



March 6, 2018

The Honorable Mary Ellen Barbera,
Chief Judge
The Honorable Clayton Greene, Jr.
The Honorable Sally D. Adkins
The Honorable Robert N. McDonald,
The Honorable Shirley M. Watts
The Honorable Michele D. Hotten
The Honorable Joseph M. Getty,
Judges

The Court of Appeals of Maryland
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Your Honors:

We write on behalf of the ACLU of Maryland and NAACP Legal Defense and Educational Fund, Inc. in response to the Court's Notice dated March 5, 2018, announcing an emergency open meeting on March 6, 2018 to take public testimony regarding the recent changes to Md. R. 16-910, previously R. 16-909, which was significantly revised in the Court's Rules Order dated June 20, 2017, adopting, with modifications, the rules changes proposed in the Court's Standing Committee of Rules of Practice and Procedure's (Rules Committee) 193rd Report. Because we were unable to attend today's meeting to testify on such short notice, we respectfully submit these written comments in lieu of oral testimony.

We are pleased to learn that the Rules Committee unanimously decided to reinstate language in R. 16-910 that would include in public online judicial case files the *full* names and office contact information of law enforcement officers and public officials acting in their official capacity. Consistent with the presumption of openness of court records as articulated in R. 16-903 and for the reasons stated below, we urge you to take no further action on the Rule, such as limiting an officer's name to first initial and last name. The recent federal police corruption case involving the Baltimore Police Department's (BPD) Gun Trace Task Force (GTTF) and the federally court-enforceable consent decree that seeks to address unlawful policing practices of the BPD dramatically highlight the need for more transparency about the conduct of public officials.

R. 16-910 governs access to the judiciary's electronic records, which for the public is almost exclusively accomplished by means of the Judiciary Case Search web site, which provides a free, user-friendly, publicly accessible web application that allows for searches of multiple fields, including names of parties, attorneys and some other case participants, in electronic records of civil and criminal cases in state district and circuit courts. The provision that was changed contained an exception to the general rule that said remote access should not be allowed to "the name, address, telephone number, date of birth, e-mail address, and place of employment of a victim or nonparty witness in . . . a criminal action" among other types of cases. R. 16-910(b)(2)(A). Prior to the change, and the renumbering of the rule, the general rule in R. 16-909(b)(2)(A) was subject to an

exception in R. 16-909(b)(2)(B) instructing that “[u]nless shielded by a protective order, the name, office address, office telephone number and office e-mail address, if any, relating to law enforcement officers, other public officials or employees acting in their official capacity, and expert witnesses, may be remotely accessible.” The June 20, 2017 Rules Order deleted subsection (b)(2)(B) from the renumbered rule, and beginning on March 1, 2018, Case Search users first publicly noted that the names of police officer (and presumably other public official) witnesses or victims were no longer contained within the Case Search database.

We understand from Judge Wilner’s letter appended to the Court’s March 5, 2018 notice of the emergency open meeting that the deletion of subsection (b)(2)(B) in the renumbered R. 16-910 was a mistake, in the sense that it was not the intent of the Rules Committee to propose that action at this time. That fact presumably explains why the change, which is hugely significant, was not even mentioned in the Rules Committee’s extensive summary of the proposed changes contained in its 193rd Report. However Judge Wilner’s letter also states that the Rules Committee “had received communications from police organizations objecting to the disclosure of the full names of officers who were merely nonparty witnesses. The subcommittee found merit in that concern and proposed, with respect to criminal and incarcerable traffic cases, that ‘only the last names, badge numbers, and employing agency of the arresting officers’ be disclosed.”

For the reasons discussed below we believe that having the *full* names of officers (and other public officials testifying pursuant to their official duties, but we refer herein simply to officers for the sake of brevity) who are nonparty witnesses in criminal cases included in Case Search is critical to the public’s ability to meaningfully and adequately monitor the officers’ conduct. Additionally, officers have no legitimate interest in categorically shielding their full names from the Case Search database (as opposed to convincing a judge in a particular case that their name should be shielded for some reason). We therefore strongly oppose any proposal to either limit Case Search to officers’ last names only, last names with first initial, or eliminate officers’ names altogether.

It is difficult to overstate the importance of being able to search the Case Search database by the name of the officers who are participants in criminal cases. The continuing fallout from the criminal convictions of eight officers who were members of the BPD Gun Trace Task Force provides a current, dramatic example of how crucial this database is (though it is by no means the only example). In just the few days since officer names were removed from the database, reporters have pointed out numerous ways in which their work has been hindered. Justin Fenton, at the Baltimore Sun, pointed out that there is now no way for reporters to look up which cases involving GTTF officers who have upcoming hearings to vacate convictions.¹ Prosecutors have not provided an update on their review of those cases since December 8. There is no way to look up all of the cases in which indicted officers have been involved, to determine how many cases may be affected by GTTF corruption scandal. It is now impossible to ascertain using Case Search which officers worked with the convicted officers, and thus which officers might have been under a duty to report the wrongdoing by a fellow officer. And we are now unable to identify cases handled by the dozen unindicted officers alleged to have committed misconduct in testimony at the trial.

¹ See, e.g., Justin Fenton and Tim Prudente, *Maryland Judiciary defends decision to remove police officers’ names from public online court database*, The Baltimore Sun, March 2, 2018, <http://www.baltimoresun.com/news/maryland/crime/bs-md-ci-officers-names-case-search-20180301-story.html>.

Baynard Woods, of The Real News, pointed to another recent notorious incident involving the BPD, the still unsolved death of Det. Sean Suiter the day before he was scheduled to testify before the grand jury investigating the GTTF officers. He noted that it is now impossible to look up the cases involving Sean Suiter, or to see who he was working with in the investigation he was to testify about the day after he died.² It is impossible to see that Det. Suiter handled cases with officers involved in the Freddie Gray case, including one who is a central figure in HBO's documentary "Baltimore Rising" (and thus cannot claim any privacy interest in her name). It is impossible to see that Det. Suiter also worked with Ofc. Jason Giordano, who was working with Det. Jemell Rayam when the latter killed Sean Cannady according to the testimony of Det. Momodu Gondo at the GTTF trial. These examples are likely multiplied among the literally dozens of corruption investigations of BPD officers over the last decade. And that is just one department among many in Maryland. The public, criminal defense and civil rights attorneys, and the press that acts on the public's behalf, should not have to, and cannot, rely on government officials to provide this information when it should be readily available (and has been available for many years) through this search engine.

It is also important to note that the existence of officers names in individual court records is not a substitute for the ability to search by name in a database. Without the ability to do a computer search, anyone interested in the information noted above would have to review every case file any given court to achieve the same result that can be obtained in seconds via a computer search. That is obviously not possible.

Given the importance of this information in a database, and that fact that police officers are public servants, officers have no legitimate basis to demand a blanket shield of their names. The officers' names (and the fact that they are police officers) are already public record information, both by law, and in practice. The Maryland Public Information Act (MPIA) says that the part of a public record containing a public employee's home address is barred from disclosure (though not categorically, but only unless there is a public interest in disclosure), but an employee's work address is not prohibited from disclosure. Md. Code, Gen. Prov. § 4-331. This necessarily implies that the employee's identity is also subject to disclosure as a public record. The MPIA goes further and makes clear that every public employee's salary is also a public record subject to disclosure. Md. Code, Gen. Prov. § 4-101(j)(2); *see also* 83 Opinions of the Attorney General 192 (1998) (records regarding the salaries of individual employees are not personnel records shielded from disclosure). As a result, press outlets, or jurisdictions themselves, have created searchable databases listing the names, positions, and salaries of every public employee (including police officers) in multiple jurisdictions, including at least Anne Arundel County, Baltimore County, and Baltimore City.³

² Baynard Woods and Brandon Soderberg, *Maryland courts remove police officer's names from database, causing outrage among lawyers, journalists and other advocates for transparency*, The Baltimore Beat, March 2, 2018, <http://baltimorebeat.com/2018/03/02/maryland-courts-remove-police-officers-names-database-causing-outrage-among-lawyers-journalists-advocates-transparency/>.

³ *See, e.g., Anne Arundel County government employee salary*, Capital Gazette, Feb. 12, 2016, <http://www.capitalgazette.com/data/government/cgnews-searchable-database-anne-arundel-county-government-employee-salaries-20160212-htmlstory.html>. *See also, Baltimore County employee pay database*, The Baltimore Sun, (2016), <http://salaries-archive.news.baltimoresun.com/baltimore-county/cy2012-through-partial-2015/>; Open Baltimore, *Baltimore City Employee Salaries FY 2017*, City of Baltimore, <https://data.baltimorecity.gov/City-Government/Baltimore-City-Employee-Salaries-FY2017/fh59-3d3c/data>.

The inclusion of officer names in in the Case Search database cannot be reasonably said to present an added safety risk to law enforcement in the same way that victims may be endangered by being identified in a public database. Police officers are public servants. Testifying in criminal trials is part of their job as law enforcement officers, and the subject matter of their testimony is likewise part of their job. The proponents of secrecy cannot point to even a single case in Maryland where the existence of an officer's name in Case Search has led to any negative consequence. There is simply nothing of any weight to balance against the tremendous public interest in transparency and accountability that the inclusion of officer names in Case Search provides.

Limiting disclosure to last names only is not sufficient to vindicate the public interest in transparency, and is not a reasonable compromise, because of the frequency with which officers have the same last names. For example, a search of the police officers in the Anne Arundel County salary database reveals that there are two officers with the last names Anderson, Benner, Bennett, and Brandt, four with the last name Brown, and so on. A search of the Baltimore County database shows that there are two officers with the last names Ables, Abrams, Aiosa, Albrecht, Andrews, Arnold, Arthur, and Askew, four with the last name Allen, six with the last name Anderson, and so on. First names are necessary to distinguish which officer is which.

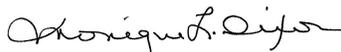
Finally, we must express our dismay at the incongruity of any move that shields BPD officers (or any officers) from scrutiny at the precise moment when the public rightfully has demanded greater transparency of police practices. The BPD is subject to a court-ordered consent decree because of years of unconstitutional policing. The recent GTTF trial revealed the most egregious and shocking account of police misconduct and corruption this city has every witnessed. It is a betrayal of the public's trust for the Judiciary to acquiesce at this moment to an effort to shield officers from the kind of scrutiny that their conduct has invited. The Judiciary must ensure that the processes and records of proceedings involving law enforcement remain as open, transparent, and available to the public and the press as possible.

Having now restored the previous rule, and directed the Judiciary staff to restore officers' full names and agency information to the Case Search database as quickly as possible, we urge you to not further restrict access to officer names in the database. Thank you for considering our views. Please do not hesitate to contact us with any questions.

Sincerely,



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