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

JAMES J. KAUFMAN,

Plaintiff,

ORDER

v.

06-C-205-C

MATTHEW FRANK,, *et al.*,

Defendants.

Before the court is plaintiff's 13-part motion to compel discovery, which the state opposes. As a predicate matter, I conclude that the state has met or exceeded its discovery obligations under the Federal Rules of Civil Procedure and is not stonewalling plaintiff as a litigation tactic. I address the 13 subparts in order:

1) Plaintiff complains that defendants will not disclose to him the withheld Loompanics catalog *itself* as opposed to simply withholding the objectionable books offered in the catalog). Defendants contend that the catalog, by displaying and describing objectionable publications, is itself objectionable. On December 6, 2006, defendants submitted for *in camera* review photocopies of certain pages from the Loompanics book catalog. *See* Dkt. 36 (under seal). In an order entered December 7, 2006, I approved the state's decision to withhold all but one of the Loompanics catalog pages that the state provided for review. Actually, plaintiff would not be entitled even to the single page I allowed but for the fact that the state submitted it as a separate exhibit. This court has in the past, and will in this case, allow the Wisconsin Department of Corrections to take an "all or nothing" approach that allows DOC to ban an

entire publication if anything in it threatens institutional order or security. Because the state is not required to redact the catalog in order to provide plaintiff with the inoffensive pages, he is not entitled to disclosure of the catalog.

2) Plaintiff claims that the state's answer is nonresponsive to his interrogatory asking why inmates are not allowed written access to law library resources when physical access was unavailable. Having reviewed the state's response, *see* dkt. 33 at 4, I conclude that there is no additional information for the state to provide. If plaintiff has a specific instance in mind to which the state can respond, then he should supplement this discovery demand. Otherwise, the state's response is sufficient.

3) Plaintiff asks for a more general answer to his interrogatory requesting an explanation of the policy that requires items to arrive at the institution with a merchandise receipt. Plaintiff interprets the state's answer to be limited to "free" items as opposed to "all items." The state clarifies that the cited administrative code section and policy apply generally, but that "free" items that would not have generated receipts nonetheless are allowed in the institution. No further response is necessary.

4) Plaintiff asks for the names of all DOC employees responsible for drafting and implementing the rule that prohibits free items except for approved religious items. The state stands by its answer. This particular policy is specific to JCI and was not authorized by the department administrator. Therefore, there is no additional information for the state to provide.

5) Plaintiff requested a list of all fiction books available in the JCI library "so that I may point out exactly which books contain derogatory, inflammatory, and/or sexual content." The state objected, contending that the request was burdensome, oppressive and harassing; there are 18,040 books in the institution's libraries and the automation software is old and might require tweaking by the librarian, who has no staff assistance. According to the state, plaintiff may obtain virtually all of the requested information at a cited website. The state admits that this list does not include all of the institution's books and explains why not.

The state has sufficiently demonstrated that the burden of complying with plaintiff's request outweighs any probative value the specific information and the specific format would have for plaintiff. Plaintiff may make his point about a double standard by using the cited database to obtain information. So long as the available database presents a large, representative sample, plaintiff is capable of finding titles of publications that he believes prove his evidentiary point. I am denying this subpart of plaintiff's motion.

6) Plaintiff deems insufficient the state's response to his request for redacted copies of all inmate complaints from February 1, 2003 to February 1, 2006 regarding religious emblems. Plaintiff seeks this information to establish a pattern and policy of denying non-mainstream emblems to prisoners.

The state offers a multifaceted response: First, plaintiff is not proceeding on a policy and practice claim with respect to religious symbols. He has no claim against the DOC on this point and his claim against Frank is as to the failure to allow receipt of free non-religious materials into the institution. Second, it was not until August 19, 2005 that the Court of Appeals for the

Seventh Circuit ruled that Atheism is a "religion" for institutional purposes. Therefore, the institution's denial of non-traditional religious emblems prior to that date would prove nothing. Finally, the state reports that it has provided the requested information for JCI, but resists doing so for DOC as a whole.

The state's response is sufficient. The point plaintiff is attempting to establish is collateral to his main complaint, so the burden on the state of providing system-wide information is too great. Information regarding complaints prior to August 19, 2005 is irrelevant. So long as the state has provided redacted complaints from JCI for the period August 20, 2005 to February 1, 2006, it has sufficiently met its discovery obligations.

