

CLERK OF THE
DISTRICT COURT
KRISTIE LEE BOELTER
2014 DEC 19 PM 2 00
FILED
BY _____
DEPUTY

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8 **MONTANA THIRTEENTH JUDICIAL DISTRICT COURT, YELLOWSTONE COUNTY**

9 **CITY OF BILLINGS,
STATE OF MONTANA,**

10 **Plaintiff,**

11 **and**

12 **THE BILLINGS GAZETTE COMMUNICATIONS,
a Division of Lee Enterprises,**

13 **Respondents**

CAUSE NO. DV 14-0964

JUDGE MICHAEL G. MOSES

**CITY OF BILLINGS
BRIEF IN SUPPORT OF
MOTION FOR A
PROTECTIVE ORDER**

14
15 **THE CITY OF BILLINGS** has moved the Court for an Order pursuant to
16 M.R.Civ.P. 26(c) staying further discovery in the above action. That Rule is set
17 forth, in pertinent part, as follows:

18 (1) *In General.* A party or any person from whom discovery is sought may
19 move for a protective order in the court where the action is pending--or as an
20 alternative on matters relating to a deposition, in the court for the district
21 where the deposition will be taken. The motion must include a certification that
22 the movant has in good faith conferred or attempted to confer with other
23 affected parties in an effort to resolve the dispute without court action. The
24 court may, for good cause, issue an order to protect a party or person from
25 annoyance, embarrassment, oppression, or undue burden or expense....'

26 This case is not about what needs to be done, but who is to do what and
27 how to go about getting it done. The City is not concealing any of the
28 information requested. Indeed, it has provided all relevant documents to the
Court for its *in camera* inspection as required by numerous cases decided by

1 the Supreme Court of Montana. The City is without authority to adjudicate the
2 proper balance between the Public's Right to Know and the Individual Right to
3 Privacy. The Court has expressed its opinion that the information on any line
4 on any page in any document in the materials submitted to it will 'spill the
5 beans' and compromise the privacy rights of all individuals mentioned in these
6 documents.

7 The Gazette has chosen, nonetheless, to proceed with discovery requests
8 that would result in the disclosure of all the information in the case, whether it
9 pertains to a subject of the investigation, a witness, or an investigator. The
10 individuals mentioned in the report would be deprived of their Right to Privacy
11 without due process of law if this were permitted to occur.

12 The discovery responses would moot all rights of all parties mentioned in
13 the documents, and to the extent any disclosure is later determined to be
14 unlawful or improper, it would subject the citizens of Billings to numerous
15 claims that could be brought to make the determination as to the proper
16 balance between the Public Right to Know and the Individual Right of Privacy
17 under the facts of this case. That determination has to be made by the highest
18 court in this state if this double jeopardy situation is to be avoided.

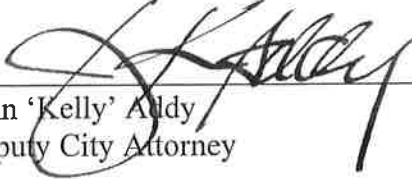
19 Such a determination in advance of any release of documents would also
20 protect the Gazette from any subsequent claims brought by individuals. The
21 Court has had these documents for some time now in a form that permits it to
22 make its determination, and the Court is the one institution involved in this
23 case that is so constituted and so trained to make an impartial and unbiased
24 ruling as to the proper balance to be struck in this case between these two vital
25 constitutional rights held by every individual and entity in the State of
26 Montana.

27 In order to the case to proceed as the Supreme Court of Montana has
28 always held such matters should proceed, before the City responds to any
discovery requests propounded by the Gazette, further discovery should be

1 stayed and the Court should rule on the merits forthwith, in a manner that
2 does not moot the appeal rights of any person mentioned in the report.

3 DATED this 19th day of December, 2014.

4 BILLINGS CITY ATTORNEY'S OFFICE

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6 
7 John 'Kelly' Addy
8 Deputy City Attorney

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on this 19th day of December, 2014, I mailed, via
11 United States Postal Service, First Class postage prepaid, and emailed a
12 true and accurate copy of this **BRIEF IN SUPPORT OF MOTION FOR**
13 **PROTECTIVE ORDER** to the following:

14 Martha Sheehy
15 SHEEHY LAW FIRM
16 P.O. Box 584
17 Billings, Montana 59103-0584
18 Email: msheehy@sheehylawfirm.com

19 DATED this 19th day of December, 2014.

20
21 
22 John 'Kelly' Addy
23 Deputy City Attorney
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