IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

OFFICER JOHN DOE, et al.	*	
Plaintiff,	*	
v.	*	**Case No. C-15-CV-22-2523**
	*	
MONTGOMERY COUNTY, MARYLAND	*	
	*	
Defendant.	*	

MEMORANDUM OPINION

I. INTRODUCTION

This matter came before the Court on December 21, 2022 for a Hearing on the Reporters Committee for Freedom of the Press and *The Washington Post* (together the "Media Intervenors") Motion to Intervene and Modify the Court's August 16, 2022 Protective Order (the "Protective Order"), and the Plaintiff's Opposition thereto; the Maryland Coalition for Justice and Police Accountability (the "Coalition") Motion to Intervene and Modify the Protective Order, and the Plaintiff's Opposition thereto; and Alexa Renehan's Motion to Intervene.

Upon consideration of the arguments of counsel as well as the memorandums of law filed in support of the Motions, it is this **24th day of February 2023**, the Circuit Court of Maryland for Montgomery County hereby makes the following findings with respect to the parties Motions to Intervene and Motions to Amend the Protective Order in the pending litigation.

II. BACKGROUND OF THE LITIGATION

A. The Pending Litigation

The Maryland Public Information Act ("MPIA") was enacted in the 1970s to grant the public access to government records.[1] The goal was to allow for the distribution of public records while "protecting legitimate governmental interests and the privacy rights of individual citizens."[2] In order to obtain a record, one must submit a public records request under the MPIA to the appropriate agency. On October 1, 2021, the Maryland Police Accountability Act of 2021- Search Warrants and Inspection of Records Relating to Police Misconduct ("MPAA"), otherwise known as Anton's Law went into effect.[3] Under the MPAA a police officer's internal discipline and complaint records is separate from their personnel records. Thereby, allowing the public to request an officer's internal discipline and complaint records through the MPIA. When the MPAA went into effect, Plaintiff, Fraternal Order of Police, Montgomery County, Lodge 35, Inc. ("FOP"), and Defendant, Montgomery County Maryland (the "County"), entered into a Memorandum of Agreement ("MOA") that governed the release of police disciplinary records in light of the new law.[4]

The litigation at hand stems from Renehan's January 28, 2022 request under the MPIA to Montgomery County, Maryland for police disciplinary records concerning Officer John Doe ("Doe).[5] Doe was notified of the request on June 22, 2022.[6] On June 29, 2022, Plaintiffs provided notice to the Defendant of their objection to the production of the requested records, in compliance with the parties' MOA.[7]

On July 5, 2022, Plaintiffs Officer John Doe and FOP filed the above-captioned matter to enjoin Defendant Montgomery County, Maryland from disclosing Officer Doe's police records as

---

[1] Md. Code, Gen. Prov. § 4-101, *et seq*. *See also* https://www.marylandattorneygeneral.gov/Pages/OpenGov/pia.aspx
[2] *Id.*
[3] *Maryland Police Accountability Act of 2021*, S.B. 178, 2021 Leg., 442nd Sess. (2021).
[4] Coalition's Ex. B.
[5] Renehan's Ex. A at 19.
[6] Pl. Amended Complaint.
[7] *Id.*

required by the parties' MOA.[8] Per the Plaintiffs' Amended Complaint, Plaintiffs request a declaratory judgment and injunctive relief to prevent the release of Doe's personnel records and request a declaratory judgment and injunctive relief stating the MPAA violates the substantive due process and equal protection rights arising under the Fourteenth Amendment to the United States' Constitution and Article 5 and 24 of the Maryland Declaration of Rights.[9] These claims are not ripe for review; thus, will not be discussed in this Opinion.

On September 27, 2022, the Media Intervenors filed and served its Motion to Intervene and Motion to Modify the Protective Order in the pending litigation under the First Amendment to the United States Constitution, Article 40 of the Maryland Declaration of Rights, and common law, stating that it seeks to vindicate the constitutional and common law rights that ensure access to court records and proceedings.[10] On September 30, 2022, Renehan filed and served her Motion to Intervene in the pending litigation under Maryland Rule 2-214, stating that she has a unique interest in this litigation and seeks to vindicate her rights under the MPIA and Anton's Law.[11] On October 11, 2022, the Coalition filed and served its Motion to Intervene in the pending litigation under Maryland Rule 2-214 and its Motion to Vacate the Case Sealing Order in the pending litigation, stating that it seeks to vindicate the constitutional and common law rights that ensure access to court records and proceedings and seeks to address the merits of the Plaintiffs' claims.[12]

B. Maryland Police Accountability Act (Anton's Law)

The death of Anton Black on September 15, 2018 started a five-year lobbying effort to require accessibility to police discipline records. Black died while in police custody after being

---

[8] *Id.*
[9] *Id.*
[10] *See generally* Media Intervenors' Emergency Motion to Intervene to Modify Protective Order and Obtain Public Access to Court Records and Proceedings.
[11] *See generally* Alexa Renehan's Motion to Intervene.
[12] *See generally* The Coalition's Motion to Intervene.

detained by three police officers in Caroline County, Maryland.[13] Blacks' parents unsuccessfully attempted under the MPIA to obtain the disciplinary records of the officers involved but were denied. The records were deemed personnel records and therefore not subject to disclosure by the custodians pursuant to Md. Code, Gen. Prov. § 4-311.[14]

Anton's Law rendered moot the *Dashiell v. Md. Dep't. of State Police* holding that police internal discipline and complaint records were indistinguishable from an officer's personnel record.[15] In other words, under *Dashiell,* the entirety of an officer's records were considered personnel records. Anton's Law, in effect, separated police internal discipline and complaint records from personnel records, thereby making disciplinary and complaint records releasable under the MPIA.

III. STANDARD OF REVIEW

A. Motion to Intervene

i. Intervention as of Right

Md. Rule 2-214(a) governs intervention as of right. The statute states, "Upon timely motion, a person shall be permitted to intervene in an action: (1) when the person has an unconditional right to intervene as a matter of law; or (2) when the person claims an interest relating to the property or transaction that is the subject of the action, and the person is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest unless it is adequately represented by existing parties."[16]

A party moving for intervention must satisfy four requirements in order to intervene as of right: (1) The application for intervention must be timely; (2) The applicant must have an interest

---

[13] *See Accountability for Police Killing Anton Black*, ACLU of Maryland (https://www.aclumd.org/en/campaigns/accountability-police-killing-anton-black).
[14] Md. Code, Gen. Prov. § 4-311. *see also Dashiell v. Md. Dep't. of State Police*, 443 Md. 435 (2015).
[15] *Id.*
[16] Md. Rule 2-214(a).

in the subject matter of the action; (3) Disposition of the action in the applicant's absence would at least potentially impair the applicant's ability to protect its interest; and (4) The applicant's interests must be inadequately represented by the existing parties.[17]

Timeliness is a "threshold issue to be resolved before reaching the substantive merits of the motion."[18] In evaluating timeliness, the court must analyze "the purpose for which intervention is sought, the probability of prejudice to the parties already in the case, the extent to which the proceedings have progressed when the movant [mov]es to intervene, and the reason or reasons for the delay in seeking intervention."[19] The trial court has broad discretion in evaluating timeliness.[20]

In evaluating an applicant's interest in the litigation, the court must find an applicant has "an interest for the protection of which intervention is essential and which is not otherwise protected."[21] One factor the court may evaluate is whether the intervenor will be bound by the judgment.[22] The intervenor must present some concrete evidence as to its interest, more than mere speculation that the outcome may adversely affect its interest.[23]

Factor three requires consideration of the disposition. A court must analyze whether an applicant's absence would at least potentially impair its ability to protect its interest.[24] There is limited case law analyzing this prong because it is subjective, and the burden is objectively low.[25]

---

[17] *See* Md. Rule 2-214(a); *Env't Integrity Project v. Mirant Ash Mgmt., LLC*, 179 Md. App 179 (2010) (citing *Hartford Ins. Co. v. Birdsong*, 69 Md.App. 615 (1987)). *see also Pharmaceia Eni Diagnostics, Inc. v. Wash. Suburban Sanitary Comm'n*, 85 Md. App. 555, 568, 584 (1991).
[18] *Hartford Ins. Co.*, 69 Md. at 623.
[19] *Doe v. Alternative Med. Maryland, LLC*, 455 Md. 377, 415 (2017) (citing *Maryland-Nat. Capital Park & Planning Comm'n v. Town of Washington Grove*, 408 Md. 37, 70 (2009)).
[20] *Maryland-Nat. Capital Park & Planning Comm'n*, 408 Md. at 70-71.
[21] *Id.* at 75 (quoting *Citizens Coordinating Comm. on Friendship Heights, Inc. v. TKU Associates*, 276 Md. 705, 712 (1976)).
[22] *Id.* (citing *Id.*)
[23] *Id.* (citing *Shenk v. Md. Dist. Sav. & Loan Co.*, 235 Md. 326, 327 (1964)).
[24] *Chapman v. Kamara*, 356 Md. 426 (1999).
[25] *Id.*

The finder of fact must evaluate the litigation at issue and the intervenor's unique interests in the litigation.[26]'

In evaluating the adequacy of representation factor, or factor four, the court must compare "the interest asserted by the intervention applicant with that if each existing party."[27] "The burden of showing that existing representation may be inadequate is a minimal one."[28] The Court in *Maryland Radiological Soc., Inc. v. Health Services Cost Review Comm'n.*, adopted an "interest-analysis" test to determine whether an intervenor does not have adequate representation:

> The cascading test to be applied is: 1) if the proposed intervenor's interest is not represented or advocated to any degree by an existing party, or if the existing parties all have interests which are adverse to those of the proposed intervenor, the intervenor should be permitted to intervene; 2) if the proposed intervenor's interest is similar, but not identical, to that of an existing party, 'a discriminating judgment is required on the circumstances of the particular case, but [the proposed intervenor] ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee'; 3) if the interest of an existing party and the proposed intervenor are identical, or if an existing party is charged by law with representing the proposed intervenor's interest, 'a compelling showing should be required to demonstrate why this representation is not adequate.'[29]

ii. Permissive Intervention

Md. Rule 2-214(b) governs permissive intervention. The statute states, in relevant part, "(1) Generally. Upon timely motion a person may be permitted to intervene in an action when the person's claim or defense has a question of law or fact in common with the action. (3) Considerations. In exercising its discretion, the court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties."[30]

---

[26] *Id.*
[27] *Maryland-Nat. Capital Park & Planning Comm'n*, 408 Md. at 103 (quoting *Maryland Radiological Soc., Inc.* v. *Health Services Cost Review Comm'n.*, 285 Md. 383, 402 (1979)).
[28] *Citizens Coordinating Comm.*, 276 Md. at 714.
[29] *Maryland-Nat. Capital Park & Planning Comm'n*, 408 Md. at 103 (quoting *Md. Radiological Soc*, 285 Md. at 390–91)).
[30] Md. Rule 2-214(b)(1) and (3).

"The underlying ground of [permissive intervention] is to promote judicial economy in the litigation process. More practical considerations, however, often play a role. The intervenor may fear, for example, that in his or her absence the court will rule the wrong way on an issue that the intervening party may have to litigate later if intervention is not granted."[31]

B. Motion to Modify a Protective Order

Md. Rule 16-900, *et seq* governs motions to seal and/or limit inspection of a case record. In relevant part, Md. Rule 16-934(a) provides: This Rule is intended to authorize a court to permit inspection of a case record that is not otherwise subject to inspection, or to deny inspection of a case record that otherwise would be subject to inspection, if the court finds, by clear and convincing evidence, (1) a compelling reason under the particular circumstances to enter such an order, and (2) that no substantial harm will come from such an order. In relevant part, Md. Rule 16-934 (e) provides:

(1) After an opportunity for a full adversary hearing, the court shall enter a final order:

(A) precluding or limiting inspection of a case record that is not otherwise shielded from inspection under the Rules in this Chapter;

(B) permitting inspection, under such conditions and limitations as the court finds necessary, of a case record that is not otherwise subject to inspection under the Rules in this Chapter; or

(C) denying the petition.

(2) A final order shall include or be accompanied by findings regarding the interest sought to be protected by the order.

---

[31] *Alternative Med. Maryland*, 455 Md. at 418-19 (quoting Md. Rule 2-214, Maryland Rules Commentary ((4th ed. 2014)), at 199).

(3) A final order that precludes or limits inspection of a case record shall be as narrow as practicable in scope and duration to effectuate the interest sought to be protected by the order.

(4) A final order granting relief under Code, Criminal Procedure Article, Title 10, Subtitle 3 shall include the applicable provisions of the statute. If the order pertains to a judgment of conviction in (A) an appeal from a judgment of the District Court or (B) an action that was removed pursuant to Rule 4-254, the order shall apply to the records of each court in which there is a record of the action, and the clerk shall transmit a copy of the order to each such court.

(5) In determining whether to permit or deny inspection, the court shall determine, upon clear and convincing evidence:

(A) whether a special and compelling reason exists to preclude, limit, or permit inspection of the particular case record, and, if so, a description of that reason;

(B) whether any substantial harm is likely to come from the order and, if so, the nature of that harm; and

(C) if the petition seeks to permit inspection of a case record that has been previously sealed by court order under subsection (e)(1)(A) of this Rule and the movant was not a party to the case when the order was entered, whether the order satisfies the standards set forth in subsections (e)(2), (3), and (5)(A) of this Rule.

(6) Unless the time is extended by the court on motion of a party and for good cause, the court shall enter a final order within 30 days after a hearing was held or waived.

In order for a court to grant a protective order, the court must make a finding by clear and convincing evidence that, (1) the presumption of access is overcome by a compelling government interest and (2) the sealing of the records is narrowly tailored to support the compelling

government interest. The Supreme Court has historically noted a presumption that trials, court proceedings, and court documents are open to the public.[32]

IV. BACKGROUND OF THE INTERVENORS

A. The Media Intervenors

The Reporters Committee and *The Washington Post* collectively form the Media Intervenors. This nonprofit, unincorporated association was founded in 1970 by journalists and media lawyers. Today, the association's attorneys "provide pro bono legal representation, amicus curiae support, and other legal resources to protect First Amendment freedoms and the newsgathering rights of journalists."

The Media Intervenors filed an Emergency Motion on September 27, 2022 to intervene in this matter for the "limited purpose of vindicating the constitutional and common law rights of the press and public to judicial proceedings and records." The Media Intervenors state that the proceedings at hand concern the newly enacted Anton's law and the Maryland Public Information Act ("MPIA"), which arguably should allow the public access to police disciplinary records. Further, it argues that the public's right to these records "are of keen interest to the press and public," justifying its need to intervene.

The Media Intervenors move this Court to grant leave to intervene in the above-captioned proceeding and request the Court modify its August 16, 2022 Protective Order, which in effect would unseal all previously filed sealed judicial matters. The Media Intervenors seek to ensure that all future filings are filed unredacted, not filed under seal, and all hearings are open to the public.

---

[32] *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 580 (1980). *see also Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 597 (1978).

Plaintiffs oppose the Media Intervenors' Motion and argue that, (1) the Media Intervenors lack standing to intervene; (2) the Protective order was entered to allow the parties to properly litigate the action, not seal the record from public inspection; (3) the improper conduct of *The Washington Post* warrants denial of the Motion to Unseal[33]; (4) the Motion to Unseal would nullify the ability to challenge MPIA disclosures; (5) the Media Intervenors do not articulate a basis to intervene; and (6) there is no urgency to produce Officer Doe's decades-old records.

Defendant does not object to intervention by the Media Intervenors so long as there is some form of protective order in place and the Media Intervenors abide by the order.

B. The Coalition

The Coalition is made up of "individuals and family members who have been impacted by police violence, civil rights activists, religious leaders, legal experts, and advocates for a whole host of groups led by Black and Brown people, who together agree on specific reforms with the goal of improving police practices in Maryland."[34] The Coalition aims to restore trust in police and aims to address police misconduct in Maryland.

The Coalition is a self-proclaimed main contributor to the passage of Anton's Law. As such, the Coalition seeks intervention in this matter stating it has a substantial interest in the Plaintiffs and Defendant's compliance with Anton's Law. The Coalition requested the records at issue on October 3, 2022.[35] The Coalition never received a response to this request. Additionally, it argues that the members of the Coalition and the public at large have a right to these records under the Constitution and Common Law and the Court failed to give notice and an opportunity to be heard to the Coalition prior to the granting of the Protective Order.[36]

---

[33] Plaintiffs contend *The Washington Post's* publishing of Plaintiff John Doe's name was improper conduct.
[34] The Coalition's Motion to Intervene.
[35] *See* Exhibit A to the Coalition's Motion to Intervene.
[36] The Coalition's Motion to Intervene.

The Coalition moves the Court to grant leave to intervene in the above-captioned proceeding, unseal all previously filed pleadings; sealed judicial matters; and modify the Protective Order entered by the Court on August 16, 2022 to ensure that all future filings are unredacted, unsealed, and all future proceedings are held in open court.

Plaintiffs oppose the Coalition's Motion and argue that (1) the Coalition does not have standing to intervene under Md. Rule 2-214(a)(2); the Coalition does not have standing to permissively intervene; and (3) the Coalition does not have standing to intervene under the Constitution and Common Law.

Defendant does not object to intervention by the Coalition so long as there is some form of protective order in place and the Coalition abides by the order.

C. Alexa Renehan

On January 28, 2022, Renehan submitted a public records request to Defendant, Montgomery County in order to obtain the disciplinary records for Officer John Doe, pursuant to Anton's Law.[37] On February 23, 2022 Renehan received a letter dated February 17, 2022 from Mary Davidson, the Montgomery County Police Department ("MCPD") Custodian of Records.[38] Davidson stated that the database located Officer Doe's "potentially releasable information" and a payment of $63,030 was required before the request could be processed.[39] In light of the high fees, Renehan limited her request to materials that describe each complaint the officer had received and the outcome.[40] On March 22, 2022, Merlie Figueroa, the MPIA Coordinator, sent Renehan a link to the documents requested.[41] Renehan claimed the documents provided were

---

[37] Alexa Renehan's Memorandum in Support of Motion to Intervene.
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] *Id.*

insufficient to satisfy her request, as the "Concise Employee History" did not provide any descriptions of a complaint nor its outcome.[42] Renehan reached out to the custodian of records three more times in regard to the missing records.[43]

On April 7, 2022, Davidson responded by suggesting a narrower scope of records to reduce costs.[44] Davidson stated the records would include the description of each complaint and the outcome.[45] The total cost to produce these documents was $270, which Renehan paid via the online payment portal.[46] On June 7, 2022, Davidson conveyed that the records were in the final stage of review and per an agreement between the MCPD and the FOP, the officer was entitled to review the records to be released.[47]

On July 6, 2022, Davidson informed Renehan that MCPD received the complaint filed with this Court to prevent the disclosure of the records. Renehan then retained counsel to file a motion seeking to intervene in the suit.[48]

Neither Plaintiffs nor Defendant oppose Renehan's request to intervene provided that she be bound by the Protective Order.[49]

V. THE MEDIA INTERVENORS AND THE COALITION MAY INTERVENE AS THE PUBLIC HAS A CONSTITUTIONAL AND COMMON LAW RIGHT OF ACCESS TO JUDICIAL RECORDS.

Plaintiffs argue that the Protective Order is necessary to "protect the identity of the Plaintiff and the contents of the records," and that "without such an order, the matter would likely be mooted by the publication of the contents of the disputed records and the identity of the

---

[42] *Id.*
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] *Id.*
[49] Per statements made by respective counsel during the December 21, 2022 hearing.

officer."[50] Further, Plaintiffs argue that the requested police personnel records are not subject to production under the MPIA and these requests invade the privacy of Officer Doe.[51] Plaintiffs also argue that the Media Intervenors' Motion caused great delay and prejudice to the Plaintiffs.[52]

A. Presumption of Access.

The Court holds that the Media Intervenors and the Coalition have a presumptive right of access to judicial records and proceedings under the First Amendment to the United States Constitution, Article 40 of the Maryland Declaration of Rights, and common law codified through Maryland jurisprudence. Moreover, Md. Rule 16-904 states that "judicial records are presumed to be open to the public for inspection." It is well-settled Maryland law and Federal law that nonparty members of the press and public may intervene for the limited purpose of contesting restricted access to court records and proceedings.[53]

The Media Intervenors and the Coalition have standing to litigate this presumptive right of access, which was codified in *News American v. State* when the court held that media outlets may intervene in criminal proceedings to assert a First Amendment right to access.[54] In 1991, Maryland extended this right to include civil proceedings.[55] Because "the right of public access is firmly embedded in the First Amendment,"[56] when assessing the need for restricted access, a court must determine whether (1) the presumption of access is overcome by a compelling government interest, and if so, whether (2) the sealing of the records is narrowly tailored to support said

---

[50] *See generally* Consent Motion for Protective Order and Briefing Schedule.
[51] *Id.*
[52] Argument made on the record during the December 21, 2022 hearing.
[53] The Media Intervenors and the Coalition may file a motion to intervene, and this is an appropriate motion, despite Plaintiff's arguments that the Intervenors should have filed a pleading.
[54] *News Am. Div., Hearst Corp. v. State,* 294 Md. 30, 45 (1982).
[55] *Doe v. Shady Grove Adventist Hosp.*, 89 Md. App. 351, 560 (1991) (holding that a protective order could be drafted, which would protect the confidentiality of patient's identity but would not hamper the right of public access).
[56] *State v. Cottman Transmission Sys., Inc.*, 75 Md. App. 647, 657 (1988) (holding that the gag ordered entered by the trial court was too broadly sweeping that it was an impermissible restraint on free speech).

government interest.[57] The proponent of the protective order bears the burden in showing that this strict scrutiny test is met.[58] Plaintiffs have failed to meet their burden.

B. The Presumption of Access is Not Overcome by a Compelling Government Interest.

Plaintiffs have failed to show a compelling governmental interest to overcome the presumption of access. As stated above, Plaintiffs argue their interest includes: a generalized protection against invasion of privacy, the records requested would invade an officer's right of nondisclosure, the Protective Order would allow the parties to litigate this matter without interference, and the litigation would be rendered moot if the records were to be disclosed. The Court finds that Plaintiffs' interests are outweighed by the Media Intervenors' interest, with the exception of specific documents that this Court has deemed for "counsel's eyes only" per the Amended Protective Order that will accompany this Opinion.

