

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JOHN DOE I, et al.,

Plaintiffs,

v.

COLONEL TYREE V. BLOCKER,
in his official capacity as Commissioner of
the Pennsylvania State Police
Defendant.

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:
:
:
:

CIVIL ACTION

NO. 16-6039

ORDER

AND NOW, this ____ day of _____, 2018, upon consideration of
Plaintiffs' Motion to Compel, it is ORDERED and DECREED that the Motion is DENIED.

BY THE COURT:

Slomsky, J.

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Defendant.	:	NO. 16-6039

**DEFENDANT’S MEMORANDUM OF LAW
IN RESPONSE TO PLAINTIFF’S MOTION TO COMPEL**

Defendant Lieutenant Colonel Robert Evanchick, Acting Commissioner of the Pennsylvania State Police,¹ by counsel, respectfully submit this memorandum of law in opposition to Plaintiffs’ Motion to Compel (Doc. No. 47) (“Motion”).

I. INTRODUCTION

Plaintiffs’ Motion seeks certain discovery from Defendant that was outstanding but has now been completely produced. The Motion also appears to seek to compel Defendant to produce information to which Defendant made reasonable objections and limitations. Yet Plaintiffs do not provide any argument to refute Defendant’s reasonable objections and limitations. Because DOC has responded in full to Plaintiffs’ discovery requests, and otherwise made reasonable objections to the requests, the Motion should be denied.

¹ Colonel Tyree Blocker was named as a defendant in this matter in his official capacity as the Commissioner of the Pennsylvania State Police, only. On March 22, 2018, Lt. Col. Evanchick was appointed to serve as Acting Commissioner following Col. Blocker’s retirement. Lt. Col. Evanchick is substituted as the defendant pursuant to Fed. R. Civ. P. 25(d).

II. ARGUMENT

A. Defendant Has Produced All Responsive and Relevant Information

Plaintiffs' Motion asserts that Defendant's discovery responses have been inadequate. As of March 21, 2018, Defendant had produced all relevant training, policy, and procedures documents. Only two items remained outstanding at the time the Motion was filed: (1) Defendant's interrogatory responses; and (2) statistical data from the Pennsylvania Instant Check System mental health database relating to entries of involuntary mental health commitments under Section 302 of the Mental Health Procedures Act, 50 Pa. Stat. §§ 7101-7503 ("Section 302"). To the extent that the Motion seeks to compel information to which Defendant has objected, Defendant's objections are reasonable and proper.

1. All Outstanding Discovery Has Been Produced

At the time Plaintiffs filed their Motion, Defendant had two items outstanding: (1) Defendant's interrogatory responses; and (2) statistical data from the mental health database. Both of these items were produced on April 26, 2018. Defendant has now produced all responsive and relevant information in its possession.

Plaintiff's discovery requests were exceedingly broad. Defendant has worked diligently to respond to Plaintiffs' discovery requests, and delays in responding were not a result of dilatory conduct. On November 9, 2017, Plaintiffs served their requests for production of documents and interrogatories. Due to the broad nature of the requests, responding to them required consultation with multiple teams within State Police, as well as outside Information Technology ("IT") vendors. Defense counsel communicated to Plaintiffs' counsel that, due to the need to consult and communicate with numerous individuals, additional time was required to gather knowledge and information sufficient to provide responses and objections. The amount of time needed was

exacerbated due to the timing of the end of year holidays causing difficulty in making connections.

On January 19, 2018, Defendant provided responses and objections to the requests for production of documents. At the same time, Defendant produced what he believed to be the main responsive documents, including policies, procedures and training materials. Defendant represented that additional internal documents were being reviewed as quickly as possible, and that Defendant was still attempting to connect with outside IT vendors to determine what type of data would be available from the mental health database. On March 21, 2018, Defendant produced the additional internal documents.

The statistical data required work from an outside vendor. Despite diligent efforts of Defendant, connecting with this outside vendor proved difficult and caused significant delays. Even after Defendant was able to consult with the vendor on capabilities for data collection, further delays came in obtaining a quote for the work before it could be completed. On April 26, 2018, Defendant produced the statistical data to Plaintiff, within days of receiving it from the vendor.

The interrogatory requests sought information that was not within Defendant's personal knowledge. Responding to the interrogatories required consultation with multiple teams within State Police and outside vendors, as well as review of all the documents requested in the requests for production of documents. On March 22, 2018, defense counsel represented to the Court and Plaintiff's counsel that Defendant's would be able to serve the responses to the interrogatories by April 12, 2018. Despite this representation, the process was delayed due to several factors: (i) delays in the statistical data, which were outside of Defendant's control, as described above; (ii) defense counsel's unavailability due to an affliction of stomach flu; (iii) the unexpected

retirement of Col. Blocker requiring Lt. Col. Evanchik to become educated on the issues and facts. On April 26, 2018, Defendant served the interrogatory responses.

At this point, Defendant has produced all responsive and relevant information subject to Defendant's objections.

