ADVANCE SHEET HEADNOTE
March 30, 2026

2026 CO 18

No. 23SC927, *Brubaker v. Colorado Sun*—Public Records—Colorado Open Records Act; Children's Code—Dependency and Neglect Records and Information—Reports of Child Abuse or Neglect—§ 19-1-307(1)(a), C.R.S. (2025)— §§ 24-72-201 to -230, C.R.S. (2025)—*Peck v. McCann*, 43 F.4th 1116 (10th Cir. 2022).

In this case, two media organizations requested, pursuant to the Colorado Open Records Act ("CORA"), §§ 24-72-200.1 to -205.5, C.R.S. (2025), the total number of reports of child abuse or neglect made to local child welfare authorities from each of three state-funded residential child care facilities over a three-year period, as well as the number of those reports at each facility that were screened for investigation. The Colorado Department of Human Services ("CDHS") responded that, pursuant to section 19-1-307(1)(a), C.R.S. (2025) ("subsection (1)(a)") of the Colorado Children's Code Records and Information Act, it was precluded from disclosing the information sought by the media organizations. In particular, CDHS contended that providing the requested information for each of the three specific RCCFs would *disclose* the "address of any child, family, or

informant" contained in a report of child abuse or neglect, or, alternatively, would *confirm* that such a report originated from an RCCF's specific address.

The supreme court concludes that CDHS must disclose the six cardinal numbers requested by the media organizations. The media organizations asked CDHS for six *cardinal numbers*: the total number of reports of child abuse or neglect made to local child welfare authorities from each of the three specified RCCFs over a three-year period; and the number of those reports at each facility that were screened for investigation. Because CDHS has failed to satisfy its burden of demonstrating that the cardinal numbers requested constitute a "report[] of child abuse or neglect," or the "name," "address," or "any other identifying information" of a child, family, or informant contained in such a report, it must disclose those cardinal numbers to the media organizations. § 19-1-307(1)(a).

A division of the court of appeals remanded the case to the district court for factual findings instead of ordering the disclosure of the six requested cardinal numbers. Accordingly, the division's judgment is reversed. The case is remanded to the division with instructions to return it to the district court for further proceedings consistent with this opinion.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 18

Supreme Court Case No. 23SC927
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 21CA1608

Petitioner:

Amanda Brubaker, in her official capacity as the Records Custodian for the Colorado Department of Human Services,

v.

Respondents:

Colorado Sun and Tegna, Inc., d/b/a KUSA-TV/9News.

Judgment Reversed
en banc
March 30, 2026

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **JUSTICE BOATRIGHT**, **JUSTICE GABRIEL**, and **JUSTICE BLANCO** joined. **JUSTICE BERKENKOTTER**, joined by **CHIEF JUSTICE MÁRQUEZ** and **JUSTICE HOOD**, concurs in the judgment only.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 United States Supreme Court Justice Louis Brandeis, one of the most influential jurists in American history, passionately defended people's privacy, going so far as to call an individual's "right to be let alone" both "the most comprehensive of rights" and "the right most valued by civilized men." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting); *see* Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193, 193–220 (1890). Yet he also staunchly spoke out about the importance of transparency, famously observing that "[s]unlight is said to be the best of disinfectants; electric light the most efficient policeman." Louis D. Brandeis, *What Publicity Can Do*, *in Other People's Money and How the Bankers Use It* 92, 92 (1914). That these two compelling interests are inherently virtuous is beyond question. But enforcing them simultaneously is sometimes easier said than done.

¶2 Today, we deal with media requests to the Colorado Department of Human Services ("CDHS") for information related to reports of child abuse or neglect made from state-funded residential child care facilities ("RCCFs"). The parties' dispute pits an individual's interest in keeping identifying information private (an interest CDHS seeks to defend) against the public's interest in transparency from government agencies (an interest the media seeks to foster). But we're not called upon to discern how to breathe life into each one of these vital interests without

treading on the other. No, our General Assembly took on that task already: It struck a delicate balance between the two dueling interests many years ago. Our mission today is to resolve the parties' disagreement by ascertaining and effectuating the legislature's intent in achieving that equilibrium.

¶3 In this case, Colorado Sun and Tegna, Inc., d/b/a KUSA-TV/9News, (collectively the "Media Organizations") requested, pursuant to the Colorado Open Records Act ("CORA"), §§ 24-72-200.1 to -205.5, C.R.S. (2025), the total number of reports of child abuse or neglect made to local child welfare authorities from each of three RCCFs over a three-year period, as well as the number of those reports at each facility that were screened for investigation.[1] CDHS responded that, pursuant to section 19-1-307(1)(a), C.R.S. (2025) ("subsection (1)(a)") of the Colorado Children's Code Records and Information Act ("Children's Records Act"), it was precluded from disclosing the information sought by the Media Organizations.[2] In particular, CDHS contended that providing the requested information for each of the three specific RCCFs would

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[1] The Media Organizations' requests referred to reports of child abuse or neglect, *as well as to calls to the child abuse hotline and reports of runaways*. Because child-abuse hotline calls and reports of runaways fall under the umbrella of reports of child abuse or neglect, we, like the parties, generally refer to reports of child abuse or neglect when discussing the Media Organizations' requests.

[2] Subsection (1)(a) prohibits the disclosure of "reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such reports."

disclose the "address of any child, family, or informant" contained in a report of child abuse or neglect, or, alternatively, would *confirm* that such a report originated from an RCCF's specific address.

¶4 We ultimately conclude that CDHS must disclose the six cardinal numbers requested by the Media Organizations. Because the division remanded the case to the district court for factual findings instead of ordering the disclosure of the six requested cardinal numbers, we reverse the division's judgment. We remand the case to the division with instructions to return it to the district court for further proceedings consistent with this opinion.

