

<p>DISTRICT COURT, MORGAN COUNTY, COLORADO</p> <p>Court Address: 400 Warner Street, P.O. Box 130 Fort Morgan, CO 80701</p> <hr/> <p><b>Plaintiffs-Counterclaim Defendants:</b></p> <p>THE CITY OF FORT MORGAN, COLORADO, a municipal corporation; and,</p> <p>ANDREA STRAND, custodian of records,</p> <p>v.</p> <p><b>Defendant-Counterclaimant:</b></p> <p>EASTERN COLORADO PUBLISHING COMPANY, doing business as <i>The Fort Morgan Times</i>;</p> <p>and</p> <p><b>Counterclaimant:</b></p> <p>WILLIAM HOLLAND, a citizen of the State of Colorado.</p> <hr/> <p>Attorneys for Defendant-Counterclaimants: Thomas B. Kelley, #1971 Christopher P. Beall, #28536 LEVINE SULLIVAN KOCH &amp; SCHULZ, L.L.P. 1888 Sherman Street, Suite 370 Denver, Colorado 80203 Tel: (303) 376-2400 / Fax: (303) 376-2401 E-mail: cbeall@lskslaw.com</p>	<p><b>EFILED Document</b> <b>CO Morgan County District Court 13th JD</b> <b>Filing Date: Mar 27 2008 10:39PM MDT</b> <b>Filing ID: 19176197</b> <b>Review Clerk: Jody L Andrews</b></p> <hr/> <p style="text-align: center;">▲ <b>COURT USE ONLY</b> ▲</p> <hr/> <p>Case Number: <b><u>08 cv 00002</u></b></p> <p>Division : <b><u>C</u></b></p>
<p><b>DEFENDANT &amp; COUNTERCLAIMANT'S INITIAL DISCLOSURES UNDER C.R.C.P 26(a)(1)</b></p>	

Defendant-Counterclaimant Prairie Mountain Publishing Company, L.L.P., formerly known as Eastern Colorado Publishing Company, doing business as *The Fort Morgan Times*, and Counterclaimant William Holland, (collectively herein, “the *Times*”), through their attorneys Levine Sullivan Koch & Schulz, L.L.P., pursuant to C.R.C.P. 26(a)(1), hereby provide their initial disclosures in this civil action:

**A. Individuals Likely to Have Discoverable Information:**

The following individuals are likely to have discoverable information relevant to the facts alleged with particularity in the pleadings:

1. Anita Balthazar, former Member of the City Council, whose address and telephone number are known to the plaintiffs, has knowledge concerning the events and documents related to the evaluation of Michael Nagy prior to her departure from the City Council at the end of 2007.
2. Jack Darnell, Mayor, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.
3. Lyn Deal, Member of the City Council, whose address and telephone number are known to the plaintiffs, has knowledge concerning events related to the records at issue in this case after joining the City Council in 2008.
4. William Holland, Publisher of the *Fort Morgan Times*, P.O. Box 4000, Ft. Morgan, Colorado, 80701, (970) 867-5651, has knowledge concerning the request of the *Times* for access to the records at issue in this case.
5. Keith Kuretich, acting City Manager, whose address and telephone number are known to the plaintiffs, has knowledge concerning the City's policies, procedures, practices and actual conduct with respect to retention of personnel evaluation records.
6. Terry McAlister, President of the City Council, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.
7. Michael Nagy, former City Manager, whose address and telephone number are known to the plaintiff, has knowledge concerning the destruction of the records at issue here and the plaintiffs' policies and practices with respect to such records, as well as concerning the City Council's personnel evaluation session concerning him on December 18, 2007.
8. James Powers, Member of the City Council, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.
9. Terri Schafer, Member of the City Council, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.

10. Ron Shaver, Member of the City Council, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.
11. Alberta Simmons, Member of the City Council, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.
12. Andrea J. Strand City Clerk, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.
13. Jeffrey A. Wells, City Attorney, whose address and telephone number are known to the plaintiffs, has knowledge concerning all disputed facts in this action.

#### **B. Categories of Documents**

The following categories of documents are relevant to the disputed facts alleged with particularity in the pleadings. The documents are in the possession and control of the plaintiffs.

1. All records relating to any personnel evaluation of Michael Nagy by the City Council.
2. All records relating to the policies and/or practices of the City of Fort Morgan with respect to retention of records.
3. All records relating to the destruction of the council members' individual December 2007 personnel evaluations of Michael Nagy.

#### **C. Categories of Damages**

This is an action under the Colorado Open Records Act ("CORA"), §§ 24-72-201, *et seq.*, C.R.S., and as a result, no damages are available. The Counterclaimants do, however, seek a recovery of all their reasonable attorney's fees and costs. The documents supporting such fees and costs will be made available pursuant to C.R.C.P. 121(c), § 1-22(2)(b) only upon a resolution of the CORA claims in this case..

#### **D. Insurance Agreement**

There is no insurance policy or other agreement which may be applicable to any judgment against the *Times* in this action.

**E. Reservation of Rights**

The *Times*' disclosures here are made with the information available at this time. The Defendant and Counterclaimants reserve their right to supplement these disclosures as additional information becomes available.

Respectfully submitted this 27th day of March, 2008.

By /s Christopher P. Beall  
Thomas B. Kelley, #1971  
Christopher P. Beall, #28536  
LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.

Attorneys for Defendant  
**Prairie Mountain Publishing Company, L.L.P.**

THIS DISCLOSURE WAS FILED WITH THE COURT THROUGH  
THE LEXISNEXIS FILE-AND-SERVE ELECTRONIC FILING SERVICE. UNDER  
C.R.C.P. 121(C), § 1-26, THE ORIGINAL SIGNED COPY OF THIS DOCUMENT IS ON FILE WITH LEVINE SULLIVAN  
KOCH & SCHULZ, L.L.P.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of March, 2008, a true and correct copy of the foregoing **DEFENDANT & COUNTERCLAIMANT'S INITIAL DISCLOSURES UNDER C.R.C.P 26(a)(1)** was served on the following counsel through the Lexis/Nexis File-And-Serve electronic court filing system, pursuant to C.R.C.P. 121(c), § 1-26:

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/s Christopher P. Beall \_\_\_\_\_