings the ethics bodies do not effectively function or fulfill their mission. Logic and experience indicate that public employees and officials are more likely to seek ethics advice when their inquiries are confidential. A degree of privacy should be implicit in the advisory function of ethics bodies, because then public employees and officials are more likely to seek ethics advice because they know their inquiries will be treated as confidential.

6. Failure to preserve the confidentiality of requests for advisory opinions or letter rulings will have a chilling effect on public employees and elected officials seeking guidance regarding ethical duties and obligations. It is axiomatic that many of those seeking such guidance will not wish to have their request made public. There are many reasons to preserve confidentiality. One example is an inquiry from a public employee regarding the conduct of her or his supervisor. Disclosure of the request is likely to adversely impact the requestor. The same is true for a public employee who initiates a request regarding the conduct of a co-worker. Additionally, public disclosure of a request regarding contemplated activity by a public employee or official may adversely affect the requestor even if the action is not undertaken. In such circumstances, the chilling affect is likely to deter a person from requesting an advisory

opinion or letter ruling which may, in turn, unnecessarily chill lawful conduct or even result in inappropriate conduct that could have been deterred. The importance of confidentiality for those requesting guidance from the IEC is not purely speculative. Indeed, the IEC recently received an inquiry where the caller specifically asked if the request for an opinion would be confidential. When the caller was informed that public disclosure was possible, the caller chose not to proceed further.

7. Advisory opinions and letter rulings are public documents so the advice will be public. The IEC, however, out of concern for the personal privacy of the requestor will issue advisory opinions and letter rulings that do not identify the person involved or the person requesting the opinion or any identifying information about them.

8. The IEC wishes to fulfill its constitutional mandate and become a strong ethics body for the state of Colorado. In order to do this, the IEC must be able to freely receive requests for advisory opinions and letter rulings without the private and often unique concerns that give rise to the request being subject to public disclosure. Moreover, there is no public benefit from disclosure of the requests for advisory opinion or letter ruling as the advisory opinions and letter rulings themselves are public documents. Stated simply, requiring disclosure of these requests is contrary to public policy.

9. The IEC is not seeking to keep information such as the number of advisory opinions or letter rulings requested, or the dates of such requests, or the length of time involved in responding to the requests confidential. Rather, the IEC simply seeks to avoid disclosure of the personal and private information contained in requests for advisory opinion or letter ruling. As noted above, the substance of the question raised and the IEC's response will be public in the advisory opinion or letter ruling which gives the public, as well as public employees and officials the full benefit of the advice. Only the personal and private information involved in the request would remain confidential.

10. It is important to note that the IEC also handles complaints of ethics violations. These complaints are public documents once the IEC determines they are not frivolous (if the IEC finds them to be frivolous, they remain confidential according to the provisions of Article XXIX). This application does not seek to keep non-frivolous complaints confidential. This is noted to point out that requests for advisory opinion and letter ruling do not involve complaints about ethical violations; rather they are intended to provide opinions and advice that inform the affected persons and help to avoid ethical violations. If the requests for advisory opinion or letter ruling are not confidential, it will have a chilling effect on the willingness of public employees, public officials and other persons to avail themselves of the primary tools designed to prevent ethical violations.

11. C.R.S. § 24-72-204(6)(a) allows the IEC, as custodian of the requests for advisory opinions and letter rulings, to apply to the Court to restrict disclosure of these documents because in the IEC's opinion, disclosure of the contents of these requests would do substantial injury to the public interest through the chilling effect on requests for such opinions. It would also do substantial injury to the public interest by impacting the IEC's ability to function effectively as the primary ethics body in Colorado. The IEC believes that requests for advisory opinion and

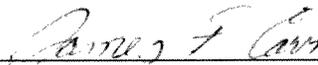
letter ruling are critical to its effective functioning and ability to define the ethical boundaries under Colorado law.

**REQUEST FOR RELIEF**

WHEREFORE, pursuant to C.R.S. § 24-72-204(6)(a), the IEC requests that this Court enter an Order finding that access to requests submitted to the IEC for an advisory opinion or a letter ruling shall be restricted and disclosure disallowed, as such disclosure would do substantial injury to the public interest.

Respectfully submitted this 10<sup>th</sup> day of September, 2008.

FOR THE ATTORNEY GENERAL



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Commission

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<b>ORDER</b>	

THIS COURT, having reviewed the Application from the Colorado Independent Ethics Commission ("IEC"), and being further advised in the premises, it is hereby ORDERED:

Pursuant to C.R.S. 24-72-204(6)(a), access to requests submitted to the IEC for an Advisory Opinion or a Letter Ruling shall be restricted and disclosure disallowed, as such disclosure would do substantial injury to the public interest

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2008.

By the Court:

\_\_\_\_\_  
 Denver District Court Judge