

OF INFORMATION ACT (FOIA), 5 U.S.C.552(B)(6)

From: [REDACTED]
To: [EVOO \(NHTSA\)](#); [REDACTED]
Cc: [NHTSA ODI CRD](#); [REDACTED]
Subject: ODI# 11372597
Date: Thursday, February 18, 2021 8:01:59 PM
Attachments: [REDACTED]

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Tracking Number 11372597

To Whom It May Concern,

Attached please find the following filed in the above-referenced tracking number:

- * Respondent's Objection to the District Attorney of the 18th Judicial District's Motion to Quash Subpoena to Produce Documents and Proposed Order
- * Motion for Immediate Disposition by a Forthwith Hearing on Motion to Quash Subpoena to Produce Documents and Proposed Order

The corresponding exhibits to the Objection are located by clicking on the secured Dropbox link below. The password is the case number [REDACTED].

[REDACTED]

Please feel free to contact me if you have any problems with the link.

Thank you,
Denise Ramirez
Paralegal
CHALAT HATTEN & BANKER PC
1600 Broadway Suite 1920, Denver, CO 80202
O. 303.861.1042 | F. 303.861.0506 | chalatlaw.com



[REDACTED]

[REDACTED]

[REDACTED]

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DISTRICT COURT, DOUGLAS COUNTY, COLORADO Court address: 4000 Justice Way Castle Rock, CO, 80109 Telephone: 720-437-6200	▲ COURT USE ONLY ▲ Case No.: [REDACTED] Div./Ctrm: C
In the Interests of: , Respondent.	
[PROPOSED] ORDER DENYING THE DISTRICT ATTORNEY OF THE 18TH JUDICIAL DISTRICT'S MOTION TO QUASH SUBPOENA TO PRODUCE DOCUMENTS and RELATED ORDERS CONCERNING THE INSPECTION	

The Court has heard the District Attorney of the 18th Judicial District's Motion to Quash Subpoena to Produce Documents and the Objection thereto. The Court, being fully apprised of the pleadings, facts, and law finds that a full response to the Respondent's C.R.C.P. 45 SUBPOENA *DUCES TECUM* TO PRODUCE DATA, DOCUMENTS, PHOTOGRAPHS AND REPORTS dated January 25, 2021, would not hinder the prosecution by the Sheriff and the District Attorney in the proceedings pending in the Douglas County Court, People v. E.A., a minor, Case # [REDACTED]. The documents, photographs and reports sought by the Subpoena shall be produced within 48 hours of the date and time of this order.

Additionally, the Court has heard the District Attorney's oral (or, anticipated) motion to quash and other contentions objecting to the Respondent's C.R.C.P. 45 SUBPOENA *DUCES TECUM* TO PRODUCE THE 2004 ACURA TL, VIN 19UUA66264A [REDACTED] FOR

INSPECTION, DISASSEMBLY, AND TESTING OF THE VEHICLE'S SEAT BELT
SAFETY RESTRAINT SYSTEM.

The Court denies the anticipated/oral motion to quash the subpoena and objections to the inspection, and herewith ORDERS the inspection planned for February 26, 2021 go forward as planned and that the persons subpoenaed, counsel for Respondent and other interested parties through counsel cooperate to fulfil the intent and purposes of this order that the inspection, disassembly and testing of the vehicle's seat belt go forward, with notice to interested parties and allowing all counsel to have experts of their own choosing present.

It is therefore ORDERED:

Dated this _____ day of _____

By the Court:

District Court Judge

DISTRICT COURT, DOUGLAS COUNTY, COLORADO Court address: 4000 Justice Way Castle Rock, CO, 80109 Telephone: 720-437-6200	
In the Interests of: , Respondent.	▲ COURT USE ONLY ▲ Case No.:
<i>Attorneys for Conservators and Guardians:</i> James H. Chalat, Atty. Reg. No. 8037 Russell R. Hatten, Atty. Reg. No. 30399 <i>CHALAT HATTEN & BANKER, PC</i> 1600 Broadway, Suite 1920 Denver, Colorado 80202 Phone: (303) 861-1042 Facsimile: (303) 861-0506 Email: jchalat@chalatlaw.com	Div./Ctrm: C
MOTION FOR IMMEDIATE DISPOSITION BY A FORTHWITH HEARING ON MOTION TO QUASH SUBPOENA TO PRODUCE DOCUMENTS	

Respondent requests pursuant to C.R.C.P. 121 §1-15(4) that the Court hear the Motion To Quash Subpoena To Produce Documents and related matters on an in order to render immediate disposition of the Motion prior to the scheduled February 26, 2021 inspection and seat-belt disassembly examination planned by the Respondent's experts and regarding the 2004 Honda Acura TL.

CERTIFICATE OF CONFERRAL

Undersigned has spoken with Mr. Jacob Edson, Chief Deputy District Attorney for the 18th Judicial District. Mr. Edson has no objection to a forthwith hearing on his Motion to Quash provided it is conducted by WEBEX.

Further Mr. Edson has no objection to the Court ruling on the Subpoena for production of the Honda for the disassembly inspection. *See*, C.R.C.P. 45 Subpoena *Duces Tecum* To Produce The 2004 Acura TL, VIN 19UUA66264A [REDACTED] For Inspection, Disassembly, And Testing Of The Vehicle's Seat Belt Safety Restraint System. District Court, Douglas County, In the Interests of [REDACTED], Case # [REDACTED] Div. C. FILING ID [REDACTED]. For service only SERVED ONLY: February 12, 2021 10:37 AM. A copy of this subpoena is attached to the Objection to Motion to Quash as Respondent's Ex. 4.

Thus, Mr. Edson agrees the Court can take up in one forthwith hearing the pending Motion and the objections the District Attorney raises about the disassembly inspection set for February 26, 2021.

The G.A.L. herein, Mr. Chayet has no objection to the forthwith hearing and would support it as the vehicle inspection and determination of whether a good faith basis exists for the Respondent through her Conservators and Guardians to proceed with a claim for product liability and breach of warranty. Likewise, the counsel for other interested parties [REDACTED] have no objection to a forthwith hearing.

AS GROUNDS FOR THE MOTION FOR FORTHWITH HEARING:

1. The traffic accident occurred on October 13, 2021.
2. The subject vehicle, the 2004 Honda Acura is at the Douglas County impound lot, sitting out of doors, subject to weather, rodents, and is vulnerable, in undersigned's opinion to the sort of events at an impound yard that might injure, damage or impair the evidentiary foundation for the inspection.

3. The vehicle was being held for evidence in a pending Traffic Case as described in the Objection to the Motion to Quash. The seat belts have no relevance whatsoever to the Traffic Case. The inspection will not hinder the prosecution of the Traffic Case.
4. The instant that it was learned a plea agreement had been reached between the District Attorney on the Traffic Case and defense counsel on the Traffic case (which concerns solely the careless driving of the vehicle) undersigned counsel moved forward on setting the inspection. Time is of the essence to the Respondent and her Guardians and Conservators.

WHEREFORE the Respondent moves for immediate disposition of the Motion to Quash.

Dated: February 17, 2021

CHALAT HATTEN & BANKER PC

/s/ James H. Chalats

James H. Chalats, Atty. Reg. No. 8037

Russell R. Hatten, Atty. Reg. No. 30399

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Denver, Colorado 80202

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Fax: 303.861.0506

Email: jchalat@chalatlaws.com

Attorneys for Petitioners

CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2021, a true and accurate copy of the foregoing was e-filed and e-served via Colorado Court's e-filing service which will send notification of such filing to the following counsel of record:

American Honda Motor Co., Inc.
1919 Torrance Blvd.
Torrance, CA 90501-2746
Via email to: csc@ahm.honda.com

American Honda Motors
Honda/Acura Case #11875549
Via email to
AHMcustomersupport@ahm.honda.com

Autoliv Inflators
Autoliv Safety Technology, Inc.
250 American Way
Brigham City, UT 84302

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Rob Baldwin
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Attorney for E.A., a minor
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Greenwood Village, CO 80111
Attorney for E.A., a minor
Via email to: smorse@smorselaw.com

U.S. DOT National Highway Traffic Safety
Administration (NHTSA)
NHTSA tracking number 11372597
Via email to: <https://www.nhtsa.gov/about-nhtsa/contact-us>

/s/ Denise Ramirez
for CHALAT HATTEN & BANKER, PC

DISTRICT COURT, DOUGLAS COUNTY, COLORADO Court address: 4000 Justice Way Castle Rock, CO, 80109 Telephone: 720-437-6200	▲ COURT USE ONLY ▲ Case No.: [REDACTED] Div./Ctrm: C
In the Interests of: , Respondent.	
[PROPOSED] ORDER GRANTING MOTION FOR IMMEDIATE DISPOSITION BY A FORTHWITH HEARING ON MOTION TO QUASH SUBPOENA TO PRODUCE DOCUMENTS	

On this date came before the Court Respondent's Motion for Immediate Disposition by a Forthwith Hearing on Motion to Quash Subpoena to Produce Documents. The Court, being fully apprised of the pleadings, facts, and law find the motion is well taken and should be granted.

It is therefore ORDERED that the Court Clerk be contacted for hearing dates for a Forthwith Hearing.

Dated this _____ day of _____

By the Court:

District Court Judge

DISTRICT COURT, DOUGLAS COUNTY, COLORADO Court address: 4000 Justice Way Castle Rock, CO, 80109 Telephone: 720-437-6200	
In the Interests of: , Respondent.	▲ COURT USE ONLY ▲ Case No.:
<i>Attorneys for Conservators and Guardians:</i> James H. Chalat, Atty. Reg. No. 8037 Russell R. Hatten, Atty. Reg. No. 30399 <i>CHALAT HATTEN & BANKER, PC</i> 1600 Broadway, Suite 1920 Denver, Colorado 80202 Phone: (303) 861-1042 Facsimile: (303) 861-0506 Email: jchalat@chalatlaw.com	Div./Ctrm: C
RESPONDENT'S OBJECTION TO THE DISTRICT ATTORNEY OF THE 18TH JUDICIAL DISTRICT'S MOTION TO QUASH SUBPOENA TO PRODUCE DOCUMENTS	

The Respondent, , objects to the Motion to Quash Subpoena to Produce Documents filed by the District Attorney for the 18th Judicial District.

I. CERTIFICATE OF CONFERRAL

Undersigned counsel, Jim Chalat and Russell Hatten, have conferred with all counsel, including Jacob Edson, Chief Deputy for John Kellner, District Attorney, in the three cases which have arisen from this matter. Only Mr. Edson is opposed to production of the records requested in the subpoena.

1. As the Court understands, [REDACTED] was critically injured in a motor vehicle collision on October 13, 2020. There is an underlying traffic case against E.A., a minor, arising from the MVA. E.A. is the [REDACTED]-old driver of the car in which [REDACTED] was the passenger. *People v. E.A., a minor*, [REDACTED] (“Traffic Case”). The Traffic Case is set for a plea and sentencing on March 23, 2021 at 1:30 PM in division G. This is expected to occur via WEBEX per the information tendered to the guardians by [REDACTED], the Victim Witness Specialist of the Office of the District Attorney.

- a. The People are represented in the Traffic Case by the 18th Judicial District Attorney, Ms. Cara Knight, Deputy District Attorney, Douglas District Attorney’s Office.

Mr. Edson, the movant herein, has filed his motion to quash on behalf of the District Attorney’s office. Undersigned has conferred at length with Mr. Edson. His position remains unchanged. He objects to the subpoena for records. *Respondent’s Exhibit 2*. He also objects to the [REDACTED] family’s attorneys’ experts inspecting the Acura TL and disassembling the restraint system until *after* the conclusion of the Traffic Case. *Respondent’s Exhibit 4*. Mr. Edson agrees that the Court may take up the issue of the inspection scheduled under *Exhibit 4* for February 26, 2021 at any hearing on his Motion to Quash. Mr. Edson states that the inspection may hinder the prosecution of the Traffic Case, even though that case rests on a simple right of way violation. Mr. Edson also argues that the existing plea agreement may be repudiated at the last minute by the minor defendant.

The Court should note that an earlier inspection, not involving any disassembly, was undertaken with notice and under subpoena, *without objection* from any interested party. *See, Respondent's Exhibits 1, 5 & 6.*

- b. The Defendant minor, E.A., is represented by Ms. Iris Eytan. Ms. Eytan's position is stated in an email received February 12, 2021: "I'm sorry, but I do not have the authority to provide you any discovery that has been produced to me as defense counsel from the DA's office. As you can see, I'm not objecting, but I cannot release it."
2. The [REDACTED] have filed a civil case. [REDACTED], *Ward and Protected Person*, by and through her co-guardians and co-conservators, [REDACTED] and [REDACTED], and [REDACTED] and [REDACTED] individually, v. E.A., a minor child by and through [REDACTED], his parent and guardian, and [REDACTED], individually. DISTRICT COURT, DOUGLAS COUNTY, COLORADO, CASE NUMBER: [REDACTED]. ("[REDACTED] et al. v. E.A. et al."). The defendants in this case have yet to file responsive pleadings, however, as a professional courtesy, the defendants' attorneys have contacted undersigned counsel for the [REDACTED]. The purpose and function of the original contact was to put into place an Unopposed Protective Order. *See, Respondent's Exhibit 8.*
 - a. Attorney Stuart D. Morse of Stuart D. Morse & Associates, LLC, represents E.A. in [REDACTED] et al. v. E.A. et al. Mr. Morse conferred with undersigned and he has no objection to the production by the District Attorney's office of the documents requested by the Subpoena. Mr. Morse further has no objection to the scheduled

inspection and disassembly of the restraint system on February 26, 2021 as proposed by the Respondent's attorneys, so long of course that it is done with notice and an opportunity to be present or to have an expert present.

- b. Likewise, undersigned has conferred with Joel S. Babcock of Sutton Booker P.C., who represents [REDACTED] in the civil action, and his position is identical to that of Mr. Morse. Mr. Babcock, on behalf of the co-defendant in [REDACTED] *et al.* v. *E.A., et al.*, has no objection to the production by the District Attorney's office of the documents requested by the Subpoena, and has no objection to the scheduled inspection and disassembly of the restraint system on February 26, 2021 as proposed by the [REDACTED] attorneys, and again, so long of course as it's done with notice and an opportunity to be present or to have an expert present.
3. In this case, undersigned has conferred with the Guardian Ad Litem by email. The G.A.L., Mr. Chayet, responded to an inquiry, made with copies of the relevant documents, as to opposition or support of the Motion to Quash. Mr. Chayet e-mailed a reply on 2/16/2021 at 12:16 PM which read: "Thank you for the conferral on this matter by e-mail to me on February 16, 2021. As you know I have been court appointed by the Douglas County Probate Court to protect and advocate for the best interests of [REDACTED]. Unequivocally, you have my support to pursue these records as being in the best interests of [REDACTED]." -s/ *Marco d. Chayet, Esq.*

II. STATEMENT OF ISSUES

4. There are two issues before the Court:

- a. On January 11, 2021, this Court ordered that “The Co-Guardians unlimited authority also includes the ability pursuant to C.R.P.P, 40 and 62 to subpoena records and information and if necessary, to participate in litigation on the Protected Person’s behalf. The Colorado Criminal Justice Records Act (“CCJRA”) expressly provides: “records of criminal justice agencies in this state may be open for inspection as provided in this part 3 *or as otherwise specifically provided by law.*” (emphasis supplied). C.R.S. § 24-72-301(2) & 303(1). *See also, People v. Thompson*, 181 P.3d 1143, 1145–46 (Colo. 2008).

Given the express provisions in the CCRJA deferring to other discovery means provided by law, is the CCRJA the “exclusive means by which persons can request inspection and copying of Criminal Justice Records” as asserted by the Movant at page 3 of its Motion?

- b. The Colorado Court of Appeals has adopted the CCRJA standards in a case involving an ongoing criminal investigation and has held that the question for the Court to determine is whether disclosure before the conclusion of a criminal case would “hinder the investigation.” The subpoena requests under review demand recorded data, such as the downloaded electronic data from the other car involved in the incident, scan data from a scientific photography/reconstruction system (FARO) and other information obtained by the DSCO. It does not seek any evidence which would constitute privileged work product of the District Attorneys’ office, disputed 5th amendment statements by the minor defendant. Would production of requested criminal justice records in any way “hinder the

investigation” in a resolved traffic case only waiting on the procedural event of entry of plea and sentencing.

III. STATEMENT OF THE CASE ON THE ISSUES BEFORE THE COURT

5. Respondent’s efforts to protect the Acura, and to take steps by consent and agreement with the District Attorney began on December 2, 2020 with a “Spoliation” letter addressed to counsel for E.A. *Respondent’s Exhibit 10*.
6. No reply was made by the Ms. Eytan.
7. On December 3, 2021 counsel for the Respondent drew up and served a subpoena To Produce For Inspection, And Nondestructive Testing The 2004 Acura TL, Vin 19UUA66264A [REDACTED] *Respondent’s Exhibit 1*.
8. That inspection was performed on December 21, 2020. The inspection was sent with full notice to the interested parties. *Respondent’s Exhibit 11*.
9. The expert performing that inspection was Steve Knapp, P.E. Mr. Knapp is a qualified engineer with experience in the design, manufacture and function of safety restraint systems. Mr. Knapp reached preliminary conclusions that “there is no evidence of permanent lockup that would indicate that the automatic tensioner deployed.” (Ex. 5, p. 7 ¶5.b. ii). The automatic tensioner is described in the Owner’s Manual: “For added protection, the front seat belts are equipped with automatic seat belt tensioners. When activated, the tensioners immediately tighten the belts to help hold the driver and front passenger in place.” *Respondent’s Exhibit 5, p. 9*.
10. Some online resources state that the seat belt pretensioner may be the most significant component of a vehicle relating to safety as it works on sensors connected to the airbags as well to hold the passenger in place in the seat to get the benefit of the restraint system.

11. On February 2, 2021 immediately after it was learned that the Traffic Case had been resolved with an agreed upon plea bargain, undersigned served by e-mail a copy of the spoliation letter to the District Attorney prosecuting the case. *Respondent's Exhibit 10*. Undersigned is unaware of the terms of the plea agreement. Undersigned counsel have distanced themselves from the process in accord with *Rademacher v. Becker*, 2015 COA 133, 374 P. 3d 499 (Colo. 2015); *See also, Rademacher v. Greschler*, 2020 CO 4¹. Nonetheless, Respondent has, through her counsel, been diligent in informing both the parties and the District Attorney about our interest in preservation of the car and our intentions to proceed with a full inspection once the Traffic Case settled and could no longer be hindered by the inspection.
12. The next step in determining whether a good faith basis exists to make a products liability claim on behalf of [REDACTED] is to examine (dissect if you will) the seat belt tensioners to determine if they malfunctioned. This requires a clear understanding of the physics of the accident including speeds and the exact vectors of the vehicles to each other. The DSCO download of the EDR from the Subaru will assist in understanding the speeds (the 2004 ACURA does not have downloadable EDR). The FARO scanning data and reports will provide evidentiary foundation for the vehicles' relative vector.
13. Two subpoenas were served. One for the records. *Respondent's Exhibit 2*. One for the inspection, *Respondent's Exhibit 3*.
14. Both vehicles, the 2004 ACURA TL, VIN19UUA66264A [REDACTED], and the 2020 Subaru Crosstrek VIN JF2GTAEC5L8 [REDACTED], remain at the Douglas County impound lot at 2965

¹ In *Rademacher v. Becker*, the Court of Appeals held that it was contrary to public policy to link resolution of potential civil personal injury claims with resolution of potential criminal charges. Undersigned counsel Jim Chalat is Carol Rademacher's counsel in the *Rademacher v. Greschler*, and continues as counsel in the post-judgment appellate proceedings: *Becker, et al. v. Rademacher et al.* No. 2020CA1054.

US-85 in Castle Rock, Colorado 80109. The vehicles have been outdoors since October 13, 2020. They are both damaged and subject to rain, snow, pests (rodent droppings have been noticed) and variations in temperatures. Rust/oxidation of the interiors of the Acura could impede the quality of the evidence. *See, Ex. 5 pages 1 – 3.*

15. Although the Motion to Quash only targets the Subpoena for records, counsel for the Movant objects to the February 26, 2021 inspection even though the Traffic Case has reached an agreed upon plea bargain. The Movant agrees the Court can address both subpoenas in a hearing or an order in the case.

ARGUMENT

The CCRJA is not the “exclusive means by which persons can request inspection and copying of Criminal Justice Records.”

C.R.S. § 24-72-301(2) provides:

It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3, and that all other records of criminal justice agencies in this state may be open for inspection as provided in this part 3 *or as otherwise specifically provided by law. (emphasis added)*

C.R.S. § 24-72-303(1) states:

Each official action as defined in this part 3 shall be recorded by the particular criminal justice agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 *or as otherwise provided by law.* The official custodian of any records of official actions may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office. *(emphasis added)*

The plain language of the statute anticipates requests made through other legal means. A subpoena is a legal means provided by law. In fact, case law in Colorado has previously had to distinguish between requests made under the Colorado Open Records Act (CORA) and the CCJRA. *Freedom Colorado Info., Inc. v. El Paso Cty. Sheriff's Dep't*, 196 P.3d 892 (Colo. 2008) *Harris v. Denver Post Corp.*, 123 P.3d 1166, 1168 (Colo. 2005). The court did not disqualify a right of inspection because of the form of the request. Such an argument elevates form over substance and here, where the victim herself is making a request to advance a lawful civil claim as is contemplated by the Victim Rights Act, the District Attorney's conduct could be construed to actively chill or potentially harm the victim's civil claims. C.R.S. § 24-4.1-302.5.

The standards are applicable, for instance where a newspaper files a motion as an intervening party in a high- profile criminal case growing out of a sexual assault case. *People v. Thompson*, 181 P.3d 1143, 1145–46 (Colo. 2008). The standards of the CCRJA were applied to the question of whether the indictment would be unsealed and furnished to the Denver Post. But there was no contention that the CCJRA was sole and exclusive means for release of the records.

Applying the CCRJA to the facts in *Thompson*, the Colorado Supreme Court held:

However, the CCJRA distinguishes between two types of criminal justice records—records of official actions and other criminal justice records—and prescribes different regimens of public access to those records. See §§ 24–72–301(2), –303(1), –304(1); see also *Background Info. Servs.*, 994 P.2d at 427.

Generally, the CCJRA mandates disclosure of records of official actions. Pursuant to section 24–72–302(7), “official action” includes an indictment. § 24–72–302(7). Records of official actions “*shall be open* for inspection by any person at reasonable times, *except as provided in [the CCJRA] or as otherwise provided by law.*” § 24–72–303(1) (emphasis added). Thus, a record of official action must be available for public inspection unless one of the two exceptions applies: (1) non-disclosure is required by the CCJRA, or (2) non-disclosure is required by other law. See *id.* Consequently, the CCJRA does not grant any criminal justice agency, including a court, any discretion as to whether to disclose *1146 a record of official action in its entirety, in part, or not at all. See *id.*

In contrast, disclosure of other criminal justice records is discretionary. Section 24–72–304(1) provides that “[e]xcept for records of official actions which must be maintained and released pursuant to [the CCJRA], *all criminal justice records, at the discretion of the official custodian, may be open* for inspection by any person at reasonable times....” § 24–72–304(1) (emphasis added). In sum, while the CCJRA leaves access to other criminal justice records to the discretion of the criminal justice agencies that are the official custodians of those records, it mandates that records of official actions be available for public inspection, subject to exceptions set forth in the CCJRA or by other law. See §§ 24–72–301, –303(1); see also *Harris*, 123 P.3d at 1171; *Background Info. Servs.*, 994 P.2d at 427 (recognizing the distinction between records of official actions and other criminal justice records).

People v. Thompson, 181 P.3d 1143, 1145–46 (Colo. 2008)

The standards and balancing test under CCRJA are applicable, and when applied clearly support release of the requested documents to the Respondent

We agree, however, that the CCRJA sets the appropriate standards for review of the release of the documents sought by the Subpoena. The FARO scan, the EDR download and the other items sought under the subpoena are Criminal Justice Records. The Court should conduct a hearing to weigh whether release of the documents would hinder the prosecution. *Madrigal*, *supra*. Although the CCRJA sets the appropriate standards for review of the release of the documents sought by the Subpoena, it is hardly the “exclusive means by which persons can request inspection and copying of Criminal Justice Records”. Mot. to Quash, p. 3.

As here, in *Madrigal v. City of Aurora*, 2014 COA 67, the plaintiff “asserted a right to receive copies of an ongoing investigation.” The court found that the City of Aurora had not abused its discretion in delaying the disclosure until after the conclusion of the criminal investigation because earlier disclosure likely would have “hindered the investigation.”

However, in contrast to this case, in *Madrigal* the district attorney had already furnished:

“800 pages of documents to plaintiffs. These documents included the entire APD investigative file, including police reports and names of the officers involved, names and contact information of all witnesses, photographs of the scene, videotaped statements of

the witnesses, and a “use of force investigative summary.”

The Respondent in the case at hand has not received any records beyond the Traffic Accident Report and the Uniform Summons and Complaint/Penalty Assessment against E.A., a minor. In contrast to *Madrigal*, the Respondent has not received the core scientific data we need to lay foundation for our own scientific research. Disclosure of that core scientific data cannot hinder the prosecution of the case against E.A. It is digital data that has already been obtained and downloaded and will not change. But it is relevant to Respondent’s attempts to determine whether the seat belt safety restraint system may have failed, causing Respondent to sustain much greater injuries. Moreover, the question of the seatbelt restraint system has never been raised to our knowledge as a core issue in the Traffic Case. Indeed, whether the seatbelt restraint system operated properly is an issue that would have arisen AFTER the alleged careless driving infraction and, therefore, is not related to the alleged infraction committed by E.A., a minor.

Hypothetically, were it to be the case that the restraint system malfunctioned, the District Attorney would have had to have disclosed that under the doctrine of *Brady v. Maryland*, 373 U.S. 83 (1963) as the evidence would be relevant to the causation question. Similarly, why the criminal defense attorney is standing in the way of the disclosure remains a mystery. Her client would seem to want to see if his conduct was not the sole cause of the Respondent’s injuries, similarly if the EDR or other reconstructive evidence shows that the Subaru driver violated any standards by way of speed or maneuvers, that also would be pertinent to the Traffic Case. Nonetheless, the Traffic Case has settled.

The movant’s attorney has stated that the Respondent could wait another five weeks, notwithstanding the risk to the car or his own office’s refusal to respond to Respondent’s

spoliation letter. Further Movant's attorney has argued in conferral that there is a "risk" that E.A. may repudiate the plea bargain, fire his attorney and seek new counsel to try the case. The representations of the civil lawyers for E.A. and his father refer to those arguments as baseless.

The prosecution has essentially been terminated in favor of a plea and sentencing. A victim impact statement, uninfluenced by any *Rademacher* considerations, has been filed. E.A. has essentially admitted his responsibility in a written offer to the [REDACTED] family. Under these circumstances, there is not a compelling reason for the District Attorney to refuse to provide copies of the requested information to Respondent.

Dated: February 17, 2021

CHALAT HATTEN & BANKER PC

/s/ James H. Chalats

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2021, a true and accurate copy of the foregoing was e-filed and e-served via Colorado Court's e-filing service which will send notification of such filing to the following counsel of record:

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