UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

HISPANIC NATIONAL LAW ENFORCEMENT ASSOCIATION NCR, *et al.*, Plaintiffs, v. PRINCE GEORGE'S COUNTY, MARYLAND, *et al.* Defendants.	Case No. 18-cv-03821 TDC

PLAINTIFFS' REPLY TO DEFENDANTS' OBJECTIONS TO UNSEALING

REDACTED VERSION

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Plaintiffs hereby reply to Defendants' Objections (ECF 196) seeking to keep under seal approximately 100 documents which were attached to, and relied upon in, Plaintiffs' Response to Defendants' Motion to Limit the Number of Discriminatory Acts that May Be Considered at Trial (ECF 161 & ECF 167-176). As stated in Plaintiffs' Interim Sealing Motion (ECF 179), the maintenance of a seal on those documents would be contrary to Local Rule 105.11, the prior decisions of the other judges of this Court, and the controlling law of the Fourth Circuit — none of which is acknowledged, must less addressed, in Defendants' "Objections."

Of note, Defendants have rejected out of hand the "less drastic means" recognized by the courts of redacting the names of individuals in some of the documents, as often proposed by the courts to protect "privacy" interests. That would not take more than a few hours. Rather, Defendants insist the documents must be sealed in their entirety in perpetuity.

FACTUAL AND PROCEDURAL BACKGROUND

As the Court knows, the present dispute arose when Defendants filed an unprecedented motion (ECF 134) to prevent Plaintiffs from introducing more than 20 "untethered acts" of discrimination at trial—an event which has not yet been scheduled. In their motion, Defendants did not contend that those acts or their condonation by senior Police Department officials were irrelevant to this lawsuit. Rather Defendants contended that there were **simply too many** such acts of racial discrimination, harassment, and retaliation to be presented at a trial. Defendants motion was thus, in practical effect, a dispositive motion to preclude the trier of fact from ever considering the full range of Defendants' discriminatory acts.

In Plaintiffs' Response (ECF 161), Plaintiffs showed that the Defendants' motion was legally unprecedented, conflicts with the prior ruling of this Court concerning the standing of the two associational plaintiffs (HNLEA and UBPOA) to sue on behalf of their members, and not necessary as a practical matter. Indeed, many of the acts which Defendants brand as

"untethered" are, in fact, racially motived discrimination and harassment directly harming members of the two associational plaintiffs and hence are covered by this Court's prior ruling allowing such claims. Plaintiffs further showed that neither the Fourth Circuit, nor any other court, had ever imposed any such arbitrary numerical limit on the discriminatory acts presented at trial in a case such as this.

In response to Defendants' assertion that it would be impossible for the Plaintiffs to present such acts in an efficient manner, Plaintiffs submitted a preliminary report of their police practices expert, Michael Graham, showing how he will present Defendants' discriminatory policies and customs in testimony that should take no more than a day or two. And to establish that the vast preponderance of that presentation will be made through the files of PGPD itself, Mr. Graham described those specific documents, and Plaintiffs filed them with their brief.

In their July 13 Reply, Defendants change tack somewhat and argue that the acts they are trying to exclude "are not per se admissible" and must be reviewed "to determine whether they satisfy an established analytical basis for admission." ECF 195 at 8. Defendants then cryptically challenge broad categories of those materials such as "me-to" and "comparator" evidence, despite the fact that such evidence is routinely admitted in discrimination cases. And Defendants make yet one more passing attack on this Court's decision rejecting Defendants' motion to dismiss the two organizational Plaintiffs as representatives seeking redress for discrimination against their members. ECF 73. But that last-ditch effort to exclude the evidence contained in the sealed materials in no way negates the right of the public to view such evidence, which both sides have now submitted in conjunction with Defendants' Motion to Exclude.

The issue here is that Defendants indiscriminately labeled 130 of the documents Plaintiffs rely on – **along with every other page of the nearly one million pages they have**

produced – as "confidential," in violation of the clear language of the protective order barring such wholesale designation. ECF 72 ¶ 1(a). But under the terms of the Protective Order, Plaintiffs were therefore obligated to submit those 130 documents under seal and to redact the corresponding public versions of the Graham Report and Plaintiffs' Response.[1] ECF 72 ¶ 2. Pursuant to the Protective Order and Local Rule 105.11, Plaintiffs filed an interim motion that such sealing was not at all justified – and that, in fact, the 130 documents should be available to the public, in the same way all of the other filings in this Court are open to public review. Plaintiffs made their position clear to Defendants on June 18. ECF 196-3.

As detailed below, the redacted version of the Graham Report attracted significant public attention. Both the State's Attorney for Prince George's County and its Chief Public Defender expressed their concerns about the conduct described in the Graham Report, as well as their interest in reviewing the documents that had been sealed. Other community organizations involved in monitoring PGPD did the same. And six hours after the redacted version of the Graham Report was released, County Executive Angela Alsobrooks asked for, and received, the resignation of Defendant Chief Stawinski.

Initially, Defendants did not respond to Plaintiffs' June 18 filing. On July 1, however, defense counsel moved for a four-week extension in which to respond on the sealing issue,

[1] Defendants' misleading reference to "1488 pages" (ECF 196 at 1) submitted with Plaintiffs' Response to Defendants' Motion to Exclude includes almost 1000 pages of public documents such as the General Orders of the PGPD and the Guidelines of the EEOC. After Defendants' concession that about 30 of the 130 "sealed" documents do not require such treatment, only about 360 pages are still at issue (less than .04% of the total number of pages designated as "confidential" by the Defendants in their document production.)

To show the effect of Defendants' remaining sealing and redaction demands, Plaintiffs are today filing a new version of the Graham Report redacted in accordance with the Defendants' directions in Exhibit 1C of their Objections. As provided in the Protective Order, Plaintiffs submit this version without prejudice to their position throughout, and in this pleading, that those interim seals are not justified and should be removed.

telling this Court that they could use the additional time to review, and perhaps withdraw, the "confidential" designations as to some of the 130 documents. ECF 191. Ultimately, the parties agreed to a somewhat shorter extension through July 13. ECF 192.

On July 8, the parties conferred on Defendants' preliminary decision to continue to assert confidentiality over about three-fourths of the documents Defendants had reviewed by that date. During the conference, Defendants stated they intended to assert that the **entire contents** of any IAD investigative file must be maintained under seal. In addition to responding that Defendants' position was invalid as a matter of law, Plaintiffs asked whether Defendants might agree to release those documents after the redaction of the identifying information of the accused, the complainant, and witnesses. Defendants responded that they would not do so, and that the entire file must be withheld from public view.

Defendants have now officially advised the Court and Plaintiffs that they consider significant portions of the Graham Report and approximately 100 of the 130 documents attached to the Plaintiffs' Response to Defendants' Defendants' Motion to Limit to be "confidential"; indeed, they have insisted on additional redactions. ECF 196-4. (As noted, Plaintiffs have attached a revised version of the Graham Report reflecting information Defendants concede is not actually confidential. Ex. 1.) Defendants continue to insist that the other 100 documents—and any reference to them in the Graham Report or pleadings—must be sealed, notwithstanding that they have been filed in response to Defendants' Motion to exclude and their contents are a matter of public interest. As shown below, Defendants' latest attempt to withhold these documents from public view is no more valid than their initial, indiscriminate designations.

ARGUMENT

Under Local Rule 105.11, the controlling law of the Fourth Circuit, and the decisions of the other judges of this Court in similar circumstances, this Court should unseal the documents in question unless the Court finds—on the basis of a real factual record (rather than mere assertions of Defendants' counsel)—that there is some "compelling government interest" in maintaining the seal that cannot be satisfied in any alternative, "narrowly tailored" manner, such as the redaction of specific identifying information. Defendants have failed to make any such showing. Indeed, their latest response fails even to acknowledge that the requirements of Local Rule 105.11 and the controlling case law exist.

I. The Controlling Legal Standard Ignored by Defendants

Local Rule 105.11 provides that "Any motion seeking the sealing of pleadings, motions, exhibits, or other documents to be filed in the court record shall include (a) proposed reasons supported by specific factual representations to justify the ceiling and (b) an explanation why alternatives to ceiling would not provide sufficient protection." Local Rule 105.11 follows the controlling decisions of the Fourth Circuit which recognizes that there is a strong presumption that any document filed as part of a pleading should be publicly available unless there are "compelling" reasons to maintain it under seal which cannot be met in any other way. *Rushford v. New Yorker Magazine*, 846 F.2d. 249 (4th Cir. 1988).

In *Rushford*, the Court of Appeals recognized that there were two foundations for that demanding standard. First, the Court recognized that "under common law, there is a presumption of access accorded to judicial records." *Id.* at 253 (citing *Nixon v. Warner Communications, Inc.*, 435 U. S. 589, 597 (1978)). That general guarantee of public access to

judicial files is alone sufficient to overcome a party's desire to seal a pleading in most circumstances.

The *Rushford* court then added that the general presumption of public availability must be afforded **even greater** weight under the First Amendment where the documents at issue relate to a matter of public interest. The Fourth Circuit – citing both the Supreme Court's decision in *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510 (1984) and its own prior decision in *In re Washington Post Co.*, 807 F.2d 383, 390 (4th Cir. 1986) – explained that, "under the First Amendment the denial of access must be necessitated by a compelling government interest and narrowly tailored to preserve that interest." 846 F.2d at 253. The Fourth Circuit then squarely held that "the more rigorous First Amendment standard should apply to documents filed in connection with a summary judgment motion in a civil case." *Id.*

In *Doe v. Public Citizen*, 749 F.3d 246, 267 (4th Cir. 2014), the Fourth Circuit, considered a request by the media for access to reports about a defective product – which had been sealed during the course of civil litigation before a different judge of this Court. The court reviewed its decision in *Rushford*, and the cases that followed, in holding that the district judge had erred in sealing summary judgment motions "and accompanying materials." *Id.* at 268. The Court of Appeals restated its holding in *Rushford* that "the First Amendment right of access attaches to materials filed in connection with a summary judgment motion." *Id.* at 267. The Fourth Circuit further explained that its decisions "recognize[] the right of access to documents as a necessary corollary of the capacity to attend the relevant proceedings." *Id.* (quoting *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 93 (2d Cir. 2004)).

Turning to the documents at issue in *Doe*, the Fourth Circuit explained that

> the sealed documents in this case implicate public concerns that are at the core of the interest protected by the right of access: "the citizens desire to keep a

> watchful eye on the workings of public agencies…[and] the operation of the government. **The interest of the public and press in access to civil proceedings is at its apex when the government is a party to the litigation. Indeed, the public has a strong interest in monitoring not only functions of the courts but also the positions that its elected officials and government agencies take in litigation.**

749 F.2d at 271 (emphasis added) (internal citations omitted).

There can be no doubt that the 100 documents and the still redacted portions of the Graham Report fall in that category. As the Graham Report establishes, each of the documents which Defendants are now trying to hide from public review are either direct evidence of acts of racial discrimination, harassment, or retaliation by members of the PGPD **or** comments by senior leadership condoning such misconduct. These are all public officers. And those documents have been filed in response to a motion filed by that same senior leadership seeking to exclude that evidence at trial.

In the years since *Rushford* was decided, the Fourth Circuit has consistently re-affirmed its holding and indeed expanded its reach. And, in at least one case, the Court of Appeals made clear that documents concerning the operations of the police are prime examples of the type of document in which the public is rightly interested:

> Society has an understandable interest not only in the administration of criminal trials, but also in law enforcement systems and how well they work. The public has legitimate concerns about methods and techniques of police investigation: for example, whether they are outmoded or effective, and whether they are unnecessarily brutal or instead cognizant of suspects' rights.

Matter of Application & Affidavit for a Search Warrant, 923 F.2d 324, 331 (4th Cir. 1991).

The judges of this Court have likewise consistently applied the strong presumption against sealing any materials filed in a judicial proceeding. **In just the last twelve months, four different judges of this Court in five different cases have denied motions to maintain a seal on a variety of materials filed in pre-trial proceedings.** *Lamb v. Madly*, 2020 WL 2512413

(D. Md. May 15, 2020) (Xinis, J.) (denying seal to Amended Complaint and attached exhibits containing personal information); *Flournoy v. Rushmore Loan Management Services, LLC*, 2020 WL 1285504 (D. Md. March 17, 2020) (Xinis, J.) (denying motion to seal operational manual attached to pleadings related to class certification and motion to dismiss); *Benchmark Electronics, Inc. v. Meyers*, 2019 WL 6528587 (D. Md. Dec. 3, 2019) (Hazel, J.) (denying motion to seal arbitration materials deemed confidential under commercial agreement which were attached to motions to confirm arbitral award and to strike); *Ganzzermiller v. University of Maryland Upper Chesapeake Medial Centr*, 2019 WL 4751457 (D. Md. Sept. 30, 2019) (Blake, J.) (denying motion to seal motion for summary judgment and attached exhibits containing "private and personal information" and ordering redaction of "only demonstrably confidential personal medical information entitled to protection"); *Sanchez Carrera v. EMD Sales, Inc.*, 402 F. Supp. 3d 128, 152 (D. Md. August 21, 2019) (Bredar, C.J.) (denying motion to seal "confidential" sales agreement attached to cross-motions for summary judgment).

Defendants do not cite any contrary case where a judge of this Court did as they now demand and maintained a seal over portions of a public filing or the exhibits attached to it.

II. Defendants Concede the Materials Are of Interest to the Press and Public.

Defendants do not dispute that the press, and public at large, are paying close attention to these proceedings and are concerned that, thus far, discrimination and other misconduct by senior PGPD officials has been kept from public review. Nor can they. For that interest is clear from the public record.

One recent press report began by recognizing the obvious link between the release of the preliminary Graham Report and the forced resignation of former Chief Stawinski six hours later:

> Following the filing of a damning expert report in federal court detailing dozens of instances of alleged racial discrimination, retaliation and abuse within his

> department, Prince George's County Police Chief Hank Stawinski resigned Thursday evening, effective immediately.
>
> **…Though the document is heavily redacted, Graham noted that the Prince George's County Police Department does not appropriately manage allegations of discrimination or misconduct by its white officers, noting several complaints brought forth by Black and Brown employees that went uninvestigated or under-prosecuted.**
>
> …The report also explored a series of uninvestigated complaints filed by public officials and civilians, **most of which are heavily redacted.**

Maryland Matters, *Prince George's Police Chief Resigns After Release of Report on Discrimination* (June 19, 2020) (emphasis added).[2]

Other press outlets similarly commented on the specific allegations in the Graham Report, Chief Stawinski's forced resignation, **and** the fact that portions of the report had been redacted and the attached exhibits for the moment sealed. *See, e.g.*, WBAL, *After Scathing Report on Racism in Ranks, Prince George's County Police Chief Resigns* (June 18 2020); WAMU, *Reports of Racism in Prince George's County Police Department Add to Calls for Change* (June 22, 2020); Maryland News, *Prince George's Police Chief Resigns Hours After New Court Filing Details Discrimination Black and Brown Police Officers* (June 18, 2020).

The Graham Report, the attached exhibits, and the fact that many had been filed under seal were also a matter of concern to the County's chief prosecutor and public defender. State's Attorney Aisha Braveboy commented on the Report and called for greater transparency with respect to the manner in which PGPD was operating:

> Prince George's County officials called for greater access to police personnel records Friday, citing a lack of transparency following the recent airing of allegations of racial discrimination. "Our system must be restorative and compassionate while being firm and protective," Prince George's County States Attorney Aisha Braveboy (D) declared at a news conference Friday afternoon.

[2] Copies of the news articles cited herein are attached hereto as Exhibit 2.

> "**And the only way we can achieve these goals is by demanding that each player in our justice system operates with integrity and transparency."**
>
> The announcement follows the resignation of former Prince George's County Police Chief Hank Stawinski Thursday evening following the release of an expert report alleging dozens of discriminatory episodes within the department towards Black and Brown officers.
>
> **…The 94-page expert report put on the public docket was largely redacted after Prince George's County Police Department designated its files as confidential.**
>
> **…While Braveboy would not comment on the lawsuit, she said that it's important that her office have access to the unredacted records the detail allegations of bias so that she can conduct her own investigation "because it may be that those officers are involved in cases our office and I must – and I will – protect the integrity of every single prosecution that this office conducts," she said.**

Maryland Matters, *Prince George's Officials Call for Access to Police Personnel Records, Install Interim Chief* (June 19, 2020) (emphasis added).

The same press account contained an even stronger expression of concern by the Chief Prince George's County Public Defender:

> **Prince George's County Public Defender Keith Lotridge agreed with the need for more access. "The systemic racism against officers alleged in the report comes from the same culture this caused ongoing abuse and mistreatment of our clients** – Black and Brown men and women who are targeted by police and then discredited when their accounts contradict those claims by misbehaving officers." **The public defender appreciated [Ms. Braveboy]'s commitment to transparency surrounding the release of records, noting attorneys in his office never had access to them.** *Id*. (emphasis added).

It is thus clear that both the press and senior county law enforcement officials appreciate the importance of the Graham Report and support review of the underlying documents. Indeed, in the wake of the release of the Report and the forced resignation of Chief Stawinski, County Executive Alsobrooks and Interim Chief Velez issued statements that are consistent with the unsealing of the records in question *and* entirely inconsistent with the sealing now being pressed by the County's attorneys. At a press conference the day after the release of the Report, Ms.

Alsobrooks and Interim Chief Velez both said that they were committed to "transparency" in that review of all conduct at PGPD. Although Ms. Alsobrooks added that she had not yet read the Graham Report, the fact that she announced a new commission on police reform the day after its release was not lost on the press or public. *See* WTOP, *Task Force on Police Reform Announced in Prince George's County* (July 3, 2020).

In the face of this clear public interest, Defendants make the remarkable assertion that release of the Graham Report and the related documents "would be imprudent … right now given the current political and social climate." ECF 196 at 3. Although one may understand why the senior leadership of PGPD does not want the press and public to have access to PGPD email and other files describing the racist acts of certain leaders and officers, that is hardly a "compelling" government interest. To the contrary, PGPD's concerns about public review only underscore the importance of the right of public and press access to that information.

III. Under Rule 105.11 and Controlling Caselaw, the Documents Should be Unsealed

Under Local Rule 105.11 and the decisions of other judges of this Court, Defendants' insistence on a continued seal cannot be justified—certainly not by concerns that can easily be met by a series of quick redactions. The decision of Judge Hollander in *Johnson v. Baltimore City Police Department*, 2013 WL 497868 (D. Md. 2013), is particularly instructive.

Like this case, *Johnson* involved a claim of employment discrimination (disability) filed against a Maryland police department. *Id.* at *1. As in this case, in *Johnson* the defendant police department had been required to produce information "from plaintiff's personnel file and the personnel files of six other officers who plaintiff identifies as similarly situated comparators." *Id*. As in this case, the defendant police department in *Johnson* had then moved (through summary judgment) to pre-empt further consideration of the facts disclosed in those files. *Id.*

And, just as in this case, in *Johnson* the defendant police department tried to justify a seal on the grounds that the documents contained sensitive "personnel" information. *Id.*

Judge Hollander rejected that request, without even requiring the plaintiff to submit an opposing brief. In so deciding, she referenced the clear requirements of Local Rule 105.11 and quoted the Fourth Circuit caselaw establishing the related propositions that "in ruling on a motion to seal, 'the [D]istrict Court must…weigh the appropriate competing interests' in public access on the one hand and confidentiality on the other" and must further "consider less drastic alternatives to sealing." *Id.* (quoting *Va. Dep't of State Police v. Washington Post*, 386 F.3d 567, 574 (4th Cir 2004)).

Judge Hollander then turned to the Baltimore Police Department's argument that unsealing the personnel records would violate Maryland law on the right of the general public to view the records of public agencies: "The core of the BPD's request for sealing is its assertion that matters drawn from the personnel files of plaintiff and her comparator officers are confidential under Maryland law. To support this assertion, defendant cites provisions of the Maryland Public Information Act." *Id.* at *2. Without even deciding whether the documents might be entitled to some protection under state law, Judge Hollander rejected the police department's sealing request because their demand that the exhibits be sealed "has failed to convince me that less drastic 'alternatives to sealing would not provide sufficient protection.'" *Id.* at *3 (quoting Local Rule 105.11 and citing *Va. Dep't of State Police, supra*, 386 F.3d at 576).[3]

[3] Defendants cite *Montgomery County Maryland v. Shropshire* for the proposition that "records of an internal investigation pertaining to the alleged violation of administrative rules" are "personnel records" under the MPIA. 420 Md. 362, 378 (Md. 2011). However, that case did not address whether, as here, less drastic measures than sealing were available. *See, id.* In any event, Defendants' bare assertion that personnel records are covered by the state MPIA cannot

Judge Hollander focused on the obvious alternative of redacting identifying information, such as names, from the personnel files, referencing the Maryland Court of Appeals:

> I am convinced that redaction of the comparator officers' personnel records would provide sufficient protection of confidentiality interests. This is especially so because the Maryland Court of Appeals's recent decision in *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*…indicates that once a record has been appropriately redacted to remove information that could connect a record to a particular "individual" employee, the redacted record is no longer a "personnel record of an individual" within the meaning of [the Maryland Public Information Act]. *Id.*

This analysis equally applies to the documents at issue here. *Maryland Department of State Police*, 59 A.3d 1037 (Md. 2013), concerned a request by the NAACP for documents involving complaints of racial profiling, including all complaints investigated by the State Police Internal Affairs unit and all documents reflecting the conclusion of those investigations. After the State Police refused to provide the documents – citing the "personnel records" exemption of the MPIA – and the NAACP sued to obtain access, the Maryland Court of Appeals held that the redaction of the identity of officers' names was entirely sufficient to permit general public disclosure, even with the various exemptions from such access set in the MPIA. *Id.* at 1046-47. As Judge Hollander recognized, that decision by the Maryland Court of Appeals applies perforce where, as here, a police force seeks to seal its investigative files which are attached to pleadings filed in a federal discrimination case – where, again, the obvious solution is simple redaction.

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overcome the strong presumption in favor of public access to court records under federal law. *See Johnson*, 2013 WL 497868, at *2. Indeed, this Court has repeatedly made clear that the MPIA cannot be used as a way to obstruct the Federal Rules of Civil Procedure. *See, e.g.*, *McDonnell v. Hewitt-Angleberger*, 2012 WL 6088830, at *2 (D. Md. 2012) (citing numerous prior decisions on point and summarily rejecting defendants' motion for protective order seeking nondisclosure or confidentiality of police internal affairs records based upon MPIA or LEOBR arguments).

Judge Hollander even set forth the precise procedure for handling such documents without any overall seal: "On the basis of the BPD's arguments in the Motion to Seal, I see no reason that the records of the comparator officers could not be redacted and referred to by pseudonym (for instance, "Officer A," "Officer B," etc.) in the exhibits and the briefing…." 2013 WL 497868 (D. Md. 2013) at *5. *See also Solomon v. Kess-Lewis*, 2013 WL 4760982, at *1 (D. Md. 2013) (motion to seal denied where party failed to show "why redactions, as opposed to sealing records in their entirety, would not provide sufficient protection."). As discussed below, that process would take only a few hours on the documents at issue here.

IV. The Few Decisions Cited By Defendants Do Not Support Continued Sealing

Having failed even to address the Local Rule, Fourth Circuit authority, or the decisions of other judges of this Court unsealing various "confidential" documents (including the kinds of police records at issue here), Defendants cite a few cases which they contend require this Court to grant their sealing demand. But a review of those decisions shows they not only do not support Defendants' demand but, in fact, establish just how unjustified it is.

Defendants' primary case is *Fether v. Frederick County, Maryland*, 2014 WL 1123386 (D. Md. 2014), where Judge Gauvey was **not** presented with the issue here—the sealing of court filings—but rather the preliminary question of whether to grant a protective order to cover document productions. That, of course, has nothing to do with sealing court filings. In **all** of the cases discussed above—where the Fourth Circuit and the judges of this Court ruled that court filings quoting or attaching "confidential" materials should not be sealed from public view—the underlying documents had previously been produced under protective orders.

It is also worth noting that in *Fether*, Judge Gauvey acknowledged that she might not have even insisted on a protective order had the plaintiff, who sought to obtain the records,

agreed that they could be redacted to mask the identities of the officers involved. 2014 WL at 1123386, at *2, n. 1. Citing *Maryland Department of State Police v. Maryland State Conference of NAACP Branches*, 59 A.3d, *supra*, Judge Gauvey recognized that such redaction might have changed her decision even as to the scope of the initial protective order. *Id.*

Defendants' repeated reliance on *Martin v. Conner*, 287 F.R.D. 348 (D. Md. 2012), is even more misplaced. Again, that case did not concern the sealing or unsealing of court filings and attachments. Rather the issue was again whether records of police conduct should be produced in discovery. In holding that the records **should be produced**, Judge Gauvey discussed a number of factors that cut against the same "confidentiality concerns" now urged by Defendants in their demand for a permanent seal on court filings. *Id.* at 353-57 She found those other factors—including the public interest in monitoring police conduct—overcame that concern where the privacy of the police officers named in the materials could readily be maintained by redacting "the address, phone number, email, and other identifying information of [the defendant officers] as well as the names and identifying information of non-defendant police officers." *Id.* at 357.

What is even more remarkable is Defendants' reliance on *Martin* without acknowledging that Judge Gauvey **questioned the same claim Defendants' make here** that public review of police investigatory files would "chill" other complainants if they understood they might someday be made public.[4] Quoting Judge Weinstein's decision in *King v. Conde*, 121 F.R.D. 180 (E.D.N.Y. 1988)—which likewise concerned (and compelled) the production of police records in discovery—Judge Gauvey noted that such concerns were likely fanciful:

> The fifth factor [in the analysis made in *King* as to production] is the potential effect of the chilling of citizen candor during internal investigations.

> However, Judge Weinstein in *King* noted that "[i]t is not at all clear that people who feel aggrieved by actions of police officers would even think about the possibility that their complaints might be disclosed to another person who feels aggrieved by police officers." *Martin*, 287 F.R.D. at 35.

Finding that neither side in *Martin* had presented actual evidence on that speculative issue—and holding that the burden to do so was on a police force seeking to withhold such reports—Judge Gauvey held that that factor actually favored disclosure in *Martin*. *Id.*[5]

V. The Documents Should Be Unsealed and the Graham Report Filed Unredacted

Defendants are attempting to suppress many documents which are not IAD investigative files at all. The only apparent concern as to those documents is that they will embarrass the leadership of PGPD and, in many cases, substantiate the charges of the Plaintiffs.

A. Complaints Made Against PGPD to State and Federal EEO Authorities

One category of documents Defendants are attempting to suppress are complaints and logs of complaints which the individual Plaintiffs and other minority officers filed with federal or state Equal Employment Opportunity agencies because the PGPD EEO process failed to afford them any redress. *See, e.g.*, ECF 171 Ex. 35-36 ([redacted]); Exs. 37-40 ([redacted]); ECF 174 Ex. 103 ([redacted]); ECF 175 Exs. 139-140 ([redacted]

[5] Defendants cite two additional inapposite to support maintaining the seal. First, in *Santiago v. Baltimore City Police Department*, the court chose *sua sponte* to refer to the officers by number instead of name because the parties had exchanged records under a confidentiality order —there was no dispute about sealing. 2018 U.S. Dist. LEXIS 55884 at *4, n.2 (D. Md. Mar. 30, 2018). Second, in *Rock v. McHugh*, the plaintiff sought to seal the complaint and the briefing and exhibits related to the defendant's motion to dismiss. 819 F. Supp. 2d 456, 475 (D. Md. 2011). The plaintiff's motion was based on the fact that the documents contained sensitive medical information and the motions were **unopposed** by the defendant. *Id.* Even so, the court allowed the defendant to seal only specific documents containing sensitive medical information not previously redacted and ordered that the rest of the documents would not be sealed. *Id.*at 476-77.

[redacted]). Clearly these logs of complaints, and the complaints themselves, filed with anti-discrimination agencies cannot be sealed in a case concerning the deficiencies of that process—deficiencies which are of concern to the public as well as the parties to this litigation.

B. Evidence of Racist Conduct Provided to PGPD by Plaintiffs or Other Citizens

Defendants are also attempting to maintain a seal over actual evidence of racist conduct–photographs and Internet screenshots. Defendants apparently claim that such evidence taken from public sources has somehow become "confidential" simply because the individual Plaintiffs and other complainants sent it to Internal Affairs, which, in most cases, failed to investigate appropriately. For example:

- Defendants want to maintain a seal on the photograph of [redacted] ECF 172 Exs. 46-49, 50 (photograph), ECF 174 Ex. 113.
- Defendants want to maintain a seal [redacted]. ECF 172 Exs. 61-62, ECF 174 Ex. 133. Again, Defendants have no response to the fact that that incident was so well known that it was included in the Complaint in this case from the outset. Defendants are simply attempting to suppress photographic proof that would interest the public, along with email and other internal documents that show that PGPD again failed to take that misconduct seriously.
- Defendants are attempting to suppress [redacted] ECF 174 Exs. 112, 114-15. These exhibits in no way implicate any "deliberations" of the IAD.
- Defendants argue to maintain a permanent seal [redacted] ECF 176 Ex. 159. *See also* ECF 175 Ex. 150 ([redacted]). Somehow, in the Defendants' view, these public posts on the Internet have become "confidential" information which must be kept from the public.

- Defendants argue that there is something "confidential," to the point of requiring the sealing of court filings, in the application of a white supervising officer for a Maryland license plate directing an obscenity at our first African-American President **and** the ruling by the State Department of Motor Vehicles that the request violated its own regulations against such hateful messages. ECF 174 Ex. 120. [redacted].

None of this evidence of racist conduct or the insufficient way in which it was handled by PGPD requires any seal to keep it from the public. Not under the normal presumption that court filings are public; and certainly not under the heightened standards articulated in *Rushford* and routinely observed by the other judges of this Court.

C. Evidence that PGPD Refused to Take the Complaints of the Plaintiffs Seriously

Another category of documents which Defendants seek to withhold from public concerns meetings and other communication among the named Plaintiffs, the plaintiff associations, and the leadership of PGPD. Those documents are important to this case—and to the public—in that they show that the PGPD leadership (including individuals who are still in office even after the removal of former Chief Stawinski) does not take racist conduct or retaliation seriously. ECF 174 Exs. 105, 108 ([redacted]). Such documents are plainly a matter of concern to the public who will live under that leadership for at least the foreseeable future.

D. The Other IAD Files Do Not Require Permanent Sealing; At Most They May Be Redacted to Remove the Names of Officers Noted

Finally, Defendants' turn to the IAD investigative files and once again argue they must be kept, in their entirety, from public view. Quite apart from governing case law, which holds that such material is not entitled to be maintained under seal, Defendants misstate the competing concerns of the public in monitoring police misconduct and the desire of some of the officers to have their identities withheld.

In many of the IAD files at issue, the officer involved is one of the individual Plaintiffs. Exs. 43-44, 52-54, 64-65, 75, 84, 122, 134, 135. Defendants never explain why those files should be maintained under seal when those Plaintiffs have put those investigations of themselves in issue. Indeed, Defendants cited some of those same files in their reply brief to their motion to limit (which curiously argues against any review in this Court of other "untethered acts," but refers specifically only to files involving three of the original *named* Plaintiffs.)

In other cases, Defendants seek to withhold from public view IAD files involving other officers. Some of these concern individuals whose misconduct was so well known that their cases were already a matter of public record before the document productions in this case. In some other cases, the officers' identity had not previously been disclosed to the public.

In either case, the overwhelming weight of the cases discussed above establishes that it would be wrong to maintain such plainly relevant materials attached to a court filing under perpetual seal. And, again, the answer to any "privacy" concern is the simple, straightforward, and sufficient redactions of names and personal information prescribed by Judge Hollander in *Baltimore Police Department* and Judge Gauvey in *Martin*.

E. Redacting the Names of Officers Will Not Be Difficult

In one page near the conclusion of their "objections" Defendants assert, with no factual foundation, that it will not be possible to redact the names and any other identifiers of the officers mentioned in the documents they demand be sealed. That is nonsense.

As Judge Hollander specified in Baltimore Police Dept. and the Maryland Court of Appeals set forth in Maryland State Police, it would not take one person more than one day to eliminate the names and other identifiers in the 360 pages of documents at issue. Plaintiffs are so confident of that fact that, should the Court decide redaction is warranted, Plaintiffs will perform that task for review by defense counsel. That process will take far less time and effort than Defendants have devoted to trying to withhold such documents from the public.

CONCLUSION

The documents filed in this Court and the Graham Report filed as ECF 167-176 should be unsealed.

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Respectfully submitted,

/s/ John A. Freedman

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