IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BLAINE COLEMAN,

Plaintiff,

Case No. 11-CV-15207

vs.

Hon. Mark A. Goldsmith

ANN ARBOR TRANSPORTATION AUTHORITY, et al.,

Defendants.
_____/

PLAINTIFF'S MEMORANDUM
REGARDING DEFENDANTS' OBJECTION TO PRODUCING DOCUMENTS

The court has ordered the parties to file memoranda, not to exceed three pages, regarding defendants' objections to a request for production made by plaintiff. (Dkt. # 37.)

The request for production ("RFP") at issue is plaintiff's RFP # 6, served June 5, 2012:

> All documents related to the ACLU's Freedom of Information Act ["FOIA"] requests in June and July 2011, including but not limited to emails sent or forwarded to and from Michelle Sanders related to those requests. (*See* Exhibit 1.)

For the court's reference, copies of the referred-to FOIA requests are attached. (*See* Exhibit 2.) Upon information and belief, Michelle Sanders is the AATA employee who coordinated or organized AATA's response to the ACLU's FOIA requests. (*See* Exhibit 3.) On February 29, 2012, plaintiff's counsel notified counsel for all defendants in writing that he might be requesting the emails and other documents identified in RFP # 6. (*See* Exhibit 4.)

Defendants objected to RFP # 6, and did not produce responsive documents, on grounds that "it is over broad, seeks information that is not relevant and not likely to lead to the discovery of admissible evidence and seeks information that is beyond the scope of the Court's May 23,

2012 order." (*See* Exhibits 5 and 6.) Plaintiff now seeks an order compelling production of documents responsive to this request.

Plaintiff is entitled to production of these documents because (1) they are relevant to "the history of Defendants' enforcement of the advertising policy" (Order, Dkt. # 35 at 1), and (2) they are "reasonably calculated to lead to the discovery of admissible evidence," Fed. R. Civ. P. 26(b)(1). In short, plaintiff seeks to discover how defendants and their agents reacted when confronted for the first time by the ACLU with an inquiry that implicitly called into question, or at the very least requested information about, their advertising policies and practices, and their criteria for accepting and rejecting ads. Internal communications, or communications between AATA and TAG, can shed light on critical questions before the court: whether defendants' treatment of ads *in practice* complied with the constitutional requirements discussed in *United Food & Commercial Workers Union, Local 1099 v. Southwest Ohio Regional Transit Authority*, 163 F.3d 341 (6th Cir. 1998).

Often, an external event (such as a FOIA request, a news article, or an email) generates internal communications that turn out to be quite revealing in terms of how an organization actually operates. In this case, for example, plaintiff has already learned through discovery that in February 2011 AATA's Mary Stasiak forwarded TAG's Randy Oram a link to a news article about the rejection of plaintiff's ad, and Oram responded with an email suggesting that TAG uses *its own criteria* to reject AATA ads. (*See* Exhibit 7.) A similarly revealing email exchange between Stasiak and Oram took place soon after Coleman submitted his ad to TAG and AATA in January 2011. (*See* Exhibit 8.) Plaintiff's question now is whether the ACLU's FOIA letter in June 2011 asking for "criteria used by AATA or its agents in determining whether to approve or reject an advertisement" (Exhibit 2) led to any additional AATA/TAG communication of similar relevance. Surely plaintiff's request for copies of such communications is "reasonably

calculated" to lead to the discovery of admissible evidence—specifically, evidence regarding "the history of Defendants' enforcement of the advertising policy" (Dkt. # 35 at 1).

Defendants have argued that RFP # 6 is not relevant because it deals with a collateral issue involving whether they properly responded to a FOIA request. That is not the purpose of this RFP. The purpose of the RFP is to discover whether the fact of the FOIA request itself led to internal or AATA-TAG communications that sheds light on defendants' actual practices regarding the acceptance or rejection of ads.

By anology, consider a hypothetical lawsuit in which an employee brings a civil rights claim alleging a hostile work environment. If, prior to the lawsuit, the employer had received a letter from a civil rights organization asking about the company's harassment policies, the plaintiff would be entitled to discovery regarding how the company's managerial staff reacted to having received the letter. In this case, RFP # 6 is a proper request for the same reason.

Searching for and producing responsive documents will not impose an undue burden on defendants. The RFP asks for a discrete set of items about a specific topic during a limited time period. Additionally, defendants have been on written notice for nearly four months that these documents might be requested as part of discovery in this litigation. (*See* Exhibit 4.)

Accordingly, plaintiff requests that the court order the production of documents responsive to RFP # 6.

Respectfully submitted,

Dated: June 27, 2012

/s/ Daniel S. Korobkin
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CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2012, I electronically filed the foregoing memorandum and attachments with the Clerk of the Court using the ECF system, which will send notification of such filing to:

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