

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

MAGDALEN BRADEN, et al. : CIVIL ACTION
v. :
CITY OF PHILADELPHIA, et al. : NO. 98-2718

MEMORANDUM AND ORDER

THOMAS J. RUETER
United States Magistrate Judge

February 10, 1999

Presently before the court is plaintiffs' second motion to compel discovery (Document No. 15), defendants' response thereto (Document No. 17), and plaintiffs' reply to defendants' opposition (Document No. 20).¹ In their motion, plaintiffs seek an order compelling defendants to respond to their first set of interrogatories, request for production of documents, and requests for admissions served on defendants on September 9, 1998 ("Interrogatories I") and supplemental interrogatories served on defendants on December 7, 1998 ("Interrogatories II"). Interrogatories I and Interrogatories II were directed to defendant City of Philadelphia (the "City") only. Plaintiffs also request this court to award them their attorney's fees and costs incurred in bringing both of their motions to compel as authorized by Fed. R. Civ. P. 37. In their response, defendants argue that they provided timely and complete responses, including appropriate objections, to both sets of interrogatories. Defendants request this court to award them their attorney's fees and costs incurred in opposing this motion. For the reasons that

¹ Plaintiffs' motion was referred to this court for disposition by the Honorable James McGirr Kelly by order dated February 1, 1999.

follow, plaintiffs' motion is granted in part and denied in part. The City's request for attorney's fees is denied.

I. The City's Responses to Interrogatories I Were Timely

On September 9, 1998, plaintiffs served the Interrogatories I on the City. (Pls.' Mem. of Law Supp. Mot. Ex. A.) The parties disagree as to when the City was required to respond to Interrogatories I. The parties agree that the responses were originally due on October 9, 1998. A settlement conference was held between the parties and the undersigned on October 14, 1998. On October 8, 1998, in light of the upcoming settlement conference, the parties agreed that the City would have a thirty day extension of time, until November 9, 1998, to respond to the discovery requests. Although no settlement was reached, the parties apparently remained hopeful that one could be, and plaintiffs' counsel filed a joint application for extension of time dated October 22, 1998 requesting that the discovery and all related deadlines be extended by sixty (60) days. (Defs.' Resp. Ex. A.)²

On or about November 9, 1998, counsel for plaintiffs telephoned the City's counsel inquiring about the responses to Interrogatories I. Since the City's counsel was out of the country from November 7 through November 15, 1998, another City Solicitor attempted to determine when the responses would be provided. Plaintiffs claim that the City's counsel agreed to provide the responses early in the week of November 16, 1998. The City claims that it agreed to provide the responses the end of that week, i.e., on November 20, 1998. The City's counsel agreed to provide copies of certain transcripts from earlier administrative hearings and did so, as

² In this application, plaintiffs' counsel represented that the "parties have been engaged in protracted, good faith efforts to settle the ... case." (Defs.' Resp. Ex. A ¶2.)

agreed, on November 13, 1998. (Defs.' Resp. Ex. B.) Despite several telephone conversations between the City's counsel and the office of plaintiff's counsel during the beginning of the week of November 16, 1998, the deadline for the City's responses to Interrogatories I was not addressed again. On November 18, 1998, plaintiffs filed their first motion to compel relating to Interrogatories I. By letter dated November 19, 1998, counsel for the City reiterated his understanding that the administrative hearing transcripts were due November 13, 1998, and the balance of the responses were due November 20, 1998. (Defs.' Resp. Ex. D.) On Friday, November 20, 1998, the City hand delivered its responses to Interrogatories I.

Counsel for plaintiffs claims that he agreed to withdraw his first motion to compel if the City provided "good faith, substantive responses" by Friday, November 20, 1998. (Pls.' Mem. of Law Supp. Mot. at 3.) Plaintiffs argue here that by this quoted language, they intended that they would not accept any responses that raised objections to any of the requests in the Interrogatories I. Plaintiffs also argue that the City's November 20, 1998 responses "ignore the fact that under Fed. R. Civ. P. 36, plaintiffs' requests for admissions were deemed admitted as of November 9, 1998 and under Fed. R. Civ. P. 33(b)(4), the City waived its right to object to the discovery requests when it failed to provide response [sic] by the agreed upon deadline." (Pls.' Mem. of Law Supp. Mot. at 3.)

This court finds that the parties did agree to an extension of time for the City to respond to Interrogatories I until the week of November 16, 1998. Plaintiffs contend that the responses were due the beginning of that week; the City claims they were due Friday, November 20, 1998. This court finds that a misunderstanding between the parties existed as to the exact date the responses were due. The City, however, provided certain requested transcripts on

November 13, 1998, as it had agreed. The City was not mistaken as to the November 13, 1998 deadline for the transcripts. The City provided the balance of the responses by November 20, 1998; the date it understood them to be due. This court finds that the City provided timely responses to Interrogatories I on November 20, 1998.

II. The City's Responses to Interrogatories II Were Timely

On December 2, 1998, plaintiffs served the City with Interrogatories II. (Pls.' Mem. of Law Supp. Mot. Ex. D.) Responses to Interrogatories II were due January 4, 1999. On December 4, 1998, Stephen C. Miller, Senior Attorney for the City, entered his appearance for the defendants replacing prior counsel. In order for Mr. Miller to review the case, and because the parties were continuing to explore settlement, the parties filed a joint application for extension of the discovery and related deadlines of sixty (60) days. (Defs.' Resp. Ex. F.)

By letter dated January 6, 1999, plaintiffs' counsel agreed to an extension until January 11, 1999 for the City to respond to Interrogatories II. (Pls.' Mem. of Law. Supp. Ex. G.) In this letter, plaintiffs' counsel stated as follows:

As we discussed, the responses to the supplementary discovery requests were due on January 4, 1999, but I have agreed to extend the deadline to January 11 because of your heavy workload. In this regard, I understand that the City will be providing written answers and the requested materials on January 11. If this is incorrect (i.e., if the City intends to file objections to any of the discovery requests), please let me know tomorrow so that I can seek appropriate relief without delay. I continue to be greatly concerned about the discovery deadline and do not want to wait until January 11 to learn that a motion to compel may be required.

(Pls.' Mem. of Law Supp. Mot. Ex. G.) It is clear from the terms of this letter drafted by plaintiffs' counsel, that plaintiffs agreed to the extension to January 11, 1999 because of the heavy workload of the City's counsel. The extension was not contingent on the City waiving its

objections to any of the requests as plaintiffs now claim. (Pls.' Mem. of Law Supp. Mot. at 6.) Plaintiffs requested the City to notify them if it intended to file objections to any of Interrogatories II. The City apparently did not honor this request. Even if the City had notified plaintiffs that it intended to file objections, any motion to compel filed by plaintiffs prior to the expiration of the previously granted extension to January 11, 1999 would have been premature.

III. The City's Objections

Plaintiffs maintain that several of the City's objections to Interrogatories I and II are improper. In their Reply to Defendants' Opposition to Plaintiffs' Second Motion to Compel, plaintiffs complain that the City's responses to the following discovery requests were inadequate.

a. Interrogatories I, No. 1. The City provided some of the requested information in this interrogatory when it gave plaintiffs the name of the confidential informant after the court approved the Confidentiality Agreement submitted by the parties. The City, however, shall provide the balance of the requested information, including the informant's address and the information requested in subparagraphs (a) - (e) of this interrogatory. This court overrules the City's objection and finds that this information is reasonably calculated to lead to the discovery of admissible evidence. It is ordered that this information is subject to the confidentiality agreement.

b. Interrogatories I, Nos. 2 and 3. These interrogatories request identification of each instance during a period of five years: (1) "in which the Philadelphia Department of Licenses and Inspections has gained entry to a single-family home for the purpose of determining compliance with the Philadelphia Code by means of filing a complaint in a civil action in equity and/or a Petition for a Civil Search Order and receiving such an order from a

court”, and (2) “in which you have sought from a court and received a permanent injunction requiring property owners to obtain building, plumbing or electrical permits to correct alleged Philadelphia Code violations ... while those violations [were] still being challenged in the ... administrative appeals process.” The City objected to these two interrogatories as being overly broad and unduly burdensome. The City explained that it does not maintain data in the manner or categories requested by the interrogatories. All violations during the specified five years would have to be reviewed to determine whether a single-family home was involved and/or a court order was obtained. By letter dated December 4, 1998, the City explained that the Code Enforcement Unit of the Law Department handles approximately 300 to 500 cases per year, which includes cases that involve the Department of Licenses and Inspections as well as other City departments and agencies. (Defs.’ Resp. Ex. E.) To respond to plaintiff’s discovery requests, the City would have to compile a list of all cases handled by the Code Enforcement Unit over the five year period, review the list for cases involving the Department of Licenses and Inspections, assemble all the files for those cases, including files archived in a storage facility, and manually reviewing each such file to locate any information responsive to the discovery requests. This court agrees that this procedure is unduly burdensome and, accordingly, defendants are not required to produce the requested information. See Fed. R. Civ. P. 26(c).

Plaintiffs contend that each Code Enforcement City Solicitor could be asked to identify the cases which he or she handled which involved the information sought in these two interrogatories. It does not appear to this court that this would make the process any less burdensome. In its letter dated December 4, 1998, over two months ago, the City offered to allow plaintiffs to examine and copy the relevant records. See Fed. R. Civ. P. 33(d). Plaintiffs

have not yet availed themselves of this opportunity. The City also correctly points out that complaints in a civil action in equity and/or petitions for a civil search order are public records available to all individuals through the courts.

c. **Interrogatories I, No. 6; Interrogatories II, No. 1.** In these interrogatories, plaintiffs contend that they are seeking to learn the identity of all individuals who have first hand knowledge of the facts underlying this lawsuit. Specifically, plaintiffs claim that they want to know whether any of the City defendants have discussed this lawsuit or the facts underlying it with a list of eight persons set forth in Interrogatories II, No. 1. (Pls.’ Reply at 3.)³ The City’s response to Interrogatories II, No. 1 appears to be complete. (Pls.’ Mem. of Law Supp. Mot. Ex. I; Defs.’ Resp. Ex. E.) The City identified the eight listed individuals with whom it discussed this lawsuit or the facts underlying it. Plaintiffs argue that the City failed to state whether it discussed the facts of this case with “City Councilmen or their representative”, “any of plaintiffs’ neighbors”, “James Gavarone”, or “Shirley Hayes”. The City shall supplement its answer to make clear whether it discussed this lawsuit or the facts underlying this lawsuit with any of these groups of individuals and, if so, shall provide the information regarding such communications requested in Interrogatories II, No. 1.

d. **Interrogatories I, Nos. 15 and 16.** The City has answered this question more broadly than asked. The City shall supplement its response to make clear whether defendants D’Alessandro and McLaughlin ever served in positions of policymakers for the Philadelphia Department of Licenses and Inspections, as opposed to the City of Philadelphia.

³ It appears that if plaintiffs receive the information requested in Interrogatories II, No. 1, this information also will respond sufficiently to Interrogatories I, No. 6. (Pls.’ Reply at 3.)

e. **Interrogatories I, Doc. Req. No. 9 and Interrogatories II, Doc. Req.**

No. 6. In these document requests, plaintiffs seek (1) copies of all “documents containing job descriptions of the positions at the Philadelphia Department of Licenses held by [sic] between January 1996 and January 1997” by a list of individuals (Interrogatories I, Doc. Req. No. 9); and (2) copies of “personnel files or any other employment files on the defendants in this action who are, or who have ever been, employees of the City of Philadelphia.” (Interrogatories II, Doc. Req. No. 6.) As to Interrogatories I, Doc. Req. No. 9, the City objected on the ground that the requested information is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding its objection, the City offered to make all responsive relevant, non-privileged information available to plaintiffs, if any exists, at a mutually convenient time. See Fed. R. Civ. P. 33(d). Plaintiffs failed to avail themselves of this opportunity. Regardless, the City shall determine if such information exists and, if so, produce it to plaintiffs.

As to Interrogatories II, Doc. Req. No. 6, the City again objected but offered to make the personnel files available to plaintiffs at a mutually agreeable time.⁴ See Fed. R. Civ. P. 33(d). Plaintiffs failed to avail themselves of this opportunity. Regardless, the City shall determine if such information exists and, if so, produce it to plaintiffs.

f. **Interrogatories II, Doc. Req. No. 7.** The City provided plaintiffs with responsive documents in its possession and stated that it would supplement its production if

⁴ Our court has recognized “a heightened standard of relevance” for discovery of information contained in personnel files. Stabilus v. Haynsworth, Baldwin, Johnson and Greaves, P.A., 144 F.R.D. 258, 266 (E.D. Pa. 1992). While the City objected to the production of the personnel files on the grounds of relevance and that production would be unduly burdensome, the City has agreed to make the personnel files available to plaintiffs for their inspection. (Pls.’ Mem. of Law Supp. Mot. Ex. I.) Thus, this court need not address the City’s objections.

“further documentation responsive to request 7 becomes available”. (Pls. Mem. of Law Supp. Mot. Ex. I.) The City shall determine if such further documentation responsive to this request has become available and, if so, shall produce it to plaintiffs.

g. Interrogatories I, Nos. 17-21. Although not addressed in their Reply, plaintiffs contend that the City failed to properly respond to these interrogatories seeking information regarding asserted immunity defenses. (Pls.’ Mem. of Law Supp. Mot. at 12.) In addition to stating objections, the City directed plaintiffs to the records of the administrative and state court proceedings involving the facts in this case. In their response to the motion, the City provided more specific responses to these questions. This court finds that the City has properly responded to these interrogatories.

For all the reasons stated above, plaintiffs’ second motion to compel discovery is granted in part and denied in part. The City shall provide all responses directed herein to plaintiffs’ counsel within fourteen (14) days from the date of this order. In all other respects, plaintiffs’ motion is denied. The City’s request for attorney’s fees is denied. An appropriate order follows.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge

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ORDER

AND NOW, this 10th day of February, 1999, upon consideration of plaintiffs' second motion to compel discovery (Document No. 15), and defendants' response thereto, and for the reasons stated in the accompanying Memorandum, it is hereby

ORDERED

1. Plaintiffs' second motion to compel discovery is GRANTED IN PART and DENIED IN PART;
2. The City shall provide all responses directed by this court in its accompanying Memorandum to plaintiffs' counsel within fourteen (14) days from the date of this order; and
3. The City's request for attorney's fees is DENIED.

BY THE COURT:

THOMAS J. RUETER
United States Magistrate Judge