

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMY BUHALO : CIVIL ACTION
 :
 v. :
 :
 POLICE OFFICER JAMES FALLON, JR. ;
 POLICE OFFICER TIMOTHY CARRE ;
 CITY OF PHILADELPHIA : NO. 03-04727-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

June 2, 2006

Plaintiff asserts she was sexually molested by the defendant police officers in 2002. She is suing them and the City of Philadelphia for civil rights violations and related torts. The defendant police officers were criminally prosecuted, entered pleas of *nolo contendere*, and were sentenced. Plaintiff's claims against the City of Philadelphia assert that the City is liable for inadequately training the police officers, and for tolerating an atmosphere of seeming indifference to police sexual misconduct. The defendant City of Philadelphia now seeks a protective order to preclude certain discovery sought by plaintiff.

At an earlier stage, the City provided plaintiff's counsel with information concerning all complaints of sexual misconduct by Philadelphia police officers which may have occurred up to and including the date of the alleged assault on plaintiff. Plaintiff now seeks to compel production of similar information with respect to subsequent complaints. The City

seeks to bar such additional discovery, on the theory that complaints against other police officers for conduct occurring after the assault on plaintiff would be entirely irrelevant to any issue in the present case.

It is true, as the City contends, that the City's handling of later complaints against other police officers cannot be regarded as proof that the defendant officers were not properly trained. Liability in this case is dependent upon whether or not the defendant police officers' wrongful conduct was due to their having received inadequate training - not on whether other police officers may later have also received inadequate training. Nor can it be assumed that later policies were also in effect at the time of plaintiff's assault. Thus, the later history is not directly relevant to any issue in this case. On the other hand, however, if the evidence tends to show that, before plaintiff's assault, the City had a policy of ignoring or minimizing complaints against police officers, evidence that the frequency of post-2002 complaints against police officers changed significantly could well provide corroboration (or refutation) of plaintiff's contentions concerning the adequacy of the City's handling of complaints of sexual misconduct by police officers.

In my view, therefore, whether the City should be required to disclose what complaints of misconduct subsequent to

plaintiff's assault occurred, and how they were handled, depends upon the inferences which may reasonably be drawn from the information concerning pre-assault events. If the information already disclosed provides at least some support for plaintiff's claims, information concerning post-assault events is discoverable. Absent such a showing, information about later complaints and how they were handled would be neither relevant nor likely to lead to relevant information. Plaintiff will therefore be afforded a brief further period in which to provide the court with a brief summary of the information thus far produced concerning pre-assault complaints against police officers, and how such complaints were handled.

An Order follows.

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ORDER

AND NOW, this 2nd day of June 2006, upon
consideration of defendant's motion for a protective order and
plaintiff's response, IT IS ORDERED:

1. Within 30 days, plaintiff may provide this court
with a brief summary of the information thus far produced
concerning pre-assault events, as discussed in the accompanying
Memorandum.

2. Ruling on the pending motion for protective order
is DEFERRED for that period.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.