

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	C.A. No. H-84-2949
)	
v.)	
)	
SPRING BRANCH INDEPENDENT)	
SCHOOL DISTRICT, et al.,)	
)	
Defendants.)	
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UNITED STATES' REPLY TO DEFENDANTS'
RESPONSE TO MOTION FOR A PROTECTIVE ORDER

On August 18, 1986, the United States moved this Court for a protective order with respect to Defendants' ("SBISD") Rule 26 and 30(b)(6), F.R.Civ.P., Notice of Deposition, served on the United States on July 23, 1986. In its Response to the United States' Motion, SBISD asserts that the Motion was filed in an untimely manner and that the proposed deposition will be neither burdensome nor premature.

1. The Motion For a Protective Order
was Filed In a Timely Manner

Prior to the filing of the United States' Motion for a Protective Order, counsel for the parties agreed to postpone the taking of the deposition until September 17, 1986. The

United States' Motion was filed on August 18, 1986 and was therefore clearly filed in a timely manner.

In asserting in the first section of its Response that the United States "has waived any right to object to the deposition because the motion was filed too late", SBISD fails to acknowledge that the parties had agreed to postpone the deposition until September 17. (SBISD acknowledges this agreement later in its Response, p. 7). That agreement was reached in a telephone conversation that occurred shortly after the United States received the Notice of Deposition. In that conversation, counsel for the United States indicated that scheduling conflicts would prevent production of a witness on the date originally noticed and that the United States was considering filing a motion for a protective order to prevent SBISD from taking the deposition. Thus, the date for the deposition was September 17, 1986, and the United States' Motion for a Protective order, filed on August 18, was timely.

2. The Discovery Sought By SBISD Is
 Unreasonably Duplicative and Is
 Premature

As described in the United States' Motion, the areas of inquiry listed in SBISD's Notice of Deposition are essentially an identical listing of the two sets of interrogatories propounded to the United States on July 7, 1986. To the extent

permitted by the local rules, ^{1/} the United States has answered those interrogatories by providing all information that is available. Some of the information sought in the interrogatories and again in the Notice of Deposition, however, simply does not exist at this time. The United States will of course supplement its answers to those interrogatories when further information is available. At present, therefore, further inquiry into these areas by deposition would be both premature and duplicative.

In its Response, SBISD recounts some of the work performed by the United States in this litigation, apparently in an effort to establish that the information it seeks must be available and that its deposition request is not premature. SBISD's speculation about the information that the United States possesses, however, does not alter the fact that much of the information it seeks through deposition has simply not been

^{1/} Local Rule 10(E)(4) imposes a 30-interrogatory limit. Defendants recently served on the United States 46 interrogatories, bringing the total number of interrogatories propounded by defendants to 64. Defendants have not sought a waiver of Local Rule 10(e)(4). Upon receiving the most recent sets of interrogatories, the United States filed on August 14, 1986 a Motion to Extend the number of interrogatories in order to permit thorough discovery and proper trial preparation in this large and complex action. Pending a ruling on that Motion, the United States answered 29 of the additional interrogatories.

developed at this stage of the litigation. For example, some of the areas of inquiry require thorough and complex analysis of applicant flow and hiring information, but such an analysis must await completion by the United States of its data-base. As explained in the Motion for a Protective Order, the United States only recently completed copying SBISD employee and applicant files, and it is in the process of coding this information into its data-base. All of the information that is available and that is requested in the Notice has been provided in answers to interrogatories or will be provided if the Court grants the United States' motion to extend the number of interrogatories permitted to be filed in this case. When additional information becomes available, as required by the Federal Rules of Civil Procedure, the United States will provide it in supplemental answers to interrogatories.

SBISD argues that in moving for a protective order, the United States is in effect asserting that it should not be required to submit to a deposition until it has completed the discovery process. The United States makes no such assertion; it merely submits that a deposition that seeks non-existent information and information that has been previously requested is not sanctioned by the discovery provisions of the Federal Rules of Civil Procedure.

CONCLUSION

For the reasons stated in this Reply and in the United States' Motion for a Protective Order, the Motion for a Protective Order should be granted.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "John M. Devaney", is written over a horizontal line.


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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing Reply of United States to Defendants' Response to Motion for a Protective Order has been served upon counsel for the Defendants by United States mail on this 5th day of September, 1986, at the following address:

Jeffrey A. Davis
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Houston, Texas 77002




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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing United States' Second Motion for a Protective Order and Memorandum in Support of United States' Second Motion for a Protective Order has been served upon counsel for the Defendants by courier mail, on this 8th day of September, 1986, at the following address:

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