

May 5, 2009

Jane T. Feldman  
Executive Director and Records Custodian  
Independent Ethics Commission  
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DELIVERED BY HAND

Ms. Feldman:

Pursuant to the Colorado Open Records Act, SS24-72-201 et seq., will you please make available for inspection and duplication the following public records:

All recordings and any minutes of executive sessions held by the commission in 2009, including the following which were noticed by the commission in hearing notices or agendas:

- An executive session held on January 14, 2009, during a regular meeting
- An executive session held on January 23, 2009, during a regular meeting
- One or more executive sessions held on February 2, 2009, during a regular meeting
- One or more executive sessions held on February 20, 2009, during a regular meeting
- An executive session held March 18, 2009, at 4700 S. Syracuse St. in Denver
- An executive session held on March 19, 2009, during a regular meeting
- A telephonic executive session held March 31, 2009
- An executive session held on April 6, 2009, during a regular meeting
- • A telephonic executive session held April 13, 2009
- An executive session held on April 21, 2009, during a regular meeting

All recordings and any minutes of unlawfully closed meetings are public records for one or more of the following reasons:

- The so-called executive sessions were noticed without sufficient specificity as to the topics under discussion;

- the statutes cited as authority for holding executive session did not in every case apply;
- attorney-client privilege between state bodies and their attorneys is specifically waived by the Colorado statutes governing open meetings, except in narrow cases concerning pending or imminent court cases;
- matters under discussion are not all required to be kept confidential by existing federal laws or rules or state statutes;
- the Colorado open meetings statute requires a recorded vote in open, public session before convening an executive session, and the official minutes of the commission do not record any such votes;
- the Colorado open meetings statute requires a recorded vote in open, public session before convening an executive session and certain executive sessions were held without any public meeting preceding them;
- binding judicial precedents in Colorado establish that the failure of a public body to “strictly comply” with the procedural requirements for convening an executive session (including the specificity of topic announcement requirement) renders the entire closed door discussion not an “executive session,” but an illegally convened closed public meeting, and the records or minutes of such a meeting are a public record subject to disclosure under the Colorado Open Records Act.
- based upon information, belief and the commission’s own admission, the record demonstrates the commission deliberated, formulated policy, reached conclusions, or adopted positions during certain so-called executive sessions, which also renders the entire closed door discussion not an “executive session” but an illegally convened closed public meeting, and the records or minutes of such a meeting are a public record subject to disclosure under the Colorado Open Records Act.

If these records are not in your custody or control, will you please forthwith so notify me and state in detail to the best of your knowledge the reason for the absence of the records, their location, and what person or persons has custody or control of the records, as required by SS24-72-203(2),C.R.S.

Will you please set a date and hour within three working days at which time the records will be available for inspection, pursuant to SS24-72-203(3).

If you deny access to any of the above public records, will you please provide forthwith a written statement of the grounds for the denial, citing the law or regulation under which access is denied, as required by SS24-72-204(4).

Sincerely,

[signed]

Ernest Luning  
The Colorado Independent  
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**PENALTY:** Anyone who willfully and knowingly violates the provisions of this law can be found guilty of a misdemeanor. The fine is set at \$100 and/or imprisonment of 90 days. If a court finds the document was withheld arbitrarily or capriciously, the custodian may personally have to pay court costs and attorney's fees for the other side.