

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
CASE 1:26-MC-00018-WCM

IN RE: PRODUCTION ORDERS AND)
 CERTAIN PROTECTIVE) ORDER
 ORDERS)
_____)

This matter is before the Court *sua sponte* concerning certain discovery issues that arise before the undersigned.

The Court has seen an increase in the number of requests for the entry of consent orders that authorize the disclosure of materials that are generally deemed confidential under North Carolina law but that may be produced with a court order.¹ The requests are often accompanied by proposed consent orders that are also designed to address how the materials will be handled following their production. In other words, in these instances, the Court is asked to do two (2) separate things: 1) enter an order that directs (or “authorizes”) a party or non-party to produce certain materials (a “Production Order”) and 2) enter an order that governs the handling of the materials after they are produced (a “Protective Order”).

The requests for these orders, however, are oftentimes lacking in certain

¹ These materials may include law enforcement agency recordings under [N.C. Gen. Stat. § 132-1.4A](#); personnel records under [N.C. Gen. Stat. § 153A-98](#) and § 160A-168; and records of criminal investigations and intelligence information records under [N.C. Gen. Stat. § 132-1.4](#).

respects.

Parties seeking Production Orders regularly cite North Carolina law, since the subject materials are typically deemed confidential under state law. Discovery issues in federal court, though, are generally governed by federal law. See e.g., Smith v. City of Greensboro, No. 1:19CV386, [2021 WL 10280232](#), at *4 (M.D.N.C. Apr. 28, 2021) (“As an initial matter, the Court notes that Plaintiff has not requested the BWC footage pursuant to North Carolina law, but rather as a request for discovery in a federal civil lawsuit. Discovery in a federal civil action is governed by Federal Rule of Civil Procedure 26....”); Sides v. Kimbrough, No. 1:23-CV-502, [2024 WL 99490](#), at *10 (M.D.N.C. Jan. 9, 2024), report and recommendation adopted, No. 1:23-CV-502, [2024 WL 406659](#) (M.D.N.C. Feb. 2, 2024) (“Defendants argue that, ‘[i]n the normal course, North Carolina’s General Statutes restrict Defendants’ handling of the video recordings at issue here.’ Defendants concede, however, that ‘[t]he Middle District has held that the strict procedural requirements of [the relevant state statute] do not apply to the handling of law enforcement recordings in, at least, the formal portions of federal litigation.’”) (internal citations omitted); see also Smith, [2021 WL 10280232](#), at *5 (referencing the defendant’s brief, which “readily acknowledge[d]” that there was “no caselaw analyzing the interplay between federal discovery rules and Section 132-1.4A”).

Such requests can be unclear or deficient in other ways. For example,

they may suggest that the producing party—which is often a state agency or municipality and may or may not be a party to the litigation—is willing to produce the subject materials upon the entry of a Protective Order. A representation of this nature indicates that the producing party has determined that it will voluntarily provide the materials and, therefore, that no Production Order is needed—only a Protective Order that will govern the post-production handling of the materials. Yet, the proposed orders accompanying such motions do sometimes include a provision that orders the production of the materials. At other times, the specific materials to be produced are ill-defined.

In view of these issues and others, and in an effort to assist attorneys and parties who may anticipate making such requests, the undersigned issues the following guidance.

Any requests for Court action should clearly state the relief sought—whether that be the entry of a Production Order, a Protective Order, or both.

A request for a Production Order should: 1) identify the producing party, 2) sufficiently define the materials that are the subject of the request, and 3) clearly advise that the producing party objects to the production of the materials, even with the entry of a Protective Order, such that a Court order is needed to overrule the producing party's (perhaps pro forma) objection and secure the production of the materials. A request for a Production Order should

be presented by way of a motion to compel or other similar procedural mechanism.²

In addition, the motion should advise of the position of the other party or parties to the litigation as to the relief sought. Similarly, if the producing party is not a party to the case, the motion should advise of the position of the producing party, and a copy of the motion should be served on the producing party, with that service being reflected on the certificate of service.

As discussed above, the undersigned considers requests for Protective Orders to be requests for a separate and distinct type of relief. A request for a Protective Order may be filed separately from a request for a Production Order or combined with it, again provided that the specifics of the relief sought are included.

² In some cases, a pretrial order may require that, prior to filing a contested discovery motion, the parties request a conference with the undersigned. A request that the Court enter a Production Order may be made in that context.

Movants seeking a Production Order, a Protective Order, or both should submit a proposed order for the Court's consideration and advise of the position of any other party or parties and the producing party as to the entry of that specific proposed order.

It is so ordered.

Signed: July 31, 2026

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

