

NOTIFY

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 20 CV 1035 G

NOTICE SENT
06-30-20

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC.

v.

BRISTOL COUNTY SHERIFF'S OFFICE

BCSO
L.J.R.
G.+H.
R.C.H.
F.+H.
N.A.
C.E.H.
ACLW
D.L.M.
M.S.
K.M.M.

DECISION AND ORDER ON PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF

The plaintiff, American Civil Liberties Union of Massachusetts, Inc., ("ACLUM") is a Massachusetts non-profit corporation. It brings this action against the Bristol County Sheriff's Office ("BCSO") alleging that the BCSO failed to comply with the plaintiff's public records request made pursuant to the public records law, G. L. c. 66, § 10 and relating to an incident that occurred in the C. Carlos Carreiro Immigration Detention Center at the BCSO facility on May 1, 2020. On May 7, 2020, the ACLUM submitted a public records request to the BCSO for *inter alia*, any and all audiovisual recordings, photos, reports and records, findings, conclusions and recommendations, communications between and among the BCSO staff and with the Office of the Inspector General for the United States Department of Homeland Security and the Executive Office of the President, relating to the incident. On May 14, 2020, the BCSO denied the ACLU's public records request claiming specific exemptions under G.L. c. 4 § 7(26) (f), investigatory and (n), public safety exemptions. In their written opposition to the request for injunctive relief, the BCSO also claims exemption under G.L. c. 4 § 7(26) (c), the privacy exemption.

(LAT)

The plaintiff seeks declaratory judgment that the records requested are public records within the meaning of G. L. c. 66 §10, that their release is required by law and that the BCSO may not charge a fee for responding to the request. The plaintiff's complaint included six attached exhibits, among them its public records request, the BCSO's response, multiple internet links relating to news articles about conditions inside the BCSO and public statements made by Bristol County Sheriff Thomas Hodgson about the incident and other unrelated matters. The plaintiff also seeks a permanent injunction ordering the BCSO to immediately disclose the requested records and requests the imposition of attorney fees and costs. Because the ACLUM requested expedited proceedings, the court issued a short order of notice and conducted a hearing on June 9, 2020.¹ In advance of the hearing, the BCSO filed its "Opposition to the Plaintiff's Request for Injunctive Relief." Included in their opposition are two attached exhibits. (Exhibit "A" – List of the contents of the folder of the BCSO's "Special investigations Unit" relating to the "ICE B Disturbance of 5/1/2020; Exhibit "B" - Document signed on May 5, 2020, by a MA Assistant Attorney General acknowledging receipt of documents that office requested relative to the "ICE – B Disturbance of May 1, 2020." The ACLUM then filed a "Reply Memorandum to Defendant's Opposition to Plaintiff's Request for Declaratory and Injunctive Relief." Thereafter, with leave of court and the assent of the plaintiff, the BCSO filed "Defendant's Sur-reply to Plaintiff's Reply to Defendant's Opposition to Plaintiff's Request for Injunctive Relief" which includes two additional exhibits. (Exhibit "A" – email dated May 4, 2020 from Matthew P. Gittens, Special Agent with the Office of the Inspector General ("IG"), Department of Homeland Security to Captain Robert T. Perry, Jr.,

¹ Although not requested by the plaintiff, the matter was set for hearing on a preliminary injunction. In a foot note in its reply to the defendant's opposition, ACLUM noted that it did not request a preliminary injunction, but instead full satisfaction of its claim.

Special Investigations Unit of the BCSO informing Captain Perry that the Office of the Inspector General will be opening an investigation regarding the riot over the week end. The IG requested any incident reports, medical records, video surveillance in the possession of the BCSO; Exhibit “B” - Letter dated May 5, 2020 from the Office of the Massachusetts Attorney General (“AG”) to the General Counsel of the BCSO requesting the production of various reports, records, audio and video recordings, names of detainees and others present relating to the May 1, 2020 incident). In support of the defendant’s sur-reply, is the affidavit of Lorraine J. Rousseau, Esq., an attorney employed by the BCSO attesting to the ongoing investigations by the IG of the Department of Homeland Security, the AG’s office of Massachusetts, as well as an internal criminal investigation by the BCSO, all relating to the incident on May 1, 2020.

During the hearing on June 9, 2020, the court heard full argument from both sides, allowing each side to argue the issues to their fullest extent. Neither party objected to the supplemental materials and exhibits filed before or after the hearing. Both sides have litigated the issues as if for a decision on the merits, and notably neither party has questioned or challenged the procedural posture of the case. Both sides seek judgment on the ultimate request for relief. Therefore, the court considers the June 9, hearing as one for judgment on the pleadings under Mass. R. Civ. P. 12 (c) converted to a summary judgment pursuant to Mass. R. Civ. P. 56 and rules as follows.


Upon due consideration of the oral arguments, the written submissions and exhibits it is clear that the investigatory exemption applies to some of the materials sought.² However, it is well settled that there is a strong presumption favoring public disclosure, G.L. c. 66, s 10 (c), and that

² After review of the public statements made by the Sheriff as provided by the ACLUM, I am not convinced the BCSO has waived the investigatory exemption where the statements are consistently a general narrative of the event without extensive and specific detail.

“the statute does not provide a blanket exemption for investigatory material.” See *Reinstein v. Police Cmm’r of Boston*, 378 Mass. 281, 289 (1979).³

For the foregoing reasons, it is **ORDERED** that the BCSO provide under seal to the court, the following materials within thirty days of this order:

- All materials it claims should be entirely protected;
- All materials for which redactions of names can be made to allow for release;
- All materials for which names and camera locations can be redacted to protect institutional security concerns.


Sharon E. Donatelle
Justice of the Superior Court

DATED: June 25, 2020

³ Where the court has found that the investigatory exemption applies, it does not address the public safety and privacy exemptions also asserted by the BCSO.