



**This case is an attempt by Plaintiff Christopher S. Koyste, on behalf of the Federal Public Defender’s Office, to gain access to State Police files and records in preparation for the defense of one Segundo Garcia, who has been indicted for federal narcotics violations in the United States District Court for the District of Delaware in the case of United States v. Garcia, Crim. A. No. 99-64-1-MMS. Segundo Garcia, through his defense counsel, has sought and has been denied this same information on three separate occasions.<sup>1</sup> Presently before this Court is Plaintiff Koyste’s complaint to compel production of the very material that has been denied his client three times in federal court. Defendants Delaware State Police and Captain Raymond W. Hancock (“Defendants”) move to dismiss. Because Plaintiff’s complaint fails to state a claim upon which relief can be granted as a matter of law, the Defendants’ motion to dismiss is GRANTED.**

## **I. FACTS**

**Plaintiff Koyste, on behalf of the body that represents Segundo Garcia, has filed**

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<sup>1</sup> United States v. Garcia, D. Del., Crim. A. No. 99-64-1 MMS, 2000 WL 654377, Schwartz, S.J. (Feb. 28, 2000); United States v. Garcia, D. Del., Crim. A. No. 99-64-1 MMS, 2000 WL 654374, Schwartz, S.J. (April 5, 2000); United States v. Garcia, D. Del., Crim. A. No. 99-064 GMS, 2001 WL 173784, Sleet, J. (Feb. 13, 2001).

complaint seeking discovery material for the defense of his client.<sup>2</sup> The material sought includes (1) various state police records and reports relating to all automobile stops made by State Police Officer Albert Homiak from January 1, 1995 up to and including August 25, 1999 and (2) all versions of the standard operating procedures of the Interstate Highway Criminal Patrol (“IHCP”) from 1990 through the present day.<sup>3</sup>

On February 28, 2000, Judge Schwartz ruled that the record contained “not a shred of evidence to even raise suspicion sufficient to support Garcia’s claim of racial or state of origin discrimination.”<sup>4</sup>

On April 5, 2000, Judge Schwartz ruled that the same records sought in this complaint are “are irrelevant and likely inadmissible because Garcia has not adduced ‘a shred of evidence’ to support his assertion of racial or state of origin discrimination.”<sup>5</sup>

On April 11, 2000, Plaintiff delivered a request under the Freedom of Information Act, Title 29 Delaware Code Chapter 100 to Defendants, seeking the State Police records detailed above.

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<sup>2</sup> Curiously, Plaintiff Koyste does not directly address the fact that the records are sought for the defense of a client, and in fact explicitly states that “he is not seeking discovery”, without any other mention of the Garcia case. See Pl.’s Answering Mem. in Opp’n to Def.’s Mot. to Dismiss at 6.

<sup>3</sup> Pl.’s Compl. at 6.

<sup>4</sup> United States v. Garcia, 2000 WL 654377 at \*13.

<sup>5</sup> United States v. Garcia, 2000 WL 654374 at \*2.

On April 18, 2000, the State of Delaware Department of Justice denied Plaintiff's request, explaining that the documents sought are:

[A]llegedly connected to litigation currently active in the federal court for the District of Delaware, *U.S. v. Garcia*, C.R.A. No. 99-64-1", and "[p]ursuant to 29 *Del. C.* ¶ 10002(9) [FN 1] we are declining your request since those documents are not public records in these circumstances.<sup>6</sup>

"FN 1" quotes 29 Del. C. § 10002(d)(9):

(d) "Public record" is information of any kind, owned, made, used, retained, received, produced, composed, drafted or otherwise compiled or collected, by any public body, relating in any way to public business, or in any way of public interest, or in any way related to public purposes, regardless of the physical form or characteristic by which such information is stored, recorded or reproduced. For purposes of this chapter, the following records shall not be deemed public: (9) Any records pertaining to pending or potential litigation which are not records of any court;...

On June 19, 2000, Plaintiff filed a complaint in Chancery Court seeking the State Police records. On August 10, 2000, the complaint was transferred for lack of jurisdiction from Chancery Court to this Court. On January 16, 2001, Defendants moved to dismiss the complaint.

On February 13, 2001, Judge Sleet ruled that Garcia's concurrent motion to compel production of the records in the United States District Court for the District of Delaware was "an attempt to circumvent the discovery process proscribed for criminal

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<sup>6</sup> Pl.'s Compl., Exhibit B.

cases.”<sup>7</sup>

## II. STANDARD OF REVIEW

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<sup>7</sup> United States v. Garcia, 2001 WL 173784 at \*3.

In considering a motion to dismiss, the Court must accept as true all allegations contained in the plaintiff's complaint.<sup>8</sup> The test of sufficiency is whether the plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint.<sup>9</sup>

### III. DISCUSSION

Defendant argues that dismissal is appropriate because: (1) **Plaintiff Koyste, effectively seeking the State Police records on behalf of the Federal Public Defender's Office, does not have standing to sue as a "citizen of the State" who is entitled to access to public records under 29 Del. C. § 10003(a); (2) the records sought are exempt from inspection under the "pending litigation" exception of 29 Del. C. § 10002(d)(9); and (3) the records sought are exempted from inspection as "[i]nvestigatory files compiled for civil and or criminal law-enforcement purposes" under 29 Del. C. § 10002(d)(3).**

In response, Plaintiff argues that (1) Plaintiff Koyste is "a private citizen [who] has standing to sue" and the fact that the case is captioned as "Christopher S. Koyste, on behalf of the Federal Public Defender's Office" does not cause Plaintiff to lack standing; (2) the documents sought are merely statistical data and not "records

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<sup>8</sup> Plant v. Catalytic Constr. Co., Del. Super., 287 A.2d 682, 686 (1972), aff'd, Del.Supr., 297 A.2d 37 (1972).

<sup>9</sup> Spence v. Funk, Del. Supr., 396 A.2d 967, 968, (1978).

pertaining to pending or potential litigation” under the exemption of 29 Del. C. § 10002(d)(9); and (3) the documents sought are not “investigatory files” under 29 Del. C. § 10002(d)(3).

Because the Court finds that the Federal Public Defender’s Office through Plaintiff Koyste does not have standing to sue, and that the records sought fall under the “pending litigation” exception of 29 Del. C. § 10002(d)(9), the Court will not address the issue of whether the records at hand constitute “investigatory files” under 29 Del. C. § 10002(d)(3).

First, it strains credibility to argue that Plaintiff Koyste is suing in his individual capacity as a “citizen of the State” after the complaint is captioned “Christopher S. Koyste, on behalf of the Federal Public Defender’s Office”. Plaintiff Koyste is an employee and representative of the Federal Public Defender’s Office. Plaintiff Koyste is acting at the behest of and on behalf of the Federal Public Defender’s Office. He is putting a face on the name of the Federal Public Defender’s Office, which is seeking materials to be used as discovery in the defense of its client Segundo Garcia. The Federal Public Defender’s office is not a “citizen of the State” under 29 Del. C. § 10003(a) and lacks standing to sue, whether it captions itself alone or under the guise of its chosen representative.

It is difficult to fathom how the records sought by Plaintiff do not constitute “records pertaining to pending or potential litigation” under the exemption to “public

records” of 29 Del. C. § 10002(d)(9). Although Plaintiff Koyste does not directly state why he wants the State Police materials, his purpose is clear: for use by the Federal Public Defender’s Office in the defense of its client, Segundo Garcia. In fact, Plaintiff Koyste confidently states that “he is not seeking discovery but rather State documents which should be available to all citizens to view and are being hidden by the State illegally.”<sup>10</sup> This statement, true or not, cannot obscure the fact that Plaintiff Koyste is attempting a circuitous route around the normal discovery channels. Allowing such a bypass could interfere with or render meaningless the criminal discovery rules.<sup>11</sup>

Most importantly, the information that Plaintiff desires has been thoroughly considered and soundly rejected as irrelevant to the U.S. v. Garcia case by two federal judges in three separate proceedings. It would cause an absurd, incongruous, and disruptive result to the U.S. v. Garcia case if this Court were to grant Plaintiff Koyste access to materials that have already been unquestionably forbidden to Segundo Garcia and his chosen defense counsel by federal judges intimately familiar with the case. The Court concludes that plaintiff has failed to state a claim which relief can be granted.

#### IV. CONCLUSION

For the foregoing reasons, Defendants’ Motion to Dismiss is **GRANTED**.

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<sup>10</sup> See Pl.’s Answering Mem. in Opp’n to Def.’s Mot. to Dismiss at 6.

<sup>11</sup> See Legal Aid Society v. New York City Police Department, N.Y. App. Div., 274 A.D. 2d. 207 (2000); Pittari v. Pirro, N.Y. App. Div., 258 A.D. 2d. 202 (1999).



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John E. Babiarz, Jr.

JEB<sub>jr</sub>/SR/BJW  
Original to Prothonotary