2003 WL 136090
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United States District Court,
S.D. New York.

Robert WRIGHT et al., Plaintiffs,
v.
Henry J. STERN et al., Defendants.
UNITED STATES OF AMERICA, Plaintiff,
v.
CITY OF NEW YORK et al., Defendants.

Nos. 01 Civ.4437 DC MHD, 02 Civ.4699 DC MHD. |
Jan. 14, 2003.

Plaintiffs filed class action alleging that hiring policies of city parks department were racially discriminatory. On plaintiffs' motion for order directing production of documents, the District Court, Dolinger, United States Magistrate Judge, held that: (1) personnel files maintained by department's deputy commissioner were subject to disclosure, and (2) deputy commissioner's business calendars and notebooks were subject to disclosure.

Motion granted.

Opinion

MEMORANDUM & ORDER

DOLINGER, Magistrate J.

***1** Plaintiffs in these two consolidated cases have applied by letter for an order directing production of seven categories of documents that defendants have insisted on withholding from discovery. Plaintiffs also ask that defendants be required to provide a list of one category of employees hired since 1995 by the New York City Parks Department. (Letters to the court from Assistant United States Attorney Lisa R. Zornberg dated Dec. 27, 2002 and Jan. 7, 2003). Defendants oppose all of these requests. (Letter to the court from Assistant Corporation Counsel Kit T. Wong dated Jan. 3, 2003). Plaintiffs' application is granted.

The document requests are identified as Garafalo requests 1, 4, 9, 10 and 11 and Stark requests 1 and 7. The remaining request, in the nature of an interrogatory, is labeled as Stark request 9. We first address the document demands, and do so in the order in which they are discussed by counsel.

[1] Garofalo request 4 is for a file labeled "personnel", which Deputy Commissioner Robert Garofalo maintains in or near his office and which he described at two sessions of his deposition. Based on his testimony, there is no question that it contains materials "reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P, 26(b)(1). As such it is producible.

In opposing this conclusion, defendants press two arguments, both plainly meritless. First, they assert in conclusory fashion that "personnel" matters may cover issues that are not relevant to the claims and defenses in this case. That is certainly true, but defendants offer no indication of what matters, if any, are in fact contained in the file that are beyond the scope of relevance, and they offer no factual basis for inferring that it is preferable for defendants to sift through the file to weed out irrelevant documents. Indeed, they do not offer to undertake this task, and we see no occasion here to invite them to do so, particularly in the absence of any suggestion that possibly irrelevant items found in that file are so sensitive as to justify such treatment.

Second, defendants argue that plaintiffs have had ample opportunity to obtain this discovery before, and thus that the court should deny access on the basis of Fed.R.Civ.P. 26(b)(2)(ii). The factual premise for this argument is a complete mystery; indeed, plaintiffs apparently only learned of the existence of this file at a November 14, 2002 deposition, and then asked for it with reasonable promptitude. There is simply no reason to deny them access to it.

The next two requests, identified as Garofalo requests 9 and 11, seek, respectively, business calendars and notebooks maintained for a pertinent time period by Mr. Garofalo. Defendants object to these demands as overbroad.[1]

[1] To the extent that defendants also object to these and other requests as untimely, we reject their argument again. Plaintiffs have acted expeditiously to request specific documents are their existence is disclosed in discovery, and defendants make no showing of undue prejudice.

[2] The deposition testimony by Mr. Garofalo indicates that both categories of documents contain pertinent information, including, for example, which individuals he interviewed for open slots. The defendants' objection turns on their contention that some portions of these documents may contain information that is not relevant to the case. This objection is groundless.

***2** When a document contains both pertinent and irrelevant information, the document should generally be produced in its entirety unless it includes privileged or otherwise sensitive information. Defendants do not offer any basis for such an inference in this case, and also do not suggest that any specific portion of the notebooks and calendars should be redacted. Rather, they simply object to the request.

The defendants' objection is rejected. They are to produce the calendars and notebooks.

The next two sets of documents in dispute are labeled Garofalo request 10 and Stark request 7. These seek the minutes and agendas of the so-called Commissioner and Cicada meetings held by former Commissioner Henry Stern. Defendants object on the ground of overbreadth.

Again, there is absolutely no reason to doubt that these documents contain information that is relevant to the claims and defenses in this case. To the extent that defendants object to production because those documents may also contain segments that do not relate to the issues in this case, their objection is rejected for the reason previously stated.

The following two requests, denominated Garofalo request 1 and Stark request 1, seek copies of transcripts containing prior testimony by Mr. Garofalo and Mr. Stark in their official capacities in proceedings involving issues or factual questions that may relate either directly or indirectly to some of the issues in this case. Again, we infer from the circumstances of their testimony in those proceedings that some of what these two officials said will prove pertinent to at least some of the issues or factual questions in this case. Accordingly, the transcripts are to be produced.

The final dispute concerns a request by plaintiffs for a list of so-called "Year–Round Seasonals" hired by the Parks Department since 1995. There is no dispute that this information is quite relevant to the case. Defendants simply object on the alternative grounds that they should not be compelled to create a new document and that the information requested is discernible from documents previously produced by the City.

The first objection misconstrues the nature of the request. Plaintiffs are seeking, in substance, an answer to an interrogatory requesting the names and other identifying information concerning these hires. If that information is reasonably available to the defendants from the records maintained by the Department of Parks or otherwise, they may be required to obtain and provide it.

In this case Mr. Stark testified that the list could be obtained from computerized records maintained by the Department, and defendants do not suggest that deriving this data would be unduly burdensome. Thus, there is an adequate basis for granting the relief sought by plaintiffs.

In seeking to resist this conclusion, defendants argue that they have provided documents from which such information can be derived, and in support of this contention they refer in general terms to several thousand pages of documents turned over to plaintiffs earlier in discovery. The problem with this approach is that such a generalized reference makes it plain that defendants cannot satisfy the standards for invoking Fed.R.Civ.P. 33(d), under which a producing party may specify documents produced that contain a complete answer to an interrogatory if "the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served." Plaintiffs would be required to undertake an extensive document analysis to derive a list that apparently can be provided far more readily by defendants from their own computer files. Defendants are required to do so.

CONCLUSION

***3** For the reasons noted, plaintiffs' application to compel further discovery response from defendants is granted in its entirety. Supplemental production of the requested documents and information is to be completed in two weeks.