

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

CHAMBERS OF
LOIS H. GOODMAN
UNITED STATES MAGISTRATE JUDGE

CLARKSON S. FISHER U.S. COURTHOUSE
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TRENTON, NJ 08608
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November 9, 2017

LETTER ORDER

**Re: IN RE: INVOKANA (CANAGLIFLOZIN) PRODUCTS LIABILITY
LITIGATION
Civil Action No. 16-md-2750**

Dear Counsel:

The Court has reviewed the parties' joint letter of October 31, 2017 regarding Plaintiffs' request for production of materials from the personnel files of deposition witnesses. Specifically, Plaintiffs seek Invokana-related performance evaluations and self-evaluations contained in the witnesses' personnel files. October 31, 2017 Letter at 2. Plaintiffs contend that this information is relevant insofar as it provides insight in the witnesses' responsibilities and the product development process, and it also helps to identify other individuals involved in the product in suit. *Id.* at 1. According to Plaintiffs, Defendants' concerns about the privacy of certain highly sensitive personal information, such as compensation history, can be addressed by redaction. *Id.* at 4. In response to Defendants' request for an individualized showing to justify any such production, Plaintiffs object that it would expose their deposition strategy. *Id.* at 2.

Defendants emphasize their employees' basic privacy interests in their personnel files and particularly in their self-evaluations and performance reviews. *Id.* at 5, 7. They contend that disclosing this information is an invasion of their employees' privacy and a disruption in the employer-employee relationship. *Id.* at 7. Defendants assert that the information Plaintiffs seek can be obtained elsewhere in the over two million documents produced to date. *Id.* Defendants cite authority in similar cases that required an individualized showing of relevancy, proportionality, and particularity prior to the release of personnel files. Defendants ask the Court to require Plaintiffs to make a similar showing here. *Id.*

The parties' polarized positions notwithstanding, it seems to the Court that a reasoned middle ground is available. Plaintiffs' stated reasons for seeking the disputed information is to better understand the role that a witness has played in bringing Invokana to market. Defendants profess their eagerness to protect their employees from the disclosure of sensitive evaluative information. The two categories of information are distinct. Portions of a witness's personnel file that disclose the witness' goals, objectives, and responsibilities related to Invokana might be produced without disclosing evaluations or assessments of that witness's performance, whether prepared by the witness or by the employer. The parties are instructed to meet and confer as to how best to achieve that production. To the extent that Plaintiffs' request seeks critiques of a

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witness's job performance, that request is denied without prejudice to a renewed application upon a particularized, witness-by-witness showing.

IT IS SO ORDERED.



LOIS H. GOODMAN
United States Magistrate Judge