

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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JOHN GROSS,

Plaintiff,

OPINION & ORDER

v.

14-cv-782-wmc

WARDEN BOUGHTON *et al.*,

Defendants.

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The court is in receipt of *pro se* plaintiff John Gross's motion for issuance of six separate subpoenas or orders to compel in advance of the evidentiary hearing on plaintiff's motion for immediate relief from imminent danger scheduled for Wednesday, January 28 (dkt. #19), along with defendants' response (dkt. #23). The court takes up each such request in turn.

*First*, pursuant to the telephonic scheduling conference held on January 7, Gross has written to clarify the spelling of the name of Lieutenant Cichanowicz, whom he previously asked be present at the hearing. (*See* Tr. (dkt. #18) 29:18-23.) Defendants have no objection to this request, so the subpoena against Lieutenant Cichanowicz will issue. Defendants' counsel is to advise the U.S. Marshal promptly if defendants will accept this subpoena on Cichanowicz's behalf.

*Second*, Gross asks that defendant Captain Gardener be subpoenaed, based on his purported role as a gang coordinator at Wisconsin Secure Program Facility ("WSPF"). In response, defendants represent that Captain Gardener is *not* the gang coordinator at WSPF. Rather, non-party Lebbeus Brown is and will be present at the evidentiary hearing. This appears to be sufficient for purposes of acquiring the testimony of the gang coordinator for

the January 28 hearing. Accordingly, the court will not require Captain Gardener to be present provided that defendants' counsel ensures that Brown is made available.

*Third*, Gross seeks to compel defendants to produce "any and all incident reports, confidential informant statements, anonymous notes/statements generated on or about Paul Hendler and Derek Kramer." (Mot. (dkt. #19) 1.) He further requests reports that specifically pertain to an incident in which Hendler, through Jacob Baker, recruited another inmate to carry out attacks in the High Risk Offender Program ("HROP"), but was apparently reported and instead carried out an attack in the General Population. Defendants object to the general request as overly broad, but have agreed to produce copies of any incident reports WSPF has regarding Hendler, Kramer or Baker attacking or threatening guards or other inmates (presumably including Gross himself). (Defs.' Resp. (dkt. #23) 2.) The court finds that: (1) the request for *all* reports and statements is overly broad; (2) defendants should produce to plaintiff and the court any responsive incident reports as agreed two days before the hearing; and (3) if there are confidential or anonymous statements related to Hendler, Kramer and/or Baker attacking or threatening guards or other inmates, defendants should file them *in camera* with the court two days before the hearing to avoid security risks.

*Fourth*, Gross requests copies of letters sent to or from Hendler and Kramer between November of 2011 and the present. Defendants represent they do not retain and, in any event, do not have copies of any such letters, but will make Lebbeus Brown available to answer Gross's questions about mail monitoring. Since defendants cannot produce what they do not have, Gross's request will be denied, but Brown should be made available to answer questions related to the mail monitoring as defendants propose.

*Fifth*, Gross asks that the court enter an order preventing the Department of Corrections from transferring Hendler or any known associates to Waupun Correctional Institution or Dodge Correctional Institution, as a means of preserving those institutions as “potential safe haven[s]” for him. (Mot. (dkt. #19) 2.) The court agrees with defendants that there is no basis for such an injunction before the evidentiary hearing has even taken place and will deny this request.

*Sixth*, Gross asks for copies of WSPF logbooks “to show Hendler and Kramer were and are escorted past [his] cell.” (Mot. (dkt. #19) 2.) Defendants indicate that they do not keep records of when inmates are escorted and by whom. They do agree to produce records showing “when Hendler was taken to recreation on Gross’s range recently.” (Defs.’ Resp. (dkt. #23) 3.) Again, defendants obviously cannot produce records they do not have, and Gross does not suggest the logbooks will be relevant in any other way, so Gross’s request will be denied, except that defendants are to produce to plaintiff and the court any responsive records they *do* have two days before the hearing.

#### ORDER

IT IS ORDERED that plaintiff John Gross’s motion for issuance of subpoenas (dkt. #19) is GRANTED IN PART and DENIED IN PART, consistent with the opinion above.

Entered this 21st day of January, 2015.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge