

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. 2084CV01035

AMERICAN CIVIL LIBERTIES UNION OF)
MASSACHUSETTS, INC.,)
))
Plaintiff,)
v.)
))
BRISTOL COUNTY SHERIFF’S OFFICE,)
))
Defendant.)

PLAINTIFF’S REQUEST FOR STATUS CONFERENCE

Plaintiff ACLUM respectfully requests that the Court schedule an immediate status conference in this matter at the earliest date convenient for the Court.

The purpose of the proposed status conference is to discuss whether the continued withholding of any records in this matter is appropriate in light of the completion of the Attorney General’s investigation, as well as the BCSO’s noncompliance with the Court’s October 27, 2020 Second Order On Plaintiff’s Request For Injunctive Relief (the “Order”). That Order had required BCSO to “provide this court with the status of the three investigations it references in asserting the investigatory exemption.” It has not provided any such information. There is thus no basis in the record to conclude that any investigations are still active or, if active, would be prejudiced in any way by the release of the requested records concerning the May 1 incident.

Recent developments make clear that release of the records is warranted. On December 15, 2020, the Attorney General’s Office filed a letter with this Court stating that it had concluded its investigation into the May 1 incident (“AGO Letter”). Appended to the Letter was a

painstakingly detailed, fact-intensive, and thorough 58-page report containing the Attorney General's findings and recommendations (the "AGO Report"). Among other things, the AGO Report found that, during the May 1 incident, the BCSO committed violent and egregious violations of the detainees' civil rights, including by using "excessive and disproportionate force" and by acting with "deliberate indifference to a substantial risk of serious harm to the health of the detainees." AGO Report at 1. There are also many other highly concerning findings, including that staff may have been coached to modify written reports concerning the incident, and that Sheriff Hodgson (who was observed personally filming portions of the incident) failed to turn over records of the incident contained on his cell phone. *See* AGO Report at 4, 44.

In its Letter, the Attorney General's Office makes clear that, not only is its investigation complete, but also that there are no investigatory impediments preventing BCSO from producing any documents responsive to ACLUM's request. Quite the contrary: the Attorney General affirmatively supports disclosure of these records because "public disclosure of the records sought in this litigation would serve the public interest by increasing the BCSO's public accountability, openness, and transparency." *See* AGO Letter. In light of the AGO Letter and Report, revisiting the scope of the Court's current Order may be appropriate under these changed circumstances.

BSCO has not provided the Court with any information to the contrary, despite this Court's Order requiring BCSO to provide an update regarding the status of the three investigations it relies upon in asserting the investigatory exemption. *See* Order at 3-4. Undersigned counsel has diligently sought updates from BCSO regarding its compliance with this Court's Order. On November 13, 2020, ACLUM's counsel reached out to counsel at BCSO, who stated that they

were “working on . . . the status of the investigations.” Exhibit A. On November 23, 2020, ACLUM’s counsel again reached out to BCSO, but did not receive a reply. Exhibit B. On December 10, 2020, almost a month after its first email, ACLUM’s counsel reached out to BCSO for a third time for a status update. Exhibit B. As of the filing of this request, almost two months after the Court’s Order, ACLUM still has not heard back from BCSO as to the status of the investigations, nor has the BCSO reported this information to the Court. BCSO’s lack of response to the Court’s Order leaves BCSO with no basis to claim that any investigation is active or would be prejudiced by the release of these records.

A status conference would also be useful to discuss the BCSO’s continued apparent failure to conduct an adequate search for records responsive to ACLUM’s request. For one thing, BCSO has ignored this Court’s Order to provide a written response and affidavit attesting to the existence or non-existence of any materials responsive to ACLUM requests #6, 8, and 10. *See* Order at 3. Additionally, the AGO Report raises serious questions about whether other responsive records have been omitted from the BCSO’s index, including responsive emails,¹ as well as the records made on Sheriff Hodgson’s cell phone.

BCSO’s refusal to release these records, as well as its noncompliance with this Court’s Order, has allowed the BCSO to continue to make public statements characterizing the incident without the fear of contradiction that would exist if the underlying records were available. Despite the AGO’s 58-page report, replete with detailed references to written correspondence and video evidence, Sheriff Thomas Hodgson has continued to make contrary public characterizations about

¹ The AGO Report notes that its findings relied in part on a collection of BCSO email communications. AGO Report at 3. The Index produced to the Court denotes a single email communication. Custodial Index of Records at 34. This would suggest that there are additional relevant email communications that have not been produced to the Court or indexed.

the May 1 incident. On December 16, he held a press conference in which he again made detailed assertions about the incident, called the Attorney General a “political hack,” and stated that he was placing the Attorney General’s recommendations for reform “halfway down the sewer pipe.”² Later that day, he gave an approximately 40-minute radio interview in which he again purported to detail the incident, claimed the BCSO “did everything picture perfect by any standard,” claimed the Attorney General has gone to “incredible lengths to dismiss and discount the truth about what really happened,” and bizarrely claimed the Attorney General is “a pro-illegal person.”³ Every moment that the BCSO is allowed keep these records secret and ignore this Court’s Order allows it further room to make wild assertions to the press without threat of contradiction by the underlying records.

For all the foregoing reasons, ACLUM believes that a status conference is immediately warranted, and requests that the Court schedule one at its earliest convenience.

December 17, 2020

Respectfully submitted,

/s/ Christopher E. Hart

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² See “Hodgson Puts Healy Report ‘Down the Sewer Pipe,’” *Commonwealth Magazine*, Dec. 17, 2020, available at <https://commonwealthmagazine.org/immigration/hodgson-puts-healey-report-down-the-sewer-pipe/>

³ <https://www.iheart.com/podcast/1002-nightside-with-dan-28654279/episode/sheriff-hodgson-would-like-a-word-75266536/>

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of December, 2020, the foregoing document was filed with the Suffolk Superior Court and will be served via email on counsel for Defendant at:

Lorraine J. Rousseau, Esq.
Bristol County Sheriff's Office
400 Faunce Corner Road
North Dartmouth, MA 02747
lorrainerousseau@bcso-ma.org

/s/ Nicholas L. Anastasi
Nicholas L. Anastasi

Exhibit A

Anastasi, Nicholas

From: Anastasi, Nicholas
Sent: Wednesday, November 18, 2020 12:31 PM
To: 'Lorraine Rousseau'
Cc: Robert Heroux; Robert Novack; Gregory O'Neill; Rachel McCarthy
Subject: RE: Executed Protective Order

Thank you Lorraine. Yes, we will copy you on the filing.

From: Lorraine Rousseau [mailto:LORRAINEROUSSEAU@bcso-ma.org]
Sent: Wednesday, November 18, 2020 10:06 AM
To: Anastasi, Nicholas <nanastasi@foleyhoag.com>
Cc: Robert Heroux <ROBERTHEROUX@bcso-ma.org>; Robert Novack <robertnovack@bcso-ma.org>; Gregory O'Neill <GREGORYONEILL@bcso-ma.org>; Rachel McCarthy <RachelMcCarthy@bcso-ma.org>
Subject: RE: Executed Protective Order

****EXTERNAL****

Hi Nick,

All is well. Thank you for asking. Hope you are also doing well.

I've attached a copy of our executed Protective Order. Could you please copy us on its filing. Also, I am working on the search for responsive emails and the status of the investigations.

Thank you,
Lorraine

From: Anastasi, Nicholas [mailto:nanastasi@foleyhoag.com]
Sent: Friday, November 13, 2020 12:20 PM
To: Lorraine Rousseau
Cc: Robert Heroux; Robert Novack; Gregory O'Neill; Rachel McCarthy
Subject: Executed Protective Order

Lorraine,

I hope that you are well. Attached please find an executed version of the protective order issued by the Court on October 27. If you could please sign and return via email, we will coordinate filing with the court.

Thank you,
Nick

Nicholas Anastasi | Associate

FOLEY

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Exhibit B

Anastasi, Nicholas

From: Anastasi, Nicholas
Sent: Thursday, December 10, 2020 12:54 PM
To: 'Lorraine Rousseau'; 'Robert Heroux'; 'Rachel McCarthy'; 'Gregory O'Neill'
Subject: RE: ACLUM v. BCSO, C.A. No. 2084CV01035

Hi Lorraine,

I hope that you are well. I am writing to follow up on the below, and to see if you have an update on the status of the investigations.

Thanks very much,
Nick

From: Anastasi, Nicholas
Sent: Monday, November 23, 2020 9:48 AM
To: Lorraine Rousseau <LORRAINEROUSSEAU@bcso-ma.org>; Robert Heroux <ROBERTHEROUX@bcso-ma.org>; Rachel McCarthy <RachelMcCarthy@bcso-ma.org>; Gregory O'Neill <GREGORYONEILL@bcso-ma.org>
Subject: ACLUM v. BCSO, C.A. No. 2084CV01035

Hi Lorraine,

I am writing in response to your email from this past Wednesday regarding the October 27 Protective Order. In that email, you noted that the BCSO is in the process of searching for responsive emails (which we understand to include emails responsive to requests 6, 8, and 10). Can you provide us with a general timeframe for completing that project? Also, can you confirm that you will be searching for all materials, including but not limited to text messages, responsive to requests 6, 8, and 10, as required by the Court's order?

Additionally, we intend to begin our in-person review of the records subject to the protective order this week. We feel that the most efficient approach to the review, for both parties and the Court, is to work through the records in phases. As such, we would like to start by reviewing all of the relevant video footage, and briefing the court on just that footage, before moving on to the photos and written documents. Please let us know if you agree to this approach – if so, we will propose it to the Court.

Best,
Nick

Nicholas Anastasi | Associate

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