

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

JOHN DEVORE : CIVIL ACTION
 :
 v. :
 :
 CITY OF PHILADELPHIA, et al. : NO. 04-3030

MEMORANDUM AND ORDER

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE February 15, 2005

The Plaintiff has filed a Motion to Compel the production of documents from the Pennsylvania State Police, (“PSP”). The PSP, which is not a party to this case, opposes the motion, and in response, has filed a Motion to Quash. The Defendants have filed a Memorandum in Partial Support of the Motion to Compel. For the reasons that follow, we will grant the Motion to Compel in part and grant the Motion to Quash in part.

At the root of Plaintiff’s case against the Defendants is his claim that the Defendants sabotaged his employment opportunities by disclosing his employment and criminal history record and by stating that he was fired from his position as a Philadelphia Police Officer. The PSP happens to be one of the potential employers who did not hire the Plaintiff. The question is “why.”

The Plaintiff seeks all background, investigation, and interview, hiring records, files, memoranda, and reports concerning John Devore and his application for employment. In addition, the Plaintiff seeks the records of those hired and not hired for a two year period prior to

2002, through the time that the Plaintiff was disqualified from employment.¹ The PSP objects to both requests and has filed a Motion to Quash the subpoena.

A. Records Relating to Plaintiff’s Application and Investigation

The PSP argues that the background investigation, records, and other information concerning the decision not to hire the Plaintiff are confidential and privileged. Thus, argues the PSP, the public’s interest in the candor necessary to conduct the candidate screening outweighs the Plaintiff’s need for the information used in his background investigation. The PSP points out that “it is of paramount public importance that those interviewed regarding an applicant display complete candor to the investigator.” See PSP Response, at 5. Thus, disclosure of the information provided “frustrates the interest of the public and the purpose of the background investigation.” Id.

Although the court recognizes the interest the PSP has in the confidentiality of Mr. Devore’s background investigation records, we also recognize that these records may be the lynchpin to either the Plaintiff’s case or the City’s defense. Thus, we believe a compromise will satisfy both the parties’ need for the records and the PSP’s interests in maintaining their confidentiality. See Miles v. Boeing Co., 154 F.R.D. 112, 115 (E.D. Pa. 1994)(employee personnel files are confidential and their discovery should be limited whenever possible).

The PSP proposes that if it is ordered to produce Mr. Devore’s records, it be permitted to redact all information regarding third parties. We do not believe such a broad redaction is necessary. Instead, we believe redaction of all identifying information regarding

¹The Plaintiff also seeks the guidelines used for selecting cadets, troopers, or other members of the PSP, and the guidelines which formed the basis of the decision not to hire Mr. Devore. The PSP has previously provided this information. See PSP Response, at 2.

third parties is appropriate. Thus, the PSP will be required to produce the personnel and investigational records, even if the information was provided by a third party. However, the PSP need not identify, by name, the source of the information if the information was provided by someone other than a party to this case. It will be sufficient if the PSP simply notes that the requested information was supplied to PSP by a “third party.”

It must be remembered here that the issue is solely one of why the PSP decided not to hire Mr. Devore. Whether the information given to the PSP by third parties was accurate or not is simply irrelevant, so long as the PSP relied on that information. As a result, the identities of these third parties need not be disclosed.

B. Information Regarding Other Candidates

The Plaintiff also seeks “the records of those hired and not hired, for a two year period prior to 2002 and post the decision not to hire the Plaintiff, which records concern persons similarly situated as John Devore.” See PSP Response, at 3. With respect to this request, we will deny the Plaintiff’s Motion and grant the PSP’s Motion to Quash.

Although we believe the request is unduly burdensome and overbroad, and again involves disclosure of confidential material, our decision rests on the fact that these records are irrelevant to this case. This is not a case against the PSP for some type of discrimination, wherein the Plaintiff is attempting to prove some type of pretext argument. The issue is whether the Plaintiff was denied employment because the City, its officials, or employees, released information that should not have been released. Thus, the only question we are interested in is, “why didn’t the PSP hire Mr. Devore?” The PSP’s actions regarding other candidates for employment is irrelevant to this case.

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ORDER

AND NOW, this 15th day of February, 2005, upon consideration of the Plaintiff's Motion to Compel, the Response of the Pennsylvania State Police, the Response of the Defendant, and the Motion of the Pennsylvania State Police to Quash, and for the reasons stated in the accompanying Memorandum, IT IS HEREBY ORDERED that the Motion to Compel is GRANTED IN PART and DENIED IN PART. The Pennsylvania State Police shall produce the records regarding the Plaintiff, redacting any identifying reference to third parties. In all other respects the Plaintiff's Motion to Compel is DENIED. IT IS FURTHER ORDERED that the Motion to Quash filed by the Pennsylvania State Police is GRANTED IN PART AND DENIED IN PART. To the extent the Movant seeks to quash the subpoena for records of employment candidates, other than the Plaintiff, the Motion is GRANTED.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE