

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

JUDICIAL WATCH, INC.,

Plaintiff,

v.

U.S. DEPARTMENT OF STATE,

Defendant.

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Civil Action No. 13-cv-1363 (EGS)

**PLAINTIFF’S MOTION TO UNSEAL
AUDIOVISUAL RECORDINGS OF ALL DEPOSITIONS**

Plaintiff Judicial Watch, Inc., by counsel, respectfully moves to unseal the audiovisual recordings of all depositions taken in this case. Ms. Abedin, Mr. Bentel, Ms. Mills, and Mr. Pagliano oppose this motion. Even though the State Department previously took no position on the motion to seal the recordings, the State Department also opposes this motion. As grounds therefor, Plaintiff states as follows:

STATEMENT OF POINTS AND AUTHORITIES

I. Introduction.

This case is “all about the public’s right to know.” Transcript of February 24, 2016 Hearing Concerning Plaintiff’s Motion for Discovery. The authorized depositions “relate to former Secretary of State Hillary Clinton’s email practices during her tenure at the State Department.” May 26, 2016 Minute Order Granting Motion to Seal. In addition, the Court has stated, “The public has a right to know details related to the creation, purpose and use of the clintonemail.com system.” *Id.*

Because the public has a right to know, the audiovisual recordings of the depositions in this case must be unsealed. The sole reason for sealing the recordings in the first place was to avoid their misuse during the 2016 campaign season. Now that the election is over that reason no longer exists.

II. Background.

Prior to her deposition, Ms. Mills moved for the audiovisual recording of her deposition to be sealed. In support of her motion, Ms. Mills argued:

- “That refusal raises a serious concern that Judicial Watch plans to use the recording of Ms. Mills’ deposition, and exploit her image and words, *as part of a partisan attack against Secretary Clinton and her presidential campaign.*” Mills’ Motion (ECF No. 79) at 1 (emphasis added);
- “Since Secretary Clinton announced her candidacy for the presidency . . .” *Id.* at 2;
- “As counsel for Ms. Mills, we seek the Court’s intervention to prevent Judicial Watch from using the audiovisual recording of her deposition for similar, *partisan purposes.*” *Id.* at 3 (emphasis added);
- “[W]e have good cause to believe the audiovisual recording of Ms. Mills’ deposition *could be used in attacks against Secretary Clinton and her presidential campaign,* either by Judicial Watch or some other entity.” *Id.* at 4 (emphasis added);
- “Providing this like treatment will ensure that Ms. Mills, a private citizen, does not have her image and voice exploited by partisan groups seeking to use these judicial proceedings *in this campaign season* to further their own political agendas.” Mills’ Reply (ECF No. 82) at 1 (emphasis added); and
- “Ms. Mills, a non-party to this case, has a very real concern that her privacy will be invaded and her image *exploited for political gain by those seeking some advantage in this contentious campaign season.*” *Id.* at 2 (emphasis added).

At that time, the State Department took no position. Plaintiff opposed the motion, maintaining that Ms. Mills’ concerns were not well founded and demonstrating the substantial public interest and demand for timely information about Secretary Clinton’s email practices. Subsequently, the

Court granted Ms. Mills' motion and, *sua sponte*, sealed the audiovisual recordings of all depositions until further notice. May 26, 2016 Minute Order Granting Motion to Seal.

On July 17, 2016, a coalition of 19 news media organizations moved to intervene to seek reconsideration of the Court's motion to seal the audiovisual recordings. *See* Coalition's Mot. (ECF No. 111.) at 1. Plaintiff did not take a position on the coalition's attempt to unseal the recordings. Ms. Mills and Mr. Pagliano opposed the coalition's motion. *Id.* at 2. The State Department also opposed the unsealing of the recordings because "the reasons that amply justified the Court's May 26 order remain[ed] unchanged." Def's Response (ECF No. 118) at 1. The Coalition's motion is still pending.

III. Argument.

The U.S. Court of Appeals for the District of Columbia Circuit has held:

[T]he existence of the common law right to inspect and copy judicial records is indisputable. This right serves the important function of ensuring the integrity of judicial proceedings in particular and of the law enforcement process more generally. And although the right was first recognized at a time when records were documentary in nature, it is now settled that the right extends to records which are not in written form, such as audio and video tapes.

In re Application of National Broadcasting Company, 653 F.2d 609, 612 (D.C. Cir. 1981).

Plaintiff is a not-for-profit educational organization that seeks to promote transparency, accountability, and integrity in government and fidelity to the rule of law. As it argued originally, Plaintiff seeks to make the recordings public because of the substantial interest in Secretary Clinton's email practices. Even though the election is over, the news media and the public continue to monitor and follow the proceedings in this case. *See e.g.*, Josh Gerstein, *Clinton fights demand for more information on emails*, Politico (November 21, 2016, available at

<http://www.politico.com/blogs/under-the-radar/2016/11/hillary-clinton-emails-231732>). The release of the recordings will not only allow the public to better understand Secretary Clinton's email practices, it will also provide the public with a more complete picture of the discovery taken in this case.

Under Rule 26(c) of the Federal Rules of Civil Procedure, a court may issue a protective order upon a showing of "good cause." *Burgess v. Town of Wallingford*, 2012 U.S. Dist. LEXIS 135781, *35 (D. Conn. Sept. 21, 2012). "The 'good cause' standard requires that the movant identify specific prejudice or oppression that will be caused by disclosure." *Id.* In addition, if "the movant fails to present concrete reasons justifying a protective order, the discovery materials in question will not receive judicial protection and may remain open to public inspection." *Id.* Although Plaintiff disputed whether Ms. Mills showed "good cause," the Court found she had. That good cause – the possibility that the recordings could be exploited for political gain during the contentious campaign season – is now moot. The reason for the protective order no longer exists.

A significant public interest remains in the recordings. As the coalition of 19 news media organizations previously stated:

The matter before this Court speaks directly to the actions of government officials in the performance of their duties. All of the individuals whom Judicial Watch has deposed to date, as well as those whom it may depose in the future, are current or former government officials. Further, under this Court's May 4 Order, the scope of their testimony in this case is limited to matters relating to the performance of their official duties. The use of a nongovernmental email account by the former Secretary of State, and the actions of other State Department officials and employees who themselves used, were aware of, or assisted in the establishment of that nongovernmental email system, are matters of legitimate interest to the public.

Coalition Mem. (ECF No. 111-1) at 7. The coalition also described how “access to cold transcripts, alone, deprives the public of critical context and other information vital to understanding the deponents’ testimony” and how only the “release of the entirety of the video of the deposition[s] will provide the public with the fullest context and most robust understanding” of the testimony. *Id.* at 10-12.

IV. Conclusion.

Plaintiff respectfully requests the Court unseal the audiovisual recordings of all depositions in this case.

Dated: December 5, 2016

Respectfully submitted,

/s/ Michael Bekesha
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