

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**
8

9 JERRY DILLINGHAM,

10 Plaintiff,

11 v.

12 F. GARCIA,

13 Defendant.
14

Case No. 1:18-cv-00579-LJO-EPG (PC)

ORDER RE: DOCUMENTS
WITHHELD ON THE BASIS OF THE
OFFICIAL INFORMATION
PRIVILEGE

15
16 Jerry Dillingham (“Plaintiff”) is a state prisoner proceeding *pro se* and *in forma*
17 *pauperis* in this civil rights action. This case proceeds “on Plaintiff’s original complaint (ECF
18 No. 1), on Plaintiff’s claims against Defendant Garcia for conspiracy, retaliation in violation of
19 the First Amendment, and excessive force and failure to protect in violation of the Eighth
20 Amendment.” (ECF No. 21, at p. 4). Plaintiff’s claims stem from allegations in his complaint
21 that Defendant Garcia threatened Plaintiff’s life and told other inmates to attack Plaintiff
22 because Plaintiff wrote 602 grievances against him, that Defendant Garcia conspired with an
23 inmate to have that inmate attack Plaintiff, and that Defendant Garcia watched that inmate
24 attack Plaintiff without trying to prevent it.

25 Based on information provided in Defendant Garcia’s scheduling conference statement,
26 and after discussion at a scheduling conference held on September 30, 2019, the Court ordered
27 that “Defendant(s) have thirty days from the date of service of [the scheduling] order to submit
28 to the Court for *in camera* review the two confidential memoranda that were prepared in

1 connection with Plaintiff’s allegations in the complaint, the two confidential appeal inquiry
2 findings that were prepared in connection with Plaintiff’s allegations in the complaint, and
3 other related documents.” (ECF No. 75, at p. 2) (footnote omitted).

4 On October 31, 2019, Defendant Garcia complied with the Court’s order and submitted
5 the documents for *in camera* review. (ECF No. 81). Defendant Garcia included an explanation
6 for his claim that the documents should be withheld under the official information privilege.
7 (ECF Nos. 80 & 81). He also included a declaration from J. Barba and a privilege log. (*Id.*).

8 The “common law governmental privilege (encompassing and referred to sometimes as
9 the official or state secret privilege) . . . is only a qualified privilege, contingent upon the
10 competing interests of the requesting litigant and subject to disclosure. . . .” *Kerr v. U.S. Dist.*
11 *Ct. for N. Dist. of Cal.*, 511 F.2d 192, 198 (9th Cir. 1975) (internal citations omitted). The
12 Ninth Circuit has since followed *Kerr* in requiring *in camera* review and a balancing of
13 interests in ruling on the government’s claim of the official information privilege. *See, e.g.*,
14 *Breed v. U.S. Dist. Ct. for N. Dist. of Cal.*, 542 F.2d 1114, 1116 (9th Cir. 1976) (“[A]s required
15 by *Kerr*, we recognize ‘that in camera review is a highly appropriate and useful means of
16 dealing with claims of governmental privilege.’”) (quoting *Kerr v. U. S. Dist. Ct. for N. Dist. of*
17 *Cal.*, 426 U.S. 394, 406 (1976)); *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033-34 (9th
18 Cir. 1990), *as amended on denial of reh'g* (Feb. 27, 1991), *as amended on denial of reh'g* (May
19 24, 1991) (“Government personnel files are considered official information. To determine
20 whether the information sought is privileged, courts must weigh the potential benefits of
21 disclosure against the potential disadvantages. If the latter is greater, the privilege bars
22 discovery.”) (internal citations omitted).

23 With these legal standards in mind, the Court has conducted an *in camera* review of the
24 documents withheld under the official information privilege.

25 The Court holds that the following documents or portions of documents should be
26 produced because the potential benefits of disclosure are greater than the potential
27 disadvantages:

- 28 • Pages 010, 017-20, 022, 043-47

