

DISTRICT COURT, BOULDER COUNTY,
COLORADO
Court Address: 1777 Sixth Street, Boulder, CO 80302

Plaintiffs: FLEET RUSSELL WHITE, JR., an individual; and PRISCILLA BROWN WHITE, an individual

Defendants: CITY OF BOULDER a Colorado home rule municipality; and MARK R. BECKNER, in his official capacity as Chief of the Boulder Police Department and Custodian of records for the Boulder Police Department.

Attorneys for Defendants:
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REPLY BRIEF SUPPORTING DEFENDANTS' MOTION TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT IN FAVOR OF DEFENDANTS FOR FAILURE TO STATE A CLAIM BASED ON CLAIM PRECLUSION OR ISSUE PRECLUSION

1. Plaintiffs' response does not address the key problems with their claim: A) the Plaintiffs seek the same records that they sought in 2002; B) those records still relate to an open investigation; C) Judge Montgomery ruled that disclosure of some of those records would disclose police investigative methods and harm the ongoing investigation; and D) the Plaintiffs did not appeal those rulings.

2. The circumstances that are "material" have not changed. Today, as in 2002, "[t]he only criminal justice records that Petitioners do seek are those relating to the allegations of Ms. Krebs ..."¹

¹ Ruling and Order dated September 26, 2002, *White v. City of Boulder*, Boulder District Court, Exhibit 3 to Complaint and Application for Order to Show Cause.

² Letter from Mark R. Beckner, Chief of Boulder Police to Fleet Russell White, Jr. and Priscilla Brown White

3. Today, as in 2002, “[t]his case [the JonBenet Ramsey murder investigation] is still an unsolved, open case.”²

4. Today, as in 2002, C.R.S. §24-72-305 (5) permits the custodian “[o]n the ground that disclosure would be contrary to the public interest ... to deny access to records of investigations conducted by or of ... any ... police department or any criminal Justice investigatory files compiled for any other law enforcement purpose.”³

5. Today, as in 2002, a proceeding under C.R.S. §24-72-305 (7) requires the court to determine whether “the denial of inspection was proper.” *Id.*

6. Judge Montgomery’s September 26, 2002 Ruling and Order states, in pertinent part:

The only criminal justice records that Petitioners do seek are those relating to the allegations of Ms. Krebs ...

Chief Beckner and the City’s denial of inspection was not arbitrary or capricious. Respondents have a legitimate interest in preventing disclosure of investigatory files of any open case. It is in the public interest that disclosure of police investigations be limited for all of the reasons Chief Beckner testified to.

This Court appreciates the department’s need for a hard line against disclosure particularly in the extraordinary circumstances of the Ramsey investigation.

...

The Court further finds however that Petitioners have a compelling and legitimate interest in obtaining the records of Ms. Krebs’s allegations which so impacted their family

...

² Letter from Mark R. Beckner, Chief of Boulder Police to Fleet Russell White, Jr. and Priscilla Brown White (March 13, 2014) Exhibit 11 to Complaint and Application for Order to Show Cause,

³ The statute provides, in pertinent part:

§ 24-72-305. Allowance or denial of inspection--grounds--procedure—appeal.

...

(5) On the ground that *disclosure would be contrary to the public interest*, and unless otherwise provided by law, *the custodian may deny access to records of investigations conducted by or of ... any ... police department or any criminal justice investigatory files compiled for any other law enforcement purpose.*

...

(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. ... Unless the court finds that the *denial of inspection was proper*, it shall order the custodian to permit such inspection

(emphasis added)

The Court does find an ongoing public interest in protecting the integrity of the underlying investigation however, and based on Chief Beckner's testimony, finds that some of the police interviews in the Krebs matter may harm the ongoing investigation by showing just how much the police do or do not know or by disclosing otherwise unknown witnesses.

The Court therefore orders Respondents to deliver to the Court under seal copies of the documents and evidence pertaining to the Krebs allegations and subsequent investigation for an *in camera* review. Based on that review the Court will, determine what, if any, part of the file may be released to Petitioners.⁴

On November 3, 2002, Judge Montgomery entered the following Order:

Upon review of the Boulder Police Department's records that pertain to Ms. Krebs' allegations against Petitioners and their family, and considering those factors described in the Court's original ruling in this case, the Court determines that a portion of the police file should be released. The transcripts of Ms. Krebs' two interviews with the police and Detective Trujillo's summary of her interview will be released with some redactions.⁵

7. Thus, in 2002, Judge Montgomery clearly considered and decided, under the statute, whether the Boulder Police Department's "denial of inspection" of any records relating to the Krebs investigation "was proper."

8. Defendants have no different investigative records relating to the Krebs investigation than they had, and produced, for Judge Montgomery's *in camera* review, in 2002.⁶

9. The "material circumstances" are unchanged. Issue preclusion and claim preclusion require dismissal of this action.

⁴ n 1, *supra*

⁵ Order dated November 3 2002, *White v. City of Boulder*. Boulder District Court
A to this Brief.

Exhibit

⁶ Affidavit of Detective Tom Trujillo, Exhibit B to Defendants' Motion to Dismiss or in the Alternative for Summary Judgment in Favor of Defendants for Failure to State a Claim Based on Claim Preclusion or Issue Preclusion.

Dated this 28th day of April 2014.

Respectfully Submitted,
OFFICE OF THE CITY ATTORNEY

By: /s/ Claybourne M. Douglas
Claybourne M. Douglas, No. 6346
Senior Assistant City Attorney

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April 2014, a true and correct copy of the foregoing was electronically filed and served *via* ICCES, or by placing said copy in the United States mail, postage prepaid, and addressed as follows:

Fleet White, Jr.
Priscilla Brown White

/s/ Lisa Thompson _____

Lisa Thompson

DISTRICT COURT, BOULDER COUNTY, COLORADO

FLEET R. WHITE and PRISCILLA BROWN WHITE
Plaintiffs,

DATE FILED: April 28, 2014

vs.

THE CITY OF BOULDER, COLORADO and MARK C. BECKNER, individually and
in his capacity as Chief of the Boulder Department of Police and Custodian of Records
for the Department of Police
Respondents.

ORDER

Upon review of the Boulder Police Department's records that pertain to Ms. Krebs' allegations against Petitioners and their family, and considering those factors described in the Court's original ruling in this case, the Court determines that a portion of the police file should be released. The transcripts of Ms. Krebs' two interviews with the police and Detective Trujillo's summary of her interview will be released with some redactions.

This Order is stayed until 11 November 2002.

Done this 3 November 2002

BY THE COURT


Lael Montgomery
District Court Judge