

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

<b>STEVE C. BARNES,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 10-1280-JTM-GLR</b>
	)	
<b>CESSNA AIRCRAFT COMPANY,</b>	)	
	)	
<b>Defendant.</b>	)	

**MEMORANDUM AND ORDER**

Before the Court is an Unopposed Motion for Order for Production of Military Records (ECF No. 62), filed by Defendant on August 24, 2011. Counsel for Defendant Cessna Aircraft Company ask the Court to order non-party Air Force Office of Special Investigations(“AFOSI”) to produce all records in its possession pertaining to an alleged burglary/housebreaking investigation of Steve C. Barnes at McConnell AFB, Kansas, in 1995 (investigation file number 95321016S774585).<sup>1</sup> Plaintiff’s counsel does not oppose the motion.

On July 26, 2011, Defendant gave notice to Plaintiff of its intent to issue a subpoena to AFOSI under Fed. R. Civ. P. 45.<sup>2</sup> Nothing of record, however, shows that Defendant issued the subpoena or that AFOSI responded to it. Instead of providing such relevant information, Defense counsel filed a one-paragraph motion to order a non-party to produce records without providing any

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<sup>1</sup>The motion specifically states that defense counsel move for the order. They cite no authority for counsel to be a proper movant for this type of motion. Through counsel, represented parties ask courts to take action. Attorneys do not generally make motions on their own behalf, but rather on behalf of a party they represent. The proper movant for this motion appears to be Defendant.

<sup>2</sup>See Notice of Subpoenas (ECF No. 53).

statutory or other basis for the order to produce.<sup>3</sup> Courts do not compel non-parties to produce documents unless the requesting party has served a subpoena under Fed. R. Civ. P. 45 and the non-party has failed to produce responsive documents.<sup>4</sup> Because Defendant has not shown that it served a subpoena in accordance with Rule 45 or that AFOSI has withheld documents from production, the Court denies the Unopposed Motion for Order for Production of Military Records (ECF No. 62).

Dated in Kansas City, Kansas on this 12th day of October, 2011.

S/ Gerald L. Rushfelt  
Gerald L. Rushfelt  
United States Magistrate Judge

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<sup>3</sup>To the extent this is a motion to command production under Rule 45(c)(2), the local rules of this Court require that such a motion “be accompanied by a copy of the subpoena in dispute.” D. Kan. Rule 37.1(a).

<sup>4</sup>*E.E.O.C. v. Thorman & Wright Corp.*, 243 F.R.D. 426, 429 (D. Kan. 2007).