

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-05-043-WH
)	
JIMMY C. CHISUM,)	
)	
Defendant.)	

ORDER

Before the Court is the motion of the defendant to compel discovery and delay in schedule for hearing. In the motion, defendant seeks certain discovery materials in relation to his upcoming sentencing. The government has responded to the motion at the Court’s request and appears to have made available to the pro se defendant sufficient materials so that defendant may adequately represent himself. The government represents that defendant (who is not incarcerated) has not availed himself of the opportunity for inspection.

A defendant has a right to fair sentencing procedures, but he has no due process right to be informed in advance of the identity of witnesses or of the expected substance of their testimony. *United States v. Diaz-Villafane*, 874 F.2d 43, 47 (1st Cir.1989)*. At most, a defendant has a constitutional right not to be sentenced on the basis of invalid information and, therefore, must be given an opportunity to rebut any challenged information. *Id.* See

*The government appears to have gone beyond this principle in this case. The Court believes this is appropriate, given defendant’s pro se status and the potentially complicated tax loss calculations involved in this sentencing.

also *United States v. Jones*, 640 F.2d 284, 286 (10th Cir.1981)(due process right to be sentenced based on accurate information).

Defendant also makes a reference in his motion to taking depositions. (Defendant's Motion at 5). Rule 15 F.R.Cr.P. does not contemplate use of depositions of adverse witnesses as discovery tools in criminal cases. *United States v. Carrigan*, 804 F.2d 599, 602 (10th Cir.1986).

Finally, defendant has requested a delay in the sentencing hearing. The Court has recently granted the government's motion for continuance, and therefore this aspect of defendant's motion is moot.

It is the Order of the Court that the motion of the defendant to compel discovery and delay in schedule for hearing (#96) is hereby DENIED on the merits in part and DENIED as moot in part, as described above.

ORDERED THIS 11th DAY OF MAY, 2006.



Ronald A. White
United States District Judge
Eastern District of Oklahoma