

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

October 15, 2021

ANA MARIA RAVINES DE SCHUR,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
EASTER SEALS-GOODWILL NORTHERN)	OCAHO Case No. 2020B00093
ROCKY MOUNTAIN, INC.,)	
)	
Respondent.)	
_____)	

ORDER ON RESPONDENT'S RENEWED MOTION TO COMPEL

I. BACKGROUND

This case arises out of the antidiscrimination provisions of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1324b(a)(1)(B). On September 18, 2020, Complainant Ana Maria Ravines De Schur filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Easter Seals-Goodwill Northern Rocky Mountain, Inc. Complainant alleges that Respondent discriminated against her based on citizenship and national origin, engaged in document abuse, and retaliated against her when she asserted her rights against unfair immigration-related employment practices in violation of § 1324b. Compl. 6, 9.¹ On October 28, 2020, Respondent's counsel filed an answer.

On August 26, 2021, the Court issued an Order Denying Respondent's Motion to Compel for failure to comply with 28 C.F.R. § 68.23(b). *Ravines de Schur v. Easter Seals-Goodwill N. Rocky Mountain, Inc.*, 15 OCAHO no. 1388b, 4 (2021).² In its previous order, the Court noted

¹ Pinpoint citations to the Complaint are to the internal page numbers of the PDF, as opposed to the varied numbering on the actual pages of the Complaint.

² Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to

Respondent could refile a timely motion to compel that comports with the regulation. *Id.*

On September 15, 2021, Respondent timely filed a Renewed Motion to Compel and Brief in Support. Complainant's response was due by September 30, 2021. *See* 28 C.F.R. §§ 68.11(b), 68.8(c)(2). To date, the Court has not received Complainant's response. As such, Respondent's Renewed Motion to Compel is ripe for adjudication.

II. PARTIES' POSITIONS

Respondent served written discovery on Complainant on April 30, 2021. Renewed Mot. to Compel 2. On June 3, 2021, Complainant provided discovery responses that Respondent argues are "non-responsive and incomplete." *Id.* at 3. Respondent provided the discovery requests, the responses (if any), and argument in support of compelling the discovery responses. *Id.* at 6–14. Respondent attached to its motion the discovery requests and responses. *See* Renewed Mot. to Dismiss, Ex. J. Respondent also provided the email in which it attempted to meet and confer with Complainant regarding the disputed discovery requests. *See* Renewed Mot. to Dismiss, Ex. E. Finally, Respondent "request[ed] its fees and costs." Renewed Mot. to Compel 14.

III. STANDARDS

A. Extensions to Respond to Discovery

Pursuant to OCAHO's rules, extensions to respond to discovery are granted by the Court. *See United States v. Facebook, Inc.*, 14 OCAHO no. 1386e, 2 n.2 (2021); *see also* 28 C.F.R. §§ 68.19(b), 68.21(b); *Kalil v. Utica City Sch. Dist.*, 9 OCAHO no. 1101, 4 (2003).

B. Motion to Compel

A party may move the Administrative Law Judge (ALJ) for an order compelling a response if the party upon whom a discovery request is made fails to respond adequately, including evasive or incomplete responses, or otherwise objects to any part of the request. 28 C.F.R. § 68.23(a), (d). Per 28 C.F.R. § 68.23(b), a party's motion to compel must include:

- (1) the nature of the questions or request;

Volume 8, where the decision has not yet reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database "FIM-OCAHO," or in the LexisNexis database "OCAHO," or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

- (2) the response or objections of the party upon whom the request was served;
- (3) arguments in support of the motion; and
- (4) a certification that the movant has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure information or material without action by the [ALJ].

An objecting party may ultimately defeat the motion by demonstrating that the requested material is irrelevant, or, alternatively, that “its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative evidence.” 28 C.F.R. § 68.40(b).