7) Plaintiff seeks unredacted, complete records of the various institutional complaints he has filed and referenced in this federal civil complaint. These are plaintiff's complaints about the withheld publications mentioned above in paragraph 1. As noted in the court's December 7, 2006 order, plaintiff is not entitled to view these materials in this case at this time (and probably not ever). The court's order sufficiently describes the withheld materials so that plaintiff can determine what they contain and prepare accordingly. If later the court determines that a more detailed explanation and description of the withheld materials is necessary for plaintiff to receive, then it will expand upon its previous order. At this point, however, plaintiff is not entitled to the discovery he seeks.

8) Defendants report that they have produced the requested materials. Therefore, there is nothing for the court to order.

9) Plaintiff requested complete records of the conduct reports cited in his complaint and motion, but the state omitted pages. The state responds that this is just a variation on subpart 7, above; it has no additional response. Having previously addressed this issue, I stand on my previous conclusion: plaintiff is not entitled to the requested material at this time.

10) The state reports that it has located and produced the requested document. Therefore there is no additional information to provide.

11) Plaintiff requested a list of the books kept behind the check out desk of the JCI library. Plaintiff contends that there are only about 100 books on these shelves, and they contain "pages and pages of derogatory, racist and sexual materials." The state relies on its response to subpart 5, above.

On the one hand, plaintiff's access to the website booklist should provide ample information to prove up his claim of a double standard. On the other hand, notwithstanding the state's claim that its current computerized program is inadequate and the library is understaffed, if in fact there exists in some format a list of the books held "behind the checkout desk" then defendants must provide it. I am unfamiliar with the layout of the library and therefore do not know why certain books are held in this location; perhaps they are reference books that cannot be checked out. Regardless, if a list exists, it must be provided; if not, then I will not impose the state the burden of creating one.

12) This is plaintiff's complaint in subpart 12:

> In several requests for admissions, Kaufman requested the defendants admit to simple and direct quotes from DOC policies and DOC documents. The defendants objected, claiming such

> quotes were 'legal conclusions' to which no response was required. *If* Kaufman had asked for any interpretations of the policies, that would be a valid objection, but that is not the case here. Instead, Kaufman was asking for admissions as to direct quotes, word-for-word, from the policies. That requires a response.

Dkt. 30 at 3, emphasis in original.

The state responds that plaintiff's failure to specify any RFAs within the over-100 promulgated makes it difficult to respond to this subpart. As for the actual RFA responses, the state contends that it complied with F.R. Civ. Pro. 36(a), because plaintiff's requests relate to statements or opinions of fact, or of the application of law to fact. It is difficult to rule specifically on a general complaint, but if plaintiff simply is asking the state to admit that the rules and regulations say what they say, then this is not a necessary or appropriate use of RFAs. There are easier and quicker ways to lay the foundation for a rule, regulation or statute. The state does not have to submit a further response to plaintiff's RFAs on such points.

13) This is subpart 13:

> There are a number of admissions, containing direct quotes from other DOC documents, which the defendants claimed lack of knowledge. These are all documents provided as part of discovery and/or contained in Kaufman's inmate file, so there is no reasonable basis for the defendants' claim.

Dkt. 30 at 3.

The state responds that it is unsure exactly which RFAs plaintiff has in mind, but as a general matter, it acknowledges that it denied such requests because plaintiff was "cherry-picking" statements out of context. The state notes that RFAs are not necessary to lay a foundation for the admissions of a party opponent. The state is correct. I will not compel

additional answers to unspecified RFAs, nor would I compel a party to provide a substantive answer to an RFA that seeks ratification of an out-of-context and incomplete statement.

Finally, the state accuses plaintiff of harassment because he has served over 100 RFAs regarding statutory citations, purported quotes from complaints, and quotes from the Bible. Although there is no numerical limit on RFAs, the more a party serves, the more closely the court will review their content for relevance in the face of a harassment claim. If the state wishes to pursue this with the court, it must file its own motion. At this juncture, the state's relief is limited to this court's denial of plaintiff's motion.

ORDER

It is ordered that plaintiff's motion to compel is granted in small part and denied in large in the manner and for the reasons set forth above.

Entered this 12th day of December, 2006.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge