
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, and JOSEPH SEINITZ, 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.

JAMIE KALVEN,

Intervenor-Appellee.

TONI PRECKWINKLE; MANUEL FLORES; ROBERT FIORETTI; PAT DOWELL; LESLIE HAIRSTON; FREDDRENN 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; and JOSEPH A. MOORE,

Intervenors-Appellees.

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division
No. 04 C 2617
The Honorable Joan Humphrey Lefkow, Judge Presiding

**REPLY BRIEF OF DEFENDANTS-APPELLANTS
TO BRIEF OF ALDERMEN INTERVENORS-APPELLEES**

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TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
SUPPLEMENTAL STATEMENT OF FACTS	1
ARGUMENT	7
THE DISTRICT COURT'S DECISION TO LIFT THE PROTECTIVE ORDER SHOULD BE REVERSED, AND THE PROTECTIVE ORDER SHOULD NOT BE MODIFIED ON ANY BASIS ADVANCED BY THE ALDERMEN.	7
CONCLUSION	19

TABLE OF AUTHORITIES

PAGE(S)

Cases

<u>Jepson, Inc. v. Makita Electric Works, Ltd.</u> , 30 F.3d 854 (7th Cir. 1994)	10
<u>Oklahoma Hospital Association v. Oklahoma Publishing Co.</u> , 748 F.2d 1421 (10th Cir. 1994)	10

Other Authorities

Fed. R. Civ. P. 26(c)	1, 11
65 ILCS 5/10-4-4 (2004)	13
65 ILCS 5/11-1-1 (2004)	11, 12
65 ILCS 5/11-1-2(c) (2004)	11, 12
Municipal Code of Chicago, Ill. §§ 2-57-010 to 2-57-160 (rev. 2007)	4, 13
Municipal Code of Chicago, Ill. § 2-57-100 (rev. 2007)	13
Municipal Code of Chicago, Ill. § 2-57-110 (rev. 2007)	12-13, 14
Municipal Code of Chicago, Ill. § 2-60-080 (1999)	16
Chicago City Council, <u>Journal of Proceedings</u> 16031-16035 (Nov. 13, 2007)	13

SUPPLEMENTAL STATEMENT OF FACTS

This section summarizes and supplements the statement of facts in the defendants' opening brief. See Corrected Brief and Short Appendix of Defendants-Appellants 8-16 [hereafter "Opening Br."].

Bond filed suit against the defendants, R.1, 57, and during discovery, Bond and the defendants agreed to a protective order under Rule 26(c), which the district court approved and entered on February 2, 2005, R.32-33 (Opening Br. A1-A7). In response to Bond's discovery requests, the defendants produced thousands of pages of documents, and some were designated as confidential under the protective order. Before discovery closed, the parties settled, and the case was dismissed. R.247-50. Because the case settled before any dispositive motion was filed or a trial was held, no discovery materials were ever filed with the court.

A week before the case's dismissal, Kalven filed a petition to intervene and lift the protective order as to five categories of discovery materials, R.242, and the district court retained jurisdiction to decide the petition, R.249. The defendants opposed Kalven's challenge to the protective order, but not his intervention. R.260 (Response Brief for Appellee Jamie Kalven A3-A13 [hereinafter "Kalven Br."]). The district court issued an order on July 2, 2007, allowing Kalven to intervene and lifting the protective order. R.267-68 (Opening Br. A8-A17).

The defendants then moved the district court to temporarily stay the July 2, 2007 order, to give them time to decide whether to seek reconsideration or appeal,

R.269, and a hearing was held on July 9, 2007, R.272, Ex.2 (Opening Br. A19-A35). During the hearing, Kalven and Bond opposed any stay; noted that the City Council was scheduled to vote on the proposed OPS ordinance on July 19, 2007; and said Kalven wished to “participate in the public hearing” with the discovery materials. R.272, Ex.2 at 3-4, 6 (Opening Br. A21-A22, A24). According to Bond’s attorney, the proposed ordinance would create an independent agency to “oversee and investigate police abuse in Chicago,” R.272, Ex.2 at 6 (Opening Br. A24), and “a number of [A]ldermen asked [him] about” the materials, R.272, Ex.2 at 7 (Opening Br. A25), but he had been unable to share them because of the protective order, R.272, Ex.2 at 6-7, 16-17 (Opening Br. A24-A25, A34-A35). The defendants interjected that if any Alderman in fact wanted access to the materials to inform their vote on the ordinance, that access should come from them, not Bond or Kalven. R.272, Ex.2 at 8-10, 12-15 (Opening Br. A26-A28, A30-A33). The court found it “persuasive” that some Aldermen may be “interested in this information,” R.272, Ex.2 at 8 (Opening Br. A26), so it “lift[ed] the protective order as to” the defendants, R.272, Ex.2 at 17 (Opening Br. A35). In lifting the protective order to this limited extent, the court stated, “if these [A]ldermen ask you for the information, you have it, you should give it to them. That’s my view.” R.272, Ex.2 at 9 (Opening Br. A27). The court added, “then it becomes more or less a political issue. That is, you deal with these [A]ldermen yourself. But you can’t . . . say this is [the] subject of a protective order because it isn’t.” R.272, Ex.2 at 17 (Opening Br. A35). The district court granted a

temporary stay, but refused to grant a stay pending appeal. R.272, Ex.2 at 9-12 (Opening Br. A27-A30). The district court memorialized this decision in a minute order, stating: the July 2, 2007 order is stayed until July 16, 2007, at 5:00 p.m.; the “protective order is lifted as to” the defendants “but is kept in place as to plaintiff [Bond] and intervenor [Kalven]”; and if the defendants appeal, “then the motion to stay pending appeal is hereby denied.” R.271 (Opening Br. A18).

The defendants filed a notice of appeal on July 13, 2007, R.274, docketed as appeal No. 07-2651. That day, the defendants also filed an emergency motion in this court for a stay pending appeal. R.272, Ex.F (Supplemental Appendix to Brief of Intervening-Appellees SA24-SA43 [hereafter “Aldermen Supp. App.”]). In the motion, the defendants stated, among other things, that they would “make the confidential documents available to any City Council member who requests them.” R.272, Ex.F at 19 (Aldermen Supp. App. SA42). The defendants returned to the district court that day as well, to ask that the temporary stay be extended until this court decided the emergency motion, to avoid any risk of mooted the appeal, R.272, and a hearing was held on July 16, 2007, R.282 (Aldermen Supp. App. SA44-SA64). During the hearing, the defendants said that if any Alderman wanted access to the materials, “the City attorneys can provide them with that information.” R.282 at 18 (Aldermen Supp. App. SA61). The district court refused to extend the stay, R.278; R.282 at 20 (Aldermen Supp. App. SA63), and this court granted a stay pending appeal later that day, just before the temporary stay expired, R.279 (Aldermen Supp. App. SA65-SA66).

On July 17, 2007, two days before the City Council hearing on the proposed OPS ordinance, the Corporation Counsel provided to all fifty Aldermen, even to those who made no request, copies of the category (1), (2), and (3) lists, with the names and employee numbers of all officers redacted, and indicated that the other discovery materials were too voluminous to provide. The City Council voted on and enacted the ordinance during the July 19, 2007 hearing. See Municipal Code of Chicago, Ill. §§ 2-57-010 to 2-57-160 (rev. 2007) (Aldermen Supp. App. SA67-SA74). Some Aldermen then “chose to release” the redacted lists to members of the media, including Kalven, Kalven Br. 12, who thereafter posted them on his website, see <http://www.viewfromtheground.com/archive/2007/07/court-of-appeals-stays-order.html>; Opening Br. A36-A39; Kalven Br. A1-A2; (A1-A5).

More than a month after the hearing, on August 23, 2007, Alderman Toni Preckwinkle sent a letter to the Corporation Counsel requesting that unredacted versions of the discovery materials be provided. R.285, Ex.E (Aldermen Supp. App. SA75). By letter dated September 11, 2007, the Corporation Counsel denied the request, explaining that the materials were the subject of a pending appeal, No. 07-2651, and the defendants wished to avoid any possibility that allowing others to review them would affect the appeal. R.285, Ex.F (Aldermen Supp. App. SA76).

A month and a half later, on October 22, 2007, with briefing in appeal No. 07-2651 underway, twenty-eight Aldermen filed a petition in the district court seeking to intervene in the case and lift the protective order, R.285, and a hearing was held

on October 25, 2007, R.297 (Intervening-Appellees' Brief RA10-RA17 [hereafter "Aldermen Br."]). During the hearing, the district court concluded that it lacked subject matter jurisdiction over the Aldermen's petition. R.297 at 8 (Aldermen Br. RA17). As the court explained, the Aldermen were asking it to resolve "the very question that is before the Court of Appeals," which is whether the materials should remain under the protective order, R.297 at 5 (Aldermen Br. RA14); "this issue is exactly what is before" the Seventh Circuit, R.297 at 7 (Aldermen Br. RA16); and the Aldermen were merely "asking [it] to decide [the issue] again," R.297 at 7 (Aldermen Br. RA16). The court added that it had "already granted the relief" the Aldermen were seeking, the order granting that relief was on appeal, and the protective order remained in effect because of the stay. R.297 at 6-7 (Aldermen Br. RA15-RA16). The court also made clear that it had not ordered the defendants to provide the materials to any Alderman during the July 9, 2007 hearing, but had merely lifted the protective order as to the defendants, thereby allowing them to decide whether to share the materials with others. R.297 at 6-7 (Aldermen Br. RA15-RA16). The court recalled saying: "If you want to deliver [the materials] to the [A]ldermen – parentheses, I think you should – you can do that. I'm not going to stand in your way. If you recall at the end of the transcript, I said: This is a political question as far as I'm concerned." R.297 at 6-7 (Aldermen Br. RA15-RA16). The district court memorialized this decision in a minute order, stating that the Aldermen's petition "is denied for lack of subject matter jurisdiction." R.287.

Five days later, on October 30, 2007, the Aldermen filed a notice of appeal, R.288, docketed as appeal No. 07-3644. This court consolidated that appeal with the defendants' appeal, No. 07-2651, but did not consolidate briefing. After briefing in appeal No. 07-2651 was completed, the Aldermen filed the opening brief in their appeal, along with a motion to intervene in our appeal, which this court granted. The defendants then moved to dismiss appeal No. 07-3644 as unnecessary in light of the Aldermen's intervention in our appeal, and to require the Aldermen to refile their opening brief in their appeal as a proper intervenors-appellees' brief in our appeal. The court granted that motion and allowed, as well, our request to respond to the Aldermen's brief by way of this separate reply brief.

ARGUMENT

THE DISTRICT COURT'S DECISION TO LIFT THE PROTECTIVE ORDER SHOULD BE REVERSED, AND THE PROTECTIVE ORDER SHOULD NOT BE MODIFIED ON ANY BASIS ADVANCED BY THE ALDERMEN.

The argument of those Aldermen who intervened in this appeal is twofold. First, the Aldermen adopt Kalven's position that the district court's July 2, 2007 decision lifting the protective order was not an abuse of discretion. See Aldermen Br. 3, 8-9, 13. To this, we respond by incorporating the arguments in our opening brief, see Opening Br. 20-50, and reply brief to Kalven's brief, see Reply Brief of Defendants-Appellants 1-25 [hereafter "Reply Br."], which address that position at length. Second, they alternatively argue that, at a minimum, the protective order should be modified to allow them access to certain materials. See Aldermen Br. 3, 8-13.¹ The Aldermen are not clear about which materials they seek access to, but they appear to focus primarily on the unredacted version of the category (1) list – a list of officers who were the subject of more than ten CRs from 2001 to 2006 – and the category (5) documents – CR files of the defendant officers – redacted as the

¹ The Aldermen do not differentiate between their two arguments for purposes of the standard of review. They state only that a "district court's decision about whether to modify its own protective order is reviewed for abuse of discretion." Aldermen Br. 8. That standard does not apply to their alternative argument because the district court did not consider the modification the Aldermen propose to this court.

district court ordered. See id. at 6 n.2, 10-11, 13.² Thus, while the Aldermen refer generally to the documents as “lists” and “reports,” they make no specific argument for access to the category (2) list – a list of those officers on the category (1) list who participated in CPD’s early intervention programs – and the category (3) list – a list of those officers on the category (1) list who were assigned to CPD’s Public Housing South Unit. Indeed, they mention those lists in their statement of facts, see id. at 5, but never again. Furthermore, like Kalven, see Reply Br. 1-2, the Aldermen do not reference the category (4) list – a list of the defendant officers’ CR files – at all, so we assume that they too do not seek that list.

Three other points require clarification at the outset. First, the Aldermen describe the category (1) list as containing information about “the nature of the complaints made against” the officers. Aldermen Br. 5. That is not accurate. That list identifies the officers by name, employee number, and unit number, and lists the officers’ CR files by number, the date the CR files were opened and closed, the dispositions of the investigations, and the actions taken based on the dispositions. See A1-A5. And, everything on that list except the officers’ names and employee numbers is in the public domain. That list does not indicate the nature of the complaints, which is part of the problem with releasing the officers’ names. As we

² As we have noted, see Reply Br. 2, Kalven now agrees that, in addition to the redactions the district court ordered, all officers’ employee numbers should be redacted from any document released. Since the Aldermen advance no particular argument about employee numbers, and, instead, adopt Kalven’s arguments, they have agreed to this redaction as well.

have discussed, see Opening Br. 41; Reply Br. 22, Kalven tags those officers as “repeaters,” R.242 at 2, and as having committed “chronic abuses,” Kalven Br. 32, but those labels reflect mere speculation about the nature of the complaints and an assumption that the complaints were valid, neither of which can be gleaned from this skeletal list. Indeed, as we have also explained, CPD registers all complaints, and they are counted whether legitimate or not. See Opening Br. 41; Reply Br. 22. Thus, if this list were released in unredacted form, it would unfairly brand officers, by name, with unproven labels like the ones Kalven uses.

Second, the Aldermen assert that the district court, during the July 9, 2007 hearing, ordered the defendants to provide the materials to them. See Aldermen Br. 6, 7. That is not correct. During that hearing, the district court lifted the constraint of the protective order as to the defendants, allowing them to decide whether and to what extent to share the materials with others. In particular, the court stated, “if these [A]ldermen ask you for the information, you have it, you should give it to them. That’s my view.” R.272, Ex.2 at 9 (Opening Br. A27). Importantly, the district court added, “then it becomes more or less a political issue. That is, you deal with these Aldermen yourself.” R.272, Ex.2 at 17 (Opening Br. A35). And, during the October 25, 2007 hearing, the district court specifically rebuffed any suggestion that it had ordered the defendants to provide the materials to any Alderman. The court recalled that it had said: “If you want to deliver [the materials] to the [A]ldermen – parentheses, I think you should – you can do that.

I'm not going to stand in your way. If you recall at the end of the transcript, I said: "This is a political question as far as I'm concerned." R.297 at 6-7 (Aldermen Br. RA15-RA16). Indeed, as we have explained, see Opening Br. 30-31; Reply Br. 4, the district court, as a matter of law, had no authority to order the defendants, or Bond for that matter, to release the materials to others. While the parties are free to disseminate materials not covered by a protective order, in the absence of a choice by a party to disseminate, there is no right of access. See, e.g., Jepson, Inc. v. Makita Electric Works, Ltd., 30 F.3d 854, 858 (7th Cir. 1994) (citing Oklahoma Hospital Association v. Oklahoma Publishing Co., 748 F.2d 1421, 1424 (10th Cir. 1994)). Both the district court and Kalven recognized this limitation on the court's authority. See R.268 at 8-9 (Opening Br. A16-A17); R.297 at 6-7 (Aldermen Br. RA15-RA16); Kalven Br. 31 n.10.

Third, the Aldermen assert that "it should be apparent that revealing the documents to [them] is not synonymous with public disclosure," because they will be able to use the materials for their stated purposes "without disclosing [them] to the public." Aldermen Br. 13. This identifies no legal basis to modify the protective order to allow the Aldermen access to the materials. At most, this is something the defendants might consider in deciding whether and to what extent to share them with the Aldermen. But, whoever shares the materials with the Aldermen, once the door is opened, no safeguards would be in place to prevent further dissemination. No matter how well intentioned the Aldermen might be, they would not be parties

to the protective order, nor would their staff. And, as with any information, the greater the number of people who are privy to it, the greater the risk that confidentiality will be breached, even if inadvertently. Indeed, the Aldermen's position in this court is that the need for disclosure outweighs officer privacy and other interests, and the Aldermen stress that their constituents ask them for information that is contained in the materials. See Aldermen Br. 11. And, the Aldermen have in the past demonstrated a desire to share this type of information with the public. When the Corporation Counsel provided the redacted lists to all Aldermen before their vote on the proposed OPS ordinance, some Aldermen "chose to release" copies of the redacted lists to members of the media, including Kalven, Kalven Br. 12, who then posted them on his website.

Turning now to the merits, there is "good cause," as defined by Rule 26(c), to keep the protective order in place without modifying it to allow the Aldermen access to the confidential materials. The Aldermen assert, in a variety of ways, that they need the materials to perform the City Council's function of CPD oversight, a function they claim stems from state law, citing 65 ILCS 5/11-1-1, 11-1-2(c) (2004). See Aldermen Br. 4, 8-13. In particular, the Aldermen contend that they need information about past complaints and investigations to determine whether other reforms are needed regarding the handling of police misconduct complaints, see id. at 10-11, further asserting that "[w]ithout the lists, [they] cannot have meaningful conversations with police supervisors about their oversight of these officers or the

handling of civilian complaints, or discuss whether there is a need for reforms in the complaint, investigation, and disciplinary policies and practices,” id. at 11-12. In the same vein, the Aldermen claim that they need the materials in order to determine “whether misconduct charges have been thoroughly investigated” and “whether the complaints were well-founded.” Id. at 11. And, the Aldermen assert that “[w]ithholding documents from [them] means they are no more informed than their constituents, and that they must draw conclusions from headlines and incomplete information.” Id. at 12.

The statutes the Aldermen cite do provide that the City Council “may pass and enforce all necessary police ordinances,” 65 ILCS 5/11-1-1, and “may prescribe any additional duties and powers of the police officers,” 65 ILCS 5/11-1-2(c). But, the Aldermen cannot reasonably take the position that their ability to perform these functions will be undermined without these materials; after all, the materials are only at issue now because of the fortuity that Bond filed the underlying lawsuit and asked for this particular information during discovery. The Aldermen have performed the functions they describe for decades, and have had myriad tools at their disposal to acquire whatever information they actually needed to do so. For instance, under the new OPS ordinance, the City Council’s Committee on Police and Fire receives quarterly reports regarding police misconduct complaints and the investigations of those complaints, “without identifying any individual.” Municipal

Code of Chicago, Ill. § 2-57-110 (rev. 2007) (Aldermen Supp. App. SA71-SA72).³

And, final summary reports about complaints are open to public inspection, except to the extent the information in the reports is exempted by Illinois FOIA, collective bargaining agreements, or other laws. See id. § 2-57-100 (Aldermen Supp. App. SA71). If any Alderman believes additional reforms are needed, an amendment to the current ordinance may be proposed and voted on by the entire City Council.

What is more, the City Council, like most legislative bodies, has long had the means to investigate the enforcement of ordinances, and the actions of municipal officers, agents, and employees. See 65 ILCS 5/10-4-4 (2004). And, the Aldermen frequently request information from or raise issues of concern with CPD through the City Council's Committee on Police and Fire, which meets on a regular basis and has "jurisdiction over all matters relating to the Police Department" Chicago City Council, Rules of Order 32 (May 23, 2007). Without doubt, there are many ways, besides Bond's lawsuit, for the Aldermen to inform themselves and perform these functions. This very case confirms that the Aldermen do not need the materials at issue to carry out these functions. The City Council passed significant reforms concerning how police misconduct complaints are investigated, see Municipal Code of Chicago, Ill. §§ 2-57-010 to 2-57-160 (rev. 2007) (Aldermen Supp. App. SA67-SA74), without the unredacted lists and the CR files these Aldermen now seek.

³ The City Council later amended the OPS ordinance to name the agency the Independent Police Review Authority. See Chicago City Council, Journal of Proceedings 16031-16035 (Nov. 13, 2007).

This point also addresses the Aldermen’s contention that “complete and unredacted reports would have proved invaluable in July 2007, when the Aldermen voted on” the OPS ordinance. Aldermen Br. 10. All Aldermen were given copies of the redacted lists before the July 19, 2007 hearing on the ordinance, and nothing further was requested at the time that disclosure was made. Indeed, it was not until more than a month later, on August 23, 2007, that Alderman Preckwinkle sent a letter to the Corporation Counsel seeking unredacted copies of the materials. See R.285, Ex.E (Aldermen Supp. App. SA75). By then, the OPS ordinance had been enacted, eliminating the need for the materials to inform any Alderman’s vote.

Obtaining the lists in unredacted form – in other words, providing the names of the listed officers – and the defendant officers’ CR files (with certain redactions) will not benefit the Aldermen in performing these functions in any significant way. As we have explained, the category (1) list, which the Aldermen seem to be most interested in, is skeletal – simply listing names, employee numbers, unit numbers, CR numbers, dates, and dispositions. Contrary to the suggestion of the Aldermen, see Aldermen Br. 11, 12, revealing the officers’ names says nothing about whether complaints were effectively investigated under the old system; about what else, if anything, should be changed about how investigations are currently conducted; or about whether the complaints listed were well founded and properly investigated. Indeed, the new ordinance, which these Aldermen passed, reflects the City Council’s legislative judgment that neither it nor the public needs officers’ names in the

quarterly report to assess how complaints are handled or to otherwise monitor police misconduct. See Municipal Code of Chicago, Ill. § 2-57-110 (rev. 2007) (Aldermen Supp. App. SA71-SA72). At the same time, revealing the officers' names implicates serious privacy and other concerns, as we discuss in our opening brief and reply brief to Kalven.

The same is true of the category (2) and (3) lists, if, contrary to our surmise above, the Aldermen are in fact seeking access to them. Whatever conclusions can be drawn from these lists can be drawn without knowing the names. And, as for the category (5) CR files, those will not aid the determination whether complaints were properly investigated under the old system. This is because, as we have discussed, see Opening Br. 42 & n.8; Reply Br. 19, the district court ordered the names of all complainants and witnesses redacted from the CR files before a party shares them with others. As such, anyone who desired to retrace the investigation to ascertain whether it was adequately conducted would only have the officers' names, and thus could not do so properly. Therefore, the Aldermen's assertion that their interests "are not at odds with those of the City," Aldermen Br. 10, to the extent it implies a common goal of reform in CPD, is true, but it nonetheless fails to take into account that such reform is possible while still respecting the privacy and other interests of police officers. The Aldermen's desire to have the CR files cannot possibly overcome the privacy and other concerns raised by releasing the officers' personnel information, particularly in conjunction with their names, which we

explain in our prior briefs. Alternatively, to the extent that the Aldermen press for the release of materials that the Corporation Counsel has determined should not be released, their interests are at odds with those of the defendants the Corporation Counsel represents in this case.

The Aldermen add that they need the materials to determine “what, if any, disciplinary actions were taken.” Aldermen Br. 11. But, this information is already in the public domain on the category (1) list. All that was redacted from that list were the officers’ names (and employee numbers). The public version of the list, therefore, indicates any disciplinary action taken.

The Aldermen also contend that they need the officers’ names on the lists “to respond effectively to constituent concerns.” Aldermen Br. 11. This, the Aldermen say, includes being able to ascertain “whether officers on the list patrol their wards.” *Id.* But the risk of harming officer privacy and other interests by release of this misleading personnel information, which, again, we address at length in our prior briefs, far outweighs any need to broadcast the names of the officers to the Aldermen’s constituents.

In addition, the Aldermen assert, citing Municipal Code of Chicago, Ill. § 2-60-080 (1999), a general ordinance about the authority of the Corporation Counsel and the City Council to settle lawsuits, that the City Council “must know the facts of a particular police misconduct case against the City before deciding whether to approve a proposed settlement,” Aldermen Br. 12. This does not explain why the

Aldermen need the materials at issue here. The materials do not reveal the facts of any case. Nor is there any settlement at issue. To the contrary, the City Council already approved the settlement of Bond's claims, and no Alderman asked to view any of the materials at issue here before approving that settlement. If the City Council did not consider the materials important to the settlement here, there is no reason to think they would be needed in considering other settlements.

The Aldermen also indicate that, this year, the City Council "must decide whether to approve the collective bargaining agreement between the Fraternal Order of Police and the City," and that these materials "may help inform" them "in the bargaining negotiations." Aldermen Br. 12. The Aldermen do not make clear any connection between the materials they seek and the collective bargaining process. For its part, the FOP is squarely on our side, having filed an amicus brief in opposition to lifting the protective order. Thus, it is unlikely that the negotiation over the new contract will involve any of the information the defendants – and the FOP – seek to protect in this case. If, by some chance, something does prove to be relevant, the City Council has other means to obtain what is needed to inform their decision in this process, just as it has been able to consider and approve collective bargaining agreements over the years.

In the end, whatever help the materials at issue may be to these Aldermen in performing their duties, that does not overcome the need to protect the privacy of the officers and the other interests we set forth for maintaining the protective order.

As the district court indicated, see R.272, Ex.2 at 17 (Opening Br. A35); R.297 at 6-7 (Aldermen Br. RA15-RA16), the question whether and to what extent the Aldermen in particular should have access to these materials is a political one that should be resolved among the Aldermen, the Corporation Counsel, and CPD, not by this court in this context.

CONCLUSION

This court should reverse the district court's July 2, 2007 order lifting the February 2, 2005 protective order outright. In addition, this court should reject the alternative request by these Aldermen to modify the protective order to allow them access to the materials they seek.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH FED. R. APP. P. 32(a)(7)(B)(ii)

In accordance with Fed. R. App. P. 32(a)(7)(C)(i), I certify that the Reply Brief of Defendants-Appellants to Brief of Aldermen Intervenors-Appellees complies with the type-volume limitation set forth in Fed. R. App. P. 32(a)(7)(B)(ii) because it contains 4,662 words, beginning with the words “SUPPLEMENTAL STATEMENT OF FACTS” on page one and ending with the words “Respectfully submitted” on page eighteen. In preparing this certificate, I relied on the word count of the word-processing system used to prepare the brief, which was WordPerfect 12.

NADINE J. WICHERN, Attorney

CERTIFICATE OF COMPLIANCE WITH 7TH CIR. R. 31(e)(1)

In accordance with 7th Cir. R. 31(e)(1), I certify that a digital version of the Reply Brief of Defendants-Appellants to Brief of Aldermen Intervenors-Appellees has been furnished to the court, and that the digital version excludes the documents included in the appendix because they are unavailable in non-scanned PDF format.

NADINE J. WICHERN, Attorney

TABLE OF CONTENTS TO APPENDIX

Portion of redacted version of category (1) list
posted on Kalven's website A1-A5

CERTIFICATE OF SERVICE

I certify that I served the attached Reply Brief of Defendants-Appellants to Brief of Aldermen Intervenors-Appellees by placing two bound paper copies and one computer disk containing the digital version in an envelope with sufficient postage affixed and directed to each person named below at the address indicated, and by depositing each envelope in the United States mail box located at 30 North LaSalle Street, Chicago, Illinois, 60602, before 5:00 p.m. on March 17, 2008.

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