

United States District Court, S.D. New York.
Tyetta **MEACHEM**, on her own behalf and on
behalf of all others similarly situated, et al., Plaintiffs,
v.

Brian J. **WING**, as Commissioner of the State of
New York Office of Temporary Disability
Assistance, Antonia Novello, as Commissioner of the
State of New York Department of Health, and James
M. McGowen, as Commissioner of the State of New
York Department of Labor, Defendants.

No. 99 CIV. 4630 AGS.

July 27, 2000.

MEMORANDUM ORDER

SCHWARTZ, District J.

*1 This action was filed by plaintiffs, on behalf of themselves and all others similarly situated, on June 25, 1999. At issue are three statutory schemes that provide financial benefits to low income individuals or households: the Food Stamp program; the Medicaid program; and New York's Cash Assistance Program. Each program provides for a system of "fair hearings," through which beneficiaries may challenge the provision of benefits under these programs. *See* 7 C.F.R. § 273 (Food Stamp Program); 42 C.F.R. § 431 (Medicaid Program); [New York Social Services Law § 22](#) (Cash Assistance Program).^{FN1} The City of New York participates in the disbursement of funds through State social services programs. Recipients of food stamps, medicaid, or cash assistance from the City must periodically attend appointments with City employees for a variety of purposes, including the verification of benefits eligibility for benefits and the evaluation of whether a recipient should participate in particular employment programs or work-related activities. (Amended Complaint ¶¶ 56, 57.) The appropriate City agency mails recipients appointment notices for such appointments. (*Id.* ¶ 59.) Failure to attend one of these appointments may cause the City to initiate a procedure to discontinue or reduce a recipient's benefits. (*Id.* ¶ 58.) Through the system of fair hearings, recipients may contest the City's decision to discontinue or reduce benefits.

^{FN1}. The Cash Assistance Program includes, *inter alia*, Safety Net Assistance for childless adults and Family Assistance for pregnant women and families with a

minor child.

Plaintiffs, all of whom have had their benefits altered after fair hearings, claimed at the hearings that they did not receive the City's notices of appointment for eligibility verification or work-related activities. They allege violations of law in the manner in which defendants conduct and decide fair hearings. Specifically, plaintiffs contend that defendants systematically fail to provide recipients with fair hearings that comply with the requirements set forth in federal and state statutory law and the Due Process Clause of the Fourteenth Amendment. Currently before the Court are disputes that have arisen among the parties in the course of discovery.

I. Stipulation of Confidentiality

At a pre-trial conference on June 5, 2000, the Court ordered the parties to prepare a proposed joint stipulation and protective order by June 30, 2000, in order to facilitate plaintiffs' examination of certain fair hearings records. (Tr. at 6, 14-15.)

The Court has received a letter from plaintiffs dated July 10, 2000 with an attached Proposed Stipulation of Confidentiality and Order. (Letter from Ian F. Feldman to the Court dated July 10, 2000.) With regard to the language contained in the proposed stipulation, the parties' sole disagreement appears to be the definition of "confidential information." (*Id.*) The parties' proposed definitions are as follows:

(i) Plaintiffs' definition: "Confidential information" means all communications and information revealed to plaintiffs' attorneys as a result of their examination of the records of fair hearings held under [New York Social Services Law § 22](#) that could identify a recipient of or an applicant for benefits under the Safety Net Assistance, Family Assistance, Food Stamp and Medicaid programs. The definition of confidential information shall not extend to any document or parts of any document that does not identify an applicant or recipient."

*2 (ii) Defendants' definition: " 'Confidential information' means all information relating to applicants for or recipients of programs subject to the fair hearings process, pursuant to [New York Social Services Law Section 22](#), revealed to plaintiffs' attorneys in discovery in this action."(*Id.*, Ex. A)

June 26, 2000.)

From the correspondence attached as exhibits to the letter, it is clear that the parties have attempted, unsuccessfully, to negotiate the matter. The Court also observes that throughout the negotiation process, plaintiffs have agreed to broaden their proposed definition to include any information “that *could identify* a recipient of or an applicant for benefits,” as opposed to information containing identities alone. (*Id.*, Exs. B-F.)

