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JUDGE KATHERINE M. STOLZ
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

JOSEPH J. KIRBY and DEBORAH A.
KIRBY, husband & wife,

Plaintiffs,

vs.

THE CITY OF TACOMA, a municipal
corporation, RAY CORPUZ and "JANE
DOE" CORPUZ, husband & wife, PHILLIP
ARREOLA and "JANE DOE" ARREOLA,
husband & wife; WILLIAM WOODWARD
and "JANE DOE" WOODWARD, husband
& wife; RAYMOND ROBERTS and
"JANE DOE" ROBERTS, husband & wife;
DAVID BRAME and "JANE DOE"
BRAME, husband & wife; and JAMES
HAIRSTON and "JANE DOE"
HAIRSTON, husband & wife,

Defendants.

NO. 99 2 13911 4

MOTION OF TACOMA POLICE
MANAGEMENT ASSOCIATION FOR
PROTECTIVE ORDER

6 DEC 26 2001

I. MOTION/RELIEF REQUESTED

COMES NOW the TACOMA POLICE MANAGEMENT ASSOCIATION (TPMA), a
Washington not for profit corporation, by and through its attorney, STEPHEN M. HANSEN, of
the law firm of LOWENBERG, LOPEZ & HANSEN, P.S., and pursuant to Superior Court Civil
Rule 26(c), moves the above-entitled Court for a protective order in opposition.

MOTION OF TACOMA POLICE MANAGEMENT
ASSOCIATION FOR PROTECTIVE ORDER - 1

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ORIGINAL

1 **II. EVIDENCE RELIED UPON**

- 2 1. Motion (with exhibits and declarations) of Defendants City of Tacoma *et al.*
 3 2. Declaration of Mark Langford

4 **III. DECLARATION**

5 I, MARK LANGFORD, DECLARE UNDER PENALTY OF PERJURY AS FOLLOWS:

- 6 1. I am the current acting President of the TACOMA POLICE MANAGEMENT
 7 ASSOCIATION ("TPMA"). I submit this declaration in support of the instant
 8 motion to motion for protective order. I am competent to testify to the facts in
 9 this declaration.
- 10 2. The TPMA is a Washington not for profit corporation. Its members consist of all
 11 commissioned officers of the Tacoma Police Department who are of the rank of
 12 either Captain or Lieutenant. The TPMA is the exclusive bargaining
 13 representative with the City of Tacoma for the Captains and Lieutenants. I am a
 14 Tacoma Police Officer. My current rank is that of Captain. Before being
 15 promoted to the rank of Captain, I served as a Lieutenant for a period of 10 years.
- 16 3. The TPMA respectfully moves for a protective order be issued in accordance with
 17 CR 26(c). TPMA joins the motion filed by the above-named Defendants and
 18 specifically incorporates said Defendants' motion and supporting materials by
 19 reference.
- 20 4. The Plaintiffs are seeking production of all the named defendant's "pre-hire" files
 21 (with the exception of Phillip Arreola), and are seeking production of *all* pre-hire
 22 files for all police lieutenants *employed by the City of Tacoma for the past ten*
 23 *years*. These files are not a part of a police officer's regular personnel file. They
 24 are kept separate and locked. They contain such personal information as pre-
 25 employment questionnaires, criminal history, lie detector tests and results,
 26 psychological test results, and independent investigative reports.
- 27 5. The Plaintiffs' discovery request would require disclosure of information that is

1 highly confidential and personal to the current and former police Lieutenants. The
 2 City of Tacoma has opposed the dissemination of this information on behalf of the
 3 named defendants. Any ruling of this Court will also affect the rights of
 4 individuals who are not named defendants; namely, those who are members of the
 5 TPMA. The rights of retired individuals could be affected as well.

- 6 6. The information contained in the "pre-hire" files is all highly personal to each
 7 applicant. In many instances disclosure of such information could cause
 8 embarrassment as the information contains information pertaining to the
 9 applicant's physical and mental health, creditworthiness, job history, drug use and
 10 criminal history. Each applicant submitted this information in order to be
 11 considered for a position of employment, but with the expectation that such
 12 information would be held in strict confidence.

13 THIS STATEMENT IS TRUE AND CORRECT TO THE BEST OF MY
 14 KNOWLEDGE AND SIGNED UNDER PENALTY OF PERJURY UNDER
 THE LAWS OF THE STATE OF WASHINGTON.

15 DATED AT TACOMA, Washington, this ___ of December, 2001.

16
 17 
 18 MARK LANGFORD

19 IV. AUTHORITIES

20 The Tacoma Police management Association joins with the City of Tacoma and the
 21 named defendants herein in urging the Court to deny the Plaintiffs' requests to compel or obtain
 22 discovery as to the "pre-hire" files on the basis that the information contained within the files is
 23 neither relevant nor calculated to lead to discoverable evidence. In the event that the Court
 24 concludes that information from said files is discoverable, the TPMA alternatively requests that
 25 the Court fashion a protective order that will ensure that the privacy interests of the affected
 26 individuals are protected to their fullest extent.
 27

1 CR 26(c) provides, in part, as follows:

2 (c) Protective Orders. Upon motion by a party or by the person
 3 from whom discovery is sought, and for good cause shown, the
 4 court in which the action is pending or alternatively, on matters
 5 relating to a deposition, the court in the county where the
 6 deposition is to be taken may make any order which justice
 7 requires to protect a party or person from annoyance,
 8 embarrassment, oppression, or undue burden or expense, including
 9 one or more of the following: (1) that the discovery not be had; (2)
 10 that the discovery may be had only on specified terms and
 11 conditions, including a designation of the time or place; (3) that the
 12 discovery may be had only by a method of discovery other than
 13 that selected by the party seeking discovery; (4) that certain matters
 14 not be inquired into, or that the scope of the discovery be limited to
 15 certain matters; (5) that discovery be conducted with no one
 16 present except persons designated by the court; (6) that the
 17 contents of a deposition not be disclosed or be disclosed only in a
 18 designated way; (7) that a trade secret or other confidential
 19 research, development, or commercial information not be disclosed
 20 or be disclosed only in a designated way; (8) that the parties
 21 simultaneously file specified documents or information enclosed in
 22 sealed envelopes to be opened as directed by the court. If the
 23 motion for a protective order is denied in whole or in part, the
 24 court may, on such terms and conditions as are just, order that any
 25 party or person provide or permit discovery.

26 CR 26(b) permits broad discovery of any matter that is relevant to the claims and not
 27 privileged. *Rhinehart v. Seattle Times Co.*, 98 Wn.2d 226, 232, 654 P.2d 673 (1982). But under
 28 CR 26(c), the trial court may restrict discovery for good cause "to protect a party or person from
 annoyance, embarrassment, oppression, or undue burden or expense...." CR 26(c). It is within the
 trial court's discretion to fashion suitable protective orders. *John Doe v. Puget Sound Blood Ctr.*,
 117 Wn.2d 772, 778, 819 P.2d 370 (1991); *Kramer v. J.I. Case Mfg. Co.*, 62 Wn.App. 544, 556,
 815 P.2d 798 (1991).

As our Supreme Court has observed,

the effective administration of justice does not require
 dissemination beyond that which is needed for litigation of the
 case. It was the needs of litigation and only those needs for which
 the courts adopted this rule and demanded of the litigant a duty
 which would not otherwise be his. ***For this reason, it is proper
 that the courts be slow to subject a civil litigant to any exposure
 which he deems offensive, beyond that which serves the purpose
 of the rule.***

Rhinehart v. Seattle Times Co., 98 Wash.2d 226, 236, 654 P.2d 673 (1982), *aff'd*, 467 U.S. 20

1 (1984)(emphasis added).

2 Under the Superior Court Civil Rules "the trial court exercises a broad discretion to
3 manage the discovery process in a fashion that will implement the goal of full disclosure of
4 relevant information and at the same time afford the participants protection against harmful side
5 effects." *Rhinehart v. Seattle Times Co.*, 98 Wn.2d at 226. Protection orders under the Civil
6 Rules are "meant to protect the health and integrity of the discovery process, as much as to
7 protect the parties who participate in it." *Id.* at 256. As a result, trial courts are afforded
8 substantial latitude to decide when a protective order is appropriate and what degree of protection
9 is required given the unique character of the discovery process. *Marine Power & Equipment Co.*
10 *v. State Dep't of Transportation*, 107 Wn.2d 872, 875, 734 P.2d 480 (1987).

11 Washington courts recognize that the right of privacy to applies to "the intimate details of
12 one's personal and private life..." *Police Guild v. Liquor Control Board*, 112 Wn.2d 30, 38, 769
13 P.2d 283 (1989)(citations omitted). In *Cowles Publishing v. State Patrol*, 44 Wn.App. 882, 724
14 P.2d 379 (1986) the Division III appellate court discussed what sort of information the "personal
15 information" exception to the Washington Public Disclosure Act was intended to protect:

16 Such information might include, but is not limited to, the particular
17 employee's union dues, charitable contributions, deferred
18 compensation, medical records, disabilities, employment
19 performance evaluations, and reasons for leaving employment.
Likewise, the phrase may include those sensitive records relating to
health, or marital and family information necessary for calculating
health plans, job benefits, and taxes.

20 *Cowles Publishing v. State Patrol*, 44 Wn.App. at 891 (citation omitted).

21 A trial court may properly deny a discovery request when the burden of the request
22 outweighs the potential relevance. *City of Seattle v. McConahy*, 86 Wn.App. 557, 570 n. 5, 937
23 P.2d 1133, *review denied*, 133 Wn.2d 1018 (1997). This is the case in the instant matter. Here,
24 the discovery requests should be denied as there has been no showing that the requests are
25 relevant or that the requests would lead to the disclosure of admissible evidence. In the
26 alternative, in the event the Court authorizes such discovery, such discovery should be narrowly
27 limited to specifically enumerated documents within the pre-hire files upon proof by the


1 Plaintiffs that such documents satisfy the relevancy requirements of CR 26 (CR 26(c)(4)).
2 Moreover, any information which would identify the applicant should be redacted (CR 26(c)(2)),
3 such materials should not be distributed to third parties outside the scope of this litigation CR
4 26(c)(2)), and any documents should filed be filed under seal CR 26(c)(2) & (6)). The Court
5 should additionally order such other terms as the Court may deem appropriate to protect the
6 privacy interests of the affected individuals.

7 **V. CONCLUSION**

8 For the reasons set forth above, the Tacoma Police Management Association respectfully
9 requests that its motion be GRANTED.

10 RESPECTFULLY SUBMITTED December 21, 2001.

11 LOWENBERG, LOPEZ & HANSEN, P.S.

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14 _____
15 STEPHEN M. HANSEN, W.S.B.A.#15642
16 Attorney for Tacoma Police Management
17 Association
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