

IN THE IOWA DISTRICT COURT IN AND FOR LINN COUNTY

BRACKEN ANN MITCHELL and	)	
JERIME ERON MITCHELL	)	
	)	
Plaintiffs,	)	No. LACV087209
	)	
vs.	)	
	)	
CITY OF CEDAR RAPIDS and	)	
LUCAS JONES, Individually and in his	)	<b>ORDER</b>
official capacity as an agent and/or	)	
employee of the City of Cedar Rapids Police	)	
Department, a governmental subdivision of	)	
The CITY OF CEDAR RAPIDS, IOWA,	)	
	)	
Defendants.	)	

On August 23, 2017, this matter came before the Court for hearing on Defendant’s Motion for a Protective Order in this action for damages arising out of a police officer involved shooting. Plaintiffs appeared by Attorneys Larry Rogers and Laura Seelau. The City of Cedar Rapids appeared by Assistant Elizabeth Jacobi. Lucas Jones appeared by Attorneys Wilford Stone and Gregory Usher.

Plaintiff Jerime Mitchell and his spouse, Bracken Mitchell, have filed suit against the City of Cedar Rapids (“The City”) and Cedar Rapids Police Officer Lucas Jones (“Jones”) alleging that the Mitchells suffered damages as a result of Jones shooting Jerime Mitchell during a traffic stop in the early morning hours of November 1, 2016. The Mitchells have alleged that Jones was negligent in his decision to stop Jerime Mitchell’s vehicle and in his handling of the encounter with Mitchell, including using excessive force, assaulting Jerime Mitchell and otherwise acting illegally. The Mitchells have alleged that the City was negligent as *Respondent Superior* and was negligent in allowing Jones to continue as a police officer due to its knowledge that Jones had a propensity to ward violence in his conduct as a police officer. The Mitchells also allege that Jones and the City acted willfully and wantonly with reckless disregard for the rights of the Mitchells and that the Defendants intentionally inflicted emotional distress upon the Mitchells. The Mitchells seek actual and punitive damages. Jones filed an Answer where he denied any negligence on his part and alleged that he acted within his duty of care as a police officer, he acted in self-defense and that any injuries the Mitchells might have suffered were the result of Jerime Mitchell’s willful or negligent acts, including failure to mitigate damages. Jones also alleges that the Mitchells are not entitled to punitive damages and that Jones is entitled to complete or qualified immunity for his actions. The City filed an Answer which denied all of the Mitchells’ claims and joined in Jones’ affirmative defenses.

Jones and the City have requested a protective order that sets out a procedure for the parties to designate what discovery they believe is not privileged, but should be held by the requesting party as confidential. These cover law enforcement reports, including those that involve Jones' involvement in another incident where a suspect was shot in 2015, Jones' employment records, including internal reviews, and Mitchell's medical records. Thus, the proposed order does not cover or limit a party's right to designate discovery as privileged. Those issues are left for another day. The parties have unsuccessfully consulted with each other in an attempt to reach an agreement on a procedure for not privileged but confidential discovery.

Iowa Rule of Civil Procedure 1.503 provides, in relevant part:

“1.503(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”

“[A] party is entitled to discover any information that is not privileged and that is relevant to the subject matter of the lawsuit.” Mediacom Iowa, L.L.C. v. Incorporated City of Spencer, 682 N.W.2d 62, 66 (Iowa 2004), (citing State ex. rel. Miller v. Nat'l Dietary Research, Inc., 454 N.W.2d 820, 822-23 (Iowa 1990)). Litigants are permitted “to discover information regardless of its relevance and admissibility in their civil lawsuit if the information ‘appears reasonably calculated to lead to the discovery of admissible evidence.’” State ex rel. Shanahan v. Iowa Dist. Court for Iowa County, 356 N.W.2d 523, 530 (Iowa 1984). “[A] party seeking to defeat discovery must show that the information sought is privileged or irrelevant.” State ex rel. Miller v. National Dietary Research, Inc., 454 N.W.2d 820, 823 (Iowa 1990).

“[T]he philosophy underlying our discovery rules is that ‘litigants are entitled to every person’s evidence, and the law favors full access to relevant information.’” Mediacom Iowa, L.L.C. v. Incorporated City of Spencer, supra. “Thus, the district court should liberally construe our discovery rules.” Id.

Iowa Rule of Civil Procedure 1.504 governs protective orders. Rule 1.504 provides, in relevant part:

1.504(1) “Upon motion by a party or by the person from whom discovery is sought or by any person who may be affected thereby, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the district where the deposition is to be taken:

“a. May make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

“(1) That the discovery not be had.

“(2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place.

“(3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery.

“(4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.

“(5) That discovery be conducted with no one present except persons designated by the court.

“(6) That a deposition after being sealed be opened only by order of the court.

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“(8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.”

Defendants’ major concern appears to be that the discovery requested by Plaintiffs, when produced, should still held confidentially consistent with Iowa Code Chapter 22 and Iowa Code §622.11.

