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United States District Court, S.D. New York.

DANIELS, et al., Plaintiffs,
v.
CITY OF NEW YORK, et al., Defendants.

No. 99 CIV 1695. | March 8, 2001.

Attorneys and Law Firms

Catherine W.H. So, Esq., Kristen K. Sauer, Esq., Jeffrey K. Powell, Esq., Debevoise & Plimpton, Nancy Chang, Esq., Center for Constitutional Rights, Jonathan C. Moore, Esq., New York, for Plaintiffs.

Lisa S.J. Yee, Esq., Ingrid Box, Esq., Heidi Grossman, Esq., Assistant Corporation Counsel, Corporation Counsel for the City of New York, New York, for Defendants.

Opinion

OPINION AND ORDER

SCHEINDLIN, D.J.

*1 A dispute has arisen over the extent of disclosure of civilian information contained in the UF-250 database. Plaintiffs would like to use any such information directly in their efforts in soliciting witnesses and class members. Defendants would like to have an intermediary, such as a magistrate judge, oversee the initial mailing to all civilians except arrested adults and juveniles for whom they oppose any disclosure whatsoever. Only after the civilians express a willingness to participate in this lawsuit would the magistrate judge forward the contact information to plaintiffs' counsel. For the following reasons, I am bifurcating the procedures to be used: plaintiffs' counsel will be permitted to contact directly, in writing, only those adult civilians who have not been arrested; for adults who have been arrested and juveniles, I hereby adopt the procedure recommended by defendants.

Arrested adults and juveniles are afforded certain statutory rights to privacy. For arrested adults, all records of the stop, arrest and prosecution are sealed by operation of law pursuant to Criminal Procedure Law § 160.50 where the arrest and/or prosecution is terminated in favor of the arrestee. Similarly, § 375.1 of the Family Court Act

provides for the sealing of all records relating to the arrest and/or prosecution of a juvenile when the case is terminated in the juvenile's favor.

The case at bar is brought under 42 U.S.C. § 1983 and, as such, is governed by Federal Rule of Evidence 501 which states that privileges are governed by federal common law. Because the privileges in issue are state statutory privileges, they must be construed narrowly, "and must yield when outweighed by a federal interest in presenting relevant information to a trier of fact." *United States v. One Parcel of Property at 31-33 York St.*, 930 F.2d 139, 141 (2d Cir.1991). Nonetheless, "the policies underlying state evidentiary privileges must still be given serious consideration, even if they are not determinative." *Burka v. New York City Transit Auth.*, 110 F.R.D. 660, 664 (S.D.N.Y.1986). Thus, as a matter of comity, federal courts must balance the deference to be accorded state-created privileges with the need for the information sought to be protected by the privilege. *Id.*

Here, plaintiffs seek the identifying information for all civilians contained in the UF-250 database,¹ including arrested adults and juveniles. Plaintiffs justify their need for the information as follows:

First, defendants have denied, throughout the litigation, plaintiffs' claim that the SCU engages in illegal stops...

Second, it is difficult to determine on the basis of a UF-250 form alone whether the stop recorded therein was legal, as UF-250 forms consist solely of the self-serving statements of the officer who made the stop. Plaintiffs' counsel will need to contact the individuals listed in the UF-250 database in order to assess the accuracy of the rationales for the stops that are listed in the UF-250 database.

*2 *Third*, without access to the unredacted UF-250 database, plaintiffs will have great difficulty assessing the adequacy of the SCU's record-keeping on, and monitoring of, stops and frisks. In addition, access to the unredacted UF-250 database will assist plaintiffs in conducting statistical analyses...

Fourth, in the course of their contacts with class counsel, potential class members would have the opportunity to learn about their constitutional rights with respect to the SCU, and to learn of the injunctive relief claims raised in this suit.

Fifth, the ability to contact the individuals listed in the UF-250 database will allow class counsel to fulfill their ethical obligation to advocate zealously

the interests of the *entire* plaintiff class, and not just the interests of the named plaintiffs.

Letter from Nancy Chang, Esq. dated February 26, 2001.

Defendants oppose the disclosure of this information, particularly as to those who were arrested and as to juveniles, citing privacy interests created by the sealing statutes described above. Defendants argue in the alternative, that if the Court releases the material, plaintiffs' counsel should not be permitted to make direct contacts with these people, but that the initial contact should be made by a neutral magistrate or special master.

Plaintiffs need for this information is great. *First*, those civilians identified in the UF-250 database may very well have been subjected to suspicionless stops and frisks. As such, they may become named plaintiffs or, at the very least, witnesses in this lawsuit. *Second*, testimony from additional persons stopped without reasonable suspicion would help prove that the stops were made pursuant to a municipal policy, practice or custom. The greater the number of incidents, the more likely such stops are the result of a policy, practice or custom. Furthermore, as plaintiffs' counsel have argued in many court hearings, the identification of persons wrongly stopped has been a difficult process with very limited results. Access to the UF-250 database would greatly streamline this process.

Against this need for the information, and lack of alternative means of obtaining it, is the privacy concerns of those who have been stopped by the police or arrested. In balancing plaintiffs' need for the information against the citizen's right to privacy, I conclude that plaintiffs should be given access to the requested information, but in the case of those who were arrested or juveniles, only if these individuals waive their statutory right to privacy. For this reason, the initial contact with these groups must be made by a magistrate judge. Only after the individuals in these groups express a willingness to speak with plaintiffs' counsel can the magistrate judge release their contact information. By utilizing this procedure, only those persons who voluntarily and knowingly choose to waive their right to confidentiality will be contacted by plaintiffs' counsel for more extensive interviewing. Needless to say, this procedure is not required for adults who were not arrested. To protect the privacy rights of these individuals, plaintiffs' counsel's initial contact must be in writing. Only if the individual expresses an interest in the litigation will plaintiffs be permitted to follow up with a more detailed telephone call.

*3 The contents of the Magistrate Judge's letter and that of plaintiffs' counsel is set forth as Exhibit A to this Order.

SO ORDERED:

INFORMATION TO BE INCLUDED IN LETTER TO CIVILIANS

- i. This letter is to advise you that you are either a witness or a potential member of a class action lawsuit seeking injunctive and declaratory relief against the City of New York for alleged constitutional violations.
- ii. The constitutional violations alleged are unlawful stops and frisks by the Street Crime Unit of the NYPD, done without reasonable suspicion and on the basis of racial profiling.
- iii. This class action does not seek money on behalf of its members.
- iv. We obtained your name from records supplied by the NYPD pursuant to court order.
- v. We would like to talk to you to discuss the case, to determine whether you might be a witness or a member of the class of plaintiffs, and how you might participate in the case, if you wish to do so.
- vi. As attorneys for the class of plaintiffs, we are prohibited from disclosing anything you tell us unless you agree to such disclosure.
- vii. We will not publicize your identity unless you agree to such publication.
- viii. You are under no legal obligation to cooperate with us, or even talk to us.
- ix. If you are interested in speaking with us, please fill out the enclosed form indicating your willingness to have a lawyer contact you by telephone. If we do not receive a completed form within 30 days of this mailing or otherwise hear from you, we will assume you do not wish to speak to us.

Rider for Arrested Adults and Juveniles Only

- If you are a juvenile, or were a juvenile at the time of the allegedly unconstitutional stop, please be advised that no personal information, even contact information, will be sent to plaintiffs' counsel unless you consent to the unsealing of your records.

- If you were arrested subsequent to the allegedly unconstitutional stop, please be advised that no personal information, even contact information, will be sent to plaintiffs'

counsel unless you consent to the unsealing of your records which have been sealed by operation of Criminal Procedure Law § 160.50.

Footnotes

¹ The UF-250 database is a compilation of the reports of stops conducted by officers of the Street Crime Unit ("SCU").