

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

**JOHN R. STELLY, II,
Plaintiff**

VERSUS

**STATE OF LOUISIANA, THROUGH
DEPARTMENT OF PUBLIC SAFETY
AND CORRECTIONS, OFFICE OF
STATE POLICE
Defendant**

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* **CIVIL ACTION NO. 23-772**
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* **SECTION “T”**
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* **JUDGE GREG G. GUIDRY**
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* **MAGISTRATE JUDGE**
* **JANIS VAN MEERVELD**
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MEMORANDUM IN SUPPORT OF REQUEST TO SEAL

Defendant, The State of Louisiana, through Department of Public Safety and Corrections, Office of State Police (“Defendant” or the “State Police”), respectfully presents this Memorandum in Support of Request to Seal in response to the Motion to Consider Whether Another Party’s Material Should Be Sealed filed by Plaintiff, John R. Stelly II (“Plaintiff” or “Stelly”) [Rec. Doc. 131] pursuant to Local Rule 5.6 and the Protective Order issued in this case. The State Police requests Exhibits 14, 15, 24-31 to Plaintiff’s Opposition to the State Police’s Motion for Summary Judgment [Rec. Doc. 128] be filed under seal.

The Fifth Circuit has held that to decide whether something should be sealed from the public record, a court must undertake a “document-by-document” balancing of the public’s “common law right of access against the interests favoring nondisclosure.” *June Med. Servs., L.L.C. v. Phillips*, 22 F.4th 512, 521 (5th Cir. 2022). To the extent that any sealing is necessary, it must be “congruent to the need.” *Id.* (citing *Binh Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417 (5th Cir. 2021)). Countervailing interests can “outweigh the right of public access,” so long as the party seeking to overcome the presumption of access shows that the interest in secrecy outweighs

the presumption. *See Cox Operating, LLC v. Atina M/V*, No. CV 20-2845, 2023 WL 3092797, at *1 (E.D. La. Apr. 26, 2023). Courts have held that possible harm may result if employee's personnel files are disclosed to the public. *See, e.g., Duling v. Gristede's Operating Corp.*, 266 F.R.D. 66 (S.D.N.Y. 2010) (finding possible harm from disclosure of personal information in employers' personnel files demonstrated a particular need for protection). In addition, the right to privacy described in La. Const. art. I, §5 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. 3 Cir. 1978)).

The State Police is cognizant of the presumption in favor of the public's access to judicial records, and, for that reason, agreed to allow Plaintiff to file deposition transcripts into the record and not under seal. The records Plaintiff seeks to file in support of his Opposition to the State Police's Motion for Summary Judgment contain, generally, the following documents:

- (1) "Summary reports" created by State Police Internal Affairs and contain information on each candidate for the following categories: (a) State Police experience; (b) time in grade (time as a lieutenant); (c) Prior law enforcement experience; (d) education; (e) specialized training; (f) PES rating (i.e. performance evaluation rating); (g) Disciplinary action; (h) awards; and (i) commendations. There are typically four to eight candidates for each promotion represented on each summary report. These are Exhibits 14-16, 26-31, and 52
- (2) "Certificates of eligibles" containing test scores of candidates for promotion. These are Exhibits 24 and 25.¹

¹ These documents were produced by non-party Louisiana State Police Commission pursuant to a subpoena issued by Plaintiff and they were marked confidential pursuant to the protective order issued in this case.

Because exhibits 16 and 52 are Stelly's personal Summary Report created by Internal Affairs for his applications for promotions to captain, the State Police do not request to file those documents under seal. If Plaintiff has no objection to those documents being in the public record, then neither does the State Police.

However, other than John Stelly, none of the individuals on the summary reports or certificates of eligibles containing promotional test scores are parties to this litigation. The State Police has an interest in keeping the personal, employment information of its officers confidential from the public. Additionally, these individuals have a right to privacy under the Constitution and there is no need for the extensive information included on the summary reports to be made public. Individuals who applied for captain positions from 2017-2021 should not have their personal information made public through this litigation.

In the alternative, if the Court determines these documents should be public, the State Police requests the Court allow it to redact any information included on the summary reports that is not relevant to the claims and/or defenses made in the lawsuit. For instance, Exhibit 3 to John Stelly's deposition contains the summary report for the September 1, 2017 captain promotion. Chavez Cammon was awarded that promotion. Therefore, all identifying information related to the other individuals on that panel that are not Chavez Cammon or John Stelly should be redacted. The State Police requests authority to redact this information if the Court is inclined not to allow it to seal the documents. The State Police adopts and incorporates, as if copied *in extenso* herein, any Memorandum in Support of sealing filed by non-party, Louisiana State Police Commission.

The State Police requests the exhibits be sealed for a period of five years from the conclusion of this litigation to allow sufficient time to pass before the personal information of

officers becomes public. The State Police requests that sealed documents not be made available through PACER or the clerk's office.

Pursuant to Local Rule 5.6 and the Protective Order issued in this case, the State of Louisiana, through Department of Public Safety and Corrections, Office of State Police, respectfully requests Exhibits 14, 15, and 24-31 to Plaintiff's Opposition to the State Police's Motion for Summary Judgment [Rec. Doc. 128] be filed under seal.

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