

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

FRANK RICCI, et al.,	:	
	:	
Plaintiffs,	:	NO. 3:04cv1109 (MRK)
	:	
v.	:	
	:	
JOHN DESTEFANO, et al.,	:	
	:	
Defendants.	:	

**RULING AND ORDER**

Having conferred with the parties during an on-the-record telephonic conference on December 9, 2004 and having considered Defendants' Motion for Protective Order [doc. # 14] and attached Proposed Order Re: Discovery Confidentiality, Plaintiffs' Opposition to Defendants' Motion for Protective Order [doc. #17] and Defendants' Reply Memorandum in Support of Defendants' Motion for Protective Order [doc. # 16], the Court DENIES IN PART and GRANTS IN PART Defendants' Motion for Protective Order [**doc. # 14**].

Plaintiffs are all firefighters in the New Haven Fire Department who took the examination for Captain or Lieutenant in November and December 2003. The Plaintiffs claim that the City "threw out" those test results in violation of state and federal law. *See* Compl. [doc. #1]. The City asserts that it did not certify the scores and results of those examinations because, among other reasons, the examination had an adverse affect upon African Americans.

The current dispute arises because in the course of discovery; Plaintiffs have sought the names, race and scores of those individuals who took the examinations for Captain and

Lieutenant that are in dispute in this action. Defendants seek to restrict the use and dissemination of that information as provided by their proposed protective order. Plaintiffs appear to oppose any restriction on their use and dissemination of those test scores.

At this time and based upon the information currently available, the Court has decided to endorse the Proposed Order Re: Discovery Confidentiality. The Court does so because the Court is concerned about the interests of those who are not parties to this action and who have not heretofore consented to release of their results on a test that the Defendants claim was flawed. *See Slater Steel, Inc. v. Vac-Air Alloys Corp.*, 107 F.R.D. 246, 248 (W.D.N.Y. 1985) (courts may limit discovery to "protect third parties from harassment, inconvenience, or disclosure of confidential documents") (quoting *Dart Indus. Co. v. Westwood Chem. Co.*, 649 F.2d 646, 649 (9th Cir. 1980)). That said, the Court recognizes that Plaintiffs fear the Proposed Order will hamper their ability to prepare their case and will subject them to "vexatious claims of breach of the order." Pls.' Opp'n to Defs.' Mot. for Protective Ord. [doc. # 17], at 9. The Court believes that these are legitimate concerns, but it is not clear at this point that Plaintiffs' fears will be realized, and the Court is unwilling to subject innocent third parties to embarrassment and annoyance based on concerns that may never materialize.

Accordingly, the Court believes that as a first step, the parties should try to work within the strictures of the Proposed Order, and the Court therefore GRANTS Defendants' Motion for Protective Order [doc. #14] to the extent that it seeks approval of the Proposed Order. However, the Court's endorsement of the Protective Order is conditional at this point and if Plaintiffs find – and can demonstrate to the Court – that their ability to prepare their case is being compromised by the terms of the Protective Order, or if the Court finds that Defendants are using the Protective

Order to harass Plaintiffs, then the Court will reconsider its endorsement of the Protective Order and will entertain lifting any restrictions that are shown to be problematic.

IT IS SO ORDERED.

/s/ Mark R. Kravitz  
United States District Judge

**Dated at New Haven, Connecticut: February 28, 2005.**