

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

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

RICHARD M. GILMAN,

Plaintiff,

No. CIV S-CIV-S-05-0830 GGH P

vs.

EDMUND J. BROWN, et al.,

Defendants.

ORDER

_____ /

By order, filed on October 3, 2001, this court ordered defendants to produce unredacted Executive Case Summaries (ECS) and Decision Face Sheets for all convicted murderers who come within the subclass who were granted parole by the Board of Parole Hearings (BPH) from January 1, 1991, through December 31, 2008, within forty days of the September 29, 2011 hearing on plaintiffs’ motion for production of documents.¹ See Order at docket # 3** The production was ordered subject to a pre-existing protective order. See docket # 301.

\\

¹ The subclass is defined as “all California state prisoners who have been sentenced to a life term with possibility of parole for an offense that occurred before November 8, 1988” (docket # 340 at 2).

1 Defendants have now brought an ex parte motion seeking authorization to redact
2 “information contained in the confidential section of an inmate’s c-file,” averring that such
3 information relating to “personal, private and confidential information” which “could potentially
4 pose a significant threat to the safety and well-being of incarcerated inmates were the information
5 to fall into the wrong hands.” Motion (docket # 378-1), p. 3; see also, Declaration of Michael W.
6 Pott (docket # 378-2) & Declaration of Everett Fischer (docket # 378-2). Defendants contend
7 that the material at issue is information that implicates public safety concerns, is not disclosed
8 outside the California Department of Corrections and Rehabilitation (CDCR), and is not in any
9 way responsive to the plaintiffs’ request for production. Docket # 378-1, pp. 3* Defendants
10 maintain that the confidential c-file sections could contain information from a variety of sources
11 over a period of years, concerning an inmate’s gang activities and affiliations, drug-running or
12 other illegal/improper prison activities, personal victim information, victims’ letters about threats
13 made by the inmate in custody, claims of child molestation. Id. Defendants express concerns
14 about an inmate possibly gaining access to the information in the confidential section of his/her
15 own c-file by way of being a witness at a deposition or hearing or trying to identify the source of
16 confidential information, stating that inmates’ access to such information could lead to threats or
17 violence upon inmates, prison staff or members of the public. Id. Defendants state they would
18 provide a privilege log identifying where redactions are made within the ECS’s. Id., at 4.

19 Defense counsel, on or about October 17, 2011, was advised about some of the
20 ECS’s containing confidential information from inmate c-files, and spoke with plaintiffs’
21 counsel, on October 19, 2011, to see if plaintiffs would agree to redacting the information.
22 Docket # 378-1, pp. 5-6; Pott Dec. ¶ 3. Plaintiffs would only agree to do so, according to
23 defendants, if defendants would produce ECS’s for each person whose case went to the governor
24 for review from January 1, 1991 through December 31, 2008, not just for those classmembers
25 who fit within the parameters of the sub-class definition, those whose offenses took place prior to
26 November 8, 1988 (docket # 340 at 2); as of October 26, 2011, plaintiffs’ would not stipulate to

1 redactions. Id., at 6; Pott Dec., ¶ 6.

2 Plaintiffs have filed an opposition which the undersigned has considered.

3 Defendants contend generically that release of confidential information could
4 jeopardize the safety of the inmate whose c-file contains the very generally described
5 information, other inmates, staff, officers and institutional security. Docket # 378-1. Defendants
6 pose hypotheticals that appear to the court to be unlikely scenarios; in any event, they do not
7 support their assertions with specific and concrete evidence.² Defendants argue that the
8 protective order to which their production is subject is not sufficient to cover every scenario they
9 can craft. That may be true of any protective order. However, the remedy for an unexpected,
10 future potential prejudicial dissemination of specific, truly confidential information is not the
11 grant of unilateral authority to excise information from a volume of exhibits; the remedy is to
12 fashion a more “protective” protective order, e.g., restricting some information to attorneys’ eyes
13 only. Moreover, defendants do not demonstrate that anything contained on the ECS would not
14 also have been contained in the record before the Board of Parole Hearings (BPH) – a record that
15 may well have also been available to the inmate.

16 The court will not revisit its ruling at this time. The court will not provide a
17 blanket order approving across-the-board redactions of a portion or portions of Executive Case
18 Summaries that defendants in their unilateral discretion might deem ultra-confidential.

19 To cover the situation where an ECS may be presented by plaintiffs’ counsel to an
20 inmate at his deposition (unlikely), the court orders: that no such Executive Case Summary shall
21 be exhibited to the inmate without plaintiffs’ counsel having notified defendants’ counsel in the
22 notice of deposition that a specific Executive Case Summary(s) will be utilized as an exhibit at
23 the inmate deposition. If counsel cannot agree that the information is truly sensitive such that it

24
25 ² For example, it is highly unlikely that an inmate in deposition, assuming even that such
26 a deposition is necessary, that information other than that pertaining to that particular inmate
would be shown. Even if there were confidential information related specifically to the inmate
undergoing deposition, that remote possibility can be easily remedied. See above.

