IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DIANE BOND,	)	
	)	
Plaintiff,	)	
	)	No. 04 C 2617
v.	)	
	)	Judge Joan Humphrey Lefkow
CHICAGO POLICE OFFICERS EDWIN	)	
UTRERAS (Star No. 19901), et al.,	)	Magistrate Judge Arlander Keys
	)	
Defendants.	)	

NOTICE OF MOTION AND CERTIFICATE OF SERVICE

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PLEASE TAKE NOTICE that on **Thursday, October 25, 2007 at 9:30 a.m.**, plaintiffs shall appear before the Honorable Judge Joan Humphrey Lefkow in Room 1925 at the U.S. District Court for the Northern District of Illinois, Eastern Division, and then and there present **PETITION OF 28 CITY OF CHICAGO ALDERMEN FOR LEAVE TO INTERVENE AND MOTION TO OBTAIN ACCESS TO CERTAIN DOCUMENTS REGARDING OVERSIGHT OF THE CHICAGO POLICE DEPARTMENT**, true and correct copies of which are attached hereto and herewith served upon you.

The undersigned, an attorney, certifies that he caused a true and correct copy of this notice and the attached pleadings to be served through CM/ECF system automatically to counsel identified above and via fax to Nadine Whichern, City of Chicago, Department of Law (312.744.3588) on this 22nd day of October 2007.

RESPECTFULLY SUBMITTED,

/s/ Matthew J. Piers
One of the Attorneys for Petitioners

Dated: October 22, 2007

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

DIANE BOND, Plaintiff v. CHICAGO POLICE OFFICERS EDWIN UTRERAS (Star No. 19901), et al., Defendants	)	No. 04 C 2617 Judge Joan Humphrey Lefkow Magistrate Judge Arlander Keys

Petition of 28 City of Chicago Aldermen for Leave to Intervene and Motion to Obtain Access to Certain Documents Regarding Oversight of the Chicago Police Department

Petitioners, City of Chicago Aldermen Toni Preckwinkle, Manuel Flores, Robert Fioretti, Pat Dowell, Leslie Hairston, Freddrenna Lyle, Sandi Jackson, Michelle Harris, Anthony Beale, Toni Foulkes, Joann Thompson, Latasha Thomas, Lona Lane, Willie Cochran, Howard Brookins Jr., Ricardo Munoz, Sharon Denise Dixon, Billy Ocasio, Walter Burnett, Jr., Ed Smith, Scott Waguespack, Carrie Austin, Rey Colon, Emma Mitts, Brendan Reilly, Thomas M. Tunney, Helen Shiller, Joseph A. Moore (hereafter collectively referred to as "Petitioners" or "Aldermen"), by their counsel Matthew J. Piers, Judson H. Miner and Clyde E. Murphy respectfully seek leave to intervene in this matter in order to obtain access to certain Chicago Police Department documents which have been produced to plaintiff in discovery in this case and wrongfully withheld from them by the City of Chicago's Corporation Counsel. In support of their petition, the Aldermen state as follows:

I. INTRODUCTION

The Aldermen come before this Court under extraordinary circumstances. The Aldermen are the elected officials of the City of Chicago charged with overseeing its various governmental agencies, including its police department. The corporate authority of the City of Chicago (an Illinois municipal corporation) is the City Council. The 28 Petitioners are a majority of that 50 member body. The Aldermen petition the Court because City of Chicago documents containing critical information related to their supervision and oversight of the Chicago Police Department have been produced in discovery in this case, but are being improperly withheld from them by Corporation Counsel of the City of Chicago, in direct conflict with Corporation Counsel's express judicial representations that the documents would be made available to any alderman upon request.

During the underlying litigation of this case, certain Chicago Police Department documents were compiled and produced in discovery. Those documents include documents pertaining to police officers who have been the subject of more than ten civilian complaints in a five year period as well as police misconduct investigative files regarding a group of officers who were charged with having engaged in a pattern of abuse against racial minorities on Chicago's South Side. In a written opinion issued July 2, 2007 (copy attached as Exhibit A), this Court ordered that these documents should be made available to the public. Subsequently, the Corporation Counsel sought to stay that Order. During proceedings regarding the requested stay of the July 2, 2007 Order, it was correctly represented to the Court that certain Chicago aldermen were also seeking the documents. In response, the Corporation Counsel represented that any harm from a stay

would be mitigated because the Corporation Counsel would provide the documents to "any City Council member who requests them." Exhibit B, Emergency Motion for Stay Pending Appeal, at 19.[1] On July 9, when this Court temporarily stayed its July 2 Order, it specifically directed that "if these alderman ask you for the information [the documents], ... you should give it to them." Exhibit C, at 9.

