IN THE COURT OF COMMON PLEAS
GENERAL DIVISION
BUTLER COUNTY, OHIO

ERIN GABBARD, et al

Plaintiff,

vs.

MADISON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION, et al

Defendants.

Case No. CV 2018 09 2028

Judge Charles L. Pater

ENTRY AND ORDER GRANTNG THE DEFENDANT'S MOTION FOR PROTECTIVE ORDER IN PART, AND DENYING IT IN PART

This matter is before the court on the Defendant, Madison Local School Board of Education's, (Madison/The Board), motion for a protective order pursuant to Civ.R. 26(C), Rules of Superintendence 45(E), and Loc. R. 2.04(A)(2). Upon consideration of the motion, the pleadings, the arguments of counsel and the other matters of record herein, the motion is granted in part and denied in part.

Defendant's motion for a protective order is granted as to the requests contained in paragraphs 1, and 3 of its motion. The methodology for compliance with this directive shall be discussed later in this decision. The remaining portion of the motion is denied.

PROCEDURAL POSTURE

Plaintiff, Erin Gabbard, (Gabbard), and a coalition of other parents, filed a two count complaint challenging The Board's April 24, 2018 decision to arm district employees, in response to a February 2016 school shooting incident at Madison High School.

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The first count of the complaint seeks a permanent injunction barring Madison from implementing its decision to arm staff that have not completed the same training as required by peace officers under Ohio law.

Count two of the complaint sought an order of mandamus to force the release of documents by The Board that Plaintiffs maintain they are entitled to under Ohio's public records laws.

The first count of the complaint is set for a trial on the merits on February 25, 2019. Count 2 of the complaint was dealt with in a previous decision that granted part of the Plaintiffs' request for mandamus.

The Board now moves to protect any information contained in court records, deposition testimony, and/or trial exhibits that it labeled as "highly confidential" including:

1) The identities, and any identifying information, of individuals authorized to carry a concealed weapon under The Board's firearm policy,

2) The Firearm Authorization Policy and any testimony regarding specific details of it,

3) The mental health evaluations of the individuals authorized to carry a concealed weapon and any testimony regarding those evaluations.

Plaintiffs argue that most of the information Madison seeks to protect is already public, and, regardless, they maintain Ohio law creates a presumption in favor of access. *See generally*, Ohio Rules of Superintendence R. 45, *Adams v. Metallica, Inc.*, (2001), Ohio App. 1st, 143 Ohio App3d 482, 490, 785 N.E.2d 286.

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The Board maintains release of any information it deemed as "highly confidential" poses a clear and present danger to the safety and security of district employees and students.

DECISION

The court extensively reviewed many of the issues presented in this motion in its ruling on Plaintiffs' earlier request from the perspective of a mandamus action. Now, however, the matter has moved beyond the scope of Ohio's traditional position on public records and the exceptions carved out by the Ohio General Assembly to one of what court records the public may have access to.

The Ohio Rules for Superintendence of the Courts, R. 45, reads in the relevant parts:

> (A) [C]ourt records are presumed open to public access.
>
> (E)(1) Any party to a judicial action or proceeding or other person who is the subject of information in a case document may, by written motion to the court, request that the court restrict public access to the information or, if necessary, the entire document. Additionally, the court may restrict public access to the information in the case document or, if necessary, the entire document upon its own order.
>
> (2) A court shall restrict public access to information in a case document or, if necessary, the entire document, if it finds by clear and convincing evidence that the presumption of allowing public access is outweighed by a higher interest after considering each of the following:
>
> (a) Whether public policy is served by restricting public access;
>
> (b) Whether any state, federal, or common law exempts the document or information from public access;
>
> (c) Whether factors that support restriction of public access exist, including risk of injury to persons, individual privacy rights and interests, proprietary business information, public safety, and fairness of the adjudicatory process.

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The court will examine Madison's requests in the order presented within this framework.

The Board first seeks to block the identification of persons authorized by it under the district's policy to carry a concealed weapon while in a school safety zone. Here, the court can find no state, federal or common law that exempts the information from public knowledge. There does exist, however, a strong public policy in restricting unfettered access to such knowledge as it directly raises the likelihood of risk of injury to persons and public safety. In fact, even the parties agree, "there are articulable safety concerns backed by expert evidence . . . . to keep the identities of the armed staff members confidential." The court, therefore, agrees that the identities of persons authorized to carry concealed firearms on school district property is subject to redaction. The Board next seeks to block access to its firearms policy.

Prior to enacting any legislation a public body can decide how to draft and what information it will opt to include in any policy that the public may wish to access. Here, The Board could have drafted a generic firearms policy and encapsulated the particulars within its Emergency Plan. Instead, Madison opted to produce a policy with extensive detail, and shared most of the information with the general public in a newsletter. It now wants the court to agree with its position that all of that policy is part of the district's Emergency Plan and therefore exempt from public disclosure. Once again Madison falls back on claims that the release of any information it designated as "highly confidential" would raise the risk of injury to students, staff and personnel authorized by The Board to carry a concealed weapon. The court finds much of this argument unpersuasive.

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As stated earlier, The Board could have enacted a general policy for public view, and then included specific details of its requirements in a separate directive of the Emergency Plan. Here, regardless of Defendant's claims, most of the information contained in the policy has already been made public and is not much different from what one routinely finds in job postings for federal, state and local law enforcement positions.

Among the public information already disseminated in this matter are the minimum standards for personnel to be considered by The Board for authorization to carry a concealed weapon on school grounds, *i.e.* meeting the minimum requirements for licensure to carry a concealed firearm, completion of additional district ordered training, background checks and mental health evaluations. This information is no different from that government employers routinely disclose in seeking job applicants. The same can be said of the request to know under what conditions authorization would be withdrawn by The Board. As the court previously noted in its mandamus ruling, The Board failed in its burden to demonstrate that this information is exempt from disclosure. Nothing in that regard has changed.

Again, as it did earlier, The Board argues that the training requirements, firearm selection and ammunition to be utilized are part of its emergency management plan and therefore exempt under R.C. §149.433(A)(3) and R.C. §3313.536.

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R.C. §3313.536 reads in the relevant part:

> (2) [E]ach administrator shall also incorporate into the emergency management plan adopted under division (B)(1) of this section all of the following: (a) A protocol for addressing serious threats to the

> safety of property, students, employees, or administrators; (b) A protocol for responding to any emergency events that occur and compromise the safety of property, students, employees, or administrators. (3) Each protocol described in divisions (B)(2)(a) and (b) of this section shall include *procedures determined to be appropriate by the administrator for responding to threats and emergency events*, respectively, including such things as notification of appropriate law enforcement personnel, calling upon specified emergency response personnel for assistance, and informing parents of affected *(sic)* students. *Emphasis added*
>
> (I)Copies of the emergency management plan and information required under division (B) of this section are security records and are not public records pursuant to section 149.433 of the Revised Code.

The court previously found that the specifics of training for personnel responding to an active shooter situation is clearly a, "procedure determined to be appropriate by the administrator for responding to threats and emergency events" and not for public dissemination. The identification of vendors, suppliers, etc. of that training, however, does not fall within the definition of detailing specific training. Besides this information was already shared in the aforementioned newsletter.

As to the number of armed personnel, weapons choice and type of ammunition to be utilized, The Board could have included that as a separate entry in its Emergency Plan. Since it opted not to, and that type of information is readily available on the Internet, *e.g.*, "it appears the standard-issue OSHP, *sic* (Ohio State Highway Patrol) sidearm is a Sig Sauer P226 or P229 in .40 S&W" https://www.quora.com, the court cannot find that information is exempt under R.C. §149.433(A)(3) or R.C. §3313.53. Public policy is rarely served by courts prohibiting citizens from knowing the general policies as enacted by their elected officials. Likewise, no federal, state or local law exempts the majority of

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information in the policy from disclosure. In fact, nothing in the policy as presented supports a restriction of access beyond that which the court has already granted, *i.e.* that personal identifiers must be restricted.

Finally, The Board wants to block access and testimony on the results of mental health evaluations of those individuals it authorized to carry a concealed firearm.

Here, provisions of the Health Insurance and Patient Portability Act, (HIPPA), as codified in CFR 45 §65 FR 8446, support The Board's position. Unlike a personal injury action or similar tort, the individuals here have not granted counsel, the court, The Board, or medical treatment providers permission to access and/or release health information in furtherance of a legal claim. Rather, the individuals granted permission to the providers to share limited, specific information for purposes of an employment decision. That information may not be shared without violating individual HIPPA rights. Having found in its earlier decision on mandamus, and here again, that some information is precluded from public view, the court must now decide how best to secure the information for procedural purposes and, how to release information that the public may access.

According to The Ohio Rules of Superintendence, R.45(E)(3), the court "shall use the least restrictive means possible" to preclude public release. To that end the court orders the parties shall submit all depositions, trial exhibits and other evidence for its and other courts' consideration, un-redacted and under seal.

The court further directs the parties shall submit the exact same items for public consumption with: 1) all personal identifiers redacted; and 2) all references and testimony as to mental health evaluations redacted.

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IT IS THEREFORE ORDERED, AJUDGED AND DECREED, that Defendants' motion for a protective order is granted in part as to the requests in sections 1 and 3 of the filing.

IT IS FURTHER ORDERED, AJUDGED AND DECREED that Defendant's motion for a protective order is denied as to the remaining sections.

SO ORDERED.

ENTER,

Charles L. Pater, Judge

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