¶5 In the proceedings below, the district court perceived no ambiguity in subsection (1)(a) and agreed with CDHS's plain-meaning interpretation. It ruled that subsection (1)(a) barred CDHS from providing the information requested. But a divided division of the court of appeals saw it differently. *Colo. Sun v. Brubaker*, 2023 COA 101, ¶ 5, 542 P.3d 1190, 1191. Finding the parties' divergent interpretations of subsection (1)(a) equally reasonable, the division cut the Gordian knot by resorting to other tools of statutory interpretation. *Id.* at ¶ 32, 542 P.3d at 1195. Specifically, the division considered subsection (1)(a)'s legislative history and the consequences of endorsing each party's construction. *Id.* at ¶¶ 33–43, 542 P.3d at 1195–96. The division then concluded that not all addresses of children, families, or informants contained in reports of child abuse

or neglect are protected under subsection (1)(a); rather, reasoned the division, an address is exempt from disclosure pursuant to that statutory provision only when it constitutes identifying information. *Id.* at ¶¶ 40–41, 542 P.3d at 1196. Stated differently, according to the division, some addresses do not qualify as "identifying information" and thus fall outside the scope of subsection (1)(a).

¶6 In light of its interpretation, the division remanded the case to the district court for factual findings on whether the requested information "would disclose 'identifying information' of a child, family, or informant associated with a child abuse or neglect report." *Id.* at ¶ 44, 542 P.3d at 1197. That is, the division directed the district court on remand to discern whether the addresses of the three RCCFs under the magnifying glass constitute "identifying information" pursuant to subsection (1)(a). *Id.* Rather than proceed with the remand, however, CDHS petitioned our court for certiorari review. We granted its petition.[3]

¶7 In analyzing subsection (1)(a), we first ask whether it is ambiguous. Because we conclude it is not, we do not reach the second issue raised by CDHS's petition.

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[3] We agreed to review the following two issues:

1. Whether the court of appeals erred as a matter of law in concluding that section 19-1-307(1)(a), C.R.S. (2023), is ambiguous.
2. Whether, if the court of appeals correctly concluded that section 19-1-307(1)(a) is ambiguous, it erred in concluding the legislative history and *Peck v. McCann*, 43 F.4th [1116] (10th Cir. 2022), support its interpretation of the statute.

Instead, we proceed to consider whether CDHS has met its burden of showing that the plain meaning of the language in subsection (1)(a) precludes disclosure of the information sought by the Media Organizations' CORA requests. We determine that it has not.

¶8 The Media Organizations asked CDHS for six *cardinal numbers*: the total number of reports of child abuse or neglect made to local child welfare authorities from each of the three specified RCCFs over a three-year period; and the number of those reports at each facility that were screened for investigation. Because CDHS has failed to satisfy its burden of demonstrating that the cardinal numbers requested constitute a "report[] of child abuse or neglect," or the "name," "address," or "any other identifying information" of a child, family, or informant contained in such a report, it must disclose those cardinal numbers to the Media Organizations. § 19-1-307(1)(a).

I. Relevant Provisions of CORA and the Children's Records Act

¶9 Before reciting the case's facts and procedural history, we hit the pause button to discuss the relevant provisions of CORA and the Children's Records Act. This background information will help place the rest of our opinion in context.

¶10 When it enacted CORA, our General Assembly appeared to heed Justice Brandeis's pearls of wisdom, choosing sunlight as Colorado's disinfectant and electric light as Colorado's police officer. The legislature declared that this state's

public policy is that public records are generally open for inspection at reasonable times. § 24-72-201, C.R.S. (2025). The term "[p]ublic records" in CORA encompasses "all writings made, maintained, or kept by the state [or] any agency . . . for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds." § 24-72-202(6)(a)(I), C.R.S. (2025). Further, "information obtained by public agencies in the course of performing their duties" under the Children's Records Act "is considered public information" by CORA. *See* § 19-1-302(1)(a), C.R.S. (2025). It follows that reports of child abuse or neglect under the Children's Records Act generally qualify as "public records" that must be accessible to the public pursuant to CORA. Indeed, on this much, the parties agree.

¶11 Of course, rules often paint with broad strokes, and exceptions add the subtle detail. Any exceptions here, however, must be construed narrowly in light of the strong presumption in favor of disclosure. *Shook v. Pitkin Cnty. Comm'rs*, 2015 COA 84, ¶ 6, 411 P.3d 158, 160. And a records custodian asserting an exception bears the burden of establishing the applicability of that exception. *Id.*

¶12 One of the exceptions to disclosure under CORA is an "inspection [that] would be contrary to any state statute." § 24-72-204(1)(a), C.R.S. (2025). CDHS relied on the exception in section 24-72-204(1)(a) in denying the Media

Organizations' CORA requests. The "state statute" identified by CDHS as being contrary to the Media Organizations' CORA requests was subsection (1)(a) of the Children's Records Act. *See* § 19-1-307(1)(a). Thus, subsection (1)(a) takes center stage in this opinion.

¶13 Subsection (1)(a), titled "Identifying information—confidential," states in pertinent part that "reports of child abuse or neglect and the name and address of any child, family, or informant, or any other identifying information contained in such reports shall be confidential and shall not be public information." This version of subsection (1)(a) has been on the books since 1977, though it hasn't always resided at its current address. *See* Ch. 246, sec. 8, § 19-10-115(1)(a), 1977 Colo. Sess. Laws 1020, 1023. It is the scope of this provision that is at the nub of this matter.

¶14 Our legislature enacted subsection (1)(a) to preclude the public disclosure of reports of child abuse or neglect and certain information contained in such reports. The primary purpose of this confidentiality provision was to "balance the best interests of children" and the "privacy interests of children and their families" against the "need to share information among service agencies and schools" and "to protect the safety of schools and the public at large." *Id.* at 1122 (quoting § 19-1-302(2)); *see* § 19-10-115, 8 C.R.S. (1973 & Supp. 1975).

¶15 With this background in mind, we turn to the case's facts and procedural history. We then proceed to analyze the merits of the contentions advanced by the parties.

II. Facts and Procedural History

¶16 CDHS is responsible for regulating private operators of RCCFs across the state. RCCFs are tasked with providing twenty-four-hour treatment and care for children who experience serious emotional, behavioral, or developmental disorders, many of whom are victims of child abuse or neglect. CDHS has the sole authority to initiate appropriate sanctions, including closure, when RCCFs fail to comply with the standards prescribed by Colorado law.

