

**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 TO FILE RESPONSE TO PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT UNDER SEAL**

Defendant, City of Memphis ("the City"), moves this Court for permission¹ to file its Response to Plaintiff's Motion for Summary Judgment (ECF Nos. 91, 92, 93) Under Seal.²

During the course of discovery in this case, a number of documents and deposition transcripts have been designated as "Confidential" or "Attorneys' Eyes Only" by one or both of the remaining parties to the litigation pursuant to the Protective Order (ECF No. 52.)

In connection with the filing of the responses to various dispositive motions, the City respectfully requests that it be allowed to memoranda and exhibits under seal to insure that claims of privilege and confidential information as designated by the parties are not inadvertently disclosed.

The parties have consulted, through counsel, and it is agreed that neither the Plaintiff nor Defendant have objection to the filing of documents under seal for the purposes described herein,

¹ The City previously filed a Motion to Allow Filing Under Seal (ECF No. 77) as it related to the City's own Motion for Summary Judgment on Contempt, and then filed a subsequent Supplement to that Motion (ECF No. 83). The City filed its Response to the Plaintiff's Motion for Summary Judgment (ECF Nos. 91, 92, 93) under seal, and files this Motion to File the Response Under Seal in conjunction thereto.

² The City has also filed a Motion to Hold Plaintiff's Motion to File Under Seal in Abeyance (ECF No. 82) asking the Court to delay ruling on the unsealing of Exhibits until after it rules on the City's Motion for Summary Judgment on Standing.

although the ultimate issue of whether particular disputed documents are privileged or eligible to remain under seal is reserved by the Court.

LAW AND ARGUMENT

The courts have long recognized a strong presumption in favor of openness as to court records. The burden of overcoming that presumption is borne by the party that seeks to seal them. *Id.* at 305. “Only the most compelling reasons can justify non-disclosure of judicial records.” *In re Knoxville News–Sentinel Co.*, 723 F.2d 470, 476 (6th Cir. 1983). The greater the public interest in the litigation's subject matter, the greater the showing necessary to overcome the presumption of access. *Id.* 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.* The proponent of sealing therefore must analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Id.* at 305-06 (citations omitted).

The City submits the following list of documents filed under seal with its Response to ACLU-TN's Motion for Summary Judgment on Contempt (ECF No. 91), Response to Statement of Facts (ECF No. 92), and Statement of Additional Facts (ECF No. 93). For each document listed, the City either (1) has no objection to the document being unsealed; (2) is arguing why the exhibit should remain sealed, regardless of the Court's ruling on the Motion for Summary Judgment on Standing; or (3) is conceding that there is no substantive reason to keep the document 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), requesting that the Court delay unsealing these documents until it has ruled on the City's Motion for Summary Judgment on Standing.

DOCUMENT	DESCRIPTION	SEALED OR UNSEALED	ARGUMENT
RESPONSE			
ECF No. 91	RESPONSE TO MOTION FOR SUMMARY JUDGMENT	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. A	Various Confidential emails and Joint Intelligence Briefings	Sealed	This Exhibit contains information pertaining to a law enforcement investigation of a persons suspected of criminal activity. It also identifies the person suspected of criminal activity, and exposure could harm his reputation.
Ex. B	Social Media and Tactical Considerations for Law Enforcement Report	Unsealed	
Ex. C	Independent Review of the 2017 Protest Events in Charlottesville, Virginia	Unsealed	
RESPONSE TO STATEMENT OF FACTS			
ECF No. 92	RESPONSE to STATEMENT OF FACTS	Sealed	The City is invoking the law enforcement privilege to seek an order from this Court preventing this document from being unsealed. ³ This document identifies a confidential source and its disclosure could interfere or impair the operations of several units of the MPD.
Ex. 1	Deposition Excerpts of	Sealed pending ruling on Motion for Summary	

³ The City incorporates its argument and affidavits from Defendant's Response to Plaintiff's Motion to File Under Seal (ECF No. 84) in support of its assertion of law enforcement privilege. The affidavits will be filed once the Court rules on the pending Motion for *In Camera* Review (ECF No. 86).

	Michael Rallings	Judgment on Standing	
Ex. 2	Deposition Excerpts of Timothy Reynolds	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 3	Deposition Excerpts of Lt. Albert Bonner	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 4	Deposition Excerpts of Major Stephen Chandler	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 5	Joint Intelligence Briefs from July 2016	Sealed	This Exhibit contains information pertaining to a law enforcement investigation of persons suspected of criminal activity. It also identifies the persons suspected of criminal activity, and exposure could harm their reputation.
Ex. 6	Deposition Excerpts of Major Bass	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 7	PowerPoint Presentation regarding Valero Refinery Protest	Sealed	This Exhibit contains information pertaining to a law enforcement investigation of persons suspected of and arrested for criminal activity. It also identifies the persons suspected of criminal activity, and exposure could harm their reputation.
Ex. 8	Deposition Excerpts of Major Lambert Ross	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 9	Defendant's Expert Witness Report of Fred Godwin	Unsealed	
Ex. 10	Deposition Excerpts of Sgt. Wilburn	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 11	Internal MPD	Sealed pending ruling on	

	email related to investigation of possible criminal activity	Motion for Summary Judgment on Standing	
Ex. 12	MPD Ops Plan related to event at Commercial Appeal	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 13	City's Permitting Ordinance	Unsealed	
Ex. 14	Deposition Excerpts of Aubrey Howard	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 15	Collective exhibit containing evidence of various threats to the public	Sealed pending ruling on Motion for Summary Judgment on Standing	
ADDITIONAL FACTS			
ECF No. 93	Statement of Additional Facts	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 1	Affidavit of Larry Godwin	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 2	Affidavit of Toney Armstrong	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 3	Deposition Excerpts of Director Michael Rallings	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 4	Deposition Excerpts of Major Lambert Ross	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 5	Deposition Excerpts of Major Stephen Chandler	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 6	Deposition Excerpts of Eddie Bass	Sealed pending ruling on Motion for Summary Judgment on Standing	

Ex. 7	Joint Intelligence Briefs from July 2016	Sealed	This Exhibit contains information pertaining to a law enforcement investigation of persons suspected of criminal activity. It also identifies the persons suspected of criminal activity, and exposure could harm their reputation.
Ex. 8	Internal MPD Email Regarding Criminal Suspect	Sealed	This Exhibit contains information pertaining to a law enforcement investigation of persons suspected of criminal activity. It also identifies the persons suspected of criminal activity, and exposure could harm their reputation.
Ex. 9	Criminal Case History of Ian Jeffries	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 10	PowerPoint Presentation regarding Valero Refinery Protest	Sealed	This Exhibit contains information pertaining to a law enforcement investigation of persons suspected of and arrested for criminal activity. It also identifies the persons suspected of criminal activity, and exposure could harm their reputation.
Ex. 11	Deposition Transcript and Exhibit from Deposition of Aubrey Howard	Sealed pending ruling on Motion for Summary Judgment on Standing	
Ex. 12	Deposition Excerpts of Timothy Reynolds	Sealed pending ruling on Motion for Summary Judgment on Standing	

The documents designated as "SEALED" in the above chart should be sealed because they identify several persons suspected of criminal activity, and their premature disclosure could harm their reputation; or the document identifies a confidential source whose disclosure could potentially harm the operations of the MPD.

For these reasons, the City respectfully requests that the documents marked as "Sealed" remain under seal, and the documents marked as "Unsealed" be unsealed. The City also respectfully requests that the remaining documents remain under seal pending the Court's ruling on the City's Motion for Summary Judgment on Standing (ECF No. 80).

Respectfully submitted,

/s/ Jennie Silk

Buckner Wellford (#TN 9687)
R. Mark Glover (#TN 6807)
Jennie Vee Silk (#TN 35319)
BAKER, DONELSON, BEARMAN,
CALDWELL & BERKOWITZ, P.C.
165 Madison Avenue, Suite 2000
Memphis, Tennessee 38103
Telephone: 901.577.2152
Fax: 901.577.0786
Email: bwellford@bakerdonelson.com
mglover@bakerdonelson.com
jsilk@bakerdonelson.com

Attorneys for Defendant, The City of Memphis

CERTIFICATE OF SERVICE

I hereby certify that on July 10, 2018, the foregoing was served via the Court's ECF system to the following counsel of record:

Thomas H. Castelli
Mandy Floyd
ACLU Foundation of Tennessee
P.O. Box 120160
Nashville, Tennessee 37212

/s/ Jennie Silk