

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

Chelsey Nelson Photography LLC,  
and Chelsey Nelson,

Plaintiffs,

v.

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–Enforcement; and 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,

Defendants.

Case No. 3:19-cv-00851-BJB-CHL

**Plaintiffs' Reply to Defendants'  
Response to Plaintiffs' Motion to  
Unseal Documents 119 and 121 and  
Their Attachments and Response  
to Defendants' Cross-Motion to  
Permanently Seal**

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## **Introduction**

Chelsey Nelson wants to run her photography studio, shoot photographs, write blogs, and participate in events consistent with her faith. But Louisville’s law acts as both an unconstitutional roadblock and traffic guard—stopping Chelsey from speaking messages she wants to say and directing her to create content and participate in ceremonies that violate her beliefs. This case presents fundamentally important questions about the nature of constitutional and statutory freedoms and local public-accommodations law. For that reason, the generally strong presumption in favor of openness and transparency for court records is especially muscular here.

But Louisville seeks to hide evidence from the public eye. Louisville has the burden to justify that secrecy. With nary a case cite, a document-by-document review, or evidence that disclosure would cause any injury, Louisville cannot carry that burden. This Court should grant Chelsey’s motion to unseal and deny Louisville’s motion to permanently seal.

## **Argument**

The parties agree that the Court should unseal Documents 119, 119–1, 119–2, 119–4, and 121. Doc. 125, PageID.5162–63. They disagree about the case files in Document 119–3. Chelsey argues these case files should be unsealed as filed and that Louisville should produce unredacted copies of Scooter Triple B’s and Teen Challenge’s case files. Louisville claims the case files should be permanently sealed and that it need not produce any unredacted files. Louisville makes three arguments. None suffice.

Louisville first argues that the case files should be permanently sealed because Louisville’s ordinance, its contracts with the EEOC and HUD, and EEOC and HUD regulations prohibit Louisville from disclosing those case files. Doc. 125, PageID.5165–66.

The Court already rejected these arguments when it compelled Louisville to produce the case files. Doc. 89, PageID.2203–10. That reasoning applies with even more force now. While protective orders and “[s]ecrecy is fine at the discovery stage,” “very different considerations apply” at the adjudication stage. *Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 305 (6th Cir. 2016) (cleaned up). The Court should again reject Louisville’s arguments to conceal these case files because the need for transparency increases when “the parties place material in the court record.” *Id.*

In any event, Louisville’s ordinance does not govern disclosure in this federal suit over a constitutional issue, Doc. 89, PageID.2203, and it is not an absolute bar to disclosure even under Kentucky law. *See* Doc. 124, PageID.5156 (making this point). The EEOC and HUD contracts and regulations are also irrelevant. One submitted case file involves an employment complaint for sexual orientation discrimination from 2013. Doc. 119–3, App. 1013. But the EEOC had no jurisdiction over sexual-orientation discrimination at that time. So the EEOC contract and regulations could not apply to that complaint. And neither EEOC’s contracts and regulations nor HUD’s apply to the remaining case files. Those are complaints filed against *public accommodations* for allegedly violating Louisville’s law. *See, e.g., id.* at 952, 954, 964, 971, 975, 1021, 1029, 1037, 1042, 1049, 1056, 1064 (checking boxes for complaints against public accommodations). The EEOC and HUD don’t have jurisdiction over such complaints.

Next, Louisville argues the case files should be permanently sealed (with full redactions) to protect complainants’ privacy. Doc. 125, PageID.5166. But “proponents of closure bear the burden of showing that disclosure will work a clearly defined and serious injury.” *Shane Grp., Inc.*, 825 F.3d at 307 (cleaned up). Louisville “offers only platitudes here.” *Id.* Complainants expect little privacy. Doc. 124, PageID.5156 (explaining why). And the current redactions solve any privacy

concerns—there’s no reason to lock the safe *and* throw away the key by redacting the documents *and* sealing them. What’s more, if the Court is concerned about the five pages (out of 162) that Louisville highlights, Doc. 125, PageID.5166, it could seal those pages. *Shane Grp., Inc.*, 825 F.3d at 305 (seals must be “narrowly tailored”). *Cf. Rudd Equip. Co., Inc. v. Volvo Constr. Equip. N. Am., LLC*, No. 3:19-CV-778-DJH-CHL, 2020 WL 6946577, at \*4 (W.D. Ky. Nov. 25, 2020) (party seeking seal must justify request on a “line-by-line basis”).

The “strong presumption” favoring open records also outweighs privacy concerns because Chelsey brings First Amendment claims. *Shane Grp., Inc.*, 825 F.3d at 305 (cleaned up). Courts assume the public has an interest in whether a “statute is or is not constitutional.” *Id.* The United States’ and other groups’ input here affirms the interest in how this Court resolves this case. *See* Doc. 38, PageID.1120 (“The United States has a substantial interest in the preservation of its citizens’ rights to free expression and the free exercise of religion.”); Doc. 108–1, PageID.4741 (noting the ACLU’s “strong interest” here). The case files are relevant to that resolution. *See* Docs. 119, 121. *Contra* Doc. 125, PageID.5167. So the public interest extends to the case files themselves—the “evidence and records” this Court may rely on in reaching its decision—to allow the public to “assess for itself the merits” of the decision. *Shane Grp., Inc.*, 825 F.3d at 305.

Finally, Louisville argues re-producing unredacted copies of Scooter Triple B’s and Teen Challenge’s case files “serves no meaningful purpose.” Doc. 125, PageID.5167. Not so. Redacted case files conceal information; unredacted case files don’t. *See* Doc. 123, PageID.5150 (treating redactions the same as sealing). And Louisville’s *ipse dixit* does not give “reasons and legal citations” to justify concealment. *Shane Grp., Inc.*, 825 F.3d at 305–06.

### **Conclusion**

Louisville's motion to permanently seal should be denied. Meanwhile, Documents 119 and 121 and their attachments should be unsealed as filed and Louisville should produce unredacted copies of Scooter Triple B's and Teen Challenge's case files.

Respectfully submitted this 4th day of May, 2022.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 4th day of May, 2022, I electronically filed the foregoing document with the Clerk of Court using the ECF system which will send notification of such filing to all counsel of record who are registered users of the ECF system.

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