UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE APPLICATION OF CONSUMER WATCHDOG AND LOS ANGELES TIMES COMMUNICATIONS LLC TO UNSEAL COURT RECORDS	Case No. 2:24-cv-01650-SB ORDER GRANTING IN PART APPLICANTS' MOTION TO UNSEAL COURT RECORDS [DKT. NO. 6]

In 2019, the Federal Bureau of Investigations (FBI) and the U.S. Attorney's Office launched an investigation into a corrupt scheme involving the Los Angeles City Attorney's Office and the Los Angeles Department of Water and Power (LADWP), resulting in the conviction of four individuals. During the investigation, the FBI obtained 33 search warrants that remain under seal. Petitioners Consumer Watchdog and Los Angeles Times Communications LLC now move to unseal these 33 warrants and related documents. The government does not oppose the unsealing of the documents but seeks to redact seven categories of information, two of which Petitioners challenge: the identities of uncharged third parties; and FBI Special Agent Andrew Civetti's purported statements that former City Attorney Michael Feuer lied before the grand jury. After considering the written submissions and hearing oral argument, the Court grants the motion in part for the reasons set forth below.

I.

In 2014, LADWP implemented a flawed billing system that cost residents of the City of Los Angeles hundreds of millions of dollars and resulted in multiple class action lawsuits. Dkt. No. 6 at 1. In response, city officials and others devised a scheme to limit the City's exposure: private counsel, acting in collusion with the City, would bring a class action lawsuit against the City and then enter into a global settlement on terms favorable to the City. Dkt. No. 15 at 2. This legal charade included a $1.75 million kickback from private counsel purporting to

represent the plaintiff class to the City's special counsel and an extortion plot by an employee of another of the City's special counsel to conceal the collusion. The public corruption then made its way to the LADWP in a separate bribery scheme involving its general manager at the time. *Id*.

In July 2019, FBI agents raided the LADWP headquarters and the offices of the City Attorney. Dkt. No. 6 at 2. In 2023, the investigation concluded, resulting in the felony convictions of David Wright, the former general manager of LADWP; David Alexander, the former chief information security officer of LADWP; Thomas Peters, the former head of civil litigation at the City Attorney's Office; and Paul Paradis, the City's former special counsel. Dkt. No. 15 at 2–3. The government's investigation also resulted in a misconduct investigation by the State Bar of California. *Id*. at 3.

During the investigation, the government applied for and obtained approximately 33 search warrants. The search warrants and related materials (totaling approximately 1,400 pages) were sealed, and remain so, pursuant to a protective order. *Id*. Although these materials were provided to Paradis, the production was subject to a protective order that allowed him to use them solely for purposes of sentencing and prohibited dissemination beyond this restricted use. *Id*. at 5.

Petitioners now move to unseal the "search warrant applications, any supporting affidavits, the search warrants themselves, the returns, the docket sheets, and any related judicial records." Dkt. No. 6 at 1. The government is "open in principle to unsealing" the requested materials if the following categories of information are redacted:

(1) The names/identities of uncharged third parties who were then subjects of the federal investigation;

(2) The names/identities of confidential government informants and witnesses who cooperated in the federal investigation (not including Paradis and Peters, who pled guilty to publicly filed cooperation plea agreements);

(3) Information protected by grand jury secrecy, including grand jury testimony, summaries of grand jury testimony, and statements incorporating grand jury testimony;

(4) Confidential medical information, including medical records and treatment information;

(5) The names/identities of victims and intended victims of alleged crimes;

(6) Personal identifying information, including, but not limited to, social security numbers, dates of birth, bank account information, home and personal email addresses, and personal telephone numbers; and

(7) Impeachment-related information regarding affiants/potential government witnesses unrelated to the merits of the federal investigation.

Dkt. No. 15 at 7.[1]

Petitioners challenge only two of the above categories (in part): Categories One and Three. Specifically, Petitioners assert that the identities of uncharged third parties who are public officials should not be redacted. *See* Dkt. No. 16 at 3. Petitioners also argue that the statements made by Agent Civetti should be disclosed because they do not fall within the protective scope of Rule 6(e) of the Federal Rules of Criminal Procedure. As to the remaining categories of information, Petitioners raise concerns about the redaction process—including the determination of whether various uncharged third parties are properly considered victims—and request a reasonable procedure to ensure that the redactions are narrowly tailored. *Id*. at 2–3.

On March 28, the City moved to intervene and filed a statement of nonopposition to the motion to unseal. Dkt. No. 17. The City acknowledges that it cannot waive the privacy rights of individuals and appears to agree with the government that some of the information contained in the warrant materials should be redacted. *See id*. at 4. Neither Petitioners nor the government opposes the City's request to intervene. Dkt. No. 18. The unopposed intervention request is granted.

[1] The government withdrew its request to redact descriptions of "confidential/non-public investigative tools and techniques." Dkt. No. 15 at 7.

II.

The public has a qualified common-law right to inspect public records, including judicial records and documents.[2] *United States v. Bus. of Custer Battlefield Museum & Store Located at Interstate 90, Exit 514, S. of Billings, Mont.*, 658 F.3d 1188, 1192 (9th Cir. 2011). This includes the right to inspect warrant materials after an investigation has concluded. *Id*. The common-law right of public access "does not extend to grand jury transcripts." *United States v. Index Newspapers LLC*, 766 F.3d 1072, 1084 (9th Cir. 2014). Where the common-law right exists, the party seeking to seal or redact the records has the burden of overcoming the "strong presumption" by "articulating compelling reasons" to limit public access. *Custer Battlefield Museum*, 658 F.3d at 1194–95 (cleaned up). The court must then balance the public's interest with the compelling interest, and—should the court restrict access—it must state the compelling reasons and specific factual findings on which that decision was based. *Id*. at 1195.

III.

The Court first addresses whether the identities of uncharged third parties may be shielded before turning to the requested disclosure of Agent Civetti's statements. The Court will then address the redaction procedures.

A.

Petitioners contend that the public is entitled to learn the identities of uncharged third parties now that the federal investigation is complete. Because the investigation has ended, there is a presumptive right of access to the warrant materials. *See Custer Battlefield Museum*, 658 F.3d at 1192. To overcome the presumption, the government must justify the redactions by "articulating compelling reasons that outweigh the general history of access and the public policies favoring disclosure." *Id.* at 1194–95.

The government asserts that uncharged third parties have substantial privacy, reputational, and due process interests that justify concealing their

[2] Petitioners raise in a footnote that they have a separate right of access under the First Amendment, but they fail to develop this argument. The Court, therefore, will not address it. *See Hilao v. Estate v. Marcos*, 103 F.3d 767, 778 n.4 (9th Cir. 1996) ("The summary mention of an issue in a footnote, without reasoning in support of the appellant's argument, is insufficient to raise the issue on appeal.").

identities. As a general principle, this assertion is often true in a case involving private third parties. *See id*. at 1194 (stating that the privacy interests of persons identified in warrants "may be redressed through a court's discretion either to release redacted versions of the documents or, if necessary, to deny access altogether"); *Times Mirror Co. v. United States*, 873 F.2d 1210, 1216 (9th Cir. 1989) (discussing the need to protect the privacy interests of individuals identified in warrants and grand jury proceedings during ongoing investigations); *Matter of the Application of WP Co. LLC*, 201 F. Supp. 3d 109, 129 (D.D.C. 2016) (determining that the compelling privacy and due process interests of individuals not charged in warrants limited further disclosure of such materials).

But the weight of third-party privacy interests is reduced where the investigation involves actions taken by public officials in their official capacity pursuing public business. The Ninth Circuit has stated: "The high public official has no privacy interest in freedom from accusations, baseless though they may be, that touch on his conduct in public office or in his campaign for public office. The private individual . . . has no privacy interest in allegations, baseless though they may be, bearing on the way he does business with public bodies." *In re McClatchy Newspapers, Inc.*, 288 F.3d 369, 373 (9th Cir. 2002). An official acting as a public servant cannot reasonably expect to be shielded from public inquiry into the work done on behalf of the public. The same is true for those working with public officials and charged with carrying out government business.

Balancing the public's interest in accessing the search warrant materials with the privacy concerns of uncharged third-party public officials and those working with them (as described above), the balance tips in favor of disclosure. The public interest in this case is particularly strong. *See Nixon v. Warner Comms., Inc.*, 435 U.S. 589, 597–98 (1978) (discussing the right to inspect public records in order to "keep a watchful eye on the workings of public agencies"); *In re Los Angeles Times Commc'ns LLC*, 28 F.4th 292, 298 (D.C. Cir. 2022) (discussing the "powerful public interest" relating to a public official's alleged violations of insider-trading laws). Public confidence in government—which lies at the core of a well functioning democracy—is shaken, if not shattered, when public officials and those operating on their behalf engage in criminal or unethical conduct. The nature and scope of misconduct in this case, resulting in convictions of high-level public officials at two municipal agencies, raise serious questions about a culture of corruption. These questions warrant public scrutiny to determine the extent to which wrongdoers have been held accountable and the extent to which the affected agencies have been reformed. The need for scrutiny is only heightened where the corruption threatens the integrity of the judicial system and the safety of this

nation's infrastructure. Without disclosure of the identities of the public officials and others working for the City, the public would not be able to "properly evaluate the fruits of the government's extensive investigation." *United States v. Kott*, 135 F. App'x 69, 70 (9th Cir. 2005).

In short, the public's interest in the information sought is exceptionally weighty, and the government has failed to establish compelling reasons to overcome the right of access. The government's request to redact the identities of uncharged third parties is therefore denied in part. The government shall disclose the identity of any public official, or any private person working with a public official on government business, who was the subject of the federal investigation in the criminal case.

B.

Petitioners also request access to Agent Civetti's statements about whether former City Attorney Feuer lied under oath before the grand jury. This request arises out of a statement made by Paradis during his sentencing hearing. According to Paradis, Agent Civetti stated in two affidavits supporting search warrant applications that "Mike Feuer testified falsely and perjured himself before a United States grand jury." Dkt. No. 16 at 8.

The secrecy of grand jury proceedings is long-standing and provides a "very well established exception" to the presumed public right of access to court proceedings. *Index Newspaper*, 766 F.3d at 1084; *see* Fed. R. Crim. P. 6(e)(2) (prohibiting the disclosure of grand jury material). The protective shield of secrecy serves to "encourage witnesses to come forward voluntarily without fear that those whom they testify against will know they did so, to encourage witnesses to testify fully . . . , and to assure that individuals who are accused but exonerated are not held to public ridicule." *Index Newspaper*, 766 F.3d at 1084 (citing *Douglas Oil of Cal. v. Petrol Stops Northwest*, 441 U.S. 211, 218–19 (1979); *see also Kamakana v. City and Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (stating that grand jury transcripts are traditionally "kept secret for important policy reasons"). Consequently, the public has no presumptive right of access to grand jury transcripts. *Custer Battlefield Museum*, 658 F.3d at 1192.

Petitioners argue that Agent Civetti's comments are not protected under Rule 6(e) because his purported statements merely reflect his opinion and do not reveal any grand jury information upon which his opinion may have been based. *See* Dkt. No. 16 at 9. Relying on out-of-circuit decisions, Petitioners assert that "a

statement of opinion as to an individual's potential criminal liability [does not] violate the dictates of Rule 6(e) . . . even though the opinion might be based on knowledge of the grand jury proceedings, provided the statement does not reveal the grand jury information on which it is based." *In re Grand Jury Investigation*, 610 F.2d 202, 217 (5th Cir. 1980). At oral argument, the government did not appear to take issue with this limited proposition, and the Court agrees that the government should not redact Agent Civetti's opinion provided that the opinion, as stated, does not refer to or comment on the grand jury proceedings.

According to Petitioners, the Court should not stop there. They contend that any opinion expressed by Agent Civetti about Feuer's candor should be disclosed even if Agent Civetti was expressly commenting on grand jury proceedings in a sealed affidavit and even if the disclosure has the incidental effect of revealing the substance of those proceedings. The Court is not willing to go that far. While the public interest in this matter is undeniably substantial, so too is the principle that "the proper functioning of our grand jury system depends upon the secrecy of grand jury proceedings." *Press-Enter. Co. v. Superior Ct. of Cal. for Riverside Cnty.*, 478 U.S. 1, 9 (1986) (citation omitted). For this reason, there is no presumptive right of access to grand jury proceedings. *Index Newspaper*, 766 F.3d at 1085. Paradis's unauthorized public statements about Agent Civetti's opinions do not fundamentally alter the balance to be stricken here. To the extent that Agent Civetti disclosed an opinion not expressly tied to the grand jury proceedings, the opinion will be made public. To go beyond that poses the additional risk that the disclosure of partial information from the grand jury will result in distortions that cannot be perceived without greater context. The Court is not satisfied that this risk is justified when all other competing interests are considered.

C.

Finally, Petitioners express concern that the government may improperly withhold information based on its misguided view of the scope of permissible redactions and request a procedure to avoid such impropriety.

Petitioners' concern stems in part from the government's reference to Paul Kiesel—an attorney who acted as one of the City's special counsel in the collusive litigation and who agreed to pay hush money to his former employee who threatened to disclose the collusion—as a "victim." Dkt. No. 16 at 3 ("Perplexingly, the USAO considers former Special Counsel Paul Kiesel, who himself was a key player in the underlying unethical and illegal activity, to be a 'victim' of the extortion scheme that he participated in and helped to cover up.").

The government clarified at the hearing that it does not consider Kiesel to be a victim for purposes of redactions, and the Court sees no reason at this point to be concerned that the government will overreach.

Nevertheless, the Court agrees that it would be prudent to implement redaction procedures in this matter. The parties are therefore ordered to meet and confer about a reasonable front-end and back-end procedure. On the front end, the parties should discuss a procedure that would allow a reasonable amount of transparency about the government's redaction methodology. On the back end, the parties should discuss an informal dispute resolution procedure. The Court does not intend to micromanage the process, though it will hear from the parties about any reasonable request for it to retain limited jurisdiction. The parties shall file a status report no later than April 22, 2024, addressing the anticipated procedures, the timeline for production, and the proposed Court involvement.

IV.

Based on the foregoing, the government shall unseal the 33 search warrant applications, any supporting affidavits, the search warrants themselves, the returns, the docket sheets, and the related judicial records. The government may redact:

(1) The names/identities of uncharged third parties who were then subjects of the federal investigation who are not public officials, or private persons working with a public official on government business, who were the subject of the federal investigation in the criminal case;

(2) The names/identities of confidential government informants and witnesses who cooperated in the federal investigation (not including Paradis and Peters, who pled guilty to publicly filed cooperation plea agreements);

(3) Information protected by grand jury secrecy, including grand jury testimony, grand jury transcripts, summaries and descriptions of grand jury testimony, and statements incorporating grand jury testimony;

(4) Confidential medical information, including medical records and treatment information;

(5) The names/identities of victims and intended victims of alleged crimes;

(6) Personal identifying information, including, but not limited to, social security numbers, dates of birth, bank account information, home and personal email addresses, and personal telephone numbers; and

(7) Impeachment-related information regarding affiants/potential government witnesses unrelated to the merits of the federal investigation.

The parties shall meet and confer and submit a joint report by no later than April 22, 2024, addressing the procedures for redactions, the timeline for production, and any request for continued jurisdiction.

Date: April 11, 2024

Stanley Blumenfeld, Jr.
United States District Judge