

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____)	
UNITED STATES OF AMERICA,)	
)	
v.)	Criminal Action No. 12-40026-FDS
)	
JOHN J. O'BRIEN,)	
)	
<u>Defendant.</u>)	
_____)	

ORDER ON MOTION TO CLARIFY AND RECONSIDER

April 5, 2013

SOROKIN, C.M.J.

The United States moves to clarify and reconsider the Court's March 13, 2013 discovery order. This Motion is ALLOWED IN PART AND DENIED IN PART.

Regarding requests (a), (b), and (g), the government is "unsure how to respond more fully to defendants' request[s]," as it already had produced, prior to the Court's order, thousands of pages of hiring files and raw interview data in which the information sought by way of these requests might be found. Doc. No. 103 at 2. The government need not comb through these thousands of pages of files for information responsive to these requests. As the Court previously explained: "The defendants already have received and reviewed approximately 180 boxes of documents, many of which included applicant files. The requests at issue [in the March 13, 2013 Order] are aimed at other information." Doc. No. 97 at 9. In addition, as explained in the original order, "interrogatories [are] not an avenue of discovery available to the defendants pursuant to the federal or local criminal rules." Id. at 20. From the papers and counsels' arguments at the hearing, the Court understood the government to be in possession of

information responsive to the requests, as the Court construed them, other than (or in addition to) the hiring files and raw interview data previously disclosed. It is from this other information that the Order requires disclosure. The same clarification applies to Request (31).

Regarding requests (j), (k), and (l), the government says it has complied, but that it possesses no information regarding whether any anticipated witness who has cooperated in this case will be allowed to continue to collect, or will remain eligible to collect, a state pension. Doc. No. 103 at 3. The government has no obligation to go further, i.e., to seek out information not within its control.

Finally, the government requests reconsideration of Request (6), asserting that the informal reports ordered produced by the Court are not material within the meaning of Rule 16. Id. at 4-6. The request for reconsideration is DENIED. The arguments now advanced by the government were not, but could have been, advanced in its original papers. See Doc. No. 87 at 11-12. In addition, the information before the Court regarding the nature of the informal reports establishes their materiality.¹

Accordingly, the Motion is ALLOWED IN PART AND DENIED IN PART.

SO ORDERED.

/s/ Leo T. Sorokin
Leo T. Sorokin
Chief U.S. Magistrate Judge

¹I note that the government has not asserted that the documents are not material, only that the defendants have not established that the documents are material.