

*United States Court of Appeals  
for the Third Circuit*

OSHA DATA/CIH, Inc.  
Appellant,

v.

United States Department of Labor,  
Appellee.

Docket No. 99-5457 (3rd Cir.)

**MOTION TO  
EXPAND THE RECORD**

Appellant, OSHADATA/CIH, INC., through counsel, hereby moves to expand the record to include the December 4, 1998 letter from the Appellee, a copy of which is attached hereto and is annexed to Appellant's Reply Brief.

The reasons for this Motion are as follows:

1. The Third Count of the Complaint concerns a request for agency records under the Freedom of Information Act, 5 U.S.C. § 552 ("FOIA"). The subject request (Appendix Vol. I at 46) was made because Appellant learned that Appellee was withholding the most recent 30 days of data when responding to FOIA requests for the "sequential IMIS derived file," Appellee's electronic database of information obtained from workplace inspections performed by Appellee's Occupational Safety and Health Administration.
2. The request honed in on the 30 day withholding period by requesting the IMIS file "up to and including the date of file tape creation" but limiting "[t]he requested file period of coverage" to 30 days. See request at Appendix Vol. I at 46.
3. In a summary judgment motion which was never heard by the District Court, Appellant initially took the position, for purposes of that motion, that the records were received and, while the claim thereby became moot, since it was capable of repetition, the mootness

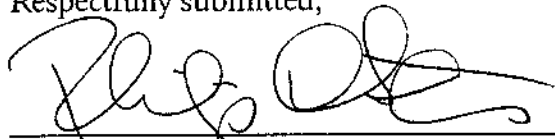
doctrine should not apply.

4. In the subsequently filed motion actually considered by the District Court, Appellant changed its position, arguing that no records were received on data generated within the 30 day period immediately proceeding the date of the IMIS file creation, as had been sought in the FOIA request.
5. The District Court dismissed the Third Count as moot.
6. Point II of Appellee's Brief on this appeal addresses the Third Count. Appellee does not concede that it in fact was and continues to withhold data within the 30 day period. Appellee only suggests that "OSHA Data contends that DOL had instituted a policy of delaying disclosure... ." Appellee Brief at 50.
7. The December 4, 1998 letter, however, expressly states, on the second page, that entire records are excluded when certain information within the record are dated less than 30 days before the "run" date of the file.
8. Appellant seeks to expand the record to include the December 4, 1998 since, as a matter of fact, there is no bona fide dispute that Appellee has and is withholding the most recent 30 days of agency records.

Accordingly, Appellant respectfully moves to expand the record to include the December 4, 1998 record as included in Appellant' Reply Brief.

Dated: January 11, 2000

Respectfully submitted,



PHILIP D. STERN  
Attorney for Appellant,  
OSHADATA/CIH, Inc.

U.S. Department of Labor  
DEC 4 1998

Occupational Safety and Health Administration  
Washington, D.C. 20210



Reply to the Attention of:

Mr. Matthew M. Carmel  
OSHA-DATA  
12 Hoffman Street  
Maplewood, New Jersey 07040-1114

Dear Mr. Carmel:

This letter is in reference to your requests of June 30, 1998 and September 30, 1998. In response to your requests magnetic tape reels were sent to you on approximately August 4, 1998 and October 30, 1998. These tapes contained records from the Integrated Management Information System (IMIS), specifically:

1. IMIS derived file information
2. A file of corresponding Mailing Address Information
3. Files of corresponding 5(a)(1) Abstract and Accident Investigation narrative information

As a result of ongoing changes in how OSHA is entering and using the data, certain data fields may now contain information that is covered by one or more FOIA exemptions. Rather than withhold the entire IMIS until we have determined the disclosability of the records in these fields, we are providing you with those elements and records that can be disclosed. Enclosed is a list of restricted information not included in the files provided.

Enclosed also is a floppy diskette containing the IMIS FOIA Log of requestor address information for the two quarters ending in June and September 1998. Also on this floppy diskette (in compressed format) are IMIS table files and Inspection Derived File documentation with a current file description(FD).

The cost of producing the tapes in August and October and the enclosed FOIA Log information is \$486. Please make your check or money order payable to U.S. Department of Labor - OSHA, and submit payment to:

U.S. Department of Labor - OSHA  
Office of Management Data Systems  
Post Office Box 2422  
Washington, D.C. 20013

If you have any questions, please contact Mr. Bruce Beveridge of my staff on (202) 693-1700.

Sincerely,

*Cathryn Goedert -301*  
Cathryn Goedert  
Acting Director  
Office of Management Data Systems

