

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

**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.

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ORDER

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

MOTION: PLAINTIFFS' MOTION TO COMPEL AND FOR RULE 37(B) SANCTIONS (Doc. No. 133)

FILED: August 10, 2004

THEREON it is **ORDERED** that the Motion to Compel (Doc. 133) is **GRANTED**, and the Motion for Rule 37(b) Sanctions is **DENIED**.

The Plaintiffs are requesting that the Defendants be compelled to provide the Inspector General ("IG") Logs. Originally, the Court held a hearing on July 26, 2004, and ordered the Defendants to produce the IG Logs. The Plaintiffs filed this Motion to Compel after the Defendants failed to produce the IG Logs claiming the Health Insurance Portability and Accountability Act ("HIPAA") prevented the Defendants from producing the IG Logs.¹ The Defendants produced to the Court three redacted IG Logs. (See, Doc. 137). In addition, at the Court's request, the Defendants produced three unredacted IG Logs for an *in camera* inspection.

"Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P.26(b)(1). As the Plaintiffs argued at the hearing, the IG Logs will provide critical information to the Plaintiffs concerning the chemical agent use of force from January 1, 2001, until the date of the hearing (July 26, 2004). The Plaintiffs could not obtain this information from any other source. The Court has reviewed both the redacted and unredacted IG Logs. The IG Logs that were redacted contain no useful

¹ The Defendants also argued that the Plaintiffs should pay for the cost of producing the IG Logs. In its Order (Doc. 138) dated August 26, 2004, the Court determined that the Defendants were required to bear the cost of production of the IG Logs.

information. All the information that is useful has been redacted. The Plaintiffs are left with very little information at all. The Court reviewed the unredacted IG Logs and finds that they contain information that is relevant and appears reasonably calculated to lead to the discovery of admissible evidence. Further information provided by the Defendants to the Court concerning the codes reflected in the IG Logs do appear to provide information that will narrow the number of IG Logs to be reviewed and produced. For example, the Defendants state that “[a]lmost exclusively, code ‘a’ is applicable to spontaneous use of force, but again does not indicate use of a chemical agent. Also, code ‘k’ is not used for any use of force situations involving inmates (parolees and probationers only).” (See, Doc. 153, Defendants’ Notice in Response to Court’s Order of October 4, 2004). Additionally, the IG Logs provided to the Court were overwhelmingly pertaining to officers being injured rather than inmates. The Court finds that HIPAA does not specifically apply to the IG Logs. However, by redacting the names of individuals involved coupled with the Confidentiality Agreement (Doc. 129), any privacy concerns can be accomplished. To afford the Defendants the maximum protections, the Defendants will be required to review and produce the IG Logs which reflect the non-spontaneous chemical agent use of force from January 1, 2001, until July 26, 2004, with the names redacted.

IT IS FURTHER ORDERED:

The Defendants shall produce the IG Logs which reflect the non-spontaneous chemical agent use of force from January 1, 2001, until July 26, 2004, with the names redacted as expeditiously as possible. The Court will expect that these reports will be produced absent an appeal of this Order.

DONE and **ORDERED** in Chambers in Ft. Myers, Florida this 17th day of December, 2004.



DOUGLAS N. FRAZIER
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record
Unrepresented Parties