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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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Armando Roberto Aros, III

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No. CV-04-306-PHX-SRB (LOA)

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Plaintiff,

)

**ORDER**

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vs.

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Robinson, et al.,

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Defendants.

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This matter is before the Court on Plaintiff’s Motion to Compel and Request for Sanctions. (Doc. 181) Defendant opposes the motion and requests a protective order pursuant to Fed.R.Civ.P. 26(c)(1). (Doc. 199) Plaintiff has filed a reply. (Doc. 218, Attachment A)

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**I. Background**

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Plaintiff, proceeding *pro se*, commenced this civil rights action against several employees of the Arizona Department of Corrections (“ADC”) in 2004 and amended his Complaint several times. Pursuant to Court orders, he filed a Third Amended Complaint in 2005. (Doc. 20) Plaintiff’s Complaint included four counts alleging the following: (1) Count I - In 2002, Defendants violated his Fourteenth Amendment right to Due Process by administratively reclassifying him to be housed in level five maximum security units for the next two years and raising his Public and Institutional Score (“P/I”) from 4/3 to 5/5 (Doc. 20 at 4-4C); (2) Count II - Defendants violated Plaintiff’s substantive due process rights by administratively reclassifying him to be housed in level five maximum

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1 security units for the next two years and raising his P/I from 4/3 to 5/5 (Doc. 20 at 5-5C);  
2 (3) Count III - Defendants violated Plaintiff's Fourteenth Amendment right to equal  
3 protection when he was administratively reclassified to be housed in level-five maximum  
4 security units for two years, and when his classification score was raised from 4/3 to 5/5.  
5 (Doc. 20 at 6-6C); and (4) Count IV - Defendants violated Plaintiff's Eighth Amendment  
6 right to be free from cruel and unusual punishment by failing to remedy conditions of  
7 confinement at the Central Unit of ASPC-Florence. (Doc. 20 at 7)

8 On September 12, 2005, the Court dismissed the allegations in Count III for failure  
9 to state a claim. (Doc. 19) The Court subsequently granted Defendants' Motion for  
10 Summary Judgment on the remaining claims. (Doc. 87) Plaintiff appealed.

11 The Ninth Circuit Court of Appeals vacated the portion of the judgment which  
12 dismissed Plaintiff's Equal Protection claim, stating that Plaintiff had "alleged that other  
13 inmates systematically received lesser punishment for conspiring to assault other inmates,  
14 and that defendants singled him out for the sole purpose of depriving him of the  
15 evidentiary and procedural safeguards accorded other inmates in his situation. These  
16 allegations are sufficient to state a claim." (Doc. 103) On remand from the Ninth Circuit,  
17 this Court reinstated Count III and Defendants Robinson, Ray Martinez, Fulton, Fansler,  
18 Conrad Luna, John Doe I, John Doe II, and Donna Clement. (Doc. 108) In accordance  
19 with the Ninth Circuit's ruling, the only issue before the Court is Plaintiff's claim that  
20 Defendants' reclassification decisions violated his right to Equal Protection.

21 Defendant Fansler was a member of the committee which considered evidence that  
22 Plaintiff had assaulted another inmate, Hank Lazarro, on October 29, 2002. (Doc. 20 at  
23 6) The evidence considered included "a report which includes information from a  
24 confidential informant describing [Plaintiff's] involvement in an assault on another  
25 inmate with a weapon." (Doc. 20 at 6A) Based on Plaintiff's behavior, Defendants  
26 Fansler and Fulton recommended that Plaintiff's public and institutional ("P/I") risk  
27 scores be increased from 4/3 to 5/5. (Doc. 20 at 6, 6A-C) Defendants Fulton and Fansler  
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1 also recommended that Plaintiff be housed in level 5 housing units for the next 2 years,  
2 dating from November 12, 2002. (Doc. 20 at 6A) After his reclassification, Plaintiff was  
3 placed in SMU-I. (*Id.*)

4 Plaintiff has served a request for production on Defendant Fansler, seeking various  
5 records. Defendant Fansler argues that Plaintiff should not be entitled to discover the  
6 records he seeks. Alternatively, Defendant Fansler argues that the Plaintiff should only  
7 be provided redacted copies of the records.

## 8 **II. Applicable Law**

9 Before considering the discovery dispute, the Court will discuss the applicable  
10 law. Local Rule of Civil Procedure 37.1, which governs motions to compel, provides  
11 that:

12 the moving party shall set forth, separately from a memorandum of  
13 law, the following in separate, distinct numbered paragraphs:

- 14 (1) the question propounded, the interrogatory submitted, the  
designation requested or the inspection requested;
- 15 (2) the answer, designation or response received; and
- 16 (3) the reason(s) why said answer, designation or response is  
deficient.

17 LRCiv 37.1(a). Plaintiff's Motion to Compel does not comply with Local Rule 37.1(a).  
18 (Doc. 181) Plaintiff's Motion refers to the subject matter of several discovery requests,  
19 but such references are buried in the text of the motion and are not set forth "in separate,  
20 distinct numbered paragraphs" as Rule 37.1(a) requires. Plaintiff's failure to comply with  
21 the Local Rule provides an independent sufficient basis to deny his Motion to Compel.  
22 "District courts have broad discretion in interpreting and applying their local rules."  
23 *Simmons v. Navajo County*, 609 F.3d 1011, 1017 (9<sup>th</sup> Cir. 2010) (quoting *Miranda v. S.*  
24 *Pac. Transp. Co.*, 710 F.2d 516, 521 (9<sup>th</sup> Cir. 1983)). "[W]e emphasize that the district  
25 court in this case was under no obligation to undertake a cumbersome review of the  
26 record on the [Plaintiff's] behalf." (*Id.*) Also see, *Tran v. Tyco Elec. Corp.*, 2008 WL  
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1 2037279, at \* 2 (D.Or. 2008) (denying motion to compel where plaintiff failed to comply  
2 with Local Rule 37.1's requirements); *Burgess v. Pliler*, 2006 WL 278588, at \* 3 (E.D.  
3 Cal. 2006) (defective motion to compel denied where party failed to follow local rule  
4 requiring that party set forth the requests propounded and allegedly deficient responses  
5 received). The Court, however, will also consider the merits of the Motion in view of the  
6 considerable time and effort the parties have spent in relation to the Motion.

7 Despite Plaintiff's failure to comply with Local Rule 37.1(a), Defendant Fansler  
8 culled through the Motion to Compel and identified the documents that appear to be at  
9 issue. (Doc. 199 at 6) Defendant Fansler identified the documents as: (1) the victim's  
10 statement, (2) confidential information ("CI") statements; (3) the CI Reliability Assess-  
11 ment Questionnaire(s) ("CIRAQ") for the CIs; (4) photographs of the weapon used in the  
12 assault; and (5) records of medical treatment the victim received after the assault. (Doc.  
13 199) Plaintiff's reply addresses the discovery of the foregoing materials. (Doc. 218,  
14 Attachment A 18-25)

15 Federal Rule of Civil Procedure 26 provides that:

16 [T]he scope of discovery is as follows: The parties may obtain discovery  
17 regarding any nonprivileged matter that is **relevant to any party's claim**  
18 **or defense** - including the existence, description, nature, custody, condition,  
19 and location of any documents or other tangible things and the identity  
20 and locations of persons who know of any discoverable matter. **For good**  
21 **cause**, the court may order discovery of any matter relevant to the subject  
22 matter involved in the action. Relevant information need not be admissible  
23 at the trial if the discovery appears reasonably calculated to lead to the discovery  
24 of admissible evidence. All discovery is subject to the limitations  
25 imposed by Rule 26(b)(2)(C).

26 Fed.R.Civ.P. 26(b)(1) (emphasis added). Accordingly, the nature of Plaintiff's claim  
27 defines the scope of discovery. The only claim remaining is Plaintiff's allegation that his  
28 Fourteenth Amendment right to equal protection was violated by his reclassification in  
2002. (Doc. 20 at 6-6C) A section 1983 plaintiff alleging an equal protection violation  
must prove that: (1) the defendants treated plaintiff differently from others similarly  
situated; (2) the unequal treatment was based on an impermissible classification; (3) the

1 defendants acted with discriminatory intent in applying this classification; and (4)  
2 plaintiff suffered injury as a result of the discriminatory classification. *Moua v. City of*  
3 *Chico*, 324 F.Supp.2d 1132, 1137 (E.D.Cal. 2004); *Barren v. Harrington*, 152 F.3d 1193,  
4 1194 (9th Cir. 1998) (a section 1983 plaintiff alleging denial of equal protection “must  
5 show that the defendants acted with an intent or purpose to discriminate against plaintiff  
6 based on membership in a protected class.”); *Van Pool v. City and County of San*  
7 *Francisco*, 752 F.Supp. 915, 927 (N.D.Cal. 1990) (§1983 plaintiff must prove purposeful  
8 discrimination by demonstrating that he “receiv[ed] different treatment from that received  
9 by others similarly situated,” and that the treatment complained of was under color of  
10 state law). To establish a violation of the Equal Protection Clause, Plaintiff must show  
11 intentional discrimination. *Sischo-Nowenjad v. Merced Community College Dist.*, 934  
12 F.2d 1104, 1112 (9<sup>th</sup> Cir. 1991). Prisoners are not a suspect classification within the  
13 meaning of the Fourteenth Amendment. *McQuery v. Blodgett*, 924 F.2d 829, 834 (9<sup>th</sup> Cir.  
14 1990). A mere demonstration of inequality is not enough to establish a violation of the  
15 Equal Protection Clause. *Id.*

16 The Court will consider Plaintiff’s disputed discovery requests in light of Rule 26  
17 and the nature of his claim.

### 18 **III. Disputed Discovery Requests**

#### 19 **A. Victim Statement**

20 In his disputed discovery requests to Defendant Fansler, Plaintiff seeks to obtain  
21 the “victim’s statement.” (Doc. 181; Exh. L) Plaintiff apparently refers to the victim of  
22 the assault upon which Defendants Fansler and Fulton recommended that Plaintiff’s  
23 public and institutional risk scores be increased from 4/3 to 5/5. (amended complaint,  
24 count III at 6B)

25 Defendants object to Plaintiff’s request for the victim’s statement for security  
26 reasons. (Doc. 199 at 6) Defendant Fansler also states that Plaintiff has not explained  
27 why he needs the victim’s statement. Although Defendant Fansler asserts Plaintiff has  
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1 not denied involvement in the assault, in his Reply, Plaintiff contends that he “did not  
2 participate in the assault of that prisoner . . . .” (Doc. 218, Attachment A at 19-20)  
3 Petitioner’s reclassification at issue in Ground III was based on his conduct in assaulting  
4 the victim. Plaintiff has referred to the victim by name in the Complaint, thus, it does not  
5 appear that protecting the victim’s name is a legitimate security concern when that  
6 individual’s name is already known to Plaintiff and has appeared in the pleadings in this  
7 case. Defendants further argue that releasing the victim’s statement “could be extremely  
8 intimidating and have a chilling effect on any future victims’ willingness to cooperate  
9 with prison authorities in the future.” (Doc. 199 at 7; Exh. B ¶ 10, 31, 34) Defendants  
10 further argue that Plaintiff is familiar with the general content of the victim’s statement  
11 because he was reclassified in a proceeding that relied upon that statement. (Doc. 199 at  
12 7)

13 As Plaintiff admits, the name of victim of the 2002 assault is known to him, and  
14 thus the name of victim need not be obtained by discovery. Additionally, Plaintiff has not  
15 shown that the victim’s statement is relevant to his Equal Protection claim or otherwise  
16 established good cause to support his request to discover the victim’s statement.  
17 Fed.R.Civ.P. 26(b). Defendants argument that disclosing the victim’s statement would  
18 have a chilling effect is well taken. Courts have long recognized that the right to know  
19 evidence supporting prison disciplinary rulings is not absolute. *Wolff v. McDonnell*, 418  
20 U.S. 539, 564- 565 (1974). As the Supreme Court has noted, prison disciplinary  
21 proceedings “take place in tightly controlled environments peopled by those who have  
22 been unable to conduct themselves properly in a free society.” *Ponte v. Real*, 471 U.S.  
23 491, 497 (1985). The risks of “violence or intimidation directed at either other inmates or  
24 staff” are real. *Id.* at 495. Thus, when the disclosure of evidence presents such risks,  
25 hearing officers may properly decline to inform an inmate of the adverse evidence. *Wolff*,  
26 418 U.S. at 565. In view of the foregoing, the Court will deny Plaintiff’s motion to  
27 compel Defendants to produce the victim’s statement.

1           **B. Confidential Informant Statements and Reliability Questionnaires**

2           Plaintiff also requests disclosure of the Confidential Informant statements and the  
3 Confidential Informant Reliability Assessment Questionnaires (“CIRAQs”). (Doc. 199 at  
4 7; doc. 219, attachment A at 20) Defendants object to this request because release of  
5 confidential informant statements could expose the informants to the risk of retaliation.  
6 Defendants further argue that, if ADC is unable to keep the identity of the informants  
7 confidential, it could have a devastating impact on ADC’s ability to obtain such  
8 information in the future. Defendants further argue that the CIRAQs permit prison  
9 officials to determine whether the statements of confidential informants are credible. In  
10 this case, Plaintiff’s due process challenge to his reclassification hearing was dismissed  
11 on summary judgment and affirmed on appeal. Thus, as Defendants argue, the quality  
12 and quantum of evidence Defendants relied upon in deciding to reclassify Plaintiff has  
13 already been challenged and determined to have been adequate. Thus, the credibility of  
14 the confidential informant statements is not at issue.

15           The Court agrees. Plaintiff, has not shown good cause to discover the confidential  
16 informant statements or the CIRAQ’s and has not shown how such information is relevant  
17 to his Equal Protection claim. Defendants arguments that disclosing the confidential  
18 informant statements would have a chilling effect on the informants and expose them to  
19 possible retaliation is well taken. Courts have long recognized that the right to know  
20 evidence supporting prison disciplinary rulings is not absolute. *Wolff*, 418 U.S. at 564-  
21 565. As the Supreme Court has noted, prison disciplinary proceedings “take place in  
22 tightly controlled environments peopled by those who have been unable to conduct  
23 themselves properly in a free society.” *Ponte v. Real*, 471 U.S. at 497. The risks of  
24 “violence or intimidation directed at either other inmates or staff” are real. *Id.* at 495.  
25 Thus, when the disclosure of evidence presents such risks, hearing officers may properly  
26 decline to inform an inmate of the adverse evidence. *Wolff*, 418 U.S. at 565. In view of  
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1 the foregoing, the Court will deny Plaintiff's Motion to Compel Defendants' to produce  
2 the confidential informant statements and the CIRAQs.

3 **C. Photograph of Weapon used in Assault**

4 Plaintiff next seeks a photograph of the weapon, a three-hole punch, used in the  
5 2002 assault. Defendants state that there is no photograph of that item, thus, there is  
6 nothing to produce to Plaintiff. The Court cannot order Defendants to produce materials  
7 that do not exist. *McBride v. Rivers*, 2006 WL 622591 at \*11 (11<sup>th</sup> Cir., March 14, 2006)  
8 (holding that the defendant was not obligated to produce documents that could not be  
9 retrieved).

10 **D. The Victim's Medical Records**

11 Finally, Plaintiff seeks the victim's medical records depicting the nature and extent  
12 of the injuries. Plaintiff claims that the "weapon use" was "made up" by officials to  
13 justify the application of separate protocols to Plaintiff. (Doc. 218, Attachment A at 22)  
14 He argues that the medical records will "fail to evince the types of injuries to be expected  
15 following an all-out-attack with a heavy metallic object like the one claimed to be have  
16 been yielded in this case." (*Id.*) Defendants argue that Plaintiff was reclassified based on  
17 his behavior in participating in the assault, not based on the extent of the injuries caused.  
18 Thus, even if the victim authorized release of his confidential medical records, they are  
19 not relevant to his Equal Protection claim. The Court agrees. Plaintiff has not shown that  
20 the victim's medical records are relevant to his Equal Protection Claim.

21 **IV. Summary**

22 After consideration of this matter, the Court will deny Plaintiff's Motion to  
23 Compel in its entirety. Plaintiff also requests the imposition of sanctions pursuant to  
24 Fed.R.Civ.P. 37(a)(4)(A). In view of the determination that Plaintiff's Motion to Compel  
25 will be denied, the Court need not consider Plaintiff's Request for Sanctions. Likewise,  
26 Defendants' Motion for Protective Order is moot.

27 Accordingly,

