

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

BENTURA MARTINEZ,

Plaintiff,

v.

C.O. II P. JANUS,

Defendants.

ORDER

09-cv-607-wmc

Plaintiff Bentura Martinez is proceeding on his claims that defendant P. Janus retaliated against him on May 5, 2009 because plaintiff had complained about defendant to defendant's supervisor and that defendant had violated plaintiff's rights under the free exercise clause of the First Amendment when she took his medicine bag. Now before the court is plaintiff's motion to compel responses to his first request for production of documents (RFPs) Nos. 5, 6, 8, 9, 10 and 12, which defendant opposes.

RFP 5 asks for all DOC-GBCI personnel file records regarding defendant from January 1, 2000 until the present. Defendant objects that the request is overbroad and not reasonably calculated to lead to admissible evidence and that some of the information contained therein is confidential. Plaintiff contends in this motion that he is seeking only information concerning investigations of P. Janus for incidents similar to those alleged in this complaint. This request is granted: plaintiff is entitled to discover this information as contained in defendant's personnel file or in less formal file maintained by Human Resources. Any identifying information of staff or inmates must be redacted.

RFP 6 requests all GBCI formal investigation and informal investigations regarding defendant. Defendant objected to this request as unintelligible, overly broad and not reasonably

calculated to admissible evidence. Now in her response to plaintiff's motion to compel she provides information about an investigation conducted by Captain Lesatz, but states that there are no written records of this investigation. I am directing defendant's attorney to search again to ensure that no written documentation exists; if it does, then defendant must disclose it.

In request eight plaintiff requests all inmate complaints filed by inmates against Janus from January 1, 2000 to present. Defendant has produced a list of the offender complaints. The information provided is an adequate response and plaintiff's motion to compel any further response to this request will be denied,

RFP 9 requests a copy of the conduct report written by defendant in May 2009. Defendant states no conduct report was served on the plaintiff. In his motion plaintiff asserts that he wants the report referred to by Lesatz that was written even though it was not served on him. Defendant responds that even though Lesatz referred to a conduct report, the reference was an error and no conduct report was written. This response is adequate. The court cannot order production of non-existent documents. Plaintiff's motion to compel any further response will be denied.

RFPs 10 and 12 seek internal institution rules. Defendant responds that plaintiff has been provided copies of the pertinent Department of Corrections regulations and policies. Plaintiff has not pointed to the existence of any procedures or policies that have not been provided. Therefore, plaintiff's motion to compel further response to RFPs 10 and 12 will be denied.

ORDER

IT IS ORDERED that plaintiff's motion to compel responses to discovery requests, dkt. 31, is GRANTED as to requests for production Nos. 5 and 6 and DENIED in all other respects.

Entered this 2nd day of August, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge