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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

ROBERT DEWAYNE BOSLEY, JR.,  
Plaintiff,  
v.  
M. VALASCO, et al.,  
Defendants.

Case No. 1:14-cv-00049-MJS (PC)

**ORDER GRANTING IN PART  
PLAINTIFF'S MOTION TO COMPEL  
(ECF No. 40)  
SEVEN-DAY DEADLINE FOR IN  
CAMERA REVIEW**

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983. This matter is before the undersigned pursuant to the consent of the parties. (ECF Nos. 4, 26.)

Pending before the Court is Plaintiff's motion to compel, which Defendant opposes. (ECF Nos. 40, 43.) For the reasons set forth here, Plaintiff's motion will be granted in part.

**I. RELEVANT BACKGROUND**

**A. Introduction**

Plaintiff initiated this action on January 14, 2014, and is proceeding on a Second Amended Complaint that was found to state a Fourteenth Amendment excessive force claim against Defendant Valasco. (ECF Nos. 13, 14.)

1 On April 30, 2015, Defendant filed an Answer, and a Discovery and Scheduling  
2 Order (“DSO”) issued shortly thereafter. (ECF Nos. 21, 22.) Pursuant to the DSO, the  
3 discovery deadline was January 12, 2016, and the dispositive motion deadline was  
4 March 21, 2016. The DSO directed the parties to file their responses to written  
5 discovery requests forty-five days after requests were first served. DSO ¶ 2. The DSO  
6 further directed the parties to serve discovery requests “sufficiently in advance of the  
7 discovery deadline to permit time for a response and time to prepare and file a motion to  
8 compel.” Id. ¶ 7.

9 On March 21, 2016, Defendant filed a motion for summary judgment. (ECF No.  
10 48.) Plaintiff’s opposition to that motion is due on May 3, 2016. (See ECF No. 51.)

11 **B. Plaintiff’s Motion to Compel**

12 In the instant motion to compel, which was purportedly mailed via institutional  
13 mail on December 17, 2015, but was not filed with the Court until January 13, 2016,  
14 Plaintiff moves for an order directing Defendant to respond to the following Requests for  
15 Production of Documents (“RPD”):

- 16 1. The Central File aka “C” file pertaining to Marti Velasco  
17 [sic], Correctional Officer at the Fresno County Jail,  
18 regardless of date, including, but not limited to, all  
19 records, disciplinary actions, electronically stored  
20 information, incident reports, rule violation reports, file  
21 grievances by inmates, Correctional Officer appeals,  
22 Videotapes, and color photographs. Modified dated from  
23 1-1-2013 to present.
- 24 2. I contend that Marti Velasco [sic] used excessive force  
25 against Plaintiff on December 14, 2013 please supply the  
26 following information identified by name below; the last  
27 know [sic] address, and last know [sic] telephone  
28 number, of each person with knowledge of the incident,  
victims, and any witnesses present during the incident.  
Witnesses: Jorge Hernandez, Jose Eduardo Garcia,  
Gregory Luis Gomez, Lawrance Williams, and Jessie

1 Moreno. Victims: Lucky Vang, Robbie Shanklen (Toledo),  
2 and Saren Hem.

3 Pl.'s Mot. Compel ("MTC") at 2.

4 Attached to Plaintiff's motion is a California subpoena duces tecum signed by  
5 him on January 7, 2016, but not directed to any particular person or entity. (ECF No. 40  
6 at 4-6.) Under the section on the form for specifying the documents to be produced,  
7 Plaintiff wrote:

8 The Personel [sic] File aka "P" file pertaining to Marti  
9 Velasco. [sic], Defendant, including but not limited to, all  
10 records, reports, correspondence, memorandums,  
11 disciplinary actions, electronically stored information,  
12 incident reports, inmate filed grievances, requests for  
13 medical care and treatment, and color photographs. Dated  
14 from January 1, 2013 to present.

15 (ECF No. 40 at 4-6.) Under the section on the form for explaining why the documents  
16 are sought and their relevance, Plaintiff wrote:

17 On September 28, 2015, Dec 17, 2015 Plaintiff issued a  
18 subpoena duces tecum seeking the Defendant Personel [sic]  
19 file Marti Velasco [sic] who is the Defendant employed at  
20 Fresno County Jail recognize that 42 U.S.C. § 290dd-2(b)  
21 provide also under code of civil procedure section 1985.3  
22 [illegible] 1985.6 provides that the court may order the  
23 disclosure of employee records if it finds good cause to do  
24 so, however Defendant Attorney objects authorization the  
25 release without a court order or authorization indicating that  
26 the documents are necessary to the administration of justice.  
27 [¶]

28 Defendant was allowed an opportunity to release of his  
records and declined. However Defendant Employment  
ethics is in question within the civil case and the production  
of documents therefore necessary for the administration of  
justice and adequately prepare, answer defendant's  
interrogatories and properly execute Plaintiff claim set forth.

1 According to "Motion to Compel" Defendant will produce the  
2 employee records of Marti Velasco [sic] pursuant this order.

3 (ECF No. 41 at 5.)

4 In his opposition, Defendant asks the Court to deny Plaintiff's motion as untimely,  
5 as well as based on the official information privilege and privacy. (ECF No. 43.)

6 **C. The Parties' Discovery Efforts**

7 **1. Plaintiff's Discovery Efforts**

8 Though Plaintiff's cursory motion does not include details describing when or  
9 how he asked Defendant for the documents and information that he now seeks, or what  
10 the objections were to those requests, Defendant's opposition provides some context.

11 Set One: On September 28, 2015, Plaintiff served his first set of discovery  
12 requests on Defendant, which included 7 RPD, 36 Requests for Admissions ("RFA"),  
13 and 10 Interrogatories ("Set One"). Klar Decl. ¶ 2, Ex. A. Included in this set was RPD  
14 No. 6, which asked for "All documents non-confidential contained in defendant's  
15 personnel file. Incident reports, disciplinary report any similar situations that supports  
16 [sic] the allegations." Klar Decl. Ex. A (ECF No. 43 at 19).

17 On November 12, 2015, Defendant served his responses to these discovery  
18 requests. Klar Decl. Ex. B. Relevant here, Defendant objected to RPD No. 6, Set One,  
19 as follows:

20 Objection: Defendant objects on the ground that the request  
21 imposes undue burden (FRCP 26(c)) and is protected by the  
22 qualified privilege for official information, under *Sanchez v.*  
23 *City of Santa Ana*, 936 F.2d 1027, 1033-1034 (9th Cir.  
24 1990); *Soto v. City of Concord*, 162 F.R.D. 603 (N.D. Cal.  
25 1995.) The request also seeks documents that if disclosed,  
26 will violate the Defendant's privacy rights. Defendant further  
objects because this request is overbroad and unduly  
burdensome.

27 Klar Decl. Ex. B (ECF No. 43 at 24).

1 On December 6, 2015, Plaintiff sent Defendant a meet and confer letter  
2 regarding Defendant's responses, reiterating his request for the documents in  
3 Defendant's personnel file. Klar Decl. ¶ 6, Ex. E.

4 On December 15, 2015, Defendant re-asserted his privilege and privacy  
5 objections. Klar Decl. ¶ 7, Ex. F.

6 Set Two: On October 28, 2015, Plaintiff served a second set of discovery,  
7 including 7 RPD, 26 RFA, and 12 Interrogatories ("Set Two"). Klar Decl. ¶ 3, Ex. C.  
8 Included in Set Two was RPD No. 6, which, like RPD No. 6, Set One, sought "All  
9 documents non-confidential contained in defendant's personnel file. Incident reports,  
10 disciplinary report any similar situations that supports the allegations." Klar Decl. Ex. C  
11 (ECF No. 43 at 29).

12 Defendant responded to these discovery requests on December 9, 2015. Klar  
13 Decl. Ex. D. As to RPD No. 6, Set Two, Defendant's objection was identical to that  
14 previously made, but he also objected to the request for being burdensome, harassing,  
15 and oppressive. Id. (ECF No. 43 at 36).

16 Set Three: On December 18, 2015, less than one month before the conclusion of  
17 the discovery period, Plaintiff sent Defendant a letter making an informal request for  
18 production of documents. Klar Decl. ¶ 8, Ex. G. There, he asked for the "last known  
19 address and last known telephone number of each person that I believe were witnesses  
20 present during the incident or victims of Marti Velasco [sic]. 1. Jorge Hernandez; 2. Jose  
21 Eduardo Garcia; 3. Gregory Luis Gamez; 4. Lawrence Williams; 5. Jessie Moreno; 6.  
22 Lucky Vang; 7. Robbie Shanklen (Toledo); 8. Saren Hem." Klar Decl. ¶ 8, Ex. G.

23 On January 11, 2016, Defendant objected to this request as follows:

24 Objection: Pursuant to the Discovery and Scheduling Order  
25 (Document 22), Plaintiff's request is untimely. Responses to  
26 written discovery shall be due forty-five days after the  
27 request is first served. (Doc. 22, 2:22-23.) Discovery  
28 requests must be served sufficiently in advance of the  
discovery deadline to permit time for a response. (Id., 7:27-

1 28.) Defendant's responses are due on February 1, 2016,  
2 which is after the discovery cut-off date of January 12, 2016.  
3 Therefore, Plaintiff's request is untimely. Defendant further  
4 objects on the basis that this request does not seek the  
production of documents, but rather seeks information.

5 Klar Decl. ¶ 9, Ex. H (ECF No. 43 at 52).

6 Set Four: Finally, on January 7, 2016, Plaintiff served a California state court civil  
7 subpoena duces tecum on Defendant.<sup>1</sup> Klar Decl. ¶ 10, Ex. I.

8 Defendant objected to the subpoena on January 12, 2016, for failure to properly  
9 serve a properly-issued subpoena, undue burden, official information privilege, and  
10 privacy. Klar Decl. ¶ 10, Ex. J.

## 11 **2. Defendant's Discovery Efforts**

12 On November 24, 2015, Defendant deposed Plaintiff. Klar Decl. ¶ 4. The next  
13 day, on November 25, 2015, Defendant sent Plaintiff his first set of discovery, which  
14 included RPD and Interrogatories. Klar Decl. ¶ 5.

15 On December 29, 2015, Defendant filed a stipulated protective order re mental  
16 health records for Plaintiff. (ECF No. 37.) This motion was denied on January 8, 2016,  
17 but leave to re-file was granted. (ECF No. 39.) On February 8, 2016, Defendant re-filed  
18 his motion, and on March 25, 2016, the motion was granted. (ECF Nos. 6, 50.) Plaintiff  
19 was directed to submit his mental health records within fourteen days from the date of  
20 the order.

## 21 **II. LEGAL STANDARD**

22 Federal Rule of Civil Procedure 26(b)(1) (as amended eff. Dec. 1, 2015) sets  
23 forth the following standard pertaining to relevance:

24 Parties may obtain discovery regarding any nonprivileged  
25 matter that is relevant to any party's claim or defense and  
26 proportional to the needs of the case, considering the  
27 importance of the issues at stake in the action, the amount in  
controversy, the parties' relative access to relevant

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28 <sup>1</sup> This subpoena appears to be the same subpoena as the one attached to Plaintiff's motion.

1 information, the parties' resources, the importance of the  
2 discovery in resolving the issues, and whether the burden or  
3 expense of the proposed discovery outweighs its likely  
4 benefit. Information within this scope of discovery need not  
be admissible in evidence to be discoverable.

5 Limitations to discovery are set forth in Federal Rule of Civil Procedure  
6 26(b)(2)(C), which provides:

7 On motion or on its own, the court must limit the frequency  
8 or extent of discovery otherwise allowed by these rules or by  
9 local rule if it determines that:

10 (i) the discovery sought is unreasonably cumulative or  
11 duplicative, or can be obtained from some other source that  
is more convenient, less burdensome, or less expensive;

12 (ii) the party seeking discovery has had ample  
13 opportunity to obtain the information by discovery in the  
14 action; or

15 (iii) the proposed discovery is outside the scope  
permitted by Rule 26(b)(1).

16 Under Rule 37 of the Federal Rules of Civil Procedure, “a party seeking  
17 discovery may move for an order compelling an answer, designation, production, or  
18 inspection.” Fed. R. Civ. P. 37(a)(3) (B). The court may order a party to provide further  
19 responses to an “evasive or incomplete disclosure, answer, or response.” Fed. R. Civ.  
20 P. 37(a)(4). “District courts have ‘broad discretion to manage discovery and to control  
21 the course of litigation under Federal Rule of Civil Procedure 16.’” Hunt v. County of  
22 Orange, 672 F.3d 606, 616 (9th Cir. 2012) (quoting Avila v. Willits Env'tl. Remediation  
23 Trust, 633 F.3d 828, 833 (9th Cir. 2011)). Generally, if the responding party objects to a  
24 discovery request, the party moving to compel bears the burden of demonstrating why  
25 the objections are not justified. E.g., Grabek v. Dickinson, 2012 WL 113799, at \*1 (E.D.  
26 Cal. Jan. 13, 2012); Ellis v. Cambra, 2008 WL 860523, at \*4 (E.D. Cal. Mar. 27, 2008).  
27 This requires the moving party to inform the Court which discovery requests are the  
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1 subject of the motion to compel, and, for each disputed response, why the information  
2 sought is relevant and why the responding party's objections are not meritorious.  
3 Grabek, 2012 WL 113799, at \*1; Womack v. Virga, 2011 WL 6703958, at \*3 (E.D. Cal.  
4 Dec. 21, 2011).

5 The Court is vested with broad discretion to manage discovery and  
6 notwithstanding these procedures, Plaintiff is entitled to leniency as a pro se litigant;  
7 therefore, to the extent possible, the Court endeavors to resolve Plaintiff's motion to  
8 compel on its merits. Hunt, 672 F.3d at 616; Survivor Media, Inc. v. Survivor  
9 Productions, 406 F.3d 625, 635 (9th Cir. 2005); Hallett v. Morgan, 296 F.3d 732, 751  
10 (9th Cir. 2002).

### 11 **III. DISCUSSION**

#### 12 **A. Timeliness**

13 Defendant first objects to Plaintiff's motion on the ground that it is untimely since  
14 it was filed on January 13, 2016, one day after the close of the discovery period.  
15 Plaintiff's filing, however, is accorded the benefit of the prison mailbox rule, pursuant to  
16 which a document is deemed served or filed on the date a prisoner signs the document  
17 (or signs the proof of service, if later) and gives it to prison officials for mailing. See  
18 Houston v. Lack, 487 U.S. 266 (1988) (establishing prison mailbox rule); Campbell v.  
19 Henry, 614 F.3d 1056, 1059 (9th Cir. 2010) (applying the mailbox rule to both state and  
20 federal filings by prisoners). On the attached proof of service, Plaintiff certifies that he  
21 placed a copy of the motion in the institutional mail on December 17, 2015. (See ECF  
22 No. 40 at 3.) However, the subpoena duces tecum that is attached to the motion is  
23 signed by Plaintiff and dated January 7, 2016. (See id. at 5.) Using the date on the last-  
24 signed document and applying the prison mailbox rule, the Court concludes that  
25 Plaintiff's motion is not untimely. Therefore, this objection is overruled.  
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1                   **B.     Plaintiff’s Request for Defendant’s Personnel File**

2                   The Court next turns to Plaintiff’s request for a copy of Defendant’s personnel  
3 file. Defendant opposes this request pursuant to the official information privilege and his  
4 right to privacy.<sup>2 3</sup>

5                               **1.     Official Information Privilege**

6                   The Supreme Court has long noted that privileges are disfavored. Jaffee v.  
7 Redmond, 518 U.S. 1, 9 (1996). “The party asserting an evidentiary privilege has the  
8 burden to demonstrate that the privilege applies to the information in question.” Tornay  
9 v. United States, 840 F.2d 1424, 1426 (9th Cir. 1988). Privileges are to be “strictly  
10 construed” because they “impede full and free discovery of the truth.” Eureka Fin. Corp.  
11 v. Hartford Acc. and Indem. Co., 136 F.R.D. 179, 183 (E.D. Cal. 1991). “If the privilege  
12 is worth protecting, a litigant must be prepared to expend some time to justify the  
13 assertion of the privilege.” Id.

