

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

MARLON J. POWELL,

Plaintiff,

v.

MARIO GARCIA and JOHN SAMUELSON,

Defendants.

ORDER

10-cv-202-bbc

Plaintiff Marlon J. Powell is proceeding in this case on a claim that defendants Mario Garcia and John C. Samuelson violated his First Amendment right to free exercise of his religion and violated the Religious Land Use and Institutionalized Persons Act by preventing plaintiff from receiving meal bags during Ramadan in 2009. Now before the court is plaintiff's motion to compel discovery. *See* Dkt. 31. Plaintiff did not submit either his discovery requests or defendants' responses, but defendants have provided both.

First, plaintiff moves to compel a response to Document Request No. 2, which requested email correspondence between Captain Jensen and other Department of Corrections Personnel. Although defendants objected to the request as too broad, they made copies of documents responsive to this request (12 pages of email) available for plaintiff to inspect and copy. Because the documents have been provided, plaintiff's motion to compel their production is denied as moot.

Second, plaintiff requests production of the notes that Captain Jensen took during Ramadan 2009. Defendants respond that they do not know what document request this refers to. I will deny plaintiff's motion to compel production of these notes without prejudice; plaintiff

may attempt to clarify what specifically he seeks so that defendants have a better chance of finding and disclosing these notes.

Third, plaintiff argues that “the defendants have not produced Unit Manager Schultz affidavit attesting to the fact that he did indeed speak with me prior to filing my 1st complaint.” Defendants respond that such an affidavit does not exist. Defendants cannot be compelled to produce a document that does not exist.

Finally, plaintiff seeks to compel the production of “log book entries that should have the dates that I did not receive a meal bag.” In plaintiff’s Document Request No. 4, plaintiff requested these log book entries. Although defendants objected, they stated they would attempt to retrieve the documents and make them available. Defendants have now made these logs available for plaintiff’s inspection and/or copying. Because these documents have now been made available to plaintiff, his motion to compel production of them will be denied.

ORDER

IT IS ORDERED that plaintiff Marlon Powell’s motion to compel discovery, dkt. #30, is DENIED.

Entered this 14th day of April 2011.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge