

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

BLAINE COLEMAN,

Case No.: 11-15207

Plaintiff,

Hon. Mark A. Goldsmith

v.

ANN ARBOR TRANSPORTATION
AUTHORITY, MICHAEL FORD,
TRANSIT ADVERTISING GROUP AA,
And RANDY ORAM

Defendants.

MEMORANDUM

The Ann Arbor Transportation Authority (“AATA”) has produced (or identified on a privilege log) *all* documents it has in its possession concerning the AATA’s Advertising Policy, proposed ads forwarded to the AATA by TAG (including related correspondence) and *all* documents related to the AATA’s decision to reject Mr. Coleman’s ad. In Document Request No. 6, Mr. Coleman also seeks “all documents” related to Mr. Coleman’s counsel’s June 2011 Freedom of Information Act (“FOIA”) request.¹ The AATA Defendants objected to this discovery on the ground that it seeks information that is not relevant or likely to lead to the discovery of admissible evidence and because the discovery is beyond the scope of the court’s order setting the case for an

¹ The ACLU limited the scope of its initial FOIA request based on the costs associated with responding to its initial request. The AATA then responded to the ACLU’s modified FOIA. To the extent the ACLU is using discovery in this case to secure documents it refused to pay for in its FOIA request, the discovery is improper under MCL 15.234(1) and MCL 15.243(v).

evidentiary hearing. For example, Mr. Coleman's request would include the AATA's FOIA response policy and other matters that are clearly not related to the two factual issues the Court indicated would be tried at the evidentiary hearing.

Mr. Coleman contends that documents related to the AATA's response to the FOIA request "might" have relevance to how the AATA applied its advertising policy because the FOIA request came from the American Civil Liberties Union. This contention does not suggest any relevance and the implication that the AATA would respond to a FOIA request from the ACLU in an atypical way is unsupported by any facts or common sense. Mary Stasiak (the AATA employee who first reviews proposed ads in light of the Advertising Policy) was not even aware of the ACLU's FOIA request and had no role in responding to it. If Ms. Stasiak had communicated with Mr. Oram or anyone else about responding to the FOIA request, those communications would have been included in the AATA Defendants' voluminous production of documents. The Court must ask how "all documents" related to the ACLU's FOIA request could be related in any way to the application of the Advertising Policy or to the decision to reject Mr. Coleman's ad. The lack of any logical connection between the matters the Court will address at the evidentiary hearing and Request No. 6 underscores the utter lack of relevance of "all documents" related to the response to the FOIA request.

In considering the scope of discovery, the Court should balance a party's "right to discovery with the need to prevent fishing expeditions." *Conti v. Am. Axle and Mfg, Inc.*, 326 Fed. Appx. 900, 907 (6th Cir. 2009), citing *Bush v. Dictaphone Corp*, 161 F.3d 363, 367 (6th Cir. 1998). The AATA Defendants have already produced hundreds of pages of documents concerning its review of proposed ads and its application of the Advertising

Policy to Mr. Coleman's ads. It will produce three witnesses for deposition to discuss the application of the Advertising Policy in general and to Mr. Coleman's proposed ad specifically. The Court has ordered limited discovery and an accelerated discovery schedule and the AATA Defendants have complied with the Court's scheduling order. Given the abbreviated discovery schedule, the AATA Defendants' timely production of all relevant documents, the considerable work necessary to prepare for the evidentiary hearing, the additional burden of tracking down "all documents" related to the FOIA request and the lack of any relevance of the AATA's response to the FOIA request to the matters to be tried, the AATA Defendants respectfully ask that the Court sustain the AATA Defendants' objections to Mr. Coleman's Request No. 6.

MADDIN, HAUSER, WARTELL,
ROTH & HELLER, P.C.

/s/ Kathleen H. Klaus

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Dated: June 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2012, I electronically filed the above document(s) with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: all counsel of record.

/s/ Kathleen H. Klaus

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