14                   In civil rights cases brought under section 1983, questions of privilege are  
15 resolved by federal law. Kerr v. United States Dist. Ct. for the N. Dist. of Cal., 511 F.2d  
16 192, 197 (9th Cir. 1975). “State privilege doctrine, whether derived from statutes or  
17 court decisions, is not binding on federal courts in these kinds of cases.” Kelly v. City of  
18 San Jose, 114 F.R.D. 653, 655–56 (N.D. Cal. 1987).

19                   “Federal common law recognizes a qualified privilege for official information.”  
20 Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9th Cir. 1990) (citing Kerr, 511  
21 F.2d at 198.

22                   The discoverability of official documents should be determined under the  
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24 <sup>2</sup> During the course of discovery, Plaintiff has requested a copy of Defendant’s personnel file multiple times,  
25 including in both Sets One and Two. Since those requests were properly and timely served, the Court declines to  
26 reach Defendant’s argument that Plaintiff’s identical request in the subpoena duces tecum is untimely under the  
DSO and improper pursuant to Federal Rule of Civil Procedure 45.

27 <sup>3</sup> To the extent Defendant has objected on other grounds to these requests, the Court will not address those not  
28 briefed by Defendant in the opposition brief and only asserted through blanket objections. Defendant has waived  
these objections by failing to provide reasons for the objections as required under Federal Rule of Civil Procedure  
34(b)(2)(B).

1 “balancing approach that is moderately pre-weighted in favor of disclosure.” Kelly, 114  
2 F.R.D. at 661. The party asserting the privilege must properly invoke the privilege by  
3 making a “substantial threshold showing.” Id. at 669. The party must file an objection  
4 and submit a declaration or affidavit from a responsible official with personal knowledge  
5 of the matters attested to by the official. Id. The affidavit or declaration must include (1)  
6 an affirmation that the agency has generated or collected the requested material and  
7 that it has maintained its confidentiality, (2) a statement that the material has been  
8 personally reviewed by the official, (3) a description of the governmental or privacy  
9 interests that would be threatened by disclosure of the material to the plaintiff or  
10 plaintiff's attorney, (4) a description of how disclosure under a protective order would  
11 create a substantial risk of harm to those interests, and (5) a projection of the harm to  
12 the threatened interest or interests if disclosure were made. Id. at 670. Requiring the  
13 defendant to make a “substantial threshold showing” allows the plaintiff to assess the  
14 defendant's privilege assertions and decide whether they should be challenged. Id.

15         With his opposition, Defendant submits the declaration of John J. Zanoni, a  
16 Sheriff's Lieutenant with the Fresno County Sheriff's Office (“Sheriff's Office”) in the  
17 Personnel and Internal Affairs Units. See Def.'s Opp'n Ex. 2. Mr. Zanoni declares that  
18 he has personally reviewed Defendant's personnel and internal affairs files and  
19 concludes that the Sheriff's Office has serious privacy and confidentiality concerns in  
20 releasing them. Zanoni Decl. ¶¶ 3-4. He claims that releasing these documents would  
21 include irrelevant information, such as Defendant's private medical information, family  
22 information and other personal information. Id. ¶ 5. Mr. Zanoni also claims that the  
23 release of this information would affect the safety of individuals involved in Internal  
24 Affairs investigations, such as Defendant, other officers, staff and inmate witnesses, and  
25 confidential informants. Id. ¶¶ 7-8. In addition, he contends that “disclosure of  
26 confidential investigations would seriously compromise the Sheriff's Office [sic] ability to  
27 conduct accurate, truthful and reliable investigations, which could jeopardize the safety  
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1 and security of the Fresno County Jail.” Id. ¶ 10. Moreover, disclosure of Internal Affairs  
2 investigation documents could undermine the investigative process and obstruct further  
3 investigations by educating inmates about the Sheriff’s Office’s investigatory strategies  
4 and procedures. Id. ¶ 11. He concludes that the harm that would be incurred following  
5 the release of this information even if the Court issues a protective order because “it is  
6 unlikely that Plaintiff will follow the court order because of his pro se status.” Id. ¶ 12.

7 The Court has reviewed Mr. Zanoni’s declaration, but notes the absence of a  
8 privilege log attached to it, to Defendant’s opposition to the instant motion, or even to  
9 Defendant’s objections to Plaintiff’s discovery requests. “The asserting party, as in any  
10 case where a privilege is claimed, must sufficiently identify the documents so as to  
11 afford the requesting party an opportunity to challenge the assertion of privilege.” Miller  
12 v. Pancucci, 141 F.R.D. 292, 300 (9th Cir. 1992). Pursuant to Federal Rule of Civil  
13 Procedure 26(b)(5)(A),

14 When a party withholds information otherwise discoverable  
15 by claiming that the information is privileged or subject to  
16 protection as trial-preparation material, the party must:

- 17 (i) expressly make the claim; and  
18 (ii) describe the nature of the documents,  
19 communications, or tangible things not  
20 produced or disclosed – and do so in a manner  
21 that, without revealing information itself  
22 privileged or protected, will enable other parties  
23 to assess the claim.

24 The advisory committee notes to Rule 26(b)(5) make clear that withholding otherwise  
25 discoverable materials on the basis that they are privileged or subject to the work  
26 product doctrine without notifying the other parties as provided in Rule 26(b)(5)(A) by  
27 describing the nature of the information so as to enable them to assess the claim “*may*  
28 be viewed as a waiver of the privilege or protection.” Fed. R. Civ. Pro. 26(b)(5) advisory  
committee's comment (emphasis added). The advisory committee comments also

1 indicate that if it appears complying with the privilege log requirements presents an  
2 undue burden, a party may seek relief through a protective order. Id. Defendant did not  
3 move for a protective order to relieve him of the obligation of providing a privilege log.

4           Nonetheless, the Ninth Circuit has “reject[ed] a per se waiver rule that deems a  
5 privilege waived if a privilege log is not produced within Rule 34’s 30-day time limit.”  
6 Burlington Northern & Santa Fe Ry. Co. v. U.S. Dist. Ct. for the Dist. of Mont., 408 F.3d  
7 1142, 1149 (9th Cir. 2005). Instead, the Ninth Circuit has instructed courts to look at the  
8 following factors in determining whether a waiver has occurred: (1) “the degree to which  
9 the objection or assertion of privilege enables the litigant seeking discovery and the  
10 court to evaluate whether each of the withheld documents is privileged;” (2) “the  
11 timeliness of the objection and accompanying information about the withheld  
12 documents;” (3) “the magnitude of the document production;” and (4) “other particular  
13 circumstances of the litigation that make responding to discovery unusually easy ... or  
14 unusually hard.” Id. In evaluating these factors, the court is directed to apply them “in  
15 the context of a holistic reasonableness analysis” and not in a “mechanistic  
16 determination of whether the information is provided in a particular format.” Id.  
17 (emphasis added).

18           Here, the balance of the Burlington factors weighs in favor of finding that  
19 Defendant has waived the assertion of this privilege. As to the first factor, neither  
20 Defendant’s objections to Plaintiff’s discovery requests nor his opposition to the instant  
21 motion give sufficient details regarding the contents of the personnel file. The only  
22 specific information is that the file includes Defendant’s private medical information and  
23 “family information,” which the Court presumes to include Defendant’s home address.  
24 The remainder of Mr. Zanoni’s declaration is directed to generalized safety fears and  
25 potential for harm if courts were to require the release of, inter alia, confidential  
26 investigations and internal affairs documents. There is no suggestion, however, that  
27 such documents in fact exist in Defendant’s personnel file and are relevant to this  
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1 action. As to the second and third factors, a privilege log has not yet been provided in  
2 this case, leaving the Court with no indication as to the magnitude of the document  
3 production. Finally, though litigation involving a pro se prisoner carries with it some  
4 obstacles, there is no cognizable reason why Defendant was unable to provide a  
5 privilege log in response to Plaintiff's valid request.