Thereafter, Petitioner Alderman Preckwinkle requested these documents from Corporation Counsel Mara Georges. Exhibit E, August 23, 2007 letter from Preckwinkle to Georges. Despite this Court's direction to the Corporation Counsel to provide the documents to the Aldermen, and despite Corporation Counsel's repeated representations to this Court and to the Seventh Circuit that it would do exactly that, the Corporation Counsel has refused to provide the documents to Alderman Preckwinkle. Exhibit F, September 11, 2007 letter from Georges to Preckwinkle.

This Court has already recognized the importance of the documents to the public: "Without such information, the public would be unable to supervise the individuals and institutions it has entrusted the extraordinary authority to arrest and detain persons against their will. With so much at stake, defendants simply cannot be permitted to operate in secrecy." Exhibit A, at 6.

The Aldermen have an even more pressing need for this information than the

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[1] That motion to the Seventh Circuit references as support for this point the Corporation Counsel's representations to this Court on July 9, 2007. Exhibit C, Transcript of Proceedings of July 9, 2007, at 7-9. In addition, in seeking unsuccessfully on July 16, 2007 to get Judge Pallmeyer to extend this Court's temporary stay, the Corporation Counsel again represented that "if there's any public official who has an interest in the documents that are in question, any Alderman ... they can contact the City, the City attorneys, and the city attorneys can provide them with that information." Transcript of Proceedings of July 16, 2007, copy attached as Exhibit D, at 18.

general public. The Aldermen are actively engaged in ongoing efforts to improve police oversight in Chicago in furtherance of their duty as elected officials and public trustees. In the context of the recent rash of allegations of serious misconduct within the City's Police Department, the importance of these documents to City Council cannot be overstated. Amid reports that rogue officers with a history of multiple abuse complaints are using their position for criminal purposes (*see, e.g.*, Exhibits G and H), it is imperative that the City Council have access to documents that may disclose patterns of illegal activity within the Police Department so that it can investigate and properly discharge its oversight responsibilities.

II. BACKGROUND

The Court is familiar with the procedural history that forms the basis for Petitioners' Motion. During the course of litigation in this case, the City of Chicago produced to Plaintiff Diane Bond certain Chicago Police Department documents, including lists of Chicago police officers who were repeatedly charged with official misconduct and documents detailing the Chicago Police Department's investigations of civilian complaints against the defendant officers. These documents were covered by a protective order entered by this Court and, consequently, no one outside the litigation has been able to view them.

A journalist, Jamie Kalven, petitioned this Court to intervene and for a ruling that the documents at issue are not confidential and should be released. On July 2, 2007, this Court found that the documents had "a distinct public character" and ordered that the protective order be lifted, and the documents be released to the public. Exhibit A, at 6.

In the face of this Court's July 2 Order, the Corporation Counsel moved for an

emergency stay. At the hearing on the motion to stay, counsel for Plaintiff Bond, Craig Futterman, brought to the Court's attention the fact that Aldermen had been seeking access to the disputed files. Exhibit C, at 6-7. The Court directly asked the City to address the Aldermen's requests for this information:

> THE COURT: I do find it persuasive ... that aldermen of the city are interested in this information because it seems to me as our elected representatives they, [if] anyone, have an interest in this, a very legitimate interest.
> So what's your response to that?
>
> CITY COUNSEL: I don't doubt that there is an interest generally in these concerns ...

Id. at 8-9.

The Assistant Corporation Counsel's comments were an understatement. At the time, the City Council had scheduled a hearing on a legislative proposal to reform Chicago's Office of Professional Standards ("OPS"), the office charged with investigating allegations of excessive force made against Chicago police officers. Legislative consideration regarding reforms to improve police oversight is ongoing. The documents at issue contain vital information about the effectiveness of OPS, and have direct bearing on the City Council's deliberations over possible reforms. To ensure that the Aldermen would have access to the information, the Court directed the Corporation Counsel to provide the documents to any Alderman who requested them:

> THE COURT: Well, let me try to be clear here. What I am hearing ... is that some aldermen have approached them about getting this information ... and the aldermen will say, well, what do you have? **And if these alderman ask you for the information, you have it, you should give it to them.**

Id. at 9-10 (emphasis added). Accordingly, the Corporation Counsel represented to this

Court, and thereafter to the Seventh Circuit that it would "make the confidential documents available to any City Council member who requests them." Exhibit B, at 19.

