

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 19-cv-00901-WJM-NRN

MICHAELLA LYNN SURAT,

Plaintiff,

v.

RANDALL KLAMSER in his individual capacity, and
CITY OF FORT COLLINS, a municipality,

Defendants.

**UNOPPOSED MOTION FOR LEAVE TO RESTRICT ACCESS TO EXHIBITS 16 & 18
TO PLAINTIFF'S CONSOLIDATED RESPONSE TO DEFENDANTS' MOTION TO
DISMISS AND MOTION FOR SUMMARY JUDGMENT [ECF 128]**

Defendants Randall Klamser and City of Fort Collins, by and through counsel, Hall & Evans, LLC, and under D.C.COLO.LCivR 7.2, hereby move the Court to restrict public access to Exhibits 16 & 18 to Plaintiff's Consolidated Response to Defendants' Motion to Dismiss and Motion for Summary Judgment [ECF 128] under Level 1 Restriction, stating in support as follows:

D.C.COLO.LCivR 7.1(A): Undersigned counsel conferred with counsel for Plaintiff. Plaintiff's counsel does not oppose the relief requested herein.

I. DISCUSSION

1. Plaintiff filed her Consolidated Response to Defendants' Motion to Dismiss and Motion for Summary Judgment [ECF 128] and attached multiple exhibits. Among these are exhibits 16 & 18, which are internal affairs records from the City of Fort Collins.

Defendants had disclosed these records as “Confidential” under the auspices of the Stipulated Protective Order previously entered in this case. See [ECF 75]. The Protective Order directs that any Confidential Information shall be filed in accordance with D.C.COLO.LCivR 7.2.

2. Plaintiff separately filed all confidential exhibits, including exhibits 16 & 18, as Level 1 Restricted. See ECF 129. Those records are filed as ECF 129-3, -4, -5, & -6. Plaintiff’s counsel has clarified that ECF 129-4 & -6 are continuations of ECF 129-3 & -5, respectively, but were filed separately because they were too large to file together.

3. Plaintiff has previously moved to restrict access to Exhibits 12 & 13 to her Response, which were filed as ECF 129-1 & -2. See [ECF 138]. The Court granted this motion. See [ECF 141].

4. Here, Exhibits 16 & 18 properly fall within the criteria for restricting access to documents, outlined in D.C.COLO.LCivR 7.2(c).

5. First, the City of Fort Collins has an interest in restricting access to internal affairs records, under Colorado law. See Colo. Rev. Stat. 24-72-301, *et seq.* (Colorado Criminal Justice Records Act (“CCJRA”), governing access to criminal justice records under Colorado law); ***Huspeni v. El Paso Cty. Sheriff's Dep't***, 196 P.3d 892 (Colo. 2008) (holding CCJRA controls access to internal affairs files and any request to access those files must go to agency’s records custodian, who must then weigh the factors outlined in the CCJRA in making disclosure; any challenge to that decision must be filed in the relevant Colorado district court and evaluated under an abuse of discretion standard). Under the CCJRA and ***Huspeni***, Exhibits 16 & 18 are therefore not presumptively accessible to the public but rather must requested through the statutory

procedure. Because the records were provided to Plaintiff for the limited purpose of this litigation, making them accessible to the public as exhibits would undercut Colorado's statutory scheme for determining whether to release the records, outlined in the CCJRA and *Huspeni*.

6. Making these exhibits accessible to the public would also cause serious injury to Defendants because it would make records public when the City of Fort Collins might otherwise have a lawful right not to release them under the CCJRA. Further, making the exhibits public would substitute this Court's judgment for whether these records should be released for Colorado's statutory system to make this determination and would not show comity to the Colorado Supreme Court's authoritative interpretation of the procedure necessary for such a request.

7. Finally, no alternative to restricted access is practicable or adequate here since release of any of these records would undermine Colorado's statutory system to request public access. The Colorado legislature has decided that the records custodian must first determine whether to release these records, whether to redact them, or whether to take other measures allowing limited release. A party can then challenge that decision in Colorado courts. This Court should defer to that statutory process rather than deciding those issues here.

8. Defendants, therefore, respectfully request Exhibits 16 & 18 be classified as Level 1 Restricted pursuant to D.C.COLO.LCivR 7.2, with access limited to the parties and the Court.

II. CONCLUSION

In conclusion, for all the foregoing reasons, Defendants respectfully request the Court issue an order subjecting to Level 1 Restriction Exhibits 16 & 18 to Plaintiff's Consolidated Response to Defendants' Motion to Dismiss and Motion for Summary Judgment [ECF 128], filed with the Court as ECF 129-3, -4, -5, & -6, with access to those exhibits limited to the parties and the Court.

Dated and respectfully submitted this 26th day of January, 2021.

s/ John F. Peters

Mark S. Ratner

John F. Peters

Hall & Evans, LLC

1001 Seventeenth St., Suite 300

Denver, CO 80202

Phone: 303-628-3300

Fax: 303-628-3368

ratnerm@hallevans.com

petersj@hallevans.com

and

John R. Duval, Esq.

Deputy City Attorney

City of Fort Collins

P.O. Box 580

Fort Collins, CO 80522

(970) 221-6520

jduval@fcgov.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE (CM/ECF)

I hereby certify that on this 26th day of January, 2021, a true and correct copy of the foregoing **Unopposed Motion for Leave to Restrict Access to Exhibits 16 & 18 to Plaintiff's Consolidated Response to Defendants' Motion to Dismiss and Motion for Summary Judgment [ECF 128]** was electronically filed with the Clerk of Court via CM/ECF which will send notification of such filing to the following email addresses:

David Lane, Esq.
Andrew McNulty, Esq.
Helen S. Oh, Esq.
Killmer, Lane & Newman, LLP
1543 Champa St, Suite 400
Denver, CO 80202
dlane@kln-law.com
amcnulty@kln-law.com
hoh@kln-law.com
Attorneys for Plaintiff

s/ Therese Curtin, Legal Assistant
Mark S. Ratner
John F. Peters
Hall & Evans, LLC
1001 Seventeenth St., Suite 300
Denver, CO 80202
Phone: 303-628-3300
Fax: 303-628-3368
ratnerm@hallevans.com
petersj@hallevans.com

ATTORNEYS FOR DEFENDANTS