

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

DAVID DAHLER,

Plaintiff,

v.

ORDER

DARYL KOSIAK and LT.
JOHNSON,

06-C-528-S

Defendants.

Plaintiff moves to compel discovery. He specifically seeks responses to his interrogatories nos. 2 and 3 and his request for production of documents no. 2. This motion has been fully briefed and is ready for decision.

These discovery requests seek the reports made by Lt. Kosiak in his investigation of plaintiff's claim under the Federal Tort Claims Act. Defendants argue that these reports were prepared in anticipation for litigation and are beyond the scope of discovery. Rule 26(b)(3), Federal Rules of Civil Procedure.

In Smith ex rel. Smith v. U.S., 193 F.R.D. 201 (D.Del. 2000), the Court held the United States was not required to produce the administrative FTCA claim file in a medical malpractice suit because the administrative process was the foundation of the defense of a lawsuit. This reasoning is also applicable to plaintiff's case. The FTCA claim file is protected from discovery by Rule 26(b)(3) under work product privilege. Plaintiff's motion to compel discovery will be denied.

Dahler v. Kosiak et al., 06-C-528-S

ORDER

IT IS ORDERED that plaintiff's motion to compel discovery is DENIED.

Entered this 15th day of March, 2007.

BY THE COURT:

/s/

JOHN C. SHABAZ

District Judge