6 Even assuming, however, that the Court did not find a waiver, Defendant has not  
7 carried his burden of showing that the information in the personnel file is covered by the  
8 official information privilege. As the party asserting the privilege, Defendant must  
9 properly invoke the privilege by making a "substantial threshold showing," which he has  
10 not done. Kelly, 114 F.R.D. at 669. Defendant has instead relied on boilerplate claims of  
11 harm, which have regularly been rejected by courts. Id. at 672 ("A general claim of harm  
12 to the public interest would not be sufficient to overcome the burden placed on the party  
13 seeking to shield material from disclosure."); Miller, 141 F.R.D. at 302. See also, e.g.,  
14 Bird v. Mayhew, 2016 WL 374555, at \*6 (E.D. Cal. Feb. 1, 2016) ("Defendant asserts  
15 the official information privilege by presenting boilerplate objections that fails to comply  
16 with the above requirements."); Johnson v. Sandy, 2014 WL 4631642, at \*11 (E.D. Cal.  
17 Sept. 15, 2014) (rejecting "broad objections and boilerplate claims of confidentiality and  
18 policy rights"). Furthermore, the fear that disclosure of internal affairs investigations  
19 would likely result in reduced participation by officers and the like has no empirical  
20 basis. Kelly 114 F.R.D. at 664 ("no empirical study supports the contention that the  
21 possibility of disclosure would make officers who participate (as respondents or as  
22 investigators) in internal affairs investigations less honest," and "in the absence of  
23 special circumstances proved by law enforcement defendants, courts should ascribe  
24 little weight to a police department's purported interest in preserving the anonymity of  
25 citizen complainants."). Lastly, Defendant outlines the potential for abuse of the  
26 confidential information but does not explain how disclosure of any of the documents  
27 subject to a carefully crafted protective order would create a substantial risk of harm to  
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1 these governmental interests.

2 Defendant's claim of official information privilege is therefore overruled.

3 **2. Privacy**

4 With respect to privacy rights, federal courts recognize a constitutionally-based  
5 right of privacy that may be asserted in response to discovery requests. Soto, 162  
6 F.R.D. at 616. The resolution of a party's privacy objection involves balancing the need  
7 for the information sought against the privacy right asserted. Id. (citing Perry v. State  
8 Farm Fire & Cas. Co., 734 F.2d 1441, 1447 (11th Cir. 1984)). "In the context of the  
9 disclosure of police files, courts have recognized that privacy rights are not  
10 inconsequential." Soto, 162 F.R.D. at 616. "[F]ederal courts generally should give some  
11 weight to privacy rights that are protected by state constitutions or state statutes." Kelly,  
12 114 F.R.D. at 656. "However, these privacy interests must be balanced against the  
13 great weight afforded to federal law in civil rights cases against police departments."  
14 Soto, 162 F.R.D. at 616.

15 The Court acknowledges Defendant's interest in his privacy, but also recognizes  
16 that courts have fulfilled a plaintiff's need for discovery while protecting a defendant's  
17 privacy by ordering the production of documents subject to a protective order limiting  
18 the access to the material at issue to plaintiff, his counsel and those experts who require  
19 such information to formulate an opinion. Soto, 162 F.R.D. at 617. Defendant's privacy  
20 objection is overruled.

21 Defendant asks that, in the event the Court grants Plaintiff's motion as to his  
22 personnel file, that the Court issue an order undertaking an *in camera* review of the  
23 information subject to disclosure and to then determine what information, if any, should  
24 be released. This request will be granted.

25 **C. Plaintiff's Request for Witness Information**

26 In Set Three, Plaintiff sent a letter to Defendant dated December 18, 2015,  
27 asking for the "last known address and last known telephone number of each person  
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1 that I believe were witnesses present during the incident or victims of Marti Velasco  
2 [sic]. 1. Jorge Hernandez; 2. Jose Eduardo Garcia; 3. Gregory Luis Gamez; 4.  
3 Lawrence Williams; 5. Jessie Moreno; 6. Lucky Vang; 7. Robbie Shanklen (Toledo); 8.  
4 Saren Hem.” Klar Decl. ¶ 8, Ex. G.

5 Defendant objects to this request as untimely under the DSO and improperly  
6 served pursuant to Federal Rules of Civil Procedure 33 and 34. He also asserts third-  
7 party privacy rights.

8 As indicated supra, the DSO directed the parties to file their responses to written  
9 discovery requests forty-five days after the requests are first served. DSO ¶ 2. The DSO  
10 further directed the parties to serve discovery requests “sufficiently in advance of the  
11 discovery deadline to permit time for a response and time to prepare and file a motion to  
12 compel.” Id. ¶ 7. Assuming for the moment that the form of Plaintiff’s request was  
13 proper, the Court agrees with Defendant that the request was untimely since it was not  
14 served sufficiently in advance to permit Defendant to respond before the close of the  
15 discovery period and for a motion to compel be filed. Nonetheless, the Court concludes  
16 that there is good cause to allow the present motion. See Fed. R. Civ. P. 16(b)(4) (“A  
17 schedule may be modified only for good cause and with the judge’s consent.”).

18 Defendant also claims that Plaintiff’s motion to compel should be denied because  
19 his request was informally made in a letter and not pursuant to the formal requirements  
20 of the Federal Rules of Civil Procedure. This informality, however, did not prevent  
21 Defendant from responding. “[W]hen one party responds to another’s informal request,  
22 resort to a motion to compel is an acceptable next step.” M.M. v. Yuma County, 2011  
23 WL 5445336, at \*2 (D. Ariz. Nov. 10, 2011) (internal citations omitted).

24 Defendant’s final argument is that “the information Plaintiff seeks, last known  
25 address and telephone number of the above named inmates, violate privacy rights of  
26 these individuals. Releasing this information can create safety and security risks to  
27

1 these inmates.”<sup>4</sup> While a bare assertion of privilege or privacy is not sufficient and the  
2 witnesses' names are not shielded from disclosure in any event, Defendant is not  
3 required to disclose telephone numbers or addresses. Seattle Times Co. v. Rhinehart,  
4 467 U.S. 20, 35 n.21 (1984); Burlington, 408 F.3d at 1149; Soto, 162 F.R.D. at 616.

5 Generally, if the responding party objects to a discovery request, the party  
6 moving to compel bears the burden of demonstrating why the objections are not  
7 justified. E.g., Grabek, 2012 WL 113799, at \*1; Mitchell v. Felker, 2010 WL 3835765, at  
8 \*2 (E.D. Cal. Sep. 29, 2010); Ellis, 2008 WL 860523, at \*4. This requires the moving  
9 party to inform the Court which discovery requests are the subject of the motion to  
10 compel, and, for each disputed response, why the information sought is relevant and  
11 why the responding party's objections are not meritorious. Grabek, 2012 WL 113799, at  
12 \*1; Mitchell, 2010 WL 3835765, at \*2; Ellis, 2008 WL 860523, at \*4.

13 Here, Plaintiff has not addressed these privacy concerns, much less  
14 demonstrated that his need for the information outweighs the third party privacy  
15 interests. Accordingly, in the absence of any argument from Plaintiff, the Court will not  
16 require Defendant to produce addresses or telephone numbers in response to Plaintiff's  
17 request.

18 **V. CONCLUSION**

19 Based on the foregoing, IT IS HEREBY ORDERED that:

20 1. Plaintiff's motion to compel (ECF No. 40) is GRANTED IN PART and DENIED  
21 IN PART as follows:

22 a. Plaintiff's request for a copy of Defendant's personnel file, limited to  
23 those documents that are relevant to this action, and dated from  
24

25 \_\_\_\_\_  
26 <sup>4</sup> Defendant did not raise this objection in his January 11, 2016, response to Plaintiff's request. See Klar Decl. Ex. H.  
27 When ruling on a motion to compel, a court “generally considers only those objections that have been timely  
28 asserted in the initial response to the discovery request and that are subsequently reasserted and relied upon in  
response to the motion to compel.” Calderon v. Experian Info. Solutions, Inc., 290 F.R.D. 508, 516 n. 4 (D.Idaho  
2013) (citation omitted). Though Defendant's argument appears to be untimely asserted in his opposition, the  
Court will nonetheless consider it in light of the interests involved. Hunt, 672 F.3d at 616.



1 January 1, 2013, to the present, is GRANTED.

2 b. Plaintiff's remaining requests are DENIED.

3 2. Defendant shall submit an unredacted copy of his personnel file to the Court  
4 for an in camera review within seven days from the date of this Order.  
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6 IT IS SO ORDERED.

7  
8 Dated: April 27, 2016

/s/ Michael J. Seng  
9 UNITED STATES MAGISTRATE JUDGE  
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