

10/18/08 10:00 AM

From: Kanassattega, Joshua
Sent: Monday, March 24, 2008 2:31 PM
To: 'Larsen, Chris (USAWIE)'
Cc: Glenn Reynolds
Subject: RE: United States v. Menominee et al: Protective Order

Good afternoon Chris,

As to the first issue, the Government's position is indeed unfortunate. As you know, I have stated many times previously, Menominee has never requested and does not now request that the Government provide Menominee with the "entire set of BIA records," *i.e.*, the 80,000 pages of documents referred to in the Government's motion. The Government's recent change of direction and offer to provide an "entire set of BIA records" is simply an offer that should have been made back in September 2007 before the Government required Menominee to visit MRO/Milwaukee offices to inspect the BIA records and select BIA documents for copying. Moreover, as I explained to you during my last inspection visit in Milwaukee, it would be unfair to put Menominee to the burden of reviewing each and every one of the 80,000 pages of documents in the 31 boxes of BIA records searching for place-holders from its document inspection process. Before proceeding further, Menominee requests that the Government re-consider its position.

As to the Privacy Act materials, Menominee will be reviewing the website posting in search of any Government produced document containing information protected by the Privacy Act. However, and more importantly, Menominee hopes that the Government's apparent lack of ability to identify any such document, does not mean that the Government misled the Court into thinking that one or more Government produced documents were posted on Menominee's website when, to my knowledge, none were posted. Chris, please clarify that the Government had a factual basis to suggest to the Court that a protective order was needed to force Menominee to remove one or more Government produced documents from its website based on the Privacy Act.

Thank you for your prompt attention to these two issues.

Regards,

Jay

From: Larsen, Chris (USAWIE) [mailto:Chris.Larsen@usdoj.gov]
Sent: Monday, March 24, 2008 1:00 PM
To: Kanassattega, Joshua
Cc: Glenn Reynolds
Subject: RE: United States v. Menominee et al: Protective Order

Good afternoon Jay – as you are aware, the government has offered to scan and produce (at no cost to MTE) the entire set of BIA records, including your place-holders. Therefore, you or your staff will be able to readily identify and pull out the groups of documents marked during your previous inspections.

4/7/2008

EXHIBIT 22

As to your second point, it is the government's position that in accordance with the Court's Interim Order, MTE has the obligation to independently review and redact Privacy Act materials from any materials it intends to file or disclose publically.

Regards,

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From: Kanassatega, Joshua [mailto:joshua.kanassatega@leonard.com]
Sent: Friday, March 21, 2008 4:07 PM
To: Larsen, Chris (USAWIE)
Cc: Glenn Reynolds
Subject: United States v. Menominee et al: Protective Order
Importance: High

Good afternoon Chris,

I write on two issues related to the interim Protective Order issued by Judge Griesbach today.

First, I interpret paragraph 3(A) of the Order only to authorize the Government to produce "electronic" (instead of hardcopy) versions of BIA records. This would seem to resolve any need for the Government (or Menominee) to retain a copy service to provide Menominee hard copies of documents. However, the Government should provide electronic copies of, and only of: (1) each document I have identified from the boxes of documents I have reviewed at MRO and your office, and (2) those documents I have not yet had an opportunity to review, *i.e.*, BIAK Boxes 1 - 7. To the extent you continue to hold your current position, that is to insist on producing all "80,000" pages of BIA documents (including those I have reviewed without requesting copies), over Menominee's objections, Menominee intends to move the Court for appropriate relief, including sanctions for conduct that forces Menominee, at great burden and expense, to conduct a second review of tens of thousands of pages of documents.

Second, with respect to paragraph 4 of the Order, I am not aware that Menominee has posted on its website any materials produced by the Government containing personal information subject to the Privacy Act, 5 U.S.C. Section 522 *et seq.* As you know, the Government, as the producing party, bears the burden to identify private data in the BIA documents and to redact any private data from any document prior to providing electronic copies to Menominee. It is reasonable to assume that, as to any copies of documents the Government has provided to Menominee to date, your office has identified (or can readily identify at this time) those documents together with the matter within the documents that is protected under the Privacy Act. Please identify any such documents together with the matter within them that the Government believes is protected from disclosure under the Privacy Act as soon as possible so that Menominee can take appropriate action to ensure it is fully compliant with the Court's Order.

4/7/2008

Regards,

Jay

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