

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
STATE OF FLORIDA, IN AND FOR HILLSBOROUGH COUNTY  
GENERAL CIVIL DIVISION

RICHARD S. COCHRAN,

Plaintiff,

vs.

THE CITY OF TAMPA, FLORIDA, a  
Florida Municipal Corporation, and  
STEPHAN HOGUE, Chief of Police, The  
Tampa Police Department,

Defendants.

CASE NO. 04-3026

DIVISION H

**ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR  
TEMPORARY INJUNCTION**

This cause came before the court on April 5, 2004 on Plaintiff's motion for a temporary injunction, under FRCP 1.610. Present for the Plaintiff was his attorney, Rory Weiner, Esquire; present for the Defendants was their attorney, Kirby Rainsberger, Esq. The proceedings were recorded by a court reporter. The Plaintiff is a 15 year veteran with the City of Tampa Police Department (TPD), and recently promoted to the position of Detective. Plaintiff wants (1) to prevent TPD from using his medical records, which were obtained using medical releases signed by the Plaintiff under threat of disciplinary action, to return the records to him, and (2) for TPD to refrain from taking any adverse employment against him until during the pendency of this civil action or the TPD internal affairs investigation regarding Plaintiff.

This court grants Plaintiff's requests by the issuance of a temporary injunction, but without prejudice so as to allow TPD to come back and seek to dissolve the injunction upon a showing of a direct connection between Plaintiff's job-related performance and the otherwise private medical information being sought.

In 1974, the Florida Legislature enacted the Police Officers' Bill of Rights, F.S.

§112.532(1), which includes procedural safeguards during interrogation and investigation.

These protections include rights guaranteed during and subsequent to investigation, rights prior to and during interrogation, and the right to file suit. This statute provides injunctive relief in the circuit court for officers injured by a denial of any right guaranteed by the statute.

Reviewing the pertinent U.S. Supreme Court cases, specifically, *Garrity v. New Jersey*, 87 S. Ct. 616 (1967), and *Spevak v. Klein*, 87 S.Ct. 625 (1967), it is reasonably clear that (1) if a law enforcement officer is not provided with immunity, any statement given under threat of adverse personnel action is unconstitutionally coerced; (2) if a law enforcement officer is not provided with immunity, the taking or threatening to take any adverse personnel action in response to the assertion of the privilege against compelled self- incrimination has an unconstitutional, chilling effect upon the privilege; (3) if a law enforcement officer is granted immunity but nonetheless refuses to answer questions specifically, directly, and narrowly related to official duties, the officer may be dismissed; and (4) if a law enforcement officer is granted immunity and answers questions specifically, directly, and narrowly related to official duties, the officer may be dismissed if the answers provide cause for dismissal.

While it has been held that a law enforcement officer is required to answer questions specifically, directly, and narrowly relating to the performance of his official duties, and that he has no legitimate expectations to privacy involving the performance of job-related duties, an officer may be protected from questioning in regard to non job-related matters in which the officer has a reasonable expectation of privacy. (See 16 U. Balt. L. Rev. 452, Spring 1987, "*The Law Enforcement Officer's Privilege Against Compelled Self-Incrimination*", Byron L. Warnken) There has been no showing, at least so far in this case, of any connection between the Plaintiff's job-related actions or behavior and his otherwise private medical records. If and when such a showing is made, by way of affidavit or testimony adduced at a hearing before this court, the matter can be reconsidered.

The TPD takes the position that the privilege of being a police officer is dependent upon a willingness to forego constitutional rights and privileges. However, the protections of the

United States Constitution apply to all citizens equally. In choosing their career, law enforcement officers should not be required to abandon rights enjoyed by the public at large.

It is thereupon, ORDERED AND ADJUDGED:

1. Plaintiff's motion for a temporary injunction is granted in part, as described hereinafter.
2. Defendants are temporarily enjoined from directly or indirectly using the medical information obtained through the written releases signed by Plaintiff on 11/26/03 or 3/8/04, in any manner adverse to the Plaintiff.
3. Upon proper motion and showing a connection between Plaintiff's job-related actions or behavior and the medical information sought to be obtained, the Defendants may apply to lift this injunction.

DONE AND ORDERED at Tampa, Florida, this \_\_\_\_\_ day of April, 2004.

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William P. Levens  
CIRCUIT JUDGE

Copies to:  
Counsel of record