

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

TOMMIE CARTER,

Plaintiff,

v.

THOMAS BELZ, *et al.*,

Defendants.

ORDER

12-cv-301-slc

Plaintiff Tommie Carter is proceeding on claims that defendant prison staff deprived him of his Eighth Amendment right to be free from cruel and unusual punishment by using excessive force against him, failing to intervene to prevent the use of such force, denying medical care and providing inadequate conditions of confinement. Now before the court is plaintiff's motion to compel the production of various documents. In their response, defendants argue that plaintiff has not attempted to communicate with defense counsel as directed in the court's preliminary pretrial conference order. This response is somewhat confusing because plaintiff has submitted a copy of a letter he sent to defendants indicating his dissatisfaction with defendants' discovery responses. In any case, defendants have noted their objections to plaintiff's requests by attaching a copy of their discovery responses, so I will address plaintiff's motion.

First, plaintiff requests "logs, lists, or any other documentation" regarding grievances filed by WSPF inmates from October 11, 2011 to the present. Defendants raise a host of objections to this request but note that the request comprises 2485 grievances. There is no need for defendants to supply plaintiff with this type of information unless plaintiff can be much more specific about what he is looking for and why it is relevant to his lawsuit.

In another request, plaintiff asks the files for all grievances filed against defendants Belz, Wiegel and Gallinger. Defendants correctly point out that this request is overly broad and burdensome: defendants' database search shows that there are over 120 such grievances, and the

filing of a grievance means very little because it is simply an allegation; much more relevant is whether a defendant was found to have committed the alleged improper conduct. Here, defendants have identified one excessive force complaint against Gallinger. If Gallinger actually has been found by an administrative entity to have engaged in the same conduct alleged against that defendant in this lawsuit, then that finding is *discoverable*. Whether it would be *admissible* at trial is a different question. But if we get to that point, we can resolve any dispute through motions *in limine* before trial. Defendants note valid confidentiality concerns about these records; if they have discoverable records, then for the time being they may produce them in redacted form.

Likewise, plaintiff seeks defendants' "personnel files, curriculum file and other items possessed" by the DOC "concerning the defendants' employment." Defendants have already made available performance evaluations and position descriptions. Plaintiff seeks "any and all reprimands" against defendants. As discussed above, any disciplinary proceedings against defendants regarding this lawsuit or regarding similar behavior to the allegations in this case are also discoverable and should be produced. It is unclear what else might be in the records that would be discoverable and plaintiff does not explain what other information he wants or why he needs it. At this point, then, the defendants need not provide anything beyond the information specified in this order.

Plaintiff seeks FBI and National Crime Information Center "rap sheets," any criminal complaints, convictions and "C.C.A.P." information regarding defendants. Plaintiff does not explain the relevance of this information, but in any case, defendants point out that these documents are not in their possession. A party cannot produce information it does not have. That said, if any defendant ever has been charged criminally for actions similar to those that form the basis of plaintiff's claims, then defendants should provide plaintiff with that history.

Plaintiff seeks any audio and video recordings of the incidents forming the basis of plaintiff's claims. Defendants have told plaintiff that they will allow him to view relevant video but because of their security concerns they will not allow him a copy. This is a legitimate concern, so their response is adequate, although defendants must submit a copy of the video to the court (under seal if they wish) in lieu of plaintiff doing so. Plaintiff also seeks the policies and procedures regarding the preservation of recordings at WSPF. Defendants object on security grounds, which is an adequate rationale, but if any relevant recordings were made but were not preserved, then defendants must at least provide a general explanation as to why it was not preserved.

Plaintiff requests all health service requests from October 11, 2011 onward, but he does not explain why he needs this information, which obviously is voluminous and confidential. That request is denied. More specifically, plaintiff asks for his own complete medical records from that date forward. Defendants state that they will make those records available for plaintiff to view and copy, which is all they are required to do.

Finally, plaintiff seeks all DOC policies concerning the use of force. Defendants refer plaintiff to Wis. Admin Code. ch. DOC 306 but refuse to provide internal procedures for security reasons, arguing that releasing this sensitive information could create dangerous situations where inmates would be prepared and informed on how to respond to staff security tactics. Plaintiff also seeks documents revealing the practice or custom of "hyperextending" prisoners' wrists when using force. Defendants raise legitimate security concerns about disclosing this information, so plaintiff's motion to compel disclosure of these documents, but they must at least confirm or deny that correctional officers are trained to use wrist

hyperextension as a control technique in appropriate circumstances, and if they are, whether defendants deem plaintiff's situation in this case to be an appropriate circumstance.

Plaintiff is entitled to learn at least this much because his burden in this lawsuit is to prove that the defendants used force against him maliciously, for the purpose of causing harm, rather than in a good faith effort to keep control of the actual situation. If plaintiff can establish that a defendant used a type of force that the defendant was not trained to use, or that the defendant used a taught technique in a circumstance for which it was appropriate, then this would be relevant to plaintiff proving his claim.

Along these lines, plaintiff should remain focused on the facts of his case, that is, what was happening that made defendants decide to restrain plaintiff, what defendants actually did to restrain plaintiff and why this was or was not necessary. The important factors include why force was needed, how much force was used, the extent of the injuries inflicted, whether the defendant perceived a threat to the safety of staff or prisoners and whether defendants made any effort to temper the severity of the force they used.

ORDER

It is ORDERED that plaintiff Tommie Carter's motion to compel discovery, dkt. 34, is GRANTED IN PART and DENIED IN PART. Defendants shall provide plaintiff with discovery as described in the opinion above.

Entered this 18th day of January, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge