

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

June 9, 2020

MARTINE MBITAZE,)	
Complainant,)	
)	
v.)	8 U.S.C. § 1324b Proceeding
)	OCAHO Case No. 2020B00005
)	
GREENBELT POLICE DEPARTMENT,)	
)	
Respondent.)	
_____)	

ORDER DENYING MOTION TO COMPEL AND RESETTING DEADLINES

I. BACKGROUND

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324b(a)(1)(B). On October 11, 2019, Complainant filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) against Respondent, Greenbelt Police Department. Complainant alleges that Respondent refused to hire her based on her citizenship status and national origin, and engaged in document abuse in violation of § 1324b. On November 8, 2019, Respondent filed an answer and a motion to dismiss. On January 15, 2020, the Court issued an order denying the motion to dismiss. On April 10, 2020, the undersigned held a prehearing conference setting the deadlines in this matter. On May 18, 2020, Complainant filed a Motion to Compel Production of Documents and Exhibits. Respondent filed a response on June 8, 2020.

II. DISCUSSION

Complainant filed a motion to compel requesting that the Court require Respondent to produce documents responsive to Complainant’s request for production of documents. Complainant contends that out of twenty requests, Respondent only submitted one response and Respondent objected to at least one other request.

Nevertheless, in its response, Respondent contends that it responded to Complainant’s request for production of documents on April 2, 2020, and also provided Complainant with all emails that were responsive to her requests. Respondent also states that it supplemented its responses to

Complainant's requests on May 21, 2020, several days after Complainant filed her motion to compel. Respondent states Complainant confirmed she received the supplemental documents on May 26, 2020. Respondent argues that based on its supplemented document production, Complainant's motion to compel is moot.

An OCAHO Administrative Law Judge 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. *United States v. Rose Acre Farms, Inc.*, 12 OCAHO no. 1285, 2 (2016). The OCAHO rules permit parties to file motions to compel responses to discovery if the responding party fails to adequately respond or objects to the request. 28 C.F.R. § 68.23(a). However, pursuant to OCAHO Rule § 68.23(b), a motion to compel must set forth and include:

- (1) The nature of the questions or request;
- (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 in good faith 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 Administrative Law Judge.

Complainant's motion to compel appears to seek responses to nineteen requests for production. Complainant's motion does not describe the nature of the nineteen requests and does not describe Respondent's responses or objections to those requests. Complainant describes only one request, seeking a list of immigrants that Respondent currently employs as police officers. She states that Respondent objected to the request as too vague and irrelevant to the subject matter. She argues that the request is crucial to her case because this matter is in reference to immigration. The Court notes that Complainant filed a Motion for Production of Documents on February 11, 2020. If these are the document requests Complainant seeks to compel, the Complainant should so indicate, provide Respondent's responses to the discovery requests, and provide arguments in support of the requests she seeks to compel. Further, Complainant's motion does not contain a certification that prior to filing the Motion to Compel, she attempted in good faith to confer with Respondent in an effort to obtain the requested information without judicial intervention. *See United States v. Allen Holdings, Inc.*, 9 OCAHO no. 1059, 5 (2000) (motions to compel are prima facie invalid if the motion lacks a certification of good faith conferment).

As such, Complainant's Motion to Compel is DENIED. However, since Respondent supplemented its responses to the request for production after Complainant filed her motion to compel and since Complainant's motion to compel did not meet the OCAHO requirements, **on or before June 18, 2020**, Complainant may resubmit a motion to compel in accordance with the requirements as set forth in § 68.23(b). Respondent should be mindful of the ten-day response deadline pursuant to 28 C.F.R. § 68.11(b).

III. DEADLINES RESET

At the prehearing conference, the undersigned set the case schedule. The discovery period has closed, therefore no new discovery requests may be propounded. However, due to the current

discovery dispute, the court will extend the dispositive motions deadlines. The deadlines in this matter are reset as follows:

Dispositive motions due: July 15, 2020

Responses due: August 15, 2020

Hearing: October 6–7, 2020 in Greenbelt, Maryland

SO ORDERED.

Dated and entered on June 9, 2020.

Jean C. King
Chief Administrative Law Judge