

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  
27  
28

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

MICHAEL TURNER,  
Plaintiff,

No. C 09-03652 SI

**ORDER RE: MOTION TO QUASH**

v.

OAKLAND POLICE OFFICER  
CHRISTOPHER CRAIG J. TURNER, et al.  
Defendants.

Defendants’ motion to quash is currently scheduled for hearing on February 18, 2011. Pursuant to Civil Local Rule 7-1(b), the Court finds this matter appropriate for resolution without oral argument and hereby VACATES the hearing. Having considered the papers submitted, and for good cause shown, the Court rules as follows.

Plaintiff served a subpoena directing the Custodian of Records for the Oakland Police Department Officer Files to produce “Any and all documents, reports, records, statements, and recordings relating to alleged incidents of dishonesty and / or falsification of documents and / or evidence by Oakland police officers J. Turner, 8944, C. Craig, 8038, and / or P. Phan, 8933 from 2005 to present.” Rosen Decl. Ex. 1.

Defendants Craig, Turner, and Phan move to quash this subpoena, and they request monetary sanctions in the amount of \$1375.00 for plaintiff’s failure to withdraw the subpoena after being asked to by defendants. In the alternative, defendants request that the subpoena be stayed until after the Court rules on a not-yet-filed motion for summary judgment, or that the Court sign a protective order regarding the requested records. Plaintiff is not opposed to a protective order, but argues that the

1 subpoena should not be squashed or stayed. Plaintiff also argues that defendants failed to meet and  
2 confer before filing the motion, thus violating prior Court orders, and he requests \$2750.00 in sanctions.

3 The Federal Rules of Civil Procedure permit parties to “obtain discovery regarding any  
4 nonprivileged matter that is relevant to any party's claim or defense . . . . Relevant information need not  
5 be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of  
6 admissible evidence.” Fed. R. Civ. P. 26(b)(1). “The key phrase in this definition—‘relevant to the  
7 subject matter involved in the pending action’—has been construed broadly to encompass any matter  
8 that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may  
9 be in the case.” *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978). “[T]he question of  
10 relevancy should be construed ‘liberally and with common sense’ and discovery should be allowed  
11 unless the information sought has no conceivable bearing on the case.” *Soto v. City of Concord*, 162  
12 F.R.D. 603, 610 (N.D. Cal. 1995).

13 One claim remains in this case—a § 1983 claim that defendants violated plaintiff’s Fourth  
14 Amendment rights by detaining him for ten days while purportedly testing the blessing oil for the  
15 presence of illegal substances. Defendants assert that their involvement with plaintiff and his detention  
16 ended the moment that they gave the blessing oil to the crime lab, and therefore nothing in their  
17 personnel files could possibly be relevant to plaintiff’s claim.<sup>1</sup> Plaintiff argues that the requested  
18 documents related to the defendant officers’ credibility and reputation for veracity.

19 The Court agrees that plaintiff is attempting to obtain discovery regarding a matter that is  
20 relevant to his remaining claim. Under defendants’ reasoning, no discovery could possibly be relevant,  
21 because defendants are simply not liable for violating plaintiff’s Fourth Amendment rights. Defendants’  
22 motion to quash is DENIED.<sup>2</sup> However, the Court does find it appropriate to issue a protective order  
23 and will sign the order to which the parties agreed.

---

24  
25 <sup>1</sup> Defendants discuss California privilege law surrounding the personnel records of police  
26 officers, but they do not argue that the records cannot be disclosed in this case. *See* Mem. of Points and  
Authorities in Support of Def. Motion to Quash at 4–5.

27 <sup>2</sup> The Court also declines to stay the subpoena until after the resolution of a not-yet-filed  
28 defense motion for summary judgment. Relevant discovery is relevant discovery, and if it leads to  
admissible evidence such evidence would be admissible not only at trial, but also on a motion for  
summary judgment.

1           The Court DENIES the sanctions requests made by both plaintiff and defendants. The Court  
2 notes, however, that sending a demand email is not the same as meeting and conferring. The parties are  
3 instructed to make reasonable attempts to confer that are actually calculated to lead to a conference any  
4 time they have a dispute that is even somewhat related to discovery. For example, if counsel believes  
5 that an email has not been responded to, counsel might consider using the telephone to inquire whether  
6 a response is forthcoming. Similarly, upon receipt of a demand letter, counsel might respond directly  
7 to explain why he does not wish to acquiesce.

8           This dispute is a perfect example of why the Court requires the parties to confer before filing  
9 certain motions. If counsel for defendants had spoken to counsel for plaintiff, defendants would have  
10 learned, at the very least, that plaintiff was willing to stipulate to a protective order. Defendants likely  
11 would also have learned why it was that plaintiff filed a third-party subpoena and why plaintiff believed  
12 he was entitled to the requested portions of the personnel files. Even if defendants still felt that they  
13 needed to file this motion, they could have narrowed the question for the Court to the question of  
14 relevance (as they did in their reply brief, after conferring with counsel for plaintiff). Additionally, it  
15 would have behooved plaintiff to respond directly to defendants' email rather than merely asking if it  
16 was a request to meet and confer. Assuming that the parties were able to narrow the issues under  
17 dispute, plaintiff could have directed his time and attention to the question of relevance rather than  
18 attacking the manner in which defendants' approached their problems with the subpoena.

19           Defendants calculated the attorney's fees for the time expended on the initial briefing on this  
20 motion at \$1375.00, and plaintiff has calculated his attorney's fees at \$2750.00. The Court does not  
21 need to tell the parties that the filing of unnecessarily broad motions drives up the costs of litigation  
22 unnecessarily. It is the responsibility of counsel to litigate in a reasonable manner, and that includes  
23 speaking with opposing counsel when problems arise.

24  
25  
26  
27  
28

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  
27  
28

For the foregoing reasons and for good cause shown, the Court hereby DENIES defendants' motion to quash. (Doc. 87.) The Court DENIES the sanctions requests of both parties. (Docs. 87 & 91.) A separately issued protective order will follow.

**IT IS SO ORDERED.**

Dated: February 16, 2011

  
\_\_\_\_\_  
SUSAN ILLSTON  
United States District Judge