

1 Defendant filed objections to the order (ECF No. 62), which were overruled (ECF
2 No. 71). Defendant ultimately submitted the specified documents for in camera review on
3 January 3 and January 5, 2017. He also submitted a statement of objections to the
4 release of said documents to Plaintiff, a privilege log, and a proposed protective order
5 (ECF Nos. 92- 93).

6 Following a January 13, 2017 conference, the Court ordered that certain
7 documents be produced to Plaintiff's counsel, some of them pursuant to a protective
8 order. (ECF No. 97.) The Court specified limited permissible redactions to those
9 documents. Defendant now seeks to redact additional material. (ECF No. 101.) Plaintiff
10 filed a response. (ECF No. 108.) Defendant filed no reply.

11 **II. Discussion**

12 **A. Subjects of Investigation**

13 Defendants first seek to redact “[a]ny reference in the OIA Investigative Report to
14 who the subjects of the OIA Investigation were, including any reference to any notice of
15 rights that would identify the purpose or type of interview.” The Court agrees that the
16 issue of whether correctional personnel other than Defendant were the subject of an OIA
17 Investigation is not, in itself, directly relevant to this action. Thus, Defendant may redact
18 all references to any notice of rights, without prejudice to Plaintiff's right to move the
19 Court to release such information upon a showing of good cause for same.

20 To the extent Defendant wishes to redact additional references that would identify
21 the subjects of the investigation, he must first submit to the Court, in camera, a copy of
22 the OIA Investigation Report containing the proposed redactions. Additionally, Defendant
23 must submit an index identifying each page containing the proposed redactions, and the
24 line number or approximate line number of the proposed redactions. Such submission
25 shall be made within **five days** of the date of this order to
26 mjsorders@caed.uscourts.gov. The Court will review the proposed redactions to ensure
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1 that they do not redact relevant and otherwise discoverable information and advise the
2 parties of the results of its review before releasing the information.

3 **B. Statement of Facts**

4 Defendant next seeks to redact “[t]he entire Section of the OIA Investigative
5 Report entitled ‘Statement of Facts from Investigation.’” Defendant argues that this
6 summary of facts, compiled by a third party investigator, cannot in itself be used to
7 impeach any witness to the acts at issue in this case. Additionally, it is cumulative of
8 other information contained in the OIA report, information which already serves to
9 identify potential witnesses. Finally, “it represents the investigator’s selection of facts he
10 found significant.”

11 Plaintiff responds it would be “entirely inappropriate” to redact the entire
12 Statement of Facts, “which the court found to be relevant and which at least seems likely
13 to contain information that is potentially useful to plaintiff’s case.”

14 The Court notes that the Statement of Facts does not contain investigative
15 findings or conclusions. It is merely a listing of facts, derived from the investigation, that
16 the investigator found relevant to the specific allegation of misconduct against the
17 Defendant in this action. While the Statement itself likely is inadmissible, it nonetheless
18 may lead to the discovery of admissible evidence, and therefore is a proper subject of
19 discovery. Fed. R. Civ. P. 26(b)(1). The Court reiterates its prior determination that the
20 report contains highly relevant information bearing directly on the incident at issue and
21 potential liability therefore. The Court concludes that the balance of interests tips in favor
22 of requiring Defendant to disclose the Statement of Facts pursuant to the protective
23 order.

24 **III. Conclusion and Order**

25 Based on the foregoing, it is HEREBY ORDERED that:

- 26 1. Defendant’s request for additional redactions (ECF No. 101) is GRANTED
27 IN PART as follows:
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- a. Defendant may redact from the OIA Report all references to any notice of rights.
- b. To the extent Defendant wishes to redact further material identifying the subjects of the investigation, he must submit his proposed redactions to the Court in camera, along with an index of the proposed redactions, within **five days**. The Court will reserve its ruling on this portion of Defendant's request pending receipt of the proposed redactions, if any.

2. In all other respects, the request is DENIED.

IT IS SO ORDERED.

Dated: February 21, 2017

/s/ Michael J. Seng
UNITED STATES MAGISTRATE JUDGE