

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

JOHN R. STELLY, II,
Plaintiff,

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CIVIL ACTION NO. 2:23-cv-00772

JUDGE GREG G. GUIDRY

Versus

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

MAGISTRATE JUDGE
JANIS VAN MEERVELD

MEMORANDUM IN OPPOSITION TO SEALING PLAINTIFF’S EXHIBITS TO HIS
OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT THAT OTHER
PARTYS HAVE DESIGNATED AS CONFIDENTIAL

MAY IT PLEASE THE COURT:

Plaintiff John R. Stelly, II (“Stelly”), respectfully submits this memorandum to oppose Defendant, The State of Louisiana, through Department of Public Safety and Corrections, Office of State Police (“Defendant” or the “State Police”)’s Memorandum in Support to Seal the following exhibits to Plaintiff’s Opposition to Motion for Summary Judgment: Exhibits 14, 15, 24-31, 52, and Exhibit 55 with grades not redacted.

There is a presumption in favor of the public’s access to judicial records, and, for that reason, is not seeking to seal any of the deposition transcripts or the memorandum in support. Instead, the State Police requests that the Court file Exhibits 14, 15, 24-31, 52 and Exhibit 55 with grades not redacted to Plaintiff’s Opposition to the Motion for Summary Judgment under seal. These documents are:

14, 15, 26-31 and 52 are “summary reports” created by State Police Internal Affairs and contain information on each candidate for the following categories: (1) State Police experience; (2) time in grade (time as a lieutenant); (3) Prior law enforcement experience; (4) education; (5)

specialized training; (8) PES rating (i.e. performance evaluation rating); (9) Disciplinary action; (10) awards; and (11) commendations. There are typically four to eight candidates for each promotion represented on each summary report.

Exhibit 52 is a Certificate of Eligibles for a position for which Stelly was denied promotion to captain. Defendant did not request this document be sealed because the grades are redacted. However Stelly desires to file an Exhibit 52 with the grades of the candidates not redacted.

Exhibits 24, 25, and 55 (without grades redacted) include Certificates of Eligibles that show the grades that each candidate scored on the promotional exam. This is a competitive exam that tests the candidates on skills that they will need to perform the duties of the positions for which they are applying to be promoted. See the 2018 LSP Captain Examination Test Plan and References (Rec. Doc. 128-17 and Louisiana Constitution 10:45 (Rec. Doc 128-16)). The public should know that Stelly scored the highest grade on the promotional exams for the positions he applied to from 2018-2021. The public should know that on some of the times that Stelly was not promoted, a Black candidate was selected, even though that candidate had the lowest grade on the exam.

Exhibits 24 and 25 also include Interview Summary Forms that show the race of all candidates competing for the promotions, the candidate selected and the reasons for the selection of that candidate. The public has a right to know this information.

The State Police claims it has an interest in keeping the employment information of its troopers confidential from the public. It claims that Individuals who were promoted to captain from 2017- 2021 should not have the public know their employment information that was considered to promote them to captain.

The public are taxpayers of this state who pay for the Louisiana State Police. The public

has a right to know that the most qualified candidate for promotion to captain is being promoted to captain. Also, in the case, the public is entitled to know the for eight promotions to captain from 2017-2021 Stelly was denied promotion to captain even though he was much more qualified that the lieutenants who were selected for promotion. This is a matter of public safety. Having the most qualified captains on the Louisiana State police makes out state a safer place.

The public records law designates specifically what employment records of the Louisiana State Police are confidential and are exemptions to the public records law. The law states that if it is not listed as an enumerated exception, then it's public: That law says:

LRS 44:4.1(A) "The legislature recognizes that it is essential to the operation of a democratic government that the people be made aware of all exceptions, exemptions, and limitations to the laws pertaining to public records. In order to foster the people's awareness, the legislature declares that all exceptions, exemptions, and limitations to the laws pertaining to public records shall be provided for in this Chapter or the Constitution of Louisiana. Any exception, exemption, and limitation to the laws pertaining to public records not provided for in this Chapter or in the Constitution of Louisiana shall have no effect."

LRS 44:11: "Confidential nature of certain personnel records; exceptions

A. Notwithstanding anything contained in this Chapter or any other law to the contrary, the following items in the personnel records of a public employee of any public body shall be confidential:

- (1) The home telephone number of the public employee where such employee has chosen to have a private or unlisted home telephone number because of the nature of his occupation with such body.
- (2) The home telephone number of the public employee where such employee has requested that the number be confidential.
- (3) The home address of the public employee where such employee has requested that the address be confidential.
- (4) The name and account number of any financial institution to which the public employee's wages or salary are directly deposited by an electronic direct deposit payroll system or other direct deposit payroll system.

B. The provisions of R.S. 44:11(A)(3) shall not apply to the personnel records of a city or parish school board to the extent that the home address of any employee of a city or parish school board shall be made available to recognized educational groups.

C. Notwithstanding any other provision of this Chapter, the social security number and financial institution direct deposit information as contained in the personnel records of a public employee of any public body shall be confidential. However, when the employee's social security number or financial institution direct deposit information is required to be disclosed pursuant to any other provision of law, including such purposes as child support enforcement, health insurance, and retirement reporting, the social security number or financial institution direct deposit information of the employee shall be disclosed pursuant to such provision of law.

D. Notwithstanding anything contained in this Chapter or any other law to the contrary, all medical records, claim forms, insurance applications, requests for the payment of benefits, and all other health records of public employees, public officials, and their dependents in the personnel records of any public body shall be confidential. However, nothing in this Chapter shall be intended to limit access to employee records under the Code of Civil Procedure or Code of Evidence.

The law also states: LRS 44:31(B)(3): "The burden of proving that a public record is not subject to inspection, copying, or reproduction shall rest with the custodian."

Therefore, because not of these enumerated exemptions apply to the exhibits that the Defendant is attempting to hide from the public and seal for five years, the Defendants motion to seal these exhibits should be denied.

Respectfully Submitted,

/s/Victor R. Farrugia

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Certified by the Louisiana Board
of Legal Specialization*

CERTIFICATE OF SERVICE

I hereby certify that I have on this 30th day of June 2024, a copy of the above and foregoing pleading has been served upon counsel of record for all parties via email.

/s/Victor R. Farrugia