

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
10

11 John Roettgen,

12 Plaintiff,

13 v.

14 Foston, et al,

15 Defendant.

Case No.: 13cv1101-GPC-BGS

**ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFF'S
MOTION TO COMPEL**

16
17 **I. FACTUAL AND PROCEDURAL BACKGROUND**

18 Plaintiff, a state prisoner proceeding *pro se*, filed this action under 42 U.S.C.
19 § 1983. Plaintiff's First Amended Complaint alleges that Defendants, correctional staff
20 at R.J. Donovan Correctional Facility, used excessive force against him on May 5, 2011,
21 and then retaliated against him when he reported the alleged incident of excessive force.
22 (ECF No. 14.)

23 On June 3, 2015, Plaintiff served Requests for Production of Documents on
24 Defendant Hernandez. (ECF No. 65-1 ¶ 2.) Document Request No. 1 seeks "on each
25 Defendant¹ all disciplinaries, internal affairs reports and/or investigations, court cases,
26

27 ¹ Although Plaintiff served his request on one defendant, his request seeks documents from all
28 defendants. In their privilege log, Defendants acknowledge that the request seeks information from
Officers J. Tolbert, G. Hernandez, C. Davis, M. Lee, J. Merchant, I. Bravo, and J. Pickett. (See ECF No.

1 CDCR 602 complaints, grievances, reprimands or any other reports or investigations.”²
2 ECF No. 84-1, Ex. 1.) Defendants responded to Plaintiff’s discovery requests on July 3,
3 2015. (ECF No. 84 at 2.) In their response, Defendants objected to Request No. 1 as (1)
4 protected by the official information privilege, (2) protected by privacy considerations,
5 (3) overbroad and (4) not reasonably calculated to lead to the discovery of admissible
6 evidence. (*Id.* at Ex. 2.) Defendants also produced a privilege log to Plaintiff which
7 described the documents withheld and the basis for withholding those documents. (ECF
8 No. 84-1, Ex. 4.)

9 Notwithstanding his objections, Defendants produced “documents consisting of
10 confidential reports related to the incident alleged in [Plaintiff’s] First Amended
11 Complaint.” (ECF No. 84 at 2.) Specifically, Defendants state that they produced “(1)
12 Report of Findings – Inmate Interview, (2) Incident Commander’s Review/Critique – Use
13 of Force Incidents, (3) Manager’s Review-First Level Use of Force Incidents, (4)
14 Manager’s Review – Second Level Use of Force Incidents, and (5) Institutional
15 Executive Review Committee Critique and Qualitative Evaluation.” (*Id.*) Defendants
16 also produced “documents related to additional training undertaken by Defendant
17 Hernandez as a result of the incident.” (*Id.*)

18 Plaintiff challenged Defendants’ objections in a motion to compel filed on March
19 15, 2016. (ECF No. 83.) Defendant filed his opposition to Plaintiff’s motion to compel
20 on March 17, 2016. (ECF No. 84.) Plaintiff filed his reply on April 18, 2016. (ECF No.
21 89.)

22 **II. PARTIES’ ARGUMENTS**

23 **a. Plaintiff’s Arguments**

24 Plaintiff’s discovery request seeks personnel records that relate to the Defendants’
25

26
27 84-1.) Given that Defendants have interpreted this request to apply to all Defendants in this case, and to
28 afford Plaintiff leniency given his status as a *pro-se* litigant, the Court will interpret this request as one
directed to all Defendants in this case.

² Plaintiff’s Request No. 1 is the only document request in dispute.

1 “misconduct in the past.” (ECF No. 83 at 2.) In his motion to compel, Plaintiff clarifies
2 that he requests this information in “log form” to alleviate any concerns regarding
3 confidential information.³ (*Id.* at 3.) Plaintiff argues that Defendants’ “general claim of
4 privilege . . . is insufficient to meet the threshold test for invoking the official information
5 privilege.” (*Id.* citing *Soto v. City of Concord*, 162 F.R.D. 603, 613-14 (N.D. Cal. 1995).

6 **b. Defendants’ Arguments**

7 First, Defendants contend that the documents sought by Plaintiff are protected by
8 the official information privilege, and he has properly met his burden to invoke it. (ECF
9 No. 84 at 8-9.) Second, Defendants argue that the documents sought by Plaintiff are
10 protected by the privacy privilege belonging not only to the defendants but also to third
11 party inmates. (*Id.* at 6-7.) Finally, Defendants assert that, if the Court finds the
12 documents are not protected from disclosure by the official information privilege or
13 privacy concerns, Plaintiff’s requests are overbroad because they are not limited by time,
14 relevant to the allegations in his complaint, or to grievances that actually resulted in
15 disciplinary action. (*Id.* at 2.)

16 **III. PLAINTIFF’S REQUEST FOR COURT CASES**

17 One of the categories of documents requested by Plaintiff in his Request for
18 Documents No. 1 is “court cases” involving each Defendant. The Court finds this request
19 for court cases to be vague and ambiguous. Plaintiff’s request could encompass lawsuits
20 against defendants, lawsuits which the defendants initiated, and even lawsuits in which
21 the defendants testified. Plaintiff’s request for “court cases” could also seek a list of
22 court cases in which each of the defendants is involved. Even though the Court finds this
23 request vague and ambiguous, the Court will afford Plaintiff the benefit of the doubt and
24 analyze the only two reasonable and relevant interpretations of this request: (1) Plaintiff
25

26
27 ³ Plaintiff’s suggestion that privacy concerns be mitigated through creation of a log is beyond what is
28 permissible in response to a request for production of documents under Federal Rule of Civil Procedure
34. Rule 34 only requires a party to produce documents that are already in existence[;]” a party is not
required to prepare new documents. *Alexander v. FBI*, 194 F.R.D. 305, 310 (D.C. Cir. 2000).

1 seeks documents from court cases in which each defendant is being sued for excessive
2 force or retaliatory conduct; (2) Plaintiff seeks a list of court cases in which each
3 defendant is being sued for excessive force or retaliatory conduct.

4 As for the possibility that Plaintiff is requesting court documents in which each
5 defendant is being sued for excessive force or retaliatory conduct, Plaintiff does not
6 address why he cannot access these documents since they are presumably public record,
7 as are most court documents. Under Federal Rule of Civil Procedure 26(b)(2)(C), the
8 Court may limit the frequency or extent of discovery otherwise allowed if the discovery
9 sought can be obtained from some other source that is more convenient, less burdensome,
10 or less expensive, or the burden imposed by the discovery outweighs its likely benefit
11 considering the parties' resources. To the extent Plaintiff seeks documents from court
12 cases in which a defendant is being sued for excessive force or retaliatory conduct, the
13 Court finds that request is unduly burdensome because such documents are equally
14 available to Plaintiff. Plaintiff can either retrieve the court documents himself, or retain
15 someone else to do so. Plaintiff has failed to offer any persuasive arguments as to why
16 the cost and burden of retrieving the court documents should be shifted to Defendants.
17 However, to the extent there are any documents in Defendants' custody, control, or
18 possession that **are not in the public record, identify lawsuits in which the**
19 **Defendants are being sued, relate to allegations of excessive force or retaliation, and**
20 **are not protected by attorney-client privilege**, those documents should be produced.

21 Another reasonable interpretation of Plaintiff's request for "court cases" is that he
22 would like a list of the court cases in which each defendant in his case is named as a
23 defendant in another proceeding with similar allegations of excessive force or retaliatory
24 conduct. Rule 34 permits a party to request documents in the responding party's
25 possession, custody, or control. Fed. R. Civ. P. 34(a)(1). However, Rule 34 only
26 requires a party to produce documents that are already in existence. *Alexander*, 194
27 F.R.D. at 310. A party is not required to prepare new documents solely for their own
28 production. *Id.*; *see also Goolsby v. Carrasco*, 2011 WL 2636099 *20-21 (E.D. Cal. July

1 5, 2011) (finding that a document request asking for the names of employees who
2 supervised the prison cage yard is not a proper request under Federal Rule of Civil
3 Procedure 34(a)); *Robinson v. Adams*, 2011 WL 2118753 *53 (E.D. Cal. May 27, 2011)
4 (denying a plaintiff's motion to compel responses to a document request seeking the
5 names of prison employees working in building two during a certain time period because
6 the request did not seek an identifiable document). Accordingly, Defendants are not
7 required to create a list of any of the lawsuits in which a defendant is being sued for
8 allegations of excessive force or retaliatory conduct.

9 Plaintiff's motion to compel with respect to "court cases" is **GRANTED** in part
10 and **DENIED** in part. As explained above, to the extent there are any documents in
11 Defendants' custody, control, or possession that **are not in the public record, identify**
12 **lawsuits in which the Defendants are being sued, relate to allegations of excessive**
13 **force or retaliation, and are not protected by attorney-client privilege**, those
14 documents should be produced. Otherwise, Plaintiff's motion to compel with respect to
15 his request for "court cases" is **DENIED**.

16 **IV. PLAINTIFF'S REQUEST FOR DISCIPLINARIES, INTERNAL AFFAIRS**
17 **REPORTS AND/OR INVESTIGATIONS, CDCR 602 COMPLAINTS,**
18 **GRIEVANCES, AND REPRIMANDS**

19 Defendants objected to Plaintiff's Request for Production No. 1 on the grounds that
20 it is overbroad, responsive documents are protected by the official information privilege,
21 and responsive documents implicate privacy concerns. Each objection is addressed
22 separately.

23 **a. Relevancy**

24 Before the Court analyzes whether the documents Plaintiff requested are protected
25 by the official information privilege, or implicate privacy concerns, the Court will
26 address Defendants' objections that Plaintiff's requests are overbroad. Defendants argue
27 that Plaintiff "did not limit his request by time, by relevance to the allegations in his
28 complaint, nor to grievances or investigations that actually resulted in discipline." (ECF

1 No. 84 at 2.)

2 **i. Applicable Law**

3 The recently revised Federal Rules provide:

4 Parties may obtain discovery regarding any nonprivileged matter that
5 is relevant to any party's claim or defense and proportional to the needs of
6 the case, considering the importance of the issues at stake in the action, the
7 amount in controversy, the parties' relative access to relevant information,
8 the parties' resources, the importance of the discovery in resolving the
9 issues, and whether the burden or expense of the proposed discovery
10 outweighs its likely benefit.

11 (Fed. R. Civ. P. 26(b)(1).) The party seeking to compel discovery has the burden of
12 establishing that its request satisfies the relevancy requirements of Federal Rule 26(b)(1).
13 *Soto*, 162 F.R.D. at 610. In turn, the party opposing discovery has the burden to show
14 that discovery should not be allowed, and has the burden of clarifying, explaining, and
15 supporting its objections. *DIRECTV, Inc. v. Trone*, 209 F.R.D. 455, 458 (C.D. Cal. 2002)
16 citing *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). The opposing
17 party may satisfy their burden by demonstrating how the discovery request is irrelevant,
18 overly broad, burdensome, or oppressive. *Khalilpour v. CELLCO P'ship*, 2010 WL
19 1267749, at *3 (N.D. Cal. Apr.1, 2010); *see also Oppenheimer Fund, Inc. v. Sanders*, 437
20 U.S. 340, 353 fn. 17, 98 S.Ct. 2380, 57 L.Ed.2d 253 (1978).

