

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-03204-RBJ-NRN

LORI FRANK,

Plaintiff,

vs.

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

Defendant.

**DEFENDANT CITY OF FORT COLLINS MOTION FOR DESIGNATION OF
CONFIDENTIALITY PURSUANT TO PROTECTIVE ORDER**

Defendant City of Fort Collins, by and through its counsel, Cathy Havener Greer and Kathryn A. Starnella of Wells, Anderson & Race, LLC, and pursuant to D.C.COLO.LCivR. 7.2 and the Stipulated Protective Order approved by the Court on May 8, 2019 (Doc. 32) move for the Court to designate as confidential certain portions of deposition testimony of Terry Jones, Erik Martin, and Greg Yeager. In support of this Motion, the City states:

CERTIFICATION PURSUANT TO D.C.COLO.LCivR. 7.1(a).

Counsel for the City of Fort Collins emailed all counsel on January 29, 2020 a list of portions of the deposition transcripts of Terry Jones, Erik Martin, and Greg Yeager to be designated as confidential under paragraphs 4 and 5c of the protective order entered May 8, 2019, (Doc#32). On February 6, 2020, Plaintiff's counsel emailed that she did not agree to any portion

of the transcripts being designated confidential. Counsel for Plaintiff, counsel for Defendant Schiager, and undersigned counsel discussed the issue and Plaintiff's counsel opposes this Motion.

1. The Stipulated Protective Order defines Confidential Information at paragraph 4 to include information, documents or material that are "protected by a statutory, regulatory, or common law right of privacy or protection, or otherwise contain nonpublic personal, personnel, employment...or other information implicating privacy interests...of the Plaintiff, any of the Defendants, or other persons, including non-parties, providing discovery in this case...".

2. The transcript portions designated by the City as confidential relate to information about non-parties and to personnel information that is considered by and treated by the City as confidential. The designated portions are attached as Exhibit A to the City's Motion to Restrict Public Access and seek to designate those transcript portions as Level 1 restricted documents pursuant to D.C.COLO.LCivR 7.2.

3. Because the parties were unable after conferral to agree to the confidentiality designation of any portions of the deposition transcripts of Mr. Jones, Mr. Martin, or Mr. Yeager, the undersigned is obligated under the terms of the Protective Order to file an appropriate motion requesting the Court to determine whether the disputed information should be subject to the terms of the Protective Order and to show good cause for the confidentiality request. (Doc. 32, paragraph 13.).

4. This case involves allegations of gender discrimination and pay equity brought by Plaintiff, a civilian employee of Fort Collins Police Services (FCPS). Terry Jones is the former interim Police Chief of Fort Collins and Erik Martin is the financial analyst for FCPS. Out of a one hundred page deposition transcript of Mr. Jones, the City seeks to designate only two and one-

half pages of transcript as confidential because those pages relate to a personnel issue involving a former employee who was a sworn officer and is not a party. The deposition transcript of Mr. Martin, who is not in Plaintiff's chain of command, is forty-two pages long, and the City requests that eight pages of transcript relating to testimony about a pending investigation into a personnel matter raised by a non-party be designated confidential. The testimony of Mr. Yeager, the current Deputy Chief of Police of FCPS, is one hundred nineteen pages and the City requests that a total of 7 pages of transcript be designated as confidential. The portion of the transcript that the City requests be designated as confidential relates to the same investigation that Mr. Martin testified about.¹

5. In addition to the protection afforded confidential information under the Stipulated Protective Order, this Court has entered Orders protecting the confidentiality of personnel information in this case, including an Order of Judge Jackson on September 16, 2019 concerning certain investigative and personnel matters, originally designated "attorneys eyes only" and later modified to "confidential" by an Order of Magistrate Judge Neureiter on November 4, 2019, who also denied "additional production related to various investigations" (Doc. 54). Magistrate Judge Neureiter also ordered that other documents are to continue to have a Level 1 restriction, over Plaintiff's objection. (Doc. 72 and Doc. 74). The order of the Magistrate Judge cited *Seattle Times Co. V. Rhinehart*, 467 U.S. 20, 34-35 (1984), for the proposition that "pretrial depositions and interrogatories are not public components of a civil trial."

¹ The City also joins in the Motion of Defendant Schiager to have certain portions of the testimony of Mr. Yeager made confidential.

6. If the confidentiality designation is not applied to the deposition transcript portions, these personnel matters concerning non-parties may become part of the public domain and could be disclosed by Plaintiff to current and former employees of FCPS who would not have access to such information absent this litigation.

7. Defendant City files herewith a Motion requesting a Level 1 restriction in accordance with D.C.COLO.LCivR 7.2(b) with respect to the portions of transcripts, attached as Exhibit A to the Motion to Restrict.

WHEREFORE, the City of Fort Collins respectfully moves this Court to restrict public access to the portions of deposition transcripts that are the subject of this Motion for Designation of Confidentiality Pursuant to Protective Order for the reasons stated above. A proposed Order is filed herewith for the Court's consideration.

Dated this 21st day of February, 2020.

Respectfully submitted,

s/ Cathy Havener Greer

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 21, 2020, a true and correct copy of the above and foregoing **DEFENDANT CITY OF FORT COLLINS MOTION FOR DESIGNATION OF CONFIDENTIALITY PURSUANT TO PROTECTIVE ORDER** was electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following email addresses:

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