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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

RONNELL HILL,  
  
                                Plaintiff,  
  
                                v.  
  
F. GONZALEZ, et al.,  
  
                                Defendants.

CASE NO. 1:11-cv-01071-LJO-MJS (PC)  
  
**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFF'S  
MOTION TO COMPEL DISCOVERY**  
  
**(ECF No. 36)**

**I. PROCEDURAL HISTORY**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action brought pursuant to 42 U.S.C. § 1983. The action proceeds on Plaintiff's First Amendment access to courts claim against Defendant Peterson. (ECF No. 10.)

Before the Court is Plaintiff's December 31, 2014 motion to compel discovery (ECF No. 36.) Defendant filed an opposition (ECF No. 39.) Plaintiff filed no reply. The matter is deemed submitted. Local Rule 230(f).

**II. LEGAL STANDARD**

The discovery process is subject to the overriding limitation of good faith. Asea, Inc. v. S. Pac. Transp. Co., 669 F.2d 1242, 1246 (9th Cir. 1981). Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, and for good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Fed. R. Civ. P. 26(b)(1). Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Id.

1 Generally, if the responding party objects to a discovery request, the party moving  
2 to compel bears the burden of demonstrating why the objections are not justified. E.g.,  
3 Grabek v. Dickinson, No. CIV S-10-2892 GGH P., 2012 WL 113799, at \*1 (E.D. Cal. Jan.  
4 13, 2012); Ellis v. Cambra, No. 1:02-cv-05646-AWI-SMS (PC), 2008 WL 860523, at \*4  
5 (E.D. Cal. Mar. 27, 2008). This requires the moving party to inform the Court which  
6 discovery requests are the subject of the motion to compel, and, for each disputed  
7 response, why the information sought is relevant and why the responding party's  
8 objections are not meritorious. Grabek, 2012 WL 113799, at \*1; Womack v. Virga, No.  
9 CIV S-11-1030 MCE EFB P., 2011 WL 6703958, at \*3 (E.D. Cal. Dec. 21, 2011).

10 The court must limit discovery if the burden of the proposed discovery outweighs  
11 its likely benefit. Fed. R. Civ. P. 26(b)(2)(C)(iii). "In each instance, the determination  
12 whether . . . information is discoverable because it is relevant to the claims or defenses  
13 depends on the circumstances of the pending action." Fed. R. Civ. P. 26 Advisory  
14 Committee's note (2000 Amendment) (Gap Report) (Subdivision (b)(1)).

### 15 **III. PLAINTIFF'S CLAIMS**

16 Plaintiff is incarcerated at California Substance Abuse Treatment Facility in  
17 Corcoran, California but complaints of acts that occurred at California Correctional  
18 Institute ("CCI") in Tehachapi, California. Defendant Peterson is a correctional officer and  
19 legal librarian at CCI.

20 Plaintiff's allegations may be summarized essentially as follows:

21 On July 20, 2010, Plaintiff was informed that his petition for a writ of habeas  
22 corpus had been denied and that he had thirty days from July 7, 2010 to request  
23 permission to appeal from the United States Court of Appeals for the Ninth Circuit. On  
24 July 21, 2010, Plaintiff asked for Priority Library User ("PLU") access, but Defendant  
25 Peterson refused to grant it.. PLU access would have allowed Plaintiff access to his legal  
26 files and writing supplies, expedited access to the library, and the opportunity to conduct  
27 legal research. Instead, Plaintiff was allowed General Library User ("GLU") access, and  
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1 did not have access to his property or the law library until August 6, 2010. No mail left  
2 the prison for the following two days because they fell on the weekend. Plaintiff was  
3 unable to continue his appeal due to Defendant Peterson's actions.

#### 4 **IV. DISCUSSION**

5 Plaintiff contends that Defendant's responses to his Request for Production of  
6 Documents Set One are deficient and asks that she be required to provide a further  
7 response. He also seeks sanctions to compensate him for making unspecified copies,  
8 for unspecified supplies, and for his time in preparing the motion. (ECF No. 36.)  
9 Defendant responds that her objections were proper. (ECF No. 39.)

##### 10 **A. Request for Production No. 1**

###### 11 **Request:**

12 Any and all documents concerning the inmate prison records  
13 of Hill including but not limited to, reports, files, evaluations,  
14 interviews, complaints, reprimands, reviews, medical records,  
15 x-rays, orders and notes.

###### 15 **Response:**

16 Defendant Peterson objects to Request No. 1 on the grounds  
17 that it is vague, overly broad, burdensome and oppressive,  
18 and seeks documents that are neither relevant nor likely to  
19 lead to the discovery of admissible evidence. To the extent  
20 that Plaintiff seeks his own medical, dental or mental health  
21 records, Defendant further objects to this request as such  
22 request seeks documents which are equally available to  
23 Plaintiff. When prison records are equally available to the  
24 plaintiff, the plaintiff must attempt to obtain them through the  
25 proper prison channels. Glass v. Diaz, 1:04-CV-5953-AWI-  
26 DLB-P, 2007 WL 2022034, at \*4 (E.D. Cal. July 9, 2007).  
27 Plaintiff may not use discovery to obtain free copies of  
28 documents equally available to him. See Jones v. Lundy,  
1:03-cv-05980-AWI-LJO-PC, 2007 WL 214580, at \*1 (E.D.  
Cal. Jan. 25, 2007). Therefore, no documents will be  
produced.

###### 26 **Ruling:**

27 Plaintiff's request appears to seek the entirety of his inmate prison records.  
28 Although Plaintiff contends in his motion that the request is limited to records concerning

1 the incident at issue in this case, the request is not so worded. Additionally, Request No.  
2 3 is limited to documents pertaining to the incident at issue; construing Request No. 1 to  
3 seek the same limited documents would render the two requests duplicative.

4 As Plaintiff acknowledges, the instant action is limited to Defendant's denial of  
5 PLU status to Plaintiff on July 21, 2010. Plaintiff's motion to compel discovery related to  
6 this incident will be discussed below in relation to Request No. 3.

7 Plaintiff has not explained the relevancy of the documents sought in Request No.  
8 1. The Court sees no relevance in, for example, Plaintiff's medical records or x-rays, or  
9 his general prison records. Accordingly, Plaintiff's motion to compel a further response to  
10 Request No. 1 will be denied on relevancy grounds pursuant to Federal Rule of Civil  
11 Procedure 26(b)(1).

12 **B. Request for Production No. 2.**

13 **Request:**

14 Any and all documents concerning complaints filed against T.  
15 Peterson including but not limited to, incident reports,  
16 grievances, investigations, complaints, interviews,  
reprimands, evaluations, reviews, and notes.

17 **Response:**

18 Defendant Peterson objects to Request No. 2 on the grounds  
19 that it is vague, overly broad, burdensome and oppressive,  
20 and seeks documents that are neither relevant nor likely to  
21 lead to the discovery of admissible evidence. To the extent  
22 that this request includes personnel files of Defendant  
23 Peterson, personnel-related files are subject to the qualified  
24 privilege of official information and a federal common law  
25 privilege. Sanchez v. City of Santa Ana, 936 F.2d 1027,  
26 1033-34 (9th Cir. 1991). Personnel files are also protected by  
27 the privacy rights of staff, including federal common law and  
28 applicable California statutes including Penal Code sections  
832.7, 832.8, Government Code section 6254 and Civil Code  
sections 1798.24 and 1798.40 and California Code of  
Regulations Title, 15 section 3400. Personnel files also are  
protected under California Evidence Code section 1040, et.  
seq., including section 1043. Therefore, no documents will be  
produced.

1                   **Ruling:**

2           Defendant's objections that the request is vague, overly broad, burdensome,  
3 irrelevant, and unlikely to lead to the discovery of admissible evidence are overruled.  
4 These are boilerplate objections and the Court finds them inapplicable to Plaintiff's  
5 request.

6           Defendant's objections on the basis of privilege also will be overruled. As an initial  
7 matter, Defendant's response implies that there are no "documents concerning  
8 complaints filed against T. Peterson" that exist outside of her personnel file. This claim  
9 must be viewed with skepticism since at least some such documents appear to be  
10 contained in Plaintiff's inmate file.

11           Additionally, Defendants have failed to make any showing that the requested  
12 documents are privileged. The Supreme Court has long noted that privileges are  
13 disfavored. Jaffee v. Redmond, 518 U.S. 1, 9 (1996). "The party asserting an evidentiary  
14 privilege has the burden to demonstrate that the privilege applies to the information in  
15 question." Tornay v. United States, 840 F.2d 1424, 1426 (9th Cir. 1988). Privileges are to  
16 be "strictly construed" because they "impede full and free discovery of the truth." Eureka  
17 Fin. Corp. v. Hartford Acc. and Indemnity Co., 136 F.R.D. 179, 183 (E.D. Cal. 1991). "If  
18 the privilege is worth protecting, a litigant must be prepared to expend some time to  
19 justify the assertion of the privilege." Id.

20           In civil rights cases brought under federal statutes, questions of privilege are  
21 resolved by federal law. Kerr v. U.S. District Court for the Northern District of California,  
22 511 F.2d 192, 197 (9th Cir. 1975), aff'd on procedural grounds, 426 U.S. 394 (1976).  
23 "State privilege doctrine, whether derived from statutes or court decisions, is not binding  
24 on federal courts in these kinds of cases." Kelly v. City of San Jose, 114 F.R.D. 653,  
25 655-56 (N.D. Cal. 1987). Under federal law, documents that are a part of the personnel  
26 records of officers defending civil rights actions, while containing sensitive information,  
27 are within the scope of discovery. Soto, 162 F.R.D. at 614-15; Hampton v. City of San  
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1 Diego, 147 F.R.D. 227, 230-31 (S.D. Cal. 1993); Miller v. Pancucci, 141 F.R.D. 292, 299-  
2 302 (C.D. Cal. 1992).

3 Nevertheless, “[f]ederal common law recognizes a qualified privilege for official  
4 information.” Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990)  
5 (“[g]overnment personnel files are considered official information.”). The official  
6 information privilege ensures disclosure of discoverable information without  
7 compromising the state’s interest in protecting the privacy of law enforcement officials  
8 and in ensuring the efficacy of its law enforcement system. Kelly, 114 F.R.D. at 662-63.

9 “To determine whether the information sought is privileged, courts must weigh the  
10 potential benefits of the disclosure against the potential disadvantages. If the latter is  
11 greater, the privilege bars discovery.” Sanchez, 936 F.2d at 1033–34. “In the context of  
12 civil rights suits against [corrections officials], this balancing approach should be  
13 ‘moderately pre-weighted in favor of disclosure.’” Soto, 162 F.R.D. at 613 (quoting Kelly,  
14 114 F.R.D. at 661).

15 The party invoking the privilege must at the outset make a “substantial threshold  
16 showing” by way of a declaration or affidavit from a responsible official with personal  
17 knowledge of the matters attested. Soto, 162 F.R.D. at 613. “The claiming official must  
18 ‘have seen and considered the contents of the documents and himself have formed the  
19 view that on grounds of public interest they ought not to be produced’ and state with  
20 specificity the rationale of the claimed privilege.” Kerr, 511 F.2d at 198 (citation omitted).  
21 The affidavit must include: (1) an affirmation that the agency generated or collected the  
22 material in issue and has maintained its confidentiality; (2) a statement that the official  
23 has personally reviewed the material in question; (3) a specific identification of the  
24 governmental or privacy interests that would be threatened by disclosure of the material  
25 to plaintiff and/or his lawyer; (4) a description of how disclosure subject to a carefully  
26 crafted protective order would create a substantial risk of harm to significant  
27 governmental or privacy interests, and (5) a projection of how much harm would be done  
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1 to the threatened interests if disclosure were made. Soto, 162 F.R.D. at 613. In addition,  
2 “[t]he asserting party, as in any case where a privilege is claimed, must sufficiently  
3 identify the documents so as to afford the requesting party an opportunity to challenge  
4 the assertion of privilege.” Miller, 141 F.R.D.at 300.

5 Defendant’s attempt to assert the official information privilege is made by way of a  
6 boilerplate objection meeting none of these requirements. Accordingly, Defendant will be  
7 compelled to provide a further response to Plaintiff’s request for production of documents  
8 within thirty days. If Defendant wishes therein to assert the official information privilege,  
9 she must make a particularized showing that the documents ought not to be produced.  
10 Plaintiff will be granted fourteen days from the date of Defendant’s response to file a  
11 further motion to compel, if necessary.

12 Defendant also complains that the request is not limited to her employment with  
13 the California Department of Corrections and Rehabilitation, nor is it is limited to any  
14 particular time period. However, relevancy and logic dictate that the request may be so  
15 limited. Accordingly, the requirement that Defendant provide a further response is limited  
16 to documents related to her employment with the California Department of Corrections  
17 and Rehabilitation and to the five year period preceding the incident at issue in this case.

18 **C. Request for Production No. 3**

19 **Request:**

20 Any and all documents concerning the incident, including but  
21 not limited to, reports, forms, investigations, complaints,  
22 appeals, witness statements, grievances, declarations,  
23 videotaped interviews, medical evaluations, medical reports,  
24 and notes.

25 **Response:**

26 Defendant Peterson objects to Request No. 3 on the grounds  
27 that it is vague, overly broad, burdensome and oppressive,  
28 and seeks documents that are neither relevant nor likely to  
lead to the discovery of admissible evidence. To the extent  
that Plaintiff seeks his own medical, dental, or mental health  
records, Defendant further objects to this request as such

1 request seeks documents which are equally available to  
2 Plaintiff. When prison records are equally available to the  
3 plaintiff, the plaintiff must attempt to obtain them through the  
4 proper prison channels. Glass v. Diaz, 1:04-CV-5953-AWI-  
5 DLB-P, 2007 WL 2022034, at \*4 (E.D. Cal. July 9, 2007).  
6 Plaintiff may not use discovery to obtain free copies of  
7 documents equally available to him. See Jones v. Lundy,  
8 1:03-cv-05980-AWI-LJO-PC, 2007 WL 214580, at \*1 (E.D.  
9 Cal. Jan. 25, 2007).

10 To the extent this request includes personnel files of  
11 Defendant Peterson, personnel-related files are subject to the  
12 qualified privilege of official information and a federal  
13 common law privilege. Sanchez v. City of Santa Ana, 936  
14 F.2d 1027, 1033-34 (9th Cir. 1991). Personnel files are also  
15 protected by the privacy rights of staff, including federal  
16 common law and applicable California statutes including  
17 Penal Code sections 832.7, 832.8, Government Code section  
18 6254 and Civil Code sections 1798.24 and 1798.40 and  
19 California Code of Regulations Title, 15 section 3400.  
20 Personnel files also are protected under California Evidence  
21 Code section 1040, et. seq., including section 1043.

22 Notwithstanding these objections, and without waiving these  
23 objections, Defendant Peterson produces the CDCR Form  
24 602 Inmate/Parolee Appeal Form (including attachments),  
25 and Informal, First, Second, and Third Level appeals  
26 decisions for appeal number CCI-10-01549, bates stamped  
27 as AG-1-11.

28 **Ruling:**

29 In her opposition to Plaintiff's motion, Defendant states that she has disclosed all  
30 responsive records that are in her possession, custody, or control. (ECF No. 39.) She  
31 acknowledges her responsibility to supplement her response should further documents  
32 be discovered. Plaintiff's motion states that he is certain other documents concerning the  
33 incident exist because he is in possession of some of them.

34 Defendant has an obligation to produce all responsive documents in her  
35 possession, custody, or control, as well as those documents she has a legal right to  
36 obtain on demand. Thus, she is required to produce those documents she is able to  
37 obtain in the course of her employment. The Court is aware that Defendant likely does  
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1 not have the right to obtain all documents maintained by the California Department of  
2 Corrections and Rehabilitation, and may have limited, if any, access to investigative or  
3 disciplinary records. Nevertheless, the Court must assume that Defendant has as much,  
4 if not more, access to CDCR records than Plaintiff. If Plaintiff is in possession of records  
5 that Defendant has failed to produce, the Court must conclude that Defendant has failed  
6 to produce all documents she has a legal right to obtain on demand. Accordingly, the  
7 Court will require Defendant to provide a further response to this request for production  
8 within thirty days. If Defendant makes a diligent search of the records available to her in  
9 the course of her employment and is able to state in good faith that no further records  
10 exist, her supplemental response may so state.

11 Defendant's remaining objections to this request are overruled. Defendant objects  
12 that the request is vague, overly broad, burdensome, oppressive, irrelevant and unlikely  
13 to lead to the discovery of admissible evidence. However, the request plainly seeks any  
14 and all documents relating to the July 21, 2010 denial of Plaintiff's PLU access. The  
15 request is limited in scope and there can be no dispute that such documents are relevant  
16 to Plaintiff's claim.

17 Defendant's objection that some of these documents may be equally available to  
18 Plaintiff also is overruled. In light of the limited nature of the request, the Court finds that  
19 requiring Defendant to produce any and all documents relating to the events at issue is  
20 not unduly burdensome. See Holmes v. Toor, CIV S-04-1308DFLPANP, 2006 WL  
21 1550201, at \*2 (E.D. Cal. May 31, 2006) (defendants must produce documents that are  
22 in their possession, custody, or control, even when equally available to plaintiff, unless  
23 defendants make a showing that doing so is unduly burdensome).

24 Lastly, Defendant's objection based on privilege is overruled for the reasons  
25 stated in relation to Request No. 2, above.

1 **D. Request for Sanctions**

2 If a motion to compel is granted, the Court must require the party whose conduct  
3 necessitated the motion to pay the movant’s reasonable expenses incurred in making  
4 the motion, unless “(i) the movant filed the motion before attempting in good faith to  
5 obtain the disclosure or discovery without court action; (ii) the opposing party’s  
6 nondisclosure, response, or objection was substantially justified; or (iii) other  
7 circumstances make an award of expenses unjust.” Fed. R. Civ. P. 37(a)(5)(A).

8 Although the Court has required Defendant to provide a further response to  
9 Request No. 2, the Court has limited the nature of that request. Accordingly, the Court  
10 finds Defendant’s objection substantially justified. Additionally, it is not apparent to the  
11 Court that Defendant has access to any further documents responsive to Request No. 3,  
12 nor is it apparent that she cannot assert a valid claim of privilege. Accordingly, this  
13 objection also is substantially justified.

14 Based on the foregoing, Plaintiff’s request for sanctions will be denied.

15 **IV. CONCLUSION AND ORDER**

16 Based on the foregoing, it is HEREBY ORDERED THAT:

- 17 1. Plaintiff’s motion to compel (ECF No. 36) is GRANTED IN PART AND  
18 DENIED IN PART;  
19 2. Defendant’s shall provide a further response to Requests for Production  
20 Nos. 2 and 3;  
21 3. Plaintiff may, but need not, file a further motion to compel, if needed, within  
22 fourteen (14) days of service of Defendant’s further response; and  
23 4. Plaintiff’s request for sanctions is DENIED.

24  
25 IT IS SO ORDERED.

26 Dated: April 13, 2015 /s/ Michael J. Seng  
27 UNITED STATES MAGISTRATE JUDGE  
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