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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

ARLIE HALCOMB,
Plaintiff,
v.
CITY OF SACRAMENTO, et al.,
Defendants.

No. 2:14-cv-2796 MCE DAD

ORDER

On June 5, 2015, this matter came before the undersigned for hearing of plaintiff’s motion to compel. Attorneys Mark Merin and Paul Masuhara appeared on behalf of the plaintiff and Senior Deputy City Attorney Andrea Velazquez appeared on behalf of the defendants. After hearing argument from the parties, the court took the motion under submission. On June 10, 2015, the undersigned issued an order directing the parties to file simultaneous briefs addressing whether the discovery at issue should be produced only subject to a protective order. (Dkt. No. 24.) The parties filed their briefs on June 17, 2015. (Dkt. Nos. 25 & 26.)

Plaintiff’s motion to compel seeks the production of un-redacted copies of Sacramento Police Department General Order 550.03, General Order 560.02 and General Order 580.02, (“General Orders”), redacted copies of which were previously produced by defendants to plaintiff. Defendants assert that the information that they have redacted from the General Orders as produced is protected by the official information privilege. Counsel for plaintiff argues that

1 defendants' assertion of the privilege is inadequately supported and that the un-redacted versions
2 of the General Orders should be produced to plaintiff without a protective order.

3 A party seeking to invoke the official information privilege "must submit an affidavit
4 from an agency official which includes the following: (1) an affirmation that the agency
5 generated or collected the material in issue and has maintained its confidentiality; (2) statement
6 that the official has personally reviewed the material; (3) specific identification of the
7 governmental or privacy interests threatened by disclosure of the material to plaintiff and/or his
8 lawyer; (4) a description of how disclosure subject to a carefully crafted protective order would
9 still create a substantial risk of harm to significant governmental or privacy interests; and finally,
10 (5) a projection of how much harm would be done to the threatened interests if the disclosure
11 were made." Sanchez v. City of San Jose, 250 F.R.D. 468, 470 (N.D. Cal. 2008) (citing Kelly v.
12 City of San Jose, 114 F.R.D. 653, 670 (N.D. Cal. 1987)).

13 Here, in asserting that the redacted information is protected by the official information
14 privilege defendants have submitted the declaration of Sacramento Police Department Captain
15 James Beezley. (JS (Dkt. No. 21-1) at 126-28.) As suggested by the undersigned at the June 5,
16 2015 hearing on the motion, Captain Beezley's declaration does not appear to at all address how
17 disclosure of the redacted information subject to a carefully crafted protective order would still
18 create a substantial risk of harm to significant governmental or privacy interests.¹ See Chism v.
19 County of San Bernardino, 159 F.R.D. 531, 535 (C.D. Cal. 1994) ("the opposing party's
20 declaration is supposed to describe how disclosure, even if made subject to a protective order,
21 would create a substantial risk of harm, as well as a projection of how much harm would be done
22 by disclosure"); Kelly, 114 F.R.D. at 672 ("In order to overcome the moderately weighted
23 presumption in favor of disclosure the party claiming the official information privilege must, at
24 least, specifically describe how disclosure under a carefully tailored protective order would
25 substantially harm a significant governmental interest and state how much harm would be done to

26 ¹ In their brief addressing whether the documents should be produced only subject to a protective
27 order, defendants nonetheless continue to assert, without support, that they "met the threshold
28 burden necessary to invoke the protections of the official information privilege." (Defs.' Brief
(Dkt. No. 25) at 3.)

1 those threatened interests by disclosure in this particular case.”). Accordingly, the undersigned
2 finds that defendants have failed to meet their initial burden in invoking the privilege. “If the
3 court concludes that a defendant’s submissions are not sufficient to meet the threshold burden, it
4 will order disclosure of the documents in issue.” Soto v. City of Concord, 162 F.R.D. 603, 613
5 (N.D. Cal. 1995). See also Zackery v. Stockton Police Dep’t, No. CIV S-05-2315 MCE DAD P,
6 2007 WL 1655634, at *3 (E.D. Cal. June 7, 2007).²

7 In their post-hearing June 17, 2015 brief, defendants argue that they have established good
8 cause for a protective order with respect to the production of unredacted General Orders because
9 Captain Beezley’s declaration states that the department’s General Orders “are held in confidence
10 by the Department and not publicly disseminated.” (Defs.’ Brief (Dkt. No. 25.) at 4.) Plaintiff’s
11 attorney, Mark Merin, has submitted a declaration stating that the Sacramento Police Department,
12 “previously made its General Order publicly-available online.” (Merin Decl. (Dkt. No. 26-1) at
13 1.) Attorney Merin declares that he “was able to obtain what appears to be previous versions of
14 two of the three General Orders in dispute here,” General Order 550.03 and General Order
15 580.02, which were obtained when those orders “were publicly-available online,” and “the
16 language of these General Orders appears to be largely consistent with the language of the
17 redacted General Orders in dispute here.” (Id.) At the conclusion of the hearing on the pending
18 motion, defense counsel submitted the unredacted General Orders for the court’s in camera
19 review. The court has now compared the redacted General Orders in dispute here with the prior
20 General Orders obtained online by plaintiff’s attorney and concurs in attorney Merin’s
21 characterization. (Compare Dkt. No. 21-1 at 80-82 with Dkt. No. 26-1 at 4-6 and Dkt. No. 21-1
22 at 84-85 with Dkt. No. 26-1 at 8.) Therefore, it does not appear that defendants have established
23 that they have maintained the confidentiality of all of the information which they seek to produce
24 only subject to a protective order.

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26 ² The undersigned would note that at the June 5, 2015 hearing on the pending motion, defendants
27 essentially conceded that a carefully crafted protective order would sufficiently protect
28 defendants’ privacy interests. In this regard, defendants stated that they have been willing to
provide plaintiff with un-redacted copies of the General Orders pursuant to a stipulated protective
order for some time.

1 Defendants also argue that public disclosure of the redacted portions of the General
2 Orders at issue³ would “be detrimental to the efforts of the Police Department and to the safety of
3 its officers,” because the “redacted sections of the subject General Orders contain information
4 regarding police procedures, and specifically regarding when, where, how and who must respond
5 to specific types of situations.” (Defs. Brief (Dkt. No. 25) at 4.) They assert the City protects that
6 information from public disclosure because its police officers “may face an ambush-style attack if
7 their movements and whereabouts were commonly known and anticipated.” (*Id.*) Having
8 reviewed the un-redacted General Orders in camera, however, the undersigned finds no support
9 for defendants’ characterization of the redacted information. The portions of the General Orders
10 which defendants have redacted do not, in any way, concern specific tactical information that if
11 disclosed would jeopardize officer safety, as asserted in conclusory fashion in defendants’
12 supporting declaration. Nor do the redactions concern information that would inform anyone of
13 law enforcement movements and whereabouts, as argued in defendants’ brief. Rather, the
14 redacted portions of the General Orders merely concern basic, straight forward practices and
15 procedures. The redacted excerpts simply spell out such things as the Department’s general
16 policies regarding the use of force and the responsibilities of supervisors in investigating incidents
17 involving the use of force by officers. In no way would disclosure of the redacted information
18 make any officer’s movements commonly known or anticipated.

19 Finally, defendants argue that, “[c]ourts have endorsed the use of a protective order to
20 protect the privacy interests of the public entity Defendant[.]” (Defs.’ Brief (Dkt. No. 25) at 3.)
21 Specifically, defendants argue that in discuss Kelly v. City of San Jose the court recognized that a
22 police department’s interest in not permitting the general public to have access to its procedure
23 and training policies “may be weighty.” (*Id.*)

24 Of course, a police department may have a weighty interest in prohibiting the public
25 disclosure of training policies and procedures. Equally true is the fact that a carefully crafted
26 protective order may protect that interest in some cases. Most importantly for purposes of

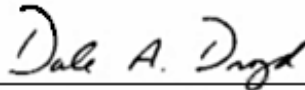
27 ³ As noted above, defendants have already produced to plaintiff redacted portions of the General
28 Orders at issue without a stipulated protective order.

1 resolving the pending motion, however, is recognition of the fact that the court in Kelly was not
2 reviewing the specific redacted General Orders at issue here. Certainly the mere fact that the
3 discovery at issue concerns police department policies and the defendants have requested a
4 protective order does not relieve defendants of their burden of establishing good cause for
5 imposition of a protective order. See Foltz v. State Farm Mut. Auto. Ins. Co., 331 F.3d 1122,
6 1130 (9th Cir. 2003) (“A party asserting good cause bears the burden, for each particular
7 document it seeks to protect, of showing that specific prejudice or harm will result if no protective
8 order is granted.”); Phillips, 307 F.3d at 1210-11 (“For good cause to exist, the party seeking
9 protection bears the burden of showing specific prejudice or harm will result if no protective
10 order is granted.”); Beckman Industries, Inc. v. International Ins. Co., 966 F.2d 470, 476 (9th Cir.
11 1992) (“Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning,
12 do not satisfy the Rule 26(c) test.”).

13 Here, for the reasons stated above, the undersigned finds that defendants have failed to
14 show that good cause exists to order the un-redacted General Orders produced subject to a
15 establish good cause for requiring production only pursuant to a protective order. Accordingly,
16 plaintiff’s May 14, 2015 motion to compel (Dkt. No. 18) is granted and defendants shall produce
17 to plaintiff the General Orders in question without redaction within fourteen days of the date of
18 this order.⁴

19 IT IS SO ORDERED.

20 Dated: June 19, 2015

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23 DALE A. DROZD
24 UNITED STATES MAGISTRATE JUDGE

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28 ⁴ Plaintiff’s motion to compel also sought leave of court to file a declaration establishing the
reasonable fees and costs incurred in support of an award of sanctions in connection with the
motion. The undersigned does not find that the imposition of sanctions is warranted in this
instance.