

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

ELAINE BLANCHARD, KEEDRAN)	
FRANKLIN, PAUL GARNER, and)	
BRADLEY WATKINS,)	
)	
Plaintiffs (dismissed),)	
)	
and)	Case No. 2:17-cv-2120-JPM-egb
)	
ACLU OF TENNESSEE, INC.,)	
)	
Intervening Plaintiff,)	
)	
v.)	
)	
CITY OF MEMPHIS, TENNESSEE,)	
)	
Defendant.)	

**ORDER DENYING MOTION TO HOLD MOTION IN ABEYANCE AND
DENYING IN PART MOTIONS TO FILE DOCUMENTS UNDER SEAL**

Before the Court are (1) Defendant City of Memphis, Tennessee (the “City”)’s Motion to Allow Filing Under Seal; (2) Intervening Plaintiff ACLU of Tennessee, Inc. (“Plaintiff”)’s Motion to File Under Seal; and (3) the City’s Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance. (ECF Nos. 77, 78, 82.)

For the reasons discussed below, the City’s Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance is DENIED, and the parties’ motions to file documents under seal in connection with their motions for summary judgment are DENIED IN PART. Specifically, the parties’ motions to file documents under seal are DENIED as to all documents the City has no objection to unsealing and all documents the City concedes have no substantive reason for

remaining sealed. Those documents are UNSEALED, effective immediately. The Court makes no rulings at this time with respect to any documents the parties argue should remain sealed for substantive reasons. Those documents remain sealed for the time being, and the parties' motions to file documents under seal remain pending in part.

By no later than **July 20, 2018**, the parties shall file unsealed versions of their motions for summary judgment on the issue of contempt. (See ECF Nos. 79, 81.) The parties shall not attach any documents that remain sealed in this action and shall redact any portions of their materials that reference sealed documents.

I. BACKGROUND

On October 12, 2017, the Court entered a Protective Order in this matter. (ECF No. 52.) Under the Protective Order, the parties are permitted to designate documents and deposition testimony as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY," and a party that receives such designated documents must treat them as confidential. (Id. ¶ 8.) When designated documents are used in a pretrial motion, the party who designated the documents is permitted to request that they be filed under seal to allow the Court to "determine whether the proffered evidence should continue to be treated as confidential information and, if so, what protection, if any, may be afforded to such information at the trial." (ECF No. 52, ¶ 13.)

On June 18, 2018, the City filed a Motion to Allow Filing Under Seal as well as a sealed Motion for Summary Judgment on the Issue of Contempt. (ECF Nos. 77, 81.) The City also filed an unsealed Motion for Summary Judgment on the Issue of Standing. (ECF No. 80.) In its Motion to Allow Filing Under Seal, the City requested permission to file exhibits and memoranda under seal in connection with the filing of dispositive motions "to insure that claims

of privilege and confidential information as designated by the parties are not inadvertently disclosed.” (ECF No. 77 at 672.¹) The City represented that, once the parties’ dispositive motions were served, counsel for the parties would “consult concerning possible declassification of materials so as to remove [their] sealed status by agreement.” (Id.)

The same day, on June 18, 2018, Plaintiff filed a Motion to File Under Seal as well as a sealed Motion for Summary Judgment. (ECF Nos. 78, 79.) Plaintiff contends that two exhibits accompanying its Motion for Summary Judgment contain the personal information of members of the public and should remain under seal but that all other documents related to its Motion for Summary Judgment do not meet the standard for being filed under seal. (See id.) Pursuant to the Protective Order, Plaintiff “requests that the Court review the proffered evidence and determine whether testimony or documents should continue be treated as confidential.” (Id. at 675.)

On June 22, 2018, the City filed a Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance. (ECF No. 82.) The City moves the Court to defer ruling on Plaintiff’s Motion to File Under Seal until after the Court has ruled on the City’s Motion for Summary Judgment on the Issue of Standing. (Id.) The City argues that it would be unfair to the City and the Memphis Police Department to expose sensitive internal documents to public view if Plaintiff does not have standing to maintain this action. (Id. at 1602.) The City further argues that holding Plaintiff’s Motion to File Under Seal in abeyance for a brief period of time will not prejudice Plaintiff or the public and would conserve judicial resources in the event that the City prevails on its Motion for Summary Judgment on the Issue of Standing. (Id.)

¹ All citations to page numbers in docket entries are to the CM/ECF PageID number.

The same day, on June 22, 2018, the City filed a Supplemental Memorandum in Support of its Motion to Allow Filing Under Seal. (ECF No. 83.) The City's Supplemental Memorandum contains a list of twenty-one exhibits accompanying its sealed Motion for Summary Judgment on the Issue of Contempt, and for each exhibit, indicates the City's position as to whether that exhibit should remain sealed. (ECF No. 83 at 1611-14.) The City has no objection to six exhibits being unsealed. (Id.) The City concedes that there is no substantive reason to keep five exhibits sealed but requests that the Court delay unsealing those exhibits until the Court has ruled on the City's Motion for Summary Judgment on the Issue of Standing. (Id.) The City argues that ten exhibits should remain sealed regardless of the Court's ruling on the City's Motion for Summary Judgment on the Issue of Standing. (Id.) In several instances, the City argues that exhibits should remain sealed because they contain information pertaining to confidential law enforcement techniques. (Id.)

On July 2, 2018, the City filed a Response to Plaintiff's Motion to File Under Seal. (ECF No. 84.) The City's Response contains a list of fifty-three documents (eight deposition excerpts and forty-five exhibits) accompanying Plaintiff's sealed Motion for Summary Judgment, and for each document, indicates the City's position as to whether that document should remain sealed. (ECF No. 84 at 1618-24.) The City has no objection to three documents being unsealed. (Id.) The City concedes that there is no substantive reason to keep thirty-seven documents sealed but requests that the Court delay unsealing those documents until the Court has ruled on the City's Motion for Summary Judgment on the Issue of Standing. (Id.) The City argues that thirteen documents should remain sealed regardless of the Court's ruling on the City's Motion for Summary Judgment on the Issue of Standing. (Id.) In several instances, the City argues that

documents should remain sealed on the basis of the law enforcement privilege.² (Id.) The City also agrees with Plaintiff that two exhibits should remain sealed because they contain the personal information of members of the public. (Id.)

The same day, on July 2, 2018, Plaintiff filed a Response to the City's Motion to Allow Filing Under Seal. (ECF No. 85.) Plaintiff agrees with the City that six exhibits accompanying the City's Motion for Summary Judgment on the Issue of Contempt should be unsealed. (Id.) Plaintiff argues, however, that the City has failed to meet its burden to seal the remaining exhibits. (Id.)

On July 6, 2018, Plaintiff filed a Response to the City's Motion to Hold Plaintiff's Motion to File Under Seal in Abeyance. (ECF No. 87.) Plaintiff argues that, "in substance, [the City] asks the court to temporarily seal Plaintiff's Motion for Summary Judgment, Memorandum in Support, and all exhibits and deposition excerpts until the Court has ruled on [the City's] Motion for Summary Judgment [on the Issue of Standing]." (Id. at 1641.) Plaintiff argues that the City must therefore satisfy the standard for sealing these documents, which it has not done. (See id. at 1641-42.) Plaintiff further argues that, even if the City prevails on its Motion for Summary Judgment on the Issue of Standing, "[t]he Court will still need to determine whether the documents filed in the public record meet the standard for being sealed." (Id. at 1642.) Plaintiff argues that there is therefore no judicial economy in holding Plaintiff's Motion to File Under Seal in abeyance pending the Court's ruling on the City's Motion for Summary Judgment on the Issue of Standing. (Id.)

² The City has filed a Motion for *In Camera* Review requesting the Court's *in camera* review of two affidavits in support of the City's invocation of the law enforcement privilege. (ECF No. 86.) The Court granted that motion on July 12, 2018. (ECF No. 95.)

II. LEGAL STANDARD

“Unlike information merely exchanged between the parties, ‘[t]he public has a strong interest in obtaining the information contained in the court record.’” Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan, 825 F.3d 299, 305 (6th Cir. 2016) (quoting Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1180 (6th Cir. 1983)) (alteration in original). “The ability of the public and press to inspect docket sheets is a critical component to providing meaningful access to civil proceedings.” Doe v. Pub. Citizen, 749 F.3d 246, 268 (4th Cir. 2014).

“The courts have long recognized, therefore, a ‘strong presumption in favor of openness’ as to court records.” Shane Grp., Inc., 825 F.3d at 305 (quoting Brown, 710 F.2d at 1179). “The burden of overcoming that presumption is borne by the party that seeks to seal them.” Id. “Only the most compelling reasons can justify non-disclosure of judicial records.” In re Knoxville News-Sentinel Co., Inc., 723 F.2d 470, 476 (6th Cir. 1983). “Moreover, the greater the public interest in the litigation’s subject matter, the greater the showing necessary to overcome the presumption of access.” Shane Grp., Inc., 825 F.3d 299 at 305. “And even where a party can show a compelling reason why certain documents or portions thereof should be sealed, the seal itself must be narrowly tailored to serve that reason.” Id.

