

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

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

DEFENDANT’S SEALED RESPONSE TO ORDER TO SHOW CAUSE

The Defendant, the City of Memphis (“the City”) hereby responds to the Court's Order to Show Cause Why the Transcript From August 27, 2019 In Camera Conference Should Not Be Prepared, Docketed, and Made Available to the Public (ECF No. 228). As explained below, the City agrees with the Court's expression of policy in favor of transparency and does not object to the release of the majority of the transcript related to the September 11, 2019 National Public Safety Partnership Symposium ("the Symposium"). The City respectfully requests, however, that the Court redact the portions of the transcript referencing the Multi-Agency Gang Unit ("MGU") and CrimeStoppers pending the Court's ruling on the City's Sealed Motion for Immediate Modification of the Consent Decree (ECF No. 227).¹

I. Background

¹ The City requested a copy of the transcript from the Court on October 2, 2019. On October 3, 2019, the Court entered an Order on Transcripts of In-Camera Conference instructing the court reporter to prepare transcripts of the *in camera* conference held on August 27, 2019 for the Parties’ use only. (ECF No. 229). On October 10, 2019, the Sealed Transcript was docketed (ECF No. 232), but as of the date of this filing, remains sealed and unavailable for review by the Parties. Counsel for the City made several attempts to obtain the transcript, but has been unsuccessful. Accordingly, the City's references to the *in camera* conference contained herein are made from counsel's memory.

On July 16, 2019, the City emailed the Monitor seeking authorization to coordinate with the FBI and the Secret Service on providing security to the dozens of federal "VIPs," including Attorney General William Barr and other executives from the DOJ, FBI, DEA, ATF, and U.S. Marshals Service, who would be attending the Symposium.² See ECF No. 227, Ex. B. The City noted that the FBI and Secret Service might, in the process of providing security for the Symposium, seek to share intelligence with Memphis Police Department ("MPD") that was obtained in violation of the Consent Decree. *Id.*

On August 21, 2019, the Monitor responded to the City's request for authorization as follows:

This question raises two issues: First, to the extent that "coordinat[ing]" with the FBI or the Secret Service includes sharing personal information, the City may not coordinate with those agencies, or any others, in planning for the symposium. Section H of the *Kendrick* Consent Decree¹ prohibits the City from "maintain[ing] personal information about any person unless it is collected in the course of a lawful investigation of criminal conduct." § H(1). It also prohibits the City from sharing "personal information . . . collected in the course of a lawful investigation of criminal conduct" unless the recipient is "another governmental law enforcement agency then engaged in a lawful investigation of criminal conduct." § H(2). I read this language to impose two applicable restrictions: (1) entirely against the sharing of personal information collected in any way other than via lawful criminal investigation (as such information may not be maintained in the first instance); and (2) against the sharing of personal information collected via lawful criminal investigation unless such sharing is with another governmental law enforcement agency and that agency already is engaged in a lawful criminal investigation.

ECF No. 227, Ex. B.

In that same August 21, 2019 letter, the Monitor also explained that the City's coordination with local law enforcement agencies was prohibited to some extent by the Consent Decree. This prohibition on inter-agency sharing of information necessarily implicates, and

² Attorney General Barr ultimately was unable to attend the Symposium, but the Deputy Attorney General attended instead.

possibly forbids, the City's participation in the MGU. *Id.*

Furthermore, in a letter dated August 26, 2019, the Monitor similarly determined that the Consent Decree effectively prohibits the receipt of anonymous tips via the CrimeStoppers program because there is no way to verify that the intelligence shared via CrimeStoppers was obtained in accordance with the provisions and restrictions of the Consent Decree. ECF No. 227, Ex. C.

II. The City's Request for an *In Camera* Conference

On August 27, the Court held a hearing on the Report of the Monitor (ECF No. 225). During the hearing, the City requested an *in camera* conference to discuss with the Court the implications of the Monitor's recent interpretations of the Consent Decree that prohibit or severely limit the sharing of information with other law enforcement agencies.

Specifically, the City sought the Court's guidance on whether MPD could share information with federal agencies in preparation for the Symposium. During the *in camera* conference, in a non-precedential ruling, the Court granted the City limited authorization to coordinate with federal agencies in order to prepare for the Symposium, with the caveat that the City would remain in close contact with the Monitor throughout the process.

Also during the *in camera* conference, counsel for the City also sought the Court's guidance on the City's participation in the MGU and the CrimeStoppers program, in view of the Monitor's stated position from his August 21 and August 26 letters that the Consent Decree effectively prohibits such participation. The Court explained that it would not address those issues during the *in camera* hearing.

On September 25, 2019, the City filed its Motion for Immediate Modification of the

Kendrick Consent Decree under seal³ to formally address the Court on, *inter alia*, the Monitor's interpretation of Section I of the Consent Decree and its implications on MPD's ability to share intelligence with other law enforcement agencies, its authority to participate in the MGU, and its participation in the CrimeStoppers program. *See* ECF No. 227.

III. Legal Standard

It is well-settled that there is a “strong presumption in favor of openness” as to court records. *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 305 (6th Cir. 2016). There are, however, important exceptions which limit the public’s right to access judicial records. *In re Knoxville News-Sentinel Co., Inc.*, 723 F.2d 470, 474 (6th Cir. 1983). A court has inherent supervisory power over its own records and files and can deny access where court files might potentially become “a vehicle for improper purposes.” *Nixon v. Warner Comm.*, 435 U.S. 589, 598 (1978). “Thus, trial courts have always been afforded the power to seal their records when interests of privacy outweigh the public’s right to know.” *In re Knoxville News-Sentinel Co.*, 723 F.2d at 474. But even where a party can show a compelling reason for sealing court documents, “the seal itself must be narrowly tailored to serve that reason.” *Shane Grp., Inc.*, 825 F.3d at 305.

IV. The City requests that the Court keep portions of the transcript under seal pending resolution of the pending Motion for Immediate Modification of the Consent Decree

Although the specific event giving rise to the *in camera* conference has passed, *i.e.* the September 11, 2019 Symposium, the City's ongoing participation in the MGU and CrimeStoppers has not yet been addressed by the Court. Accordingly, the City has no objection

³ The City filed this Motion under seal because it had concern regarding the repercussions to public safety from the exposure of these potential vulnerabilities. The Monitor granted the City permission to continue its participation in the MGU and CrimeStoppers pending resolution of the City's Motion for Immediate Modification of the Consent Decree.

to the release of the portion of the transcript related to the Symposium.

Because the Court has not yet ruled on the City's Motion for Immediate Modification, however, the City respectfully requests that the portions of the transcript related to questions concerning the City's participation in the MGU and CrimeStoppers be redacted. If the public, and specifically the criminal element of the public, becomes aware that the Consent Decree, as interpreted by the Monitor, prohibits MPD's participation in the MGU, the MGU's efficacy could be impaired. Similarly, until the Court rules on whether MPD can continue to receive tips via the CrimeStoppers program, the City request that discussion of that issue remain under seal.

V. Conclusion

For these reasons, the City respectfully requests that the Court redact those discreet portions of the transcript related to the City's participation in the MGU and CrimeStoppers until the Court rules on the City's Motion for Immediate Modification.

Respectfully Submitted,

BAKER, DONELSON, BEARMAN,
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CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of October 2019, a copy of the attached pleading was filed electronically. Notice of this filing will be served by operation of the Court's electronic filing system to all counsel of record.

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