

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Walker D. Miller**

Civil Action No. 06-cv-01142-WDM-MJW

KARYN S. PALGUT,
Plaintiff,

v.

CITY OF COLORADO SPRINGS,
Defendant.

**Stipulated Motion of the Parties Re: Outstanding Discovery Motions Pending
Before the Magistrate Judge**

The parties, through their respective counsel have entered into a number of stipulations regarding the outstanding discovery motions pending before Magistrate Judge Watanabe. The parties request that the Court enter the Proposed Omnibus Order on Pending Discovery Motion filed this date.

The parties hereby enter into the following stipulations:

- I. Doc. 205: Motion to Reconsider Ruling that May 2, 2005 Memo was Protected by the Work Product Privilege, And Supplemental Information in Support of Objections to the Ruling of April 27, 2007**

The City no longer objects to Plaintiff's use of the May 2, 2005 Memo. It further stipulates that the Memo should be unsealed, and that any restrictions on Plaintiff's use of the Memo be removed by order of the Court.

No agreement has been reached with respect to Plaintiff's request for costs attorneys' fees incurred as a result of the City's motion for protective order.

II. Doc. 208: Plaintiff's Motion to Reconsider Previous Discovery Rulings of the Magistrate Judge, Based on New Evidence And/or Supplemental Information in Support of Objections to Rulings on Motions to Compel

The City will produce the following documents to Plaintiff in response to previous discovery requests:

Calendars: On Monday, October 29, 2007, the City will produce in native electronic format the full Outlook calendaring information relating to the calendars already produced for: Lorne Kramer, Andre Sodbinow, Bev Harms, Ann Crossey, Stacey Gatto, Anthony Seeley, Pam Butler, Louise Garcia, Chief Navarro, Ted Collas, Steven Cox, David Vitwar, LaTrelle Easterling-Miller, Manuela Fadely, Steve Harris, Kent Matthews, C.J. Nauert, Rich Brown, Robert Burton, Steve Schopper, Julie Stone, Tom Wrobel, and William Wallace.

Web Pager logs: The City certifies that, except for the Web Pager logs already produced, it has not located any of Web Pager logs after requesting them from the Web Pager service provider and other types of searches. Plaintiff accepts the truth of this certification. However, the City will conduct an electronic search for any other pager logs during the electronic searches referenced in the section of the stipulation addressing Email and Digital or Electronic Documents in Native Format, *infra*. Since the City anticipates the electronic searches referenced in that section will take at least 90 days to complete, it will serve a supplemental response relating to the search of pager logs by February 1, 2008.

Email and Digital or Electronic Documents in Native Format:

The City will conduct electronic searches of ESI, from the date of January 1, 2004 through March 1, 2005, that relate directly or indirectly to the operation of the CSFD Training Academy, under the following terms:

1. The information searched will pertain to created, maintained, sent, or received from the following classes or individuals:
 - Fire Department Command (including but not limited to Chief Navarro, Deputy Chief Weller, Deputy Chief Raider, Deputy Chief Cox, and any secretarial or administrative staff working for the Chiefs);
 - Fire Department Human Resources Staff (including but not limited to Manuela Fadely, Cassie Beckey, LaTrelle Miller-Easterling, Marisa Walker, Kent Matthews, any other CSFD officers assigned to HR during the relevant time period, and any analysts, secretarial or administrative staff assigned to the department);
 - Fire Department Fiscal, Information, and Planning Department Staff (including but not limited to Nina Rikowski, Steve Harris, Tom Wrobel, William Wallace, and any other secretarial or administrative staff assigned to the department);
 - Fire Department Training Division Staff (including but not limited to Battalion Chief Brown, Captain Collas, Lieutenant Vitwar, Julie Stone, C.J. Nauert, Anthony Seeley, Robert Burton any other members of the Training Staff or Training Cadres during the relevant period of time, and any secretarial or administrative staff assigned to the department);
 - City Human Resources Staff (including but not limited to Ann Crossey, Violet Heath, and any other secretarial or administrative staff assigned to the department);
 - City Information Technology Staff (including but not limited to Andre Sodbinow and any secretarial or administrative staff assigned to the department);
 - Trainees attending the 2004-2 CSFD Training Academy.
2. The searches will be limited to key word search of five words or terms agreed upon by the parties.

3. The electronic devices that will be the target of the searches are the following:

- The CSFD Exchange Server 5.5 and the City Exchange Server 2003;
- Local hard drives of computers (including .pst files) used by the foregoing classes and individuals, so long as the hard drives used in 2004-March 1, 2005 are still being used by those classes and individuals. The City will also provide Plaintiff with a list of those hard drives that were used by any of the foregoing classes or individuals during that time frame but are not being searched, the reason why they are not being searched, and where they are located today; and
- The file servers of the CSFD and City.

4. Upon completion of the foregoing searches, the City will provide Plaintiff with a detailed, technical description of what was searched, when it was searched, and how it was searched.

Prior training academy files

The City will produce the training academy files from January 1, 1999 through the present in native format if reasonably accessible, and if not in searchable .pdf format by Monday, October 29, 2007.

Personnel files of graduates of CSFD training academies

The City will produce the portion of personnel files of individuals who have graduated from training academies since January 1, 1999 that relate to performance evaluations, disciplinary/counseling/corrective actions, and promotions and commendations. Plaintiff will accept this production in lieu of the greater scope requested in her document requests for graduates of the training academies. The City will produce this information on Monday, October 29, 2007.

Documents relating to failure to hire and the FCRA claim

The City will supplement its responses to these discovery requests by Friday, October 26, 2007.

Video of training academies

The City will provide all video from CSFD training academies in its possession, custody, or control. The City anticipates that the review of the video and copying will take approximately 5-6 weeks. The City will produce such video evidence by December 15, 2007.

Electronic preservation efforts by the City

The City will serve a supplemental response to this request by Friday, October 26, 2007.

III. Doc. 214: Plaintiff's Second Motion for Additional Discovery to Prove Unlawful Spoliation of Electronically Stored Information (ESI)

See Plaintiff's Clarification of Pending Motions

IV. Doc. 220: Plaintiff's Motion to Compel Responses to 2006 and 2007 Discovery Requests that have not been Denied by Previous Discovery Rulings Based on Newly Discovered Evidence

Information about videotaping during the training academy

The City will provide a supplemental response to this discovery request by Friday, October 26, 2007.

Information about calendars used by CSFD employees

The City will, by Monday, October 29, 2007, produce in native electronic format the full Outlook calendaring information relating to the calendars already produced.

Information about the documents and data used to create Excel spreadsheet summaries that have been produced

The City will provide a supplemental response to this discovery request by Friday, October 26, 2007.

Definitions of symbols and codes contained in the spreadsheets that have been produced

The City will produce the requested information regarding certain spreadsheets containing headings or other codes by Monday, October 29, 2007 that were identified in emails to the City's attorney dated October 11, 2007.

Notes made by CSFD employees during the application screening process

The City will serve a supplemental response to this discovery request by Friday, October 26, 2007.

Information about ESI created or maintained by Richard Kramer.

The City will provide a supplemental response to this discovery request by Friday, October 26, 2007.

Information about any Webpager logs covering the period of time before December 21, 2004

See p. 2, supra.

Incomplete responses to discovery requests

- The City will provide by Friday, October 26, 2007, a supplemental response to Plaintiff's request for Kristen Johnson's April 2004 training academy file, including the Daily Trainer Notes.
- The City will serve a supplemental response to Plaintiff's request for non-redacted payroll documents related to Richard Kramer a supplemental response by Friday, October 26, 2007.

- The City will serve a supplemental response to Plaintiff's request for the conditional and final employment offer letters from the 2004-2 Training Academy by Friday, October 26, 2007.
- The City will serve a supplemental response to Plaintiff's request for Palgut's job applications by Friday, October 26, 2007.
- The City will serve a supplemental response to Plaintiff's request for the applicant files of Boyer, Spencer, and Wyman by Friday, October 26, 2007.
- The City will serve a supplemental response to Interrogatory 38 by Friday, October 26, 2007.

Miscellaneous

All foregoing production will be accompanied by supplemental responses stating that there are no other documents responsive to the request at issue, and include a description of the efforts made to locate the requested information.

No agreement has been reached with respect to any requests by Plaintiff for expenses, attorneys' fees, or sanctions.

WHEREFORE, the parties request that the Court grant the Proposed Omnibus Order, filed this date, confirming the stipulations of the parties.

Respectfully submitted, this 26th day of October, 2007.

s/ Ian D. Kalmanowitz
Craig M. Cornish
Ian D. Kalmanowitz
CORNISH AND DELL'OLIO
431 n. Cascade Ave., Suite 1
Colorado Springs, CO 80903
Telephone: (719) 475-1204
Fax: (719) 475-1264
Email: ikalmanowitz@cornishanddellolio.com

s/Lori R. Miskel
Lori R. Miskel
Emily K. Wilson
Colorado Springs City Attorney's Office
30 South Nevada Avenue, Ste. 501
P.O. Box 1575, Mail Code 510
Colorado Springs, CO 80901-1575
Telephone (719) 385-5909
Fax: (719) 385-5535

Attorneys for Plaintiff

Email: lmiskel@springsgov.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2007, I electronically filed the foregoing **Stipulations of the Parties Re: Outstanding Discovery Motions Pending Before the Magistrate Judge** with the Clerk of Court using CM/ECF system which will send notification of such filing to the following e-mail addresses:

Lori R. Miskel
Emily K. Wilson

lmiskel@springsgov.com
ekwilson@springsgov.com

s/Esther Abramson
Esther Abramson