B. Defendant's Objections are Reasonable

Plaintiff's Motion appears to seek to compel information two which Defendant has objected, without detailing what information or why Defendant's objections are not valid. On March 30, 2018, Plaintiffs' counsel sent a letter to defense counsel regarding issues with Defendant's production as well as his objections to production. On April 16, 2018, counsel held a telephonic meet and confer to address the March 30 letter. Defense counsel provided further explanation as to the nature and reason for the objections, and attempted to find reasonable areas of compromise. For example, with regards to requests that sought information as to any and all individuals for whom a Section 302 commitment was entered in the PICS mental health database, Defendant objected to these requests on the grounds that: (i) such information required use of mental health database information in a manner prohibited under 37 Pa. Code § 33.103; and (ii) such information was not maintained in a manner that was readily accessible and would require significant manpower and cost to gather. During the meet and confer, Defendant offered to provide the information sought with respect to Plaintiffs. Plaintiffs rejected this and any other attempts to discuss reasonable limitations to the broad discovery requests. On April 26, 2018, Defendant served a written response to Plaintiffs' March 30, 2018 letter, as a follow up to the telephonic meet and confer. A copy of that letter is attached as Exhibit A hereto.

The crux of the request to which Defendant has objected is requests for information regarding all individuals subject to Section 302 commitments. Plaintiffs request, for example, "any and all documents for the last 7 years" relating to all individuals subject to Section 302

commitments, including but not limited to: (i) name and address of each individual committed, (ii) date, location, and circumstances of the commitment; and (iii) for each individual, any arrests, convictions, search warrants, incident reports, police encounters, court orders, forfeiture proceedings, detentions, incarcerations, stop and frisks, or court proceedings.

Defendant objected to production of this information on two grounds. First, under 37 Pa. Code § 33.103, PSP can only use the mental health records in its possession for the purpose of “determining, under sections 6109(d) and 6111.1(b) of the [UFA], if the potential applicant is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm, or obtaining a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth, as defined under Federal or State law, and for the purpose of informing the licensee/sheriff making inquiry under sections 6019(d) and 6111.1(b)(iii) of the act.” In other words, PSP is prevented from using the mental health records for any purpose other than running a PICS check to determine an individual’s eligibility to obtain a firearm. This statutory limitation serves the important purpose of protecting and maintaining the privacy of mental health information, which is sensitive information that would generally be protected from disclosure under the privacy provisions of the Health Insurance Portability and Accountability Act (“HIPAA”).

Second, Defendants objected to these requests on the grounds that they are overly broad, unduly burdensome to comply with, and not proportional to the needs of this case. The PICS mental health database contains nearly 180,000 entries of involuntary commitments under Section 302. The identify of each and every individual, over the last seven years, who was committed under Section 302, the name of the judge, the mental health review officer or county mental health and retardation administrator who submitted the notification, and the

circumstances of the commitment are not necessary to the litigation of a facial challenge to the statute. Moreover, Plaintiffs have requested, for each individual, information relating to any arrests, convictions, search warrants, incident reports, police encounters, court orders, forfeiture proceedings, detentions, incarcerations, stop and frisks, or court proceedings.

The PICS mental health database maintains only information relating to mental health commitments and does not maintain any information relating to arrests, convictions, search warrants, etc. Indeed such information is not maintained in any other single database. In order to attempt to obtain the information sought by Plaintiffs, PSP would have to manually search for each of the over 100,000 individuals committed under Section 302 among all of its various records, some which are electronic and some hard copy only. This process would require an incalculable amount of time, labor, and expenditure of taxpayer money. This information is not relevant to the litigation of a facial challenge to the Pennsylvania Uniform Firearms Act. And the amount of effort required to obtain the information is far disproportional to the needs of this case.

Defendant has produced statistical data regarding the number of Section 302 commitments and expungements. The data show: (1) the number of 302 commitments in the mental health database per month from January 2011 through March 2018, organized by commitment date; (2) the number of 302 commitments in the mental health database per month from January 2011 through March 2018, organized by date entered into the database; (3) for the last year, section 302 records that have been expunged from the mental health database due to successful challenges; (4) denials of firearms due to section 302 commitments from 2012 to through March 2018. Defendant is also willing to search for and produce any records relating to Plaintiffs themselves.

Defendant has produced all information relating to policies and procedures. The additional information sought by Plaintiffs, to which Defendant has objected, is not necessary for the litigation of this facial challenge and not proportional given the extreme burden of collecting that information. Thus, the Court should not compel the production of any further information.

III. CONCLUSION

Wherefore, the Court should deny Plaintiff's Motion to Compel.

Dated: April 27, 2018

Respectfully submitted,

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ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I, Kathy A. Le, hereby certify that on April 27, 2018 Defendant's Response to Plaintiff's Motion to Compel has been filed electronically and is available for viewing and downloading from the Court's Electronic Case Filing System ("ECF"). The ECF System's electronic service of the Notice of Electronic Case Filing constitutes service on all parties who have consented to electronic service.

BY: /s/ Kathy A. Le
KATHY A. LE
Deputy Attorney General