

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,	:	Civil Action No.: 99-5970(MLC)
	:	
Plaintiff,	:	
	:	
v.	:	ORDER
	:	
STATE OF NEW JERSEY and	:	
DIVISION OF STATE POLICE of the	:	
NEW JERSEY DEPARTMENT OF	:	
LAW AND PUBLIC SAFETY,	:	
	:	
Defendants.	:	
	:	

This matter having come before the Court upon Motion by Movants Kenneth Johnson, John Villamil, and Stanley Molnar (“Movants”) to Release Documents from Confidentiality [dkt. entry no. 79]; and Defendants the State of New Jersey et al. (“Defendants”) filing opposition to the Motion on July 7, 2007 [dkt. entry no. 84]; and Plaintiff the United States of America (“Plaintiff”) filing opposition to this Motion on July 13, 2007 [dkt. entry no. 88]; and this matter being referred to Judge Hughes on December 6, 2007;

And Movants arguing that “Counsel has filed this motion [to Seal] only because New Jersey Statute declares the documents at issue to be confidential” (Movants’ Br. at 2); and Movants further stating that “they did not want to include the documents without seal without leave of court” *Id.*; and Movants further stating that the documents do not warrant sealing from public access” *Id.*; and Movants further arguing that “[i]t would be inimical to the public interest to prevent counsel from presenting the documents to the ACPS for its consideration of the issues of release of the New Jersey State Police from Federal Monitoring and the issue of whether the Office of the Attorney General is able to objectively, without conflict, fulfill its role as both

defender and discipliner of the New Jersey State Police” *Id.* at 2-3; and Movants further arguing that “[n]o clearly defined, serious injury would result from release of the documents” *Id.* at 3; and Movants further stating that “[t]he statutory provisions on confidentiality are intended to protect applicants for Private Detectives’ Licenses and sources of information regarding those applicants” *Id.*; and Movants further arguing that “[t]he documents at issue contain no information regarding either applicants or sources” *Id.*;

And Defendants in opposition to Movants’ Motion stating that “[n]owhere do Movants proffer their alleged basis for the jurisdiction of this Court over their claims, issues, and relief sought” (Def.s’ Opp. Br. at 13); and Defendants further stating that “no federal jurisdiction is presented by Movants’ request that this Court interpret the New Jersey statute establishing the confidentiality of documents relating to the issuance of private detective licenses by the State of New Jersey” *Id.* (See N.J.S.A. 45:19-1, *et seq.*); and Defendants further stating that “[t]he documents that Movants seek to remove from confidentiality are from the investigative files relating to the applications for private detective licenses made by Howard Parker and Kevin Goldberg, two former members of the New Jersey State Police” *Id.* at 14; and Defendants further stating that “Movants assert that they should have the right to publicly disclose these documents, in part because they have already been released to the public in the form of newspaper articles” *Id.*; and Defendants further stating that “[i]t must be noted that the articles referenced by Movants deal exclusively with a videotape showing Parker and Goldberg using racial epithets during motor vehicle stops” *Id.*; and Defendants further stating that “[a]t no point in these articles are the documents, which are part of the investigation file resulting from Parker and Goldberg’s applications for private detective licenses mentioned” *Id.*; and Defendants also pointing out that

“counsel for Movants have violated the confidentiality provisions of N.J.S.A. 45:19-12 . . . [by] fully describ[ing] these documents in her certification” *Id.* (*See Certification of Movants’ Counsel*, ¶¶ 15-17 (counsel describes the documents date, author, and full contents)); and Defendants further stating that “N.J.S.A. 45:19-12 specifically provides that documents under its purview ‘shall not be divulged except by an order to do so by a court of record of this State’” *Id.* at 15; and Defendants further stating that “Movants are not entitled to these confidential documents under the Open Public Records Act (“OPRA”) because they are exempt from access under N.J.S.A. 45:19-12” *Id.*; and Defendants further stating that Movants do not have a common-law right of access pursuant to *Keddie v. Rutgers University*, 148 N.J. 36, 49-50 (1997), *Id.* at 16-17; and Defendants further stating that “even if Movants are granted the right to intervene . . . and further are granted the right to remove these documents from confidentiality under N.J.S.A. 45:19-12, the documents remain protected in the New Jersey state lawsuits under Consent Protective Orders which have been filed in all three of their respective lawsuits” *Id.* at 18;

And Plaintiff in opposition to Movants’ motion stating that “[a]s the party asserting jurisdiction, Movants bear the burden of showing that their claims are properly before this Court” (Pl.’s Opp. Br. at 10)(citing *Development Finance Corp. v. Alpha Housing and Health Care, Inc.*, 54 F.3d 156, 158 (3d Cir. 1995)); and Plaintiff further stating that “[t]his Court has ‘supplemental jurisdiction over all other claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution” *Id.* (citing 42 U.S.C. § 1367(a)); and Plaintiff further stating that “Movants fail to demonstrate that their claims regarding the confidentiality of a non-party private detective license

application documents are at all related to the claims in this action and the Consent Decree governing racial profiling in law enforcement practices related to traffic stops on New Jersey roadways” *Id.* at 10-11; and Plaintiff further stating that “Movants acknowledge that the confidentiality of the documents in question is governed by state law, which requires the New Jersey State Police to keep the documents confidential except by an order by a court . . .” *Id.* at 11; and Plaintiff further stating that “Movants do not allege that the issue of the confidentiality of the documents presents a federal question” *Id.*;

And the Court noting that the District Judge issued an Order denying Movants’ Motion to Intervene [dkt. entry no. 96] on December 6, 2007; and the Court finding that due to that holding, the issue before us is now moot; and the Court further finding that pursuant to N.J.S.A. 45:19-12, the documents in question must remain confidential and kept under seal until adjudication in the New Jersey Superior Court; and the Court noting that Movants concede that these documents are confidential under the New Jersey statute (*see* Movants’ Br. at 2); and the Court having reviewed the parties’ submissions and considered this matter pursuant to Fed. R. Civ. P. 78; and good cause having been shown,

IT IS on this 11th day of December, 2007,

ORDERED that Movants’ Motion to Defendant’s Motion to Release Documents from Confidentiality [dkt. entry no. 79] is **DISMISSED AS MOOT**; and it is

FURTHER ORDERED that the documents at issue will remain **CONFIDENTIAL** and **SEALED** for adjudication in the New Jersey Superior Court.

/s/ John J. Hughes

JOHN J. HUGHES
UNITED STATES MAGISTRATE JUDGE