

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS DIVISION**

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MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

**DANNY E. BROWN, SYLVESTER
BUTLER, KENNETH CAUDILL, SAMMY
J. DOUSE, WILLIE ENGLISH, SIDNEY
EVERETT, KELVIN FRAZIER, MORRIS
J. GILBERT, JIJUAN T. HAGANS, TROY
D. HALL, BENJAMIN LAFLOWER,
CURT MASSIE, ANTONIO J. MCCLOUD,
LAMAR A. MIFFIN, MICHAEL L.
MONTGOMERY, KUNTA PORTER,
ISSAC SHARPE, SAMUEL STROTHER,
JEREMIAH THOMAS, EUGENE E.
ULRATH, GLENN WHEELER,
REGINALD WILLIAMS,**

Plaintiffs,

-vs-

Case No. 2:03-cv-526-FtM-29DNF

**SECRETARY, DEPARTMENT OF
CORRECTIONS, GERALD H. ABDUL-
WASI, JOSEPH THOMPSON, CHESTER
LAMBIN, JOSEPH PETROVSKY,
WENDELL WHITEHURST,**

Defendants.

_____ /

ORDER

This cause came on for consideration on the following motion(s) filed herein:

**MOTION: PLAINTIFFS' MOTION TO COMPEL ANSWERS TO
PLAINTIFFS' CLASS ACTION INTERROGATORIES
(Doc. No. 74)**

FILED: February 4, 2004

THEREON it is ORDERED that the motion is GRANTED.

The Plaintiffs assert that the Defendants failed to properly respond to Plaintiffs' Class Action Interrogatories served on November 21, 2003. The Plaintiffs claim that the Defendants only provided responsive answers to 7 interrogatories, objected to 17 interrogatories, and provided one non-responsive answer. The Defendants responded that the Interrogatory responses should be limited to the named Plaintiffs in that the motion for class certification has not been filed and a class has not been certified. The Defendants also raise the objection that much of the information requested is confidential health information and the Plaintiffs have not provided the proper authorization for its release. The Defendants claim the computerized Use of Force Reports and the inmate grievances that the Plaintiffs are seeking are not differentiated on the computer based on spontaneous use of force versus non-spontaneous use of force. Therefore, the Defendants would have to look at each Use of Force Report as well as each grievance to determine if it was a non-spontaneous use of force. Further, the Defendants assert that the Use of Force Reports were made available to the Plaintiffs on February 5, 2004, for inspection and copying.

Interrogatory No. 1 provides as follows:

For each prison facility operated by the Florida Department of Corrections where inmates are housed in any type of segregated housing, set forth by each facility, as of the date you answer these interrogatories:

A. The number of inmates housed at each facility in Maximum Management and the arithmetic mean average maximum Management population on a monthly basis for the previous two years.

B. The number of inmates housed in each facility in Close Management and the arithmetic mean average Close Management population on a monthly basis for the previous two years.

C. The number of inmates housed at each facility in Disciplinary Confinement and the arithmetic mean average Disciplinary Confinement population on a monthly basis for the previous two years.

D. The number of inmates housed at each facility in administrative confinement and the arithmetic mean average Administrative Confinement population on a monthly basis for the previous two years.

The Defendants did not object to this Interrogatory and provided some information in chart form. The information provided did not fully respond to the Interrogatory as propounded. The Defendants shall supplement their answer and fully respond to Interrogatory No. 1 within twenty (20) days from the date of this Order.

Interrogatory No. 2¹ provides as follows:

For each prison facility operated by the Florida Department of Corrections where inmates are housed in any type of segregated housing, set forth by each facility:

A. The number of times inmates housed in Maximum Management have been the subject of a non-spontaneous use of chemical agents during the period January 1, 2001 to the present.

B. The number of times inmates housed in Close Management have been the subject of a non-spontaneous use of chemical agents during the period January 1, 2001 to the present.

C. The number of times inmates housed in Disciplinary Confinement have been the subject of a non-spontaneous use of chemical agents during the period January 1, 2001 to the present.

D. The number of times inmates housed in Administrative Confinement have been the subject of a non-spontaneous use of chemical agents during the period January 1, 2001 to the present.

¹ While the motion included the supposed language of the interrogatories, the interrogatories were not accurately quoted. Therefore, the Court used the wording from the actual interrogatories which were attached to Doc. 93.

The Defendants object arguing that this Interrogatory is overly broad and unduly burdensome. The Defendants assert that to respond to this Interrogatory they would have to identify every inmate that was housed in Maximum Management, Close Management, Disciplinary Confinement, and Administrative Confinement, and then determine the current location of each of these inmates, and then direct staff at the institution to determine the date that the inmate was subjected to a use of chemical agents, and then determine if it was non-spontaneous. Federal Rule of Civil Procedure 26(b)(2) permits a Court to limit discovery if the burden or expense of the proposed discovery outweighs its benefit. *See also, Allstate Live Ins. Co. v. The Estate of Miller*, 2004 WL 141698, *1 (S.D. Fla. 2004) Although in the instant case the discovery requested is burdensome, the necessity of this discovery outweighs the burden to the Defendants. The Plaintiffs are in need of this discovery which is statistical in nature for class certification purposes. Therefore, the Defendants are required to provide this information within thirty (30) days from the date of this Order.

Interrogatory No. 3 provides as follows:

Of the inmates housed in Maximum Management during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, set forth the number of those inmates whose psychological grade was S-3 at the time chemical agents were used.

Interrogatory No. 4 provides as follows:

Of the inmates housed in Close Management during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, set forth the number of those inmates whose psychological grade was S-3 at the time chemical agents were used.

Interrogatory No. 5 provides as follows:

Of the inmates housed in Administrative Confinement during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject

of the non-spontaneous use of chemical agents, set forth the number of those inmates whose psychological grade was S-3 at the time chemical agents were used.

Interrogatory No. 6 provides as follows:

Of the inmates housed in Disciplinary Confinement during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, set forth the number of those inmates whose psychological grade was S-3 at the time chemical agents were used.

Interrogatory No. 7 provides as follows:

Of the inmates housed in Maximum Management during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, set forth the number of those inmates whose medical history at the time chemical agents were used included a diagnosis of any type of respiratory or pulmonary disease, seizure disorder or cardiac disorder or disease.

Interrogatory No. 8 provides as follows:

Of the inmates housed in Close Management during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, set forth the number of those inmates whose medical history at the time chemical agents were used included a diagnosis of any type of respiratory or pulmonary disease, seizure disorder or cardiac disorder or disease.

Interrogatory No. 9 provides as follows:

Of the inmates housed in Administrative Confinement during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, set forth the number of those inmates whose medical history at the time chemical agents were used included a diagnosis of any type of respiratory or pulmonary disease, seizure disorder or cardiac disorder or disease.

Interrogatory No. 10 provides as follows:

Of the inmates housed in Disciplinary Confinement during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, set forth the number of those inmates whose medical history at the time chemical agents were used included a diagnosis of any type of respiratory or pulmonary disease, seizure disorder or cardiac disorder or disease.

Interrogatory No. 11 provides as follows:

Of the inmates housed in Maximum Management during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, how many have been assigned to CMHI, a CSU, a TCU, or an SOS cell, within a period beginning six months before the chemical agents were used and ending 6 months after chemical agents were used.

Interrogatory No. 12 provides as follows:

Of the inmates housed in Close Management during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, how many have been assigned to CMHI, a CSU, a TCU, or an SOS cell, within a period beginning six months before the chemical agents were used and ending 6 months after chemical agents were used.

Interrogatory No. 13 provides as follows:

Of the inmates housed in Administrative Confinement during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, how many have been assigned to CMHI, a CSU, a TCU, or an SOS cell, within a period beginning six months before the chemical agents were used and ending 6 months after chemical agents were used.

Interrogatory No. 14 provides as follows:

Of the inmates housed in Disciplinary Confinement during the period January 1, 2001 to the date on which you answer these interrogatories who have been the subject of the non-spontaneous use of chemical agents, how many have been assigned to CMHI, a CSU, a TCU, or an SOS cell, within a period beginning six months before the chemical agents were used and ending 6 months after chemical agents were used.

Interrogatory No. 15 provides as follows:

How many inmates who were subjected to the non-spontaneous use of chemical agents during the period January 1, 2001 to the date of your answer to these interrogatories suffered chemical burns as a result of the use of the chemical agents?

Interrogatory No. 16 provides as follows:

How many inmates who were subjected to the non-spontaneous use of chemical agents during the period January 1, 2001 to the date of your answer to these interrogatories

suffered any type of medical problem other than chemical burns as a result of the use of the chemical agents?

The Defendants objected to these interrogatories as unduly burdensome, and also requiring the production of confidential protected health information without appropriate authorization and release. The Defendants cite to the Health Insurance Portability and Accountability Act of 1996 (HIPPA) as requiring releases prior to providing an individual's protected health information. These interrogatories are requesting statistical information and not an individual's protected health information. Again, although the Court recognizes that there is a burden on the Defendants, the necessity of this information for the Plaintiffs to obtain class certification outweighs the burden. Therefore, the Defendants are required to provide this information within thirty (30) days from the date of this Order.

Interrogatory No. 21 provides as follows:

Set forth the number of grievances written by inmates who, during the period January 1, 2001 to the date of your response to these Interrogatories, used the grievance process as a result of being subjected to the non-spontaneous use of chemical agents.

Interrogatory No. 22 provides as follows:

Of the number of grievances listed in your response to the above Interrogatory, set forth the number of grievances which were approved based on a finding that chemical agents were used non-spontaneously without justification or to excess.

The Defendants object to this interrogatory as unduly burdensome. The Defendants assert that their staff would have to review manually 12,605 grievances to determine the number that involved the non-spontaneous use of chemical agents. The Court has weighed the burden to the Defendants, and finds that the necessity to the Plaintiffs of this information for class certification outweighs the

burden to the Defendants. Therefore, the Defendants are required to provide this information within thirty (30) days from the date of this Order.

DONE and ORDERED in Chambers in Ft. Myers, Florida this 23 day of April, 2004.



DOUGLAS N. FRAZIER
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
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F I L E C O P Y

Date Printed: 04/23/2004

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