First, Anton's Law was quite literally created to balance the public's right to access against an officer's right to privacy.[59] Anton's Law separated an officer's disciplinary record from their personnel record.[60] This differentiation allows for transparency into an officer's previous wrongdoings without disclosing an officer's entire record.[61] The Court does agree with Plaintiffs that if the records in question were to be disclosed in their entirety, this litigation would be rendered moot. However, provided the Court maintains an Amended Protective Order, the disciplinary records in question will not be made public pending this litigation. This allows the litigation to proceed on the merits thereby addressing Plaintiffs' concern. Second, the officer's

---

[57] *Globe Newspaper Co. v. Superior Court for Norfolk Cnty.*, 457 U.S. 596, 607 (1982) (holding that to exclude the press and/or public from a criminal trial, there must be a showing that closure is necessitated by a compelling governmental interest and is narrowly tailored to serve that interest).
[58] *Id.*
[59] *Maryland Police Accountability Act of 2021*, S.B. 178, 2021 Leg., 442nd Sess. (2021).
[60] *Id.*
[61] *Id.*

name is already public, and in the media, which contradicts any claim for secrecy with respect to the officer's identity.[62] There is no privacy to protect with respect to the officer's identity.

Plaintiffs' assertions regarding the necessity of the Protective Order do not outweigh the public's right to access, as access is essential to the operation of a democratic system. And "the provisions of the [MPIA] reflect the legislative intent that citizens of the State of Maryland be accorded wide-ranging access to public information concerning the operation of their government."[63] Third, the right of access does not attach when a case resolves, despite Plaintiffs' assertion in their response.[64] The essence of this presumption of access is founded on the idea that the public should have access to all stages of a court proceeding. Further, Plaintiffs rely on *Garnett*, which holds that a temporary denial of the right of access is insufficient to establish a First Amendment argument.[65] The Court does not find Plaintiffs' argument compelling as the Court views the current Protective Order as a permanent, not temporary denial because there is no provision that requires or permits the eventual disclosure of the sealed filings or content of the hearings.

C. Sealing of the Records is Not Narrowly Tailored to Protect Any Governmental Interests.

Had this Court found that the presumption of access was not overcome by a compelling government interest, Plaintiffs would still fail to meet prong two of the strict scrutiny test, as the Protective Order is not narrowly tailored to support said government interest. Plaintiffs argue that there is a governmental interest in preventing the disclosure of personnel records and allowing the case to proceed on the merits. However, the Protective Order is not narrowly tailored to protect

---

[62] https://www.washingtonpost.com/dc-md-va/2022/12/21/maryland-police-union-sues/.
[63] *Prince George's Cnty. v. The Washington Post Co.*, 149 Md. App. 289, 307 (2003) (quoting *Baltimore v. Burke*, 67 Md.App. 147, 153 (1986). *see also* Media Intervenors' Emergency Motion to Intervene to Modify Protective Order and Obtain Public Access to Court Records and Proceedings.
[64] *See generally* Plaintiffs' Opposition to Maryland Coalition for Justice and Police Accountability's Motion to Intervene.
[65] *Gannett Co. v. DePasquale*, 443 U.S. 368, 393 (1979).

Doe's interests in his records. It is overbroad because it applies to all filings and hearings and not to just those pleadings and hearings related directly to Doe's records.

In supporting this argument, Plaintiffs largely rely on *Doe v. Shady Grove Adventist Hosp.* in their assertion for sealing the records. In *Doe*, the Court held that the plaintiff may proceed under a pseudonym to limit the public's right of access to the details of the suit.[66] The Plaintiff sued a hospital and claimed that the hospital's employees improperly disclosed that he was diagnosed with AIDS.[67] The Court noted that the plaintiff's personal right to privacy regarding his medical condition outweighed a compelling government interest.[68]

In the case at hand, however, not only did Plaintiffs ask for the parties to proceed under pseudonym, but a Protective Order was entered that required all case filings to be filed under seal, and closure of the proceedings to the public. The Protective Order is broader than necessary to protect Doe's confidentiality interests as well as to ensure John Doe's protected records are not released. Furthermore, the Court finds there are no interests to protect with respect to Doe's identity as his name is already public.[69]

VI. THE COALITION MAY INTERVENE PURSUANT TO MARYLAND STATUTES.

A. The Coalition may intervene as a matter of right under Md. Rule 2-214(a).

The Court holds, over Plaintiffs' objections, that the Coalition may intervene as of right because its Motion was timely; the Coalition has an interest in the subject matter of the action; a disposition in the case at hand could potentially impair the Coalition's ability to protect its

---

[66] *Shady Grove Adventist Hosp.*, 89 Md. App. 351 at 514. *see also* Consent Motion for Protective Order and Briefing Schedule entered August 16, 2022.
[67] *Id.*
[68] *Id.*
[69] Per statements made by the Court on the record during the December 21, 2022 hearing.

interests; and the Plaintiffs and Defendant in the case do not adequately represent the Coalition's interests.

i. Timeliness.

When considering timeliness of a party's intervention, the Court looks to all relevant factors, which may include, a delay in the motion to intervene, the stage of the litigation, prejudice to the parties involved, and/or the sincerity of the claim to intervene.[70] The Maryland Court of Appeals noted in *Washington Grove* that "[t]imeliness depends upon the individual circumstances in each case, and ... consideration of those circumstances rests initially with the sound discretion of the trial court, which, unless abused, will not be disturbed on appellate review."[71] The Court previously noted at the December 21, 2022 hearing that the timeliness argument on behalf of Plaintiffs is unconvincing because this matter remains at the preliminary stage of litigation.[72]

ii. The Coalition Has an Interest in the Subject Matter of the Action.

When considering the second and third factor, the Court looks to whether the intervenor may be bound by the outcome of the pending action.[73] The intervenor must show a mere disadvantage by the disposition.[74] The intervenor must put forward specific evidence as to the potential disadvantage, the argument cannot be entirely speculative.[75]

Here, the Court finds that the Coalition has a particularized interest in the litigation despite Plaintiffs' arguments. The Coalition has previously requested the same records at issue through a

---

[70] *Md. Radiological Soc*, 285 Md. at 383.ch
[71] *Doe*, 455 Md. at 415 (quoting *Maryland-Nat. Capital Park & Planning Comm'n*, 408 Md. 37, 70 (2009)).
[72] Plaintiffs filed its Complaint on July 5, 2022. Plaintiffs and Defendant entered into its Consent Motion for Protective Order and Briefing Schedule on August 16, 2022. The first Motion to Intervene was filed on September 27, 2022. At this time, Defendant has not filed a response to the initial Complaint.
[73] *Doe*, 455 Md. at 415 (quoting *Maryland-Nat. Capital Park & Planning Comm'n,* 408 Md. 37, 70 (2009)).
[74] *Chapman v. Kamara*, 356 Md. 426, 440-43 (1999) (holding that WMATA's intervention was permissible as it had a justiciable interest in opposing the motion to vacate).
[75] *Id.*

separate MPIA request.[76] Counsel for the Coalition at the December 21, 2022 hearing asked the Court to take judicial notice of the fact that if an MPIA request is not responded to within 30-days, it is deemed a denial. The Coalition submitted its MPIA request on October 30, 2022, meaning that the Coalition's 30-day deadline ran on November 2, 2022.[77] If the MPIA request was complied with, perhaps the Coalition would not need to intervene. However, the MPIA request was not honored. Further, the Coalition, as a driving force behind Anton's Law and a member of the public, has an interest in ensuring the litigation follows the law as intended.

iii. A Disposition in the Case Could Potentially Impair the Coalition's Ability to Protect its Interests.

There are few cases that outline the requirements for this third factor because the analysis is extremely fact intensive. The Court in *Chapman v. Kamara* outlined the standard of a potential impairment to the intervenor.[78]

The Court finds that the Coalition has put forward enough substantiated evidence to show that a disposition in the pending litigation could potentially impair its ability to protect its interest. This evidence includes its interests in protecting public access to judicial records, its ability to protect its rights under the MPIA of the documents at issue, and the Coalition's stake in the matter as a public interest organization dedicated to transparency in police misconduct.

iv. The Current Parties Do Not Adequately Represent the Coalition's Interests.

The Court must apply the "interest-analysis" test set forth in *Maryland Radiological Soc., Inc. v. Health Services Cost Review Comm'n.*,[79] Again, the Court does not need to find a definite

---

[76] *See generally* The Coalition's Motion to Intervene.
[77] MD GEN PROVIS § 4-1A-06.
[78] *Chapman*, 356 Md. at 440-43.
[79] *Md. Radiological Soc*, 285 Md. at 390–91.

inadequacy in the representation, rather the Coalition must put forward evidence to show that the representation may be inadequate.[80]

Here, the Court agrees with the Coalition that the already existing parties "do not have the same stake as the Coalition in enforcing the application of Anton's Law as written."[81] The Plaintiffs and Defendant in the existing matter are tasked with determining which, if any, of Doe's records may be released in light of Anton's law. On the other hand, the Coalition seeks to ensure that Anton's Law is complied with as intended. The Coalition has distinct, broader interests and therefore has put forth enough evidence to show that the Plaintiffs and Defendant may not adequately represent its interests.

B. Alternatively, the Coalition may permissively intervene under Md. Rule 2-214(b).

Even if the Coalition is not permitted to intervene as of right under Md. Rule 2-214(a), the Coalition may permissively intervene under Md. Rule 2-214(b). This gives the Court full discretion to allow intervention when there is a common question of law or fact and the intervention would not unduly delay or prejudice the pending litigation.

As stated above and on the record during the December 21, 2022 hearing, the timeliness argument is unconvincing as intervention at this point would not result in prejudice to the Plaintiffs. Additionally, the Court finds that there is a question of law and fact between the two disputes. Specifically, although for different reasons, both parties are interested in Doe's records, whether the records may be released to the public, and if records are to be released, which records are subject to publication.

---

[80] *Citizens Coordinating Comm. on Friendship Heights, Inc.*, 276 Md. 705 at 714.
[81] The Coalition's Motion to Intervene at 12.

C. The Coalition may intervene under Courts & Judicial Procedures 3-405.

In relevant part, § 3-405 states "(a)(1) If declaratory relief is sought, a person who has or claims any interest which would be affected by the declaration, shall be made a party."[82] Plaintiffs filed a complaint for declaratory relief as they have filed a Complaint to enjoin Defendant from releasing the records. Plaintiffs had not addressed this argument in their reply briefs. In addressing this argument at the hearing, Plaintiffs contend that the Coalition does not have standing to be made a party in this litigation. However, the Court finds the Coalition has a stake in this litigation, and therefore the Coalition has standing to be made a party, should the Coalition request this relief.

VII. RENEHAN MAY INTERVENE PURSUANT TO MARYLAND STATUTES

A. Renehan may intervene as a matter of right under Md. Rule 2-214(a). Alternatively, Renehan may permissively intervene under Md. Rule 2-214(b).

During the December 21, 2022 hearing, the Court permitted Renehan to intervene as of right. Neither Plaintiffs nor Defendant objected to this intervention provided that Renehan be bound by the Protective Order. Alternatively, Renehan may permissively intervene in this litigation.

VIII. THE MOTION TO INTERVENE IS PROPER SINCE THE INTERVENORS WERE NOT AFFORDED THE OPPORTUNITY TO PARTICIPATE IN THE PROTECTIVE ORDER HEARING.

The three parties seeking to intervene were not afforded the opportunity to participate in the hearing on closure and to challenge the entry of the Protective Order. The Maryland Court held in *Colbert* that the public should be made aware that there is a motion to seal so that there can be a

[82] *See also Williams v. Moore*, 215 Md. 181, 185 (1957) (holding that "the general rule {is} that ordinarily, in an action for declaratory judgment, all persons interested in the declaration are necessary parties").

sufficient adversarial hearing should there be any objections.[83] "For the public to be able to assert this right in a meaningful fashion, the motion must be docketed in advance of the time of the hearing to provide notice to afford an opportunity to oppose the closure motion, as well as to present alternatives to closure. The court should provide individuals opposing closure an opportunity to object and to state the reasons for that opposition before ruling on the closure motion."[84] Since neither the Media Intervenors nor the Coalition received proper notice, they were unable to participate in the sealing hearing. They had no option but to file Motions to Intervene to challenge the entry of the Protective Order.

The Court has already noted on the record that the Plaintiffs' argument regarding delays in the proceedings is not particularly strong. The Intervenors filed their Motions promptly after the entry of the Protective Order and their Motions were not malicious attempts to delay the proceedings.

IX. THE COURT'S FINDINGS: INTERVENTION & THE PROTECTIVE ORDER

For the reasons stated above, the Court shall **GRANT** the Media Intervenors' Motion to Intervene. The Court shall also **GRANT** the Media Intervenors' Motion to Modify the Protective Order, with caveats as detailed below. Further, for the reasons stated above, the Court shall **GRANT** the Coalition's Motion to Intervene. The Court shall also **GRANT** the Coalition's Motion to Modify the Protective Order, with caveats as detailed below. The Court shall also **GRANT** Renehan's Motion to Intervene, as previously stated during the hearing, and expounded upon in this Opinion.

In consideration of the entirety of the arguments, the Court shall vacate the entirety of the Protective Order entered on September 16, 2022. The Court will enter an amended protective

---

[83] *Baltimore Sun Co. v. Colbert*, 323 Md. 290, 306 (1991)
[84] *Id.* at 300.

order with the following limited provisions: all documents previously filed under seal shall be provided to counsel pursuant to an "attorney's eyes only" provision; counsel shall attempt to reach an agreement regarding redactions of the Fillings; if counsel cannot agree on the redactions to be made, the Court shall hold a hearing. Pending the outcome of this litigation, and absent an agreement of the parties, or further order of Court, Plaintiff John Doe's disciplinary records shall not be disclosed. Otherwise, all future filings and hearings shall be public with the exception of agreed to or court-ordered redactions.

X. CONCLUSION

An Order accompanies this Opinion.

Karla N. Smith
JUDGE, Circuit Court for
Montgomery County, Maryland