

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

ELAINE BLANCHARD, KEEDRAN)	
FRANKLIN, PAUL GARNER and BRADLEY)	
WATKINS, (Dismissed per Court Order))	
Plaintiffs,)	
)	
and)	
)	
ACLU OF TENNESSEE, Inc.)	
Intervening Plaintiff,)	
)	No. 2:17-cv-02120-jpm-DKV
v.)	
)	
THE CITY OF MEMPHIS,)	
Defendant.)	
)	

MEMORANDUM IN SUPPORT OF PLAINTIFF’S MOTION TO FILE UNDER SEAL

Pursuant to the Protective Order (Docket No. 52) agreed to by the parties and entered by the Court, intervening Plaintiff ACLU of Tennessee, Inc. (“Plaintiff”) files this Memorandum in Support of its Motion to File Under Seal seeking the Court’s review the proffered pleadings and evidence and determination of whether testimony or documents should continue to be treated as confidential information.

The parties entered an agreed Protective Order on October 12, 2017, which, to facilitate discovery, allowed both parties to designate documents and deposition testimony as Confidential or Attorney’s Eyes Only. Under the protective order, the receiving party must treat designated documents as Confidential. When evidence is used in a pretrial motion, the designating party may

request that the material be filed underseal to allow the court to “determine whether the proffered evidence should continue to be treated as confidential information.” (Protective Order, ¶ 13.).

Discovery in this case included thousands of pages of documents and eleven depositions. Plaintiff’s Motion for Summary judgement includes approximately forty exhibits and excerpts from ten different depositions. All exhibits attached to Plaintiff’s motion have been designated as Confidential or Attorney’s Eyes Only by Defendant. All deposition excerpts have likewise been designated as Confidential or Attorney’s Eyes Only by Defendant.

The parties have conferred on their respective Motions for Summary Judgment and the use of designated evidence. Defendant has requested that its designations remain in place. The Parties have agreed to continue to review the documents and testimony filed with the Court in the Motions for Summary Judgment to determine if some designation may be removed and evidence unsealed.

Plaintiff contends that Exhibits C and J to Plaintiff’s Motion for Summary Judgement contain personal information of members of the public and should remain under seal. As for the remaining exhibits and the deposition transcript, Plaintiff does not believe that the information therein meets the standard for sealing the documents from public view.

ARGUMENT AND CITATION TO AUTHORITY

There is a strong presumption in favor of leaving court records open. Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan, 825 F.3d 299, 305 (6th Cir. 2016). “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 is in the subject matter of the litigation, the greater the burden necessary to overcome the presumption of openness. Shane Grp. Inc., 825 F.3d at 305. Asserting that the information may harm a party’s reputation or might prove embarrassing is not enough to meet this burden. Brown & Williamson Tobacco Corp. v. F.T.C.,

710 F.2d 1165, 1179 (6th Cir. 1983). However, the privacy interests of innocent third parties should weigh heavily in a court's balancing equation.” Shane Grp., Inc., 825 F. 3d at 308.

When a party can meet this burden, the seal must be narrowly tailored to serve the reason. Id. The fact that information or records were designated as Confidential and prevented from disclosure under a protective order is not alone reason to order the evidence to be sealed. Id. at 306.

A. EXHIBITS C AND J MEET THE STANDARD FOR FILING UNDER SEAL

Plaintiffs filed two exhibits which contain personal information that meet the standard for filing under seal. The documents were produced to Plaintiff with redactions of Social Security Number and Driver’s License numbers, however other information in the documents make them of a nature that warrant closing access to the public.

Exhibit C contains print outs from driver’s license records for individuals included on the City Hall Escort List at issue in the case. In addition to the redacted license and Social Security Numbers, these reports contain photographs, date of birth, and physical descriptions (height, weight, race, hair and eye color). The reports also note whether the subject has a gun permit, has received a DUI, or is under any license restrictions. Additional information has been added to some reports which include social media account addresses, suspected and possibly unproven gang affiliations and unverifiable mental health information.

While it is important that the Court be aware of the extent and type of information that was included in these reports, disclosure of all this information to the public may cause unnecessary harm to innocent third parties not involved as litigants. Even with Social Security Numbers redacted, the information could still be used by identity thieves. The mental health, criminal history and unsubstantiated references to gangs or other organizations may also cause false

associations and embarrassment to the third parties. The notes concerning mental health information should likewise be treated as confidential and potential harmful to the third party if made public. For those reasons, Plaintiff asks that the Exhibit C remain under seal.

Exhibit J contains information regarding the juvenile records of a third party not involved in the case. T.C.A. §§ 37-1-153, 154 limits the disclosure of juvenile records. Law enforcement may have access “when necessary for the discharge of their official duties.” T.C.A. § 37-1-504(a)(4). Because Exhibit J contains information regarding an individual juvenile record, it should remain under seal.

B. THE REMAINING INFORMATION DOES NOT MEET THE HEAVY BURDEN TO JUSTIFY SEALING THEM FROM PUBLIC VIEW.

The remaining designated materials do not meet the high standard to justify continuing to treat them as confidential. Most of the exhibits are communications between employees of the police department, copies of presentations and copies of social media posts. Any identifying information has already been redacted in accordance with court rules.

The public has a strong interest in this case and in access to the court record. The crux of this case is the conduct of the Defendant regarding its own residents. The Complaint alleges that the Defendant has engaged in gathering political intelligence on members of the Memphis community in violation of a Consent Decree.

In Shane Group, Inc. v. Blue Cross Blue Shield of Michigan, 825 F.3d 299 (6th Circuit 2016), the court explained the public interest in access to court records goes beyond the outcome or result of a case.

Sometimes, the public's interest is focused primarily upon the litigation's result—whether a right does or does not exist, or a statute is or is not constitutional. In other cases—including “antitrust” cases,—the public's interest is focused not only on the result, but also on the conduct giving rise to the case. In those cases, “**secrecy**

insulates the participants, masking impropriety, obscuring incompetence, and concealing corruption.” And in any of these cases, the public is entitled to assess for itself the merits of judicial decisions. Thus, “[t]he public has an interest in **ascertaining what evidence and records the District Court and this Court have relied upon in reaching our decisions.”**

Id. at 305 (quoting Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1180 (6th Cir. 1983) (citations omitted)).

In the case at hand, the public has a similar interest in the conduct giving raise to the case and the actions taken by the public officials governing them. Because the evidence in this case is of such high public importance, the resulting burden to justify sealing the evidence should be high. Other the information set forth above that contains personal information of innocent third parties, Plaintiff does not believe the justification of keeping the information confidential under the Protective Order extend to the evidence once made a part of the proceedings.

Pursuant to the Protective Order, this information is filed under seal to allow Defendant, as the designating party, an opportunity to make its case for why this information should continue under seal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on June 18, 2018 the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and served via the Court's ECF system to:

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