¶17 But CDHS also has oversight of our state's abused and neglected children. As relevant here, CDHS is responsible for Colorado's child–abuse hotline, which is publicly advertised as a "place for reporting known or suspected child abuse or neglect." § 26-5-111(2)(a), C.R.S. (2025). Operators of RCCFs have a statutory duty to report known or suspected child abuse or neglect. When RCCF operators do so through the hotline, the hotline routes the complainant to the specific CDHS office responsible for addressing reports of child abuse or neglect in the county involved. Consequently, every call made to the hotline is reviewed by the county's CDHS office. Upon the completion of such review, the complaint is either "screen[ed] in," meaning it is assigned to a caseworker for further investigation, or "screen[ed]

out," meaning it is not assigned to a caseworker for further investigation. Dep't of Hum. Servs., 12 Colo. Code Regs. 2509-2:7.103–103.10 (2025).

¶18 In 2017, CDHS revoked the license of one of the state's RCCFs, the El Pueblo Boys and Girls Ranch, in the wake of allegations that the staff there had abused or neglected some of the resident children. The Office of the Colorado Child Protection Ombudsman ("Ombudsman") then launched an investigation into the circumstances leading to the facility's closure and issued a report with findings ("CPO Report"). The CPO Report concluded that there was no "adequate system" in place to "effectively and efficiently monitor the care being provided to some of the state's most vulnerable children." Off. of Colo.'s Child Prot. Ombudsman, *Investigation Report CPO Case ID: 2017-2736*, at 3 (Aug. 12, 2019), https://coloradocpo.org/wp-content/uploads/2025/04/El-Pueblo-Boys-and-Girls-Ranch-Main-Report-Remediated.pdf [https://perma.cc/KM62-MFYN]. In fact, the CPO Report documented nearly 250 accounts of suspected institutional abuse or neglect at the El Pueblo Boys and Girls Ranch that had been made in the year prior to its closure. Alarmingly, the CPO Report noted that a majority of these matters were screened out without further investigation by Pueblo's CDHS office.

¶19 A few years after the closure of the El Pueblo Boys and Girls Ranch, a second RCCF, the Tennyson Center, closed its residential program in Denver. The Ombudsman later revealed that Denver County officials had received more than

100 complaints regarding the facility in the prior year alone, and that, disturbingly, only eight of those (less than 10 percent) were screened in and assigned for further investigation. *See* Jennifer Brown, *Denver's Tennyson Center to Close Its Residential Program After Runaways, Overdoses and Child's Death*, Colo. Sun (Mar. 23, 2021), https://coloradosun.com/2021/03/23/tennyson-center-residential-program [https://perma.cc/VQ3N-2BBL].

¶20 In the two months following the closure of the Tennyson Center's residential program, the Media Organizations submitted formal requests under CORA for the following information:

- "[A]ny documents that show *how many* calls have been made to the child abuse hotline from Mount Saint Vincent (RCCF) and Cleo Wallace (RCCF) from 1/1/2018 to 3/26/2021."
- "*The number* of hotline calls/abuse and neglect reports/runaways reports from the Tennyson Center, Mount Saint Vincent[,] and Cleo Wallace to local child welfare authorities in the last three years, and *how many* were screened in."

(Emphases added).

¶21 CDHS denied the Media Organizations' CORA requests, explaining that subsection (1)(a) prohibits the disclosure of the address of any child, family, or informant contained in reports of child abuse or neglect. When asked by the Media Organizations to reconsider, CDHS stood its ground, reasoning that although the requests did not actually ask for an address, the name of a particular RCCF was sufficient to identify that RCCF's address, which, in CDHS's view,

meant that the responsive information would effectively disclose the address of any child, family, or informant associated with a report of child abuse or neglect made from that facility. Nevertheless, CDHS offered to share with the Media Organizations the *aggregate number* of reports of child abuse or neglect made from all three facilities combined during the specified three-year timeframe, along with the *aggregate number* of those reports combined that were screened in and escalated for further investigation.

¶22 After turning down CDHS's offer, the Media Organizations brought a lawsuit in district court under CORA seeking a court order to compel CDHS to produce the requested per-facility information. CDHS moved to dismiss for failure to state a claim, arguing that the plain meaning of subsection (1)(a)'s text barred the disclosures requested by the Media Organizations. The district court agreed with CDHS and granted the motion to dismiss, finding that the responsive information would violate subsection (1)(a) by "necessarily identif[ying]" the addresses of reported incidents. Notably, however, the district court acknowledged that, at least from a practical standpoint, the literal act of "linking specific [reports] with a specific case, child or informant" might be "difficult" or "even impossible."

¶23 The Media Organizations appealed, and a division of the court of appeals reversed in a split decision. *Brubaker*, ¶ 5, 542 P.3d at 1191. The division homed

in on the core of the parties' dispute: the meaning of the statutory clause "the name and address of any child, family, or informant or any other identifying information" contained in a report of child abuse or neglect. *Id.* at ¶ 24, 542 P.3d at 1194. Because the division determined that this language was susceptible to two reasonable interpretations (those advanced by the parties), it concluded that subsection (1)(a) was ambiguous. *Id.* at ¶ 27, 542 P.3d at 1194.

¶24 The division explained that under CDHS's reading, each term in the clause's series would "constitute[] confidential 'identifying information'": Names would be categorically confidential, addresses would be categorically confidential, and "any other identifying information" would operate as a catchall phrase encompassing *additional* types of identifying information not "specifically enumerated" (i.e., identifying information other than names or addresses). *Id.* at ¶¶ 25–26, 542 P.3d at 1194. Conversely, observed the division, under the Media Organizations' reading, although subsection (1)(a)'s prohibition would apply to all identifying information contained in reports of child abuse or neglect, it would not apply to all names or addresses of children, families, or informants contained in such reports—only if those names or addresses constitute identifying information would they be barred from disclosure. *Id.* at ¶ 27, 542 P.3d at 1194.

¶25 Elaborating on the Media Organizations' construction, the division explained that it was rooted in a "sort-of reverse ejusdem generis" canon, the

much less popular cousin of "ejusdem generis."[4] *Id.* at ¶ 28, 542 P.3d at 1195. The District of Columbia Circuit Court of Appeals coined the term "reverse ejusdem generis" in 1996 in *United States v. Williams-Davis*, 90 F.3d 490, 509 (D.C. Cir. 1996). *See Brubaker*, ¶ 28, 542 P.3d at 1194–95. Pursuant to this somewhat obscure rule of syntax, in the hypothetical phrase "A, B, or any other C," the general C would not be controlled by the types of specific items enumerated in A and B; just the opposite: A and B would be subsets of, and would be controlled by, C. *Id.* Thus, only the As and Bs that are also Cs would be covered.[5]

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[4] "Ejusdem generis," Latin for "of the same kind," Jay Wexler, *Fun With Reverse Ejusdem Generis*, 105 Minn. L. Rev. 1, 1 (2020), is a canon of statutory construction that instructs that "a 'general or collective term' at the end of a list of specific items" is typically "'controlled and defined by reference to' the specific classes . . . that precede it," *Fischer v. United States*, 603 U.S. 480, 487 (2024) (omission in original) (quoting *Sw. Airlines Co. v. Saxon*, 596 U.S. 450, 458 (2022)). Pursuant to this canon, general words or phrases following a list of specific articles are interpreted to include only items *of the same kind* as those specifically listed. *See People v. Sims*, 2020 COA 78, ¶ 23, 474 P.3d 189, 194. For example, "the phrase 'other foods' in a provision covering 'apples, bananas, grapes, oranges, and other foods' would likely refer only to fruits that are not apples, bananas, grapes, or oranges." Wexler, *supra,* at 1. So, in this case, the canon would require "any other identifying information" to refer to identifying information that is not names or addresses. Here, however, the division used a *reverse* version of this canon.

[5] Unlike the canon of ejusdem generis, which "has a long and storied history in the law, has been used by judges in countless cases, and has been the subject of a large body of scholarly commentary over the years," its mirror-image canon (i.e., its reverse version) "is far less well known and understood," "didn't even have a name until the mid-1990s," and had "been the subject of absolutely no scholarly commentary at all" before November 2020. Wexler, *supra*, at 1–2 (footnotes omitted).

¶26 In subsection (1)(a), then, rather than deem the phrase "any other identifying information" to be controlled and defined by the specific terms that precede it—"name and address"—it would control and define those specific terms by modifying them. *Brubaker*, ¶ 31, 542 P.3d at 1195. Differently put, although the phrase, "any other identifying information," § 19-1-307(1)(a), would still serve as a catchall of sorts, it would "reflect[] back on the more specific, rather than the other way around." *Williams-Davis*, 90 F.3d at 509. Using this construction, only *identifying* names and *identifying* addresses of a child, family, or informant contained in a report of child abuse or neglect would qualify as confidential. *See id.*

¶27 In finding ambiguity in subsection (1)(a), the division also pointed to the legislature's use of the conjunctive "and" instead of the disjunctive *or* between "name" and "address" in the phrase, "the name and address of any child, family, or informant." § 19-1-307(1)(a); *Brubaker*, ¶ 27, 542 P.3d at 1194. The division surmised that this drafting choice possibly signaled that the legislature "did not intend for any address on its own to be confidential, but only addresses that are also disclosed with associated names" and thus constitute "identifying information." *Id.*

¶28 Having landed in the ambiguity camp, the division sought to break the logjam by turning to two other tools of statutory construction—namely, subsection (1)(a)'s legislative history and the consequences of the competing

interpretations offered by the parties. As it relates to the latter tool, the division drew insight from the Tenth Circuit's decision in *Peck v. McCann*, 43 F.4th 1116, 1126 (10th Cir. 2022). *Brubaker*, ¶ 39, 542 P.3d at 1196. In *Peck*, the court reasoned that, to avert constitutional infirmity, subsection (1)(a) and its associated penalty provisions could be construed to reach only "identifying disclosures." 43 F.4th at 1126. Steered by *Peck*, the division feared that CDHS's broader reading of subsection (1)(a) would require the confidentiality of certain nonidentifying information, which would run headlong into the First Amendment. *Brubaker*, ¶¶ 39–40, 542 P.3d at 1196. The division sidestepped this potential constitutional concern by adopting the Media Organizations' position that subsection (1)(a) prohibits only the disclosure of *identifying* names and addresses. *Id.*; *see Peck*, 43 F.4th at 1121–22.

¶29 In the end, the division held, as pertinent here, that rather than forbid in "*all* circumstances" the disclosure of the address of any child, family, or informant contained in a report of child abuse or neglect, the legislature intended to proscribe such a disclosure only when the address constitutes identifying information (i.e., only when the address "identif[ies] a particular child, family, or informant associated with a child abuse or neglect report"). *Brubaker*, ¶¶ 3, 41, 542 P.3d at 1191, 1196 (emphasis added). Thus, the division instructed the district court on remand to determine whether, under this

interpretation of subsection (1)(a), the requested disclosures would reveal "identifying information" of a child, family, or informant contained in a report of child abuse or neglect. *Id.* at ¶ 44, 542 P.3d at 1197. Put another way, the division directed the district court to decide whether the addresses of the three RCCFs in the crosshairs are identifying addresses pursuant to subsection (1)(a). *Id.*

¶30 Judge Pawar wrote separately in dissent. She opined that there is only one reasonable reading of subsection (1)(a): The statute always protects from disclosure the name, the address, and any other identifying information of any child, family, or informant contained in a report of child abuse or neglect. *Id.* at ¶ 49, 542 P.3d at 1197 (Pawar, J., dissenting). Given what she perceived as the lack of ambiguity in the language of subsection (1)(a), she would not have resorted to additional aids of statutory construction. *Id.* And, effectuating the plain meaning of subsection (1)(a)'s language, she would have affirmed the district court's ruling in favor of CDHS because, in her view, the information sought by the Media Organizations "link[ed] reports of child abuse to [the three RCCFs'] particular addresses." *Id.* at ¶ 50, 542 P.3d at 1197.

¶31 CDHS timely knocked on our certiorari door. And we opened the door and entered the fray.

III. Analysis

¶32 As usual, the launching pad for our analysis is the standard of review. After identifying that standard, we examine the language of subsection (1)(a) and conclude that it is unambiguous. Consequently, we accord the statutory words and phrases their plain and ordinary meaning without consulting other tools of construction. We then apply our interpretation of subsection (1)(a) to this case. Although our statutory construction squares with CDHS's and Judge Pawar's, we ultimately run counter to their conclusion that CDHS met its burden of showing that subsection (1)(a) prohibits disclosing the six cardinal numbers requested by the Media Organizations.

A. Standard of Review

¶33 We review de novo questions of law, including those involving statutory interpretation. *Reno v. Marks*, 2015 CO 33, ¶ 20, 349 P.3d 248, 253. In construing a statute, we aim to ascertain and give effect to the legislature's intent. *See Denver Post Corp. v. Ritter*, 255 P.3d 1083, 1089 (Colo. 2011); *see also Elder v. Williams*, 2020 CO 88, ¶ 18, 477 P.3d 694, 698. Our first step in discerning the legislature's intent is to give statutory language its plain and ordinary meaning. *Elder*, ¶ 18, 477 P.3d at 698. To do so, we read such language in context and in accordance with the rules of grammar. *Doubleday v. People*, 2016 CO 3, ¶ 19, 364 P.3d 193, 196.

¶34 We are required to avoid interpretations that result in superfluous or meaningless words or that lead to "illogical or absurd results." *In re People in Int. of A.T.C.*, 2023 CO 19, ¶ 16, 528 P.3d 168, 171; *see also Archuleta v. Roane*, 2024 CO 74, ¶ 9, 560 P.3d 399, 402. If the language of a statute is clear and we're able to decipher the legislative intent with reasonable certainty, we may not resort to other tools of statutory interpretation. *Denver Post Corp.*, 255 P.3d at 1089.

B. Subsection (1)(a) Is Unambiguous, so We Accord Its Words and Phrases Their Plain and Ordinary Meaning

¶35 As a refresher, here is the statutory clause that sits at the crossroads of the parties' positions:

> Except as otherwise provided in this section and section 19-1-303, [C.R.S. (2025)], reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such reports shall be confidential and shall not be public information.

§ 19-1-307(1)(a). Thus, in subsection (1)(a), our General Assembly chose to protect as confidential: (1) reports of child abuse or neglect; (2) the name of any child, family, or informant contained in such reports; (3) the address of any child, family, or informant contained in such reports; and (4) any other identifying information contained in such reports. The first category prohibits the disclosure of reports of child abuse or neglect (in their entirety), while the remaining three categories prohibit the disclosure of certain information contained within those reports.

¶36 Starting with the first category, there is nothing ambiguous about "reports of child abuse or neglect." Nor is there any ambiguity in the next two categories: the "name" of a "child, family, or informant" contained in a report of child abuse or neglect; or the "address" of a "child, family, or informant" contained in a report of child abuse or neglect. It follows that, in response to a CORA request, CDHS may not disclose a *report* of child abuse or neglect or the *name* or the *address* of a child, family, or informant contained in a report of child abuse or neglect.

¶37 We recognize that subsection (1)(a) refers to "the name *and* address" of a "child, family, or informant" contained in a child abuse or neglect report. (Emphasis added). But we don't perceive the legislature's use of the conjunctive "and," instead of the disjunctive *or*, between "name" and "address" to have the meaning attributed to it by the division. The legislature clearly intended to extend the protective mantle of subsection (1)(a) to both the "name" and the "address" of a child, family, or informant contained in a child abuse or neglect report. It would have been nonsensical for the legislature to use "or" instead of "and" there because then only the name or the address, but not both, would have been protected: "[T]he name *or* address of any child, family, or informant . . . contained in [child abuse or neglect] reports shall be confidential."

¶38 Nor are we persuaded by the division's floated supposition that the legislature may have employed the conjunctive "and" in "the name and address"

to confer confidential status on an address only when paired with a name. Had that been the legislature's intent, it presumably would have explicitly stated so.

¶39 That leaves the final category, "any other identifying information." The parties agree, as do we, that the plain and ordinary meaning of "identifying information" in this context is information that—alone or in conjunction with other information—is likely to either reveal or enable revealing the identity of a specific person. *See generally Identify*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/identify [https://perma.cc/43FS-HF7C] (defining "identify" in part as "to ascertain the identity of someone or something that is unfamiliar or unknown"). And, by using "any other" in front of "identifying information," the legislature conveyed that it considered both the name and the address of a child, family, or informant contained in a report of child abuse or neglect to be "identifying information." This makes sense: A name, whether alone or in conjunction with other information, is likely to either reveal or enable revealing the identity of a specific person. The same is true for an address.

¶40 Viewed through the prism of the core principle requiring us to accord statutory language its plain and ordinary meaning, "any other identifying information" functions as a catchall category for identifying information. Put simply, in addition to bringing within the shield of confidentiality both the name

and the address of a child, family, or informant contained in a report of child abuse or neglect, the legislature extended the protective veil to all other identifying information contained in such a report.

¶41 Under the division's approach, however, "any other identifying information" functions to limit the prohibition against disclosing either the "name" or the "address" of any child, family, or informant contained in a report of child abuse or neglect. According to the division, such a name or address may be disclosed under subsection (1)(a) if it is not identifying in nature. In other words, the division posited that only *identifying names* (i.e., names that qualify as identifying information) and *identifying addresses* (i.e., addresses that qualify as identifying information) are protected by subsection (1)(a). *Brubaker*, ¶ 41, 542 P.3d at 1196. But, as mentioned, this interpretation rests on the uncelebrated footing of reverse ejusdem generis, a more niche canon than its mainstream kin.

¶42 Besides, under the undisputed definition of "identifying information," we see no daylight between a name and an identifying name or between an address and an identifying address. After all, applying the agreed-upon plain and ordinary meaning of "identifying information," every name is "identifying information," and so is every address. Whether it's a name or an address, it is information that, alone or in conjunction with other information, is likely to either reveal or enable revealing the identity of a specific person. And, like Judge Pawar,

we think it dubious to suggest that the legislature meant to protect the names and addresses of children mentioned in reports of child abuse or neglect only in certain circumstances. *Id.* at ¶ 47, 542 P.3d at 1197 (Pawar, J., dissenting). Regardless, if the legislature intended to draw a distinction between a name and an identifying name or between an address and an identifying address, and to shield from disclosure only identifying names and identifying addresses, it presumably would have expressly said so.[6]

¶43 In sum, the division's interpretation is unreasonable, which means that subsection (1)(a) is not susceptible to two reasonable interpretations and is unambiguous. Because we're able to effectuate the legislature's intent by interpreting the unambiguous language of subsection (1)(a), attributing to each word its plain and ordinary meaning, we must "look no further." *Carrera v. People*, 2019 CO 83, ¶ 18, 449 P.3d 725, 729. "In such a situation, the plain meaning rule"—the chief rule of statutory interpretation—"is both the first and the last canon and nothing more is required of the judicial inquiry." *Id.* Thus, our statutory construction is "at an end," *Crandall v. City & Cnty. of Denver*, 238 P.3d

[6] We disagree with the division that the interpretation we embrace today will require certain nonidentifying information to be kept confidential. As we've made clear now, either a name or an address will *always* constitute identifying information. Thus, there is no risk of keeping confidential any nonidentifying information, and the constitutional concerns raised by the Tenth Circuit in *Peck*, while valid, are simply inapposite here. 43 F.4th at 1125–26.

659, 662 (Colo. 2010), and all that remains is the application of our reading of subsection (1)(a) to decide whether CDHS has met its burden of demonstrating that it is prohibited from disclosing the six cardinal numbers requested by the Media Organizations.

C. CDHS Has Failed to Show That Subsection (1)(a) Prohibits the Disclosure of the Six Cardinal Numbers Requested by the Media Organizations

¶44 Our interpretation of subsection (1)(a) using the plain-meaning rule jibes with CDHS's. But the final reckoning is whether CDHS has satisfied its burden of showing that subsection (1)(a) precludes the disclosure of the information requested by the Media Organizations. We conclude that it has not.

¶45 As noted, the Media Organizations requested six cardinal numbers: the total number of reports of child abuse or neglect made to local child welfare authorities from each of three RCCFs over a three-year period; and the number of those reports at each facility that were screened in for investigation. CDHS argues that disclosing the numbers requested would effectively make public *the address* of any child, family, or informant contained in a report of child abuse or neglect that originated from the Tennyson Center, Mount Saint Vincent, or Cleo Wallace. We're unpersuaded.

¶46 How can the requested disclosures make public what is already public? That's no more possible than making public the information found in a book

already sitting on a library shelf. Unsurprisingly, nobody in this case asserts that the three RCCFs' addresses are secret or otherwise confidential. They aren't. These are public facilities with publicly accessible addresses. It would strain logic to pretend that the addresses of these RCCFs aren't already public.

¶47 Still, counters CDHS, the requested cardinal numbers would necessarily *confirm* that a report of child abuse or neglect originated from a particular RCCF and thus from that RCCF's address—and by extension, from the address of a child, family, or informant contained in such a report.[7] But subsection (1)(a)'s prohibition of the *disclosure* of an address contained in a report of child abuse or neglect does not bar the *confirmation* of an already public address contained in such a report.

¶48 Expanding the scope of subsection (1)(a) as CDHS urges would stretch that statutory provision beyond its breaking point and would lead to absurd results. *See Educhildren LLC v. Cnty. of Douglas Bd. of Equalization*, 2023 CO 29, ¶ 27, 531 P.3d 986, 993 (cautioning that courts must avoid statutory constructions "that would yield illogical or absurd results"); *Archuleta*, ¶ 9, 560 P.3d at 402 (same). Indeed, CDHS's approach would hinder, if not altogether eliminate,

[7] Judge Pawar likewise concluded, in summary fashion, that the cardinal numbers requested would "link[] reports of child abuse to [the RCCF's] particular addresses." *Brubaker*, ¶ 50, 542 P.3d at 1197 (Pawar, J., dissenting).

oversight of state-funded residential facilities for children. All information, including a cardinal number, in any way related to a report of child abuse or neglect originating from an RCCF would presumably be out of bounds because it would *confirm* that such a report was made from the particular RCCF's address. We are aware of no evidence, and CDHS presents none, that this is what the legislature intended. To the contrary, our legislature has told us loud and clear that Colorado favors transparency, *Roane*, ¶ 10, 560 P.3d at 402, and we have therefore "narrowly construed" any "exceptions to the broad, general policy of [CORA]" demanding openness, *Sargent Sch. Dist. No. RE-33J v. W. Servs., Inc.*, 751 P.2d 56, 60 (Colo. 1988). Remember: Colorado is a sunlight state.

¶49 Significantly, while CDHS declined to provide the six numbers requested by the Media Organizations, it did offer to disclose the *aggregate number* of child abuse or neglect reports made from all three facilities combined over the specified three-year period, as well as the *aggregate number* of those reports combined that were screened in for further investigation. CDHS undoubtedly did so because it determined that the disclosure of the two aggregate numbers would not constitute the disclosure of the address of any child, family, or informant contained in a report of child abuse or neglect—lest we presume that CDHS deliberately agreed to violate subsection (1)(a). We have a difficult time understanding why providing a per-facility breakdown of the same two numbers should lead to a different

outcome. In other words, if the aggregate numbers do not violate the prohibition in subsection (1)(a) against the disclosure of the address of any child, family, or informant contained in a report of child abuse or neglect, why do the per-facility numbers? Even taking CDHS's last-resort argument at face value, we're left to wonder why the per-facility numbers illegally "confirm" addresses covered by subsection (1)(a) but the aggregate numbers do not. During oral arguments, CDHS could not adequately answer these questions or otherwise provide any satisfactory justification for distinguishing between the aggregate numbers it offered to disclose and the per-facility numbers it adamantly refuses to produce.

¶50 But what about the part of subsection (1)(a) that protects "other identifying information"? Even if, as we've determined, the disclosure of the cardinal numbers requested does not constitute the disclosure of an address, could they nevertheless constitute the disclosure of "other identifying information"? CDHS, the burden-bearing party, does not argue that they could, and we decline to overegg the pudding.

¶51 Before us, CDHS's opposition to the Media Organizations' requests is limited to its assertions that disclosing the cardinal numbers in question would disclose, or alternatively confirm, the addresses of the three RCCFs and, by extension, the addresses of children, families, or informants contained in reports of child abuse or neglect. And we have nixed those contentions already. Any

argument by CDHS related to "other identifying information" is advanced solely in the context of refuting the interpretation of subsection (1)(a) championed by the Media Organizations and approved by the division. Recall that, under the Media Organizations and the division's approach, an agency in receipt of a CORA request must determine whether the disclosure (or even confirmation) of an *address* would constitute the disclosure of "identifying information". We, however, have now disavowed that construction. It follows that whether a cardinal number may ever constitute "any other identifying information" is a tomorrow problem that we have no occasion to pass judgment on today.

¶52 To be clear, our restraint isn't borne out of a desire to avoid borrowing trouble. Rather, it is animated by the party presentation principle. That principle holds parties responsible for framing the issues to be resolved and calls upon courts to be neutral arbiters as they consider any matters raised. *United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020). In general, our adversarial system of adjudication "is designed around the premise" that where, as here, parties are represented by competent counsel, they "know what is best for them, and are responsible for advancing the facts and argument entitling them to relief." *Id.* at 375–76 (quoting *Castro v. United States*, 540 U.S. 375, 386 (2003) (Scalia, J., concurring in part and concurring in the judgment)). To put it more eloquently, courts may not "sally forth each day looking for wrongs to right"; rather, they

must function as "passive instruments of government," wait for cases to come to them, and decide only questions raised by the parties. *United States v. Samuels*, 808 F.2d 1298, 1301 (8th Cir. 1987) (Arnold, J., concurring in the denial of rehearing en banc). Adhering to the party presentation principle, as we must, we cabin our analysis to the arguments advanced by CDHS in attempting to meet its burden of proof.

IV. Conclusion

¶53 For the foregoing reasons, we conclude that CDHS must disclose the six cardinal numbers requested by the Media Organizations. Because the division remanded the case to the district court for factual findings instead of ordering the disclosure of the six requested cardinal numbers, we reverse the division's judgment. We remand the case to the division with instructions to return it to the district court for further proceedings consistent with this opinion. On remand, the district court should address the Media Organizations' request for attorney fees and costs pursuant to section 24-72-204(5)(b), C.R.S. (2025).

JUSTICE BERKENKOTTER, joined by **CHIEF JUSTICE MÁRQUEZ** and **JUSTICE HOOD**, concurs in the judgment only.

JUSTICE BERKENKOTTER, joined by CHIEF JUSTICE MÁRQUEZ and JUSTICE HOOD, concurring in the judgment only.

¶54 I agree with the majority that section 19-1-307(1)(a), C.R.S. (2025), ("subsection (1)(a)") of the Colorado Children's Code, Records and Information Act is not ambiguous. Maj. op. ¶ 32. The statute *always* protects certain confidential information from disclosure: the name, the address, and any other identifying information of any child, family, or informant contained in a report of child abuse or neglect. § 19-1-307(1)(a).

¶55 I write separately because the majority's conclusion—that subsection (1)(a) requires a records custodian under the circumstances here to nonetheless disclose an address contained in a report of child abuse or neglect if someone has already publicly disclosed it, *see* Maj. op. ¶ 47—is inconsistent with the explicit language in the statute and totally at odds with the protection it affords children, families, and informants. *See* § 19-1-307(1)(a). But that is not the only issue with the majority's opinion: Its conclusions regarding addresses that are "already public[,]" Maj. op. ¶ 46, is problematic; and its interpretation of subsection (1)(a) is unreasonable, produces illogical and absurd results, and will likely harm victims, families, and informants. What's more, even though the record reveals no public disclosures regarding reports of abuse or neglect concerning these two facilities, the majority nonetheless requires the Colorado Department of Human Services

("CDHS") to confirm the existence of such reports. *See id.* at ¶¶ 45–47, 49. That disclosure is unquestionably prohibited by subsection (1)(a).

¶56 For these reasons, I would reverse the judgment of the court of appeals and affirm the judgment of the district court. That is why I respectfully concur in the judgment only.

I. Subsection (1)(a) Always Protects Reports of Child Abuse or Neglect and the Name and Address of Any Child, Family, or Informant, or Other Identifying Information From Disclosure.

¶57 As I have indicated, there are, in my view, multiple flaws in the majority's reasoning. To begin, it ignores the plain meaning of subsection (1)(a). It recognizes, correctly, that subsection (1)(a) protects as confidential the address of any child, family, or informant contained in a report of child abuse or neglect and bars the disclosure of this information. *Id.* at ¶ 35. But then it declares that these addresses aren't confidential after all if you can look them up online, thus wiping out a substantial portion of the protections afforded by the statute in one fell swoop. *See id.* at ¶ 47. Finally, it concludes that CDHS has failed to meet its burden under the Colorado Open Records Act ("CORA"), §§ 24-72-100.1 to § 24-72.4-106, C.R.S. (2025), and must disclose the requested records, because the cardinal numbers requested by Colorado Sun and Tegna, Inc., d/b/a KUSA-TV/9News (collectively the "Media Organizations"), "do[] not constitute the disclosure of an address." Maj. op. ¶¶ 8, 50.

¶58 While the majority's concerns regarding CORA's purposes and the need for transparency by government agencies (an interest the media seeks to foster) are understandable, *see id.* at ¶¶ 1–2, the majority's reasoning cannot be squared with subsection (1)(a). *See* § 19-1-307(1)(a). As Judge Pawar explained, the cardinal numbers requested by the Media Organizations necessarily *confirm* that a report of child abuse or neglect originated from the address of a child, family, or informant contained in such a report. *Colo. Sun v. Brubaker*, 2023 COA 101, ¶¶ 45–50, 542 P.3d 1190, 1197 (Pawar, J., dissenting).

¶59 In concluding otherwise, the majority reads words into the statute that simply do not exist and ignores the words that do. Specifically, it disregards the language in subsection (1)(a) that explicitly states that this information "shall be confidential and shall not be public information." § 19-1-307(1)(a). It also disregards its own acknowledgment that every address is identifying information and that it is "dubious to suggest that the legislature meant to protect" sensitive information "mentioned in reports of child abuse or neglect *only in certain circumstances*." Maj. op. ¶ 42 (emphasis added).

¶60 The majority's interpretation is problematic because, as we so often observe, proper statutory interpretation requires that we "respect the legislature's choice of language." *Educ. reEnvisioned BOCES v. Colo. Springs Sch. Dist. 11*, 2024 CO 29, ¶ 32, 548 P.3d 669, 675. We "must avoid constructions that would render any

words or phrases superfluous or lead to illogical or absurd results." *Id.* Additionally, we must refrain from rewriting a statute to remedy "practical challenges." *People v. Weeks*, 2021 CO 75, ¶ 38, 498 P.3d 142, 154. The proper remedy for such practical challenges "is legislative action, not judicial fiat." *Id.*

¶61 By its very terms, subsection (1)(a) prohibits the disclosure of "reports of child abuse or neglect and the name and address of any child, family, or informant or any other identifying information contained in such reports." § 19-1-307(1)(a). Nothing about this language supports the majority's notions regarding addresses that are "already public" or cardinal numbers. Maj. op. ¶¶ 8, 47. *But see* § 19-1-307(1)(a). Critically, the statute bars the disclosure of information that *could* be used to identify a child, family, or informant, not just disclosures that *would* identify a child, family, or informant. *See* § 19-1-307(1)(a). This is hardly surprising as the point of the statute, as noted, is to *always* protect this information from disclosure to the public. *Id.*

¶62 This is the only reasonable interpretation of the statute as a records custodian has no way of knowing what other information a requestor already has (or that they may be able to obtain in the future) which means the records custodian has no way of knowing if they might be providing the first or the last puzzle piece that will allow a requestor to identify a specific child, family, or informant. Requiring the disclosures that the majority does here risks making the

custodian complicit in revealing, or enabling the revealing, of the identity of a victim, family, or informant.

¶63 Plus, if the legislature wanted to carve out an exception to subsection (1)(a) for addresses that were already public, it could have done so. *E.g.*, Maj. op. ¶ 42 (acknowledging that "if the legislature intended to draw a distinction . . . between an address and an identifying address, and to shield from disclosure only identifying . . . addresses, it presumably would have expressly said so").

II. The Majority is Requiring CDHS to Confirm the Existence of Confidential Reports.

¶64 The majority nonetheless declares that the addresses of the Tennyson Center, Mount Saint Vincent, and Cleo Wallace are all "already public." *Id.* at ¶ 46. This is so, it explains, because "[t]hese are public facilities with publicly accessible addresses[,]" which I take to mean you can easily look them up online. *Id.* But if that's the standard, what address isn't already public? Any way you slice it, the majority's opinion will leave public health departments across Colorado struggling to understand what they must disclose, potentially exposing them to awards of attorney fees under CORA—no matter their best efforts.

¶65 More troubling still, the majority does not point to any published report in the record, by the Ombudsman or otherwise, regarding Mount Saint Vincent or Cleo Wallace. Unlike the Ombudsman's disclosures regarding El Pueblo Boys and Girls Ranch and the Tennyson Center, there are no public disclosures regarding

reports of child abuse or neglect originating from these facilities. This is why the majority is mistaken that the Media Organizations' CORA request is only about cardinal numbers.

¶66 By requiring CDHS to disclose the cardinal numbers of hotline calls, abuse and neglect reports, and runaway reports, the majority is requiring CDHS to confirm the existence of such reports. Put differently, the majority is requiring CDHS to disclose confidential information to the Media Organizations about child abuse and neglect *reports* even though the disclosure of that information is unquestionably prohibited by subsection (1)(a). *See* § 19-1-307(1)(a).

III. The Majority's Opinion May Cause Countless Tomorrow Problems.

¶67 Additionally, the majority's interpretation is unreasonable and produces absurd and illogical results. Moreover, it has the potential to cause great harm to victims, families, and informants. The majority claims that questions about the reach of its holding regarding cardinal numbers are "a tomorrow problem." Maj. op. ¶ 51. This might be accurate as it relates to our court, but not so for the public health departments, media outlets, and trial courts that will have to discern just what the majority opinion means.

¶68 Questions will inevitably arise about how far the majority's rationale extends. If it is applied to victims of abuse or neglect, those victims may lose their protection under the statute if their names have already been made public, so long

as the CORA request purports to be limited to the cardinal number of reports regarding the victim. *See id.* at ¶¶ 45–47, 49. Releasing information about the number of times a victim's name appears in reports of abuse or neglect hardly aligns with the General Assembly's intent to protect victims. *See* § 19-1-302(1)(a), (2), C.R.S. (2025).

¶69 Similarly, if the majority's approach is extended to informants, it may cause informants, especially those who are not subject to Colorado's mandatory reporting scheme, *see* § 19-3-304(2), C.R.S. (2025), to hesitate to report abuse and neglect. Concerned neighbors and family members may be reluctant to become involved if they can so readily lose their anonymity in reporting. *See, e.g.*, *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987) ("Relatives and neighbors who suspect abuse also will be more willing to come forward if they know that their identities will be protected."); *Watso v. Colo. Dep't of Soc. Servs.*, 841 P.2d 299, 307, 308–09 (Colo. 1992) (describing that safeguards, such as confidentiality, under the Child Protection Act protect children and promote "alacrity in reporting" child abuse).

¶70 And if all it takes for an informant to lose some of the protections of subsection (1)(a) is a public address and a CORA request asking for a cardinal number, as here, will mandatory reporters, like employees at schools, childcare

centers, and hospitals serving children, also lose some of their protections under the statute? It is hard to imagine that this is what the legislature had in mind.

¶71 Simply put, in addition to being unreasonable and producing absurd and illogical results, the majority's opinion has the potential to cause victims great harm and to create countless "tomorrow problem[s,]" Maj. op. ¶ 51, raising significant questions about what protections for vulnerable populations will remain in its wake. *Educ. reEnvisioned*, ¶ 32, 548 P.3d at 675 (explaining that, in interpreting a statute, "we must avoid constructions that would . . . lead to illogical or absurd results").

IV. Conclusion

¶72 In sum, the majority fails to follow the plain language and obvious intent of subsection (1)(a). Its reasoning regarding public addresses is similarly strained, and its interpretation of subsection (1)(a) is unreasonable, produces illogical and absurd results, and will likely harm victims, families, and informants.

¶73 Worse still, the majority overlooks the fact that there are no published reports by the Ombudsman, or anyone for that matter, concerning Mount Saint Vincent or Cleo Wallace, meaning that *if* reports of child abuse or neglect originated from these facilities, there has been no public disclosure of those facts. Consequently, by requiring CDHS to disclose the cardinal numbers of hotline calls, abuse and neglect reports, and runaway reports for Mount Saint Vincent and

Cleo Wallace, the majority is requiring CDHS to confirm the existence of such *reports*. This disclosure is unquestionably prohibited by subsection (1)(a).

¶74 For all these reasons, I would reverse the judgment of the court of appeals and affirm the judgment of the district court. Because the majority's holding also calls for reversal of the division below, I concur in the judgment only.