

CAUSE NO. 017-314276-20

TARRANT COUNTY CRIMINAL
DISTRICT ATTORNEY'S OFFICE

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IN THE DISTRICT COURT

V.

____ JUDICIAL DISTRICT

TRENA MILLER

TARRANT COUNTY, TEXAS

**PLAINTIFF'S VERIFIED ORIGINAL PETITION FOR TEMPORARY RESTRAINING
ORDER, FOR TEMPORARY INJUNCTION, AND FOR PERMANENT INJUNCTION**

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes Plaintiff, the Tarrant County Criminal District Attorney's Office, and files this Plaintiff's Original Petition for Temporary Restraining Order, Temporary Injunction, and Permanent Injunction and would respectfully show the Court the following:

I.

DISCOVERY-CONTROL PLAN

To the extent that discovery may be necessary, Plaintiff intends to conduct discovery under Level 2, Rule 190.3, Texas Rules of Civil Procedure.

II.

PARTIES

Plaintiff, the Tarrant County Criminal District Attorney's Office, is a governmental body whose primary office is located at 401 West Belknap, Fort Worth, Texas 76196-0201.

Defendant, Trena Miller, is an individual residing in Tarrant County, Texas who may be served with process at 2825 North Highway 360, Apartment 551, Grand Prairie, Texas 75050, or wherever else she may be found.

III.

JURISDICTION & VENUE

Venue in Tarrant County, Texas is proper in this cause under Texas Civil Practice and Remedies Code § 15.002(a)(1) because all or a substantial part of the events or omission giving rise to this action occurred in this county.

Because the Plaintiff seeks injunctive relief and does not seek any monetary relief, Plaintiff's causes of action are within the jurisdictional limits of this Court. Tex. R. Civ. P. 47.

IV.

RELEVANT FACTS

At issue is the inadvertent release by Plaintiff of information to the Defendant deemed confidential by law in response to a Public Information Act request. The specific confidential information at issue is the personal information of an Arlington Police Officer contained in approximately ten seconds of a video clip from a police officer's body-worn camera. Tex. Gov't Code § 552.1175. Texas courts have previously determined that documents inadvertently disclosed through a Public Information Act request to a party not authorized to receive them may be recovered by the filing of a legal action. *See Doe v. Tarrant County*, 269 S.W.3d 147 (Tex. App.—Fort Worth 2008, no pet.).

On July 11, 2019, Plaintiff received a Public Information Act request from Defendant seeking records related to a specific incident involving the use of lethal force by the Arlington Police Department on January 11, 2019 and documented in Arlington Police Department offense report number 2019-00110697. A true and correct copy of the July 11, 2019 request is attached hereto as Exhibit "A." In response to this request, on July 25, 2019, Plaintiff sought a ruling from the Texas Office of the Attorney General seeking to withhold the requested documents pursuant

to the exception to public release found in Texas Government Code § 552.108(a)(1) in light of the ongoing investigation and upcoming presentation to a Tarrant County Grand Jury of the incident. A true and correct copy of Plaintiff's request for a ruling to the Office of the Attorney General is attached hereto as Exhibit "B" (attachments omitted). On August 22, 2019, the Office of the Attorney General issued a ruling permitting Plaintiff to generally withhold the requested documents. A true and correct copy of the ruling from the Office of the Attorney General is attached hereto as Exhibit "C."

On August 14, 2019, the Tarrant County Grand Jury declined to issue any indictments stemming from the incident documented in report 2019-00110697. Subsequently, on August 19, 2019, the Defendant submitted a second Public Information Act request seeking all material from this case and investigation held by Plaintiff. A true and correct copy of the second Public Information Act request is attached hereto as Exhibit "D." Because the investigation and prosecution had fully concluded, Plaintiff could no longer avail itself of the exception under Government Code § 552.108(a)(1) or rely upon the previous ruling of the Office of the Attorney General since the underlying facts and circumstances on which the ruling was based had changed. In light of the fact the case and investigation had concluded, Plaintiff reached out to Defendant to attempt to reach an agreement regarding the redaction and withholding of certain documents and pieces of information generally not considered subject to public release. Correspondence from August 31, 2019 between Plaintiff and Defendant to this effect is attached as Exhibit "E." On September 3, 2019, Defendant spoke by telephone with a legal assistant employed by Plaintiff, wherein she agreed to the redaction and withholding of information excepted from public release. Attached hereto as Exhibit "F" is an e-mail from September 3, 2019, briefly memorializing the

conversation between Defendant and Plaintiff's employee wherein a redaction agreement was reached.

The requested material was released to the Defendant by Plaintiff on September 19, 2019. Three DVDs containing responsive documents and media were sent to the Defendant by standard mail. On or about October 16, 2019, the Defendant contacted Plaintiff by telephone to inquire about videos that appeared to have been missing from the initial September 19, 2019 disclosure. After looking into the discrepancy pointed out by the Defendant, Plaintiff located additional responsive videos which had not been uploaded into Plaintiff's electronic case database. Defendant submitted a written request for any additional videos on October 25, 2019. A copy of this request and subsequent correspondence is attached hereto as Exhibit "G." On November 20, 2019, three additional DVDs of responsive material consisting exclusively of videos were mailed to the Defendant.

On December 20, 2019, Plaintiff was alerted by an Assistant City Attorney with the City of Arlington that the Defendant had posted a video on Facebook which contains the personal information of an Arlington Police Officer involved in the incident memorialized in report 2019-00110697. Although the Defendant had previously agreed to the withholding or redaction of information deemed confidential or excepted from public release, this piece of information was missed during the review process and was not redacted from the videos released to the Defendant, although it should have been. Tex. Gov't Code § 552.1175 (a)(1), (b) (personal information of peace officers is confidential if the officer chooses to restrict access to this information and notifies the governmental body). Plaintiff has been informed that the impacted Arlington Police Officer has filed the necessary documents under Government Code § 552.1175(b) to restrict access to his

personal information. The information contained in the video released to the Defendant is therefore confidential by statute.

In an effort to retrieve the video containing the inadvertently released confidential information, Plaintiff immediately contacted Defendant by telephone and by written correspondence on December 20, 2019. Plaintiff alerted Defendant that confidential material had been erroneously disclosed to her and requested the return of the material she had received from Plaintiff in exchange for copies of the same material with the confidential information removed. A true and correct copy of the written correspondence sent to the Defendant is attached as Exhibit “H.”

Plaintiff gave the Defendant until January 3, 2020 to voluntarily return the material. Defendant never responded to Plaintiff’s request. Instead, on January 3, 2020, Barrett Brown, an investigative journalist, posted Plaintiff’s December 20, 2019 letter on Facebook. The comments posted on Facebook in response to Plaintiff’s letter raise concerns for the safety of the Arlington Police Officer. These comments demonstrate a strong anti-law enforcement sentiment, including a disregard for the safety of the Arlington Police Officer. Plaintiff did not send a copy of the letter to Mr. Brown. Upon information and belief, Defendant provided this letter to Mr. Brown. Based on this conduct, Plaintiff believes that Defendant has no intention of returning the inadvertently released confidential information.

V.

CLAIMS FOR RELIEF

a. Request for a Temporary Restraining Order

Plaintiff asks the Court to enter an ex parte Temporary Restraining Order prohibiting Defendant, pending a hearing on the merits, from the following: 1) refraining from distributing,

copying, allowing to be viewed, or otherwise disseminating the video containing confidential information to any other person or entity; and 2) refraining from reproducing or disseminating the confidential information obtained from the video, including by transcription of the information to any other person or entity.

It is probable that Plaintiff will prevail after a hearing on the merits because the information at issue is confidential by statute and was inadvertently released to the Defendant. The Defendant is not authorized to receive the confidential information at issue and does not have a legal right to possess it. This information is confidential as a matter of law, and the inadvertent disclosure of it did not make it public or waive the protections afforded by the Public Information Act.

