

FILED IN DISTRICT COURT  
OKLAHOMA COUNTY  
IN THE DISTRICT COURT OF OKLAHOMA COUNTY  
STATE OF OKLAHOMA

FEB 17 2017

RICK WARREN  
COURT CLERK

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ZIVA BRANSTETTER and BH Media )  
Group Inc., d/b/a TULSA WORLD )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
MARY FALLIN, in her official capacity as )  
GOVERNOR OF THE STATE OF OKLAHOMA; )  
MICHAEL C THOMPSON, in his official capacity )  
as COMMISSIONER OF THE OKLAHOMA )  
DEPARTMENT OF PUBLIC SAFETY, )  
 )  
Defendants. )

Case No. CV-2014-2372

**ORDER AS TO MOTION FOR IN CAMERA REVIEW AND TO COMPEL  
DISCLOSURE OF RECORDS**

NOW on this 17<sup>th</sup> day of February, 2017, the Court having reviewed Plaintiffs' Motion for In Camera Review and to Compel filed on October 26, 2016, Governor Fallin's Combined Response filed on November 14, 2016, Commissioner Thompson's Response filed on November 14, 2016, Plaintiffs' Reply filed on December 2, 2016, Commissioner Thompson's Notice to Court Regarding Compliance with Order of December 9, 2016, the Attorney General's Notice to the Court Regarding Compliance with Order of December 9, 2016, filed on December 22, 2016, the Department of Corrections' Notice to Court Regarding Compliance with Order of December 9, 2016, filed on December 22, 2016, and Plaintiffs' Response to Non-Party "Notices" Regarding Plaintiffs' Motion for In Camera Review filed on January 18, 2017, and having heard oral

arguments on December 9, 2016, and having reviewed 3 boxes of records and one large manilla envelope of records delivered on December 29, 2016, the Court finds as follows:

1. This case concerns three (3) Open Records Requests by Plaintiff of the Defendants for records concerning the executions of Clayton Lockett and Charles Warner in 2014. The records requests covered all records concerning the executions, including the investigations associated with the executions, from March 1, 2014, to present.

2. The Court has reviewed numerous records found in three boxes, labeled 1, 2 and 3 by the Court and one large manilla envelope. Box 1 contains the unredacted transcripts of interviews conducted by the Department of Public Safety at Governor Fallin's request concerning these executions. These interviews are found in two (2) large binders with Bates stamp numbering. For ease of review, the Court placed these transcripts in the same order as Exhibit D, the privilege log from Commissioner Thompson. The Court has also enclosed in Box 1 the large manilla envelope from Governor Fallin containing two (2) sets of documents. One set contains Documents Withheld in their Entirety and the other set contains Documents with Redactions. The Court has also placed Exhibit D, Commissioner Thompson's privilege log, Governor Fallin's two (2) privilege logs, labeled Exhibit B, with one log for all documents withheld and the other for redacted documents. The Court has also included the Privilege Logs provided by the Attorney General and the Department of Corrections in their Notices filed on December 22, 2016, along with a copy of Exhibit A. Boxes 2 and 3 contain the redacted materials received by Plaintiffs and provided to the Court by Plaintiffs with tabs on the documents being challenged or not being challenged. (Note: Box 3 was delivered

in a severely damaged condition and has been patched up by the Court as best as could possibly be done.)

3. From the documents found in Boxes 2 and 3, Plaintiffs do not challenge the privileges raised as to the following documents found in Exhibit D and as listed by the following Bates stamp numbers: 2805; 1663; 1664; 1878; 325; 2194; 2365; 2836; 205; 2230; 131; 598; and 2640.

4. The central issue in this case is the interpretation of the privilege granted in 22 O.S. §1015(B). This statute specifically provides “The identity of all persons who participate in or administer the execution process and persons who supply the drugs, medical supplies or medical equipment for the execution shall be confidential and shall not be subject to discovery in any civil or criminal proceedings.” This statute clearly protects the identities of ALL persons WHO PARTICIPATE in the EXECUTION PROCESS and must be so interpreted to protect the privacy of the participants from harassment by others.

5. Where the Defendants and non-parties have raised the privilege provided under 22 O.S. §1015(B), this privilege has been properly raised to prevent disclosures of identifiers of participants in these executions. These redactions shall remain confidential and shall not be disclosed or produced.

6. As to the other privileges raised by the Defendants and non-parties, these have all been properly raised and shall protect the documents and/or redactions in the documents except for the following:

A. Exhibit D

1. Bates No. 782 – There are no redactions on this page.

B. Exhibit B – Governor’s Log – Withheld in Full

1. Bates Nos. 41714- 41734 – These documents were not provided for review. The Governor claims they are outside of the dates of the scope of review. However, without the documents, this cannot be verified. Either produce for review within the next ten (10) days or produce as ordered hereinafter.

2. Bates Nos. 41735 - 41741 – Redact the identifiers for participation in the execution as per 22 O.S. §1015(B) and produce the remainder of the document. The other privileges raised do not apply and they are denied.

3. Bates Nos. 41746 - 41749 – Same ruling as No. 2 above – redact identifiers and produce the remainder of the documents.

4. Bates Nos. 41750 - 41751 – These privileges do not apply. Produce this document consisting of two (2) pages.

C. Exhibit B – Governor’s Log – Documents with Redactions

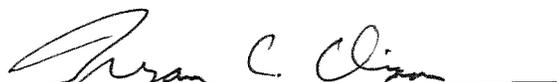
1. Bates No. 17121 – This document was not provided for review. The Governor claims this is outside of the dates of the scope of review. However, without the document, this cannot be verified. Either produce for review within the next ten (10) days or produce as ordered hereinafter.

D. Department of Corrections Privilege Log

1. Bates No. 783 – The Protected Health Information Privilege does not apply.

**IT IS THEREFORE ORDERED** by the Court that the Motion for In Camera Review is sustained and said review has been conducted with the privileges as raised by the Defendants and Non-Parties being granted or denied as noted above.

**IT IS FURTHER ORDERED** by the Court that Defendants shall produce the documents not protected by a privilege to Plaintiffs within thirty (30) days of the Order of this Court and any documents not produced for review as noted herein shall be produced within ten (10) days for this Court's review or they shall be produced with the other documents within thirty (30) days of the date of this Order.

  
Bryan C. Dixon  
District Judge

**CERTIFICATE OF MAILING**

This is to certify that on this 17th day of February, 2017, a certified copy of this Order was mailed to the following:

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Deputy Court Clerk

CERTIFIED COPY  
AS FILED OF RECORD  
IN DISTRICT COURT

FEB 17 2017

RICK WARREN COURT CLERK  
Oklahoma County

  
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