

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
-AUSTIN DIVISION

FILED

2007 JUN 13 PM 12: 19

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY Mye  
DEPUTY

RAUL MEZA,	§
PLAINTIFF,	§
	§
V.	§
	§
BRAD LIVINGSTON,	§
EXECUTIVE DIRECTOR OF THE TEXAS	§
DEPARTMENT OF CRIMINAL JUSTICE,	§
IN HIS OFFICIAL CAPACITY;	§
BRIAN COLLIER, DIRECTOR OF THE	§
TEXAS DEPARTMENT OF CRIMINAL	§
JUSTICE PAROLE DIVISION, IN HIS	§
OFFICIAL AND INDIVIDUAL	§
CAPACITIES; AND RISSIE L. OWENS,	§
JOSE ALISEDA, CHARLES AYCOCK,	§
CONRITH DAVIS, JACKIE	§
DENOYELLES, LINDA GARCIA, AND	§
JUANITA M. GONZALES, IN THEIR	§
OFFICIAL CAPACITIES AS MEMBERS	§
OF THE TEXAS BOARD OF PARDONS	§
AND PAROLES,	§
DEFENDANTS.	§

CAUSE NO. A-05-CA-1008-LY

**ORDER**

Before the Court are Plaintiff Meza's Motion to Compel Defendants Collier and Livingston to Respond to His First Discovery Requests filed February 16, 2007 (Clerk's Document 84), Livingston and Collier's response filed March 7, 2007 (Clerk's Document 102), Meza's reply filed March 15, 2007 (Clerk's Document 115), and Livingston and Collier's Sur-Reply to Plaintiff's Reply to Response to Motion to Compel Discovery filed May 2, 2007 (Clerk's Document 160); and Meza's Motion to Compel Defendant Livingston to Respond to His Second Discovery Requests filed March 14, 2007 (Clerk's Document 107), Livingston's Response to Plaintiff's Motion to Compel Second

Discovery Requests filed May 2, 2007 (Clerk's Document 159), and Plaintiff's Reply to Defendant Livingston's Response to Plaintiff's Motion to Compel Defendant Livingston to Respond to Plaintiff's Second Discovery Requests filed May 9, 2007 (Clerk's Document 170). Also before the Court is the parties' Joint Status Report on Discovery Issues filed May 25, 2007 (Clerk's Document 202). On May 17, 2007, the Court conducted a hearing on Meza's motions at which all parties were represented by counsel and at which counsel for Meza and Defendants Livingston and Collier presented oral argument. Having considered Meza's motion and other filings submitted by the parties, the oral argument of counsel, the applicable law, and the entire case file, the Court renders the following order.

Meza first asks this Court to compel Defendant Collier in his individual capacity to respond to interrogatories and to produce specific documents. In addition to seeking information from Collier in his individual capacity, Meza seeks information from Defendants Livingston and Collier in their official capacities. By the parties' Joint Status Report, Meza agrees to withdraw a number of his discovery requests. This Court will consider whether to grant Meza's motions to compel as to the remaining requests.

### **Qualified Immunity**

Defendant Collier opposes Meza's motion to compel Collier, in his individual capacity, to respond to discovery on the grounds that he is immune from Meza's discovery requests under the doctrine of qualified immunity. Defendant Collier first made this claim in his Motion for Protective Order filed in this Court on July 28, 2006. Collier's motion for protective order was referred to United States Magistrate Judge Andrew Austin for resolution. On August 30, 2006, Judge Austin denied Collier's first motion for protective order because Judge Austin had rendered a Report and

Recommendation on Collier's Motion to Dismiss (Clerk's Document 26), recommending that Collier's motion be denied as to Plaintiff's claims for prospective injunctive relief and that such claims against Collier remain pending for trial. Judge Austin advised Collier that, if this Court rejected the Report and Recommendation regarding Meza's claims for prospective injunctive relief, Collier could then renew his request for a protective order. Despite this Court's acceptance of Judge Austin's Report and Recommendation, Collier renewed his request for a protective order. This Court denied Collier's second motion for a protective order on February 6, 2007, noting that is requested relief that was identical to the relief requested in Collier's first motion for a protective order.

Despite this Court's prior rulings and the Court's statement in open court that Collier may no longer claim qualified immunity as a defense to discovery in this action, Collier maintains in his response to Meza's motion to compel that Collier should not be subject to discovery requests because he is entitled to qualified immunity. Having considered Collier's renewed arguments, the Court will overrule Collier's objections to discovery on the grounds of qualified immunity.

**Number of Interrogatories**

Collier, in his official capacity and his individual capacity, and Livingston object that Meza is seeking more than the permitted number of interrogatories when the subparts of each interrogatory are counted. Parties are limited to serving no more than 25 written interrogatories on another party, "including all discrete subparts." Fed. R. Civ. P. 33(a). In this Court, other than five specifically designated multipart questions that may be considered one question each, "subparts count as separate questions." W.D. Tex. Local R. CV-33. Although Meza contends that his subparts relate to a "common theme," Rule 33 and Local Rule CV-33's limit applies even if a number of the

interrogatories are related, other than the subparts specifically designated by this Court's local rules. This Court will deny Meza's motion to compel Livingston and Collier to answer more than 25 interrogatory subparts.

In light of the interrogatories to Collier in his individual capacity that Meza agrees to withdraw, the Court finds that the remaining interrogatories will not exceed 25, including subparts. The Court will overrule Collier's objections regarding numerosity of interrogatories as to the remaining Interrogatories 1 and 7 in Meza's First Set of Discovery Requests to Collier in his individual capacity. Similarly, in light of the interrogatories to Collier and Livingston in their official capacities that Meza agrees to withdraw, the Court will overrule Livingston and Collier's objections regarding numerosity of interrogatories as to the remaining Interrogatories 1 and 8 in Meza's First Set of Discovery Requests to Defendants in their official capacities and to Interrogatories 1 and 2 of the Second Set of Discovery Requests to Livingston.

**Objections to Requests as Overly Broad and Irrelevant**

Livingston and Collier object to several of Meza's discovery requests on the grounds that the requests are "overly broad, unduly burdensome, and harassing and not reasonably limited in scope and time . . . irrelevant and not reasonably calculated to lead to the discovery of admissible evidence." Livingston and Collier's objection relates to Interrogatories 3 and 7 and Request for Production 1 of Meza's First Set of Discovery Requests to Collier in his individual capacity; Interrogatories 1 and 8 and Request for Production 1 of Meza's First Set of Discovery Requests to Defendants in their official capacities; and to Interrogatories 1 and 2 and Request for Production 1 of Meza's Second Set of Discovery Requests to Livingston.

The Court again notes that Meza has agreed to withdraw many of his requests for discovery.

The Court has reviewed the remaining objected-to requests and concludes that these requests are relevant to the claims asserted by Meza or to the defenses asserted by Livingston or Collier. The Court does not find these requests to fall outside the scope of appropriate discovery. Noting that Livingston and Collier do not dispute Meza's contention that only twelve parolees are housed at the Travis County Correctional Complex ("TCCC") each month, the Court concludes that the requests regarding all parolees at TCCC since September 1, 2002, will not unduly burden Livingston and Collier. The requests "appear[] reasonably calculated to lead to the discovery of admissible evidence." Fed. R. Civ. P. 26(b)(1).

The Court acknowledges that Interrogatories 1 and 2 in Meza's Second Set of Discovery Requests to Livingston in his official capacity request information that is quite broad in scope. However, these interrogatories, regarding all releasees from TDCJ custody since September 1, 2002, who were previously convicted for murder or sexual assault, are not "overly broad." The interrogatories are limited in scope by the years for which data is requested and by the types of offenses for which the releasees were convicted. The interrogatories request basic, statistical information on each releasee, of the type that may be readily available to Livingston and is likely relevant to Meza's equal-protection claims that he is treated differently from other TDCJ parolees based on Defendants' improper motives. The Court further notes that Livingston did not timely respond to Meza's motion to compel answers to these specific interrogatories, allowing the Court to grant Meza's motion to compel responses to these interrogatories as unopposed. *See* W.D. Tex. Local R. CV-7(d) (requiring party opposed to motion to respond within eleven days of service of motion and allowing district court to grant motion as unopposed if no timely response is filed). Livingston and Collier's objections on the grounds that Meza's requests for discovery are "overly

broad, unduly burdensome, and harassing and not reasonably limited in scope and time . . . irrelevant and not reasonably calculated to lead to the discovery of admissible evidence” will therefore be overruled.

**Privileges Claimed by Livingston and Collier**

Livingston and Collier oppose several of Meza’s discovery requests on the basis that they request information that is confidential and privileged under a Texas statute protecting parole files from discovery. *See* Tex. Gov’t Code Ann. § 508.313(a) (West 2004). Livingston and Collier’s objection relates to Interrogatories 1 and 3 and Requests for Production 1, 2, and 5 of the First Set of Discovery Requests to Collier in his individual capacity; Interrogatory 1 and Requests for Production 1 and 2 of the First Set of Discovery Requests to Defendants in their official capacities; and to Interrogatories 1 and 2 and Request for Production 1 of the Second Set of Discovery Requests to Livingston.

Livingston and Collier further object to parts of Interrogatory 3 to Meza’s First Set of Discovery Requests to Collier in his individual capacity and to Interrogatories 1 and 2 to Meza’s Second Set of Discovery Requests to Livingston on the grounds that Meza’s interrogatories request information that is confidential and privileged under a Texas statute protecting criminal-history records. *See* Tex. Gov’t Code Ann. § 411.083 (West 2004).

The Court has received Livingston and Collier’s privilege logs claiming that the parole-file privilege protects the majority of the documents requested by Meza in his motions to compel. The Court will set a hearing on the issue of whether the aforementioned privileges protect the information sought by Meza in his discovery requests. The parties shall present evidence and argument as to the interests protected by the statutory privileges, and the relevance and necessity of the requested

documents to Meza's claims. The Court will expect a proffer of evidence from Livingston and Collier as to how the files over which Livingston and Collier claim the parole-file privilege are maintained, where such parole files are located, who is the custodian of such files, and any other evidence that will assist the Court in determining the extent to which the parole-file privilege will be applied in this action.

**IT IS THEREFORE ORDERED** that Meza's Motion to Compel Defendants Collier and Livingston to Respond to His First Discovery Requests (Clerk's Document 84) is **GRANTED IN PART** as to Interrogatory 7 of Meza's First Set of Discovery Requests to Collier in his individual capacity and Interrogatory 8 of Meza's First Set of Discovery Requests to Defendants in their official capacities. Livingston and Collier shall serve counsel for Meza with responses **no later than 5:00 p.m., June 22, 2007.**

**IT IS FURTHER ORDERED** that Meza's Motion to Compel Defendant Livingston to Respond to His Second Discovery Requests (Clerk's Document 107) is **GRANTED IN PART** as to Request for Production 1 of Meza's Second Set of Discovery Requests to Livingston. Livingston and Collier shall deliver documents responsive to Request for Production 1 to counsel for Meza **no later than 5:00 p.m., June 22, 2007,** to the extent that such documents are in the possession or under the control of Livingston or Collier.

**IT IS FINALLY ORDERED** that a hearing on the Texas statutory privileges asserted by Livingston and Collier as grounds for objections to Meza's discovery requests is set for **2:00 p.m., Tuesday, June 26, 2007,** Courtroom No. 1, United States Courthouse, 200 West 8th Street, Austin, Texas 78701. The final pretrial conference in this cause will also be held in Courtroom No. 1 at **2:00**

p.m., Tuesday, June 26, 2007.

SIGNED this 13th day of June, 2007.

  
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LEE YEAKEL  
UNITED STATES DISTRICT JUDGE