SUMMARY
March 28, 2024

2024COA30

No. 23CA0622, *Simpson v. City of Durango* — Public Records — Colorado Open Records Act — Work Product Exceptions — Work Product Prepared for Elected Officials

A division of the court of appeals holds that, under the circumstances of this case and the limited record before the court, a draft financial report is not exempt from the disclosure requirements of the Colorado Open Records Act (CORA), §§ 24-72-200.1 to -205.5, C.R.S. 2023. Specifically, the division holds that the draft report is not "[w]ork product prepared for elected officials" under section 24-72-202(6)(b)(II), C.R.S. 2023, because, based on the record provided, elected officials do not have any control over the content of the final report and are not meaningfully involved in any decision involving the final report's fate or any decision based on its content.

COLORADO COURT OF APPEALS **2024COA30**

Court of Appeals No. 23CA0622
La Plata County District Court No. 22CV30112
Honorable Suzanne F. Carlson, Judge

John Simpson,

Plaintiff-Appellee,

v.

Faye Harmer, in her official capacity as the Clerk of the City of Durango,

Defendant-Appellant.

JUDGMENT AFFIRMED AND CASE
REMANDED WITH DIRECTIONS

Division VI
Opinion by JUDGE LUM
Welling and Yun, JJ., concur

Announced March 28, 2024

Matt Roane Law, Matt Roane, Pagosa Springs, Colorado, for Plaintiff-Appellee

Nathan Dumm & Mayer P.C., Nicholas C. Poppe, Denver, Colorado, for Defendant-Appellant

¶ 1 Defendant, Faye Harmer, in her official capacity as the Clerk of the City of Durango (the City), appeals the district court's judgment requiring the City to make available for public inspection a draft financial report under the Colorado Open Records Act (CORA), §§ 24-72-200.1 to -205.5, C.R.S. 2023. Based on the limited record in this case, we reject the City's arguments and conclude that the draft report is not exempt from CORA's disclosure requirements because it is not "[w]ork product prepared for elected officials." § 24-72-202(6)(b)(II), C.R.S. 2023. We therefore affirm.

I. Background

A. City Audit and Comprehensive Financial Report

¶ 2 Each year, the City is required to undergo an independent audit of its financial statements. § 29-1-603(1), C.R.S. 2023.

¶ 3 Within thirty days of receiving the auditor's report (or within any applicable extension of time), the City "shall" forward a copy of the report to the State Auditor. § 29-1-606(3), C.R.S. 2023. If the City does not submit the report, it is subject to financial consequences. § 29-1-606(5)(b).

¶ 4 In Durango, the independent audit is prepared at the same time as, and becomes part of, the City's "Annual Comprehensive

Financial Report" (final comprehensive report). *See* Durango City Charter art. V, § 12(c).

¶ 5 The final comprehensive report contains (1) an introductory section; (2) a financial section; (3) a statistical section; and (4) a compliance section. The financial section contains the report from the independent auditor, the basic financial statements, and an unaudited "Management[] Discussion and Analysis" (management analysis). The management analysis is the City management's "narrative discussion and analysis of the financial activities of the city."

¶ 6 Once a final version of the report is complete, it is presented to the City Council, which "votes" on sending the report to the State Auditor.[1] City Council members are elected officials. *See* Durango City Charter art. II, § 1.

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[1] The exact nature of the City Council's vote is unclear from the record. *See infra* Part V. It does not appear that the entire final comprehensive report must be submitted to the State Auditor to comply with section 29-1-606, C.R.S. 2023. Instead, section 29-1-606 only requires submission of the "audit report," which must contain financial statements, the "unmodified opinion of the auditor with respect to the financial statements of the local government," and "[f]ull disclosure by the auditor of violations of state or local law which come to [the auditor's] attention."

¶ 7 The City Finance Director, who is appointed by the City Manager, is responsible for preparing the final comprehensive report. City of Durango Code of Ordinances §§ 2-142, 2-143. The process typically involves preparation of "two or three draft versions" before the report is submitted to the City Council. During the preparation of the final comprehensive report, the City Finance Director's office engages with auditors to "deliberate upon various portions of the report," including, but not limited to,

- "[a] discussion of the type and adequacy of the City's internal controls";
- "[a]nalyses of whether a purportedly missing internal control is captured in another control";
- "[a] balancing of all funds within the City's financial records";
- "[a]n analysis of the City's expenses, including, for example, a proper accounting of insurance-related expenses and federal funds"; and
- "[o]ther discussions about the financial health of the City as borne out by the audit process."

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§ 29-1-605(1)(b)-(c), C.R.S. 2023; *see also* Durango City Charter art. V, § 12(c).

The Finance Director keeps the drafts of the report "strictly confidential" until the final version has been prepared.

B. CORA Request

¶ 8 Before the completion of the 2021 final comprehensive report, plaintiff, John Simpson, made a public records request under CORA for the unaudited draft version of the report. The City declined to release any draft report, asserting, as relevant here, that it was not a public record under CORA because it was "work product." *See* § 24-72-202(6)(a)(II)(A), (b)(II). Simpson filed suit, asserting that the City's failure to release the draft report violated CORA.

¶ 9 The parties stipulated that the district court could decide whether the draft report was subject to public inspection by relying solely on the parties' briefs and affidavits. The parties also stipulated that either party or the court could request an evidentiary hearing, but no one did. Based on the limited record produced by the parties' stipulated procedure, the district court required the City to make the draft report available for public inspection on the grounds that it did not meet CORA's definition of

"work product," and it was not "prepared for elected officials." The City appeals.[2]

II. Standing and Jurisdiction

¶ 10 As an initial matter, Simpson contends that we do not have jurisdiction to hear this appeal because the City, rather than the City Clerk, filed the initial notice of appeal.

¶ 11 Before briefing, Simpson filed a motion to dismiss the appeal, asserting that (1) the City did not have standing to file the appeal; (2) the proper party was the City Clerk; and (3) the appellate deadline had run, so this deficiency could not be remedied. A motions division of this court denied Simpson's motion to dismiss and ordered that the caption be reformed to add the City Clerk in her official capacity as a party. In his answer brief, Simpson again asserts that we lack jurisdiction, repeating the arguments he made before the motions division. Simpson also argues that (1) this court

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[2] The City also asserted below that (1) the draft report would qualify for deliberative process privilege, *see* § 24-72-204(3)(a)(XIII), C.R.S. 2023, and (2) the district court should exempt the draft report from disclosure under section 24-72-204(6)(a) because it would "do substantial injury to the public interest." The district court didn't address the first argument — made only in a footnote — and rejected the second. The City does not appeal the district court's decision (or lack thereof) as to either argument.

lacks authority to "substitute" one party for another under these circumstances; and (2) even if we have such authority, the City Clerk only obtains the "standing" that the City had — which, Simpson urges, is none.

¶ 12 While we are not bound by the motions division's rulings, *see Chavez v. Chavez*, 2020 COA 70, ¶ 13, we agree with its decision in this case.

¶ 13 The City's Clerk, in her official capacity, is the custodian of records for the City. Durango City Charter art. IV, § 6. "[A]n 'official capacity suit' is 'merely "another way of pleading an action against [an] entity of which an officer is an agent."'" *Ainscough v. Owens*, 90 P.3d 851, 858 (Colo. 2004) (quoting *Oten v. Colo. Bd. of Soc. Servs.*, 738 P.2d 37, 40 (Colo. App. 1987)). Thus, Simpson's underlying lawsuit, which named the Clerk in her official capacity, was, in fact, a suit against the City. *Cf. Kentucky v. Graham*, 473 U.S. 159, 166 (1985) ("As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity. It is *not* a suit against the official personally, for the real party in interest is the entity.") (citation omitted). While the City's

notice of appeal should have included the Clerk as an official-capacity defendant in its caption, the failure to do so is not jurisdictional, and this court properly exercised its authority under C.A.R. 43(c)(1) to ensure that the Clerk was added to the caption as an official-capacity defendant.

III. Standard of Review and Applicable Law

A. CORA

¶ 14 In evaluating a district court's ruling under CORA, we review the court's factual findings for clear error but review its construction and application of CORA de novo. *Bjornsen v. Bd. of Cnty. Comm'rs*, 2019 COA 59, ¶ 39.

¶ 15 Subject to exceptions not relevant in this appeal, CORA provides that all public records shall be open to public inspection. § 24-72-203(1)(a), C.R.S. 2023. "Public records" include all writings made, maintained, or kept by a political subdivision of the state for use in the exercise of functions required or authorized by law, or involving the receipt or expenditure of public funds. § 24-72-202(6)(a)(I). However, as relevant here, "public records" do not include "[w]ork product prepared for elected officials." § 24-72-202(6)(b)(II). "Work product" is defined as "all intra- or

inter-agency advisory or deliberative materials assembled for the benefit of elected officials, which materials express an opinion or are deliberative in nature and are communicated for the purpose of assisting such elected officials in reaching a decision within the scope of their authority." § 24-72-202(6.5)(a).

¶ 16 Our guiding principle for statutory interpretation is to determine and give effect to the General Assembly's intent by first looking to the plain language of the statute. *Bd. of Cnty. Comm'rs v. Colo. Dep't of Pub. Health & Env't*, 2021 CO 43, ¶ 17. We read the statute's words and phrases according to their common usage, and "we look to the entire statutory scheme to give consistent, harmonious, and sensible effect to all of its parts." *Id.* "If the statutory language is clear and unambiguous, courts need not look further." *State v. Nieto*, 993 P.2d 493, 500 (Colo. 2000). If ambiguity exists within a statute, however, we will look to other tools of statutory construction for our interpretation. *Id.* at 501. "A statute is ambiguous when it is reasonably susceptible of multiple interpretations." *Elder v. Williams*, 2020 CO 88, ¶ 18.

¶ 17 The public policy of CORA favors disclosure, and we must construe exceptions and exclusions to CORA narrowly. *Ritter v. Jones*, 207 P.3d 954, 959 (Colo. App. 2009).

B. *Bjornsen v. Board of County Commissioners*

¶ 18 In 2019, a division of this court interpreted the "work product" and "prepared for elected officials" provisions of CORA. *See Bjornsen*, ¶¶ 38-52. At issue in *Bjornsen* were two categories of documents: (1) drafts of an email (drafts) that was ultimately sent to the public by the unelected director of the Boulder County Housing Authority (BCHA director) and (2) emails sent to and from county commissioners and staff that the county had redacted prior to disclosure (redacted emails). *See id.* at ¶¶ 43-46, 47-52. The district court ruled that the drafts and the material redacted from the redacted emails were exempt from disclosure under CORA. *Id.* at ¶¶ 3-6.

¶ 19 The *Bjornsen* division reversed the district court's judgment as to the drafts. Its holding has two critical parts. First, the division held that the drafts were work product because the purpose of the final product — the BCHA director's email to the public — was to help the county commissioners (elected officials) resolve a

contentious housing issue, and the drafts were deliberative materials that were the first step in that process. *Id.* at ¶ 44.

¶ 20 The second part of the division's holding was that, although the drafts were "work product," they were not "prepared for elected officials." The division reasoned that (1) the BCHA director testified that his staff prepared the drafts for him (rather than for elected officials) because he thought the final email might be helpful for the commissioners; (2) the BCHA director is the one who made the decision to send the email to the public; and (3) the commissioners did not ask for the drafts, and the drafts were never sent to them. *Id.* at ¶¶ 43, 46. Accordingly, the drafts were subject to public disclosure. *Id.* at ¶ 46.

¶ 21 As to the redacted emails, Bjornsen contended on appeal that the district court clearly erred by finding that the emails were not sent to or from county commissioners. The division agreed but noted that "the district court's clearly erroneous identification of the senders and recipients did not affect the propriety of the court's ruling that the redactions were proper under the CORA." *Id.* at ¶ 50.

IV. District Court's Order

¶ 22 In its order, the district court concluded that the draft financial report Simpson requested did not fit the definition of "work product." As we read the district court's order, it determined that the draft report, to the extent it was "the product of deliberation" or "contain[ed] advice or opinions," was not "communicated for the purpose of assisting . . . elected officials in reaching a decision within the scope of their authority" pursuant to section 24-72-202(6.5)(a).

¶ 23 First, the court reasoned that, while the draft was prepared "for the benefit of the City Council," it did not assist the City Council in reaching any decision because it was "not communicated *to* the City Council." (Emphasis added.) Second, the court reasoned that the draft was not intended to assist the City Council in deciding whether to submit the final comprehensive report to the state. Rather, the draft was intended to assist only in the creation of the final comprehensive report "and to ultimately lead to formation of the opinion of the auditor." In addition, the district court appears to have concluded that the decision at issue — submitting the audited report to the State Auditor — was not

sufficiently deliberative or discretionary for work product protections to attach.

¶ 24 The court next concluded that, even if the draft report was work product, it was still not exempt from disclosure. Applying *Bjornsen*, the court reasoned that, because the City Council never asked for or received the draft report, it was not prepared "for elected officials." Instead, the court reasoned, it was prepared solely for the Finance Director and the auditor.

V. Analysis

¶ 25 On appeal, the City asserts that the district court erred because (1) elected officials are not required to directly view or receive the relevant documents for those documents to be exempted as "work product" that is "prepared for elected officials"; (2) the definition of "work product" contains no requirements regarding the nature of the decision to be reached by elected officials; (3) the court misinterpreted *Bjornsen* in reaching the conclusion that the documents were not prepared "for elected officials"; and (4) interpreting "work product" or "prepared for elected officials" to require that the documents be "sent or asked for" by elected officials is too narrow and would lead to absurd results. The City urges that

for a document to be excluded from disclosure under the work product exception, it need only be "related to a decision of the elected officials."

¶ 26 We agree with the City's contentions that the district court erred to the extent it relied on the absence of evidence that the elected officials requested, viewed, or received the drafts. Nevertheless, based on the very limited record before us, we conclude that the district court did not err by determining that the draft report isn't exempt from CORA's disclosure requirements.

¶ 27 We examine in turn whether the draft report is "work product" and whether it was "prepared for elected officials."

A. Work Product

¶ 28 There are four primary "elements" to CORA's definition of "work product": (1) the material is inter- or intra-agency in nature; (2) it contains opinions or is advisory or deliberative; (3) it is assembled for the benefit of elected officials; and (4) it is communicated for the purpose of assisting elected officials in reaching a decision within the scope of their authority. § 24-72-202(6.5)(a).

¶ 29 The district court appears to have concluded that the draft report is inter- or intra-agency material. We agree. The Finance Director's affidavit explained that "her office" prepares at least two or three draft versions of the report. Therefore, there is at least some "intra-agency" aspect to the drafting process.

¶ 30 We also agree that the record reflects that the draft report meets the "advisory or deliberative" requirement. "Deliberative" refers to documents that are "reflective of the give-and-take of the consultative process," *City of Colorado Springs v. White*, 967 P.2d 1042, 1051 (Colo. 1998), often requiring "measured careful consideration and often with formal discussion before reaching a decision or conclusion," *City of Fort Morgan v. E. Colo. Publ'g Co.*, 240 P.3d 481, 487 (Colo. App. 2010) (citation omitted). The record reflects that the drafts are the product of a give and take within the Finance Director's office and between that office and the independent auditor.[3]

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[3] The term "advisory" refers to documents "containing or giving advice" and is "synonymous with a person's view or opinion." *City of Fort Morgan v. E. Colo. Publ'g Co.*, 240 P.3d 481, 486 (Colo. App. 2010) (citation omitted). The final comprehensive report is advisory, as it contains the opinion of both the independent auditor and the

¶ 31 Next, we agree with the district court that the draft is assembled "for the benefit of elected officials." The final comprehensive report is prepared, at least in part, so that the City Council can fulfill its duties to "cause to be made an annual audit" and "forward a copy of the audit report to the state auditor." §§ 29-1-603(1), -606(3). The drafts are an integral part of completing that report and, therefore, the draft report was prepared for the officials' benefit.

¶ 32 However, the record does not reflect that the draft was "communicated for the purpose of assisting . . . elected officials in reaching a decision within the scope of their authority." § 24-72-202(6.5)(a).

¶ 33 Initially, we agree with the City that the district court erred to the extent it ruled that the draft report didn't fulfill this prong because it wasn't "communicated to" elected officials. The work product definition contains no such requirement. But this error doesn't affect our conclusion.

Finance Director relating to the financial health of the City. However, because the draft report is not in the record, it is unclear whether it contains any advice or expresses any opinion.

¶ 34 The critical question is whether sending the final comprehensive report to the State Auditor is a "decision" within the scope of the City Council's authority. To "decide" means "to make a final choice or judgment about" or "to select as a course of action." Merriam-Webster Dictionary, https://perma.cc/8XTL-X5MX. This necessarily implies that the decision-maker has the authority to select from at least two alternative courses of action. The City contends that, because the City Council "votes" on sending the report to the State Auditor, it has the authority to either send the report or withhold it. And while the district court seemed to agree with the City that the City Council has the authority to withhold the report from the State Auditor, we don't see any support for that finding in this record.

¶ 35 The record does not shed any light on the scope or nature of the City Council's "vote." The sole reference in the record to any vote is a line from the Finance Director's affidavit, attesting that "the [final comprehensive report] undergoes multiple drafts, with the potential that certain suggestions or recommendations to City Council are revised or discarded before a final version is voted upon." From that reference alone, it's unclear who votes on the

report, much less what the purpose of the vote is or what the possible outcomes are.[4]

¶ 36 Under ordinary circumstances, we might be able to infer that a "vote" implies the authority to accept, reject, or ask for revisions to the final comprehensive report. Indeed, both here and below, the City describes the vote as one to "approve" or "adopt" the final comprehensive report and audit, implying that the City Council could "disapprove" or decline to adopt it while asking for a revised version. However, the City does not cite, and we have not found, any statute or city ordinance that requires or directs elected officials to "approve" or "adopt" an audit before it is sent to the State Auditor. Section 29-1-603(1) requires the "governing body" to "cause to be made an annual audit . . . each fiscal year." Likewise, the Durango City Charter article V, section 14 states only that "[a]n independent audit shall be made annually of all city accounting records by a certified public accountant." More importantly, the City does not direct us to any statute or ordinance granting the City

[4] In its trial briefing (though not in its appellate briefing), the City stated that the City Council's vote takes place at a public meeting; however, it did not provide record support for that assertion.

Council the authority to do anything with the final comprehensive report other than "forward a copy of the audit report to the state auditor within thirty days after receipt of said audit." § 29-1-606(3).

¶ 37 Additionally, on the record before us, it does not appear that the City Council members have any ability to control or alter the content of the final comprehensive report before it is sent to the State Auditor or at any other time. According to the Finance Director, drafts of the report are kept "strictly confidential" by her office until the final draft is "voted upon." Further, the final version of the report "consists of *management's representations* concerning the finances of the City of Durango" (emphasis added) and explicitly states that "management retains full responsibility for the completeness and reliability of all information presented in this report." Finally, article V, section 12 of the Durango City Charter provides that the comprehensive financial report is part of the "system of accounts and records" that is "direct[ed] and administer[ed]" by the City Manager, an unelected official.

¶ 38 In sum, the City Council has a single statutory mandate with respect to sending the report to the State Auditor: it "shall" forward a copy. § 29-1-606(3). The mere fact that the statute provides for a

penalty if the City Council fails to comply with this requirement does not mean that the City Council has the "authority" to either withhold the report or request revisions from the independent auditor or city staff — and nothing in the record supports that it does. Where the elected officials have the authority to take only one action, there is nothing to "decide" within the meaning of CORA's work product definition. *See* § 24-72-202(6.5)(a); *DiMarco v. Dep't of Revenue*, 857 P.2d 1349, 1352 (Colo. App. 1993) ("Unless the context indicates otherwise, the word 'shall' generally indicates that the General Assembly intended the provision to be mandatory."); *Ritter*, 207 P.3d at 959 ("[C]ourts must interpret the work product exception narrowly.").

¶ 39 To the extent the City argues that the City Council can make some other decision based on the financial report, "such as modify[] the internal controls of the City" or "reject the Finance Director's findings in some respect and return the Financial Section to her for further consideration," that argument was not raised before the district court and therefore is unpreserved. *See Simon v. Indus. Claim Appeals Off.*, 2023 COA 74, ¶ 28 ("We need not consider

unpreserved arguments."). Moreover, the City doesn't identify any record evidence supporting these arguments.

¶ 40 For these reasons, we conclude that the draft report isn't work product excluded from the definition of public records under CORA.

B. "Prepared for Elected Officials"

¶ 41 Even if the draft report is work product, the same dearth of evidence with respect to the City Council's authority over the content and fate of the final comprehensive report compels us to conclude that the draft report isn't "prepared for elected officials."

¶ 42 Our analysis, like the district court's, is guided by *Bjornsen*.[5] The district court concluded that the draft report here is analogous to the draft emails in *Bjornsen*. *Bjornsen*, ¶ 46. Specifically, the court reasoned that (1) the draft report was prepared for the Finance Director, an unelected official; and (2) the City Council members did not ask for or receive the draft. We agree with the court's reasoning in part.

[5] While we are not bound by the decisions of other divisions, we agree with the parties that *Bjornsen v. Board of County Commissioners*, 2019 COA 59, was correctly decided.

¶ 43 As with our work product analysis, we agree with the City that whether the elected officials asked for or received the draft report is not dispositive. While evidence that an elected official *did* request or receive a draft would certainly support a claim that the draft was "prepared for elected officials," the absence of such evidence isn't fatal. *See id.* at ¶¶ 49-50 (concluding that the district court's erroneous finding that redacted emails were not sent or received by elected officials had no bearing on whether the redactions were proper under CORA). Nevertheless, to the extent the district court erred by relying on this reasoning, the error is immaterial to the remainder of our analysis.

¶ 44 The City contends that, because the City Council votes on whether to send the final comprehensive report to the State Auditor, this case is distinguishable from the drafts in *Bjornsen*. Recall that in *Bjornsen*, the drafts were not "prepared for elected officials" because elected officials were not involved in the creation of the final email or the decision to send it to the public. *Id.*

¶ 45 While we agree that the City Council's role in sending the final comprehensive report to the State Auditor distinguishes this case

slightly from *Bjornsen*, it is insufficiently distinguishable on this record to be exempted from disclosure requirements.

¶ 46 First, as explained *supra* Part V.A, the record contains no evidence that the City Council has any ability to influence the content of the final comprehensive report. Instead, the record indicates that the Finance Director, the City Manager, and the independent auditor have complete control over the final comprehensive report's content and conclusions. And notwithstanding the singular, vague statement that the report is "voted on," the record doesn't reflect that the City Council has any authority to withhold the report from the state. Thus, as in *Bjornsen*, elected officials are not involved in the creation of the final comprehensive report, nor are they involved in any meaningful way in the decision to send the report to the State Auditor.

¶ 47 Moreover, even if we were to assume that the City Council has the authority to withhold the report, the record still lacks any evidence that City Council members can request revisions to the report prior to sending it to the State Auditor or at any other time. As a result, there's no possibility that the draft report could influence any decision the elected officials make. Lastly, the final

comprehensive report itself is not prepared at the direction of any elected official; rather, it is prepared to satisfy statutory and city code requirements. Given all this, we conclude that the draft report is not exempt from disclosure because it is not "prepared for elected officials."

¶ 48 We are not persuaded otherwise by the City's argument that a document need only be "related to" or "tethered to" a decision made by elected officials in order to be exempt from disclosure. Such a broad reading would sweep in virtually all documents produced by any city department, including the drafts in *Bjornsen*. The City does not cite, and we have not found, any appellate opinion supporting such a sweeping interpretation, and we are obligated to construe exceptions to CORA narrowly. *Ritter*, 207 P.3d at 959.

¶ 49 We acknowledge that our decision — both as to whether the draft report is "work product" and whether it is "prepared for elected officials" — may well have been different if there had been additional development of the record below relating to the nature of the City Council's vote, the scope of the City Council's authority relating to the content of the final comprehensive report, or the decisions the City Council could make based upon the information

contained in the report. But the stipulated record is bereft of any such evidence. Moreover, the City bears the burden of showing that the requested document is exempt from CORA's disclosure requirements, *see Zubeck v. El Paso Cnty. Ret. Plan*, 961 P.2d 597, 600 (Colo. App. 1998); the City agreed to the abbreviated procedure followed below; and the City controlled the information relating to any vote made by the City Council. Therefore, the deficiencies in the record work to its detriment.

VI. Attorney Fees

¶ 50 Simpson requests his appellate attorney fees under section 24-72-204(5)(b), C.R.S. 2023, which provides, "Unless the court finds that the denial of the right of inspection was proper, it shall . . . award court costs and reasonable attorney fees to the prevailing applicant in an amount to be determined by the court." An award of attorney fees under section 24-72-204(5) includes reasonable appellate attorney fees. *Marks v. Koch*, 284 P.3d 118, 124 (Colo. App. 2011). Because Simpson was successful in defending the district court's ruling that he was improperly denied the right to inspect the draft report, we agree he is entitled to his reasonable attorney fees incurred during this appeal. We exercise

our discretion under C.A.R. 39.1 and remand this case to the district court to determine the amount of reasonable attorney fees.

VII. Disposition

¶ 51 The judgment is affirmed, and the case is remanded for further proceedings consistent with this opinion.

JUDGE WELLING and JUDGE YUN concur.