

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

CIV 01-815 WJ/KBM

LOCKHEED MARTIN CORPORATION  
d/b/a LOCKHEED MARTIN MISSION SYSTEMS,

Defendant.

**ORDER DENYING MOTION TO COMPEL**

This matter is before the Court on Defendant's Motion To Compel. *Doc. 39*. I find the motion moot in part and not well-taken in part and, therefore, deny it.

***Interrogatories 1 through 3 & Requests for Production 1 through 8.*** As illustrated by the response, reply and recent correspondence, the production aspect of these items is moot. The EEOC is willing to produce the Compliance Manual. It endeavored to do so in an electronic format but was unsuccessful.<sup>1</sup> Even though the EEOC indicates the manual is available in legal and public libraries, it nevertheless will allow Defendant to inspect, copy and print the manual at its office in Albuquerque.

In correspondence sent to the Court after the motion pleadings, Defendant does not want

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<sup>1</sup> The Court tried to access the manual from <http://emlawcnetter.ban.com>, which is the website the EEOC identifies as having the entire manual. The Court was unable to access the manual. The link for the "EEOC Compliance Manual" leads to an advertisement. The "help" button leads to information on how to become a subscriber.

to review the entire manual (reputed to be 5000 pages) to determine which sections comply with its requests 1 through 8. To gather evidence in support of its defense that the EEOC has no standing to bring this suit because it failed to comply with its “own guidance,” at a minimum, Defendant wants the EEOC to provide it with the “sections, paragraphs, or titles” from the manual ***“upon which it relied to bring this suit.”***

I note that the wording of the requests for production are not narrowed to this suit. Further, the answers to these requests mention specific CFR sections, which one would imagine correlates to sections in the Compliance Manual. Nevertheless, I find the EEOC can provide a bit more guidance about the manual. It is sufficient, however, to produce a copy of the table of contents or index and identify the relied upon general chapters.

***Interrogatories 5 through 6.*** Defendant asks the EEOC to “identify all charges with the EEOC, or with its state counterpart agency, which have been brought by or on behalf of” the two women for whom the EEOC brings suit – Janna Roberts and Janette Wolfe. Defendant wants to know whether these women “have a history of bringing claims against employers” and, if so, “whether those claims had merit.” *Doc. 39* at 5.

The EEOC objected on several grounds, including relevance, burden, and the confidentiality sections of Title VII make it unlawful to make such information public. Nevertheless, without waiving the objection the EEOC also provided Ms. Robert’s and Ms. Wolfe’s answers to the interrogatories, which amount to denials of having filed other charges.

Defendant argues that: these statements are unverified; it is not required to accept the denials at face value; the EEOC must answer the question itself; and Defendant will agree to keep any such information confidential under the terms of the confidentiality order it previously secured

from the Court.

Although the admissibility of prior complaints, if any, will be decided at a later date, whether these women previously filed charges is arguably relevant or calculated to lead to admissible evidence. The *Branch v. Phillips Petroleum Company v. Equal Employment Opportunity Commission*, 63 F.2d 87, 880 (5<sup>th</sup> Cir. 1981), case is materially indistinguishable from the case here. There the employer defendant wanted to use prior charges to impeach plaintiff, and moved to enforce a subpoena by compelling the EEOC to turn over any such documents. The Fifth Circuit found that the employer's need for the disclosure did not "overcome the congressional policy embodied in [42 U.S.C. § 2000-e-5(b)]," *id.*, which provides "[c]harges shall not be made public by the Commission."

In the absence of binding authority to the contrary, I am persuaded the result in the *Branch* case is the appropriate result here. Consistent with its statutory confidentiality obligations, the EEOC need not search for or disclose other charges by the charging parties. That is not to say that the information is not discoverable from the women themselves. *See id.* at 881 n.5. Defendant can verify or further investigate the denials by other means.

Wherefore,

**IT IS HEREBY ORDERED** that Defendant's Motion To Compel (*Doc. 39*) is DENIED. However, based on subsequent correspondence, the EEOC shall produce a copy of the table of contents or index and identify those relied upon general chapters.

  
UNITED STATES MAGISTRATE JUDGE