

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MIGUEL A. GONZALEZ-CHAVEZ,) 1: 12-CV-02053-AWI - JLT
)
) ORDER AFTER IN CAMERA REVIEW
)
)
)
)
)
)
)
)
)

I. Background

The complaint alleges that on December 4, 2011, at 3:15 a.m., Bakersfield Police Officers, Messick and Barthelemes confronted Plaintiff who was sitting in a friend’s car in a WalMart parking lot. (Doc. 1 at 4) The complaint alleges the officers forcibly removed Plaintiff from the vehicle, “hit him with weapons and/or punches about his arms, legs, face and body, and [they] tase[d] him without cause, provocation or justification.” *Id.* at 4-5. Plaintiff claims he suffered injuries including a fractured knee. *Id.* at 5. Based upon these allegations, Plaintiff brings claims under 42 U.S.C. § 1983 against the officers for the use of excessive force and for *Monell* liability against the entity.

During an informal telephonic conference re: discovery dispute held on May 14, 2014, the Court was informed about a brewing discovery dispute related, in part, to the refusal of the Defendants to produce documents related to discipline suffered by ██████ for the use of excessive

1 force. (Doc. 28) Counsel agreed that the Court would conduct an in camera review of any such
2 documents and then decide whether production of the documents would be ordered. The specific
3 document request made to Defendants' Fed. R. Civ. P. 30(b)(6) witness reads,

4 Discipline received by [REDACTED] for BPD use of force
5 policy violation while employed by BPD.

6 Defendants objected to this category as follows:

7 Objection. This area of inquiry is vague, ambiguous, overbroad, burdensome, and not
8 reasonably calculated to lead to the discovery of admissible evidence. Further, this
9 category seeks information protected from disclosure pursuant to the law enforcement
10 privilege, official information privilege, and executive privilege. In addition, this
11 request further seeks to invade privacy rights of responding party and third parties.
12 Further objection is made on the grounds that this request seeks to invade the officers'
13 right to privacy as guaranteed by Article I, Section I of the California Constitution
14 and the First and Fourth Amendments of the United States Constitution, and also
15 California Code of Civil Procedure sections 823.7 and 832.8(e), and Government
16 Code sections 6254 (c)and(t).

17 Therefore, no person most knowledgeable will be produced.¹

18 On May 19, 2014, the Court conducted the in camera review. The record now at issue
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]
26 [REDACTED]
27 [REDACTED]
28 [REDACTED]

23 II. Discovery of the discipline record

24 First, Plaintiff may obtain discovery regarding any matter that is (1) “not privileged” and (2)
25 “relevant to the subject matter involved in the pending action.” Fed.R.Civ.P. 26(b)(1). The scope of
26 discovery is quite broad and relevant evidence includes any evidence which “bears on, or that
27 _____

28 ¹ Because the parties agreed the Court would conduct the review and order production of those documents that are relevant and substantially similar to the alleged facts, the Court makes no comment as to whether the objections would have been well-taken had the agreement not been reached at the telephonic conference.

1 reasonably could lead to other matters that could bear on, any issue that is or may be in the case.”
2 Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978). Indeed, courts have rejected that
3 internal investigations into police conduct should be automatically shielded. Kelly v. City of San
4 Jose, 114 F.R.D. 653, 663-668 (N.D. Cal. 1987); Soto v. City of Concord, 162 F.R.D. 603, 612-613;
5 King v. Conde, 121 F.R.D. 180, 195-196 (E.D.N.Y.1988).

6 Second, the Court concludes that the records sought may be relevant for many reasons
7 (Mediate v. City of San Diego, 2014 WL 1669977 at *3 (S.D. Cal. Apr. 28, 2014); Fed. R. Evid.
8 404(b)(2)) and may also lead to admissible evidence. In so finding, the Court is aware that [REDACTED]

9 [REDACTED]
10 [REDACTED] Though this fact could impact the admissibility of the evidence, this conclusion does not
11 necessarily follow.

12 Third, though the facts alleged in the complaint [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 Finally, the Court must weigh the need for maintaining the confidentiality of the record
19 against the need of the Plaintiff to conduct full discovery.² In doing so, the Court is mindful that
20 there is no other avenue for Plaintiff to discover this information and that it could be significant to
21 his case. Likewise, the Court does not find that disclosure here would have any measureable impact
22 on future investigations (Bernat v. City of California City, 2010 WL 4008361 at *3 (E.D. Cal. Oct.
23 12, 2010)) and, to the contrary, would heighten confidence in the investigatory process. Kelly, 114
24 F.R.D. at 667. Finally, courts have found that the privacy interests police officers have in their
25 personnel files do not necessarily outweigh a civil rights plaintiff need for the documents. Martinez

26
27
28 ² Notably, California Penal Code section 832.7 and California Evidence Code sections 1043 and 1045 do not envision that peace officer records will not be disclosed in discovery. To the contrary, these sections simply set forth the procedures by which the records may be disclosed.

