

Before the
Federal Communications Commission
Washington, DC 20554

FCC 07M-14

06332

In the Matter of)	EB Docket No. 07-13
)	
DAVID L. TITUS)	FRN No. 0002074797
)	File No. EB-06-IH-5048
)	
Amateur Radio Operator and Licensee of)	
Amateur Radio Station KB7ILD)	

MAILED
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FIRST DISCOVERY ORDER

Issued: May 24, 2007

Released: May 25, 2007

Introduction

Discovery motions were filed by the Enforcement Bureau (Bureau) on April 17, 2007: Motion to Compel Answers to Interrogatories, and Motion to Compel Production of Documents. On April 24, 2007, respondent David L. Titus (Titus) filed a consolidated Response to Motions to Compel.

Procedural Statement

This proceeding was commenced by *Order To Show Cause* (DA 07-377), released on January 30, 2007. On March 5, 2007, Mr. Titus filed a *pro se* Notice of Written Appearance representing that he would obtain counsel. On March 5, 2007, the Chief Judge's Designation *Order* (FCC 07M-08) was issued, and a Prehearing Conference date was set for March 27, 2007. Counsel for Mr. Titus filed Notice of Appearance on March 7, 2007. On March 9, 2007, the Bureau filed and served personally only Mr. Titus with its First Interrogatories and Request for Documents, and served counsel on March 19, 2007.

On March 22, 2007, counsel for Mr. Titus filed multiple requests for leave to participate in conference by telephone (which was granted without objection) and Response and General Objections to Bureau's First Interrogatories with a Request for Additional Time in which to Answer and Object. By *Order* FCC 07M-10, released March 30, 2007, additional time was granted to Mr. Titus to submit specific answers and objections to the Bureau's discovery.

On March 26, 2007, the Bureau filed Response to David Titus' Response and General Objections to the Bureau's First Interrogatories and Request for Additional Time in Which to Answer and Object. (Response). The Bureau interposed no objection to allowing Mr. Titus to respond to discovery by April 2, 2007.

The Bureau correctly notes that general objections such as protection of privileged information are without merit because the rules protect against discovery of privileged information. Cf. 47 CFR Section 1.323 (objections to interrogatories).¹ Baseless assertions that the Bureau is engaged in harassment by its document requests are without any merit, and must cease. Mr. Titus objects to disclosure of "confidential and sensitive" information but fails to provide authority for such an exemption or privilege. It does appear that the Bureau has specifically asked for such disclosure, and it also appears that the parties are prepared to agree on terms and conditions for discovery which could include such information.²

Request for Production of Documents

Request No. 1

The Bureau is entitled to copies of all documents in Mr. Titus' possession custody or control that relate to any felony and misdemeanor convictions, except documents for which an attorney-client or work product privilege is asserted.³ Mr. Titus must account for all documents of which he has knowledge, including those documents that are responsive but are not in his possession. That includes copies of responsive documents that are in "third parties' possession, custody or control" which must be identified (author, subject matter, date, addressee and persons copied) and the location of each document also must be ascertained (name of custodian, address, phone number and e-mail address.)⁴ Also, documents which are responsive even though believed to be "confidential and sensitive" must be produced to the Bureau if Mr. Titus has possession, custody or control thereof. An appropriate protective order may be sought.

Request No. 2

The Bureau is entitled to copies of all applications and correspondence that Mr. Titus has filed with or sent to the Commission, including Commission staff, since July 1, 1997. Mr. Titus has the burden to produce all responsive documents of which he has possession, custody or control. Mr. Titus must describe each responsive document of which he does not have possession, custody or control. Mr. Titus must also explain steps taken and efforts made to obtain responsive documents from custodians.

¹ Procedures for documents claimed to be privileged were discussed and determined at the Prehearing Conference of March 27, 2007. (Tr. 36) See also *Order FCC 07M-10*, released March 30, 2007.

² At the first Prehearing Conference on March 27, 2007, Bureau counsel agreed to work with Mr. Titus' attorney on confidential treatment of disclosures of "confidential and sensitive" information. (Tr. 36) and *Order FCC 07M-10, supra*.

³ Privileged documents were required to be identified in a "privilege log." See *Order FCC 07M-10, supra*.

⁴ Responsive documents that are in possession of a court must also be described and the court must be identified, including name of court address, and relevant case document numbers, and that information must be provided to the Bureau.

Interrogatories

Interrogatory No.1 (Education).

Answered in part. Mr. Titus must supplement answers to provide (1) the identity of the Washington-area community colleges, the months and years of attendance, and the names(s) of the courses taken; (2) the identity of the "college level courses" taken in prison, names of teachers, and the months and years such courses were taken; (3) the identity of (a) the "local vocational school" and (b) other computer-related courses" taken through employers, including the identity of the sponsoring employers (name, address, phone numbers, position).

The Bureau is entitled to information about juvenile adjudication, if obtainable under local law, and Mr. Titus must request documents from the Benton County Court and assist Bureau counsel in obtaining such information.

Interrogatory No. 2. (Employment since 1997).

Mr. Titus objects to disclosing current employment on grounds of relevancy, burdensomeness, and harassment. Mr. Titus contends that his continued present employment would be jeopardized. Mr. Titus does disclose prior employments as requested by Interrogatory No. 2 for the period January 1997 to August 2006. Mr. Titus must also disclose the identity of current employer, his job title, responsibilities, and his supervisor.⁵

Interrogatory No. 3 (Businesses).

Answered categorically "None."

Interrogatory No. 4 (Criminal Convictions).

Mr. Titus admits that:

- Mr. Titus was convicted of Communication With a Minor For Immoral Purposes in Benton County, Kennewick, Washington on March 12, 1993, under Case No. 93-1-00035-2. Mr. Titus was sentenced to 22-29 months (not years as the "Judgment and Sentence" order incorrectly states). After 25 months confinement, Mr. Titus completed 24 months of probation as required.
- Mr. Titus does not have any current court-ordered obligations. Mr. Titus does have to register as a "sex offender" as required by law.
- Mr. Titus has not (before the Enforcement Bureau's "Order to Show Cause") disclosed his conviction/adjudications to the FCC. Mr. Titus was not aware that he has an obligation to disclose his conviction/adjudications to the FCC.

⁵ If the Bureau decides to contact the current employer, supervisor or co-workers, Mr. Titus must be given ten (10) days written notice in advance of any contact. Such notice may be effected by e-mail to Mr. Titus' counsel.

- Prior to Mr. Titus' felony conviction as an adult (when Mr. Titus was 18 years old), Mr. Titus had two juvenile court adjudications in Benton County, Washington. Mr. Titus has no documents in his possession regarding such adjudications.

Interrogatory No. 5 (Licensee).

Mr. Titus admits to becoming FCC Licensee around August 14, 1989.

Interrogatory No. 6 (Radio Clubs).

Mr. Titus answered only in part. There is no explanation provided as to "AARL" membership since August 1989, or as to "AARL's ARES" programs. Also, the answer fails to provide identifying information about individuals Todd Buiten and David Dobbins, particularly information as to current addresses and phone numbers where they could be contacted. Mr. Titus must supplement his answer accordingly.

Interrogatory No. 7 (On-Air Activities).

Mr. Titus' answer seems to be substantially responsive to Bureau's interrogatory concerning on-air activities in the amateur radio service. The Bureau seeks to compel more details of Mr. Titus' "understanding with a local government." Mr. Titus must supplement his answer to describe "the nature of the understanding or identify the specific local government agency involved" and any other information that would be explanatory and/or descriptive.

Interrogatory No. 8 (Aliases).

Mr. Titus answered categorically "None."

Interrogatory No. 9 (On-Air Dialogue With Underage Listeners).

Mr. Titus admits that:

- Mr. Titus has communicated with hundreds of people on-the-air. Within that sphere, Mr. Titus would be surprised if he had not spoken to any other amateur radio operators who may have been under the age of 18 since 1997. Mr. Titus will supplement this answer upon determining if there are any of Mr. Titus' friends who are now adults and were under 18 when they met on-the-air.

The Bureau contends this answer is "incomplete and evasive," and suggests Mr. Titus may have a "log" to assist his recollection. Mr. Titus does not object to Bureau's motion to compel further answers to this interrogatory. Mr. Titus shall review his answer and supplement

with responsive information. Otherwise, the Bureau's concerns for more detail may be pursued in deposition.⁶

Interrogatory No.10 (Character Witnesses).

Mr. Titus agrees to identify persons he intends to use as character witnesses "once those persons have been identified." The parties will be required to exchange witness lists in advance of hearing in time to depose them, and a schedule will be set in a subsequent ruling.⁷

Interrogatory No.11 (Rehabilitation).

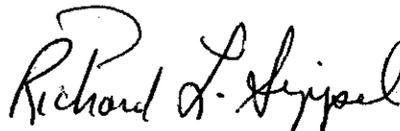
Mr. Titus responds that he "has been rehabilitated" and that he "has no criminal conviction in the last 14 years." Mr. Titus also represents that "criminal-related issues were in his teen years and younger." Mr. Titus must disclose to Bureau counsel by supplemental answer, the names, addresses, agency and/or professional affiliation/association of each person who officially and/or professionally played any part in his rehabilitation. Mr. Titus also shall explain the service and appropriate date of service provided by each person and entity.

Conclusion

The above rulings are to be complied with in both letter and spirit, and the parties are to discuss the most efficient ways that can be agreed on as to the date(s) for producing documents, and supplementing answers to interrogatories. All documents ordered to be produced must be delivered to Commission headquarters, and the Bureau must cooperate in affording an efficient and mutually convenient manner of delivery. The parties also shall submit *Joint Status Report On Discovery* to the Presiding Judge on **June 19, 2007, by 12 noon.**

SO ORDERED.

FEDERAL COMMUNICATIONS COMMISSION⁸



Richard L. Sippel
Chief Administrative Law Judge

⁶ The parties were ordered to consult on depositions and to submit a joint schedule to the Presiding Judge by May 4, 2007.) *Order FCC 07M-10, supra*. There was no deposition schedule submitted. However, the Bureau reserved its decision on discovery deposition based on completeness of production and answers. (Tr. 41)

⁷ The parties shall be required to submit proposed procedural dates including dates for exchanging witness lists, prepared testimony and documents.

⁸ Courtesy copies of this Order were transmitted to counsel for each of the parties by e-mail on the date of issuance.