

1 RFP, Set One, No. 4

2 In RFP No. 4, plaintiff requested documents regarding the transfer of inmates that took
3 place at CCC on September 11, 12, and 13, 2007, including but not limited to, “daily movement
4 sheets,” “C.S.R. worksheets,” and memoranda referencing the transfers. ECF No. 84, Ex. II.
5 Defendants objected to the request as overly broad, compound, and not likely to lead to the
6 discovery of admissible evidence. ECF. No. 84, Ex. KK at 2. These objections are overruled.
7 Defendants also responded that daily movement sheets and CSR worksheets are only retained for
8 one year pursuant to the document retention policy at CCC, and that, therefore, any documents
9 that would be responsive, no longer exist. *Id.*

10 Plaintiff makes three points in his motion to compel: (1) that old documents are always
11 “lying around” the prisons, notwithstanding the document retention policy at any institution; (2)
12 that defendants failed to produce responsive memoranda; and (3) that defendants failed to
13 produce any “128-G chronos from classification,” but that plaintiff would settle for “a copy of the
14 training module on 128-G generation by Correction Counselors” ECF No. 84 at 3-4.

15 Defendants’ opposition includes the sworn declaration of the Litigation Coordinator at
16 CCC. She confirms that daily movement sheets and CSR worksheets are only kept for one year,
17 pursuant to the document retention policy at CCC. ECF No. 85-2, ¶¶ 2-4. Though plaintiff
18 questions *when* the requested documents were destroyed (that is, in 2008 pursuant to the
19 document retention policy, or in 2013, after plaintiff requested them), plaintiff fails to discredit
20 the Litigation Coordinator’s sworn representation regarding CCC’s one year document retention
21 policy or otherwise demonstrate that any of the requested documents were (or might have been)
22 destroyed in bad faith because of this lawsuit. ECF No. 86 at 3. Therefore, this portion of
23 plaintiff’s motion to compel is denied.

24 As for plaintiff’s request for memoranda, defendants state that after making another
25 inquiry in response to plaintiff’s motion, they are producing to plaintiff “two emails with
26 attachments, showing the number of inmates to be moved when deactivating the Level III gym in
27 September 2007.” ECF No. 85 at 3. In his reply, plaintiff does not seek further memoranda or
28 otherwise argue that defendants’ production in this regard is incomplete. ECF No. 86 at 2-3.

1 Therefore, defendants appear to have satisfied plaintiff's request for memoranda, and this portion
2 of plaintiff's motion to compel is denied as moot.

3 Plaintiff does, however, contend that defendants have failed to respond to his request for
4 the "128-Gs." ECF No. 86 at 3. Defendants' opposition does not directly address plaintiff's
5 contention that the "128-G" documents are responsive to RFP No. 4 or otherwise explain why
6 they were not produced. Therefore, within 14 days of the date of this order, defendants shall file
7 a statement with the court either (1) certifying that they have produced the requested documents
8 to plaintiff, or (2) explaining why they have not produced the requested documents to plaintiff.

9 RFP, Set One, No. 6

10 In RFP. No. 6, plaintiff requested the minutes from the Men's Advisory Council meeting
11 with Defendant Angelea, in his capacity as Facility Captain, on September 6, 2007. ECF No. 84,
12 Ex. II. In response, defendants stated that the minutes are only retained for two years under the
13 CCC document retention policy, and that despite a reasonable and diligent search, there are no
14 responsive documents to produce. ECF. No. 84, Ex. KK at 3.

15 Plaintiff states, in his sworn motion to compel, that he does not "buy" that the minutes
16 were destroyed. ECF No. 84 at 4. He states that he was previously involved with the Men's
17 Advisory Council, and claims that "we had minutes of meetings from a decade past." *Id.* Thus,
18 plaintiff raises the possibility that the Men's Advisory Council minutes were not destroyed in
19 accordance with any document retention policy, and that the requested minutes may exist,
20 notwithstanding such a policy. In opposition, defendants rely on their initial response to RFP No.
21 6, claiming that the requested minutes no longer exist because of the document retention policy.
22 *See* ECF No. 85 at 3.¹ Defendants claim that there is nothing further that they can do to produce
23 documents responsive to RFP No. 6. The court disagrees. Defendants have relied solely on the
24 existence of the two-year document retention policy in refusing to produce the requested minutes.

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26 ¹ While defendants' opposition brief references defense counsel's "inquiry" for the minutes,
27 defense counsel does not submit a sworn declaration describing his inquiry, or otherwise detail
28 any other efforts he has made to obtain the minutes, either before or after plaintiff's filing of the
instant motion to compel. *See* ECF No. 85 at 3.

1 Plaintiff has presented information that the minutes may nevertheless still exist. The defendants'
2 obligations are to conduct a reasonable search for responsive documents and either produce the
3 documents located or provide a verification that after having conducted such a search, no such
4 documents could be located. Merely citing to CCC's document retention policy does not satisfy
5 that requirement. Accordingly, within 14 days of the date of this order, defendants shall file a
6 statement with the court (1) certifying and describing the steps that have been taken to locate the
7 requested minutes and (2) either producing the requested minutes or explaining why the minutes
8 have not been produced.

9 RFP, Set Two, No. 1

10 In RFP No. 1, plaintiff requested "the Office of Internal Affairs report written by OIA
11 Agent Rives, delivered to California Correctional Center in or about early July, 2001, concerning
12 his investigation of Correctional Officer Durso, upon which Plaintiff's [false] disciplinary report
13 was purported to be based." ECF No. 84, Ex. JJ. In response, defendants stated that they do not
14 have access to documents in the custody of the Office of Internal Affairs. ECF No. 84, Ex. LL at
15 2.

16 Plaintiff demonstrates the inadequacy of this response. In the motion, plaintiff points to a
17 rules violation report ("RVR") noting that a copy of the requested OIA report was given to CCC
18 prison officials. ECF No. 84, Ex. OO. Defendants' response in opposition, that "none of the
19 defendants in this case have the ability to compel production of documents from OIA," is beside
20 the point, given plaintiff's reference to the RVR. As stressed by plaintiff in his reply, he is not
21 asking defendants to obtain the document from OIA. ECF No. 86 at 1. Rather, plaintiff
22 contends that the OIA report is within the defendants' possession, custody, or control, and
23 provides sufficient grounds for his belief in this regard. Therefore, within 14 days of the date of
24 this order, defendants shall file a statement with the court either (1) stating that they have
25 produced the requested document to plaintiff, or (2) explaining why they have not produced the
26 requested document to plaintiff.

27 The argument that potentially responsive documents are not within the personal
28 possession of the individual defendants, but rather, are located within different arms of the CDCR

1 is simply not helpful. In this court's experience, "individual defendants who are employed by
2 CDCR can generally obtain documents . . . from CDCR by requesting them. If this is the case,
3 then, based on their relationship with CDCR, they have constructive control over the requested
4 documents and the documents must be produced." *Nible v. Knowles*, No. 1:06-CV-01716-DLB
5 PC, 2011 U.S. Dist. LEXIS 61557, at *11-13 (E.D. Cal. June 1, 2011); *see also Mitchell v.*
6 *Adams*, No. CIV S-06-2321 GEB GGH P, 2009 U.S. Dist. LEXIS 24289, at *24-25 (E.D. Cal.
7 Mar. 6, 2009) (even though defendant warden was sued in his individual capacity, he had
8 constructive control over requested documents because he had authority to obtain the requested
9 documents from third party CDCR).

10 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion to compel (ECF No. 84)
11 is granted to the extent that defendants shall, within 14 days, provide additional statements and/or
12 explanations in response to plaintiff's RFP, Set One, Nos. 4 and 6, and RFP, Set Two, No. 1, as
13 set forth above. In all other respects, plaintiff's motion is denied.

14 Dated: August 15, 2013.

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17 EDMUND F. BRENNAN
18 UNITED STATES MAGISTRATE JUDGE
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