

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

RICHARD F. MASSARO,	:
Plaintiff,	:
	:
-vs-	: Civil No. 3:02cv537 (PCD)
	:
ALLINGTOWN FIRE DISTRICT, <i>et al.</i> ,	:
Defendants.	:

RULING ON MOTION TO COMPEL

Plaintiff moves to compel the production of documents by defendant Allingtown Board of Fire Commissioners. For the reasons set forth herein, the motion is **granted in part**.

I. BACKGROUND

On October 22, 2002, plaintiff served defendant with a request for production consisting of forty-five separate requests. On December 6, 2002, defendant was granted an extension of time, until December 28, 2002, in which to respond to the requests for production. On December 27, 2002, defendant was granted a second extension of time, until January 15, 2003, in which to respond. On December 30, 2002, defendant served plaintiff with its response and objections to the request for production. On January 21, 2003, defendant provided, in response to the request, four boxes of photocopied documents allegedly lacking any labeling associating the documents as responsive to one of the forty-five requests within the request for production.

II. DISCUSSION

Plaintiff argues that defendant should be compelled to respond to his discovery requests as its production was “inadequate, disorganized and incomprehensible,” arriving as four boxes of

photocopies lacking any markings that might indicate to what requests defendant considered the documents responsive.¹ Defendant responds that it fully complied with the request for production and that it possesses no other document responsive to the request

Defendant, by providing four boxes of unlabelled photocopies, did not comply with FED. R. CIV. P. 34(b), which requires that “[a] party who produces documents . . . shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the request.” The collected photocopies are not argued to be representative of how the documents are maintained by defendant in the normal course of business, and the absence of any labeling fails the alternative requirement. Defendant’s written response to the request for production similarly fails to characterize the documents.

This defect in the manner in which documents are produced is not dispositive of the motion to compel. The documents were produced almost three months ago,² and the discovery deadline is now almost upon the parties. This Court could order defendants to mark the documents produced with references to specific production requests, but it is expected that plaintiff is well aware of the contents

¹ Plaintiff also argues that defendants did not timely provide a written response to their request as required by FED. R. CIV. P. 34(b). As this Court expressly granted defendants an extension of time in which to respond, albeit to a request filed after the thirty day response period had lapsed, the extension will be considered granted *nunc pro tunc* thus rendering the response timely. If plaintiff argues that the date of actual production of the documents was untimely, his request for production indicates only that supplemental disclosures shall be made within thirty days and provides no guidance on the initial production as required. *See* FED. R. CIV. P. 34(a) (“request shall specify a reasonable time, place, and manner of making the inspection and performing the related acts”).

² Although plaintiff sought and was granted expedited briefing for purposes of expeditiously resolving the present motion. After defendant filed its opposition, plaintiff sought and was granted an extension of time in which to file a reply. The reply brief was never filed, causing this Court to wait until the reply period lapsed and further protracting the present dispute.

of those boxes at this time. The relevant question on the present motion to compel is whether defendant failed to produce documents requested without a legitimate basis for refusing to do so.

The standard for a granting a motion to compel is clear. “[T]he scope of discovery under FED. R. CIV. P. 26(b) is very broad, ‘encompass[ing] any matter that bears on, or that reasonably could lead to other matter that could bear on, any issue that is or may be in the case.’” *Maresco v. Evans Chemetics, Div. of W.R. Grace & Co.*, 964 F.2d 106, 114 (2d Cir. 1992) (quoting *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351, 98 S. Ct. 2380, 2389, 57 L. Ed. 2d 253 (1978)). “Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.” FED. R. CIV. P. 26(b)(1). The scope of discovery, however, is not without bounds, and limitations are imposed where the discovery is “unreasonably cumulative or duplicative,” overly “burdensome . . . [or] expensive” or “the burden or expense of the proposed discovery outweighs its likely benefit.” FED. R. CIV. P. 26(b)(2). An order compelling discovery may be tailored to the circumstances of the case. *Gile v. United Airlines, Inc.*, 95 F.3d 492, 496 (7th Cir. 1996).

Plaintiff argues that “there may yet be items provided or omitted.” Defendant, initially objecting to forty-four out of forty-five requests, responds that the production represents “[f]ull compliance” with the requests and that “[t]here are no other documents . . . responsive to Plaintiff’s Request for Production.” Defendant does, however, indicate that it did not produce “those documents designated as [subject to] attorney client privilege.”

Other than plaintiff’s general claim that he suspects the production is not a complete response to

the requests, he specifically argues that defendant has not produced

1. plaintiff's personnel file, which defendants contend was given to plaintiff when he left their employ, Request No. 1,
2. documents related to the termination/separation of plaintiff, which defendants argue do not exist, Request No. 2,
3. documents describing all positions held by plaintiff while employed by defendants and compensation therefor, Request No. 6,
4. documentation describing the training and education of management on issues of diversity and employee discipline, Request No. 7,
5. documents describing defendants' performance evaluation procedures, Request No. 10,
6. documents pertaining to investigations of plaintiff while employed by defendants, Request No. 13, 29 and 33,
7. documents concerning this action or its subject matter, Request No. 14,
8. documents pertaining to discrimination claims lodged against defendants since 1990, Request No. 18 and 25,
9. documents detailing all benefits provided to plaintiff that accrued as of November 28, 2000, Request No. 21,
10. biographical details of all employees terminated by defendants during the term of plaintiff's employment, Request No. 22, and information provided to state or federal agencies in response to claims that such terminations were discriminatory, Request No. 23,
11. documents pertaining to Allingtown Fire District employees who have been disciplined and the reason for such discipline, Request No. 32,
12. documents pertaining to appointment of Calvin Deloatch and Aaron Haley as commissioner and chairman of board, respectively, Request No. 35-37,
13. documents pertaining to claims or defenses of defendant, Request No. 39,
14. documents pertaining to the return of the automobile provided plaintiff by Allingtown Fire District, Request No. 40,

15. documents pertaining to Allingtown Fire District locking plaintiff out of his office in November 2000, Request No. 41, and

16. documents pertaining to civil or administrative suits filed by Allingtown Fire District employees against their employer, Request No. 44.

Defendant alleges in its memorandum in opposition that it has fully complied with the requests for production except for documents that it has withheld as protected by attorney-client privilege. The only requests identified above that were objected to as protected are requests 14 and 39. These requests constitute blanket requests seeking all documents relevant to the case without qualification and cannot be read as possessing the degree of particularity required by FED. R. CIV. P. 34(b).³ As such represent the only requests to which defendant objects, it concedes its obligation to produce documents responsive to all other requests. Defendant is therefore ordered to comply with all requests for production, with the exception of Requests 14 and 39, to the extent it has not done so already.

Plaintiff also moves for sanctions against defendant for its refusal to produce the requested documents. *See* FED. R. CIV. P. 37(d) (allowing sanctions in absence of violation of court order if party fails to address discovery request). Although defendant objected to substantially all discovery requests, it generally qualified its objections with a statement that documents responsive to the request would be produced. As there is no evidence that defendant has not in fact responded to all discovery requests, there is no basis for sanctioning defendant.

³ A request need not specifically identify documents sought but may permissibly identify documents by “individual item or by category,” FED. R. CIV. P. 34(b). Serving two requests, one of which seeks all documents relevant to a sixteen-count complaint, the other seeking all documents relevant to the answer, satisfies neither requirement.

III. CONCLUSION

Plaintiff's motion to compel (Doc. No. 24) is **granted in part** consistent with the foregoing opinion.

SO ORDERED.

Dated at New Haven, Connecticut, April ____, 2003.

Peter C. Dorsey
United States District Judge