The Court orders the parties to use plaintiffs' definition as part of the Stipulation of Confidentiality and Order. In the Court's view, defendants' objections to plaintiffs' discovery requests on confidentiality grounds, in particular plaintiffs' examination of fair hearings decisions, audio tapes and related exhibits, were based on defendants' discharging their duty to protect the identities of applicants and recipients from disclosure, as defendants do not represent these individuals. While plaintiffs' proposed definition will adequately protect the identities of applicants and recipients, defendants' definition is considerably broader, and encompasses “all information related” to such applicants. Defendants' principal concern in using a more narrow definition, as reflected in the correspondence between the parties, is the use of information obtained by plaintiffs' attorneys in future litigation. (Letter from Jose L. Velez to Ian F. Feldman dated June 29, 2000). In particular, defendants state that they will not “allow plaintiffs' counsel access to information that they can use to contact public assistance recipients in order to commence subsequent litigation on other matters not related to the instant action.”(*Id.*)

While it is important that certain individuals' identities are not used outside the context of this litigation, defendants' broader concern is inapposite to the confidentiality issues embraced by this case, and should not impinge on plaintiffs' rights under [Fed.R.Civ.P. 26\(b\)\(1\)](#). Moreover, plaintiffs themselves state that they have no intention of contacting other recipients of public assistance to commence subsequent litigation on matters unrelated to the instant action. (Letter from Ian F. Feldman to Jose L. Velez dated July 10, 2000.) Rather, plaintiffs' stated desire is to share certain information with individuals and city agencies in order to improve the fair hearing process and public assistance programs. (Letter from Ian F. Feldman to Jose L. Velez dated

II. Correspondence between HRA and Defendants

At the June 5, 2000 conference, the Court responded to a disagreement between the parties regarding defendants' refusal to disclose documents containing communications between defendants, specifically the Office of Temporary and Disability Assistance (OTDA), and the City of New York Human Resources Administration (HRA) “concerning the administration of [the] system of fair hearings.”

*3 In response to questions from plaintiffs' counsel, the Court granted plaintiffs access not only to documents that specifically reference an individual's non-receipt of mail, but also those relating to due process issues in the context of the fair hearings process. (Tr. at 19.) The Court ordered defendants to disclose the relevant documents pursuant to [Fed.R.Civ.P. 26\(b\)](#).(*Id.* at 13-14, 19.)It also ordered defendants to identify in a log those documents which they are not disclosing because of privilege, and the reasons therefor, in accordance with [Fed. R. Civ. P 26\(b\)\(5\)](#).(*Id.* at 14.)

By letter to the Court dated July 12, 2000, defendants represented that they had disclosed a number of documents to plaintiffs related to communications between defendants and HRA, and attached a privilege log detailing those documents it did not disclose, along with the documents themselves for in camera review.

It appears from defendants' letter that their interpretation of the Court's decision concerning the scope of disclosure is more restrictive than the Court intended. As noted *supra*, the Court granted plaintiffs access not only to documents that specifically reference an individual's non-receipt of mail, but also those that relate to due process issues implicated by the fair hearings process.

Having reviewed the documents, the Court finds that each of them are, at least in part, relevant and likely to lead to admissible evidence. It further finds that none of the documents qualify for non-disclosure under the deliberative process privilege, or, with the exception of several statements concerning the instant litigation, the work product doctrine. In particular, the deliberative process privilege does not

apply because there is no indication that (i) the privilege has been claimed by the head of a government agency, or by a subordinate within the agency designated to assert the privilege, or (ii) the information defendants seek to protect is either predecisional or part of an agency's deliberative process. See [LNC Investments, Inc. v. Republic of Nicaragua](#), No. 96 Civ. 6360, 1997 WL 728106, at *1-2 (S.D.N.Y.). Moreover, defendants attempt to assert the privilege as to documents generated by a third party (i.e. the HRA), as opposed to intra-agency documents as required by relevant case law.^{FN2} See, e.g., [In re Franklin Nat'l Bank Securities Litig.](#), 478 F.Supp. 577, 580-81 (E.D.N.Y.1979); cf. [Peck v. United States](#), 514 F.Supp. 210, 211-12 (S.D.N.Y.1981) (noting that voluntary disclosure of a significant part of otherwise privileged communications may waive the privilege).

[FN2](#). The Court also notes that defendants have failed to submit a proper privilege log because the log fails to indicate which privilege purportedly applies to which document.

Therefore, defendants shall disclose each of the documents to plaintiffs. However, defendants may redact the documents to avoid disclosure of material that would not qualify for disclosure under the previous guidelines set forth by this Court, or which is not otherwise discoverable under [Rule 26\(b\)](#). However, defendants *shall not* redact information related to procedures used at fair hearings, decisions issued by administrative law judges (ALJs), possible problems associated with the hearing process, or the receipt (or non-receipt) of mail by benefit recipients. Any discussion of the instant action contained in these documents may be excluded under the work product doctrine.

***4 SO ORDERED.**

S.D.N.Y.,2000.
Meachem v. Wing
Not Reported in F.Supp.2d, 2000 WL 1036169
(S.D.N.Y.)

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