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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOSEFA GODINEZ MERIDA, et al.,	)	Civil No.09cv0227 BEN (AJB)
	)	
Plaintiff,	)	
v.	)	Order on Joint Statement
	)	Re: Discovery Dispute
CITY OF SAN DIEGO, et al.,	)	
	)	[Doc. No. 27]
Defendants.	)	
_____	)	

On May 14, 2010, the parties filed a joint statement regarding a discovery dispute involving an 83 page Internal Affairs (“IA”) memo pertaining to Officer Galante’s October 26, 2006 accidental discharge of another officer’s firearm while off duty. The IA memo was simultaneously submitted for in camera review by this Court. The Plaintiff contends the requested information is relevant not only to the issue of whether Defendant Paul Galante’s use of deadly force on February 10, 2007 in discharging his firearm was justified, but is also relevant to the issue of whether Defendant San Diego Police Department (“SDPD”) properly trained, supervised and disciplined Defendant Galante’s negligent or deliberate discharge of firearms. The Defendant’s object to disclosure of the IA memo based on claims of official privilege, state law, and lack of relevance to the Plaintiff’s claim.

**Relevant Factual Background**

The Plaintiff commenced this action against Officer Paul Galante, Officer Jack Pearson, the San Diego Chief of Police, William Landsdowne, and the San Diego Police Department by filing a complaint on February 6, 2009, alleging the following causes of action: 1) violation of the right of



1 how extensive it would be.” *Id.* at 671. The courts must weigh the potential benefits of disclosure  
2 against the potential disadvantages. If the latter is greater, the privilege bars discovery. *Sanchez v. City*  
3 *of Santa Ana*, 936 F.2d 1027, 1034 (9th Cir. 1990); *Jepsen v. Florida Bd. of Regents*, 610 F.2d 1379,  
4 1384-85 (5th Cir.1980); *Zaustinsky*, 96 F.R.D. at 625.

5 At issue in this motion is an 83 page IA report discussing Officer Galante’s accidental discharge  
6 of another officer’s firearm while off duty. In examining the Plaintiff’s request for this report, the Court  
7 looks at: 1) the relevancy of the information to the claims or defenses in this case; 2) the availability of  
8 the information from other sources; and 3) the relative proximity of these two events. The Plaintiff  
9 asserts that the IA report is relevant to the investigation, discipline, training and supervision of Officer  
10 Galante by the SDPD after the first allegation of misuse of a firearm as well as the Plaintiff’s *Monnel*  
11 claims. The Court has reviewed the IA report and finds that it is relevant for discovery purposes  
12 regarding the Plaintiff’s claims, the information is not available from another source and there was less  
13 than four months between the accidental discharge by Officer Galante on October 26, 2006 and Officer  
14 Galante’s February 10, 2007 use of deadly force which is the subject of the instant complaint.

15 The Defendants’ argue that the Court should deny the Plaintiff’s motion. Defendants contend,  
16 based on the declaration of the Executive Assistant Chief of Police David Ramirez, that the privilege  
17 against disclosure of official information should apply here and preclude disclosure.<sup>1</sup> However, because  
18 the qualified privilege against disclosure of information is not absolute and is subjected to a balancing  
19 test,<sup>2</sup> a general claim of harm to the public interest is not sufficient to overcome the Defendant’s burden.  
20 *See Kelly v. City of San Jose*, 114 F.R.D., 653, 660 (N.D. Cal. 1987). The Court has found the IA report  
21 to be relevant to the Plaintiff’s claims and the need for this information far outweighs the potential  
22 disadvantages of disclosure. Here, as in other civil rights cases against police departments, the IA report  
23 sought by the Plaintiff is in the possession of the SDPD and substitute documentation can not be

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25 <sup>1</sup> Specifically, the Defendants argue that disclosure will undermine the ability of the SDPD to  
26 conduct fair and through investigations into complaints of police misconduct, will erode the confidence  
27 of police officers and citizens involved in the investigatory process, will undermine and negatively  
28 affect the morale of all police officers in the SDPD, and will seriously disrupt the operation of the  
SDPD.

<sup>2</sup> In the context of civil rights suits against police departments, this balancing approach should be  
“moderately pre-weighted in favor of disclosure.” *See Kelly v. City of San Jose*, 114 F.R.D., 653, 661  
(N.D. Cal.1987).


1 provided by a comparable source. Moreover, the Defendant's concern, as expressed by Chief of Police  
2 David Ramirez, can be minimized by a carefully drafted protective order. *Sanchez v. City of Santa Ana*,  
3 936 F.2d 1027, 1034 (9th Cir. 1990); *Jepsen v. Florida Bd. of Regents*, 610 F.2d 1379, 1384-85 (5th  
4 Cir.1980); *Zaustinsky*, 96 F.R.D. at 625. However, while the Plaintiff asserts that a "carefully drafted  
5 protective order, [is one in which] only the Plaintiff and his lawyer have access to the material," given  
6 the Defendants concerns and the sensitive nature of the IA report, the Court sees no need for the  
7 Plaintiff to have access.

8 Conclusion

9 For the reasons set forth above, Plaintiffs' motion to compel is hereby GRANTED. The parties  
10 are ORDERED to meet and confer regarding the terms of the protective order and to filed a joint motion  
11 for protective order *on or before July 16, 2010*. Defendants shall produce the IA report to Plaintiff's  
12 counsel *within five (5) days of the protective order being approved by this Court*.

13 IT IS SO ORDERED.

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15 DATED: July 1, 2010

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18 Hon. Anthony J. Battaglia  
19 U.S. Magistrate Judge  
20 United States District Court  
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