

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

DEREK S. KRAMER,

Plaintiff,

v.

WISCONSIN DEPARTMENT OF CORRECTIONS, *et al.*,

Defendants.

ORDER

10-cv-224-slc

Plaintiff Derek S. Kramer is proceeding on his First Amendment and Religious Land Use and Institutionalized Persons Act claims against defendants, contending that they denied him certain religious property and the opportunity to engage in group religious exercise with other Odinists. Plaintiff has moved to compel the production of thirteen documents, or for reconsideration of his motion for appointment of counsel. Dkt. 28.

Requests for Security Policies

Plaintiff requests the following: “DOC security policy concerning security threat groups meeting at DOC chapels and religious services” (Exh. A, #7); documents relating to security measures of Wisconsin Correctional institutions take concerning security threat groups and religious services (Exh. E, #5); and all “policies, directives, e-mails, memorandums, or instructions given to GBCI staff about security threat groups or individual gang members attending GBCI chapel and religious services” (Exh. B, #12). Defendants respond that, although there is a DAI Policy 306.00.18 titled “Security Threat Group Management,” neither this policy nor any other policy concerns security threat groups meeting at DOC chapels and religious services, and there are no specific policies or procedures relating to monitoring security threat

groups or individual gang members who attend religious services at the GBCI chapel. Nevertheless, in Exhibit E, #18, plaintiff requests production of DAI Policy 306.00.18. Defendants respond that this policy is extremely sensitive , so that dissemination is restricted to security staff only; therefore, disclosing this document to plaintiff—or even his attorney, if he had one—would pose a significant security risk to the institution as a whole.

In light of this, I am denying this portion of plaintiff’s motion to compel. There are no documents responsive to these requests made by plaintiff, except for DAI Policy #306.00.18, which is not genuinely on point and the disclosure of which raises legitimate institutional security concerns.

Requests for Meeting Minutes

Plaintiff requests all documents, e-mails and recorded minutes of the DOC Religious Board dealing with security threat group meetings at DOC chapels and religious services (Exh. A, #11). Defendants interpreted this request as referring to the Religious Practices Advisory Committee because there is no other “Religious Board.” Defendants have provided the meeting minutes for this committee from September 2002 through April 2010. This response is adequate.

Requests for Policy Regarding Tools

In Exhibit B, #20, plaintiff asks for “all policy documents, e-mails, instructions and memorandum dealing with the maintenance department and the release of tools to inmates.” Defendants respond that there is one policy responsive to this requests, Security Internal

Management Procedure # 14, “Subject: Control of Tools, Equipment, Chemicals and Hazardous Materials.” Defendants object to providing this policy for security reasons. As defendants point out, the control of tools is essential to maintaining a safe and secure correctional institution because tools can be used as weapons, to create weapons or to aid an escape. In any event, the court cannot fathom how this policy would likely lead to admissible evidence in this case concerning religious practices. If plaintiff can make a more persuasive, specific proffer, then perhaps the defendants will have to provide a general synopsis of SIMP #14, but that would be the most plaintiff could expect.

Requests for Names and Religious Affiliations of Inmates

Plaintiff seeks documents that would identify the religious affiliation and names of other inmates. (Exh. C, ## 8,10 and 11, Exh.D, #3). Defendants respond that providing this information would pose a significant threat to the security of the institution and the safety of individual inmates. Plaintiff asserts that he needs this information to show that inmates of other religions are treated more favorably. Plaintiff, however, does not need information identifying actual inmates in order to show that other religious groups were treated more favorably than his. Plaintiff may adduce non-identifying information that could allow a comparison between the practices and property of different religious groups at the institution. Plaintiff is free to craft a more general discovery request to obtain this information. Defendants need not disclose the requested names and religious affiliation of inmates.

Plaintiff's Requests for His Own Records

Plaintiff seeks all his inmate records, including health, psychological, social service, legal and security files, together with any documents labeling him part of a security threat group. (Exh E, ## 1 and 19. Defendants have produced all such records with the exception of plaintiff's security files, which include documents identifying him as a member of a security threat group. Defendants object to providing these files because it could compromise the safety and security of the institution. These files are maintained in the security office under lock and key and are not disclosable to anyone outside of institution security staff because they contain highly sensitive information related to ongoing investigations concerning the gang-related activities in which plaintiff allegedly may have engaged. In other words, these files would not even be produced to plaintiff's attorney if he were to receive appointed pro bono counsel in this case. At this point, the relevance of these files would appear to be outweighed by defendants' security concerns. Plaintiff's security files and documents identifying him as a security threat will not be produced to him at this point, or perhaps ever; if plaintiff wishes to pursue this further, he will have to make a much more specific showing as to how and why his need for these files in this lawsuit outweighs the institution's legitimate security concerns regarding this information.

Conclusion

Having denied plaintiff's motion to compel, I now turn to his fallback request, that the court reconsider its denial of his motion for appointment of counsel. Plaintiff argues that if he were to be given an attorney, the attorney would have access the documents he is being denied.

As noted above, this argument is incorrect. Documents are not being disclosed because they either do not exist or because disclosing them would compromise the security of the institution. Documents that compromise the security of the institution would not be provided to any counsel appointed for plaintiff. The court is persuaded that these documents should not be provided because any minimal relevance they may have is outweighed by legitimate security concerns. Plaintiff's motion to reconsider the denial of his motion for appointment of counsel also will be denied. Plaintiff remains free to propound other discovery requests that should adduce information necessary to develop and present his claims without disclosure of the institution's highly confidential security information.

ORDER

IT IS ORDERED that plaintiff Derek S. Kramer's motion to compel production of documents or reconsideration of his motion for appointment of counsel, dkt. 28, is DENIED.

Entered this 13th day of February, 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge