

**STATE OF CONNECTICUT  
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES  
OFFICE OF PUBLIC HEARINGS**

Commission on Human Rights and  
Opportunities ex rel.  
Mary Beth Garceau

: CHRO No. 0530073  
: Fed No. 16aa402014

v.

Yale University

: December 5, 2005

Order re: commission's motion for an order compelling the respondent to produce documents

In her complaint, the complainant alleged that she was sexually harassed and constructively discharged. By motion filed on November 30, 2006, the commission moves for an order to compel the respondent to produce documents responsive to its requests for production dated September 28, 2006.

Order:

1. There being no objection by the respondent to the commission's requests numbered 2, 3, 5, 7 – 11, 14 – 22, 27, 28, 32, 33 and 35, on or before December 28, 2006, the respondent shall produce documents responsive to these requests for the commission to inspect and copy.

2. With respect to the commission's request number 1, on or before December 28, 2006, the respondent shall produce documentation sufficient to show the name(s), business address(es), job title(s) and employment relationship to the respondent of the individual(s) who prepared or assisted in the preparation of responses to this request for production. The commission's request for home address(es) is denied. The commission may renew this request after it has submitted its witness list and if service of a subpoena cannot be made at the witness's place of employment.
3. The commission's motion to compel is denied as to its request number 4. The commission has not adequately explained, nor is it readily apparent, how the complainant's time sheets and attendance records are relevant to her claims of sexual harassment and constructive discharge.
4. With respect to the commission's request number 6, on or before December 28, 2006, the respondent shall produce documentation sufficient to show the complainant's compensation including, but not limited to, wage rates; pay increases; bonuses; medical, dental and life insurance benefits with premiums paid, if any; longevity benefits; and vacation and sick time accrued by the complainant during her employment with the respondent.
5. With respect to the commission's request number 12, on or before December 28, 2006, the respondent shall produce copies of all documents relating to

internal complaints (formal or informal) made by the complainant and other employees to its human resources department, EEO office, managers, supervisors and/or agents relating to sexual harassment by Dr. Joseph Schlessinger from January 1, 2001 to November 30, 2006. The documentation shall be sufficient to show the nature of the complaint and the resolution thereof. The respondent may identify the person making the complaint by initials rather than full names. Upon receipt of the documentation and for good cause shown, the commission may move for full disclosure of the complaining employee. The commission has not adequately explained, nor is it readily apparent, how complaints about sex discrimination or sexual harassment by and against other employees not named in this complaint are relevant and material to the complainant's claim that she was sexually harassed by a specific supervisor and constructively discharged. As this complaint is not apparently one of disparate treatment (such as failure to hire or failure to promote), the need for statistical and comparative information is not readily apparent.

6. With respect to the commission's request number 13, on or before December 28, 2006, the respondent shall produce copies of all complaints alleging sexual harassment filed against the respondent in any federal or state court from January 1, 2001 to November 30, 2006 and documents sufficient to

show the resolutions thereof. The respondent is not required to produce the terms of any agreements that the parties had previously agreed or a court had ordered would be confidential.

7. With respect to the commission's request number 23, on or before December 28, 2006, the respondent shall produce copies of all documentation created by Rich Wilson, Merle Waxman, Kelly Whitley, Lawrence Cohen, Dr. Spencer, Kitty Matzin and Valerie Stanley regarding the complainant and/or Dr. Joseph Schlessinger with respect to the events alleged in CHRO case number 0530073.
8. With respect to the commission's request number 24, on or before December 28, 2006, the respondent shall produce copies of all documentation of all investigations conducted by the respondent, its supervisors, managers, agents or other persons/entities relating to the complainant and/or Dr. Joseph Schlessinger with respect to the events contained in CHRO case number 0530073.
9. The issue of the disclosure of personnel files is addressed in General Statutes § 31-128f which states in relevant part: "No individually identifiable information, contained in the personnel file or medical records of any employee shall be disclosed by an employer to any person or entity not employed by or affiliated with the employer without the written authorization of

such employee except . . . where the disclosure is made: . . . (2) pursuant to a lawfully issued administrative summons or judicial order . . . (5) to comply with federal, state or local laws or regulations . . . .” “Although the material in the personnel files may be disclosed, the decision to allow disclosure requires the court to balance the plaintiff's need for the material in the files against the privacy rights of the non-parties. In order to satisfy the process of balancing the competing interests, the court begins with a consideration of the nature of the complaint filed by the plaintiff.” *Weston v. Wellcare Health Plans, Inc.*, 2006 WL 337216, 2 (Conn. Super.).

