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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Chad Lucas Harrison,

10 Plaintiff,

11 v.

12 Charles L. Ryan, et al.,

13 Defendants.
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No. CV-13-01152-PHX-DLR (ESW)

ORDER

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17 Plaintiff is an inmate in custody at the Arizona Department of Corrections. He
18 filed a Complaint (Doc. 1) pursuant to 42 U.S.C. § 1983 alleging Defendants violated his
19 civil rights. Plaintiff filed a document on October 22, 2014 (Doc. 62) which the Court
20 has deemed to be a Motion to Compel. *See* Order filed October 31, 2014 (Doc. 66).
21 Plaintiff asserts that documents identified in his Request for Production dated August 4,
22 2014 (Doc. 62, Ex. D) have not been produced. Plaintiff fails to provide any specific
23 objection to the Defendants' responses to Request for Production numbers 3, 11-13, and
24 15. Therefore, the Court must limit its review and analysis to Request for Production
25 numbers 1-2, 4-10, and 14 (Doc. 62, Ex. D). *See* Fed. R. Civ. P. 37(a) and L.R.Civ.
26 7.2(j). Plaintiff's Motion to Compel (Doc. 62) is denied as to Request for Production
27 numbers 3, 11-13, and 15.
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2 **DISCUSSION**

3 **I. Duty to in Good Faith Confer or Attempt to Confer with Opposing Party Before**
4 **Filing a Motion to Compel**

5 Rule 37(a)(1), Federal Rules of Civil Procedure requires that a party's motion to
6 compel include a certification that the movant has in good faith conferred or attempted to
7 confer with the opposing party in an effort to obtain the sought discovery without Court
8 intervention. Local Rule of Civil Procedure 7.2(j), as well as this Court's Scheduling
9 Order (Doc. 17), further requires personal or telephonic consultation between the parties
10 prior to the filing of a motion to compel. Plaintiff failed to include his required
11 certification that such efforts were actually made. For this reason alone, the Motion to
12 Compel (Doc. 62) may be denied. However, the Court has reviewed the merits of the
13 discovery at issue for reasons of judicial economy.

14 **II. Plaintiff's Request for Production**

15 The law provides that a party may obtain discovery regarding any non-privileged
16 matter that is relevant to a party's claim. The relevant information need not be
17 admissible at trial if it is reasonably calculated to lead to the discovery of admissible
18 evidence. Fed. R. Civ. P. 26(b)(1). All discovery is, however, subject to reasonable
19 limitations by the Court when "the burden or expense of the proposed discovery
20 outweighs its likely benefit, considering the needs of the case, the amount in controversy,
21 the parties' resources, the importance of the issues at stake in the action, and the
22 importance of the discovery in resolving the issues." Fed. R. Civ. P. 26(b)(2)(C)(iii).

23 Plaintiff's Complaint (Doc. 1) alleges that Defendants violated Plaintiff's Eighth
24 Amendment rights when Defendants approved Plaintiff for protective segregation but did
25 not provide adequate protection for Plaintiff from injury by other inmates. Plaintiff seeks
26 a number of items in his Request for Production which Plaintiff argues are relevant to his
27 case.

28 **A. Request No. 1: "Any and all e-mails between Defendant Charles Ryan and**

1 **Stacey Crabtree and Marlene Coffey concerning the Plaintiff’s requests for**
2 **safety and classification and appeals.” (Doc. 62 at 23)**

3 Plaintiff identifies Marlene Coffey as a protective custody administrator for the
4 Department of Corrections. Though Ms. Coffey is not a named Defendant, she is in the
5 employ of the institution at which Plaintiff is incarcerated and where his alleged injuries
6 were sustained. Mr. Ryan and Ms. Crabtree are named as Defendants. The Plaintiff has
7 limited the scope of the email requested to those emails “concerning Plaintiff’s requests
8 for safety and classification and appeals.” The identified topics are arguably relevant to
9 Plaintiff’s claim or calculated to lead to discovery of admissible evidence. Further, the
10 Court interprets the request to limit the email correspondence among the identified
11 sender/recipients only and the information regarding only Plaintiff. Specifically, emails
12 from any of the three named individuals to any of the three individuals about Plaintiff.
13 The Court imposes a timeframe of 2008 to the present, as Plaintiff’s Complaint (Doc. 1)
14 alleges continuing harm from 2008.

15 Therefore, the Motion to Compel (Doc. 62) is granted in part as set forth herein as
16 to Request for Production No. 1. If emails obtained by Defendants refer to additional
17 inmates, an in camera inspection and redaction may be requested. Defendants indicate
18 that, as a result of their search to date, no emails exist that fall within the parameters set
19 forth by the Court. Defendants have a continuing obligation to disclose information
20 deemed relevant by the Court.

21 **B. Request No. 2: “Any and all grievances, inmate letters and complaints,**
22 **classification documents and appeals received by prison staff, Defendants and**
23 **their agents concerning Plaintiff from 2008 until present day Aug. 4th, 2014.”**
24 **(Doc. 62 at 23)**

25 The Court finds that all grievances, inmate letters, complaints, and appeals
26 generated by Plaintiff to the Defendants, prison staff, and Defendants’ agents from 2008
27 to August 4, 2014 are relevant and discoverable. Classification documents as identified
28 by the Defendants in their Response (Doc. 73 at 7) are also relevant. The described

1 methodology for disclosure set forth by Defendants is deemed reasonable. (Doc. 73 at 7-
2 9) However, whether Plaintiff was actually housed with an inmate who actively appeared
3 on Plaintiff's "Do Not House With List" from 2008 when Defendants were seeking to
4 separate the individuals is discoverable information. If such an event occurred, then the
5 time period and housing location for the event shall be identified. Further briefing
6 regarding damages and security issues will be necessary before the Court would consider
7 whether the identity of any such inmates on Plaintiff's "Do Not House With List" are
8 discoverable in this case.

9 **C. Request No. 4: "All documentation listing all inmates (total number) being**
10 **housed at ASPC Complex Lewis Detention Centers, and isolation cells for**
11 **refusing to house, requesting protection from dangerous inmates and those**
12 **incident reports." (Doc. 62 at 24)**

13 The Court sustains Defendants' objection to Request No. 4 for the reasons set
14 forth by the Defendants in their Response (Doc. 73 at 9-10). Statistical information
15 capturing numerical bed capacity, inmate population, and length of stay averages from
16 2008 is a matter of public record.

17 **D. Request No. 5: "All documentation and e-mails, notes referring to current**
18 **policy at AZ State Prison Complex Lewis Protective Segregation units, on**
19 **how to handle inmate requests for protection, no longer being able to use**
20 **Policy 805 Protective Segregation Custody as it no longer applies to inmates**
21 **already in P.S." (Doc. 62 at 24)**

22 The Court finds that Defendants' written policies and procedures which discuss
23 Protective Segregation and Protective Segregation limits as related to inmate safety and
24 inmate requests for protection are relevant and discoverable. Specific Department of
25 Correction actions regarding specific inmate requests other than Plaintiff's requests are
26 not. Unwritten policy is not discoverable by a Request for Production of Documents.
27 The Defendants have complied with production of relevant documentation as outlined in
28 Defendants' Response. (Doc. 73 at 10-12) Defendants continue to provide relevant

1 email as discovered, if any. Plaintiff's Motion to Compel (Doc. 62) is granted in part and
2 denied in part as set forth herein.

3 **E. Request No. 6: "Total number of aggravated [sic] refusal to house tickets**
4 **given out since 2009 to all inmates housed at AZ State Prison Complex Lewis**
5 **P.S. units to present day." (Doc. 62 at 24)**

6 The Court finds that the information sought is not properly posited as a Request
7 for Production. The Defendants' objection is sustained.

8 **F. Request No. 7: "All documents and notes for staff at Lewis Complex on how**
9 **to handle inmates charged with aggravated [sic] to house tickets, what is the**
10 **current policy on what property they are allowed to possess in detention cells,**
11 **no store for refusal to house inmates, no phone calls. They have a current**
12 **policy stating refusals to house get no personal property in cells. No store, no**
13 **phone, etc. I need these documents please." (Doc. 62 at 24)**

14 The Court finds that the information sought is relevant. However, Defendants
15 have produced Department Orders 704, 803, 804, and 909 in response to Plaintiff's
16 compound Request No. 7. The Court has no reasonable basis to conclude that
17 Defendants have not fully complied with Plaintiff's request. Therefore, the Motion to
18 Compel (Doc. 62) for Request No. 7 is denied.

19 **G. Request No. 8: "All documents relating to total number of assaults physical**
20 **and sexual assaults reported by victims on all Arizona State Prison Complex**
21 **Lewis Protective Custody yards from 2008 to present day Aug. 4th, 2014."**
22 **(Doc. 62 at 25)**

23 The Court finds that Plaintiff's request for sexual assault records is overly broad,
24 unduly burdensome, and not relevant to Plaintiff's claim. Plaintiff has not alleged that he
25 is the victim of a sexual assault as a result of Defendants' alleged conduct. In addition,
26 the medical records of third parties are privileged. Plaintiff's Motion to Compel (Doc.
27 62) is denied as to reports regarding sexual assaults.

28 With regard to Plaintiff's request for documents relating to physical assaults from

1 2008-August 4, 2014 which occurred in Lewis Protective Custody yards, the Court finds
2 that incidents of physical assaults during such time period are relevant only if (i) the
3 assault occurred at the same facility at which Plaintiff was housed and (ii) the assault
4 occurred while Plaintiff was housed at that facility. However, all identifying information
5 as to the inmates involved in the assaults shall be redacted from the documents. Further
6 security issues which such reports may raise shall be presented to the Court for in camera
7 review as unredacted documents with a corresponding set of proposed redacted
8 documents for the Court's consideration. Plaintiff's Motion to Compel (Doc. 62)
9 regarding assault incident reports as further limited above is granted.

10 **H. Request No. 9: "All documents and data showing total number of known**
11 **prison gang members being housed on all Lewis Complex Protective Custody**
12 **units- STG and Renouncers." (Doc. 62 at 25)**

13 The Court finds that the Motion to Compel (Doc. 62) regarding this item is now
14 moot. Defendants have indicated in their response that "validated gang members are
15 housed at ASPC-Eyman, Browning Unit. Only gang members who have renounced their
16 gang affiliations have [sic] are housed on protective custody yards." (Doc. 73 at 16) The
17 response is deemed sufficient to the request.

18 **I. Request No. 10: "All documents notes or data showing what usually happens**
19 **to known 'snitches,' 'informants' and inmates accused of sex crimes against**
20 **children or Arizona prison yards where other dangerous inmates can have**
21 **contact with these inmates." (Doc. 62 at 25)**

22 The Defendants' objection is sustained as to Request No. 10. Plaintiff's request is
23 vague, overly broad, unduly burdensome, and not relevant.

24 **J. Request No. 14: "Documents and all reporting concerning all inmate deaths**
25 **on Lewis P.C. yards from assaults, drug overdose and any other reasons from**
26 **2008 to present." (Doc. 62 at 26)**

27 The Court finds that Plaintiff's request regarding reports concerning inmate deaths
28 from drug overdose and "any other reason" is overly broad, unduly burdensome, and not

1 relevant to the issues raised by Plaintiff's claim against Defendants. Reports regarding
2 inmate deaths occurring from 2008 to the present are relevant only if (i) the death
3 resulted from an assault that occurred at the same protective custody yard at which
4 Plaintiff was housed and (ii) the assault occurred while Plaintiff was housed at that yard.
5 Such reports shall be redacted to delete all identifying information of the decedent and
6 any other inmates. If further release of information is alleged to be a risk to security, the
7 Defendants shall present the unredacted reports for in camera inspection with a proposed
8 redaction for the Court's consideration.

9 **K. Plaintiff's Request that all Discovery be Sent Directly to Plaintiff and that he**
10 **Maintain Possession of CO III Logs. (Doc 62 at 20)**

11 The Court deems the issue of delivery and possession of ADOC paperwork to be a
12 request for injunctive relief. Under 28 U.S.C. § 636(b)(1)(A), a Magistrate Judge does
13 not have the authority to decide motions for injunctive relief. The Magistrate Judge
14 therefore advises that the reference is ready to be withdrawn as to Plaintiff's requests for
15 injunctive relief contained in Plaintiff's Motion to Compel (Doc. 62).

16
17 **CONCLUSION**

18 Accordingly,

19 **IT IS ORDERED** that Plaintiff's Motion to Compel (Doc. 62) is granted as to
20 Request for Production numbers 1-2, 5, 8, and 14, subject to the limitations as set forth
21 herein.

22 **IT IS ORDERED** that Plaintiff's Motion to Compel (Doc. 62) is denied as to
23 Request for Production numbers 3-4, 6-7, 9-13, and 15.

24 **IT IS ORDERED** that for good cause shown, Plaintiff's Motion to Enlarge
25 Deadline to Submit Interrogatories (Doc. 62 at 19) is granted. It is ordered extending
26 Plaintiff's deadline to propound interrogatories on Defendants for another 20 days from
27 the date of the filing of this Order.

28 **IT IS FURTHER ORDERED** withdrawing the reference to the Magistrate Judge

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as to Plaintiff's requests for injunctive relief contained in Plaintiff's Motion to Compel (Doc. 62).

Dated this 24th day of December, 2014.



Honorable Eileen S. Willett
United States Magistrate Judge