

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JUDICIAL WATCH, INC.,
Plaintiff,

v.

FANI WILLIS,
Defendant.

CIVIL ACTION FILE NO. 24CV002805

**BRIEF IN SUPPORT OF PLAINTIFF’S MOTION
FOR IN CAMERA INSPECTION AND APPOINTMENT OF SPECIAL MASTER**

Plaintiff Judicial Watch, Inc. (“JW”) moves this Court for further relief against Defendant Fani Willis, in her official capacity as District Attorney of the Atlanta Judicial Circuit, (“Willis”). JW commenced this action pursuant to O.C.G.A. § 50-18-73 to enforce the Open Records Act. On December 2, 2024, the Court entered an Order Granting Plaintiff’s Motion for Default Judgment against Willis. The Court ordered, among other things, that Willis conduct a diligent search and provide responsive records. For any records that Willis decided to withhold, she was ordered to comply with the procedures set forth in O.C.G.A. § 50-18-71(d).

JW seeks further relief because Willis’ response to the Default Order fails to show how she complied with the Court’s Default Order or O.C.G.A. § 50-18-71(d), leaving this Court and JW to speculate as to whether she has satisfied her obligations. More specifically, Willis’ response makes no showing that the search was diligent. Based on her previous searches in this matter, it probably was not diligent. Likewise, she provided no list or even a general description regarding any responsive records she has elected to withhold. Without a list or description, it is impossible to evaluate what, if any, exemptions or exceptions are applicable, as she now contends.

Willis has now had *three* opportunities to search for the records requested by JW. A recent

deposition of Willis' official custodian, Dexter Bond, which covered her first two searches (i.e., pre-Complaint and post-Complaint) show Willis' first two searches were woefully inadequate. Nothing in Willis' recent response shows that her office likely corrected these errors during the third (post-Default) search.

JW respectfully submits that further relief is necessary so this Court and JW can fully ascertain the universe of records and whether the newly asserted exceptions and exemptions for withholding any records are applicable. JW respectfully requests this Court appoint a special master to oversee a search of Willis' records and conduct an *in camera* inspection of records found.

Proceedings

On August 22, 2023, JW requested from Willis two categories of documents: 1) all documents and communication sent to, received from, or relating to Special Counsel Jack Smith and 2) all documents and communication sent to or received from the United States House January 6th Committee. Default Order, p. 1; Complaint, Exhibit 1. Willis' office immediately responded to the request, acknowledging receipt and advising that her office would "send out the request to the appropriate department(s)." Complaint, Exhibit 1. The next day, Willis responded with, "We do not have the responsive records." Complaint, Exhibit 3. As it turns out, however, Willis *did* have responsive records. Complaint, ¶ 11 and Exhibit 4.¹ After JW independently obtained a record that was responsive to its request, but not produced or referenced in Willis August 23, 2023 response, JW filed this lawsuit on March 5, 2024. Citing Willis failure to respond to the Complaint within 30 days of service, JW moved for default judgment on April 30, 2024. This Court entered a default

¹ The Default Order found, "Plaintiff is thus entitled to judgment by default as if every item and paragraph of the complaint were supported by proper and sufficient evidence." Default Order, p. 4. Thus, it is conclusively determined (in ¶ 11 of the Complaint) that Willis wrote a letter that is "plainly responsive to the request." Exhibit 4 to the Complaint contains a copy of a letter Willis wrote to the chairman of the House January 6th Committee on December 17, 2021 (the "Letter").

judgment order against Willis on December 2, 2024 (“Default Order”). Willis responded to the Default Order on December 9, 2024 (“Response”).

Willis’ Searches

Willis has had three opportunities (i.e., pre-Complaint, post-Complaint, and post-Default) to conduct a diligent search for responsive records and satisfy her duties under O.C.G.A. § 50-18- 71(d) regarding any exemptions or exceptions she now contends are applicable. JW recently deposed Dexter Bond, Willis’ official custodian of records. Bond Depo. Bond’s testimony (which covered pre-Complaint and post-Complaint searches only) shows that Willis’ misread (narrowed the breadth) part of JW’s request and only conducted a superficial search.²

With respect to the pre-Complaint search, Bond confirmed that Willis *did not conduct any search before responding to JW that there were no responsive records*. Bond Depo. Trans. 76:1-16. Indeed, Willis did not, as her initial response indicated, send JW’s request to the “appropriate department(s).” Complaint, Exhibit 1. As a result, she did not assert any exemptions or exceptions regarding responsive records.

Only *after* JW filed its Complaint on March 5, 2024 did Willis finally attempt any search. That search, which Willis contends was “diligent,” purportedly *only* yielded the discovery of the letter attached to JW’s Complaint. Bond Depo. Trans. 28:1-30:25 and Exhibit D, p. 5. According to Bond, that letter was not discovered until June 24, 2024, almost two months after JW filed its Motion for Default Judgment. *Id.* He offered no explanation as to why it took so long to discover a copy of the Letter that was attached to the Complaint. *Id.*, *see id.* Exhibit C, p. 6. According to Willis, other than the Letter, the post-Complaint search yielded “no additional responsive exempt

² During his deposition, Bond indicated his office was prepared to submit an affidavit describing its post-Default search. Bond Depo. 89:14; 90:16, 24; 91:1; and 94:10-96:25. However, no affidavit was filed in its December 9, 2024 response to the Court’s Default Order.

or nonexempt records responsive to the request.” *Id.*, p. 6.

Ultimately, Bond’s description of his post-Complaint search raises more questions than answers. First, he acknowledged that Willis did not search employee’s cellphones for responsive records. Bond Depo. Trans. 62:10-63:4; 73:4-11. Bond testified that he did not know if he had Cellebrite technology available to him for searching employee cell phones. *Id.* As it turns out, however, Bond actually was involved in the ordering of Cellebrite technology for Willis’ office. Cellebrite order. For the most part, Bond took employees at their word that they lacked any responsive records. Another problem revealed during Bond’s deposition is that Willis misapplied the text of the requests. Generally, JW requested all documents and communications exchanged between her office and the January 6 committee and her office and Special Counsel Jack Smith’s office. Complaint, Exhibit 1. With respect to the latter request applicable to Jack Smith’s office, JW also requested all documents held by Willis “related to” the special counsel. *Id.* Bond’s testimony indicates he limited both searches to only correspondence between Willis’ office and Jack Smith’s office. Bond Depo Trans. 79:5-:25. Further, Bond did not keep any records related to his search, which limits any ability to recreate or evaluate it for adequacy beyond his testimony. Bod Depo. 94:23-95:3. Thus, there is no way for the Court or JW to verify or recreate this search.

Finally, the Court’s Default Order directed Willis to “conduct a diligent search of her records for responsive materials” and, within five business days, provide Plaintiff with copies of all non-exempt or non-excepted responsive records. Regarding any withheld records, Willis was ordered to follow the procedures set forth in O.C.G.A. § 50-18-71(d). On December 9, 2024, Willis responded to the Court’s Default Order in an unsigned, unsworn statement. Willis’ Response to Default Order.³ Likewise, the Response did not provide an affidavit describing the post-Default

³ Willis has filed a certificate of service stating that her response was filed, but JW cannot find evidence that the response was actually filed with the Court. JW is therefore attaching Willis’

search. Thus, other than advising that Willis’ “staff [has] conducted a search as directed by the Court,” the Response makes no showing as to how this second search was “diligent” or otherwise corrected the errors that occurred during the post-Complaint search. Yet, the search unquestionably yielded different results given that Willis, for the first time, asserts various exemptions for an open investigation (O.C.G.A. § 50-18-72(a)(4)), attorney-client privilege (O.C.G.A. § 50-18-72(a)(41)), and attorney work product (O.C.G.A. § 50-18-72(a)(42)). Willis’ Response. JW cannot evaluate the new exemptions or exceptions, including whether any have been waived, without a list or description of the withheld documents.

Argument

1. *In Camera* Inspection.

Pursuant to O.C.G.A. § 50-18-72(a)(41) and (42), a party in a Open Records Act enforcement action “may request that the judge of the court in which such proceeding is pending determine by an in camera examination whether such information was properly withheld.” Attorney-client privilege and attorney work product privilege do not apply to factual findings of attorneys. *Id.* The privileges only apply to legal conclusions. *Id.* Moreover, it is axiomatic that communications to third parties (such as staff of the January 6 Committee) would constitute a waiver of attorney client privilege.

A party claiming an exemption from the Open Records Act bears the burden of proving the application of the exemption. *Chua v. Johnson*, 336 Ga.App. 298, 305 (2016). Even if the privilege does apply, the trial court may conduct an *in camera* review to determine if the privileged portion may be redacted from the remainder. *Id.*, p. 306. It is critical to have a list, such as a privilege log, so that the parties can resolve whether each alleged exemption is applicable. Indeed,

response contemporaneously with this Motion.

one of the exemptions, i.e., an open investigation, necessarily ends once the investigation concludes. In such case, any final relief issued here should direct Willis to produce such documents at the conclusion of the investigation with necessitating further litigation by JW.

Given Willis' inconsistent statements, that she had no exempt records and then that she had exempt records, and given the provision for *in camera* inspection in the statutes, the Court should conduct an *in camera* inspection of the responsive records to determine 1) if the records really are exempt; and 2) if they are exempt, whether they can be redacted and the remainder produced.

2. Appointment of Special Master.

Rule 46(A)(1) provides, "Unless a statute provides otherwise, upon the motion of any party ... the court of record may appoint a master ... (c) to provide guidance, advice, and information to the court on complex or specialized subject, including, but not limited to, technology issues related to the discovery process; [or] (d) to monitor implementation of and compliance with orders of the court...." Rule 46 mandates that the court give the parties notice and an opportunity to be heard before appointing a master. *E.I. DuPont de Nemours & Co. v. Waters*, 287 Ga. 235, 237 (2010). In addition, the order must set forth, among other things, the special master's duties, specific limits on the special master's authority, and standards for reviewing the special master's orders, findings, and recommendations. *Id.*

In the present case, Willis by her own admission conducted at least three searches before finding any responsive records not already supplied by JW. She did not even bother to conduct a search until the Complaint was filed. Her records custodian says he does not know the Cellebrite equipment he apparently had a hand in ordering can be used to search cell phone texts and other data. Bond Depo., p. 62. Moreover, the custodian had no standard practice for conducting searches and keeps no records of the methods used in a given search. *Id.*, p. 75

The foregoing gives rise to grave suspicion that all responsive records have not been found.

The Court should appoint a special master to supervise and monitor the record searches. The special master should have authority to audit searches and conduct searches herself. She also should have authority to hire such consultants and experts as may be needed to execute her commission. The special master should make a recommendation to the Court as to how her fees and expenses should be allocated among the parties, taking into consideration whether she finds responsive records that Willis should have found but did not.

/s/ John R. Monroe

John R. Monroe
John Monroe Law, P.C.
156 Robert Jones Road
Dawsonville, GA 30534
678 362 7650
State Bar # 516193
jrm@johnmonroelaw.com