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Attorneys for City and Library Defendants

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

MICHAEL E. SPREADBURY,

Plaintiff,

v.

BITTERROOT PUBLIC LIBRARY,
CITY OF HAMILTON;³⁵ 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-JCL

**CITY DEFENDANTS' BRIEF IN
SUPPORT OF MOTION TO
STRIKE EXHIBIT**

INTRODUCTION

This supports the City Defendants' Motion to Strike Exhibit B (Doc. 130-2) to Plaintiff's Notice of National Security Clearance, filed October 26, 2011. Plaintiff's use of Exhibit B violates a Court Order, filed June 28, 2011, in *Spreadbury v. Bell and City of Hamilton*, Cause No. DV-2010-639, Ravalli County District Court, as well as Montana statutes. It also violates the terms of Plaintiff's probationary sentence in *State v. Spreadbury*, Cause No. DC-09-154, Ravalli County District Court. In this connection, the City Defendants' motion to strike is based on Rule 103(a)(1), Fed. R. Evid., as well as the Court's inherent power to control proceedings before it.

DISCUSSION

A. Background:

Plaintiff has filed his Notice of National Security Clearance. [Doc. 130]. Attached as Exhibit B to the Notice is a copy of a blog, "Find My Threat." Pages 5-7 of Exhibit B quotes a Hamilton Police Department report ("Library Report").

Plaintiff's Amended Complaint filed in Cause No. DV-2010-639, Ravalli County District Court sought a declaratory judgment that the City had violated his right to know and his request for public documents. Specifically, Plaintiff sought the unrestricted production of two Hamilton Police reports, the "Library Report" and the "Administrative Building Report." The "Library Report" is the police

report quoted in the blog, “Find My Threat.” However, contrary to Plaintiff’s argument, the state district court determined in its Order, filed June 28, 2011, that the reports sought by Plaintiff, the “Library Report” and “Administrative Building Report,” were not initial offense reports, contained confidential criminal justice information and contained information protected by individual privacy rights. [State Court Order, 6/28/11 (Exhibit “A” hereto).] By state statute, one cannot unilaterally and voluntarily disclose confidential criminal justice information to the public. MCA § 44-5-303. In any event, it is up to a court to determine if the merits of disclosure exceed individual privacy rights. *In re Lacy*, 780 P.2d 186, 189 (Mont. 1989).

As to the Library Report, the state district court determined that the information in the report was protected from disclosure except to the extent it had been publicly disclosed in the motion for leave to file information and affidavit in support filed in Plaintiff’s criminal action. [Exhibit “A,” pp. 16-17.] Ultimately, the state district court conducted the balancing of Plaintiff’s right to know against protected privacy interests, and the Court redacted information in the Library Report and sealed the report from examination by the public. [Exhibit “A,” p. 23.] Specifically, the state district court order issued in Cause No. DV-2010-639, Ravalli County District Court ordered as follows:

2. Such Library Report and Admin Building Report are attached hereto as Exhibit A. The Clerk of Court shall seal Exhibit A.

The Clerk of Court may permit a party or a party's attorney to access Exhibit A without a further order from this Court. However, because Exhibit A contained unredacted information regarding Plaintiff Spreadbury and the Court concluded that Plaintiff Spreadbury only waived his privacy rights to the extent necessary to release such information to him, Exhibit A shall be sealed from the public.

3. The Clerk of Court shall seal the attachments to Document #31 without a further order from this Court.

[State District Court Order, 6/28/11, p. 23.]

Following the state district court's Opinion and Order, dated June 28, 2011, Plaintiff filed a "Request for Order," dated July 2, 2011, in Cause No. DV-2010-639. Having put the state district court through the trouble of determining Plaintiff's right to know claim, Plaintiff's request reads, in part, "To answer this Court, Spreadbury wished to have a fresh copy so the indications of false statements by the librarian would not be published. Spreadbury never indicated to this honorable court that he did not have a copy." [Plaintiff's Notice, 7/2/11, p. 2, Cause No. DV-2010-639.] In this connection, the redaction by Judge Haynes in connection with the sealed police report in Cause No. DV-2010-639 is different from and much more extensive than the quoted report in Exhibit B. (Doc. 130-2) filed in this Court. The City Defendants offer to present Judge Haynes' redacted, sealed report to the Court for an *in camera* inspection. In summary, Exhibit B (Doc. 130-2) discloses matter redacted and sealed by the Ravalli County District Court.

B. Violations of Orders and Statutes:

As outlined above, Exhibit B to Plaintiff's Notice of National Security Clearance violates Judge Haynes' Order, filed June 28, 2011, in Cause No. DV-2010-639 and Montana statutes or confidential criminal justice information. Judge Haynes' Order determined the police report contains confidential criminal justice information. MCA § 44-5-303. It also determined that the privacy interests of people involved in the report should be protected. Plaintiff's presentation of the report in Exhibit B violates Judge Haynes' Order, Montana statutes and the privacy rights of involved individuals. As such, Exhibit B should be stricken.

In addition, the criminal judgment and sentence in *State v. Spreadbury*, Cause No. DC-09-154, in the Ravalli County District Court reads, in part, as follows:

8. The Defendant must comply with all municipal, county, state and federal laws and ordinances and shall conduct himself as a good citizen . . .”.

[Exh. D, p. 3 (Doc. 12-4) filed in this action.]

The criminal judgment and sentence also provide:

15. The Defendant shall remove any images, photos, or content depicting or referring to Nansu Roddy from any website controlled by or contributed to by the Defendant, including but not limited to:

www.bitterrootrising.com and www.michaelspreadbury.com by
November 20, 2010.

[Exhibit D, p. 4 (Doc. 12-4) filed in this action.]

Page 9 of Exhibit B to Plaintiff's Notice (Doc. 130-2) as well as the quoted police report refers to Nansu Roddy. In the City Defendants' view, Exhibit B violates the terms and conditions of Plaintiff's probation in *State v. Spreadbury*, Cause No. DC-09-154, Ravalli County District Court. Exhibit B includes conduct depicting or referring to Nansu Roddy on a website contributed to by Plaintiff. In addition, violating state district Court orders and state statutes is not conducting oneself as a good citizen.

CONCLUSION

The City Defendants' motion to strike should be granted. Exhibit B referred to above violates Montana statutes and state district court orders.

DATED this 31st day of October, 2011.

/s/ William L. Crowley
William L. Crowley
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 1,029 words, excluding the parts of the brief exempted by L.R. 7(d)(2)(E).

DATED this 31st day of October, 2011.

/s/ William L. Crowley
William L. Crowley
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 31st 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/ William L. Crowley
William L. Crowley
BOONE KARLBERG P.C.
*Attorneys for Defendants Bitterroot Public
Library, City of Hamilton,
and Boone Karlberg P.C.*