

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL A. MCKNIGHT,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	NO. 00-573
	:	
SCHOOL DISTRICT OF PHILADELPHIA,	:	
FLOYD W. ALSTON, DAVID W. HORNBECK,	:	
GERMAINE INGRAM, JACKIE B.	:	
SPARKMAN, JOHN L. McLEES,	:	
MARJORIE H. ADLER, GEORGE	:	
CAMMOROTA, HENRY PARKS, WILLIAM	:	
ROBINSON, ANDREW M. ROSEN, GAETON	:	
ZORZI, E.V. McLEAN, CLIFFORD JAMES,	:	
KELLY KLAKE and JAMES PLUMMER,	:	
	:	
Defendants.	:	

MEMORANDUM

ROBERT F. KELLY, J.

SEPTEMBER 25, 2000

On July 25, 2000, this Court issued a decision partially granting a Motion to Dismiss filed by all Defendants except James Plummer, ordered Plaintiff to provide, within 14 days, a more definite statement of his claim under the "Privacy Act of 1974," and granted Defendants leave to thereafter renew their Motion to Dismiss Plaintiff's Privacy Act claim. On August 8, 2000, the Plaintiff filed a one-page Motion requesting additional time to comply with the Court's Order, which was granted on August 28, 2000, and Plaintiff was directed to file a more definite statement by September 1, 2000. On September 5, 2000, this Court received Plaintiff's two-page Response along

with a cover letter from the Plaintiff dated September 2, 2000.¹ The Defendants then renewed their Motion to Dismiss on September 7, 2000, for Plaintiff's failure to file on or before September 1, 2000.

Although Plaintiff is a pro se litigant and "[c]omplaints by pro se litigants are held to less stringent standards than those drafted by legal counsel [t]here is a limit to the indulgence of the law and the resultant imposition on the defendants and the courts in pro se cases." Arunga v. AIPAC, No. CIV.A.93-24, 1993 WL 533177, at *3 (E.D. Pa. 1993)(citations omitted). Pursuant to Federal Rule of Civil Procedure 12(f), even if a party does not make a formal motion, this Court has the power to strike Plaintiff's more definite statement. FED. R. CIV. P. 12(f). The Third Circuit has held that a district court may dismiss a complaint sua sponte. Id. at *2 (citing Bryson v. Brand Insulations, Inc., 621 F.2d 556 (3d Cir. 1980)). Further, "[t]he court on its own initiative may note the inadequacy of the complaint and dismiss it for failure to state a claim as long as the procedure employed is fair." Hermann v. Meridian Mortgage Corp., 901 F. Supp. 915, 924 (E.D. Pa. 1995)(citing 5A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1357 at 301 (2d ed. 1990)). In

¹Plaintiff's letter response dated September 2, 2000 was received in the Court Clerk's office on September 5, 2000, and docketed on September 7, 2000 (Docket No. 38).

this case, the Plaintiff was given an opportunity to more clearly define his Privacy Act claim. Although the Plaintiff did not file his more definite statement within the time required by this Court's Order, before Plaintiff's statement will be dismissed on this procedural ground, the Court will examine the merits of Plaintiff's claim and whether Plaintiff alleges a set of facts upon which relief could be granted.

Defendants originally moved to dismiss paragraph 78 of Plaintiff's Complaint because the Plaintiff did not identify the creditors to whom his allegedly private information, i.e., his address and telephone number, was disclosed. The Defendants surmised, and this Court assumes, that Plaintiff's claim is brought under the Right of Financial Privacy Act of 1978 ("RFPA"), 12 U.S.C. sections 3401-3422. The RFPA focuses on a customer's right to notice before government agencies are permitted access to records of his financial transactions and the customer's right to contest such access. 12 U.S.C. §§ 3401-3422. The Defendants argued in their prior motion to dismiss that the Plaintiff's failure to identify with any specificity the identity of these "creditors" or whether these "creditors" are government agencies which might trigger the RFPA required dismissal for failure to state a claim upon which relief may be granted.

Plaintiff now claims that he provided an attorney named Roseanne P. O'Malley ("O'Malley") with information regarding his

temporary address and telephone number and informed O'Malley that he did not want this information revealed "to 'creditors' or anyone." (Pl.'s Statement at 1, ¶ 1.) He further alleges that O'Malley gave his temporary residence information to the Defendants. Finally, Plaintiff states "[i]f the explanation and/or investigation [of his credit report] concludes that the defendant(s) provided this information to creditors plaintiff believes that his privacy rights were violated." (Id. at 2, ¶ 1.) Based on these allegations, Plaintiff's claim for relief under the RFPA fails because Plaintiff alleges a violation of his privacy rights by O'Malley, not the Defendants. Paragraph 78 of Plaintiff's Complaint is therefore dismissed.

An Order follows.

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	:	
Defendants.	:	

ORDER

AND NOW, this 25th day of September, 2000, upon consideration of the Plaintiff's More Definite Statement of his Privacy Act claim and the Defendants' Motion to Dismiss, it is hereby ORDERED that Defendants' Motion is GRANTED and Plaintiff's Privacy Act claim in Paragraph 78 of Plaintiff's Complaint is DISMISSED.

BY THE COURT:

ROBERT F. KELLY,

J.