

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

JABARR ROSSER : CIVIL ACTION
 :
 v. :
 :
 THE CITY OF PHILADELPHIA, et al. : NO. 05-514

ORDER AND OPINION

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE

DATE: September 9, 2005

For the following reasons, this Court will grant Plaintiff's Motion to Compel the Complete, Unredacted Informant's File. Defendant the City of Philadelphia must produce this file to counsel for Plaintiff no later than Tuesday, September 13, 2005.

In his motion to compel, Rosser points out that the City has not described the contents of the informant's file, nor has it explained why each document in the file is subject to privilege. The City, on the other hand, argues that Rosser has not explained his need for the file. Rosser wins on this point. The party claiming the benefit of an evidentiary privilege bears the burden of persuasion on the applicability of the privilege. See McCrink v. Peoples Benefit Life Ins. Co., Civ. A. No. 04-1068, 2004 WL 2743420 at *7 (E.D. Pa. Dec. 29, 2004); Saldi v. Paul Revere Life Ins. Co., 224 F.R.D. 169, 194 (E.D. Pa. 2004).

Rosser has also pointed out that the City has not even specifically named the privilege it is asserting. He assumed the "law enforcement privilege" was intended. Since the City has not said otherwise in its response to Rosser's motion, I will make the same assumption.

The Honorable Stewart Dalzell described this privilege in Saunders v. City of Philadelphia, Civ. A. No. 97-3251, 1997 WL 400034 (E.D. Pa. Jul. 11, 1997):

[T]he federal “law enforcement” privilege is a qualified privilege designed to prevent the disclosure of information that would be contrary to the public interest in the effective functioning of law enforcement. A federal Court applying the privilege must weigh the Government’s interest in ensuring the secrecy of the materials in question against the need of the adverse party to obtain the information. See Torres v. Kuzniasz, 936 F. Supp. 1201, 1209 (D.N.J. 1996). Among the list of factors useful in weighing these competing interests are: (1) the extent to which disclosure will thwart governmental processes by discouraging citizens from giving the government information; (2) the impact upon persons who have given information of having their identities disclosed; (3) the degree to which governmental self-evaluation and consequent program improvement will be chilled by disclosure; (4) whether the information sought is factual data or evaluative summary; (5) whether the party seeking the discovery is an actual or potential defendant in any criminal proceeding either pending or reasonably likely to follow from the incident in question; (6) whether the police investigation has been completed; (7) whether an intradepartmental disciplinary proceedings have arisen or may arise from the investigation; (8) whether the plaintiff’s suit is non-frivolous and brought in good faith; (9) whether the information sought is available through other discovery or from other sources; and (10) the importance of the information sought to the plaintiff’s case. See Frankenhauser v. Rizzo, 59 F.R.D. 339, 344 (E.D. Pa. 1973).

Id. at *5.

Obviously, the disclosure of an informant file raises some general law enforcement concerns, such as whether it will discourage citizens from giving the government information. Otherwise, however, the Saunders factors do not favor the City. The City has already represented that the confidential informant at issue in this case is no longer at her last known address, and that, in fact, she is believed to live in Florida. It is clear, therefore, that disclosure of her file will have no impact on any matter in which she was involved which may still be pending; her involvement was ended long before Rosser requested the file. It is similarly clear that the disclosure of the informant’s file will have little impact on the informant herself, and should not endanger or inconvenience her.

The importance of this information to Rosser is significant. Central to his case is the allegation that the contact between him and this confidential informant, which was the predicate for his trial on drug charges, never took place. He suggests that the informant may not even exist. Therefore, access to the informant file would be meaningful, as far as can be determined without further information as to the contents of the file. Obviously, it is not material which can be obtained from another source. I conclude that the file is discoverable. Because trial will take place in ten days, it should be produced as soon as possible.

Accordingly, I will now enter the following:

ORDER

AND NOW, this 9th day of September, 2005, upon consideration of Plaintiff's Motion To Compel, docketed in this case as Document No. 23, and the City's response thereto, it is hereby ORDERED that Plaintiff's Motion is GRANTED; and it is further

ORDERED that the City shall produce the complete and unredacted Informant's File to counsel for Plaintiff no later than Tuesday, September 13, 2005.

BY THE COURT:

JACOB P. HART
UNITED STATES MAGISTRATE JUDGE