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5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 YAKIMA POLICE PATROLMAN'S ASSOCIATION, a Washington labor
8 organization; and GEOFF GRONEWALD,
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Plaintiffs,
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v.
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12 CITY OF YAKIMA, a municipal corporation; DOMINIC RIZZI, JR.,
13 individually and in his official capacity as Chief of Police of the City of
14 Yakima; and TAMMY REGIMBAL, individually and in her official capacity
15 as Public Records Officer of the City of Yakima; and JOHN LACROSSE,
16
Defendants.

NO: 14-CV-3045-TOR

ORDER DENYING PLAINTIFFS' SECOND MOTION FOR A TEMPORARY RESTRAINING ORDER

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18 BEFORE THE COURT is Plaintiffs' Second Motion for a Temporary
19 Restraining Order (ECF No. 9). This matter was heard with oral argument on
20 April 18, 2014. Mitchell Riese appeared on behalf of the Plaintiffs. James

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Mitchell appeared on behalf of Defendants City of Yakima, Dominic Rizzi, and Tammy Regimbal. Neither John LaCrosse nor the Washington State Attorney General appeared. The Court has reviewed the briefing and the record and files herein, and is fully informed. This order memorializes the Court's oral ruling during the hearing.

BACKGROUND

This case concerns a public records request for information pertaining to an investigation of a Yakima Police Department officer's alleged misconduct. Plaintiffs Yakima Police Patrolman's Association ("YPPA") and Geoff Gronewald seek a temporary restraining order preventing the release of the records before the officer's pre-disciplinary/name-clearing hearing. For the reasons explained below, the Court denies the request.

FACTS[1]

Plaintiff Yakima Police Patrolman's Association ("YPPA") is a labor organization representing police officers of the Yakima Police Department. Geoff

[1] The following facts are primarily drawn from Plaintiff's complaint and are accepted as true for the purposes of the instant motion. Defendants did not file any responsive briefing.

Gronewald is a police officer employed by the City of Yakima Police Department ("YPD").

Gronewald was notified on February 25, 2014, that he was the subject of a YPD internal investigation into allegations of misconduct, and he was placed on administrative leave. Gronewald was notified on April 10, 2014, that he was to appear before Defendant Dominic Rizzi, Jr., the YPD Chief of Police, on May 13, 2014, for a pre-disciplinary/name-clearing hearing concerning allegations of violations of YPD policy. Gronewald was informed that the disciplinary action contemplated could include termination, and that the hearing would allow Gronewald to "present matters of refutation, explanation and/or mitigation."

On March 19, 2014, Defendant LaCrosse submitted a public records request to Defendant Tammy Regimbal, the Public Records Officer for the City of Yakima, requesting any and all information regarding Gronewald's administrative leave, including any investigation surrounding his leave. Regimbal notified Gronewald of the request.

On April 14, 2014, the YPPA filed a complaint and motion for a temporary restraining order prohibiting release of the records. At a hearing on April 16, 2014, the Court denied the motion for a TRO with leave to renew. The same day, Plaintiff filed a First Amended Complaint and the Second Motion for a Temporary Restraining Order now before the Court, adding as plaintiff Geoff Gronewald and

as defendant John LaCrosse, the member of the press who requested the documents.

Plaintiff's Second Amended Complaint claims that information contained in the investigative file contains stigmatizing information about Gronewald, the release of which could cause immediate and irreparable harm because it could impair Gronewald's reputation for honesty or morality. Plaintiff sues pursuant to 42 U.S.C. § 1983, claiming that releasing the investigative file before Gronewald has his predisciplinary/name-clearing hearing violates Gronewald's Fourteenth Amendment liberty interest in remaining free from the public dissemination of stigmatizing information by his employer. Plaintiff states that Defendants believe they are obligated by the Washington Public Records Act ("PRA"), RCW 42.56, to disclose the records requested by Defendant LaCrosse without first providing Plaintiff Gronewald a pre-disciplinary/name-clearing hearing, and that in the future Defendants would be similarly obligated to disclose the records of other YPPA members without first providing a pre-disciplinary/name-clearing hearing for the officer involved. Plaintiffs' Second Amended Complaint also claims that the PRA is unconstitutional as applied to Plaintiff Gronewald to the extent that the statute allows Defendants to disclose stigmatizing information regarding Plaintiff Gronewald without first affording him a pre-disciplinary/name-clearing hearing.

Plaintiffs filed a notice of constitutional challenge to the PRA, and a Constitutional Challenge Certification was sent to the Washington Attorney General.

Plaintiffs pray for a temporary restraining order and preliminary injunction enjoining the release of any portion of the investigative file concerning Gronewald until he has had a pre-discicplinary/name-clearing hearing.

DISCUSSION

"An application for a temporary restraining order involves the invocation of a drastic remedy which a court of equity ordinarily does not grant, unless a very strong showing is made of a necessity and desirability of such action." *Youngstown Sheet & Tube Co. v. Sawyer,* 103 F.Supp. 978, 980 (D.D.C.1952). The standard for granting a temporary restraining order "is identical to the standard for issuing a preliminary injunction." *Brown Jordan Intern. v. Mind's Eye Interiors, Inc.,* 236 F.Supp.2d 1152, 1154 (D .Hawai'i 2002). Pursuant to Rule 65 of the Federal Rules of Civil Procedure, the Court may grant preliminary injunctive relief in order to prevent "immediate and irreparable injury." Fed.R.Civ.P. 65(b).

To obtain this relief, a plaintiff must establish that (1) he is "likely to succeed on the merits," (2) he is "likely to suffer irreparable harm in the absence of preliminary relief," (3) "the balance of equities tips in his favor," and (4) "an injunction is in the public interest." *Winter v. Natural Res. Def. Council,* 555 U.S. 7, 20 (2008). The Ninth Circuit uses a "sliding scale" under which the temporary

restraining order may be issued if there are serious questions going to the merits and the balance of hardships tips sharply in the plaintiff's favor, along with satisfaction of the two other *Winter* factors. *Alliance for the Wild Rockies v. Cottrell,* 632 F.3d 1127, 1135 (9th Cir. 2011).

Plaintiff cites *Cox v. Roskelley*, 359 F.3d 1105, 1106 (9th Cir. 2004) for the proposition that "publication of stigmatizing information without a name clearing hearing violates due process," and that publication can occur when a records are placed in a personnel file. ECF No. 2 at 5. Plaintiff contends that Defendants intended to publish stigmatizing information without affording Gronewald a name-clearing hearing to which he is entitled. As such, Plaintiff argues, it has shown that it is likely to succeed in the matter.

The Fourteenth Amendment's guarantee of procedural due process applies when a constitutionally protected property or liberty interest is at stake. *See Vanelli v. Reynolds Sch. Dist. No. 7,* 667 F.2d 773, 777 (9th Cir. 1982). Where the State seeks to bar forever an individual from public employment, makes a charge of "dishonesty," or attaches a "stigma" to an employment decision, it must afford due process. *Board of Regents of State Colleges v. Roth,* 408 U.S. 564, 573 (1972). But mere harm to reputation alone is insufficient to implicate an individual's liberty interest. *Paul v. Davis*, 424 U.S. 693, 711-712 (1976). "[D]ue process protections will apply if 1) the accuracy of the charge is contested; 2) there is some public

disclosure of the charge; and 3) it is made in connection with the termination of employment or the alteration of some right or status recognized by state law." *Llamas v. Butte Cmty. Coll. Dist.,* 238 F.3d 1123, 1129 (9th Cir. 2001). "Failure to provide a "name-clearing" hearing in such a circumstance is a violation of the Fourteenth Amendment's due process clause." *Cox v. Roskelley*, 359 F.3d 1105, 1110 (9th Cir. 2004). Placing the stigmatizing information in the employee's personnel file, "in the face of a state statute mandating release upon request, constitute[s] publication sufficient to trigger [the employee's] liberty interest under the Fourteenth Amendment." *Cox*, 359 F.3d at 1112. In such a case, "[t]he lack of an opportunity for a name-clearing hearing [would violate a plaintiff's] due process rights." *Id.*

Here, there is simply no threatened Constitutional violation. Plaintiffs have failed to meet two of the three criteria triggering due process protection. Assuming that the information is in fact stigmatizing, which is not apparent from the record, its placement in Gronewald's personnel file would be sufficient publication for the purposes of invoking due process protections. But Gronewald has not yet been terminated; he is on administrative leave. This is insufficient to invoke due process protections. *See Mustafa v. Clark County School District*, 157 F.3d 1169, 1179 (9th Cir. 1998) (citing *In re Selcraig*, 705 F.2d 789, 795 (5th Cir. 1983) ("official publication of a stigmatizing charge…without discharge is not of itself

constitutionally prohibited")). "A constitutional deprivation of liberty occurs when there is *some injury to employment or employment opportunities* in addition to damage to reputation and a subsequent denial of procedural due process to redress that injury." *In re Selcraig*, 705 F.2d at 796 (emphasis added). Gronewald has not suffered an injury to employment yet, and therefore the third prong of the test has not been met.

Furthermore, even if the stigmatizing information had been published in connection with termination, Gronewald would be entitled to due process, namely, a name-clearing hearing. Gronewald has a name-clearing hearing scheduled on May 13, 2014. Thus, there is no threatened constitutional violation. As the Supreme Court put it, "[d]efamation, by itself, is a tort actionable under the laws of most States, but not a constitutional deprivation." *Siegert v. Gilley,* 500 U.S. 226, 233-234 (1991).

Having found no legal basis for the constitutional challenge, the request for a temporary restraining order founded on constitutional violations must be denied, even under the Ninth Circuit's "sliding scale" analysis. If there is no constitutional deprivation, the balance of equities does not tip sharply in Gronewald's favor because there is no constitutional right to protect. Nor, arguably, is it in the public interest to prohibit release of the information, because, at least in theory, the records contain information of concern to the public. *See* RCW 42.56.050 ("A

person's 'right to privacy'…is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public.").

ACCORDINGLY, IT IS HEREBY ORDERED:

Plaintiffs' Second Motion for a Temporary Restraining Order (ECF No. 9) is **DENIED**.

The District Court Executive is hereby directed to enter this Order and provide copies to counsel.

DATED April 18, 2014.

THOMAS O. RICE
United States District Judge