

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 FOR DESIGNATION OF CONFIDENTIALITY PURSUANT TO PROTECTIVE
ORDER (DOC # 87)

Plaintiff, through her undersigned counsel, responds to DEFENDANT CITY OF FORT COLLINS MOTION FOR DESIGNATION OF CONFIDENTIALITY PURSUANT TO PROTECTIVE ORDER (DOC # 87) as follows:

1. Defendant has not shown good cause to designate any of the testimony from the depositions of Terry Jones, Erik Martin and Greg Yeager confidential. None of the testimony is truly personal.

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

3. 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.

4. 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" or other employees. 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.

5. 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.

6. 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.

7. In its Motion, Defendant seeks to malign Plaintiff's character by implying that such information "could be disclosed by Plaintiff to current and former employees" if not designated as confidential

8. What Defendant fails to inform the court is that Plaintiff was present at all of the depositions taken. They were taken weeks ago on December 16, 2019. The information was not designated as confidential during the depositions but just a day before Defendant filed its Motion for Summary Judgment on January 30, 2020. Had plaintiff truly wanted to disclose any

information she heard during the depositions to any other employee (which she does not), she could have done so weeks ago because the information was not designated as confidential during the deposition.

9. 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 treat the deposition testimony as confidential.

13. Accordingly, Plaintiff respectfully requests that the Court deny the City's Motion.

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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