III. ANALYSIS

A. The City’s Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance

The City moves the Court to defer unsealing several documents the parties have filed in connection with their motions for summary judgment on the issue of contempt. (See ECF Nos. 82, 83.) The City argues that it would be unfair to expose its sensitive internal documents to public view if Plaintiff does not have standing to maintain this action. (ECF No. 82 at 1602.)

The City further argues that, by deferring consideration of the parties' motions to file documents under seal, the Court can conserve judicial resources in the event that the City prevails on its Motion for Summary Judgment on the Issue of Standing. (See id.)

As the City recognizes, however, the parties' motions for summary judgment on the issue of contempt may well be unsealed even if the City prevails on its Motion for Summary Judgment on the Issue of Standing. (See ECF No. 82 at 1608.) Indeed, even if Plaintiff does not have standing to enforce the Consent Decree at issue in this action, Plaintiff—as well as others—may have standing to seek the unsealing of the parties' filings. See Doe, 749 F.3d at 265 (“[A public interest organization’s] interest in the litigation is that of a third party seeking access to documents filed with the court, which is an interest entirely independent of the injury that supplied the requisite case or controversy between [the parties].”).

The line between discovery and adjudication “is crossed when the parties place material in the court record.” Shane Grp., Inc., 825 F.3d at 305. Once that line is crossed—as it has been in this case—“[t]he public has a strong interest in obtaining the information contained in the court record.” Brown, 710 F.2d at 1180. Accordingly, the City’s Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance is DENIED, and the Court will consider the parties’ motions to file documents under seal.

B. The Parties’ Motions to File Documents Under Seal

The parties move the Court for leave to file documents under seal in connection with their motions for summary judgment on the issue of contempt.³ (See ECF Nos. 77, 78.) The City has no objection to unsealing several of these documents. (See ECF Nos. 83, 84.) The City

³ The parties’ motions to file documents under seal in connection with their responses are not yet ripe. (See ECF Nos. 89, 94.)

concedes that several other documents have no substantive reason for remaining sealed, but “for the same reasons listed in the City’s Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance (ECF No. 82), [the City] requests that the Court delay unsealing these documents until it has ruled on the City’s Motion for Summary Judgment on Standing.” (Id.)

In light of the Court’s earlier denial of the City’s Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance, the parties’ motions to file documents under seal in connection with their motions for summary judgment on the issue of contempt are DENIED IN PART. Specifically, the motions are DENIED as to all documents the City has no objection to unsealing and all documents the City concedes have no substantive reason for remaining sealed.⁴ The Court makes no rulings at this time, however, as to any documents the parties argue should remain sealed for substantive reasons. Those documents remain sealed for the time being, and the parties’ motions to file documents under seal remain pending in part.

IV. CONCLUSION

For the foregoing reasons, the City’s Motion to Hold Plaintiff’s Motion to File Under Seal in Abeyance is DENIED, and the parties’ motions to file documents under seal in connection with their motions for summary judgment are DENIED IN PART. Specifically, the parties’ motions to file documents under seal are DENIED as to all documents the City has no

⁴ With respect to the City’s Motion for Summary Judgment on the Issue of Contempt, the City has no objection to unsealing Exhibits 6, 7, 8, 9, 10, and 16. The City concedes that Exhibits 1, 2, 3, 4, and 5 have no substantive reason for remaining sealed. (See ECF No. 83.) With respect to Plaintiff’s Motion for Summary Judgment, the City has no objection to unsealing Exhibits A, O, and QQ. The City concedes that the following documents have no substantive reason for remaining sealed: Exhibits B, D, E, F, G, H, I, K, L, M, N, P, R, S, T, U, V, W, DD, EE, FF, GG, HH, II, JJ, KK, NN, OO, RR, and SS; and Deposition Excerpts of Eddie Bass, Director Albert Bonner, Major Stephen Chandler, Aubrey Howard, Joseph Patty, Director Michael Rallings, and Bradley Wilburn. (See ECF No. 84.)

objection to unsealing and all documents the City concedes have no substantive reason for remaining sealed. Those documents are UNSEALED, effective immediately. The Court makes no rulings at this time with respect to any documents the parties argue should remain sealed for substantive reasons. Those documents remain sealed for the time being, and the parties' motions to file documents under seal remain pending in part.

By no later than **July 20, 2018**, the parties shall file unsealed versions of their motions for summary judgment on the issue of contempt. (See ECF Nos. 79, 81.) The parties shall not attach any documents that remain sealed in this action and shall redact any portions of their materials that reference sealed documents.

IT IS SO ORDERED, this 16th day of July, 2018.

/s/ Jon P. McCalla

JON P. McCALLA
UNITED STATES DISTRICT JUDGE