

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN R. STELLY, II : NO. 2:23-CV-00772-GGG-JVM
: :
VERSUS : JUDGE GREGG G. GUIDRY
: :
STATE OF LOUISIANA, THROUGH : MAG. JUDGE JANIS VAN MEERVELD
DEPARTMENT OF PUBLIC SAFETY AND : :
CORRECTIONS, OFFICE OF STATE POLICE : :

MEMORANDUM IN SUPPORT OF REQUEST TO SEAL

MAY IT PLEASE THE COURT:

This Memorandum in Support of Request to Seal is submitted on behalf of the Louisiana State Police Commission (“LSPC”), a nonparty to this suit that designated certain documents “confidential” in response to a public records request by the Plaintiff.

Plaintiff issued a request for public records to LSPC, and in response, LSPC submitted a substantial number of documents to the Plaintiff in this case. Some of those documents were submitted under a Protective Order and labeled with a “Confidential” designation.¹ After further discussions with Plaintiff’s counsel, LSPC agreed to remove the “Confidential” designation from all documents except for the documents that were called “Certificates of Eligibles.”² Those documents contained the names of Louisiana State troopers along with the scores or grades each received on certain promotional exams. The parties further agreed that these documents could be used by Plaintiff in these proceedings if he first redacted the grade or score. However, Plaintiff advised that he wished to file the unredacted document and for this reason a motion to seal the documents became necessary.

¹ Rec. Doc 64.

² The Certificates of Eligibles are contained within SPC000001-000727, Supplemental SPC000001-000130. Plaintiff has labeled these documents as Exhibits 24 and 25 in connection with his Memorandum in Opposition to Motion for Summary Judgment.

Plaintiff argues that there is no exception in the Public Records Law, La. R.S. 44:1.1 *et seq.* that would prevent disclosure of the Certificates of Eligibles containing the troopers' names and grades/scores on promotional exams, and we do not disagree with that argument. However, the right to privacy described in La. Const. art. I, §5³ protects against any “unreasonable” invasions of privacy and has been interpreted as preventing certain documents from being subject to disclosure under the Public Records Act. *Bester v. Louisiana Supreme Court Committee on Bar Admissions*, 779 So.2d 715 (2001), citing *Trahan v. Larivee*, 365 So.2d 294 (La. App. 3rd Cir. 1978), *writ denied*, 366 So.2d 564 (La. 1979).

In *Trahan v. Larivee, supra.*, the court addressed whether performance evaluation reports were public records subject to disclosure. After considering that the forms included detailed comments of the rater concerning the employee's personal attitude and attributes, the court determined that “[t]o publish or disclose such personal opinions may embarrass or humiliate the employee among his fellow employees, friends, or family. It may affect his future employment.”⁴ As such, the court held that those documents were protected from production under the public records law by the right to privacy embodied in art. I, §5 of the La. Constitution of 1974.

The issue of whether scores or rating sheets were protected by La. Const. art. I, §5, from production under the Louisiana Public Records Law was addressed in an opinion of the Louisiana Attorney General.⁵ There the Attorney General opinion noted, “Score or rating sheets evaluating various applicants for employment, like the employee evaluations in *Trahan*, may contain information of a private nature that, if disclosed, would embarrass or humiliate the applicant, or

³ La. Const. art. I, §5, 1974 provides in pertinent part: “Every person shall be secure in his person, property, communications, houses, papers, and effects against unreasonable searches, seizures, or invasions of privacy.”

⁴ *Id.* at 299.

⁵ La. Atty. Gen. Op. No. 09-0240 (La.A.G.), 2009 WL 5240193

expose the applicant to public disgrace. The public has a right to know who was considered for the position, and the qualifications; however, the score or rating sheets themselves are exempt from production under the Public Records Act due to the right to privacy.”⁶

In conclusion, LSPC moves this Court to protect those documents called “Certificates of Eligibles” containing the names and exam scores of individual state troopers by ordering that these documents be filed under seal.

Respectfully submitted,

TAYLOR, PORTER, BROOKS & PHILLIPS L.L.P.

By: /s/ M. Lenore Feeney

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⁶ *Id.*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing has been electronically filed with the Clerk of Court using the CM/ECF system which will send notice of electronic filing to all counsel of record this 28th day of June, 2024.

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