

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

CHRISTINE MILLS, et. al.)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 04-2205 (HHK/AK)
)	
JAMES BILLINGTON, Librarian,)	
Library of Congress)	
)	
Defendant.)	
)	

MEMORANDUM ORDER¹

Pending before the Court is Plaintiffs’ Motion to Direct Defendant to Preserve Data and Documents [144] and Defendant’s Opposition thereto [152]. For the reasons set forth below, Plaintiffs’ Motion is **denied**.

I. Background

Plaintiffs are minority employees of the Library of Congress who brought suit on behalf of themselves and “as representatives of a class of all minority job applicants and all past, current, and future minority employees of the Library of Congress.” (2d Am. Compl. [28] ¶¶ 1-2.) Plaintiffs allege that Defendant James Billington, the Librarian of Congress, “engaged in an ongoing pattern and practice of discrimination against its minority employees” regarding compensation, promotions, wage classifications, job assignments, and recruitment. (*Id.* ¶ 2(a)-(d).)

¹ United States District Judge Henry H. Kennedy referred this matter to the undersigned Magistrate Judge for all discovery-related motions, pursuant to Local Civil Rule 72.2(a). (*See* Order of Referral to United States Magistrate Judge [39].)

Discovery closed on September 30, 2009. A Motion for Class Certification was due at that same time, but has been put on hold while the Court resolves several lingering discovery matters. (*See* Minute Order dated 09/29/09.) Defendant recently requested a stay of the pending discovery matters so that he may file a motion to dismiss based on res judicata. (*See* Mot. for Briefing Sched. & Stay of Pending Discovery Issues [142].) This request is currently pending before Judge Henry Kennedy . In the meantime, several discovery disputes remain pending.

On December 1, 2009, Plaintiffs filed a Motion to Direct the Defendant to Preserve Data and Documents. (*See* Pls. Mot. to Direct Def. to Preserve Data & Docs. [144].) Plaintiffs request this Court to order Defendant to preserve data and documents that are subject to their motion to compel or that may be relevant to claims they assert in this case and claims of the putative class if their motion for class certification is granted. (*Id.*) Specifically, Plaintiffs request that Defendant preserve (1) electronic personnel data and emails maintained at the National Finance Center²; (2) data maintained in the AVUE system; and (3) data and documents Defendant maintains related to merit selections at the Library of Congress. (*Id.* at 1-2.)

With respect to the first category of documents, Defendant asserts that the Library of Congress does not have control over the data maintained by the National Finance Center and, therefore, cannot ensure the preservation of the data. (Opp'n to Mot. to Direct Def. to Preserve Data & Docs. [152] at 2.) As to the second and third categories, Defendant asserts that AVUE and the Library of Congress are already maintaining that data and those documents dating back to

² Plaintiffs indicate they are seeking preservation of data at the "National Data Center" in New Orleans. Both this Court and Defendant presume Plaintiffs meant the "National Finance Center" located in New Orleans. The National Finance Center performs personnel and payroll transaction processing for the Library of Congress and many other federal agencies.

2003 and will continue to do so. (*Id.* at 2-3.) Defendant states that a litigation hold has already been placed on these files and that this fact has been communicated to Plaintiffs numerous times. (*Id.* at 3.) As such, Defendant argues that these requests are moot. (*Id.*)

Additionally, Defendant argues that Plaintiffs failed in their duty to meet and confer pursuant to Local Rule 7(m) prior to filing their motion with this Court. (Opp'n at 1.) In their motion, Plaintiffs state that pursuant to Local Rule 7(m), Plaintiffs' counsel contacted the Defendant who "declined to agree to this motion on the grounds that it was 'premature.'" (Pls. Mot. at 1 fn.1.) In its opposition, however, Defendant submits the email communication between Plaintiffs' and Defendant's counsel, which reveals that Defendant believed the motion was premature because the parties had yet to meet and confer on the matter. (Opp'n at 1-2 & Ex. 1.) In the email, Defendant's counsel suggests "scheduling a conversation between the parties to attempt to reach an agreement before troubling the Court with any additional filings." (*Id.* at Ex. 1.) Defendant's counsel never received a response from Plaintiffs' counsel, and Plaintiffs instead went forward with filing the motion on December 1. (*Id.* at 1-2.)

II. Discussion

Local Rule 7(m) states: "Before filing any nondispositive motion in a civil action, counsel shall discuss the anticipated motion with opposing counsel, either in person or by telephone, in a good-faith effort to determine whether there is any opposition to the relief sought and, if there is opposition, to narrow the areas of disagreement." As shown by the evidence that Defendant submits, Plaintiffs have failed to meet the requirements of Local Rule 7(m). "The entire purpose of the meet-and-confer rule is to force litigants to attempt to resolve, or at least narrow, the disputed issues to prevent the unnecessary waste of time and effort on any given

motion. The purpose of the rule is not to simply determine whether the motion will be opposed.” *Alexander v. FBI*, 186 F.R.D. 197, 199 (D.D.C. 1999). Defendant’s counsel was willing and able to meet with Plaintiffs’ counsel to resolve or narrow this issue before Plaintiffs’ had to resort to court intervention. Defendant’s efforts to resolve this matter prior to filing were, however, simply ignored. Therefore, this Court will deny the motion without prejudice. Plaintiffs may file again after they have made a good faith effort to meet and confer with Defendant on this matter.

Although this Court will not address the merits of this motion, it does note that based on Defendant’s opposition, it appears this matter can be resolved without further court intervention. Defendant states that it is already maintaining and preserving the documents in question dating back to 2003 that are maintained by both AVUE and the Library of Congress. As such, this Court strongly urges the parties to resolve this matter on their own.

III. Conclusion

For the foregoing reasons, it is this 5th day of January, 2010, hereby

ORDERED that Plaintiffs’ Motion to Direct Defendant to Preserve Data and Documents is **denied without prejudice**.

_____/s/_____
ALAN KAY
UNITED STATES MAGISTRATE JUDGE