

William L. Crowley
Natasha Prinzing Jones
Thomas J. Leonard
BOONE KARLBERG P.C.
201 West Main, Suite 300
P.O. Box 9199
Missoula, MT 59807-9199
Telephone: (406)543-6646
Facsimile: (406) 549-6804
bcrowley@boonekarlberg.com
npjones@boonekarlberg.com
tleonard@boonekarlberg.com

*Attorneys for Defendants Bitterroot Public Library,
City of Hamilton and Boone Karlberg P.C.*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON, LEE
ENTERPRISES, INC., BOONE
KARLBERG P.C., DR. ROBERT
BROPHY, TRISTA SMITH, NANSU
RODDY, JERRY STEELE, STEVE
SNAVELY, STEVEN BRUNER-
MURPHY, RYAN OSTER,
KENNETH S. BELL, and JENNIFER
LINT,

Defendants.

Cause No. CV-11-064-M-DWM

**CITY DEFENDANTS' BRIEF IN
SUPPORT OF SECOND MOTION
TO FILE UNDER SEAL**

Pursuant to Local Rule 1.8(b), United States District Court, District of Montana, Defendants Bitterroot Public Library, Dr. Robert Brophy, Trista Smith, Nansu Roddy, City of Hamilton, Jerry Steele, Steve Snavely, Steven Bruner-Murphy, Ryan Oster, Kenneth S. Bell and Jennifer B. Lint (collectively, “City Defendants”) have again moved the Court for its Order allowing the filing of the City Defendants’ Statement of Undisputed Facts under seal. The referenced document will support the City Defendants’ Motions for Summary Judgment. The Order is necessary because the City Defendants’ Statement of Undisputed Facts refers to and attaches a number of police reports which contain confidential criminal justice information. *See* Mont. Code Ann. § 44-5-303.

The City Defendants previously moved the Court to file their Statement of Undisputed Facts under seal. The Court denied the motion “without prejudice.” (Doc. 125, p. 4.) The Court determined the City Defendants had not provided sufficient information to determine whether “compelling reasons” exist to allow filing under seal. (Doc. 125, p. 3 (*citing Kamakana v. City and County of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006))). Accordingly, the Court held the City Defendants must:

1. identify the specific police reports they want to have filed under seal;
2. describe the specific information within each police report that is confidential; and

3. articulate the requisite compelling reasons why the information should remain under seal as opposed to being subject to public inspection.

(Doc. 125, pp. 3-4.)

The Montana Criminal Justice Information Act of 1979 (Act), Mont. Code Ann. § 44-5-101, *et. seq.*, constrains the City Defendants in the dissemination of confidential criminal justice information. The Act provides that “dissemination of confidential criminal justice information is restricted to criminal justice agencies, to those authorized by law to receive it, and to those authorized to receive it by a district court upon a written finding that the demands of individual privacy do not clearly exceed the merits of public disclosure.” Mont. Code Ann. § 44-5-303(1). The term “confidential criminal justice information,” in turn, is defined by the Act to include “criminal investigative information,”¹ “criminal justice information or records made confidential by law,” and “any other criminal justice information not clearly defined as public criminal justice information.” Mont. Code Ann. § 44-5-103(3).

¹“Criminal investigative information” is defined to mean “information associated with an individual, group, organization, or event compiled by a criminal justice agency in the course of conducting and investigation of a crime or crimes. It includes information about a crime or crimes derived from reports of informants or investigators or from any type of surveillance.” Mont. Code Ann. § 44-5-103(6)(a).

The City Defendants wish to attach the 11 police reports listed and described below to their Statement of Undisputed Facts. To the extent the Court deems it necessary, the City Defendants are prepared to provide the reports for an *in camera* review:

1. Hamilton Police Department Case Report 209CR0001281

This case report contains the details of an investigation of a report of disorderly conduct at the Bitterroot Public Library on June 11, 2009. The identities of the witness (work address, work and home phone number and date of birth) and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

2. Hamilton Police Department Case Report 209CR0001589

This case report contains the details of an investigation of a report of stalking of Bitterroot Public Library staff on July 15, 2009. The identities of the witness (work address, work phone number and date of birth) and the accused Michael Spreadbury (home address, home phone number, date of birth, and social security number) are included.

3. Hamilton Police Department Case Report 209CR0001297

This case report contains the details of an investigation of a report of a false report on June 12, 2009. The identity of the complainant (home address, home phone number, date of birth, and social security number) is included.

4. Hamilton Police Department Case Report 209CR0001330

This case report contains the details of an investigation of a report of harassment at the Bitterroot Public Library on June 16, 2009. The identities of the complainant (work and home phone numbers and date of birth) and the accused Michael Spreadbury

(home address, home phone number, date of birth, and social security number) are included.

5. Hamilton Police Department Case Report 208CR0002941

This case report contains details of an investigation into a report of harassment at the Ravalli Republic on December 2, 2008. The identities of the complainant (home address, work and home phone numbers, and date of birth); witness (home address, home phone number, date of birth and social security number), and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

6. Hamilton Police Department Case Report 209CR0001529

This case report contains details of an investigation into a report of criminal trespass at the Ravalli Republic on June 9, 2009. The identities of the complainant (home address, work and home phone numbers, and date of birth); witness (home address, work and home phone numbers, and date of birth), and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

7. Hamilton Police Department Case Report 209CR0001932

This case report contains details of an investigation into a report of intimidation and tampering with a witness near the Bitterroot Public Library on November 4, 2009. The identities of the victim (work address, work and home phone numbers, and date of birth); witness #1 (home address, work phone number, and date of birth), witness #2 (home address, work and home phone numbers, date of birth and social security number), and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

8. Hamilton Police Department Case Report 209CR0002579

This case report contains details of an investigation into a report of criminal trespass at the Bitterroot Public Library on August 20, 2009. The identities of the complainant (work address, work

phone number, and date of birth); witness (home address, work and home phone numbers, and date of birth), and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

9. Hamilton Police Department Case Report 209CR0001937

This case report contains details of an investigation into a report of criminal trespass at the Bitterroot Public Library on November 4, 2009. The identities of the complainant (work address, work phone number and date of birth); witness #1 (home phone number and date of birth), witness #2 (work and home phone numbers), witness #3 (home phone number and date of birth), and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

10. Hamilton Police Department Case Report 210CR0001938

This case report contains details of an investigation into a report of criminal harassment at the Ravalli Republic on August 18, 2010. The identities of the complainant (work address, home phone number, date of birth and social security number) and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

11. Hamilton Police Department Case Report 211CR0002216

This case report contains details of an investigation into a probation officer's request for assistance with an uncooperative probationer in Hamilton, Montana on October 4, 2011. The identities of the witness (home address, home phone number and date of birth) and the accused Michael Spreadbury (home address, home phone number, date of birth and social security number) are included.

The reports listed above all contain confidential criminal justice information. First, they contain personal information of witnesses, complainants, victims, and alleged offenders. Second, they contain information "compiled by a

criminal justice agency in the course of conducting and investigation of a crime or crimes.” *See* Mont. Code Ann. § 44-5-103(6)(a). As such, they contain “criminal investigative information,” as defined by the Act.

Plaintiff may argue, as he has in the past, that the information is public criminal justice information because it includes “initial offense reports.” *See* Mont. Code Ann. § 44-5-103(e)(I). However, the Montana Department of Justice has promulgated rules which define the appropriate contents of an initial offense report:

(1) Initial offense reports should contain the following:

- (a) the general nature of the charges against the accused;
- (b) the offense location;
- (c) the name age, and residence of the accused;
- (d) the name of the victim, unless the offense charged was a sex crime; and
- (e) the identity of a witness unless the witness has requested confidentiality.

(2) Initial offense reports should not contain:

- (a) driver’s license numbers;
- (b) social security numbers;
- ...
- (e) with respect to the victim of any offense other than those described in 2(d) [Mont. Code Ann. §§ 45-5-502, 45-5-504, or 45-5-507] who requests confidentiality, any information other than the offense location that may directly or indirectly disclose the address, telephone number, or place of employment of the victim or member of the victim’s family.

A.R.M. 23.12.203.

As Judge James A. Haynes determined in another action filed by Plaintiff in Ravalli County District Court, in which the court was called upon to address the confidentiality of, *inter alia*, one of the reports listed above (209CR0002579): “[A]t a minimum, the Reports contain both public criminal justice information and confidential criminal justice information.” (6/28/11 Order in *Spreadbury v. Bell*, Montana Twenty-First Judicial District Court, Ravalli County, Cause No. DV 2010-639/49, attached as Exhibit A, p. 8.) Thus, Judge Haynes has already ruled that at least one of the reports at issue is confidential and should be restricted from public dissemination. (Ex. A.) Moreover, the same reasoning Judge Haynes applied to Case Report 209CR0002579 is equally applicable to all the reports at issue here: All of the reports contain far more than information which would be considered appropriate in an “initial offense report.” Specifically, they contain dates of birth, social security numbers, names and address of witnesses without any record as to whether a right of privacy was waived, and full investigative narratives. (Ex. A, p. 8.)

The City Defendants have presented the requisite compelling reasons to file their Statement of Undisputed Facts under seal. However, if the Court is not inclined to grant the City Defendants’ request, the City Defendants alternatively move for an Order allowing for the redaction of social security numbers, as well as any identifying information other than names for victims, complainants, and

witnesses identified in the reports. In the event the Court deems this approach more appropriate, the City Defendants also request a written finding that “the demands of individual privacy do not clearly exceed the merits of public disclosure,” ensuring the City Defendants’ compliance with Mont. Code Ann. § 44-5-303(1).

For the reasons stated, the City Defendants’ Second Motion To File Under Seal should be granted.

DATED this 21st day of October, 2011.

/s/Thomas J. Leonard
Thomas J. Leonard
BOONE KARLBERG P.C.
Attorneys for Defendants
Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 7(d)(2)(E), Local Rules of the United States District Court, District of Montana, I hereby certify that the textual portion of the foregoing brief uses a proportionally spaced Times New Roman typeface of 14 point; is double spaced; and contains approximately 1,798 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 21st day of October, 2011.

/s/ Thomas J. Leonard
Thomas J. Leonard
BOONE KARLBERG P.C.
Attorneys for Defendants
Bitterroot Public Library, City of
Hamilton and Boone Karlberg P.C.

CERTIFICATE OF SERVICE

I hereby certify that, on the 21th day of October, 2011, a copy of the foregoing document was served on the following persons by the following means:

 1 CM/ECF
 Hand Delivery
 2 Mail
 Overnight Delivery Service
 Fax
 E-Mail

1. Clerk, U.S. District Court
2. Michael E. Spreadbury
700 South Fourth Street
Hamilton, MT 59840

/s/ Thomas J. Leonard
Thomas J. Leonard
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot Public
Library, City of Hamilton,
and Boone Karlberg P.C.*