Iowa Code § 22.2(1) provides:

“Every person shall have the right to examine and copy a public record and to publish or otherwise disseminate a public record or the information contained in a public record. Unless otherwise provided for by law, the right to examine a public record shall include the right to examine a public record

without charge while the public record is in the physical possession of the §custodian of the public record. The right to copy a public record shall include the right to make photographs or photographic copies while the public record is in the possession of the custodian of the public record. All rights under this section are in addition to the right to obtain a certified copy of a public record under section 622.46.”

There are exceptions to open records disclosures. In particular, Iowa Code § 22.7(5) provides:

“Peace officers' investigative reports, privileged records or information specified in section 80G.2, and specific portions of electronic mail and telephone billing records of law enforcement agencies if that information is part of an ongoing investigation, except where disclosure is authorized elsewhere in this Code. However, the date, time, specific location, and immediate facts and circumstances surrounding a crime or incident shall not be kept confidential under this section, except in those unusual circumstances where disclosure would plainly and seriously jeopardize an investigation or pose a clear and present danger to the safety of an individual. Specific portions of electronic mail and telephone billing records may only be kept confidential under this subsection if the length of time prescribed for commencement of prosecution or the finding of an indictment or information under the statute of limitations applicable to the crime that is under investigation has not expired.”

Iowa Code § 622.11 states:

“A public officer cannot be examined as to communications made to the public officer in official confidence, when the public interests would suffer by the disclosure.”

“In *State ex rel. Shanahan v. Iowa District Court*, 356 N.W.2d 523, 528 (Iowa 1984), we observed that these two statutory provisions express essentially the same legislative purpose with respect to DCI files: assurance to all persons upon whom law enforcement officials rely that ‘official confidentiality attends their conversations and may protect from public access the officers' reports of what they have said.’ *Id.* The privilege cloaking these communications, however, is qualified, not absolute. *Id.* at 527. An official claiming the privilege must satisfy a three-part test: (1) a public officer is being examined, (2) the communication was made in official confidence, and (3) the public interest would suffer by disclosure. *Id.* at 527; accord *Shannon v. Hansen*, 469 N.W.2d 412, 414 (Iowa 1991).”

Hawk Eye v. Jackson, 521 N.W.2d 750, 753 (Iowa 1994)

This Court finds that, with regard to reports generated by law enforcement, (e.g. Cedar Rapids Police, Linn County Sheriff, Iowa Department of Criminal Investigation), that are within the possession of the Defendants, the prong that it will relate to the examination of a public officer is met. The record is less clear as to whether the communication was made in official confidence, especially as to those communicated the night of the incident or within 96 hours after. To the extent that law enforcement officer communications with other officers might initially be made in confidence, there is still an expectation that the communicating officer might be expected to testify in a public proceeding especially if it involves something the officer personally witnessed. Lastly, as in Hawk Eye v. Jackson, *id.*, this Court finds that the public's right to know greatly outweighs law enforcement and the party's right to privacy for an incident that happened one year ago, has already been fully investigated internally by the police and has already been through the grand jury process with no charges brought against the officer. The alleged facts of the incident have been the subject of wide media coverage and broad public discussion. Public disclosure of these reports in a county of over 200,000 people may enhance the public discussion but should not jeopardize any party's right to a fair trial.

Thus, the Court will attempt to fashion an order that allows for production and possible disclosure of reports about the incident itself and leave for another day, determination of the issue with regard to personnel records, medical records, the internal police investigation and other materials that fall outside the current order. See Iowa Code §§22.7 (11) and 622.10.

IT IS THEREFORE ORDERED:

That Defendants shall produce to counsel for the Plaintiffs within fourteen (14) days of this order any requested law enforcement investigative reports, including electronic recordings or telephone communications generated by or in the possession of a defendant or a police officer acting in the scope of his or her duties that were compiled as a result of the reporter's own observation or investigation, including interviews or conversations with law enforcement at the scene of the incident that resulted in the injuries to Plaintiff Jerime Mitchell or lay witnesses to that event. The order covers any investigative reports or electronic communications generated or filed within 96 hours of the incident, but does not apply to reports or memorandum generated solely for purposes of a police internal review of the incident.

Any other requested documents or requested discovery that any party believes may be discoverable but subject to confidentiality or privilege, including a ground of confidentiality or privilege not addressed by this ruling, shall be made known to the other party and the Court within thirty days of this order or within fourteen days of the request, whichever period is longer. The Court shall then schedule a further hearing to review the grounds of objection and the response if the parties are unable to resolve their dispute prior to the date set for hearing.

The Court will address the request for preservation of evidence by separate order.

The parties are still invited to consult about the contents of a Protective order that is consistent with this ruling.



State of Iowa Courts

**Type:** OTHER ORDER

**Case Number** LACV087209  
**Case Title** JERIME & BRACKEN MITCHELL VS CITY OF CEDAR RAPIDS

So Ordered

A handwritten signature in black ink, appearing to read "Patrick R. Grady". The signature is written in a cursive style and is positioned above a horizontal line.

Patrick R. Grady, Chief District Court Judge,  
Sixth Judicial District of Iowa