21 Federal Rule 26(b)(2)(C) also requires the court, on motion or on its own, to limit
22 the frequency or extent of discovery otherwise allowed by the rules if it determines that
23 (1) "the discovery sought is unreasonably cumulative or duplicative, or can be obtained
24 from some other source that is more convenient, less burdensome, or less expensive;" (2)
25 the party seeking discovery has had ample opportunity to obtain the information by
26 discovery in the action;" or (3) "the proposed discovery is outside the scope permitted by
27 Rule 26(b)(1)." Fed. R. Civ. P. 26(b)(2)(C)(i)-26(b)(2)(C)(iii). The Court must also limit
28 discovery when "the burden or expense of the proposed discovery outweighs its likely

benefit.” Fed. R. Civ. P. 26(b)(1).

ii. Analysis

Defendants request the Court narrow responsive documents to only those that (1) involve allegations of excessive force, (2) resulted in discipline and (3) occurred within the past five years. The Court addresses each argument in turn.

1. Limiting Defendants’ Production To Documents Involving Excessive Force

Plaintiff’s First Amended Complaint involves allegations that Defendants violated his First, Eighth and Fourteenth Amendment rights. (*See generally* ECF No. 14.) However, his discovery request seeks documents regarding *any* disciplinary action, complaint, or grievance for each Defendant. Documents responsive to this request would necessarily include disciplinary actions unrelated to alleged excessive force or retaliation. While the Court acknowledges the relevance of certain disciplinary records, complaints or grievances as having the potential to reveal the defendant officers’ patterns of behavior, the Court agrees that Plaintiff’s request is too expansive.

However, the Court rejects Defendants’ argument that any production be limited to documents involving allegations of excessive force. Disciplinary documents, complaints or grievances related to claims of retaliation or untruthfulness would also be relevant to Plaintiff’s claims and could be used to show a pattern of behavior or impeach a witness’s testimony. Thus, any production should be limited to complaints, grievances or disciplinary actions involving excessive force, retaliation, or untruthfulness.

2. Limiting Defendants’ Production to Complaints or Grievances that Resulted in Discipline

Defendants request that any production be limited to complaints, grievances or investigations that resulted in discipline. The Court finds this limitation too narrow. For example, if a Defendant received a series of complaints from inmates for excessive force that never resulted in discipline, such information could still be useful to Plaintiff to establish not only a pattern of behavior by that individual defendant, but also arguably a

1 pattern of complacency by the prison management. The Court finds that complaints or
2 grievances, even if they did not result in discipline, are relevant to Plaintiff's claims and
3 must be produced.

4 **3. Limiting Defendants Production to Complaints or** 5 **Grievances Within the Last Five Years**

6 Defendants request that any production be limited to documents regarding
7 complaints, grievances, or disciplinary actions which occurred within the past five years.
8 The Court disagrees. While the Court acknowledges Defendants' argument that incidents
9 remote in time have less probative value, such a determination is beyond the scope of this
10 Court's analysis for the purposes of discovery. Indeed, that determination is more
11 appropriate for the trial judge in the context of a motion *in limine*. At the discovery
12 stage, this Court need only recognize the relevance of the information that could be
13 garnered from the requested documents, and that the request is proportional to the needs
14 of the case. The Court finds that records of grievances, complaints, investigations or
15 disciplinary actions spanning each Defendants' employment at Richard J. Donovan
16 Correctional Facility are relevant to Plaintiff's claims, and proportional to the needs of
17 his case.

18 **iii. Conclusion**

19 The Court **OVERRULES** in part, and **SUSTAINS**, in part, Defendants'
20 objections. The Court finds that, subject to the additional analysis below regarding
21 official information privilege and privacy concerns, relevant documents subject to
22 production include **all disciplinary records, internal affairs reports and/or**
23 **investigations, CDCR 602 complaints, grievances, and/or reprimands that involve**
24 **allegations of excessive force, retaliation, or untruthful conduct involving each of the**
25 **Defendants throughout the course of their employment at Richard J. Donovan**
26 **Correctional Facility.**

27 **b. Privacy Rights**

28 Defendants also contend that disclosure of the requested documents would invade

1 the privacy of the individual defendants, and any inmates who filed complaints against
2 them. (ECF No. 84 at 6-7.) Defendants argue that requiring them to produce grievance
3 and discipline histories to an inmate in the same prison “would allow an inmate to
4 undermine the officers’ authority, and would expose the officers to threats to release the
5 information, and even blackmail.” (ECF No. 84 at 6.) According to Defendants, these
6 privacy concerns outweigh Plaintiff’s need for the documents, and therefore, the
7 documents should not be produced. (*Id.* at 7.) Because the Court has already determined
8 that certain documents Plaintiff seeks are irrelevant and should not be produced, its
9 analysis of the privacy implications of the requested documents is limited only to the
10 documents the Court has determined are relevant and subject to production.

11 **i. Applicable Law**

12 Federal Courts ordinarily recognize a constitutionally-based right of privacy that
13 can be raised in response to discovery requests. *See Breed v. United States Dist. Ct. for*
14 *Northern District*, 542 F.2d 1114, 1116 (9th Cir. 1976) (balancing the invasion of
15 minor’s privacy rights against the court’s need for ward files); *Johnson by Johnson v.*
16 *Thompson*, 971 F.2d 1487, 1497 (10th Cir. 1992), *cert. den.* 507 U.S. 910, 113 S.Ct.
17 1255, 122 L.Ed.2d 654 (1993) (denying discovery of names of participants in a medical
18 study due to privacy interests of the individual participants); *Cook v. Yellow Freight Sys.,*
19 *Inc.*, 132 F.R.D. 548, 550–51 (E.D. Cal. 1990) (balancing targeted individual's right of
20 privacy against public’s need for discovery in employment discrimination case).

21 However, the right to privacy is not absolute and can be outweighed. Courts
22 generally balance the need for the information against the severity of the invasion of
23 privacy. *See Ragge v. MCA/Universal Studios*, 165 F.R.D. 601, 604–05 (C.D. Cal. 1995)
24 (finding that disclosing employment records is not “unusual or unexpected”). Disclosure
25 of documents that implicate privacy concerns must be narrowly construed to limit the
26 invasion “to the extent necessary for a fair resolution of the law suit.” *Id.* at 605
27 (quoting *Cook*, 132 F.R.D. at 552).

28 In the context of the disclosure of police files, courts have recognized that privacy

1 rights are not inconsequential and should be given “some weight.” *Kelly*, 114 F.R.D. at
2 656; *Denver Policemen’s Protective Ass’n. v. Lichtenstein*, 660 F.2d 432, 435 (10th Cir.
3 1981). However, “district courts in the Ninth Circuit have found that the privacy interests
4 police officers have in their personnel files do not outweigh the civil rights plaintiff’s
5 need for the documents.” *Soto*, 162 F.R.D. at 617.

6 **ii. Analysis**

7 Plaintiff seeks documents such as inmate grievances and complaints, as well as
8 disciplinary records and investigations. The Court acknowledges that these documents
9 may contain private information such as social security numbers and addresses.
10 However, this invasion of privacy must be balanced with Plaintiff’s need for the
11 information. Importantly, any invasion of the Defendants’ privacy interests can be
12 mitigated through a protective order (*Soto*, 162 F.R.D. at 617) and by redacting sensitive
13 information. *See Lamon v. Adams*, 2010 WL 4513405, at *3–4 (E.D. Cal. Nov. 2, 2010)
14 (ordering redaction of the names of the inmates who filed grievances against correctional
15 officer before documents were provided to plaintiff). These measures will greatly reduce
16 the invasion of privacy that would occur with production of the documents at issue.

17 **iii. Conclusion**

18 Most of the privacy concerns posited by Defendants can be mitigated through the
19 use of a protective order, and by redacting sensitive information from the requested
20 documents. The Court, therefore, grants Defendants permission to redact any sensitive
21 information from all documents prior to disclosure. Any remaining privacy concerns do
22 not outweigh Plaintiff’s interest in the documents. Accordingly, Defendants’ privacy
23 objection is **GRANTED** in part and **OVERRULED** in part.

24 **c. Official Information Privilege**

25 Because the Court has already determined that certain documents Plaintiff seeks
26 are irrelevant and should not be produced, its analysis of the official information privilege
27 is limited only to the documents the Court has determined are relevant and subject to
28 production.

1 **i. Applicable Law**

2 The documents Plaintiff seeks are generally found in an employee’s personnel file
3 and are generally considered “official information.” *Miller v. Pancucci*, 141 F.R.D. 292,
4 299 (C.D. Cal. 1992) (citing *Sanchez v. City of Santa Ana*, 936 F.2d 1027, 1033 (9th Cir.
5 1990) cert den., 502 U.S. 957, 112 S.Ct. 417, 116 L.Ed.2d 437 (1991)). Federal common
6 law recognizes a qualified privilege for official information. *Sanchez*, 936 F.2d at 1033.
7 Thus, the official information privilege applies to the requested documents.

8 In determining what level of protection should be afforded by this privilege, courts
9 conduct a case by case balancing analysis, in which the interests of the party seeking
10 discovery are weighed against the interests of the governmental entity asserting the
11 privilege. *Sanchez*, 936 F.2d at 1033–34; *Kelly v. City of San Jose*, 114 F.R.D. 653, 660
12 (N.D. Cal. 1987); *Miller*, 141 F.R.D. at 300; *Hampton v. City of San Diego*, 147 F.R.D.
13 227, 230-31 (S.D. Cal. 1993).

14 First, the party opposing disclosure must make a substantial threshold showing.
15 *Soto*, 162 F.R.D. at 613. The party opposing disclosure “must submit a declaration or
16 affidavit from a responsible official with personal knowledge of the matters to be attested
17 to in the affidavit.” *Id.* The affidavit must include:

- 18 (1) an affirmation that the agency generated or collected the material
19 at issue and has maintained its confidentiality; (2) a statement that the
20 official has personally reviewed the material in question; (3) a specific
21 identification of the governmental or privacy interests that would be
22 threatened by disclosure of the material to plaintiff and/or his lawyer; (4) a
23 description of how disclosure subject to a carefully crafted protective order
24 would create a substantial risk of harm to significant governmental or
25 privacy interests, and (5) a projection of how much harm would be done to
26 the threatened interests if disclosure were made.

27 *Id.*; see also *Chism v. County of San Bernardino*, 159 F.R.D. 531, 533 (C.D. Cal. 1994);
28 *Hampton*, 147 F.R.D. at 230–31; *Miller*, 141 F.R.D. at 301.

1 If the party invoking the privilege fails to satisfy this threshold burden the
2 documents in issue should be disclosed. *Soto*, 162 F.R.D. at 613. If the threshold
3 showing requirements are met, the court must weigh whether confidentiality outweighs
4 the requesting party's need for the information. *Hampton*, 147 F.R.D. at 231; *see also*
5 *Kelly*, 114 F.R.D. at 657–58.

6 *Kelly v. City of San Jose* set forth ten non exhaustive factors for courts to consider
7 in determining whether a category of documents is protected by the official information
8 privilege: (1) the extent to which disclosure will thwart governmental processes by
9 discouraging citizens from giving the government information; (2) the impact upon
10 persons who have given information of having their identities disclosed; (3) the degree to
11 which government self-evaluation and consequent program improvement will be chilled
12 by disclosure; (4) whether the information sought is factual data or evaluative summary;
13 (5) whether the party seeking the discovery is an actual or potential defendant in any
14 criminal proceeding either pending or reasonably likely to follow from the incident in
15 question; (6) whether the police investigation has been completed; (7) whether any
16 intradepartmental disciplinary proceedings have arisen or may arise from the
17 investigation; (8) whether the plaintiff's suit is non-frivolous and brought in good faith;
18 (9) whether the information sought is available through other discovery or from other
19 sources; and (10) the importance of the information sought to the plaintiff's case. 114
20 F.R.D. at 663.

21 **ii. Discussion**

22 **1. Adequacy of Declaration**

23 The affidavit in support of a claim of the official information privilege must
24 include:

25 (1) an affirmation that the agency generated or collected the material in issue
26 and has maintained its confidentiality; (2) a statement that the official has
27 personally reviewed the material in question; (3) a specific identification of
28 the governmental or privacy interests that would be threatened by disclosure

1 of the material to plaintiff and/or his lawyer; (4) a description of how
2 disclosure subject to a carefully crafted protective order would create a
3 substantial risk of harm to significant governmental or privacy interests, and
4 (5) a projection of how much harm would be done to the threatened interests
5 if disclosure were made.

6 *Soto*, 162 F.R.D. at 613; *see also Chism*, 159 F.R.D. at 533; *Hampton*, 147 F.R.D. at
7 230–31; *Miller*, 141 F.R.D. at 301.

8 **a. Defendant’s Declaration**

9 In support of his assertion of the official information privilege, Defendants provide
10 a declaration from of S. Garcia, Staff Services Manager I at Richard J. Donovan
11 Correction Facility. (ECF No. 84-1, Ex. 3.) S. Garcia’s declaration states that
12 “[d]isclosure of one or more of the personnel files would threaten both governmental and
13 privacy interests” because “[c]orrectional staff could be reluctant to discipline or create
14 documents reflecting discipline if such documents could be used by inmates in litigation
15 against individual officers.” (ECF No. 84-1, Ex. 3.) The declaration further states that
16 disclosure “could have a chilling effect on the willingness of departmental officers and
17 employees to provide personal information about themselves and their families if they
18 knew such information would be turned over to inmates or their attorneys for use against
19 them in civil lawsuits.”⁴ (*Id.*) S. Garcia explains that employees would be less likely to
20 “share potentially important information regarding job performance, health and safety
21 concerns, and security concerns if they knew such information would be turned over to
22 inmates or their attorneys[.]” (*Id.*) S. Garcia states that disclosure of the requested
23 documents “could have a negative impact on internal investigations and assessments of
24 officers and employees and have a negative impact on taking corrective actions.” (*Id.*)

25
26
27 ⁴ Defendants’ provide support for both their assertion of official information privilege and privacy
28 implicates privacy concerns and can be mitigated by the Court allowing all personal information to be
redacted. The Court addressed Defendants’ privacy arguments above, in section IV(b).

1 will have a “negative impact” or a “chilling effect” on some aspect of prison
2 administration or security is unhelpful and fails to establish that the potential
3 disadvantages of disclosure outweigh the potential benefits of disclosure. S. Garcia’s
4 declaration fails to provide *specific* information about how disclosure of the *specific*
5 documents requested would threaten a *specific* governmental interest at stake. The only
6 harm asserted in S. Garcia’s declaration is that disclosure “could” negatively impact the
7 disciplinary procedures, inhibit communication, or put the employees and the employee’s
8 family and others at “substantial risk of harm.”⁵ (ECF No. 84-1, Ex. 3, ¶ 5.) S. Garcia
9 also asserts that disclosure “of one or more of the personnel files” will “have a chilling
10 effect” on “departmental officers” or “employees[.]” (*Id.* at ¶ 4.) The vague assertions of
11 harm in S. Garcia’s declaration are insufficient to afford the protection of the official
12 information privilege. *See, e.g., Bernat*, 2010 WL 4008361 *3; *see also Soto*, 162 F.R.D.
13 at 614. Moreover, S. Garcia’s declaration fails to describe how disclosure subject to a
14 carefully crafted protective order would create a substantial risk of harm to significant
15 governmental or privacy interests. *Soto*, 162 F.R.D. at 614.

16 Because S. Garcia’s declaration in support of Defendants’ assertion of privilege
17 lacks the requisite specificity and fails to allege more than a general assertion of potential
18 harm, Defendants have not made a threshold showing.⁶ However, even if they had made
19 a threshold showing, Plaintiff’s need for documents outweighs the government’s
20 confidentiality interests, thus necessitating disclosure of the documents.

21
22
23 ⁵ Defendants’ concerns regarding the risk of harm if certain information is produced are valid, especially
24 in light of the over breadth of Plaintiff’s original request. However, because the Court has limited the
25 documents subject to production to only those that are relevant to Plaintiff’s claims, the Court finds that
26 any remaining harm is minimal and can be cured through use of a protective order and by allowing
27 Defendants to redact sensitive information as provided in section IV(b).

28 ⁶ Notably, in *Bernat* and *Soto*, even though the Court found the defendants’ declarations insufficient to
invoke the official information privilege, the Court still narrowed the production only to documents
relevant to the plaintiff’s claims. *See, e.g., Bernat*, 2010 WL 4008361 *8 ([with respect to a request for
disciplinary records] “the Court concludes that only incidents that are similar to the one at issue are
relevant, and, therefore, discoverable.”); *see also Soto*, 162 F.R.D. at 615 (describing categories of
relevant documents subject to disclosure after an in camera review).

1 **iii. Conclusion**

2 The Court finds that Defendants did not meet their threshold showing required to
3 assert the official information privilege over the requested documents, as narrowed by
4 this Court’s relevancy ruling above in section IV(a). Moreover, the Court further finds
5 that Plaintiff’s need for those relevant documents outweighs Defendants’ interest in
6 confidentiality. Accordingly, the Court **OVERRULES** Defendants’ objection based on
7 the official information privilege.

8 **V. DISCLOSURE SHALL OCCUR SUBJECT TO PROTECTIVE ORDER**

9 Courts have fulfilled a plaintiff’s need for discovery while protecting a defendant’s
10 privacy by ordering the production of documents subject to a protective order limiting
11 access to the material at issue to plaintiff, his counsel, and those experts who would
12 require such information to formulate an opinion. *Soto*, 162 F.R.D. at 617.

13 The Court finds that a protective order will serve the interests of both parties in
14 facilitating discovery, while also protecting the government’s interests. Therefore, the
15 Court orders the parties to enter into a protective order governing the documents that the
16 Court has ordered to be disclosed. Defendants shall submit a proposed protective order
17 to Plaintiff for his signature no later than **May 18, 2016**. After execution by all parties,
18 the proposed protective order shall be submitted to the Court no later than **June 1, 2016**.

19 **VI. CONCLUSION**

20 For the above stated reasons, Plaintiff’s Motion to Compel is **GRANTED** in part
21 and **DENIED** in part.

22 1. The parties are ordered to enter into a protective order prior to exchanging
23 any documents. Defendants shall submit a proposed protective order to Plaintiff for his
24 signature no later than **May 18, 2016**. After execution by all parties, the proposed
25 protective order shall be submitted to the Court no later than **June 1, 2016**.

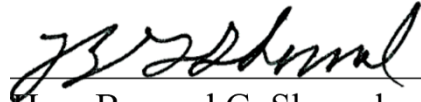
26 2. Upon court approval of the protective order, Defendants must produce **all**
27 **disciplinary records, internal affairs reports and/or investigations, CDCR 602**
28 **complaints, grievances, and/or reprimands that involve allegations of excessive**

1 **force, retaliation, or untruthful conduct involving each of the Defendants**
2 **throughout the course of their employment at Richard J. Donovan Correctional**
3 **Facility.**

4 3. Service of the documents ordered disclosed shall occur within **seven (7)**
5 **calendar days** of when the Court signs the protective order.

6 IT IS SO ORDERED.

7 Dated: May 4, 2016

8 
9 Hon. Bernard G. Skomal
United States Magistrate Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28