If Plaintiff's application is not granted, harm is imminent because the Defendant has distributed the confidential information on Facebook and YouTube, generating a wide-range of publicity. Attached hereto as Exhibit "I" is a verified affidavit from Investigator Jeff Gray detailing his observations of these postings. Comments posted on these social media platforms in response to other videos released to the Defendant have displayed strong anti-law enforcement sentiment. Continued distribution of this confidential information places the Arlington Police Officer at immediate risk of bodily injury or other action in relation for his law enforcement service.

Plaintiff has no adequate remedy at law, or otherwise from the damage or harm threatened by the Defendant's continued possession, use, or distribution of this confidential information. Monetary damages in this instance cannot be calculated and Plaintiff seeks to prevent irreparable bodily harm to the impacted officer.

Plaintiff is willing to post bond. However, because the Plaintiff does not seek pecuniary damages and requests only injunctive relief, and the information has no inherent value, Plaintiff requests that the Court set bond in the amount of \$10.00.

There is not enough time to serve notice on Defendant and to hold a hearing on this application. Defendant has distributed the video containing confidential information to other parties and has informed members of the media of Plaintiffs correspondence seeking to exchange the released documents for versions without the confidential information. This raises the strong possibility that Defendant will continue to distribute the confidential information, thereby greatly exacerbating the irreparable injury suffered by the Arlington Police Officer at the wider distribution of his confidential personal information.

b. Request for Temporary Injunction

Plaintiff asks the Court to set its application for temporary injunction for a hearing and, after the hearing, issue a temporary injunction against Defendant. Specifically, Plaintiff requests the Court to issue a temporary injunction granting the relief requested in this application. Specifically, Plaintiff asks the Court to order Defendant to undertake the following acts: 1) cease distributing, copying, allowing to be viewed, or otherwise disseminating the video containing confidential information to any other person or entity; 2) cease reproducing or disseminating the confidential information obtained from the video, including by transcription of the information; 3) inform the Court of all other persons and/or entities to which she has disseminated the video containing confidential information so that this Court may order those copies to be returned to Plaintiff; 4) remove any copies of the video containing confidential information from any social media platforms to which it has been posted; and 5) return the media at issue herein and any and all copies she has made or caused to be made to the hearing before this Court.

c. Request for Permanent Injunction

Upon a hearing on the merits, Plaintiff asks the Court to enter its judgment containing a permanent injunction granting the relief requested in this application. Specifically, Plaintiff asks

the Court to order Defendant to undertake the following acts: 1) refrain from distributing, copying, allowing to be viewed, or otherwise disseminating the video containing confidential information to any other person or entity; 2) refrain from reproducing or disseminating the confidential information obtained from the video, including by transcription of the information to any other person or entity; 3) inform the Court of all other persons and/or entities to which she has disseminated the video containing confidential information so that this Court may order those copies to be returned to Plaintiff; 4) remove any copies of the video containing confidential information from any social media platforms to which it has been posted; and 5) return the media at issue herein and any and all copies she has made or caused to be made to Plaintiff so that a copy with the confidential information removed may be provided to the Defendant.

V.

IN-CAMERA INSPECTION

Upon setting the hearing for Plaintiff's application for temporary injunction, Plaintiff will tender a copy of the media at issue to the Court for an in-camera inspection. Such inspection should be in-camera, as the public filing of the information poses a safety risk to the Arlington Police Officer.

VI.

PRAYER

Therefore, Plaintiff Prays that a temporary restraining order issue immediately without notice, to continue in force until a day to be fixed by this Court for hearing on Plaintiff's Application for Temporary Injunction, restraining defendant from distributing, copying, allowing to be viewed, or otherwise disseminating the video containing confidential information.

WHEREFORE, PREMISES CONSIDERED, Plaintiff, the Tarrant County District Attorney's Office, asks that the Defendant be cited to appear and answer and, following a hearing, that Plaintiff be awarded the following relief against the Defendant: 1) temporary restraining order; 2) temporary injunction; 3) permanent injunction; and 4) all other relief to which Plaintiff is entitled.

Respectfully submitted,

SHAREN WILSON
CRIMINAL DISTRICT ATTORNEY
TARRANT COUNTY, TEXAS

s/ Leslie L. Hunt

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