

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Misty Clark,	:	
	:	
Plaintiff	:	Civil Action 2:11-cv-0980
	:	
v.	:	Judge Sargus
	:	
Ryan Britton,	:	Magistrate Judge Abel
	:	
Defendant	:	

### Discovery Dispute Conference Order

On March 1, 2013, counsel for the parties participated in a telephone discovery dispute conference with the Magistrate Judge. Plaintiff Clark seeks two categories of information: (1) the names of inmate who were questioned by investigators who were investigating plaintiff's allegation that defendant Britton raped her; and (2) Officer Britton's deployment dates.

Inmate names. Relying on ODRC Policy 07-ORD-03, defendants maintain that—even if relevant to material disputed facts—plaintiff cannot obtain the names of other inmates because she is a former inmate. ODRC Policy 07-ORD-03 provides, in relevant part: “An inmate shall not be permitted to obtain information from the Record Office File of another inmate or former inmate.” ([http://www.drc.ohio.gov/web/drc\\_policies/drc\\_policies.htm](http://www.drc.ohio.gov/web/drc_policies/drc_policies.htm) Accessed March 1, 2013.) The Policy defines a “Record Office File” as

A four part file that contains copies of the official court documents and/or other confidential information pertaining to an inmate's institutional adjustment. The file is maintained in OnBase under MF-Records Sections 1 through 4 and/or the Reception Center Record Office or any other secure area designated by the Managing Officer at the institution Reception Centers.

*Id.*<sup>1</sup>

Defendants' counsel also argue that because Ms. Clark originally gave the investigators the inmate names, she doesn't need to obtain them from defendants. Plaintiff's counsel responded that the investigation took place three years ago and Ms. Clark does not now remember all the names she provided investigators. Defendants further maintain that the inmate names will not lead to admissible evidence because most of them could not recall any relevant information at the time they were interviewed by investigators. Finally, defendants' counsel said that plaintiff's counsel may have access to the Ohio State Highway Patrol investigative report.

I suggested that unredacted copies of the documents at issue be produced subject to an attorneys' eyes only protective order. Absent some substantial showing that the safety of an inmate or former inmate would be jeopardized by the disclosure, a party suing state actors cannot be deprived of access to discoverable evidence. It may be that Ms. Clark would never have a need to learn the identity of the inmates who provided the information to investigators. For example, plaintiff's counsel might talk with them and determine they had no information relevant to disputed material issues of fact. If an inmate was deposed, plaintiff could assist her attorneys by telephone during the deposition and would not have to learn the inmate's identity.

Defendants' counsel did not believe that resolution would protect her client's and

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<sup>1</sup>I note that it would not appear from this definition that the investigators' reports here at issue would be part of the individual inmates' Record Office Files.

the ODRC's interests and requested an opportunity to brief the issue. Accordingly, it is ORDERED that plaintiff file a motion to compel on or before **March 8, 2013**. Defendants must file their memorandum in opposition on or before **March 15**. Any reply brief must be filed on or before **March 22, 2013**.

Deployment dates. Plaintiff seeks Officer Britton's deployment dates to determine whether he voluntarily sought deployment overseas to cause this lawsuit to be stayed during the deployment. Defendants maintain the information is not relevant to any issue in this lawsuit. If plaintiff wants to address this issue, she should do so in her March 8 motion to compel.

s/Mark R. Abel \_\_\_\_\_  
United States Magistrate Judge