

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

ACLU OF TENNESSEE,	)	
	)	
Intervening Plaintiff,	)	
v.	)	No. 2:17-cv-02120-JPM-dkv
	)	
THE CITY OF MEMPHIS,	)	
	)	
Defendant.	)	

**DEFENDANT'S MOTION FOR IN CAMERA REVIEW**

The Defendant, the City of Memphis ("The City") moves this Court for permission to submit for *in camera* review two affidavits in support of the City's Response to Plaintiff's Motion to File Under Seal filed simultaneously with this Motion.

**BACKGROUND**

The Plaintiff, ACLU-TN, filed its Motion for Summary Judgment on Civil Contempt (ECF No. 79) along with fifty-three exhibits under seal. In its contemporaneously-filed Motion to File Under the Seal (ECF No. 78), the ACLU-TN asked Court to unseal all but two of the exhibits. (ECF No. 78-1, PageIDs 682-84).

In its Response to ACLU-TN's Motion to File Under Seal, the City asked the Court to keep several of the documents at issue under seal based on law enforcement investigative privilege. *See* Def's Resp. to Pl's. Mot. to File Under Seal. The City seeks to submit two affidavits (hereafter, "the Affidavits") to the Court to establish the existence of the privilege as it relates to those documents. Because the information contained in the Affidavits contains testimony and information related to confidential law enforcement sources and techniques, the City respectfully requests that the Affidavits be considered *in camera*.

## LAW AND ARGUMENT

*In camera* review should be performed by the court to determine the presence of a privilege. See, e.g., *United States v. Zolin*, 491 U.S. 554 (1989); *In re Grand Jury Supboena*, 31 F.3d 826 (9th Cir. 1994); *Royal Surplus Lines Ins. Co. v. Sofamor Danek Group, Inc.*, 190 F.R.D. 463, 486-87 (W.D. Tenn. 1998); *Diamond State Ins. Co. v. Rebel Oil Co., Inc.*, 157 F.R.D. 691 (D. Nev. 1994).

The moving party must first submit to the district court sufficient evidence showing that a privilege exists and can be asserted, and after the moving party meets its burden, it is under the discretion of the district court whether to perform the *in camera* review. *Diamond State Ins. Co.*, 157 F.R.D. at 700, n.3. (citing *Zolin*, 491 U.S. at 571).

The law enforcement privilege exists in the Sixth Circuit.

[T]he purpose of the law enforcement privilege is to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation.

*United States v. Taylor*, No. 3:14-00015, 2015 WL 9274934, at \*2 (M.D. Tenn. Dec. 18, 2015) (citing *In re Dep't of Investigation of City of N.Y.*, 856 F.2d 481, 484 (2nd Cir. 1988) (internal quotations omitted)).

Here, the City is asserting the law enforcement privilege on the following documents submitted under seal by ACLU-TN in its Motion for Summary Judgment on Contempt (ECF No. 79): a portion of Plaintiff's Memorandum in Support of its Motion for Summary Judgment (ECF No. 79-1, p. 12); Deposition Excerpts of Timothy Reynolds (pp. 91-98; 104, 110); and Exhibits X, Y, Z, AA, BB, CC, LL, and MM.<sup>1</sup>

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<sup>1</sup> The City is also claiming law enforcement privilege on Exhibit PP to the Plaintiff's Motion for Summary Judgment, however the Affidavits that are the subject of the instant motion are not relevant to that document.

These documents contain confidential information related to a social media account identified in the depositions as being used by the Office of Homeland Security. Disclosure of the documents and documentation regarding that account will implicate active and/or completed criminal investigations involving the Organized Crime Unit ("OCU") of the Memphis Police Department ("MPD"). Those OCU investigations are not related to the allegations in this matter, and the City cannot disclose that information – even to opposing counsel – without jeopardizing past and future criminal investigations, possibly even the protection of individuals associated with those investigations.

In support of its assertion of privilege, the City seeks to submit the Affidavits of Sgt. Timothy Reynolds and Colonel Paul Wright of the Memphis Police Department. Sergeant Reynolds was deposed by ACLU-TN and questioned about a confidential source used in his investigations. He invoked the law enforcement privilege at that time. His Affidavit offers further testimony related to the use of that confidential source.

The City also seeks to submit the Affidavit of Colonel Paul Wright, the Commander of the Organized Crime Unit of the Memphis Police Department. Colonel Wright's Affidavit offers testimony regarding MPD's policies and procedures regarding confidential sources and undercover operations used in investigations.

As noted above, one of the purposes of the law enforcement privilege "is to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witnesses and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation." *Taylor*, 2015 WL 9274934, at \*2. Disclosure of the Affidavits to the public, and even to opposing counsel, would compromise the confidentiality of a source.

**CONCLUSION**

Because the Affidavits contain confidential information that should be shielded from the public's view by the law enforcement privilege, i.e. the confidentiality of sources, the City respectfully requests that the Court review these Affidavits *in camera* before ruling on the ACLU-TN's Motion to File Under Seal and the City's subsequent Response.

Respectfully submitted,

/s/ Jennie Silk

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**CERTIFICATE OF SERVICE**

I hereby certify that on July 2, 2018, the foregoing was served via the Court's ECF system to the following counsel of record:

Thomas H. Castelli  
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/s/ Jennie Silk

**CERTIFICATE OF CONSULTATION**

Counsel for the City, Jennie Silk, consulted with counsel for ACLU-TN, Tom Castelli, on July 2, 2018 regarding this Motion. Counsel for ACLU-TN did not object to the City seeking permission to request *in camera* review of the Affidavits, but reserves the right to object at a later time.