

NOTIFY

10/28✓

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION
NO. 20 CV 1035 G

Notice Sent
10/29/2020

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC.

v.

BRISTOL COUNTY SHERIFF'S OFFICE

SECOND ORDER ON PLAINTIFF'S REQUEST FOR INJUNCTIVE RELIEF

The matter is before the court on the plaintiff, American Civil Liberties Union of Massachusetts, Inc., ("ACLU") 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 G. L. c. 66, § 10. On May 7, 2020, the ACLU 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 an incident that occurred in the C. Carlos Carreiro Immigration Detention Center at the BCSO facility on May 1, 2020. On May 14, 2020, the BCSO denied the ACLU's public records request claiming exemptions under G.L. c. 4 § 7(26) (f), investigatory and (n), public safety exemptions. In addition, in its written opposition to the plaintiff's request for injunctive relief, the BCSO claimed exemption under G.L. c. 4 § 7(26) (c), the privacy exemption.

The court issued an order on June 25, 2020, finding the investigatory exemption applies to some of the materials sought by the plaintiff, but that the BCSO's blanket assertion of the exemption is contrary to established case law. *Reinstein v. Police Comm'r of Boston*, 378 Mass. 281, 289 (1979). The BCSO was ordered to provide the following materials under seal to the court within thirty days:

- 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.

Thereafter, the BCSO submitted the Defendant's Response To Court's Order To Produce Records Under Seal To Court, Defendant Bristol County Sheriff's Office's Production of Custodial Index of Records And Records Submitted Under Seal. The records produced under seal consist of three volumes as follows: Volume 1, Record pages 1-245; Volume 2, Record Pages 246-479; Volume 3, Record pages 480-719; and five USB Flash Drives consisting of video recordings listed as Records 720 through 753 in the record index. In response, the ACLUM filed its Plaintiff's Reply To Defendant's Response To Court's Order To Produce Records Under Seal to Court.

The court notes the voluminous nature of the records at issue and the BCSO's assertion that every record indexed is entirely exempt despite the strong presumption favoring public disclosure, G.L. c. 66, s 10 (c). In camera inspection and decision by a judge as to each of the disputed records will be an intensive, time-consuming task for the court and one that the Supreme Judicial Court has said is "to be used only in the last resort." *Reinstein* @ 295. As well, "allowing the defendants to decide unilaterally, without any oversight, what documents are subject to

disclosure and what documents are exempt is wholly inconsistent with the purpose of G. L. c. 66, sec. 10.” *Worcester Telegram & Gazette Corp. v. Chief of Police of Worcester*, 436 Mass. 378, 385 (2002). Therefore, in view of the expansive public records request and the voluminous nature of the responsive materials, the court orders that the BCSO and the ACLUM shall have access to the materials produced under seal subject to the attached protective order to be signed by each party and returned to the court in advance of the date of access. After the opportunity to access and review the records, the ACLUM shall prepare a memorandum identifying the specific records it argues are subject to disclosure. The memorandum shall be served on the BCSO who will have twenty days to serve any opposition on the plaintiff. Upon receipt of the 9A packet from the ACLUM, the court will schedule a further hearing if necessary. The parties are encouraged to categorize the specific records when possible (ex. videos, photos, incident reports, transcripts of phone calls, administrative orders etc).

Further, the plaintiff’s original public records request consisted of ten categories of records. The record index does not appear to include any responsive materials relating to plaintiff’s requests # 6, 8 or 10. The BCSO is ordered to provide a written response and affidavit attesting to the existence or non-existence of any materials responsive to these requests. Any responsive materials shall be produced to the plaintiff or in the event of a claim of exemption, produced under seal with a custodial index and specific explanation of the exemption claimed.

Finally, while the conclusion of an investigation does not necessarily destroy the investigatory exemption, the status of the three investigations upon which the BCSO relies in asserting same is relevant to the court’s consideration. *Bougas v. Chief of Police of Lexington*,

371 Mass. 59, 63 (1976). As such, The BCSO shall provide this court with the status of the three investigations it references in asserting the investigatory exemption.

So ORDERED,


Sharon E. Donatelle
Justice of the Superior Court

DATED: October 27, 2020

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