



AlaFile E-Notice

02-CV-2017-901580.00

Judge: JUDGE RICK STOUT

To: SULLIVAN CARROLL HART
csullivan@scottsullivanlaw.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

MEREDITH CORPORATION DBA WALA-TV/FOX10 NEWS VS CITY OF MOBILE
02-CV-2017-901580.00

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JOJO SCHWARZAUER
CIRCUIT COURT CLERK
MOBILE COUNTY, ALABAMA
CIRCUIT CIVIL DIVISION
205 GOVERNMENT STREET
MOBILE, AL, 36644

251-574-8420
charles.lewis@alacourt.gov



IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

MEREDITH CORPORATION d/b/a)	
WALA-TV/FOX 10 NEWS,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO
)	CV-2017-901580
CITY OF MOBILE,)	
)	
Defendants.)	

ORDER

This matter came before the Court for an evidentiary hearing on the merits of Plaintiff's claim for injunctive relief on March 7, 2018. Having considered the request for preliminary injunction, all pleadings and exhibits of record and oral argument, this Court finds that the Plaintiff's request for injunctive relief as to "[t]he police-worn camera footage taken during the September 2, 2016, pepper spray incident by the police officers from the Mobile Police Department during or after the McGill-Toolen High School and Murphy High School football game at the cannon located at Memorial Park, 1800 Airport Boulevard, Mobile, Alabama 36606" (the "BWC Footage") is due to be **GRANTED** as set forth below:

Pursuant to Ala. Code § 36-12-40, "[e]very citizen has a right to inspect and take a copy of any public writing of this state, except as otherwise expressly provided by statute." However, this right is not unfettered and, in determining whether public writings are subject to inspection as provided by Ala. Code § 36-12-40, "Courts must balance the interest of the citizens in knowing what their public officers are doing in the discharge of public duties against the interest of the general public in having the business of government carried on efficiently and without undue interference." *Stone v. Consol. Pub. Co.*, 404 So. 2d 678, 681 (Ala. 1981). In *Chambers v. Birmingham News Co.*, the Alabama Supreme Court provided the following guidance:

There is a presumption in favor of public disclosure of public writings and records expressed in the language of § 36-12-40. Limitations to the broad language of the statute are, nevertheless, necessary, and, as stated in *Stone*, absent legislative action, the judiciary has to apply the "rule of reason." However, it must be noted that this "rule of reason" shall not be applied so as to hamper the liberal construction of § 36-12-40. The exceptions set forth in *Stone* must be strictly construed and must be applied only in those cases where it is readily apparent that disclosure will result in undue harm or embarrassment to an individual, or where the public interest will clearly be adversely affected, when weighed against the public policy considerations suggesting disclosure. These questions, of course, are factual in nature and are for the trial judge to resolve. Moreover, the *Stone* exceptions should not come into play merely because of some perceived necessity on the part of a public official

or established office policy. Furthermore, because there is a presumption of required disclosure, the party refusing disclosure shall have the burden of proving that the writings or records sought are within an exception and warrant nondisclosure of them.

Chambers v. Birmingham News Co., 552 So. 2d 854, 856-57 (Ala. 1989); see also *Water Works & Sewer Bd. v. Consol. Publ'g, Inc.*, 892 So. 2d 859, 866 (Ala. 2004) (“We decline to abandon the *Stone* balancing test; ‘absent legislative action’ as to a particular class of records, we will continue to apply a rule of reason and ‘balance the interest of the citizens in knowing what their public officers are doing ... against the interest of the general public in having the business of government carried on efficiently and without undue interference.’”).

Thus, the merit of any given request for public writings pursuant to Code of Ala. § 36-12-40 is necessarily dependent on the attendant facts and circumstances surrounding the specific request and the requested public writings themselves. The Court’s ruling herein is therefore limited to Plaintiff’s request for the BWC Footage concerning the subject “pepper-spray incident.”¹ See Doc. 30, Amended Complaint, p. 9.

Pursuant to the Mobile Police Department policy, as set forth in MO-2017-10, “[a]ll internal and external requests for BWC data (images, sounds and metadata) must be made on a Video Request Form (PD-30) and submitted to the Cyber-Intelligence Unit.” (Doc. 59, E-4). “Release of BWC data shall be governed by applicable statutory law” and “[a]uthority for final approval or denial of each request rests with the Chief of Police.” (*Id.*) Thus, the Chief of Police has the authority to grant or deny requests for BWC Footage. However, in the event that a request for BWC data is made pursuant to Ala. Code § 36-12-40, and the request is denied by the Chief of Police pursuant to MO-2017-10, the requesting party may challenge that denial in the appropriate Circuit Court. See *Chambers v. Birmingham News Co.*, 552 So. 2d 854, 856 (Ala. 1989).

The City has denied the request for BWC Footage as permitted by MO-2017-10. Plaintiff has challenged that denial in this Court. The Court has undertaken the task of determining whether any of the relevant statutory exceptions to disclosure are applicable, and has further applied the *Stone* balancing test as required by precedent. In determining that the Plaintiff has a right “to inspect and take a copy of” the BWC Footage, the Court hereby finds as follows:

Ala. Code § 12-15-134 provides for protection of law enforcement records and files concerning juveniles in juvenile proceedings. The Court finds that several of the individuals depicted in the BWC Footage are juveniles. However, no juvenile was prosecuted for the events surrounding the incident depicted in the BWC Footage, therefore the BWC Footage is not subject to the exception contained within Code of Ala. § 12-15-134(a).

Ala. Code § 12-21-3.1 provides that “law enforcement investigative reports and related investigative material are not public records.” However, this statutory exception from the Open Records Act is limited to those records that are part of a pending criminal investigation. See *Water Works & Sewer Bd.*, *supra* at 866. The Court finds that there is no current ongoing investigation

¹ The BWC Footage has been submitted to the Court by Defendant City of Mobile and the Court has conducted a review, *in camera*, of the BWC Footage.

relating to any of the juveniles depicted in the BWC Footage for the events surrounding the subject pepper-spray incident. For this reason, the BWC Footage is not subject to the exception contained within Code of Ala. § 12-21-3.1.

The Court finds that the retrieval of body-worn camera footage places a tremendous burden upon the City, having heard testimony from Public Safety Director James Barber and Sergeant Charles Saviak that the time, expense and allocation of resources associated with such requests are so substantial that, were the City to be required in the future to retrieve body worn camera or dash camera footage for non-excluded public writings pursuant to Code of Ala. § 36-12-40, the City would have no choice but to end the body-worn camera program.

The Court further recognizes that “the Open Records Act does not obligate [the City] to research, inspect, identify, copy, assemble, and make arrangements to deliver” the BWC Footage, *State v. Isbell*, 985 So. 2d 446, 451 (Ala. 2007). Indeed, had the BWC Footage not already been retrieved, copied and provided to this Court, the Court would be inclined to find that, pursuant to Alabama law, the City had no obligation to undertake such efforts to retrieve the BWC Footage. However, because the BWC Footage has already been retrieved, copied and provided to the Court, the Court finds that there is no further burden imposed upon the City to provide Plaintiff with a copy of the same BWC Footage.

This Court finds that the individuals displayed in the BWC Footage may have a legitimate, constitutionally-protected privacy interest² in the non-disclosure of their identities and further finds “it is readily apparent that disclosure will result in undue harm or embarrassment to”³ the juveniles depicted therein. However, in this particular circumstance, the Court believes that blurring the faces of those individuals depicted in the BWC Footage will serve to adequately protect the privacy interests of these individuals⁴ and will prevent any undue harm or embarrassment to these juveniles.

² The “United States Supreme Court ... has recognized certain ‘zones of privacy’ protected by the penumbra emanating from the First, Fourth, Fifth, Ninth and Fourteenth Amendments.” *Gideon v. Ala. State Ethics Com.*, 379 So. 2d 570, 572 (Ala. 1980). Courts across the country have found legitimate privacy concerns related to the disclosure of body worn camera footage depicting third parties. See *Matter of Time Warner Cable News NY1 v. N.Y.C. Police Dep’t*, 2016 NY Slip Op 26253, ¶ 8, 53 Misc. 3d 657, 668, 36 N.Y.S.3d 579, 590 (Sup. Ct.) (there are multiple “potential situations in which an individual depicted in footage captured by BWCs would have a privacy interest sufficient to preclude disclosure.”); *Conan v. City of Fontana*, No. EDCV 16-1261-KK, 2017 U.S. Dist. LEXIS 79998, at *7 (C.D. Cal. May 24, 2017) (“the Court finds disclosure of the footage will result in particularized harm because the footage implicates privacy interests of third parties unrelated to this action.”); *Sampson v. City of El Centro*, No. 14cv1807-L (DHB), 2015 U.S. Dist. LEXIS 188854, at *18 (S.D. Cal. Aug. 31, 2015);

³ See *Chambers*, *supra* at 856.

⁴ See *Sampson* at *22 (“blurring or redacting faces [in police camera footage] will adequately protect non-party privacy interests.”).

DOCUMENT 31
It is therefore **ORDERED** and **ADJUDGED** that:

1. A preliminary injunction is issued restraining the City from excluding the Plaintiff from inspecting or copying “[t]he police-worn camera footage taken during the September 2, 2016, pepper spray incident by the police officers from the Mobile Police Department during or after the McGill-Toolen High School and Murphy High School football game at the cannon located at Memorial Park, 1800 Airport Boulevard, Mobile, Alabama 36606.”
2. The City shall have fourteen (14) days from the date of this Order to produce a copy of the BWC Footage to Plaintiff.
3. The City take steps to ensure that the faces of those individuals depicted in the BWC Footage are “blurred” prior to producing a copy of the BWC Footage.
4. Plaintiff shall pay all reasonable costs incurred in the blurring of the faces as required hereunder.
5. This Court’s ruling should not be construed so as to have any precedential value for Courts in this Circuit or elsewhere in determining the validity or sufficiency of any other request for public writings—including other requests for body worn camera footage from the City of Mobile—as each specific request must be analyzed in accordance with the exceptions provided by statute and the balancing test set forth in *Stone, supra*.



HONORABLE RICK STOUT
CIRCUIT COURT JUDGE

Aug. 13, 2018.