

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

**CHELSEY NELSON PHOTOGRAPHY
LLC and CHELSEY NELSON,**

Plaintiffs,

v.

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT, et al.,**

Defendants.

Case No. 3:19-cv-851-BJB-CHL

**DEFENDANTS’ RESPONSE TO PLAINTIFFS’
MOTION TO UNSEAL DOCUMENTS 119 AND 121 AND THEIR ATTACHMENTS
AND CROSS-MOTION TO PERMANENTLY SEAL**

Defendants Louisville/Jefferson County Metro Government, Louisville Metro Human Relations Commission – Enforcement, Louisville Metro Human Relations Commission – Advocacy, Verná Goatley, in her official capacity as Executive Director of the Louisville Metro Human Relations Commission (“HRC”), Marie Dever, Kevin Delahanty, Charles Lanier, Sr., Leslie Faust, William Sutter, Ibrahim Syed, and Leonard Thomas, in their official capacities as members of the Louisville Metro Human Relations Commission-Enforcement (collectively, “Defendants”), by counsel, pursuant to Local Rule 5.6 and the Court’s Memorandum and Order Regarding Sealing Confidential Information (Doc. 123), respond as follows to the Motion to Unseal Documents 119 and 121 and Their Attachments (Doc. 124) filed by Plaintiffs Chelsey Nelson Photography and Chelsey Nelson (collectively, “Plaintiffs”) and hereby ask the Court to permanently seal the attachments to Document 119 that are stamped CNP MSJ 00952-01109.

Defendants do not request permanent sealing of Document 119 (titled Plaintiffs’ Motion

to Supplement the Summary Judgment Record or Take Judicial Notice), the Declaration of Bryan Neihart filed in support of Document 119, Exhibit A to the Declaration of Bryan Neihart filed in support of Document 119, the Proposed Order granting the motion filed as Document 119, or the reply brief filed in support of Document 119 (Doc. 121).

Document 119 is a motion by Plaintiffs to supplement the summary judgment record, which attaches as exhibits certain pages from case files of discrimination complaints filed with HRC by third-parties who have no involvement in this litigation. Most¹ of these case files were produced by Defendants as ordered by the Court's August 25, 2021 Memorandum Opinion and Order (Doc. 89), which resolved Plaintiffs' motion to compel and Defendants' motion for protective order by requiring that certain third-party case files be produced. As the Court will probably recall, Defendants objected to Plaintiffs' requests for production of these case files on a variety of grounds, including that applicable law and HRC's contracts with federal agencies declared these files confidential and prohibited production of the files to the Plaintiffs. *See* Doc. 64 and Doc. 66

Specifically, Defendants argued that production of these case files was prohibited by:

- Louisville Metro Ordinance § 92.08(B)(7) (which mandates that all records and information other than conciliation agreements “shall be confidential except as reasonably necessary to conduct an investigation and proceeding”);
- Louisville Metro Government's contract with EEOC, Doc. 64-3 at PageID #1670 (Section H.1) & #1671 (Section H.8) (requiring Louisville Metro Government to comply with federal confidentiality and privacy laws as set forth in Title VII,

¹ Plaintiffs apparently obtained copies of certain pages from the Lexington Fair Housing Council discrimination complaint case file from a third-party website. *See* Declaration of B. Neihart at ¶ 16.

Americans with Disabilities Act, Genetic Information Nondiscrimination Act, and the Privacy Act);

- 29 C.F.R. § 1601.22 (“Neither a charge, nor information obtained during the investigation of a charge of employment discrimination under title VII, the ADA, or GINA, nor information obtained from records required to be kept or reports required to be filed pursuant to title VII, the ADA, or GINA, shall be made matters of public information by the Commission prior to the institution of any proceeding under title VII, the ADA, or GINA involving such charge or information.”);
- 29 C.F.R. § 1610.17 (“Section 706(b) of title VII provides that the Commission shall not make public charges which have been filed. It also provides that (subsequent to the filing of a charge, an investigation, and a finding that there is reasonable cause to believe that the charge is true) nothing said or done during and as a part of the Commission’s endeavors to eliminate any alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion may be made public by the Commission without the written consent of the parties concerned; nor may it be used as evidence in a subsequent proceeding.”);
- 29 C.F.R. § 1611.10 (“The Commission shall not disclose any record which is contained in a system of records it maintains, by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is authorized by one or more provisions of 5 U.S.C. 552a(b).”);
- 42 U.S.C.A. § 2000e-8 (“It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by

the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.”);

- Louisville Metro Government’s contract with the federal Department of Housing and Urban Development, Doc. 64-3 at PageID #1723-1724 (Section 26 (prohibiting HRC from releasing information collected during the course of an investigation of housing discrimination while the complaint is open, except in limited circumstances that do not apply here));
- 24 C.F.R. § 103.330(a) (“nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under part 180 or in civil actions under title VIII of the Fair Housing Act, without the written consent of the persons concerned”);
- 24 C.F.R. § 103.330(b) (“Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act.”); and
- 24 C.F.R. § 103.204(c) (“HUD may also make the information you provide available to other Federal, State, or local agencies having an interest in the matter. In making such information available, HUD will take steps to protect the confidentiality of any informant or complainant when desired by the informant or

complainant.”).

The Court nonetheless ordered Defendants to produce the case files, but addressed the confidentiality concerns recognized by these laws and contracts by ordering that:

Production of **these categories of documents will be subject to a protective order** precluding Plaintiffs from disclosing any document or information included in the production in any way outside this litigation pending further order of the Court. Additionally, **Defendants will be permitted to redact from their production personal identifying information**, information about pending complaints, and information HRC received from the EEOC.

Doc. 89 at PageID #2212 (emphasis added). Defendants complied with the Court’s order by redacting personal identifying information from the case files and producing the case files to Plaintiffs subject to the Court’s protective order. Defendants respectfully submit that, in light of the above-cited laws and contractual requirements, identifying information was appropriately redacted from the case files and even the redacted case files should be maintained under seal.

All documents pertain to allegations of discrimination by third parties who have no involvement in this litigation. Most of these documents contain descriptions of incidents which complainants describe as personally humiliating and which respondents maintain did not occur, or did not occur as described by the complainants. Certain of the documents include descriptions of sensitive incidents involving minor children. *See* CNP MSJ 00955 (describing harassment and bullying allegedly experienced by a minor child); CNP MSJ 01026-27 (describing the circumstance of a mother and two minor children experiencing homelessness as a result of domestic abuse); CNP MSJ 01055 (describing parents’ efforts to obtain mental health therapy for a minor child). Although Defendants redacted names and contact information of complaining and responding parties from the case files, the documents contain other details regarding incidents which may allow members of the public to identify the complainants or respondents. *See, e.g.*, CNP MSJ 01019 (setting forth date and name of event at which alleged discrimination occurred).

Importantly, none of these details are relevant to Plaintiffs' summary judgment arguments. The public's interest in discerning the basis for the Court's future decision on the parties' cross-motions for summary judgment can be satisfied by making the parties' briefing (including Documents 119 and 121) part of the public court record. There is no need to make the underlying case files themselves part of the public record.

It would also be inappropriate to require Defendants to re-produce documents from the Scooter Triple B and Lexington Fair Housing Council case files in unredacted form. Defendants already complied with the Court's August 25, 2021 Memorandum Opinion and Order (Doc. 89) by producing the files with personal identifying information redacted. Plaintiffs have apparently had no trouble identifying the complainants and respondents for those case files and have already described the documents as part of the Scooter Triple B and Lexington Fair Housing Council case files in briefs that will soon become part of the public record. As such, requiring Defendants to re-produce the documents in unredacted form serves no meaningful purpose.

For the foregoing reasons, Defendants respectfully request that the Court GRANT Plaintiffs' motion to unseal Document 119 (titled Plaintiffs' Motion to Supplement the Summary Judgment Record or Take Judicial Notice), the Declaration of Bryan Neihart filed in support of Document 119, Exhibit A to the Declaration of Bryan Neihart filed in support of Document 119, the Proposed Order granting the motion filed as Document 119, and the reply brief filed in support of Document 119 (Doc. 121). Defendants further request that the Court otherwise DENY Plaintiffs' motion to unseal and GRANT Defendants' cross-motion to permanently seal the attachments to Document 119 that are stamped CNP MSJ 00952-01109. A proposed order has been tendered with this filing.

Respectfully submitted,

/s/ Casey L. Hinkle

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2022, the foregoing was filed via the Court's electronic filing system, which will automatically send notice of such filing to all counsel of record.

/s/ Casey L. Hinkle

Counsel for Defendants

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
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**[PROPOSED] ORDER GRANTING IN PART PLAINTIFFS' MOTION TO UNSEAL
AND GRANTING DEFENDANTS' MOTION TO PERMANENTLY SEAL**

Plaintiffs Chelsey Nelson Photography and Chelsey Nelson (collectively, "Plaintiffs") have filed a Motion to Unseal Documents 119 and 121 and Their Attachments. Defendants Louisville/Jefferson County Metro Government, Louisville Metro Human Relations Commission – Enforcement, Louisville Metro Human Relations Commission – Advocacy, Verná Goatley, in her official capacity as Executive Director of the HRC, Marie Dever, Kevin Delahanty, Charles Lanier, Sr., Leslie Faust, William Sutter, Ibrahim Syed, and Leonard Thomas, in their official capacities as members of the Louisville Metro Human Relations Commission-Enforcement (collectively, "Defendants") have filed a Motion to Permanently Seal the attachments to Document 119 that are stamped CNP MSJ 00952-01109.

The Court having considered the arguments of the parties and being otherwise duly advised, hereby GRANTS Plaintiffs' motion to unseal Document 119 (titled Plaintiffs' Motion to Supplement the Summary Judgment Record or Take Judicial Notice), the Declaration of Bryan Neihart filed in support of Document 119, Exhibit A to the Declaration of Bryan Neihart filed in

support of Document 119, the Proposed Order granting the motion filed as Document 119, and the reply brief filed in support of Document 119 (Doc. 121). The Court otherwise DENIES Plaintiffs' motion to unseal and GRANTS Defendants' cross-motion to permanently seal the attachments to Document 119 that are stamped CNP MSJ 00952-01109.

Plaintiffs are hereby ORDERED to file in the public record the documents authorized to be unsealed by this order.

Tendered by:

/s/ Casey L. Hinkle

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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2022, the foregoing was filed via the Court's electronic filing system, which will automatically send notice of such filing to all counsel of record.

/s/ Casey L. Hinkle
Counsel for Defendants