

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JEVARREO KELLEY-LOMAX,

Plaintiff,

v.

CITY OF CHICAGO, ROBERT
GARDUNO, ANTHONY SPICUZZA,
JOEL ORTIZ, GEORGE DAVROS AND
WILLIAM DOOLIN,

Defendants.

Case No.: 20-cv-04595

Judge Gary S. Feinerman

Magistrate Judge Gabriel A. Fuentes

**DEFENDANTS' MOTION FOR ENTRY OF
CONFIDENTIALITY ORDER**

Defendants the City of Chicago (the “City”) and Robert Garduno, Anthony Spicuzza, Joel Ortiz, George Davros, and William Doolin, (the “Officer Defendants”) (collectively, the “Defendants”), by their undersigned counsels, respectfully move this Court, pursuant to Federal Rule of Civil Procedure 26(c) (“Rule 26(c”), for entry of a confidentiality order and in support thereof state as follows:

BACKGROUND

Plaintiff, Jevarreo Kelley-Lomax (“Kelley-Lomax”), filed a complaint asserting a state law claim for malicious prosecution against the City and a claim against the Officer Defendants based on an alleged deprivation of his rights secured by the Fourth and Fourteenth Amendments. Plaintiff’s counsel and counsel for Defendants have met and conferred in an attempt to resolve certain disputed issues related to the terms of the confidentiality order. The parties resolved some, but not all of the disputed issues. Therefore, Defendants now move this Court for entry of the attached confidentiality order, which includes certain modifications and additions to the Local Rule 26.2 Model Confidentiality Order (“Model Confidentiality Order”). *See Exhibit A.* A

redline comparison of the Model Confidentiality Order and Defendants' proposed confidentiality order is attached hereto as **Exhibit B**.

One key term of the confidentiality order that remains in dispute is the inclusion of Paragraph Six, which allows for the redaction of personal identifying information from documents produced in discovery. Defendants anticipate that documents to be produced in this matter may contain confidential personal identifying information regarding the Officer Defendants, undercover officers, confidential informants, and non-parties to this litigation, including but not limited to, family members of the Officer Defendants and individuals who witnessed Plaintiff's arrest on February 18, 2019. Defendants request that Paragraph Six be included in the confidentiality order, and Plaintiff opposes the inclusion of Paragraph Six in the confidentiality order.

Defendants also request that the following sentence be removed from Paragraph Two of the Model Confidentiality Order: “[i]nformation or documents that are available to the public may not be designated as Confidential Information.” However, Plaintiff believes this sentence should remain in paragraph two of the confidentiality order. The parties further disagree as to certain language contained in Paragraph Three of the confidentiality order. Specifically, the parties dispute whether documents designated as “Confidential-Subject to Protective Order” must be so designated at the time the documents are produced or disclosed, or whether such designation can be made “as soon as practicable after” the documents are produced or disclosed. Defendants' position is that such designation can be done “as soon as practicable after” the documents are produced or disclosed, and Plaintiff argues that such designation must be done at the time the documents are produced or disclosed. The parties also disagree as to whether certain additional language should be added to Paragraph Four of the Model Confidentiality Order. Finally, there

are certain modifications to the Model Confidentiality Order that the parties have agreed to make. For the reasons discussed below, the Court should grant Defendants' motion and enter the confidentiality order attached to this motion as **Exhibit A**.

LEGAL STANDARD

Pursuant to Rule 26(c), district courts have broad discretion to enter a protective order "for good cause shown." *Alva v. City of Chicago*, Case No. 08 C 6261, 2010 WL 9941379, at *2 (N.D. Ill. Apr. 16, 2010) (citing Fed. R. Civ. P. 26(c)(1)). A protective order may be entered "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." *Jenkins v. White Castle Mgmt. Co.*, Case No. 12 C 7273, 2013 WL 6228938, at *1 (N.D. Ill. Nov. 26, 2013) (internal quotation marks and citation omitted). "In deciding whether good cause exists" to enter a protective order, "a district court must balance the harm to the party seeking the protective order against the importance of disclosure to the public." *McGee v. City of Chicago*, No. 04 C 6352, 2005 WL 3215558, at *1 (N.D. Ill. June 23, 2005) (citation omitted). Courts may consider the following factors in determining whether good cause exists: (i) privacy interests; (ii) the importance of the information to public health and safety; and (iii) the position of the person who stands to benefit from the confidentiality of the protective order, specifically whether that person is a public official. *Id.*

ARGUMENT

Generally, "pretrial discovery must take place in the public unless compelling reasons exist for denying the public access to the proceedings." *Am. Tel. & Tel. Co. v. Grady*, 594 F.2d 594, 596 (7th Cir. 1979); *Mosby v. O'Connor*, No. 07 C 3148, 2007 WL 9817929, at *1 (N.D. Ill. Oct. 15, 2007). Nevertheless, not all documents produced during discovery are available to the public. *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984). In fact, "[m]uch of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related to, the underlying

cause of action,” and thus, “restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information.” *Id.*; *Lane v. Salgado*, No. 13 C 3764, 2014 WL 889306, at *2 (N.D. Ill. Mar. 5, 2014) (quoting *Coffie v. City of Chicago*, No. 05 C 6745, 2006 WL 1069132, at *2 (N.D. Ill. Apr. 21, 2006) (stating “there is a difference between the public’s interest in evidence presented at a public trial and materials exchanged between the parties during the discovery process.”) Moreover, the Supreme Court recognized in *Seattle Times Co.* that while Rule 26(c) does not specifically reference privacy, privacy is “implicit in the broad purpose and language of the Rule.” *Seattle Time Co.*, 467 U.S. at 35, n.21.

I. THE COURT SHOULD ADD PARAGRAPH SIX TO THE MODEL CONFIDENTIALITY ORDER TO PROTECT THE PRIVACY INTERESTS OF THE OFFICER DEFENDANTS AND OTHER NON-PARTIES.

“Police Officers have a legitimate expectation of privacy concerning their personnel files, which often contain social security number[s], driver’s license number[s], residential address[es] and contact information, financial information, names of family members, names of insurance beneficiaries, wage information and other private matters.” *McGee*, 2005 WL 3215558, at *2 (granting protective order shielding from public disclosure CPD officer personnel files, residential information, and personal financial information and ordering that such materials be produced attorneys eyes only); *L.M. by Taylor v. City of Chicago*, No. 13 C 0483, 2013 WL 5477586, at *2 (N.D. Ill. Oct. 2, 2013) (quoting *Collens v. City of New York*, 222 F.R.D. 249, 254 (S.D.N.Y. 2004)) (“[P]olice officers play a significant role in law enforcement that may subject them [to] danger, and they have a justifiable fear that disclosing their home addresses could jeopardize their safety.”). Here, Defendants do not seek to exempt personnel files from disclosure, but rather intend to redact the confidential personal identifying information that this Court has recognized is entitled to protection. *McGee*, 2005 WL 3215558, at *2; *Digan v. Euro-Am. Brands, LLC*, No. 10 C 799, 2012 WL 668993, at *5 (N.D. Ill. Feb. 29, 2012) (allowing defendants to redact personal

information including unlisted addresses and telephone numbers, social security numbers, marital status, medical and health insurance information, and credit information from personnel and employment records of the defendant’s employees who were non-parties to the litigation); *Davis v. Precoat Metals*, No. 01 C 5689, 2002 WL 1759828, at *4 (N.D. Ill. July 29, 2002) (allowing defendants to redact “unlisted addresses and telephone numbers, social security numbers, marital status, medical and health insurance information, criminal history and credit information” from personnel and disciplinary files of employees who worked for the defendant that were produced in discovery). By adding paragraph six to the Model Confidentiality Order (“Proposed Paragraph Six”), this Court would simply be allowing for the protection of information that this Court has previously recognized is entitled to protection.

Proposed Paragraph Six permits the producing party to redact all references to current or former police officer’s confidential information about him or herself, and his or her family members, including but not limited to social security numbers, home addresses, home and cellular telephone number(s), personal email addresses, and the names of all current and former police officer’s family members and insurance beneficiaries. **Exhibit B** at 8. Additionally, Proposed Paragraph Six would allow the producing party to redact from all documents the names and other personal identifying information of undercover officers and/or confidential informants. *Id.* Finally, Proposed Paragraph Six allows the producing party to redact from all documents social security numbers, dates of birth, and information covered by the Juvenile Court Act. *Id.*

The production of such sensitive and personal information, unredacted, may cause the individual Officer Defendants, and non-parties to this litigation, “unnecessary annoyance or embarrassment and would unfairly and gratuitously invade their privacy.” *McGee*, 2005 WL 3215558, at *2. The Officer Defendants’ and non-parties’ legitimate safety concerns

regarding the production of such personal identifying information outweighs the Plaintiff's interest in such information. Additionally, such information has little relevancy to Plaintiff's claims. Furthermore, in the event that such information was disseminated to the public, there would be little benefit to the public since this information has nothing to do with the Officer Defendants' performance as public servants. *Id.*

Defendants also seek to protect documents that reference or involve juveniles. While it is unlikely that the production of documents will include references to juveniles, the Illinois Juvenile Court Act specifically states that juvenile court records shall not be made available to the general public and the identity of individuals under the age of 18 "shall remain confidential and shall not be publically disclosed, except as otherwise allowed by law." 705 ILC 405/1-8(A); 705 ILCS 405/5-905(7). The law also requires a specific order from the Juvenile Court to permit the production of juvenile records. 705 ILCS 405/5-901(5).

The inclusion of Proposed Paragraph Six would allow for the protection of sensitive, personal identifying information of the Defendant Officers, current and former police officers, their family members, undercover officers, confidential informants, non-parties to the litigation, and juveniles. Proposed Paragraph Six provides for the appropriate protection of sensitive personal information without infringing on Plaintiff's right to obtain discoverable information. Accordingly, there is good cause to include Proposed Paragraph Six in the confidentiality order.

II. THE COURT SHOULD REMOVE THE FINAL SENTENCE OF PARAGRAPH TWO OF THE MODEL CONFIDENTIALITY ORDER BECAUSE CERTAIN DOCUMENTS THAT MAY BE AVAILABLE TO THE PUBLIC CONTAIN CONFIDENTIAL INFORMATION THAT SHOULD BE PROTECTED.

Defendants maintain that the following sentence should be removed from Paragraph Two of the Model Confidentiality Order: "[i]nformation or documents that are available to the public may not be designated as Confidential Information." Plaintiff believes the sentence should be

included. This sentence should be excluded from the confidentiality order because certain records or documents that may be available to the public may contain confidential information that should be protected. For example, Complaint Registers, also known as “CR files,” are publicly available, but these files often contain sensitive and confidential information. Thus, to ensure that such sensitive and confidential information is adequately protected, the following sentence should be removed from paragraph two of the confidentiality order: “[i]nformation or documents that are available to the public may not be designated as Confidential Information.” This would permit information that is confidential within a CR file to be correctly designated, while the non-confidential information would remain accessible.

III. THE COURT SHOULD AMEND PARAGRAPHS THREE AND FOUR OF THE MODEL CONFIDENTIALITY ORDER TO ENSURE ALL CONFIDENTIAL INFORMATION IS PROPERLY PROTECTED DURING LITIGATION.

A. Paragraph Three of the Model Confidentiality Order should be modified to allow the parties to designate documents as “Confidential-Subject to Protective Order” “as soon as is practicable after” the documents are produced.

Defendants propose to alter the language in Paragraph Three of the Model Confidentiality Order, which addresses the designation of confidential information. Paragraph Three of the Model Confidentiality Order contains the following sentence: “[t]he marking ‘CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER’ shall be applied prior to or at the time of the documents are produced or disclosed.” Form LR 26.2 Model Confidentiality Order. Defendants propose the following change to this sentence: “[t]he marking ‘CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER’ shall be applied prior to or *as soon as practicable after* the documents are produced or disclosed.” *See Exhibit B* at 4 (emphasis added). Plaintiff opposes this modification.

The proposed modification to paragraph three of the Model Confidentiality Order is necessary to ensure that all confidential information is properly protected. Because documents that contain confidential information are being produced in this matter on a rolling basis, without this modification it is possible that confidential information may be produced and inadvertently may not be stamped accordingly at the time of production. This modification would allow for the protection of confidential information shortly after it has been produced. Accordingly, Defendants request that the Court enter the attached proposed Confidentiality Order, which modifies the language in Paragraph Three.

B. Paragraph Four of the Model Confidentiality Order should be modified to allow the parties to designate certain additional information from deposition testimony as “Confidential-Subject to Protective Order.”

With respect to Paragraph Four of the Model Confidentiality Order, which addresses deposition testimony, Defendants propose two specific modifications that Plaintiff contests. First, Defendants propose extending the “Confidential-Subject to Protective Order” designation to cover not just confidential deposition testimony, but also confidential exhibits. This modification is necessary to ensure all confidential material is designated accordingly, including exhibits, that may contain confidential information.

Second, Defendants argue that the parties should have the ability to serve a “Notice of Designation,” within 14 days after the delivery of the deposition transcript, to all parties of record that identifies the additional specific portions of a deposition transcript or exhibits from the deposition that should be designated as Confidential Information. Plaintiff opposes adding exhibits to the material that can be designated as confidential, after a party receives a copy of the deposition transcript. This modification is reflected in **Exhibit B** at pages 5 through 6 and is necessary to ensure that exhibits which may not have previously been designated “Confidential-Subject to Protective Order” receive such designation, if appropriate. The proposed modifications

to Paragraph Four of the Model Confidentiality Order provide additional assurance that all confidential information is properly protected, and any modified designation would happen in a short period of time, within the period of time in which the deponent has to review transcript testimony.

IV. THE PARTIES AGREE ON THE REMAINING PROPOSED MODIFICATIONS TO THE MODEL CONFIDENTIALITY ORDER.

The parties agree to the proposed modifications to Paragraph Two of the Model Confidentiality Order. Defendants seek to protect certain “employment, disciplinary, or other information that is of a sensitive or non-public nature regarding plaintiff, defendants, non-party witnesses, and non-party employees of the City of Chicago.” Exhibit B at 3. This includes “[a]ny disciplinary actions, files and attachments to such files generated by the investigation of deaths in custody, uses of deadly force, and complaints of misconduct by Chicago police officers (generally referred to as ‘Log Number’ files, ‘Complaint Registers’ (CR) files, ‘Universal’ (U) files, or ‘Extraordinary Occurrence’ (EO) files, or ‘Non-Disciplinary Intervention’ (NDI files)” and “internal Chicago Police Department ‘Summary Punishment Action Requests’ (SPARs).” Exhibit B at 3-4. Identical language was recently adopted by this Court in the confidentiality order entered in *Murdock v. City of Chicago*, Case No. 20-cv-01440, ECF No. 46 at 2 (Feinerman, J.).

Defendants also propose additional language to Paragraph 5(b)(2) of the Model Confidentiality Order, and Plaintiff does not oppose this addition. Defendants’ proposed language to Paragraph 5(b)(2) would allow the parties to also disclose confidential information to insurance carriers, in addition to “[i]ndividual parties and employees” of a party. This change is reflected at page 7 of Exhibit B. In *Murdock*, this Court overruled the plaintiff’s objection to this modification and entered an order that included the same language that Defendants propose adding to Paragraph 5(b)(2) of the Model Confidentiality Order.

Finally, the parties do not dispute the inclusion of proposed Paragraph 5(b)(9). This paragraph allows the parties to disclose confidential information to individuals who are interviewed as part of a party's investigation during the course of this litigation. **Exhibit B** at 7. "The only confidential information that may be disclosed" to such individuals is information that is "reasonably necessary to disclose for the purpose of investigation in this litigation." *Id.* This paragraph will allow the parties the ability to disclose confidential information when necessary to individuals who are interviewed during the course of this litigation, such as Assistant State's Attorneys, police officers involved in Plaintiff's arrest, and/or witnesses to Plaintiff's arrest.

CONCLUSION

For the reasons stated above, the Defendants request that this Court enter their proposed confidentiality order, which is attached hereto as **Exhibit A**, and for any such further relief that the Court deems just and proper.

Dated: May 20, 2021

Respectfully submitted,

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