

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 18-cv-03204-RBJ

LORI FRANK,

Plaintiff,

v.

CITY OF FORT COLLINS, a municipality, and  
JEROME SCHIAGER, former Deputy Chief of Police, in his individual capacity,

Defendants.

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**DEFENDANT SCHIAGER'S JOINDER IN MOTION FOR PROTECTIVE ORDER**

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Defendant JEROME SCHIAGER, former Deputy Chief of Police, joins in the Defendant City's September 13, 2019, Motion for Protective Order (Doc. 43), and makes additional arguments.

Undersigned counsel certifies under D.C.Colo.LCiv R 7.1(A) that he has consulted with counsel for Plaintiff who opposes this motion.

1. Defendant Jerry Schiager joins in the Defendant City's motion for a protective order, as it relates to him, on the two subpoenas that Plaintiff issued to two employment investigation companies to produce by September 13, 2019, all documents on every investigation that the companies did for the City in the three years ending December 31, 2018. Plaintiff's subpoenas are directed at investigations that the City contracted for, but some of the documents Plaintiff seeks relates to personal matters involving Schiager that are completely irrelevant to the claim against him in this lawsuit and are invasion of his

privacy rights. Therefore, Schiager has standing to make this objection to documents relating to him.

2. Plaintiff has made only one claim against Schiager, for denial of equal protection for retaliation and discrimination. On August 20, 2019, this Court partially granted Schiager's motion to dismiss, ruling that his alleged disparate treatment prior to December 14, 2016, was barred by the statute of limitations, and acts since February 7, 2017, when he ceased to be Plaintiff's supervisor were moot because there were none as Plaintiff conceded (Doc. 40, pp. 11-12). The Court did identify three alleged acts within the remaining approximate 50-day period between December 14, 2016, and February 2017, that could support Plaintiff's claim against Schiager (*Id.*).

3. In discovery, Plaintiff requested all investigations and related documents that the City had conducted or hired outside firms to conduct. The City has produced to Plaintiff the three reports that could possibly relate to plaintiff and her claims that the City and/or Schiager retaliated and/or discriminated against her: (1) the March 3, 2017, report done by Workplace Investigations (known at the time as Mountain States Employers Council) on Plaintiff's complaints against Schiager; (2) the May 10, 2017, report by Employment Matters/Flynn Investigation Group reviewing and confirming the findings in the investigation of Workplace Investigations identified in (1) above; and (3) the May 30, 2017, report by Employment Matters/Flynn Investigations Group of a complaint by Laura Lunsford, then a police officer, that she may have been the victim of gender discrimination on the 2010 promotion process to sergeant (this report has a short statement about Schiager that was redacted, and will be discussed below). The City also has produced most of Schiager's personnel file and will produce the balance soon.

4. The City objected to producing further investigation reports and documents on the basis of relevancy and other grounds. Rather than challenge the City's objections in this Court's discovery dispute process, Plaintiff served the subject subpoenas on the two investigation firms.

5. Schiager contends that production of these additional reports goes beyond the scope of discovery under Fed. R. Civ. P. 26 (b)(1), which generally provides that unless limited by court order, the parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense, and proportional to the needs of the case. Reports and the documents related to them that do not address Plaintiff's claims, or even the legal issues in Plaintiff's case, cannot meet the standard in Rule 26 (b)(1). Schiager also contends that because of the nature of some of the reports and documents subject to the subpoenas, he is entitled to a protective order Fed. R. Civ. P. 26(c) to avoid annoyance, embarrassment or oppression.

6. For background, on August 4, 2016, the then Police Chief, John Hutto, sent an email to police department employees asking those "who have experienced discrimination, retaliation or been targeted in some way" to make complaints that would be addressed. According to Plaintiff, police employees made 14 complaints with 62 allegations against 12 other employees (Doc. 2, complaint, ¶ 4).

7. Schiager was one of the 12 employees about whom complaints were made by other employees. This resulted in what Schiager understands to be four investigation reports on Schiager by Employment Matters/Flynn Investigations Group. One of these reports was the one relating to the 2010 complaint by Ms. Lunsford, as noted above,

which was produced by the City because it related to an allegation of possible discrimination.

8. The City objected to producing the other three reports that related to Schiager. The most extensive of those reports, dated April 27, 2017, was on seven allegations against Schiager, all of which relate to events a number of years earlier, some “as far back as 15 years,” according to the investigator’s report. None of these allegations relate to Plaintiff, discuss her complaints about Schiager (which were the subject of separate reports that were produced), or address any claims that he discriminated or retaliated against female employees. One of the other reports is a more detailed report on one allegation addressed in the April 27, 2017, report.

9. Not only is the full report on the seven allegations irrelevant to Plaintiff’s case, but some of the allegations against Schiager are of a very personal and offensive nature, even including one about Schiager’s wife. These personal allegations were found by the investigator to be without any merit. They should not be produced to the Plaintiff, even under an order of confidentiality. This is a situation where the Plaintiff is currently a co-worker with Schiager and has expressed strong dislike for Schiager in documents she has produced. She should not have possession of baseless rumors that she may use against Schiager, perhaps long after this Court’s jurisdiction ends. Further, the report contains very personal information about nonparties, some of whom are believed to be co-workers. Alternatively, Schiager requests that this Court conduct an *in camera* review of the 32-page report and any related documents including the complaints themselves before ordering it and any related documents produced to Plaintiff.

10. The last unproduced investigative report known to Schiager, dated June 22, 2017, relates to Schiager's role in hiring a Financial Analyst for the Police Department in Spring 2016. The person hired for the job was Erik Martin, who Plaintiff alleges in her complaint is the male comparator on her equal pay claim (a point that the Defendants dispute). But, the hiring process for Martin had nothing to do with Plaintiff, except possibly as to his pay if the Court concludes he is a valid comparator. Besides the lack of relevance, the report and the documents that relate to it contain personal information about Martin, not a party, that should not be revealed to Plaintiff about her co-workers. Again, if the Court considers ordering this report and related documents produced, Schiager requests that the Court review the report and related documents on an *in camera* basis. This report does not contain personal information about Schiager, but the underlying documents may as Schiager does not have access to such documents.

11. Plaintiff also objects to redactions that the City made in certain documents that it produced that also are covered by Plaintiff's subpoenas. For example, on the report relating to the complaint by Laura Lunsford, she is quoted as repeating a rumor about Schiager that is one of the offensive personal issues that someone raised about Schiager, and the investigator rejected, as discussed above on the April 27, 2017, report. Schiager asks that such redactions about him not be removed or, alternatively, that the Court review them first on an *in camera* basis.

12. In summary, the Court should quash the two subpoenas and enter a protective order on the privacy issues addressed above.

Respectfully submitted,

Date: September 13, 2019

s/ David R. DeMuro  
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CERTIFICATE OF SERVICE

I hereby certify that on this 13<sup>th</sup> day of September, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following e-mail addresses:

**Jennifer Robinson**  
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and I hereby certify that the foregoing was placed in the U.S. Mail, postage prepaid, and addressed to the following:

[none]

s/ David R. DeMuro  
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