

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

EQUAL EMPLOYMENT)	
OPPORTUNITY COMMISSION,)	
)	
Plaintiff)	
v.)	Case No. CIV-05-1148-C
)	
GARDNER MANAGEMENT GROUP,)	
L.L.C.; GARDNER TANENBAUM)	
GROUP, L.L.C.; and G & G)	
CONSTRUCTION,)	
)	
Defendants)	

ORDER

Before the Court are two discovery related motions filed by the parties. Defendants filed a Motion to Compel seeking responses to Interrogatories and Requests for Production served on Plaintiff Equal Employment Opportunity Commission. Plaintiff in turn has filed a motion seeking to quash Defendants' attempt to depose Robert Hill, an investigator for Plaintiff.

Defendants' Motion to Compel sought documents related to any complaint, criticism, and/or Congressional inquiry of the Oklahoma City branch of the EEOC regarding investigations performed, investigative techniques utilized, investigators and case handling and methods of evaluation, and any training manuals used by the office. Defendants argue the discovery was necessary to provide evidence regarding the trustworthiness of the EEOC's determination that discrimination had occurred in this case. Defendants argue that Plaintiff has indicated an intent to offer the Determinations of Discrimination at the trial of this matter

and the requested discovery is necessary to argue the admissibility of those documents. Defendants also argue the documents are necessary to prepare for the deposition of Robert Hill, the EEOC investigator who interviewed the claimants. According to Defendants, Plaintiff has indicated it will call Mr. Hill as a witness and thus it is necessary to depose Mr. Hill, and to prepare for that deposition Defendants must be allowed to discover any background information about Mr. Hill that may exist.

In light of Plaintiff's affirmative notice that it will not be offering the Determination of Discrimination, Defendants' Motion to Compel is rendered moot and will be denied on that basis. Plaintiff has also stated that it will not be calling Mr. Hill as a witness and argues that therefore there is no need for Defendants to depose him. The mere fact that Plaintiff will not call Mr. Hill does not end the inquiry. First, nothing would prevent Defendants from listing Mr. Hill as a witness and certainly they would be entitled to depose him to determine whether he has relevant information. To the extent Plaintiff argues that Mr. Hill's deposition should be prevented because of various privileges, the Court cannot determine the applicability of those privileges on the material before it. Certainly to the extent Plaintiff has produced copies of Mr. Hill's notes, any claim of privilege of the contents of those notes has been waived. Consequently, Defendants may certainly question Mr. Hill about the contents of his notes. To the extent Plaintiff believes other questions raised during the deposition raise issues of privilege, Fed. R. Civ. P. 30 provides the appropriate mechanism for resolution.

As set forth more fully herein, Defendants' Motion to Compel Discovery (Dkt. No. 39) is DENIED as moot. Plaintiff Equal Employment Opportunity Commission's Motion to Quash Subpoena, Motion for Protective Order and Request for Expedited Hearing (Dkt. No. 37) is DENIED.

IT IS SO ORDERED this 10th day of April, 2007.



ROBIN J. CAUTHRON
United States District Judge