

# HADOUSCO. | PLLC

## ATTORNEYS AT LAW GLOBAL TRADE CONSULTING

835 MASON STREET, SUITE 150-A

DEARBORN, MICHIGAN 48124

TEL: +1-313-450-4670

FAX: +1-888-450-0687

DIR: + 1-313-415-5559

DIR: + 1-602-492-4432

EMAIL: NHADOUS@HADOUSCO.COM

HTTP:// WWW.HADOUSCO.COM

*OFFICES LOCATED IN SCOTTSDALE, ARIZONA AND DEARBORN, MICHIGAN*

### **BY EMAIL, FACSIMILIE &FIRST CLASS MAIL**

To: **Jeffrey R. Clark, Esq.**  
**Cummings, McClorey, Davis & Acho, P.L.C.**  
33900 Schoolcraft Road  
Livonia, Michigan 48150

From: Nemer N. Hadous

Date: October 14, 2011

Pages:

**Re: Saad, et al., v. City of Dearborn Heights, et al.**  
**Plaintiffs' First Request for Production of Documents to Defendant City of Dearborn Heights**

Dear Mr. Clark,

We made numerous discovery requests in Plaintiffs' First Request for Production of Documents to Defendant City of Dearborn Heights ("Requests") which Defendant objected to on the basis of a privilege. Specifically, we requested the production of documents containing evidence regarding complaints and/or disciplinary matters regarding the individually-named Defendant police officers. We further requested the full Dearborn Height Policies and Procedures Manual which Defendants objected to on the basis of a privilege. We further requested a copy of the Defendants' insurance policy.

The following is a specific summary of the Requests wherein Defendant asserted a privilege (with the exception of Request for Production No. 2):

**REQUEST FOR PRODUCTION NO. 2:** Produce copies of any and all insurance policies, which cover the Dearborn Heights Police Department and/or the individually named Defendants.

**REQUEST FOR PRODUCTION NO. 4:** Produce the Dearborn Heights Police Department Policies and Procedures Manual.

**REQUEST FOR PRODUCTION NO. 6:** Produce any and all internal policy manuals regarding the Dearborn Heights Police Department.

**REQUEST FOR PRODUCTION NO. 9:** Produce any and all documents that comprise or are part of the personnel file of Defendant Scott Keller, including the disciplinary record, and any other documents in your possession that concern his hiring, training, duties, performance, assignments, and mental and physical condition.

**REQUEST FOR PRODUCTION NO. 10:** Produce any and all documents concerning or at all relevant to any formal or informal complaint made against or about Defendant Scott Keller, from any source and concerning any subject matter.

This includes without limitation:

- (a) Documents concerning all complaints and other disciplinary or police review of activities listed for Defendant Scott Keller in the file maintained by the Internal Affairs Bureau;
- (b) The complete documents concerning each incident listed on the disciplinary record for Defendant Scott Keller;
- (c) The complete documents concerning all complaints and other disciplinary or internal police review of activities maintained by the Dearborn Heights Police Department concerning Defendant Scott Keller
- (d) All information contained in the computers maintained by the Internal Affairs Bureau of the Dearborn Heights Police Department or any other division of the Dearborn Heights Police Department concerning the complaints made against Defendant Scott Keller, including without limitation the information which is retrievable by computer codes.

**REQUEST FOR PRODUCTION NO. 11:** Produce any and all documents that comprise or are part of the personnel file of Defendant Carrie Cates, including the disciplinary record, and any other documents in your possession that concern her hiring, training, duties, performance, assignments, and mental and physical condition.

**REQUEST FOR PRODUCTION NO. 12:** Produce any and all documents concerning or at all relevant to any formal or informal complaint made against or about Defendant Carrie Cates, from any source and concerning any subject matter.

This includes without limitation:

- (a) Documents concerning all complaints and other disciplinary or police review of activities listed for Defendant Carrie Cates in the file maintained by the Internal Affairs Bureau;
- (b) The complete documents concerning each incident listed on the disciplinary record for Defendant Carrie Cates;
- (c) The complete documents concerning all complaints and other disciplinary or internal police review of activities maintained by the Dearborn Heights Police Department concerning Defendant Carrie Cates;
- (d) All information contained in the computers maintained by the Internal Affairs Bureau of the Dearborn Heights Police Department or any other division of the Dearborn Heights Police Department concerning the complaints made against Defendant Carrie Cates, including without limitation the information which is retrievable by computer codes.

**REQUEST FOR PRODUCTION NO. 13:** Produce any and all documents that comprise or are part of the personnel file of Defendant Reserve Officer Nason, including the disciplinary record, and any other documents in your possession that concern his hiring, training, duties, performance, assignments, and mental and physical condition.

**REQUEST FOR PRODUCTION NO. 14:** Produce any and all documents concerning or at all relevant to any formal or informal complaint made against or about Defendant Reserve Officer Nason, from any source and concerning any subject matter.

This includes without limitation:

- (a) Documents concerning all complaints and other disciplinary or police review of activities listed for Defendant Reserve Officer Nason in the file maintained by the Internal Affairs Bureau;
- (b) The complete documents concerning each incident listed on the disciplinary record for Defendant Reserve Officer Nason;
- (c) The complete documents concerning all complaints and other disciplinary or internal police review of activities maintained by the Dearborn Heights Police Department concerning Defendant Reserve Officer Nason;
- (d) All information contained in the computers maintained by the Internal Affairs Bureau of the Dearborn Heights Police Department or any other division of the Dearborn Heights Police Department concerning the complaints made against Defendant Reserve

Officer Nason, including without limitation the information which is retrievable by computer codes.

**REQUEST FOR PRODUCTION NO. 15:** Produce any and all documents that comprise or are part of the personnel file of Defendant Michael Gondek, including the disciplinary record, and any other documents in your possession that concern his hiring, training, duties, performance, assignments, and mental and physical condition.

**REQUEST FOR PRODUCTION NO. 16:** Produce any and all documents concerning or at all relevant to any formal or informal complaint made against or about Defendant Michael Gondek, from any source and concerning any subject matter.

This includes without limitation:

- (a) Documents concerning all complaints and other disciplinary or police review of activities listed for Defendant Michael Gondek in the file maintained by the Internal Affairs Bureau;
- (b) The complete documents concerning each incident listed on the disciplinary record for Defendant Michael Gondek;
- (c) The complete documents concerning all complaints and other disciplinary or internal police review of activities maintained by the Dearborn Heights Police Department concerning Defendant Michael Gondek;
- (d) All information contained in the computers maintained by the Internal Affairs Bureau of the Dearborn Heights Police Department or any other division of the Dearborn Heights Police Department concerning the complaints made against Defendant Michael Gondek, including without limitation the information which is retrievable by computer codes.

**REQUEST FOR PRODUCTION NO. 17:** Produce any and all documents that comprise or are part of the personnel file of Defendant Jerry Skelton, including the disciplinary record, and any other documents in your possession that concern his hiring, training, duties, performance, assignments, and mental and physical condition.

**REQUEST FOR PRODUCTION NO. 18:** Produce any and all documents concerning or at all relevant to any formal or informal complaint made against or about Defendant Jerry Skelton, from any source and concerning any subject matter.

This includes without limitation:

- (a) Documents concerning all complaints and other disciplinary or police review of activities listed for Defendant Jerry Skelton in the file maintained by the Internal Affairs Bureau;
- (b) The complete documents concerning each incident listed on the disciplinary record for Defendant Jerry Skelton;
- (c) The complete documents concerning all complaints and other disciplinary or internal police review of activities maintained by the Dearborn Heights Police Department concerning Defendant Jerry Skelton;
- (d) All information contained in the computers maintained by the Internal Affairs Bureau of the Dearborn Heights Police Department or any other division of the Dearborn Heights Police Department concerning the complaints made against Defendant Jerry Skelton, including without limitation the information which is retrievable by computer codes.

**REQUEST FOR PRODUCTION NO. 19:** Produce any and all documents that comprise or are part of the personnel file for each and every Dearborn Heights police officer who was involved in the Saad Incident or otherwise identified/named in your answers to the above Interrogatories, including the disciplinary record, and any other documents in your possession that concern said officers' hiring, training, duties, performance, assignments, and mental and physical condition.

We note that the scope of discovery under Federal Rule of Civil Procedure 26 is exceedingly broad. Parties may obtain discovery regarding any matter that is (1) "not privileged" and (2) "relevant to the subject matter involved in the pending action." Fed. R. Civ. P. 26(b)(1). The phrase "relevant to the subject matter involved in the pending action" "has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 2389, 57 L.Ed.2d 253 (1978). Hence, any non-privileged information is discoverable so long as it is "reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1).

It is well-settled that questions of privilege in federal civil rights cases are governed by federal law. *See Fed.R.Evid. 501; Von Bulow v. Von Bulow*, 811 F.2d 136, 141 (2nd Cir.1987); *American Civil Liberties Union of Mississippi v. Finch*, 638 F.2d 1336, 1342-43 (5th Cir.1981); *Kerr v. United States District Court for the Northern District of California*, 511 F.2d 192, 197 (9th Cir.1975), *aff'd*, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976).

It is further well-settled that complaints against police officers are discoverable:

Privacy interest against disclosure on discovery in civil rights action against police defendants of police officer's **professional personnel records, such as prior involvement in disciplinary**

October 14, 2011

**proceedings or citizen complaints filed against officers, is not substantial**, since it is not the kind of “highly personal” information warranting constitutional safeguard.

*King v. Conde*, 121 F.R.D. 180 (E.D.N.Y., 1988); *Urseth v. City of Dayton*, 110 F.R.D. 245 (S.D. Ohio 1986); *Soto v. City of Concord*, 162 F.R.D. 603 (N.D. CA, 1995); *Scouler v. Craig*, 116 F.R.D. 494 (D NJ, 1987); *Torres v. Kuzniasz*, 936 F. Supp. 1201 (D. NJ 1996).

Accordingly, we hereby request the production of any and all documents concerning any complaint(s) regarding the individually named Defendant police officers identified in the above Requests. We hereby further request the production of any and all documents containing any disciplinary matter regarding the individually named Defendant police officers identified in the above Requests. We hereby further request production of the entire Dearborn Heights Policies and Procedures Manual and the complete Michigan Municipal Risk Management Authority Coverage insurance policy which you disclosed in part (and withheld in part).

Because of the discovery deadlines in place, we kindly ask that you provide the foregoing discovery within (5) days. **It is imperative that we receive your response within the time requested because of the short discovery period.** If you choose to respond to any of our requests to discovery by asserting a privilege then please specifically state what the privilege is so that we may articulate to the Court a proper request for an in camera review of the discovery you deem privileged. **If you are denying any of our requested discovery, then we kindly request that you notify us as soon as possible as our discovery window is very limited and we have no intent to trouble the Court with further extensions.** Accordingly, your cooperation with our requests will be in keeping with the Court’s Scheduling Order on discovery and will assist us in resolving any pending discovery issues pursuant to Local Rule 37.1.

**Cordially,**

**/s/Nemer N. Hadous**

|AZ: 027529 | CA: 264431|

United States District Courts:

- District of Arizona
- Eastern District of Michigan

Cc:

Haytham Faraj (via haytham@puckettfaraj.com)

Joseph H. Low, IV (via Joseph@jhllaw.com)