

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DWAYNE FURLOW et al.,)
)
Plaintiffs,)
) Case No. 4:16-CV-00254 JAR
v.)
)
JON BELMAR et al.,)
)
Defendants.)

**MEMORANDUM OF THE REGIONAL JUSTICE INFORMATION SERVICE
COMMISSION IN OPPOSITION TO PLAINTIFFS’ MOTION TO COMPEL**

Comes now the Regional Justice Information Service Commission (“REJIS”) by its undersigned attorney and for its Memorandum in Opposition to “Plaintiffs’ Motion to Compel Responses to Requests Directed at ‘Third-Party’ REJIS and to Reopen Deposition,” [Doc. #56.] states as follows:

I. INTRODUCTION

REJIS continues to be an existing and viable entity capable of responding to subpoenas. REJIS Inc. is a different entity not involved in the matters discussed in this case.

On January 12, 2017, REJIS received a subpoena identifying five paragraphs of topics for deposition and seven paragraphs of documents to be produced. On February 3, 2017, Marc Meschke, then Director of Client Services, appeared for deposition and produced documents in response to the subpoena. On February 24, 2017, Plaintiff’s issued a subpoena to Cindy Jennings, Training Supervisor, for deposition identifying “training and other matters relating to the St. Louis County Police Department” as the topic of testimony. This February 24, 2017 subpoena identified no documents for production. After discussion among counsel and based on Ms. Jennings availability, Plaintiffs issued a notice of deposition on March 22, 2017, and she

was deposed on March 30, 2017. This notice of deposition did not identify any documents to produce, and Plaintiffs never served any subpoena for documents after Mr. Meschke's deposition or in connection with Ms. Jennings deposition.

Following the deposition of Ms. Jennings, Plaintiffs proceeded with additional requests to counsel for REJIS via email. In May 2017, counsel for REJIS requested a subpoena for the additional records requested via email on March 30 and April 2. Plaintiffs never issued any subpoena but instead continued with follow up emails and phone calls. Plaintiffs filed the present motion to compel on July 28, 2017.

II. LAW AND ARGUMENT

A. There is no need to “reopen” any REJIS 30(b)(6) Deposition

At the outset, REJIS states that there is no need to “re-open” any Rule 30(b)(6) deposition. The Regional Justice Information Service Commission continues to be an existing and viable entity, which can respond to subpoenas. [For an explanation of Plaintiffs' confusion see Ex. 1, *Regional Justice Information Services Commission v. Regional Justice Information Services, Inc.*, Case No. 4:16-cv-00275 removed from state court Cause No. 1522-CC10562.] REJIS Inc. is a separate and distinct entity from the present non-party that responded to subpoenas and presented witnesses for deposition in this case, *Furlow et al. v. Belmar et al.*

B. REJIS fully complied with the subpoenas and notices of deposition

1. REJIS responded to the subpoenas and notices of deposition by producing documents and witnesses for deposition

Rule 45 provides in pertinent part:

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

Fed.R.Civ.P 45(e)(1)(A).

On January 12, 2017, REJIS received via FedEx a subpoena commanding the appearance of a representative from REJIS to testify on a number of topics and produce documents. [Doc. #56-3 Pltf. Ex. A.] The subpoena specifically identified documents to be produced by REJIS:

1. Any and documents providing instructions of guidance as to how Stop Orders, Wanted, or “wanted for questioning” orders are to be used;
2. Any and all documents related to how Stop Orders, Wanted, or “wanted for questioning” orders are entered, stored, maintained, manipulated, disposed of, or otherwise handled within [REJIS] software;
3. Any and all documents related to the software used to review any data or information relating to Stop Orders, Wanted, or “wanted for questioning” orders;
4. Any and all documents related to an explanation of the operation of any software used to review data or information relating to Stop Orders, Wanted, or “wanted for questioning” orders along with an archival file containing any and all Stop Orders, “wanted for questioning” orders that have been issued by St. Louis County in the last (5) years from 2012-2016;
5. Any and all documents reflecting agreements, arrangements, or understandings between [REJIS] and any other law enforcement agencies or third parties, including St. Louis County, as to sharing, disseminating, purchasing, archiving information related to Stop Orders, Wanted, or “wanted for questioning” orders;
6. Any and all documents reflecting the process by which the issuance of, evidentiary basis for, or other circumstances relating to Stop Orders, Wanted, or “wanted for questioning” orders are reviewed; and
7. Any and all documents related to Stop Orders, Wanted, or “wanted for questioning” issued by St. Louis County for the arrest of Dwayne Furlow, Ralph Torres, or Harold Liner and the identity of the persons involved in issuing, enforcing, reviewing the evidentiary and factual basis for, or terminating each such Stop Order, or “wanted for questioning” orders.

[Doc. #56-3 Pltf. Ex. A.]

On February 3, 2017, Marc Meschke appeared with counsel and produced documents in response to the subpoena. [Ex. 2, Deposition of Marc Meschke.¹] Specifically produced in electronic (on CD) and print form at the deposition:

- Wanted or stop order records within the REJIS system [Ex. 2, p. 17-18.] produced in response to ¶ 7 above.
- Wanted Entry User Guide [Ex. 2, p.21.] produced in response to ¶¶ 1, 2, 3, and 5.
- Listing of every record issued in the wanted system by St. Louis County Police...from 2012 to 2016 [Ex. 2, p. 160 – 161.] produced in response to ¶ 4.

REJIS had no records responsive to ¶ 6. Mr. Meschke answered all counsel questions at the deposition. [Ex. 2.] REJIS fully complied with the documents requested and specified in the subpoena.

2. Other than a subpoena and notice of deposition for Training Supervisor Cindy Jennings, Plaintiffs sent no other subpoena, notice of deposition or email request in almost two months after the deposition of Mr. Meschke

Almost a month later on February 24, 2017, Plaintiffs issued a subpoena to Cindy Jennings of REJIS which commanded her appearance to provide testimony. [Ex. 3, Subpoena directed to Cindy Jennings.] The subpoena did not request any production of documents. *Id.* After discussion among counsel and based on Ms. Jennings availability, Plaintiffs issued a Notice of Video Deposition on March 22, 2017. [Ex. 4, Notice of Video Deposition; Ex. 5, Email String 1 REJIS Subpoena – Depo; Ex. 6, Email String 1a REJIS Subpoena – Depo.] The Notice of Deposition did not identify any documents to produce, and no subpoena for documents served [Ex. 4.] Ms. Jennings was deposed on March 30, 2017. [Ex. 7, Deposition of Cindy Jennings.²]

¹The entire deposition transcript is filed in compliance with the Court's June 7, 2016, Order, Document No. 12.

²See footnote 1.

From February 3, 2017, after Mr. Meschke deposition until March 30, 2017, Plaintiffs issued no subpoena, notice of deposition, or any follow up request via email or otherwise – other than the subpoena, notice of deposition for Ms. Jennings, and related emails among counsel – to REJIS or its counsel. [Ex. 3, 4, 5, and 6.] Despite discussions pertaining to this case and, in particular, the deposition of Ms. Jennings, Plaintiffs made no mention of any additional document requests or matter other than scheduling the deposition of Ms. Jennings.

Counsel for REJIS is also counsel for the City of St. Louis working in the Law Department assigned to the Police Section, i.e., one of the attorneys advising the St. Louis Metropolitan Police Department (SLMPD). Plaintiffs’ counsel issued a subpoena to SLMPD, to which it responded. [Ex. 8, Subpoena to SLMPD; and Ex. 9, Email String SLMPD Subpoena.] During the course of these discussions, Plaintiffs did not mention any additional document requests related to the REJIS subpoena and deposition of Mr. Meschke. [Ex. 8.] Counsel also raises this exchange to demonstrate to the Court another example of complying with Plaintiffs’ subpoenas as opposed to emails sent to counsel with additional document requests.

In sum, REJIS fully complied with all subpoenas and notices of deposition in this case.

3. Counsel for REJIS did not “string” Plaintiffs’ counsel along in attempts to delay the investigation or discovery of their claims

Plaintiff is trying to compel REJIS to produce documents in response to three emails to counsel. (The other emails involve either follow up by Plaintiffs or REJIS counsel responding to Plaintiffs on the status of their emailed requests.) The remainder of Plaintiffs’ “discovery requests” directed to REJIS came by email to counsel. [Doc. #56-11 Pltf. Ex. I; Doc. #56-12 Pltf. Ex. J; and Doc. #56-31 Pltf. Ex. CC.] The March 30, 2017 email from Plaintiff’s to REJIS counsel listed 14 additional document requests beyond the initial subpoena to which Mr.

Meschke appeared and produced documents. Plaintiffs then added to the March 30, 2017, in a subsequent email on April 2, 2017, and modified the request in an email on June 20, 2017. *Id.*

During the May 24 conference call among counsel for REJIS, Plaintiffs' and St. Louis County Defendants' ("Belmar et al."), Plaintiffs' counsel discussions were directed only at the St. Louis County Defendants (alleged) outstanding discovery requests – not any subpoena directed to REJIS. [Doc. #56-28 Pltf. Ex. Z.] As a result of the conference call, counsel for REJIS believed that any of the additional March 30 and April 2 email requests to the extent requested in any discovery requests directed to St. Louis County Defendants would be handled by the parties in the instant case. *Id.* Counsel for the St. Louis County Defendants contacted REJIS Counsel for assistance. *Id.* Counsel for REJIS then advised REJIS to assist St. Louis County with responding to those discovery requests. *Id.* Almost a month later on June 20 – again via email – Plaintiffs resurrected and modified their email request for records to REJIS. [Doc. #56-31 Pltf. Ex. CC.]

Counsel for REJIS attempted to facilitate email requests despite the lack of any follow up subpoena. However, Mr. Meschke is no longer with REJIS and resides out of state. Nevertheless, counsel investigated the additional documents beyond the scope of and more expansive than the initial subpoena.

4. Counsel for REJIS placed Plaintiff's on notice that a subpoena would be needed for any additional document requests and in an effort to facilitate the discovery process

Counsel for REJIS put Plaintiffs on notice that REJIS expected that a subpoena for any additional documents beyond the scope of the initial subpoena and in addition to what was already produced. During the deposition of Cindy Jennings on March 30, 2017 (questions by Plaintiffs' counsel):

Q. In your capacity as training supervisor, are you familiar with the type of data that REJIS maintains relating to specific wanteds?

A. We keep the whole entire record but we don't just go out and say, "Here's how many" -- we don't send something out that says, "Here's how many charges you have in the system."

Q. I'm not saying it's being sent out; it's just stored within REJIS. So if you wanted to -- you know, oh, I wonder how many, you know, females have been issued wanteds, you know, in January of 2011, you can type it into REJIS and it pops up, oh, there it is. There's the number.

A. No, you can't do that. It would be a report that would have to be requested.

Q. But if you requested that report, that's something that could be generated?

A. Possibly, yes. If it's a field that's captured on the record in the database then, yeah, you can pull it back out.

Q. And I understand that you're a training supervisor, so maybe you're not well schooled in the -- all the IT and all that kind of stuff; is that fair?

A. Fair.

Q. Who would be the right person if I wanted to -- if I wanted a report that listed how many wanteds in each year, how many of those wanted resulted in arrests, how many of those arrests or how long the person was held while arrested, and then whether any warrants or criminal charges were brought. If that's a report that I thought might exist, who would be the right person at REJIS to ask, A, does that exist; and, B, can you do it for me?

A. The call -- the procedures we follow is that the person would call the REJIS help desk. They would create an issue and they would assign that to level 2, because they couldn't answer -- they couldn't pull that report out. So that would come to level 2 which would be my division or training unit. I would look at that ticket and say, "This is not something that I do," and I would assign it to the applications team.

* * *

Q. I'm just -- you can see where I'm going. I'm asking -- if, say, I want this report to be generated by REJIS that shows how many wanteds, how many led to arrests, how long that person was held while arrested, how many of those wanteds -- how many of any wanteds led to an actual warrant being issued and/or criminal charges being brought, if I wanted that report, who do I call?

A. The REJIS help desk.

Q. Who do I ask Ray [Flojo, REJIS counsel] to get that report from?

MR. HUGHES: You know, if I can object. You know, Marc Meschke was already produced and he was questioned already. And then there was one or two questions where he said it would be training, it would be Cindy Jennings.

MR. HOLLAND: Mike, the actual record of Marc Meschke shows that he said this is a report that he could probably produce in two to three hours, and we haven't received it. We received this [Gomez Exhibit 24 bate stamped DEF-RFP5 00000001], so I was trying to talk to her about this.

I'm fully aware of what Mr. Meschke testified to. It's now been almost two months since his deposition and we don't have anything, so I'm trying to figure out what we need to do to get it; is that fair?

* * *

MR. FLOJO: For the record, I haven't received a subpoena for that particular type of report or anything like that. Deposition happened, yes, it was talked about, but then I haven't received any requests or anything further from that deposition.

MR. HOLLAND: We'll make the request now on the record. We can discuss if we need to issue a subpoena, then we'll do that.

[Emphasis supplied.] [Ex. 7, p. 100 – 104.]

Plaintiffs never issued any subpoena to REJIS since February 24, 2017 for the deposition of Ms. Jennings.

5. Counsel for REJIS never agreed to provide records in lieu of a subpoena

Counsel for REJIS acknowledges that he requested what additional records were sought to be sent to him in an email but in no event entered into any agreement to produce any additional records beyond the scope of the initial subpoena, and certainly not in lieu of a subpoena as described in paragraphs 15 and 21 of Plaintiffs' supporting Memorandum of Law. [See ¶¶ 15, 21 of Doc. #57.] REJIS counsel did raise the issue and necessity of a subpoena on March 30, which is why counsel raised it again in May 2017, in an effort to present a discovery

request - as opposed to emails from Plaintiffs' counsel - to REJIS. The only discovery requests ever served on REJIS and responded thereto are described in II.B.1. and 2., above.

After Mr. Meschke's deposition on February 3, 2017, until Ms. Jennings deposition on March 30, 2017, Plaintiffs directed no other request via email or discovery request (except for the subpoena and notice of deposition for Cindy Jennings) to REJIS. An email search for this time period for communications between REJIS and Plaintiffs' counsel shows no mention of any follow up request related to the Meschke deposition. [Ex. 5, 6, and 9.] Plaintiffs made no request for additional records at Mr. Meschke's deposition. [Ex. 2.] It was reasonable for REJIS to have believed that the records produced at the Meschke deposition complied with the subpoena and no further action (other than producing Ms. Jennings for deposition) would be expected after almost two months after Mr. Meschke's deposition. Indeed, absent from the subpoena and notice of deposition directed to Ms. Jennings are any additional requests for documents. [Ex. 3 and 4.]

C. Some of the records or reports described by Mr. Meschke are not possible to generate

During the deposition of Mr. Meschke, questions by Plaintiffs' counsel:

Q. So for purposes of generating reports and things like that, if I wanted to see a report of every wanted created by that ORI number by St. Louis County Police Department over the last five years, is that a function that -- that someone at St. Louis County Police Department could perform on their own, or would they have to ask for help through REJIS?

A. They could -- they could manually bring up each one and print it off or copy it to something. If they wanted something that was run, most likely they would come to us to develop something. There's no existing report that just does everything, you know -- everything from that perspective.

[Ex. 2, p. 79 l. 19-25 p. 80 l. 1-7.]

Q. Okay. And for a report like that, if I want the end result to be not just the -- the reference number for the wanted and the date it was entered but then also identifying -- not identifying information, but information about the charge and the -- whether they were arrested or sort of the outcome of the wanted, about how

-- how long do you estimate, and we won't hold you to it, but how long do you estimate that would take your developers? Weeks?

A. Weeks as far as, like, time to do it or duration?

Q. Just actual sitting down and doing it. I mean, how much of a burden would that be on -- on the developers?

A. It would at least be a few days.

Q. A few days?

A. About three days or so.

[Ex. 3, p. 80 l. 16-25 p. 81 l. 1-8.]

Again, in Mr. Meschke's deposition, questions by Plaintiffs' counsel:

Q. Okay. Based on the information from those two fields, then, just in general, what would the process be or how -- how much would be involved to see how many people were arrested pursuant to a wanted and then how long they were held, whether it was over 24 hours?

A. I mean, for -- for all time or if --

Q. Just in a year, for example.

A. Okay. If I could come up with that what would it take?

Q. Yeah, what would it take you or your department?

A. Two, three hours to come up with something like that.

Q. Okay. And would that be through the jail program?

A. No, it would be through the arrest program.

Q. REJIS Arrest program?

A. Yeah.

Q. Okay. Could it also make a calculation or at least pull a report that shows wanted -- when a wanted was created, time of arrest, time of booking, and then the time of release? You could include those three time stamps?

A. Correct.

[Ex. 3, p. 151 l. 12-25 p. 152 l. 1-12.]

Counsel has consulted REJIS regarding the reports in Mr. Meschke described in his deposition. St. Louis Police County Department records could be brought up or a screen shot made of wanted records created by the St. Louis County Police Department. If requested, REJIS could create an extract for the St. Louis County Police Department for a specific period of time. Data elements (what fields to include) would need to be determined. A wanted record disposition can be included, but the assumption or conclusion that the reason for the arrest was the outcome of the wanted record cannot be determined. A report for all arrests made can be generated. A report for all wanted records can be generated. However, generating a record or report how the arrests may or may not related to the wanted entries is not possible.

D. The records sought by Plaintiffs are neither REJIS records or records kept in the ordinary course of its business

The records identified and sought by Plaintiffs in their Motion to Compel do not belong to REJIS but to the St. Louis County Police Department. [Ex. 2, p. 27 l. 5-16.] These records are not normal business records of REJIS. [Ex. 2, p. 170 l. 20-25, p. 171. l. 1-2.; Ex. 7, p. 101 l. 2-9.] Because the records sought by Plaintiffs are neither REJIS records nor records kept in its ordinary course of business, REJIS should not be permitted to disseminate these records without subpoena or Court Order (or permission from the St. Louis County Police Department). See, e.g., *State ex rel. Daly v. Information Technology Services Agency of City of St. Louis*, 417 S.W.3d 804, 809 (Mo.App. E.D. 2013); and *Jones v. Jackson County Circuit Court*, 162 S.W.3d 53.

E. REJIS production of any additional records

If the Court orders REJIS to produce any additional records or documents to Plaintiffs, REJIS would request that Plaintiffs advance reasonable costs to provide these records, allow

thirty days to research their availability and existence, compile, and assemble the records or documents, and to the extent of the information is closed, confidential, or otherwise protected by law, that a protective order be entered limiting the disclosure and dissemination to counsel only and limited to the present lawsuit. Counsel can propose a protective order.

III. CONCLUSION

For the foregoing reasons, the Court should deny Plaintiffs' Motion to Compel [Doc. #56]. In the alternative, if the Court orders REJIS to produce any records, REJIS requests such records should be produced as indicated in II.E., above.

Respectfully submitted,

REJIS Commission

By: /s/ Raymond B. Flojo

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was filed with the Clerk of the Court on August 7, 2017, to be served by operation of the Court's electronic filing system upon all attorneys of record.

/s/ Raymond B. Flojo