Therefore, with respect to the commission's request number 25, on or before December 28, 2006, the respondent shall produce copies of documentation sufficient to show what disciplinary action, if any, the respondent took against Dr. Joseph Schlessinger as a result of the complainant's allegations. While Dr. Schlessinger is not a named party to this complaint, he is specifically named as the perpetrator of numerous incidents of alleged sexual harassment. The respondent's investigation into the complainant's allegations, the results of the investigations and disciplinary action taken by the respondent against Dr. Schlessinger are relevant and material, and narrowly tailored, to the complainant's

allegations and clearly tip the balance of competing interests in favor of disclosure.

10. With respect to the commission's request number 26, on or before December 28, 2006, the respondent shall produce copies of documentation sufficient to show the respondent's response to the complainant's complaints of sexual harassment against Dr. Schlessinger, including what actions the respondent undertook; the identify, titles and functions of all persons involved; the resolutions of the complaints; and the discipline, if any imposed on any persons.
11. The commission's motion to compel is denied as to requests 29, 30 and 31. The commission has not adequately explained, nor is it readily apparent, how demographic information on other employees is relevant to the complainant's claims that she was sexually harassed by Dr. Schlessinger and constructively discharged.
12. With respect to the commission's request number 34, on or before December 28, 2006, the respondent shall produce copies of the personnel and disciplinary files (including warnings) of Dr. Joseph Schlessinger wherever and by whomever kept. Applying the balancing of interest test set forth in *Weston*, infra, while Dr. Schlessinger is not a named party to this complaint, he is specifically named as the perpetrator of numerous incidents of alleged

sexual harassment. Therefore, his personnel and disciplinary records are relevant and material, and narrowly tailored, to the complainant's allegations and clearly tip the balance of competing interests in favor of disclosure.

13. With every document produced, the respondent shall identify the request to which the document is responsive.
14. With every document to which the respondent asserts a privilege, it shall comply with the directive set forth in section IV of the August 16, 2006 hearing conference summary and order.
15. With respect to any request to which the respondent claims that it has no responsive documents, the respondent shall file and serve an affidavit that it does not possess or have access to responsive documents.
16. As to any requests for which the responsive documents are already in the possession of the commission, the respondent shall file and serve an affidavit that responsive documents are already in the commission's possession and shall identify such documents by date, author, recipient or such other identifying information sufficient to enable the commission to verify that it already possesses the documents.
17. The denial of its motion does not preclude the commission from seeking such documents pursuant to General Statutes § 51-85 or other applicable statute or regulation.

18. As set forth in section 46a-54-89a of the Regulations of Connecticut State Agencies, the respondent's failure to comply with this order for production may result in non-monetary sanctions. The sanctions "may include: (1) An order that the matters that are the subject of the request for production or disclosure shall be established in accordance with the claim of the party requesting such order; and (2) An order prohibiting the party who has failed to comply from introducing designated matters into evidence."

19. In the event that the respondent fails to comply with this order, the commission may file a motion for sanctions. The motion shall include an order page. The motion shall explain the relevance and materiality of the documents requested to the allegations of sexual harassment and constructive discharge and to the proposed sanction. Both the motion and the proposed order shall state with specificity the sanctions sought, consistent with section 46a-54-89a of the Regulations of Connecticut State Agencies.

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Hon. Jon P. FitzGerald  
Presiding Human Rights Referee

C:  
Ms. Mary Beth Garceau  
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