

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

MICHAEL HERBERT,

Plaintiff,

v.

USTON CORNELIUS,

Defendant

CIVIL NO. 2002/99

TO: Vincent Colianni II, Esq.

AAG Michael McLaurin - Fax 773-1425

Commissioner Franz Christian - VIPD - Fax 778-2373

ORDER ON PLAINTIFF'S MOTION
TO COMPEL PRODUCTION OF DOCUMENTS

THIS MATTER came for consideration on Plaintiff's Motion to Compel Virgin Islands Police Department (VIPD) Commissioner Franz Christian to produce documents requested to pursuant to subpoena (Exhibit "A" to the motion). The documents relate to the VIPD Internal Affairs investigation of the subject September 29, 2001 incident. Neither Defendant nor the VIPD filed opposition to the motion.¹

Plaintiff's Complaint is brought pursuant to 42 U.S.C. § 1983 and alleges that on September 29, 2001, Defendant wrongfully

1. On October 28, 2002 default was entered against Defendant. On December 5, 2002, AAG Michael McLaurin entered a Notice of Appearance on behalf of Defendant and Government of the Virgin Islands. The Court has scheduled a conference on January 28, 2003 to schedule a hearing on damages. The documents requested may have relevance to Plaintiff's claim for punitive damages.

shot Plaintiff. Plaintiff alleges that at all relevant time Defendant was acting within the course and scope of his employment as an officer with VIPD.

Internal Affairs investigation files in such cases are generally discoverable. *Mercy et al. v. County of Suffolk et al.*, 93 F.R.D. 520, 523 (E.D.N.Y. 1982). LRCr 16.1 provides a procedure for a Defendant to obtain such records in **a criminal case**. There is no similar provision in the civil rules however the Court will borrow from such criminal rule in determining what is appropriate herein. The Courts have recognized a balancing test in determining whether particularly sensitive matters should be disclosed. See *Kelly v. City of San Jose et al.*, 114 F.R.D. 653, 663 (N.D. Cal. 1987) [citing *Frankenhauser v. Rizzo*, 59 F.R.D. 339 (E.D.Pa. 1973)].

Upon consideration, it is hereby;

ORDERED as follows:

1. The Virgin Islands Department of Justice shall promptly obtain and review the subject VIPD Internal investigation file and the personnel file of Defendant, Uston Cornelius and shall produce all documents requested by Plaintiff's subpoena, that are not specifically objected to, by January 24, 2003.

2. To the extent the Virgin Islands Department of Justice asserts that any portions of such information should not be disclosed, such documents together with a brief statement of the particular reasons for such non-disclosure shall be delivered to my chambers by January 24, 2003 for *in camera* review.
3. Plaintiff shall maintain confidentiality of all documents produced except as is reasonably necessary for prosecution of this matter.

ENTER:

Dated: January 8, 2003

_____/s/_____
JEFFREY L. RESNICK
U.S. MAGISTRATE JUDGE

ATTEST:
WILFREDO MORALES
Clerk of Court

By: _____
Deputy Clerk