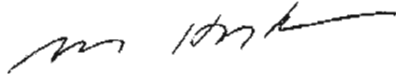


The Court being fully advised in the premises, hereby GRANTS, Defendants' Motion to Dismiss with prejudice.

Issue Date: 4/29/2014

A handwritten signature in black ink, appearing to read 'm. Hartman', written in a cursive style.

ANDREW HARTMAN
District Court Judge

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:
Office of the City Attorney
Thomas A. Carr, Atty. Reg. No. 42170
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P.O. Box 791
Boulder, CO 80306

▲ COURT USE ONLY ▲

**ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO
STATE A CLAIM BASED ON CLAIM PRECLUSION OR ISSUE PRECLUSION**

This matter comes before this Court on the Defendants' Motion to Dismiss. The Court, being fully advised, enters the following:

Findings of Fact

1. The Plaintiffs are witnesses in the investigation of the JonBenet Ramsey homicide.
2. In February 2000, Nancy Krebs made certain public allegations regarding the Plaintiffs' alleged involvement in the homicide.

3. The Boulder Police Department investigated Ms. Krebs' allegations and in May 2000 issued a statement that the investigation found no additional information to support Ms. Krebs' allegations.

4. In 2002, the Plaintiffs sought release of all records relating to the Boulder Police Department's investigation of Ms. Krebs' allegations pursuant to the Colorado Criminal Justice Records Act, C.R.S. § 24-72-301. The Defendants refused to release the records

5. The Plaintiffs sought to compel release of the records by filing a civil action against the Defendants in the Boulder County District Court, *White v. City of Boulder*,

6. On September 12, 2002, the Honorable Lael Montgomery held an evidentiary hearing to consider whether to order Defendants to produce the records.

7. On September 26, 2002, Judge Montgomery ordered Defendants to submit the records for *in camera* review. Judge Montgomery concluded in part as follows:

The Court 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.

8. On November 3, 2002, Judge Montgomery issued a ruling and order directing release of redacted transcripts of Ms. Krebs' two interviews as well as Detective Tom Trujillo's summary of those interviews. Judge Montgomery did not order the release of any other records. Neither party appealed Judge Montgomery's order.

9. The investigation into the JonBenet Ramsey homicide is open and ongoing.

10. The only records Defendants have that are responsive to the Plaintiffs' request are the records Judge Montgomery reviewed *in camera* in 2002.

Conclusions of Law

11. Issue preclusion and claim preclusion preserve judicial resources by preventing the relitigation of stale claims. *Dave Peterson Elec., Inc. v. Beach Mountain Builders, Inc.*, 167 P.3d 175, 176 (Colo. App. 2007).

12. “Claim preclusion works to preclude relitigation of matters that have already been decided as well as matters that could have been raised in a prior proceeding but were not.” *Argus Real Estate, Inc. v. E-470 Public Highway Authority*, 109 P.3d 604, 608 (Colo. 2005). Claim preclusion bars relitigation of a claim if there is:

- (1) finality of the first judgment;
- (2) identity of subject matter;
- (3) identity of claims for relief; and
- (4) identity of parties to the two actions.

Id. at 607

Claim preclusion serves the dual purpose of protecting litigants from the burden of relitigating the same issue with the same party or his or her privy and of promoting judicial economy by preventing needless litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 649, 58 L.Ed.2d 552 (1979). Claim preclusion bars not only the claims actually litigated in the first proceeding, but also those that could have been litigated. *Lobato v. Taylor*, 70 P.3d 1152, 1165 (Colo. 2003).

Wall v. City of Aurora, 172 P.3d 934, 937 (Colo. App. 2007)

13. Issue preclusion, also known as collateral estoppels, bars relitigation of an issue that is identical to an issue that has been actually litigated and necessarily adjudicated in a prior proceeding, *Stanton v. Schultz*, 222 P.3d 303, 307 (Colo. 2010).

14. Claim or issue preclusion are appropriate grounds for dismissal for failure to state a claim if the elements of the defense are evident from the pleadings, *Bristol Bay Productions, LLC v. Lampack*, 312 P.3d 1155 (Colo. 2013). If the Court considers additional material, it is appropriate to convert the motion to dismiss to a motion for summary judgment

15. The judgment in *White v. City of Boulder*, is final.

16. The instant Complaint and the Complaint in *White v. City of Boulder*, address the same subject matter, that is, the production of the same records.

17. The instant Complaint and the Complaint in *White v. City of Boulder*, seek the same relief, that is, the production of the same records.

18. The instant Complaint and the Complaint in *White v. City of Boulder*, involve the same parties.

19. As Judge Montgomery stated in her September 26, 2002 Ruling and Order, “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.”

20. Claim and issue preclusion bar the instant Complaint.

21. Plaintiffs’ claims are substantially frivolous, groundless and vexatious, not well grounded in fact or supported by a legal theory based on existing legal principles or a good faith argument for modification of existing law.

The Court being fully advised in the premises, hereby GRANTS, Defendants’ Motion to Dismiss with prejudice. Under C.R.C.P. 11(a) and C.R.S. § 13-17-102 (2) & (6), the Court awards the Defendants the amount of their reasonable expenses incurred because of the filing of the Complaint, including reasonable attorney's fees.

IT IS SO ORDERED THIS _____ DAY OF _____, 2014.

District Court Judge