

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

## **MEMORANDUM IN OPPOSITION TO MOTION FOR PROTECTIVE ORDER**

Defendants have asked the Court to enter a protective order (submitted as ECF 25-1) that differs from this District's Model Order, General Order 12-0018. Defendants do not explain the need for any modification of the Model Order, let alone the extensive modifications they propose. More importantly, defendants fail to show cause for issuance of any protective order.

As Rule 26(c) makes plain, the Court “has the power to issue a protective order only upon a showing of ‘good cause.’” *Jepson, Inc. v. Makita Elec. Works, Ltd.*, 30 F.3d 854, 858 (7th Cir. 1994). This Court recognized in *Prince v. Kato*, 18-CV-2952, 2019 WL 3554533 (N.D. Ill. July 30, 2019),

that the burden to show “good cause” lies with the party seeking the protective order. *Id.* at \*2. Defendants fail to meet their burden.

Defendants assert a need to protect disciplinary (“CR”) files of Chicago police officers. (ECF No. 25 at 1.) Plaintiff, however, has not requested any CR files. Nor will plaintiff in the future request production of any CR files.

### **I. Facts**

In February of 2020, defendants Chicago police officers Delgado and Swank stopped Chauncey Carnes’s car and took Carnes into custody for a few hours. This case centers on the lawfulness of that detention.

After the stop but before this action was initiated, Carnes filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the Central District of Illinois (ECF No. 26, Amended Complaint, ¶ 3) and assigned his claim arising out of the traffic stop to the trustee in bankruptcy. The trustee, Jeana K. Reinbold, is the plaintiff in this case solely in her capacity as Chapter 7 Trustee of the Bankruptcy Estate of Chauncey Ramon Carnes. (ECF No. 26, Amended Complaint, ¶¶ 4-6.)

Plaintiff contends that the Officers Delgado and Swank did not have “a lawful basis to conduct the traffic stop and appear to have been motivated by their perceptions of Carnes’s race.” (ECF No. 26, Amended Complaint, ¶ 15.) After making the traffic stop, the officers detained Carnes for several

hours because they suspected that Carnes had failed to register under the Sex Offender Registration Act (“the Act” or “SORA”), 730 ILCS 150/1 et seq. (ECF No. 25, Amended Complaint, ¶¶ 22-36.) Plaintiff contends that a “reasonably prudent police officer” would not have believed that there was a lawful basis to detain Carnes for a suspected violation of the Act. (ECF No. 25, Amended Complaint, ¶ 23.) Plaintiff alleges that a municipal policy, described in paragraphs 39-45 of the amended complaint, was a cause of the detention (ECF No. 25, Amended Complaint, ¶ 28) and therefore seeks to impose liability on the City of Chicago.

Defendants Delgado and Swank recorded the traffic stop on body cameras; defendant City of Chicago has produced these recordings without any limitation on dissemination.

Plaintiff has not sought production of any disciplinary (“CR”) files of Officer Delgado, Officer Swank, or any other police officer. Nor has plaintiff sought production of the personnel files of these officers. Moreover, plaintiff will not in the future seek production of the disciplinary or personal files of any Chicago police officers.

Because plaintiff does not seek CR files or personnel files, this case is unlike cases where “[c]ourts in this district have properly found good cause

to require confidential treatment of CR files.” *Prince v. Kato*, 18-CV-2952, 2019 WL 3554533, at \*3 (N.D. Ill. July 30, 2019).

The document now at issue, and which defendants will not produce without a confidentiality order, is the statement Carnes made to Chicago’s Civilian Office of Police Accountability (“COPA”) about the incident. (ECF No. 25, Amended Complaint, ¶ 38.) (See email exchange, attached as Exhibit 1.)

Defendants do not mention the COPA file in the motion for protective order and do not assert any reason for Carnes’ statement to be confidential. Defendants have thus failed to show “good cause” for entry of a protective order.

## **II. Defendants Have Failed to Justify Modifications to the Model Order of General Order 12-0018**

Defendants appear to base their proposed modifications to the District’s Model Order on a need for special protection of Complaint Registers (“CRs”) of Chicago police officers. Defendants mistakenly assert that plaintiff seeks the following:

1. Documents containing confidential information relating to parties and non-parties are being sought in this matter. Specifically, discovery relating to investigation files commonly referred to as Complaint Registers (“CRs”) of Chicago police officers are at issue.

(ECF No. 25, ¶ 1.) As plaintiff explained above, this is incorrect.

Starting from this incorrect assertion, defendants propose that a confidentiality order include any material that is “prohibited from disclosure by statute.” Defendants do not explain why they require the Order to contain an additional category of material that they contend is also protected by statute. (ECF No. 25-1 at 3.) Defendants do not explain why they insist on modifying “prohibited from disclosure” in the Model Order to “protected from disclosure.” (ECF No. 25-1 at 2.)

Nor do defendants explain why the Illinois Freedom of Information Act has any application in this federal lawsuit. (ECF No. 25-1 at 2.) “[I]t is unsound to equate FOIA exemptions to similar discovery privileges.” *People ex rel. Birkett v. City of Chicago*, 184 Ill. 2d 521, 529, 705 N.E.2d 48, 52 (1998) (citing *Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1336, 1344 (D.C. Cir. 1984)). Another judge considering a similar proposed order by the City rejected this attempt to import the exemptions of the Illinois Freedom of Information Act. *Jackson v. City of Chicago*, No. 14 C 6746, 2017 WL 5478303, at \*3 (N.D. Ill. Nov. 14, 2017).

Among other proposed changes, the City fails to explain its new paragraph about redaction. (ECF No. 25-1 at 6.) Whether there is a basis to withhold material in discovery by redacting it is a question that should be resolved through the discovery process. There is no basis to give defendants free reign to withhold material in a confidentiality order.

### **III. Conclusion**

Plaintiff has not requested, and will not request, any CR files. The need to limit dissemination of such files is the linchpin of defendant's motion. The Court should therefore deny the motion for a protective order. When, and if, a confidentiality order is required in this case, the Court should enter this District's Model Confidentiality Order.

Respectfully submitted,

/s/ Kenneth N. Flaxman  
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**Kenneth Flaxman** <knf@kenlaw.com>

Tue, Apr 6, 2021 at 9:30 AM

To: "Mimi M. Medalle" <mmedalle@zuberlawler.com>

Cc: "jaf@kenlaw.com" <jaf@kenlaw.com>, "Eileen M. Letts" <eletts@zuberlawler.com>, "Peter F. Heraty" <pheraty@zuberlawler.com>, Cheryl Friedman <Cheryl.Friedman1@cityofchicago.org>

we have found the copa letter. supplemental discovery response is attached.

I assume that the City will reach out to copa to get Mr. Carnes's statement and whatever else they have.

-knf

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**Cheryl Friedman** <Cheryl.Friedman1@cityofchicago.org>

Tue, Apr 6, 2021 at 11:47 AM

To: Kenneth Flaxman <knf@kenlaw.com>, "Mimi M. Medalle" <mmedalle@zuberlawler.com>

Cc: "jaf@kenlaw.com" <jaf@kenlaw.com>, "Eileen M. Letts" <eletts@zuberlawler.com>, "Peter F. Heraty" <pheraty@zuberlawler.com>, Marion Moore <Marion.Moore@cityofchicago.org>

Good Morning -

We're going to need a confidentiality order before the Defendants produce any of that material. Please see attached proposed confidentiality order and let me know if I may file it as agreed.

Thank you,

Exhibit 1