

Bell, Boge & Associates, P.C.

f c o n f i d e n t i a l
fax

To: Mark Cohen
Fax Number: +1 (303) 258-7893

From: Audry Piper
Fax Number:
Business Phone:
Home Phone:

Pages: 3
Date/Time: 02/18/2010 14:51:56
Subject:

Confidential information:

This transmittal and accompanying documents are intended only for the use of the individual or entity to which it is addressed, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, or the employee or agent responsible for delivering the message to the intended recipient, you are notified that any dissemination, distribution or copying of this communication is prohibited. If you have received this communication in error, please notify us immediately by telephone. Thank you.

EXHIBIT 2 TO AMENDED
COMPLAINT



322 E. OAK STREET
FORT COLLINS, CO 80524

TELEPHONE (970) 493-8999
FACSIMILE (970) 224-9188

WWW.BELL-LAW.COM

FROM THE DESK OF
GREGORY S. BELL

February 18, 2010

Mark Cohen
1942 Broadway, Suite 314
Boulder, CO 80302

Re: Colorado Open Records Request to Town of Nunn

Dear Mr. Cohen:

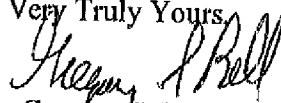
Your Open Records Request to the town has been referred to our office for response. I would begin by noting that this is not a discovery request associated with a pending lawsuit, and therefore no instructions demanding that the town itemize their basis for objections or itemize the reasons they are not in possession of certain documents have any application in this situation. As you are aware, your client was the sole custodian of all of these records up until the date of her suspension and subsequent removal, and she therefore may be the only person who knows whether or where the requested documents exist. Since all concerned would like to believe that she was fulfilling her duties while she served as clerk, the Town would be happy to allow her to inspect or copy such documents to the extent she can locate them within Town Hall in the company of a Town official. However, she will not be able to take advantage of her own actions or malfeasance by demanding that the town now perform on an Open Records Request that which she knows cannot be fulfilled due to her own actions.

Feel free to specify a time for inspection at which the Town will have a board member, police officer or other official present to accompany you or your client, or both, in inspecting any such records which may exist. At this time no current Town official is aware of any documents created or maintained by the Town of Nunn which comply with Items 1, 3, 4, 5, 6, 12 or 14. Obviously request 16, applying to an executive session, is not within the realm of public record and is exempt from your request. To the extent any documents exist itemizing 7, 8 or 9, they would have been created by counsel as work product and therefore are exempt from public records request.

As your client knows, the town has no staff to research any request which has been submitted and cannot therefore identify the location of items 12, 13, 14 or 15, although it is hoped and presumed that such items were kept in the ordinary course of business by your client while serving as Town Clerk. Perhaps she can locate them during her appointed inspection time. If any document exists responsive to items 17 or 18, such document would have been created during the time that your client acted as Clerk and therefore she should be able to locate and identify it at the appointed time. The Town will be happy to allow you to take copies of any such located items so long as they are able to keep a record of each item located and copied.

Please advise as to when you or your client, or both desire to come to the Town Hall and wish to make your own search, inspection, and copies of the items other than those identified as work product or executive session minutes. Please come prepared to tender the statutory fees for copy and personnel costs.

Very Truly Yours,



Gregory S. Bell