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MONTANA EIGHTEENTH JUDICIAL DISTRICT COURT, ~~GALLATIN COUNTY~~ ^{BY} ~~DEPUTY~~

IN RE: APPLICATION FOR THE
RELEASE OF CONFIDENTIAL
CRIMINAL JUSTICE INFORMATION.

) Case Nos.: CCJI-17-50A
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APPLICANT: BOBBY CALVAN AND
MATT VOLZ

ORDER RE: RELEASE OF CONFIDENTIAL CRIMINAL JUSTICE INFORMATION

The Court has reviewed the Application filed by Bobby Calvan and Matt Volz on behalf of the Associated Press in the above-captioned case, along with the responses of Mr. Greg Gianforte, Ben Jacobs, and the County Attorney. As noted by the Gallatin County Attorney, this application is one of a number of applications seeking dissemination of confidential criminal justice information (CCJI) created as a result of an incident on May 24, 2017 involving Gianforte and Jacobs. However, this application also seeks dissemination of CCJI that has no connection with the May 24, 2017 case, and includes requests related to the Gianforte family and a number of specified physical locations. The only basis provided by the applicants to support their request for information related to the Gianforte family is "the Public's right to know."

The collection and dissemination of criminal justice information is governed, generally, by the Montana Criminal Justice Information Act, §§ 44-5-101 *et seq.*, MCA, and

falls into two categories: "public criminal justice information" (public) or "confidential criminal justice information" (confidential). While "public" information generally may be disseminated without restriction under statutory guidelines, the release of "confidential" information is restricted to criminal justice agencies, those authorized by law to receive it, and those authorized to receive it upon issuance of a written court order finding the demands of individual privacy do not clearly exceed the merits of public disclosure. Section 44-5-303(1), MCA. Pursuant to § 44-5-303(3), MCA, whenever confidential criminal justice information is disseminated, it must be designated as confidential and, unless otherwise ordered by a court, a person that accepts confidential criminal justice information assumes equal responsibility for the security of the information with the originating agency.

Applicant does not represent a criminal justice agency. However, the Montana Supreme Court has determined that one is "authorized by law" to receive confidential criminal justice information under Article II, Section 9 of the Montana Constitution, commonly known as the "right to know" provision. *Bozeman Daily Chronicle v. City of Bozeman Police Department*, 260 Mont. 218, 223-24, 859 P.2d 435 (1993). "The only limitation on the right to receive this information is the constitutional right to privacy." *Bozeman Daily Chronicle*, 260 Mont. at 224 (quoting *Allstate Insurance Co. v. City of Billings*, 239 Mont. 321, 780 P.2d 186, 188 (1989)).

Therefore, the decision to release confidential criminal justice information must be considered in light of both Sections 9 and 10 of Article II of the Montana Constitution as interpreted by the Montana Supreme Court in cases such as *Yellowstone County v. Billings Gazette*, 2006 MT 218, 333 Mont. 390, 143 P.3d 135; *Havre Daily News v. The City of*

Havre, 2006 MT 215, 333 Mont. 331, 142 P.3d 864; *Associated Press, Inc. v. Montana Dept. of Revenue*, 2000 MT 160, 3000 Mont. 233, 4 P.3d 5; *Bozeman Daily Chronicle v. City of Bozeman Police Department* (1993), 260 Mont. 218, 859 P.2d 435; *Allstate Insurance Co. v. City of Billings, I* (1989) 239 Mont. 321, 780 P.2d 186; and *Missoulian v. Board of Regents of Higher Education* (1984), 207 Mont. 513, 675 P.2d 962. The Supreme Court further has stated that it is important to remember that in both Article II, Section 9, and § 44-5-303(1), MCA, "the right of privacy for the individual is expressly regarded." *Engrav v. Cragun*, 236 Mont. 260, 263, 769 P.2d 1224 (1989).

"Accordingly, in view of the purpose to protect individual privacy underpinning the Act, as set forth in § 44-5-102, MCA, 'it is incumbent upon a party to make a proper showing in order to be eligible to receive such specific confidential information.'" *Bozeman Daily Chronicle*, 260 Mont. at 224 (*quoting Allstate*, 780 P.2d at 189). Therefore, the party seeking the information has the burden, initially, to establish the party is authorized by law to receive the information. The burden then shifts to the agency or person in possession of the information to demonstrate why any or all portions of the material should not be released because the rights of individual privacy outweigh the merits of public disclosure. *Bozeman Daily Chronicle*, 260 Mont. at 227.

In order to determine whether an individual has met his burden and has made a proper showing of entitlement to receive the investigatory documents at issue, the Court utilizes a two-part test to determine whether an individual has a protected privacy interest under Article II, Section 10 of the Montana Constitution. The Court must determine (1) whether the individual has a subjective or actual expectation of privacy in the information

provided, and (2) whether such expectation would be recognized as reasonable by society. *Bozeman Daily Chronicle*, 260 Mont. at 225; see also, *Havre Daily News*, ¶ 23. This determination requires reasoned consideration of the specific facts underlying the request. *Havre Daily News*, ¶ 23.

Based on the response filed by the Gianforte family, they have no objection to the release of the requested information related to calls for service involving them. Based on that representation, the Gallatin County Attorney also does not object. However, the requested list of information includes calls for service that are not related to any of the Gianfortes and identifies third parties and witnesses that have had no opportunity to be made aware of the requests or review the requested information. Upon review of the documents provided, the Court finds that the individuals and witnesses that are identified in the documents have, at a minimum, a subjective expectation of privacy in the information they have provided to law enforcement, as well as a reasonable expectation of privacy in the information requested. In addition, other persons potentially affected by the release of the information may be entitled to prior notice of any requests as may be determined by the Court should such a request be filed. The Court also agrees with the observation made in the Response of the Gallatin County Attorney that regardless of these individuals' expectations of privacy, the Applicants have offered no reason to entitle them to receipt of CCJI that pertains to persons outside of the Gianforte family.

The Court further concludes that the Applicants are not entitled to any personal information of any of the individuals identified in the reports which may be included in any information that is released. The Applicants have not met the burden of establishing a right

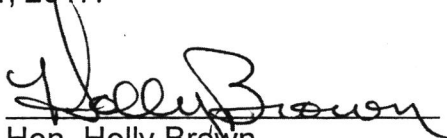
to another individual's private information. The demands of individual privacy dictate that personal indicia related to individuals identified in the reports are subject to privacy rights under Article II, Section 10, Montana Constitution and § 44-5-303, M.C.A. The Applicants have not made a specific pleading to justify disclosure of any indicia of a personal nature such as dates of birth, social security number, height, weight, and other details of a truly personal nature contained within the reports pertaining to any persons.

Wherefore, the Court enters the following Order:

1. The Application for the Release of Confidential Criminal Justice Information is **Granted** in relation to the calls for service reports from May 24, 2017, subject to redaction of all personal identification information related to Greg Gianforte and Ben Jacobs.
2. The Application for the Release of Confidential Criminal Justice Information is **Granted** in relation to the February 18, 2012, April 1, 2013 and May 21, 2016 calls for service, subject to redaction of the identification information for all third parties and witnesses, and all personal identification information related to David Gianforte and Greg Gianforte.
3. The requested information shall be released to the Applicants upon the Applicant's payment of copying costs.
4. There being no objection by Mr. Gianforte, Mr. Jacobs or the County Attorney, the Applicants may disseminate the requested information.

5. All other requested information is subject to the expectation of privacy of other persons and the Application of the Release of Confidential Criminal Justice Information is **Denied** in relation to those calls for service.

Dated this 15 day of November, 2017.


Hon. Holly Brown
District Judge

Copies:

Todd Whipple/Bill Mercer - *emailed*
County Attorney - *interoffice*
Ben Jacobs - *mailed*
Applicant - *mailed*

> 11/17/17