

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: Monday, February 22, 2021 12:57:12 PM
Attachments: [REDACTED]

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Tracking Number 11372597

To Whom It May Concern,

Attached please find Respondent's Objection to the District Attorney of the 18th Judicial District's Motion to Quash Subpoena to Produce Physical Evidence in a Pending Criminal Case regarding your tracking number 11372597.

Please feel free to contact us if you have any questions.

Thank you,
 Denise Ramirez
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DISTRICT COURT, DOUGLAS COUNTY, COLORADO		DATE FILED: February 19, 2021 4:01 PM FILING ID: 81F37CBFEB72F CASE NUMBER: 2020PR30477
Court address:	4000 Justice Way Castle Rock, CO, 80109	
Telephone:	720-437-6200	
In the Interests of: , Respondent.		▲ COURT USE ONLY ▲
<i>Attorneys for Conservators and Guardians:</i> James H. Chalats, Atty. Reg. No. 8037 Russell R. Hatten, Atty. Reg. No. 30399 CHALAT HATTEN & BANKER, PC 1600 Broadway, Suite 1920 Denver, Colorado 80202 Phone: (303) 861-1042 Facsimile: (303) 861-0506 Email: jchalat@chalatlaw.com		Case No.: Div./Ctrm: C
RESPONDENT'S OBJECTION TO THE DISTRICT ATTORNEY OF THE 18TH JUDICIAL DISTRICT'S MOTION TO QUASH SUBPOENA TO PRODUCE PHYSICAL EVIDENCE IN A PENDING CRIMINAL CASE		

The Respondent, , objects to the Motion to Quash Subpoena to Produce Physical Evidence in a Pending Criminal Case filed by the District Attorney for the 18th Judicial District.

I. SUMMARY OF ARGUMENT

A Criminal Justice Agency abuses its discretion when its prosecution would not be hindered or interfered with by the disclosure of Criminal Justice Records. To refuse to disclose records which have no bearing on the progress of a prosecution is a breach of the Agency's discretion. Here the Traffic Case in question will not be hindered or impeded by the Disclosure of

the documents sought in the Respondent's Subpoenas for Documents. Nor will the inspection and disassembly of the restraint system have any bearing on the facts of the accident and the allegations made in the Traffic Case.

When weighing the public versus private benefits of disclosure and inspection, it is clear that the People's elements of proof in the Traffic Case are completely unrelated to the Respondent's inquiry into the functionality of the restraint system in the Honda/Acura in question. The public interests of allowing the Victim, here the Respondent, to investigate and pursue her claims, if any, significantly outweigh the prosecutorial and privacy interests as described by the Movant.

II. CERTIFICATE OF CONFERRAL

Undersigned counsel, James Chalot and Russell Hatten, have conferred with all counsel in the three cases which have arisen from this matter. The Movant's attorney objects to disclosure and objects to the inspection on the grounds that the Minor, E.A., may repudiate the pending agreement for a plea and that the planned restraint system inspection and disassembly would adversely affect the prosecution in a later trial.

██████████, counsel for the owner of the car, ██████████: On Feb 19, 2021, at 9:16 AM, ██████████ wrote "Speaking only for myself, you can represent what was basically outlined in ██████████ pleading filed just the other day, i.e., that I have no objection to your efforts to inspect the safety restraint system and other components of either vehicle, and that timing is not an issue as long as it would not jeopardize the pending plea deal with EA."

On Friday, February 19, 2021 9:18 AM Mr. Stuart Morse, counsel for E.A., wrote “This is my position as well.” Ms. Iris Eytan, who is criminal defense counsel for EA in the Traffic case, “Jim, I don’t have a position. Iris”. Undersigned has reached out to Guardian Ad [REDACTED] [REDACTED] t, Todd Travis counsel for [REDACTED] and have not yet received a response.

III. COURSE OF PROCEEDINGS

The Respondent, through her counsel, has scheduled two experts to participate in the inspection and disassembly. Steve Knapp, P.E., whose background and preliminary findings were previously submitted to the Court. *See*, Respondent’s Ex’s. 5 & 6 to our Objection filed on February 17, 2021 to the 18th Judicial District Attorney’s Motion to Quash dtd. 2/5/21. Mr. Knapp is experienced, qualified and prepared.

Additionally, we have an “out-of-town” expert, Mr. Paul Lewis, *See* Respondent’s Ex. 7 attached to the Obj. dated February 17. Mr. Lewis is experienced, and has previously been admitted as an expert in an automobile defect case. [REDACTED] *v. Ford Motor Co.* [REDACTED] remanded for retrial, app. on post-judgment interest [REDACTED] *v. Ford Motor Co.*, [REDACTED].

The experts bring a high level of qualifications. They are expensive. It would serve the public interests if [REDACTED] civil case was able to proceed without further risk of damage or deterioration of the car in question.

IV. ARGUMENT

To sustain the District Attorney’s discretionary decision to withhold disclosures and to object to the inspection, the Court must find that the decision was not an abuse of discretion, and

that there is a credible basis to find that the disclosure and the inspection would impede or hinder the prosecution. There is no basis for that contention.

The Traffic Case is a simple failure to yield matter. *See Attached*, Respondent's Ex. 1, Scene Photos taken by the Respondent's family, and Respondent's Ex. 2 the Traffic Accident Report¹ (redacted). The People have the elements of proof for the charge of failure to yield/careless driving, based upon the statements, witnesses, photos and the investigation by the officers on the night of the accident.

The restraint system malfunction, if any, had nothing to do with the occurrence of the accident. The People have filed no charges against E.A. which in any way relate to the function of the restraint system.

The Respondent concedes that the vehicle is impounded by the Douglas County Sheriff's Office. The Respondent concedes that it is impounded by DSCO and the District Attorney which are each acting as a "criminal justice agency," under the CCJRA.

Respondent concedes that the CCJRA standards should control the question of the Respondent's access to and the planned inspection of the 2004 Acura TL.

The Respondent concedes that pursuant to the CCJRA the decision whether to grant inspection of the records under the Respondent's Subpoena for Records, and the Subpoena for Inspection is "consigned to the exercise of the custodian's sound discretion under sections 24-72-304 and -305." *Freedom Colorado Info., Inc. v. El Paso Cty. Sheriff's Dep't*, 196 P.3d 892, 897

¹ The Traffic Accident Report ("T.A.R.") was furnished directly to the [REDACTED] family by an insurer involved in the matter, and they furnished it to undersigned after we were retained. The T.A.R. incorrectly indicated that [REDACTED] was not in her seatbelt. This was contradicted by the reports of the first responders who had to unbuckle [REDACTED] to evacuate her.

(Colo. 2008) The Respondent concedes that this Court is obligated to review the custodian's decision for an abuse of discretion. *Madrigal v. City of Aurora*, 2014 COA 67, ¶ 12.

The Respondent concedes that “The custodian's determination constitutes an abuse of discretion when it is manifestly arbitrary, unreasonable, or unfair; it reflects a misapplication of the law; or it is not reasonably supported by competent evidence in the record. *Madrigal v. City of Aurora*, 2014 COA 67, ¶ 14

In this case this standard is easily met, and it is clear the District Attorney is abusing his discretion. There is no evidence that the prosecution in E.A. will in any way be impeded or harmed by the Respondent’s receipt of the disclosures or by the inspection. The District Attorney argues, without any merit, that the disassembly would be “tantamount to destroying evidence.” The seat belts have never been a subject of the Traffic Case. Moreover, the remarks by the Movant that somehow transfer ownership of the case to “Attorneys for Chalat Hatten & Banker are attempting to ... for their own civil action” indicates that the Movant has conflated the interests of the Respondent into the private interests of a “civil law firm.” Mot. Page 2. There is a public interest at stake here. The Victim in the Traffic Case has a right to pursue a civil action for damages, without unnecessary expense and delay. The Motion disregards Respondent’s status as victim in the pending Traffic Case, and as a protected person in these proceedings.

Finally, the Court’s obligation here is to balance the public and private interests involved. *Freedom Colorado Info., Inc. v. El Paso Cty. Sheriff's Dep't*, 196 P.3d 892, 896 (Colo. 2008)

The requests for documents and to inspect and disassemble the seat belts will simply *not* impede the prosecution of the Traffic Case against E.A.

V. CONCLUSION

The Respondent prays that this Court will deny the Motions to Quash and Order that the District Attorney produce the materials requested by the January 25, 2021 C.R.C.P. 45 Subpoena *Duces Tecum* to Produce Data, Documents, Photographs and Reports.

Further the Respondent prays that this Court will deny the Motion to Quash filed February 12, 2021, and allow the February 26, 2021 inspection and disassembly to proceed under the C.R.C.P. 45 Subpoena *Duces Tecum* to Produce the 2004 Acura TL, Vin No. 19UUA66264A [REDACTED] for Inspection, Disassembly, and Testing of the Vehicle's Seat Belt Safety Restraint System.

Dated: February 19, 2021

CHALAT HATTEN & BANKER PC

/s/ James H. Chalats

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CERTIFICATE OF SERVICE

I hereby certify that on February 19, 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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/s/ Denise Ramirez
for CHALAT HATTEN & BANKER, PC