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6 UNITED STATES DISTRICT COURT  
7 NORTHERN DISTRICT OF CALIFORNIA  
8 SAN FRANCISCO DIVISION  
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10 JOSE ANTONIO AGUILAR  
JARAMILLO,

11 Plaintiff,

12 v.

13 CITY OF SAN MATEO, and others,

14 Defendants.  
15

Case No. 13-cv-00441 NC

ORDER GRANTING PLAINTIFF'S  
REQUEST FOR PRODUCTION OF  
DOCUMENTS

Re: Dkt. No. 34

16 In this civil rights case alleging excessive force and retaliation by City of San  
17 Mateo police officers, plaintiff Jaramillo seeks to discover documents relating to his  
18 arrest, including San Mateo's "Internal Affairs" documents. The primary dispute is  
19 whether the "official information" privilege shields the discovery. San Mateo asserts that  
20 Jaramillo should instead depose witnesses to discover the relevant information. As  
21 explained below, the court finds that Jaramillo's need to discover relevant information  
22 outweighs the qualified "official information" privilege. The court therefore grants  
23 Jaramillo's discovery requests, with some modifications to focus the discovery.

24 DISCOVERY REQUESTS

25 This lawsuit arises from a March 13, 2012, incident during which Jaramillo was  
26 arrested by San Mateo Police Officers. The disputed document requests are set forth in  
27 full in the joint discovery statement, docket entry 34. In sum:  
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Case No. 13-cv-00441 NC  
ORDER GRANTING DOCUMENT REQUESTS

- 1 ● Requests 2-5: Investigative records, reports, and recordings concerning the
- 2 incident, including investigations conducted by San Mateo Internal Affairs
- 3 Division.
- 4 ● Requests 11-12: All documents “relating to training materials” on the use of force
- 5 and “relating to policies” on the use of force for the San Mateo Police Department.
- 6 ● Request 13: All documents relating to complaints received alleging police
- 7 misconduct in the last five years.
- 8 ● Request 14: All documents relating to discipline of police officers for police
- 9 misconduct in the last five years. And,
- 10 ● Request 15: documents supporting San Mateo’s contention that police had
- 11 probable cause to arrest Jaramillo.<sup>1</sup>

12 The court held a hearing on this discovery dispute on October 9, 2013. Counsel  
13 for San Mateo did not appear at the hearing and has not offered any explanation for this  
14 failure to appear.

## 15 ANALYSIS

### 16 1. Relevance

17 The general scope of civil discovery includes any nonprivileged matter that is  
18 relevant to any party’s claim or defense. Relevant information need not be admissible if  
19 the discovery appears reasonably calculated to lead to the discovery of admissible  
20 evidence. Fed. R. Civ. P. 26(b)(1).

21 Here, the requested information is probative of what happened the day of  
22 Jaramillo’s arrest, what statements witnesses made, what investigation took place,  
23 whether San Mateo ratified the officers’ conduct, whether San Mateo retaliated against  
24 Jaramillo, and whether officers complied with the applicable training and policies. The  
25 requested information is therefore relevant.

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28 <sup>1</sup> Request 16 is also identified in the letter brief, but the parties did not explain what the  
dispute is. Request 16 is therefore denied without prejudice.

1           2.       “Official Information” Privilege

2           A finding of relevance does not end the court’s inquiry. Federal Rule of Civil  
3 Procedure 26(c) provides that a court may limit discovery to protect from annoyance,  
4 embarrassment, oppression, or undue burden or expense. Furthermore, the federal  
5 common law recognizes a qualified privilege for “official information.” *Sanche v. Santa*  
6 *Ana*, 936 F.2d 1027, 1033 (9th Cir. 1990). To determine whether the official information  
7 sought is privileged, courts must do a case-by-case analysis that weighs the potential  
8 benefits of disclosure against the potential disadvantages. If the latter is greater, the  
9 privilege bars discovery. *Id.*

10           In *Kelly v. City of San Jose*, 114 F.R.D. 653, 660 (N.D. Cal. 1987), magistrate  
11 judge Wayne Brazil articulated a test for the qualified “official information” privilege that  
12 balances competing societal interests: interests of law enforcement, privacy interests of  
13 police officers or citizens who provide information to or file complaints against police  
14 officers, interests of civil rights plaintiffs, the policies that inform the national civil rights  
15 laws, and the needs of the judicial process. 114 F.R.D. at 660. In civil rights cases, this  
16 balancing test is moderately pre-weighted in favor of disclosure. *Id.* at 662; *Williams v.*  
17 *Cnty. of Alameda*, No. 12-cv-2511 SBA (MEJ), 2013 WL 4608473, at \*2 (N.D. Cal. Aug.  
18 28, 2013).

19           Many other judges in the Northern District of California have applied the *Kelly* test  
20 to police departments’ “internal affairs” documents in cases alleging police misconduct.  
21 For example, in *Williams*, magistrate judge Maria-Elena James ordered the Alameda  
22 County Sheriff’s Office to produce internal affairs documents of the named defendant  
23 officers, subject to a protective order. 2013 WL 4608473, at \*2-3. Similarly, magistrate  
24 judge Laurel Beeler ordered San Leandro to produce internal affairs documents of the  
25 named defendant officers, subject to a protective order. *Doe v. Gill*, No. 11-cv-04759  
26 CW (LB), 2012 WL 1038655, at \*4. Finally, in *Soto v. City of Concord*, 162 F.R.D. 603,  
27 613 (N.D. Cal. 1995), magistrate judge James found that Concord did not meet its  
28 “substantial threshold burden” in support of the privilege. She ordered production of

1 internal affairs files, subject to a protective order.

2 Applying the balancing test of *Kelly*, this court reaches the same conclusion here  
3 as the judges in *Williams*, *Gill*, and *Soto*. In sum, San Mateo's qualified privilege is out-  
4 weighed by the interests of civil rights plaintiffs, the policies that inform the national civil  
5 rights laws, and the societal need for transparency of the judicial process. As a  
6 consequence, the court overrules the "official information" objection to requests 2-5 and  
7 11-15 and orders San Mateo to produce responsive documents, subject to the protective  
8 order previously issued in this case, docket entry 19.

9 3. Scope

10 Finally, San Mateo objects that requests 11 and 12, asking for "documents relating  
11 to" training materials and policies on the use of force, are vague and overly broad. The  
12 court finds that these requests ask for relevant information, but could be narrowed to the  
13 specific type of force alleged in this case. Had San Mateo appeared at the discovery  
14 hearing, the parties likely could have worked out a fair compromise. San Mateo is  
15 therefore ordered to produce all training materials and policies on the use of force that it  
16 contends were applicable to the plaintiff's March 13, 2012 arrest.

17 CONCLUSION

18 Plaintiff's discovery requests are GRANTED. Within 21 days of this order, San  
19 Mateo must supplement its production with documents responsive to plaintiff's document  
20 requests 2-5 and 11-15. This supplemental production is subject to the protective order.

21 IT IS SO ORDERED.

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23 Date: October 16, 2013

24   
25 NATHANAEL M. COUSINS  
26 United States Magistrate Judge  
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