III. THE ALDERMEN HAVE STANDING TO INTERVENE IN ORDER TO CHALLENGE THE PROTECTIVE ORDER

Just as the press has a legitimate interest in intervening in a lawsuit to obtain access to documents withheld under a protective order, the Aldermen have standing to intervene pursuant to Federal Rule of Civil Procedure 24 in order to "challenge a protective order for abuse or impropriety." *Grove Fresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 898 (7th Cir. 1994), *citing In re Cont'l Ill. Sec. Litig.*, 732 F.2d 1302 (7th Cir. 1984); *see also In re Associated Press v. Ladd*, 162 F.3d 503, 507 (7th Cir. 1998); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 783 (1st Cir. 1988); and *Jessup v. Luther*, 227 F.3d 993, 997 (7th Cir. 2000).

IV. THE CORPORATION COUNSEL SHOULD BE BOUND BY THE REPRESENTATIONS MADE TO THIS COURT AND THE SEVENTH CIRCUIT THAT IT WILL SHARE THE DOCUMENTS WITH "ANY CITY COUNCIL MEMBER WHO REQUESTS THEM"

On July 13, Corporation Counsel filed an emergency motion to stay the July 2 Order, this time with the Seventh Circuit. In that motion, Corporation Counsel adopted and reaffirmed its prior agreement to provide City Council members with the documents:

> We are aware that one reason Bond wants to be freed from the commitment she and her counsel undertook in agreeing to the protective order is to provide the material to members of the Chicago City Council before a vote on Wednesday, July 18, 2007, on an ordinance to overhaul CPD's Office of Professional Standards, which investigates allegations of police misconduct. That motivation should not bear on deciding this motion. **The Aldermen do not need to sue CPD or the Law Department to obtain this information, nor do they have to obtain access to the materials from Futterman or Kalven. We have agreed to make the confidential documents available to any City Council member who requests them.**

Exhibit B at 19 (emphasis added).[2]

On that same day, Corporation Counsel filed a third emergency motion, this time to extend the stay granted by this Court. Before Judge Pallmeyer, who served as the emergency judge, the Corporation Counsel again reaffirmed that the documents would be provided to the Aldermen. The Corporation Counsel argued that there was no "time urgency" because "if there's any public official who has an interest in the documents that are in question, **any alderman ... can contact the city, the city attorneys, and the city attorneys can provide them with that information.**" Exhibit F, at 18 (emphasis added).

Both this Court and the Seventh Circuit entered stay orders based in part upon the Corporation Counsel's representations that it would provide the documents to any Alderman who asked. Thereafter, contrary to the Corporation Counsel's representations to this Court and the Seventh Circuit, and in defiance of this Court's directions, the Corporation Counsel refused to provide Alderman Preckwinkle or any other City Council member with these critical documents. Exhibit F.

The Corporation Counsel should not be allowed to make representations to three courts, obtain relief based on those representations, and then fail to act in accordance with the representations. If the Corporation Counsel's contradictory positions had occurred in the context of separate litigation, it would be grounds for judicial estoppel. *See Moriarty v. Svec*, 233 F. 3d 955, 962 (7th Cir. 2000) ("The doctrine of judicial

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[2] As noted above, the Corporation Counsel cited pages 7-9 of the July 9 transcript before this Court as record support for its position that Corporation Counsel had affirmatively agreed to provide the OPS files to any Alderman who asked. See Exhibit B, at 19.

estoppel provides that when a party prevails on one legal or factual ground in a lawsuit, that party cannot later repudiate that ground in further litigation based on the same underlying facts"); *Johnson v. Exxon Mobil Corp.*, 2004 WL 419897, at *4 (N.D. Ill. Feb. 2, 2004) ("The doctrine of judicial estoppel is intended to protect the integrity of the judicial process by preventing a party who prevails on one ground in one judicial proceeding from repudiating that ground in a subsequent judicial proceeding"), citing *New Hampshire v. Maine*, 532 U.S. 742, 749 (2001). *Campbell v. Clarke*, 481 F.3d 967, 969 (7th Cir. 2007) (litigants "who attempt to deceive federal judges ... cannot expect favorable treatment on matter of discretion"). Here, the Corporation Counsel has obtained a stay based, based in part on a representation that the Aldermen would have access to the documents, and then refused to act in accordance with the representations made to the court. The distinction should make no difference, for the policy underlying judicial estoppel is equally applicable here. The Corporation should not be allowed to make representations to three courts in the same litigation, prevail by obtaining a stay on the basis of those representations, and then repudiate the grounds upon which the stay was granted.

V. THE ALDERMEN HAVE A COMPELLING NEED FOR THE DOCUMENTS

Petitioners simply seek an order permitting the Aldermen, the members of the corporate authority of the City, to have access to the documents of their own Police Department, documents which the Corporation Counsel has admitted they should be able to review. Although this Court's July 2, 2007 Order lifting the protective order has been appealed to the Seventh Circuit, the protective order itself was not appealed, and this

Court still retains jurisdiction to enforce it, or, in its discretion, modify its terms, either by directing the Corporation Counsel to fulfill its commitment to provide the documents to requesting Aldermen, or, in the alternative, by permitting plaintiff to share the documents with the Aldermen.

The citizens of Chicago have charged their Aldermen with the responsibility of running the City government, including overseeing the Police Department. The documents at issue here are important to the City Council's supervision of the Chicago Police Department. As this Court has already found, "as our elected representatives they, of anyone, have an interest in this, a very legitimate interest." Exhibit C, at 8.

As noted above, in recent months, the City Council has held ongoing sessions regarding oversight and reform of the Chicago Police Department and OPS. Their general concerns in this regard have been heightened by recent, very troubling revelations. For example, a Chicago police officer, Jerome Finnigan, has recently been charged by the United States Attorney's Office with a series of highly serious, illegal activities, including robbery, official misconduct, and attempted murder. *See* Exhibit G. It has been publically reported that he was #3 on the list of officers with repeated official misconduct complaints. *See* Exhibit H. The two officers who headed the list above Finnigan were reportedly fellow members of the Special Operations Section of the Chicago Police Department, which was recently disbanded by the Superintendent of police in response to numerous charges of official misconduct. *Id.*

In addition to their concerns that the Police Department, the largest and one of the most important City departments, should effectively manage its personnel, the Aldermen are also acutely concerned that other as-yet unidentified officers on this list may be

involved in patterns of abuse perpetrated upon the citizens of Chicago, the very people the Aldermen and the police are responsible for protecting. The Aldermen have a legitimate and pressing need to see the documents in order to carry out their duties of overseeing the Police Department.

Further, Chicago City Council members are charged with approving the collective bargaining agreements between the Chicago Police officers' bargaining representative, the Fraternal Order of Police ("FOP") and the City. The present agreement expires this year and a new one is currently being negotiated by the Corporation Counsel and the FOP. The collective bargaining agreements with the FOP contain negotiated provisions which implicate police supervision, discipline, monitoring, and control - including the use (or non-use) of prior OPS complaints in OPS disciplinary proceedings to show such matters as motive and the lack of mistake. In addition, the collective bargaining agreements address the timing of the destruction of OPS files and limitations on the use of information about the number of complaints against officers in police behavioral monitoring and control systems.

The documents sought by the Aldermen facilitate their ability to exercise their legislative duty to carefully scrutinize the contract on behalf of the public so that the contract does not insulate officers potentially engaged in illegal or improper activities from meaningful discipline, monitoring and control.

For the foregoing reasons, good cause exists to modify the protective order to permit the Aldermen to access the documents, either from plaintiff Bond or the Corporation Counsel.

VI. CONCLUSION

The petitioning Aldermen seek the opportunity to review the Chicago Police Department documents which have already been provided to a party who sued the City. They seek to do so as part of their duties as public stewards and members of the corporate authority. The Aldermen have demonstrated substantially more than good cause to obtain access to these documents and ask the Court only to order what it has already determined they should receive, and what Corporation Counsel agreed they should be able to receive.

WHEREFORE, Petitioners, Aldermen Toni Preckwinkle, Manuel Flores, Robert Fioretti, Pat Dowell, Leslie Hairston, Freddrenna Lyle, Sandi Jackson, Michelle Harris, Anthony Beale, Toni Foulkes, Joann Thompson, Latasha Thomas, Lona Lane, Willie Cochran, Howard Brookins Jr., Ricard Munoz, Sharon Denise Dixon, Billy Ocasio, Walter Burnett, Jr., Ed Smith, Scott Waguespack, Carrie Austin, Rey Colon, Emma Mitts, Brendan Reilly, Thomas M. Tunney, Helen Shiller, and Joseph A. Moore, respectfully request that this Court enter an Order:

1. Granting them leave to intervene in this matter pursuant to Federal Rule of Civil Procedures 24; and

2. Modifying the Protective Order of February 2, 2005, to allow plaintiff to provide them with complete copies of the following documents, unredacted except as to private and personal information[3]:

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[3] As indicated in the Court's Order of July 2, 2007, such information would not include social security numbers, home addresses, telephone numbers, salaries, rates of pay, medical information and employee numbers, which the Aldermen have no need for in their review and consideration of these documents.

