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UNITED STATES DISTRICT COURT
Northern District of California

CURTIS D. WILLIAMS,

No. C 12-2511 SBA (MEJ)

Plaintiff,

**DISCOVERY ORDER RE: NAMED
DEFENDANTS' INTERNAL AFFAIRS
FILES**

v.

THE COUNTY OF ALAMEDA, et al.,

Defendants.

INTRODUCTION

In this civil rights case brought under 42 U.S.C. § 1983, the parties have filed a joint discovery letter regarding Plaintiff Curtis Williams' request for the named defendant officers' internal affairs files. Dkt. No. 51. Having considered the parties' letter and relevant legal authority, the Court now issues the following order.

BACKGROUND

Plaintiff Curtis Williams brings this case against the County of Alameda and several named defendants that are Alameda County Sheriff's Office officers alleging six claims for relief: unlawful entry; unnecessary force; violation of equal protection; unlawful arrest; malicious prosecution; and a *Monell* claim. Dkt. No. 44. On August 23, 2012, Plaintiff served his First Request for Inspection or Production of Documents. Jt. Ltr. at 2, Dkt. No. 51. Plaintiff's Request for Production No. 20 states: "Produce the personnel files of defendant deputies Kevin H. Estep, Justin Miguel, Brian R. Fernandez and Michael J. Giammalvo, defendant lieutenant Thomas F. Madigan, and defendant sergeant Mario M. Felix." *Id.*

On October 16, 2012, after receiving an extension of time to answer, Defendants objected to this request for production on the grounds that it is overly broad as to time and to subject matter, would impose an undue burden and expense on Defendants, and seeks information not relevant to this

1 *Cal.*, 511 F.2d 192, 198 (9th Cir. 1975)). Under the official information privilege, internal affairs
2 investigative materials and government personnel records may be protected from disclosure. *Id.* at
3 623; *see also Kelly v. City of San Jose*, 114 F.R.D. 653, 660 (N.D. Cal. 1987). In civil rights cases,
4 the Court has adopted a balancing test that is moderately pre-weighted in favor of disclosure. *Kelly*,
5 114 F.R.D. at 661. The party resisting discovery bears the burden of proving that disclosure is not
6 required. *Soto*, 162 F.R.D. at 609.

7 ANALYSIS

8 Here, there appears to be no dispute that the internal affairs files could reasonably be
9 calculated to lead to the discovery of admissible evidence. Instead, Defendants argue that disclosure
10 of internal affairs records will create a substantial risk of harm to the reliability of the internal affairs
11 investigatory system. *Jt. Ltr.* at 4. Specifically, Defendants argue that the reliability of the findings
12 of the Alameda County Sheriff's Office's internal investigations is entirely dependent upon officers'
13 truthfulness, and that if these types of records are disclosed, officers would be discouraged from
14 being truthful during internal investigations regarding fellow officers' conduct. *Id.* Defendants
15 further argue that internal affairs documents should be kept confidential because "protecting peace
16 officers from publication of frivolous or unwarranted charges, and maintaining confidence in law
17 enforcement agencies by avoiding premature disclosure of groundless claims of police misconduct."
18 *Id.* (quoting *Copley Press, Inc. v. Superior Court*, 39 Cal. 4th 1272, 1298 (Cal. 2006)).

19 As to Defendants' first argument, several courts, including this one, have rejected identical
20 "chilling effect" arguments. *Harper v. City of San Jose*, 2011 WL 941094, at *2 (N.D. Cal. Mar. 17,
21 2011); *Watson v. Albin*, 2008 WL 1925257, at *2 (N.D. Cal. Apr. 30, 2008) ("[Defendant's]
22 arguments that disclosure would discourage exhaustive internal investigations are unpersuasive.
23 Courts in this district have previously rejected such claims, and there is no reason to depart from that
24 reasoning here."); *Mai Thi Vu v. Clark*, 2006 WL 3318096, at *2 (N.D. Cal. Nov. 15, 2006) ("There
25 is no support for an argument that disclosure would lead to a breakdown of the IA investigation
26 system and in the past, courts have struck down such reasoning."). The Court sees no reason to
27 depart from this conclusion.

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1 As to Defendants' privacy argument, they rely on California privilege law, which is not
2 binding on federal courts in federal civil rights cases. *Kelly*, 114 F.R.D. at 655-56. However, federal
3 courts do recognize a right of privacy respecting confidential law enforcement records. *Id.* at 660-61;
4 *Soto*, 162 F.R.D. at 616. Such claims are closely scrutinized when the documents at issue are related
5 to the officers' work with the police department. *Soto*, 162 F.R.D. at 616 (suggesting that internal
6 investigation files are not protected by right of privacy when documents "related simply to the
7 officers' work as police officers") (citing *Denver Policemen's Protective Ass'n v. Lichtenstein*, 660
8 F.2d 432, 435 (10th Cir.1981)). If an individual's privacy is at stake, courts balance "the need for the
9 information sought against the privacy right asserted." *Soto*, 162 F.R.D. at 616. Moreover, "[i]n the
10 context of the disclosure of police files, courts have recognized that privacy rights are not
11 inconsequential. . . . However, these privacy interests must be balanced against the great weight
12 afforded to federal law in civil rights cases against police departments." *Id.* Further, "a carefully
13 drafted protective order could minimize the impact" of disclosure. *Id.*

14 For reasons similar to those stated by this Court in *Soto*, the Court concludes that, in applying
15 the balancing analysis to the documents sought by Plaintiff, his need for the documents (containing
16 information that is likely unavailable from any source other than Defendants) outweighs any invasion
17 of privacy with respect to officers named in the reports. The privacy rights of the officers may be
18 sufficiently protected with the use of a tightly drawn protective order, specifying that only counsel for
19 Plaintiff and his experts may have access to the material and that copies of such material will be
20 returned to Defendants at the conclusion of the case. *See id.* at 617; *see also Hernandez v. City of*
21 *Hayward*, 2005 WL 119871, at *4 (N.D. Cal. Jan. 20, 2005).

22 CONCLUSION

23 Based on the foregoing, the Court directs Defendants to produce the responsive internal
24 affairs files of the named defendant officers. To the extent Defendants have privacy concerns, the
25 documents shall be produced pursuant to a stipulated protective order and Defendants may redact the
26 following from the documents produced: any personally identifying information, including names of
27 public witnesses (other than Plaintiff), and home addresses and telephone numbers; and police
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1 officers named in the records with no ties to this case.

2 In their joint letter, the parties stipulate that the Court should conduct an in camera review to
3 decide what if any documents should be produced based on Plaintiff's claims. Jt. Ltr. at 5.
4 Accordingly, the Court ORDERS Defendants to produce the internal affairs files for in camera
5 review within seven days from the date of this Order. Defendants shall have the documents delivered
6 directly to chambers on the 15th Floor. As part of the production, Defendants shall include a draft
7 privilege log that identifies (by page and line number, if possible) all information that they claim
8 should be redacted based on this Order. The Court's review shall only include those portions of the
9 documents identified by Defendants.

10 **IT IS SO ORDERED.**

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12 Dated: August 27, 2013



13 Maria-Elena James
14 United States Magistrate Judge
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