

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:18-cv-03204

LORI FRANK,

Plaintiff,

v.

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

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANT CITY OF FORT COLLINS
MOTION TO RESTRICT PUBLIC ACCESS TO EXHIBIT A, (DOC # 85)

Plaintiff, through her undersigned counsel, responds to DEFENDANT CITY OF FORT COLLINS MOTION TO RESTRICT PUBLIC ACCESS TO EXHIBIT A (DOC # 85) as follows:

1. Judge Jackson's Practice Standards state:

I have no problem with whatever restrictions you wish to place on one another's treatment of such material. **However, I will presume that anything filed with the court is public information.** Restriction of public access is appropriate for such things as Social Security numbers, residential addresses and **true** trade secrets and may be appropriate for other categories such as criminal histories and medical information. If documents containing truly personal or trade secret information must be filed, then consider redacting that information. If it is critical that I see the information, then request a narrow order restricting public access and show good cause. Please certify in your motion that you have reviewed the Court's practice standards and have tailored your proposed order accordingly, and I will grant it. (Emphasis in original).

2. Here Defendant has not shown good cause to restrict any testimony from the depositions of Terry Jones, Erik Martin, and Greg Yeager or to designate any of the testimony as confidential. None of the testimony is truly personal or meets Judge Jackson's standards for any

other purpose.

3. Defendant argues that the information relates to non-parties and to personnel information that is considered by and treated by the City as confidential.

4. However, this is a lawsuit about employment discrimination. It is not unique or in any way different from the dozens of other employment lawsuits filed in this court every year. Employment lawsuits necessarily involved evidence of pretext and evidence related to “similarly situated” individuals. Moreover, “circumstances giving rise to an inference of discrimination” can also involve non-parties and personnel records.

5. Employment lawsuits also involve complaints about other incidents of discrimination. The undersigned has been litigating similar lawsuits as a plaintiff’s attorney for the last 25 years and has NEVER been involved in a case where the court has restricted access to the public because it involves information about “non-parties.” Even a cursory review of employment law decisions by the 10th Circuit demonstrates that information about non-parties and personnel information about other employees is routinely made available to public access.

6. Moreover, the City has deposed at least 5 of its female employees and former employees about their complaints of discriminatory conduct against supervisors in the police department and has not attempted to restrict any of the deposition testimony of those five individuals.

7. Defendant simply attempts to cherry-pick the evidence it wants the public to have access to and tie Plaintiff’s hands by restricting non-favorable information from public access. Information that, the public has a right to know because the City of Fort Collins is a public employer.

8. In addition, Defendants argue that, “no alternative to restriction will adequately

protect the privacy interests in question.” That is not true. The undersigned has offered to not identify certain female employees by name and simply refer to them as “Female Employee or Former Employee # 1; Female Employee or Former Employee # 2, . . .”

9. Such a solution could also potentially work under these facts but the City has not suggested or attempted any such solution. The problem for the City is not its attempt to protect the personnel information of non-parties but its attempt to cover-up its wrongful conduct from public scrutiny.

10. The true and unstated issue is that the City of Fort Collins has been under intense public scrutiny for its practices and conduct by the Police Department in terms of its treatment of women and seeks to limit that public scrutiny to the extent it can. In this case, by claiming that testimony showing unfavorable and discriminatory practices within the Police Department or evidence that might support circumstances giving rise to an inference of discrimination, pretext or character evidence are personal and should be confidential and the public should be restricted from knowing about it.

11. In that regard, the Coloradan Newspaper printed an article on February 12, 2020 concerning a Police Departments police brutality case and stating that the settlement of that lawsuit was "the tip of the iceberg" in terms of Fort Collins police-related lawsuits.” Link at: <https://www.coloradoan.com/story/news/2020/02/12/fort-collins-settles-police-brutality-lawsuit-off-duty-cop-chancellor-sparacio/4725694002/>.

12. This is not just cause to restrict public access to any of the deposition testimony.

13. Accordingly, because Defendant has not shown good cause Plaintiff respectfully requests that the Court deny the Motion to Restrict and grant the public access to Defendant’s Exhibit A to its Motion to Restrict.

Respectfully submitted this 25th day of February 2020.

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CERTIFICATE OF SERVICE

The undersigned certifies that on February 25, 2020 a true and correct copy of the foregoing was electronically served via email to the following:

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