

SUPREME COURT OF ARKANSAS

No. 11-1199

STUART THOMAS,

APPELLANT,

VS.

KEITH HALL,

APPELLEE,

Opinion Delivered 1-11-12

MOTION FOR ORDER OF
PROTECTION

MOTION TO SEAL GRANTED.

PER CURIAM

Petitioner Stuart Thomas, who is the Chief of Police for the City of Little Rock, moves this court to grant a protective order to place certain documents under seal. Respondent Keith Hall opposes the motion on the basis that a protective order would modify free and full access to the record. We treat Thomas's motion for a protective order as a motion to partially seal the record and briefs. We grant his motion with respect to the following four documents, pending resolution of the appeal:

1. Officer's Report dated October 30, 2009, from Lt. David Hudson to Capt. Max Spriggs, concerning arrest of Ralph Jackson.
2. Officer's Report dated October 30, 2011, from Lt. David Hudson to Capt. Max Spriggs concerning the use of force.
3. Memorandum dated December 18, 2006, from Lt. David Hudson to Asst. Chief David Rowan, concerning arrest of Jay Parks.
4. Memorandum dated February 7, 2011, from Lt. David Hudson to Capt. Max Spriggs, concerning the arrest of Chase Cooper.

The documents at issue consist of four records from the Little Rock Police Department, referred to as "use of force records," which were reviewed *in camera* by the circuit court. All of the records relate to a single police officer, Lt. David Hudson. Hall requested release of the documents under the Arkansas Freedom of Information Act (FOIA), codified at Arkansas Code Annotated section 25-19-101 to -110 (Repl. 2002 & Supp. 2011). Thomas contends that these four documents constitute job evaluation or employee performance records and are not subject to disclosure under the FOIA. Hall contends that these reports are not employee evaluation or performance records but are, instead, narrative reports created by the officer to document the circumstances surrounding an incident when force is used.

On December 2, 2011, this court stayed a circuit court order requiring Thomas to release these four documents to Hall. In addition, this court expedited Thomas's appeal of the circuit court ruling. The inherent authority of this court to seal a part of court files is tempered by the requirements that a request for sealing part of a file must be particularized, there must be some good cause for sealing part of a file, and the sealing should be in effect for only so long as is necessary to protect the specified interest. *See Ark. Dept. of Human Services v. Hardy*, 316 Ark. 119, 124, 871 S.W.2d 352, 355-56 (1994); *see also* Ark. R. App. P.-Civ. 6 (2011). Thomas's motion is particularized as to the four documents mentioned. Furthermore, he submits that there is good cause for sealing these records to prevent the public release of records that may not be subject to disclosure under FOIA. He requests that this seal last until the pending appeal is resolved, subject to modification by this court.

Under these narrow circumstances, we grant Thomas's motion to seal the portion of the record containing these four documents in order to prevent the public disclosure of these records before the applicability of FOIA is determined. We direct that both Thomas's and Hall's abstract and brief be submitted to this court under seal, with only Hall being permitted access to Thomas's brief and only Thomas being permitted to access Hall's brief. See, e.g., *Johnson v. State*, 335 Ark. 333, 333, 982 S.W.2d 669 (1998) (per curiam) (directing that part of record, along with the abstracts and briefs of each party, be sealed). As these documents are under seal by this court, we order that neither party publish or release copies of these four documents pending resolution of this appeal.

Motion to seal part of the record and the parties' briefs is granted.