The ALJ may order the withholding party to serve an answer “[u]nless the withholding party sustains [its] burden of showing that the objection is justified.” 28 C.F.R. § 68.23(a). *Cf. Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362, 1 (2020) (noting that the “ALJ has the authority to ‘compel the production of documents’ and to compel responses to discovery requests, pursuant to 28 C.F.R. § 68.23 and § 68.28.”) (internal quotation marks and citation omitted).

C. Relevance and Objections

Discoverable material is “any matter, not privileged, which is relevant to the subject matter involved in the proceeding.” 28 C.F.R. § 68.18(b). Relevance “encompass[es] any matter that bears on, or that could reasonably lead to other matter that could bear on, an issue that is or may be in the case.” *United States v. Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, 3 (2014) (quoting *United States v. Select Temps., Inc.*, 9 OCAHO no. 1078, 2 (2002)). “All relevant material and reliable evidence is admissible but may be excluded if its probative value is substantially outweighed by unfair prejudice or confusion of the issues, or by considerations of undue delay, of time, immateriality, or needless presentation of cumulative evidence.” 28 C.F.R. § 68.40(b).

The party objecting to the discovery “must articulate its objections in specific terms and has the burden to demonstrate that its objections are justified.” *United States v. Employer Sols. Staffing Grp. II, LLC*, 11 OCAHO no. 1234, 3 (2014) (citing *United States v. Allen Holdings, Inc.*, 9 OCAHO no. 1059, 5 (2000)). A party who fails to timely object or provide adequate rationale for the objection waives said objection. *Id.* (first citing *United States v. Westheimer Wash Corp.*, 7 OCAHO no. 989, 1042, 1045 (1998); then citing *In re United States*, 864 F.2d 1153, 1156 (5th Cir. 1989); and then citing Fed. R. Civ. P. 33(b)(4)). “Generalized or conclusory assertions of irrelevance, overbreadth, or undue burden are not sufficient to constitute objections.” *Allen Holdings, Inc.*, 9 OCAHO no. 1059, at 5 (citations omitted).

IV. DISCUSSION

A. Timeliness of Complainant's Discovery Responses

As a preliminary matter, Respondent does not have the authority to grant extensions of time for Complainant to provide discovery responses because that is a power reserved exclusively for the Court. *See Facebook, Inc.*, 14 OCAHO no. 1386e, at 2 n.2. Respondent propounded the discovery on April 30, 2021. Renewed Mot. to Compel 2. Complainant's responses were due thirty days later, by May 31, 2021. *See* 28 C.F.R. §§ 68.19(b), 68.20(d). Nevertheless, given Complainant's pro se status, Respondent's consent to an extension, and personal issues referenced by Complainant, the Court exercises its discretion and retroactively GRANTS Complainant an extension to respond to the discovery requests. Her responses and objections provided on June 3, 2021 are preserved. *See Facebook, Inc.*, 14 OCAHO no. 1386e, at 2 n.2.

B. Procedural Requirements

In its Renewed Motion to Dismiss, Respondent provided the discovery requests it propounded and Complainant's responses to the discovery requests. Renewed Mot. to Compel, Ex. J. Additionally, Respondent provided arguments in support of compelling the responses it seeks, as discussed further below. Renewed Mot. to Compel 4–5, 7–14. Finally, Respondent certified that it met and conferred in good faith with Complainant to resolve the discovery disputes. *Id.* at 4, 6; Renewed Mot. to Compel, Ex. E. Therefore, Respondent satisfied the procedural requirements of a motion to compel outlined in 28 C.F.R. § 68.23(b). As such, the Court now turns to the substance of Respondent's motion to compel.

C. "Discovery Request No. 1"

"Discovery Request No. 1" seeks "copies of any and all writings, correspondence, communication or documents related to job offers [Complainant has] received, or employment obtained from January 1, 2020 through current." Renewed Mot. to Compel 7.

In her response to the request for production, Complainant describes difficulties related to job applications. Renewed Mot. to Compel, Ex. J – Complainant's Disc. Resps. to Resp't 2–4. Complainant explained "[b]ecause I am on a tablet with limited access to my full email database, I cannot access all the applications for employment that I sent. Those are also registered with the Utah Department of Workforce Services, as I kept sending them their monthly required applications." *Id.* at 8. Complainant also provided a hyperlink. *Id.* at 8.

Respondent argues that Complainant's response does not satisfy its request and the documents are necessary for Respondent to mount a defense related to damages (i.e. back pay and lost wages). Renewed Mot. to Compel 4, 7.

The Court concurs with Respondent's assessment for the reasons explained below. Respondent

is entitled to the requested documents and Complainant is ordered to provide them.

Complainant's answer is not responsive since she does not provide the requested documents. Insofar as Complainant argues that she does not possess all of the applications, 28 C.F.R. § 68.20(a)(1) obligates her to produce only documents in her "possession, custody, or control." Complainant's job offers or employment obtained from January 1, 2020 are relevant as this information bears on the issue of damages. In compliance with 28 C.F.R. § 68.23(b)(3), Respondent has provided sufficient, persuasive argument in support of compelling Complainant's response to "Discovery Request No. 1."

Therefore, Complainant is ORDERED to respond to "Discovery Request No. 1."

D. "Discovery Request No. 6"

"Discovery Request No. 6" demands Complainant "[i]dentify and describe by name, address and date every application for employment and prospective employer you have contacted since January 1, 2020." Renewed Mot. to Compel 8.

In response, Complainant stated "[a]pplications for employment were sent to numerous agencies." Renewed Mot. to Compel, Ex. J – Complainant's Disc. Resps. to Resp't 11.

Respondent argues that Complainant's was non-responsive because Complainant failed to identify actual prospective employers and this information is necessary for Respondent to mount a defense related to damages (i.e. back pay and lost wages). Renewed Mot. to Compel 4, 8.

The Court concurs with Respondent's assessment for the reasons explained below. Respondent is entitled to the requested information and Complainant is ordered to provide it.

Complainant did not provide a list of applications as requested; the information is relevant to damages. In compliance with 28 C.F.R. § 68.23(b)(3), Respondent provided sufficient, persuasive argument to compel Complainant's response to "Discovery Request No. 6."

Therefore, Complainant is ORDERED to respond to "Discovery Request No. 6."

E. "Discovery Request No. 8"

"Discovery Request No. 8" seeks "copies of any and all documents reflecting or demonstrating Plaintiff's attempts to secure employment including but not limited to contacts or applications with any potential employers from January 1, 2020 through the present." Renewed Mot. to Compel 8.

In response, Complainant describes, generally, her various issues and personal conflicts within the state of Utah. Renewed Mot. to Compel, Ex. J – Complainant's Disc. Resps. to Resp't 12.

Respondent explains Complainant's response is not responsive to its request, and, similar to its other employment-related requests, Respondent asserts this information is necessary to mount a defense pertaining to damages. Renewed Mot. to Compel 4, 9.

The Court concurs with Respondent's assessment for the reasons explained below. Respondent is entitled to the requested documents and Complainant is ordered to provide them.

Complainant does not provide any responsive documents. The requested documents are relevant to damages, which may be appropriate upon a finding of liability. In compliance with 28 C.F.R. § 68.23(b)(3), Respondent has provided sufficient, persuasive argument in support of compelling Complainant's response to "Discovery Request No. 8."

Therefore, Complainant is ORDERED to respond to "Discovery Request No. 8."

F. "Discovery Request No. 9"

"Discovery Request No. 9" seeks "copies of any and all writings, notes, communications, records, files or documents, video or audio recordings . . . relating to Easter Seals." Renewed Mot. to Compel 9.

Complainant provided a hyperlink purporting to lead to "exchanges with [an Easter Seals employee]," but asserted that she "cannot retrieve further exchanges, because [her] tablet does not allow for much memory to dig into emails that are older than a year. Public computers are not available because of the Pandemic." Renewed Mot. to Compel, Ex. J – Complainant's Disc. Resps. to Resp't 12.

Respondent argues that Complainant's response was impermissibly narrow in scope as she only provided exchanges with just one of Respondent's employees. Renewed Mot. to Compel 4. Respondent seeks this information because it may show that Complainant "acknowledged Respondent's legitimate, non-discriminatory reasons for not enrolling her in its training program." *Id.* at 10.

The Court concurs with Respondent's assessment of Complainant's response. With the following caveats, Respondent is entitled to the requested documents and Complainant is ordered to provide them.

Although Complainant provided conversations with one of Respondent's employees, it is unclear whether she produced all copies of writings, communications, records, files or documents, and video or audio recordings relating to Respondent. If the produced communications are the extent of the documents in Complainant's possession, she must unambiguously state such. The requested information is relevant to Respondent's defense of a legitimate, non-discriminatory

reason for its actions.

In further analyzing this request, the Court notes that Respondent does not provide a time frame for the recordings it seeks in its discovery request. OCAHO case law permits limitations on the temporal scope of discovery. *United States v. Durable, Inc.*, 11 OCAHO no. 1221, 10 (2014) (citations omitted). Specifically, pertaining to employment discrimination cases:

[C]ourts have held that discovery of information both before and after the liability period may be relevant and/or reasonably calculated to lead to the discovery of admissible evidence; thus, courts commonly extend the scope of discovery to a reasonable number of years both prior to and following such period. *See, e.g., James v. Newspaper Agency Corp.*, 591 F.2d 579 (10th Cir.1979) (four years prior to liability period reasonable); *EEOC v. Kansas City Southern Railway*, 195 F.R.D. 678, 679–680 (D.Kan.2000) (allowing discovery for three years prior and one year after liability period); *Raddatz v. Standard Register Co.*, 177 F.R.D. 446, 448 (D.Minn.1997)(allowing discovery into the period two years after termination); *Lyoch v. Anheuser–Busch Cos.*, 164 F.R.D. 62, 67 (E.D.Mo.1995) (four years prior to liability period reasonable); *Hicks v. Arthur*, 159 F.R.D. 468, 471 (E.D.Pa.1995) (allowing discovery to extend to the period two years after the tenure of the plaintiffs); *Robbins v. Camden City Board of Educ.*, 105 F.R.D. 49, 62–63 (D.N.J.1985) (allowing discovery for a period of two years after employment terminated); *McClain v. Mack Trucks, Inc.*, 85 F.R.D. 53 62 (E.D.Pa.1979) (five years prior to liability period reasonable); *Cormier v. PPG Indus.*, 452 F.Supp. 594 (W.D.La.1978) (five years prior to liability period reasonable).

Horizon Holdings, L.L.C. v. Genmar Holdings, Inc., 209 F.R.D. 208, 211 (D. Kan. 2002); *e.g., Swackhammer v. Sprint Corp. PCS*, 225 F.R.D. 658, 667 n.10 (D. Kan. 2004); *accord Autobuses Ejecutivos, LLC*, 11 OCAHO no. 1220, at 6 (“There is no broad general rule setting out a specific time frame for discovery and disputes about the temporal scope are typically resolved based on the factual context of each case.”).³

As such, the Court limits the discovery request such that Complainant is ORDERED to respond to “Discovery Request No. 9” by providing information from January 1, 2016, approximately four years from when she submitted her job application for Respondent, to present. *See Durable, Inc.*, 11 OCAHO no. 1221, at 10–11 (limiting scope of discovery requests from a twenty-five year period to a five year period).⁴

³ Since the parties to this matter are located in Utah, and the violations are alleged to have occurred there, the Court also may look to the case law of the relevant United States Court of Appeals, here the Tenth Circuit. *See* 28 C.F.R. § 68.57.

⁴ Although Respondent is correct that Complainant’s failure to assert objections in her responses to the discovery requests constitutes a waiver of said objections, *see Employer Sols. Staffing Grp.*

Therefore, Complainant is ORDERED to respond to “Discovery Request No. 9,” subject to the constraints provided above.

G. “Discovery Request No. 13”

“Discovery Request No. 13” seeks “copies of any and all writings, correspondence, communication or documents related to rejection of employment opportunities you sought, including reasons, if any.” Renewed Mot. to Compel 10.

Complainant asserts that she “accepted the proposal of an Italian author, to translate his recently published book from Italian to English” and is “in hopes to apply for NEA (NATIONAL ENDOWMENT FOR THE ARTS) FUNDING FOR BOOK TRANSLATORS.” Renewed Mot. to Compel, Ex. J – Complainant’s Disc. Resps. to Resp’t 16.

Respondent asserts that “Complainant produced nothing” and the requested information “is necessary to assess Claimant’s lost income[.]” Renewed Mot. to Compel 5.

The Court concurs with Respondent’s assessment of Complainant’s response. With the following caveats, Respondent is entitled to the requested documents and Complainant is ordered to provide them.

Complainant does not provide the requested documents and the documents are relevant to damages, which may be appropriate upon a finding of liability. In compliance with 28 C.F.R. § 68.23(b)(3), Respondent has provided sufficient, persuasive argument in support of compelling Complainant’s response to “Discovery Request No. 13.”

To avoid concerns of overbreadth, the Court imposes the same temporal restrictions as “Discovery Request No. 9”; specifically, the Court limits the discovery request such that Complainant must provide information from January 1, 2016 to present that is responsive to “Discovery Request No. 13.”

Therefore, Complainant is ORDERED to respond to “Discovery Request No. 13,” subject

II, LLC, 11 OCAHO no. 1234, 3, the Court has an independent obligation to analyze whether the discovery requests are appropriate. *Ivins v. Corr. Corp. of Am.*, 291 F.R.D. 517, 520 (D. Mont. 2013) (citing *Moreno Rivera v. DHL Glob.s Forwarding*, 272 F.R.D. 50, 57 (D.P.R.2011)) (stating that despite an opposing party’s failure to meet its burden of showing its objection is justified, “the Court still has the obligation to review the discovery requests to ensure that they are non-frivolous requests”); see *Cotracom Commodity Trading Co. v. Seaboard Corp.*, 189 F.R.D. 655, 666 (D. Kan. 1999).

to the constraints provided above.

H. “Discovery Request No. 14”

“Discovery Request No. 14” requests Complainant “identify and describe any and all applications for benefits or financial support [she has] made and all benefits and financial support . . . received from any source from January 1, 2021 to present.” Renewed Mot. to Compel 10.

Complainant responds that the U.S. Department of Housing and Urban Development “agreed to grant me with a Federal Grant for Housing, under which I am currently not paying any rent,” and provides the name and phone number of the Section 8 Housing specialist in Provo. Renewed Mot. to Compel, Ex. J – Complainant’s Disc. Resps. to Resp’t 17.

Respondent argues that Complainant’s response was impermissibly narrow in scope as “Complainant only identified [Housing and Urban Development], no others.” Renewed Mot. to Compel 5. Moreover, Respondent asserts that “[t]he requested information is necessary to prepare an adequate rebuttal to Claimant’s claim for lost income[.]” *Id.* at 10.

The Court concurs with Respondent’s assessment for the reasons explained below. Respondent is entitled to the requested information and Complainant is ordered to provide it.

While Complainant provides Housing and Urban Development [HUD] information responsive to the request, she does not clarify whether that is the only information she possesses that is responsive to the request. Rather, Complainant has provided information indicating that she has submitted applications for benefits and/or financial support from other entities besides HUD. *See* Renewed Mot. to Compel, Ex. J – Complainant’s Disc. Resps. to Resp’t 4, 13. In compliance with 28 C.F.R. § 68.23(b)(3), Respondent has provided sufficient, persuasive argument in support of compelling Complainant’s response to “Discovery Request No. 14.”

Therefore, Complainant is ORDERED to respond to “Discovery Request No. 14.”

I. “Discovery Request No. 18”

“Discovery Request No. 18” seeks “copies of any writings, records, correspondence or documents related to [her] immigration status in the United States from 2010 to the present, including without limitation, current immigration status, applying for and/or receiving immigration status in the United States and any rejected requests for an immigration status.” Renewed Mot. to Compel 11.

Complainant responds that “no agency has the right to demand immigration papers from a refugee or an asylee” and that her valid picture ID and social security card “contain all the

information implicit to my ability to perform legal work in the United States.” Renewed Mot. to Compel, Ex. J – Complainant’s Disc. Resps. to Resp’t 20. She provides a link to a USCIS letter sent to Easter Seals explaining USCIS guidelines, but ultimately refuses to provide the requested information “for [her] protection,” and instead gives the contact information of Immigrant and Employee Rights (IER) Trial Attorney so that Respondent can “double check this safe USCIS practice.” *Id.* at 21.

Respondent asserts that “Complainant refused to produce [because she] confus[ed] employment verification with discovery.” Renewed Mot. to Compel 5. Respondent seeks this information because “information about her status and representations she made in obtaining her status is relevant to resolve all questions about her status and how she obtained it, and/or relevant in preparing a rebuttal, for instance, by showing Claimant has a predisposition to allege discrimination in many contexts.” *Id.* at 11.

In refusing to provide documents responsive to “Discovery Request No. 18,” Complainant makes general assertions that “no agency has the right to demand [her] immigration papers[;]” yet, she fails to cite to the relevant statute, case law, and/or regulation. Based on the arguments presented, the Court finds that Complainant’s work authorization status and documents supporting such are relevant to the claims of discrimination.

In analyzing this request, however, Respondent has not made a sufficient showing regarding the relevance of Complainant’s “appl[ication] for and/or receiving immigration status in the United States and any rejected requests for an immigration status” as required by 28 C.F.R. § 68.23(b)(2). Complainant’s immigration status, including her work-authorization, is relevant to her claim of discrimination, retaliation, and document abuse; but documents related to the process by which she obtained such status are not relevant and Respondent has not convinced the undersigned otherwise. Further, the temporal scope reaching back to 2010 that Respondent proposes raises concerns of overbreadth.

Respondent’s Motion to Compel regarding Discovery No. 18 is GRANTED in part and DENIED in part. Complaint is only required to produce her immigration documents that establish work authorization in the United States, and nothing more.⁵

Therefore, Complainant is ORDERED to respond to “Discovery Request No. 18,” subject to the constraints provided above.

J. “Discovery Request No. 20”

⁵ To the extent Complainant has already provided documents which establish authorization to work in the United States, Complainant shall not construe this Order as requiring her to duplicate her effort; rather, in that instance, Complainant shall construe the Order as requiring her to identify, with specificity, the document that has already been produced for Respondent.

“Discovery Request No. 20” seeks “all correspondence, notes, records, and documents [she] drafted and/or [Complainant] sent to and received from DOJ . . . at any time in 2020 including without limitation the discrimination charge, all DOJ’s requests for documentation or information and [her] responses to DOJ correspondence.” Renewed Mot. to Compel 12.

Complainant refused, asserting that the “USDOJ follows policy in that they will not release information or documents from one party to another” and that she is “not willing to violate those confidentiality standards[.]” Renewed Mot. to Compel, Ex. J – Complainant’s Disc. Resps. to Resp’t 22.

Respondent construes this as a refusal “to provide any [of the requested documents], based on some unknown confidentiality standard.” Renewed Mot. to Compel 5. Respondent argues “this information is essential in order to prepare an adequate response to the Complaint.” *Id.* at 12.

The Court concurs with Respondent’s assessment for the reasons explained below. Respondent is entitled to the requested documents and Complainant is ordered to provide them.

Inasmuch as Complainant is asserting some privilege as justification for her refusal to provide responsive documents, she “bears the burden to demonstrate that the failure to disclose is warranted.” *United States v. Capital Fireproof Door*, 14 OCAHO no. 1372, 2 (2020). The party asserting the privilege must “make the claim expressly and shall describe the nature of the documents, communications or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.” *Id.* (citing Fed. R. Civ. P. 26(b)(5)(A)). Complainant’s general assertion of confidentiality is insufficient to meet this burden.

The requested information pertains to Complainant’s IER charge, which is the basis of her complaint. In compliance with 28 C.F.R. § 68.23(b)(3), Respondent provided sufficient, persuasive argument to compel Complainant’s response to “Discovery Request No. 13.”

“Consistent with Federal Rule of Civil Procedure 26(b)(5), Complainant must either produce the documents [responsive to the discovery request], or complete a privilege log in which Complainant describes generally the subject matter, the persons participating, and the basis for asserting the privilege.” *Capital Fireproof Door*, 14 OCAHO no. 1372, at 2.

Therefore, Complainant is ORDERED to respond to “Discovery Request No. 20,” subject to the constraints provided above.

K. “Discovery Request No. 21”

“Discovery Request No. 21” seeks “copies of any correspondence, records, notes, and documents

related to or describing [Complainant's] interaction with [Respondent's] staff" pertaining to Respondent's inquiries about Complainant's immigration status or that Complainant "sent to or received from any person or entity." Renewed Mot. to Compel 12.

Complainant responded that she had "numerous phone calls with [an Easter Seals employee]" and provided a hyperlink for "most relevant written exchanges . . . already in [Respondent's] files." Renewed Mot. to Compel, Ex. J – Complainant's Disc. Resps. to Resp't 23.

Respondent argues that Complainant's response is inadequate, noting she "produced only what she deemed to be the most relevant written exchanges with [one of Respondent's employees]." Renewed Mot. to Compel 5 (internal quotation marks and alterations omitted). Moreover, Respondent claims this information may bear on Complainant's allegations that "Respondent made improper inquiries about her immigration status." *Id.* at 13.

The Court concurs with Respondent's assessment for the reasons explained below. Respondent is entitled to the requested information and Complainant is ordered to provide it.

Complainant provided what was, in her assessment, "the most relevant exchanges" with one of Respondent's employees; Respondent, however, seeks all exchanges with Respondent's staff, not just exchanges with one employee. If the produced communications are the extent of the documents in Complainant's possession, she must unambiguously state such. The requested materials are relevant as they relate directly to Complainant's claims of discrimination, document abuse, and retaliation, and Respondent's possible defenses. Further, assuming that Complainant is alleging that Respondent has equal access to the materials, "objecting to a discovery request because the information sought is equally available to the propounding parties from their own records or from records equally available to them is insufficient." *Sharma v. Lattice Semiconductor*, 14 OCAHO no. 1362a, 3 (2020) (citing *Nat'l Acad. of Recording Arts & Scis., Inc. v. On Point Events, LP*, 256 F.R.D. 678, 682 (C.D. Cal. 2009)).

In compliance with 28 C.F.R. § 68.23(b)(3), Respondent has provided sufficient, persuasive argument in support of compelling Complainant's response to "Discovery Request No. 21." However, to avoid concerns of overbreadth, the Court imposes the same temporal restrictions as "Discovery Request No. 9"; specifically, the Court limits the discovery request such that Complainant must provide information from January 1, 2016 to present that is responsive to "Discovery Request No. 21."

Therefore, Complainant is ORDERED to respond to "Discovery Request No. 21," subject to the constraints provided above.

L. "Discovery Request No. 22"

Finally, "Discovery Request No. 22" seeks "copies of all email [Complainant] sent at any time in

2020 to the Department of Workforce Services, State of Utah.” Renewed Mot. to Compel 13.

Complainant asserts she “cannot produce ALL of the documents, because [she is] suffering under physical exhaustion and anxiety” and instead provided nine hyperlinks allegedly leading to documents that “may give [Respondent] an idea of [Complainant’s] grievances to the DWS.” Renewed Mot. to Compel, Ex. J – Complainant’s Disc. Resps. to Resp’t 23–24. Complainant declined to produce “numerous further documents that [she is] not wishing to compromise for this case.” *Id.* at 24.

Respondent argues Complainant’s response is the equivalent of “produc[ing] nothing” and the documents are “relevant in assessing Claimant’s state of mind and predisposition to infer discrimination prior to her engagement with Respondent.” Renewed Mot. to Compel 5, 13.

The Court concurs with Respondent’s assessment for the reasons explained below. Respondent is entitled to the requested information and Complainant is ordered to provide it.

As the party opposing the discovery requests, Complainant has the burden to provide facts justifying her objection “by demonstrating that the time or expense involved in responding to requested discovery is unduly burdensome,” and the burden “imposes an obligation to provide sufficient detail and explanation about the nature of the burden in terms of time, money and procedure required to produce the requested documents.” *Horizon Holdings v. Genmar Holdings*, 209 F.R.D. 208, 213 (D. Kan. 2002) (citing *Snowden v. Connaught Lab., Inc.*, 137 F.R.D. 325, 332 (D. Kan. 1991)). While Complainant explains that her “physical exhaustion and anxiety” prevent her from producing discovery responses, Complainant has not provided sufficient detail explaining why Discovery Request No. 22 is overly burdensome. *See A.S. v. Amazon Web Services, Inc.*, 14 OCAHO no. 1381j, 8 (2021). Further, Respondent limited the scope of the request. It is seeking emails from 2020. Complainant’s objection is overruled.

The requested materials are relevant as they pertain to, or could reasonably lead to other matter that could bear on her allegations of document abuse, discrimination, and/or retaliation. In compliance with 28 C.F.R. § 68.23(b)(3), Respondent has provided sufficient, persuasive argument in support of compelling Complainant’s response to “Discovery Request No. 22.” Complainant is ordered to respond to “Discovery Request No. 22.”

Therefore, Complainant is ORDERED to respond to “Discovery Request No. 22.”

M. Attorney’s Fees

Without citing to authority, Respondent “requests its fees and costs incurred in this Motion and in addressing Complainant’s refusal to participate in discovery.” Renewed Mot. to Compel 2.

On the contrary, “the weight of OCAHO precedent indicates that monetary sanctions akin to

those found in the Federal Rules of Civil Procedure are not available for OCAHO Administrative Law Judges[.]” *Ogunrinu v. Law Resources*, 13 OCAHO no. 1332c, 2 (2020) (citing *Hsieh v. PMC-Sierra Inc.*, 9 OCAHO no. 1091 (2003)). OCAHO’s guiding statute only permits an award of attorney’s fees “at the conclusion of the case pursuant to 8 U.S.C. § 1324b(h).” *Id.*; accord *Griffin v. All Desert Appliances*, 14 OCAHO no. 1370b, 10 (2021) (“An award of such attorney’s fees is premature at this stage as neither party is yet a ‘prevailing party.’”). In *Hsieh*, the complainant requested attorney’s fees incurred in bringing motions to compel discovery and he cited to the Federal Rules of Civil Procedure, 28 U.S.C. § 1927, and the Court’s inherent power to deter a party from obstructing discovery. 9 OCAHO no. 1091, at 4–7. Ultimately, the Court denied the requests for attorney’s fees because it found that it lacked the authority to award the requested attorney’s fees based on the cited authorities. *Id.* at 4.

Here, Respondent has not provided any authority in support of its request for attorney’s fees and OCAHO precedent certainly does not support an award of attorney’s fees at this juncture. Therefore, Respondent’s request for attorney’s fees is DENIED.

IV. CONCLUSION

Respondent’s Renewed Motion to Compel is GRANTED in part and DENIED in part. Complainant is ordered to produce the discovery as detailed in this Order **within 30 days** of the date on the Certificate of Service for this Order.

Respondent’s request for attorney’s fees is DENIED.

“The parties should note that failure to comply with this Order may result in sanctions pursuant to 28 C.F.R. § 68.23(c).” *Ogunrinu v. Law Resources*, 13 OCAHO no. 1332e, 10 (2020).

SO ORDERED.

Dated and entered on October 15, 2021.

Honorable Andrea R. Carroll-Tipton
Administrative Law Judge