(a) The list of all Chicago police officers who had more than ten official complaints lodged against them from 2001 to 2006;

(b) The list of officers who had more than ten official complaints lodged against them from 2001 to 2006 and who were referred to one of Chicago's "early warning" programs;

(c) The list of officers who had more than ten official complaints lodged against them from 2001 to 2006 and who worked in the Public Housing South Unit;

(d) The defendant officers' Employee Complaint Histories;

(e) The CR files opened against the individual defendant officers; and

(f) The CR files directly related to plaintiff Diane Bond's complaints; or, in the alternative

3. Directing the Corporation Counsel to provide them with complete copies of the documents listed above, unredacted except as to personal and private information.

RESPECTFULLY SUBMITTED,

/s/ Matthew J. Piers
One of the Attorneys for Petitioners

Dated: October 22, 2007

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Plaintiff,	)	
	)	**No. 04 C 2617**
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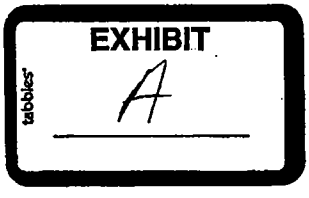
v.	)	**Judge Joan Humphrey Lefkow**
	)	
CHICAGO POLICE OFFICER EDWIN UTRERAS, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Plaintiff, Diane Bond ("Bond"), filed suit against five Chicago police officers ("the defendant officers"), the former chief administrator of the Office of Professional Standards, the present and former superintendent of the Chicago Police Department ("CPD"), and the City of Chicago ("the City") (collectively, "defendants"), alleging that the defendant officers subjected her to sexual, physical and psychological abuse pursuant to a police department policy, custom and practice under 42 U.S.C. § 1983. Shortly before trial, the parties reached a settlement. On March 23, 2007, the court entered an Agreed Order of Dismissal and dismissed the case with prejudice.

Pursuant to the parties' agreed motion, at the outset of the litigation this court entered a protective order, which allowed the parties to designate certain discovery material as confidential. The protective order defined "Confidential Matter" not to be disseminated to the public as, *inter alia*, "employment, disciplinary, investigatory ... or other information that is of a sensitive or non-public nature regarding plaintiff, defendants, non-party witnesses and non-party



employees of the City of Chicago that may be subject to discovery in this action." The protective order further provided, however, that "the designation of material as 'Confidential Matter' does not create any presumption for or against that treatment" and explicitly noted that this court would retain authority to potentially redesignate any material designated "confidential."

Prior to the parties' settlement, Bond requested and received extensive discovery documents, which included, *inter alia*, 1) a list of police officers during a specified time period against whom more than ten complaint register ("CR") files had been opened, identifying the officers by name and the CR files by number; 2) a list of those police officers identified in (1) who had been referred to CPD's early intervention programs; 3) a list of those officers identified in (1) who had been assigned to CPD's Public Housing South Unit; 4) the employee complaint histories of the defendant officers; 5) CR files against the defendant officers; and 6) CR investigative files initiated by complaints made by Bond.

On March 15, 2007, Jamie Kalven ("Kalven"), a self-described professional writer and journalist,[1] petitioned to intervene in this case[2] and moved the court to strike the confidential

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[1]See. e.g., JAMIE KALVEN, WORKING WITH AVAILABLE LIGHT: A FAMILY'S WORLD AFTER VIOLENCE (W. W. Norton & Company, 1st ed., 1999); Jamie Kalven, *Healing Is a Matter of Small Acts of Attention and Care Sustained Over Time*, at http://www.slate.com/default.aspx?id=3944&qt=jamie+kalven; Jamie Kalven, *Kicking the Pigeon*, at http://www.viewfromtheground.com/wp-content/media/ktp/kicking_the_pigeon.pdf.

[2]"[I]ntervention is the procedurally appropriate course for third-party challenges to protective orders," with the press having "standing to challenge a protective order for abuse or impropriety." *Grove Fresh Distributors, Inc.* v. *Everfresh Juice Co.*, 24 F.3d 893, 896, 898 (7th Cir.1994). *See also Jessup* v. *Luther*, 227 F.3d 993, 997-98 (7th Cir. 2000) (discussing the press and general public's right to intervene to challenge confidentiality orders in the language of Rule 24, Fed. R. Civ. P). For that reason , and because defendants express no opposition to Kalven's intervention, concentrating instead solely on Kalven's motion to unseal the disputed documents, Kalven is given leave to intervene in this action for the limited purpose of challenging the protective order for abuse or impropriety.

designation of certain documents produced during discovery by defendants.[3] Kalven contends that 1) certain documents are improperly designated as "Confidential Matter" under the protective order;[4] and 2) in any event, now that the parties have settled, good cause no longer exists to keep any of the disputed records confidential.

In response, defendants argue that public access to the requested documents should be denied because 1) there is no presumption of access to documents that were produced during discovery but were never presented to or considered by the court in resolving a motion; 2) defendants would be unfairly prejudiced by the public dissemination of the disputed documents outside of the adversarial process; and 3) the privacy interests of the defendant officers outweigh the public's purported right to or interest in access to the documents.

To begin, it is important to recognize that Kalven has not claimed a common law or first amendment right of access to the disputed documents but instead bases his claim on Rule 26(c)

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[3]Specifically, Kalven seeks access to the following documents:

> 1) The list of all Chicago police officers who had more than ten official complaints lodged against them from 2001 to 2006; 2) The list of officers who had more than ten official complaints lodged against them from 2001 to 2006 and who were referred to one of Chicago's "early warning" programs; 3) The list of officers who had more than ten official complaints lodged against them from 2001 to 2006 and who worked in the Public Housing South Unit; 4) The defendant officers' Employee Complaint Histories; 5) The CR files opened against the individual defendant officers; and 6) The CR files directly related to plaintiff Diane Bond's complaints.

Petition to Intervene and Motion to Unseal Public Documents Relating to Allegations of Police Misconduct ("Motion to Unseal") at 15-16.

[4]Because the court finds below that the protective order previously entered in this case should be lifted, there is no reason to undertake a document-by-document review to assess Kalven's contention that the City improperly designated certain documents "confidential."

of the Federal Rules of Civil Procedure. Rule 26(c) permits a district court to issue protective orders covering discovery materials upon a showing of good cause:

> Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense ....

Fed. R. Civ. P. 26(c). While defendants acknowledge the "good cause" standard for protective orders under the federal rules, defendants attempt to avoid its application by asserting common law and constitutional arguments regarding whether the public has a presumptive right of access to pretrial discovery materials that were not presented to the court and made part of the judicial decision-making process. These arguments are unavailing, however, because of the applicability of Rule 26(c), which provides an independent basis to inspect discovery materials.

Rule 26(c) , unlike the common law and first amendment, *see Seattle Times Co.* v. *Rhinehart*, 467 U.S. 20, 104 S. Ct. 2199, 81 L. Ed. 2d 17 (1984), embodies a presumption of public access to pretrial discovery materials, including those that are not part of the judicial record. "It is implicit in Rule 26(c)'s 'good cause' requirement that ordinarily (in the absence of good cause) a party receiving discovery materials might make them public." *Public Citizen* v. *Liggett Group, Inc.*, 858 F.2d 775 (1st Cir. 1988). Indeed, "[u]nless the public has a presumptive right of access to discovery materials, the party seeking to protect the materials would have no need for a judicial order since the public would not be allowed to examine the materials in any event." *In re Agent Orange Prod. Liab. Litig.*, 821 F.2d 139, 145-46 (2nd Cir. 1987). Following the reasoning of the First and Second Circuits, the Seventh Circuit has concluded that while "pretrial discovery, unlike the trial itself, is usually conducted in private" "the public at large pays for the courts and therefore has an interest in what goes on at all stages of a judicial proceeding."

See Citizens First Nat'l Bank of Princeton v. *Cincinnati Ins. Co.*, 178 F.3d 943, 945-46 (7th Cir. 1999). As a consequence, "[a]s a general proposition, pretrial discovery must take place in the public unless compelling reasons exist for denying the public access to the proceedings.[5] *Am. Tel. & Tel. Co.* v. *Grady*, 594 F.2d 594, 596 (7th Cir. 1979).

In deciding whether good cause exists, the district court must balance the interests of the parties, taking into account the harm to the party seeking the protective order and the importance of the disclosure to the nonmoving party. *Wiggins* v. *Burge*, 173 F.R.D. 226, 229 (N.D. Ill. 1997). When making a good cause determination, a district court may consider "privacy interests, whether the information is important to public health and safety and whether the party benefitting from the confidentiality of the protective order is a public official." *Citizens First Nat'l Bank of Princeton*, 178 F.3d at 944-45.

Defendants contend that "granting Kalven access to the protected documents he seeks to obtain is prejudicial to defendants because it would make public documents that cast defendants in an unfavorable light while depriving them of the ability and opportunity to effectively to respond to them." The fact that the allegations of police misconduct contained in the requested materials would bring unwanted, negative attention on defendants is not a basis for shielding the materials from public disclosure. The public has a significant interest in monitoring the conduct of its police officers and a right to know how allegations of misconduct are being investigated and handled. *See Doe* v. *Marsalis*, 202 F.R.D. 233, 238 (N.D. Ill. 2001). The court

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[5]Defendants also assert that the public's interest in access to materials that form the basis of a judicial decision is greater than in other materials generated in the discovery process. There is certainly support for that proposition, *see Hobley* v. *Burge*, 225 F.R.D. 221, 224 (N.D. Ill. 2004), but it does not, as defendants suggest, defeat the presumption of public access to pretrial discovery materials.

acknowledges that some and perhaps even all of the allegations contained in the disputed documents may not be true, but it trusts that "[t]he general public is sophisticated enough to understand that a mere allegation of police [abuse], just like a lawsuit, does not constitute actual proof of misconduct." *Wiggins*, 173 F.R.D. at 230. Moreover, to the extent that the allegations are indeed unfounded, the court is unpersuaded by defendants' bare assertion that they will be unable to demonstrate that to the public. The City has its own public relations department and there are no doubt countless media outlets that would invite City officials to participate in an open and frank discussion regarding these and other allegations of police misconduct.

Defendants' contention that the police officers' privacy interest outweighs the public's interest in the disclosure of the disputed documents is similarly unpersuasive. While the defendant officers have a valid privacy interest in the protection of private and sensitive information such as their social security numbers, home addresses and telephone numbers, the protective order already provides for and Kalven consents to the redaction of such information. Defendants contend that the defendant officers' complaint and disciplinary histories, whether summarized in list form or employee complaint histories, or in the investigative files in which the officer is accused of misconduct, are also part of their employee personnel file and thus protected from disclosure. That information, though personal, has a distinct public character, as it relates to the defendant officers' performance of their official duties. Without such information, the public would be unable to supervise the individuals and institutions it has entrusted with the extraordinary authority to arrest and detain persons against their will. With so much at stake, defendants simply cannot be permitted to operate in secrecy.

Finally, defendants contend that the Illinois Freedom of Information Act, 5 Ill. Comp. Stat. 140/1 *et seq.*, and the Illinois Personnel Records Review Act, 820 Ill. Comp. Stat. 40/0.01, both prohibit the disclosure of the disputed documents. In another case, this court already rejected defendants' attempt to use the Illinois FOIA to justify the confidentiality of the type of documents at issue in this case:

> Not only have defendants not convinced the court that the CR files or matters of police discipline are covered by the provisions they cite, but, to the contrary, [the Illinois FOIA] specifically states "disclosure of information that bears on the public duties of public employees and officials shall not be considered an invasion of personal privacy." See 5 ILCS 140/7(1)(b). This sentiment is in line with the policy favoring the public's right to be informed of the conduct of public servants.

Doe v. *White*, 2001 WL 649536, at * 1 (N.D. Ill. June 8, 2001). Defendants' reliance on the Illinois Personnel Records Review Act is also unavailing. Section 7 of that statute, the only section that has any conceivable connection to the issue before the court,[6] merely provides that an employer must give an employee written notice before disclosing "a disciplinary report, letter of reprimand, or other disciplinary action to a third party." 820 Ill. Comp. Stat. 40/7(1). Thus, the Illinois Personnel Records Review Act does not prohibit the disclosure of the disputed documents; rather it merely prescribes the procedures the CPD, as the defendant officers' employer, must follow before disclosing them. Since those procedures are hardly onerous, the Illinois Personnel Records Review Act does not provide good cause for maintaining the protective order. Even if the procedures were overly burdensome, defendants concede that Kalven is likely to obtain the documents from Bond's counsel, and since they are not subject to

[6]Defendants do not cite a specific section of the statute nor explain how the statute prohibits disclosure of the disputed documents, so the court has reviewed the statute on its own in an effort to ascertain whether any basis exists for defendants' reliance on the statute.

the Illinois Personnel Records Review Act, defendants' reliance on that statute would remain unfruitful.

CONCLUSION

Court related documents, even those not part of the judicial record, are presumed to be accessible to the public. The documents at issue in this case involve allegations of police misconduct, including the harassment and abuse of public housing residents, a particularly vulnerable group of citizens, and thus touch upon matters of grave public concern. The privacy interests of the defendant officers are diminished because of their status as public officials, and those interests that remain are served by the redaction of certain information from the requested documents. Balancing these interests, good cause no longer exists for shielding the requested materials from public inspection.[7] *See Marsalis*, 202 F.R.D. at 239 (authorizing the public disclosure of discovery documents produced by the City following its settlement of a civil rights lawsuit against its officers); *Wiggins*, 173 F.R.D. at 230 (same).

Accordingly, Kalven's motion to intervene and to unseal public documents relating to alleged police misconduct [#242] is granted. In their briefing on this motion, the parties did not distinguish between an order unsealing the record and an order ordering the disclosure of the disputed documents. To be clear, the court orders only that the protective order previously entered in this case be lifted to permit either party to disseminate the documents exchanged during the underlying litigation, as the court's authority to order dissemination of the documents

[7]Neither party discusses the potential impact of the public disclosure of these documents on unrelated third parties. Since, however, Kalven consents to the redaction of the names and contact information of any unrelated third party identified in the requested documents, the privacy interests of those individuals are not seriously implicated and thus do not provide good cause for continuing the protective order.

has not been shown. To the extent that either Bond or defendants agree to disclose the documents, any documents still bearing private and personal information regarding the defendant officers, including but not limited to, social security numbers, home addresses, telephone numbers, salaries, rates of pay, medical information and employee numbers, shall be redacted before being turned over to a third party. Additionally, consistent with Kalven's stipulation, the name and contact information of any unrelated third party shall also be redacted prior to disclosure.

Date: July 2, 2007

Enter: Joan H Lefkow

JOAN HUMPHREY LEFKOW
United States District Judge

No. _____

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

DIANE BOND, Plaintiff, v. CHICAGO POLICE OFFICERS EDWIN UTRERAS, ANDREW SCHOEFF, CHRIST SAVICKAS, ROBERT STEGMILLER, JOSEPH SEINITZ, ROBERT SCHULTZ, NICHOLAS CORTESI, JOHN CANNON, ROBERT FRANKS, WAYNE NOVY, and JOHN DOES ONE through FIVE, in their individual capacities; PHILLIP CLINE, Superintendent of the Chicago Police Department, TERRY HILLARD, Former Superintendent of the Chicago Police Department, and LORI LIGHTFOOT, Former Chief Administrator of the Office of Professional Standards, in their official capacities; and CITY OF CHICAGO, Defendants-Appellants.	) Appeal from the United States) District Court for the Northern) District of Illinois, Eastern Division.)))))))))))))))) No. 04 C 2617	U.S.C.A. - 7th Circuit RECEIVED JUL 13 2007 COD GINO J. AGNELLO CLERK
JAMIE KALVEN, Intervenor-Appellee.	) The Honorable) Joan Humphrey Lefkow,) Judge Presiding.	

EMERGENCY MOTION FOR STAY PENDING APPEAL

EXHIBIT
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The defendants-appellants, several Chicago Police Department ("CPD") officials and officers, and the City of Chicago, by their attorney, Mara S. Georges, Corporation Counsel of the City of Chicago, hereby move this court to stay pending

appeal the July 2, 2007 order of the district court, which granted the petition of Jamie Kalven ("Kalven") to intervene in this case and lifted an agreed protective order. The defendants state as follows in support of this motion.

BACKGROUND

Diane Bond ("Bond") filed a complaint in the district court under 42 U.S.C. § 1983 (2000) on April 12, 2004, claiming that her constitutional rights were violated because CPD officers sexually, physically, and psychologically abused her, and the policies, customs, and practices of CPD officials and the City for investigating and disciplining police misconduct were inadequate. R. 1. The district court entered a protective order on February 2, 2005, which was agreed to by the parties in order to facilitate the discovery process. R. 33. The protective order specifically defined which discovery materials the parties could designate as "Confidential Matter," and thus could not be disseminated by them to the public. Id. at 2-3. The definition of "Confidential Matter" included, among other things, "employment, disciplinary, investigatory . . . or other information of a sensitive or non-public nature," such as "files generated by the investigation of complaints of misconduct by Chicago police officers (generally referred to as 'Complaint Register' [("CR")] files) . . . ." Id. at 2.

In response to Bond's discovery requests, the defendants produced thousands of pages of documents, including: (1) a list of officers who had more than ten CR files opened during a set time frame, identifying them by name and the CR files by number; (2) a list of officers identified in (1) who had been referred to CPD's early