

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

MARIZA DIAZ

*

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v.

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Civil Action No.: RWT 06-57

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**THE MARYLAND NATIONAL
CAPITAL PARK POLICE, et al.**

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MEMORANDUM

This case was referred to me pursuant to Section 636(b) of Title 28 of the United States Code and Local Rule 301 for resolution of discovery disputes. Presently pending and ready for resolution is Plaintiff's motion to compel compliance with a subpoena seeking electronic information from the Fraternal Order of Police, Montgomery County Lodge 35 (Lodge 35). (Dkt. No. 10). No hearing is deemed necessary. See Local Rule 105.6. For the reasons set forth below, the motion will be denied and the subpoena quashed.

1. Factual Background.

This is an action against the Maryland National Capital Park Police, Montgomery County Division, (MNCPP), one of its former officers, Leatrice DeBruhl, and at least one of its current officers. Plaintiff, who is of El Salvadoran descent, alleges that on or about May 12, 2005, Defendant DeBruhl, who is African American, assaulted and wrongly arrested her for racially and ethnically motivated reasons. She alleges that Defendant DeBruhl directed a racial insult at her during the incident, and proffers an eyewitness to the encounter and the racial insult.

Plaintiff served Lodge 35 with a subpoena requesting production of electronic information related to a Lodge 35 website. She asserts that this website provides a private message board where its members may read and post messages, and that a recent newspaper article reported that the message board contains comments derogatory to Latin Americans.

Noting that the article quotes a Lodge representative as stating that non-members have also logged onto the site, Plaintiff seeks discovery of electronically stored information to “trace racially/ethnically derogatory postings made by Montgomery County, and possibly other [sic] police officers to their sources.” Mot. at 4. She alleges that because former Officer DeBruhl recently patrolled a parking lot pursuant to an agreement with the Montgomery County Police, and because DeBruhl’s husband reportedly contacted a police union, “it is more than reasonable to infer that [DeBruhl] interacted with Montgomery County Police Officers, and that she knew of and had access to the Montgomery County FoP website.” Mot. at 4-5.

Lodge 35 responds that the information Plaintiff seeks is irrelevant and is protected from disclosure by the First Amendment, that no need has been demonstrated, and that production would cause an undue burden.

2. **Discussion.**

Discovery is not without limits. A party can seek discovery regarding “any matter, not privileged, that is relevant to the claim or defense of any party.” *See* FED. R. CIV. P. 26(b)(1). Plaintiff contends that the information sought is relevant to show an alleged “existence of a pattern and practice of departmental wrongdoing in selecting, managing and maintaining, *inter alia*, racist/ethnically biased police officers.” Mot. at 4.

Plaintiff’s interest in Lodge 35’s webboard is based on pure speculation. She offers no basis for linking MNCPP or Defendant DeBruhl to the webboard. She has only the likelihood that non-members have accessed the site, but that offers no basis from which to conclude that these non-members are even police officers, much less MNCPP officers. The facts that DeBruhl’s husband contacted “PGPD union shop stewards” and that DeBruhl patrolled a parking

lot pursuant to an agreement with Montgomery County similarly fail to link any Defendants to Lodge 35's webboard. *See Cohn v. Bond*, 953 F.2d 154, 159 (4th Cir. 1991) (holding that the discovery process is not to be used as a “fishing expedition”); *Micro Motion, Inc. v. Kane Steel Co. Inc.*, 894 F.2d 1318, 1326 (Fed. Cir. 1990) (“requested information is not relevant to subject matter involved in the pending action if the inquiry is based on the party’s mere suspicion or speculation”) (internal quotation omitted). General information regarding “derogatory postings made by Montgomery County, and possibly other police officers,” Mot. at 4, is not relevant to Plaintiff’s claims against Defendant DeBruhl or MNCPP.

The lack of potential relevance is underscored by the fact that the requested material would not evidence relevant derogatory comments even if they occurred. Lodge 35 states that:

Because ISPs often retain records associating its IP addresses with its customers for a certain period of time, it becomes possible for an ISP to identify the customer’s account that uses a particular IP address on a particular date and time. However, the information is not always accurate. Moreover, that record *does not* indicate the location or telephone number from which the user account was accessed, what computer accessed it or who was using the computer at any time during the session.

Lodge 35's Opp. at 4 (emphasis in original).

Alternatively, Plaintiff’s motion is denied due to the overbreadth of her requests, specifically, the use of a five year period and the failure to specify any terms or parameters, rendering compliance unduly burdensome. *SEE FED. R. CIV. P. 26(b)(1)*. Lodge 35 represents that compliance would involve hundreds of hours to review thousands of documents. *See American Standard Inc. v. Pfizer Inc.*, 828 F.2d 734, 738 (Fed. Cir. 1987) (affirming district court’s restriction of discovery where nonparty status “weigh[ed] against disclosure”). A

