IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEROGIA

JUDICIAL WATCH INC., Plaintiff	)	
v.	)	CIVIL ACTION 24CV002805
FANI WILLIS, in her official capacity as District Attorney of the Atlanta Judicial Circuit, Defendant	)	JUDGE MCBURNEY

ORDER GRANTING ATTORNEY'S FEES AND COSTS

Plaintiff submitted an Open Records Act[1] (ORA) request to Defendant on 22 August 2023 by way of Fulton County's ORA on-line "portal". That same day, Plaintiff received confirmation that its request had been delivered and would be channeled to the "appropriate department" (presumably the District Attorney's Office). (Complaint, Ex. 1). The following day, the County's Open Records Custodian sent Plaintiff an e-mail confirming that the District Attorney's Office had received the inquiry and asking Plaintiff to "simplify" its ORA request. (Complaint, Ex. 2). Literally five minutes later, before any simplification had occurred, Plaintiff received a second e-mail from the Records Custodian: "After carefully reviewing your request. (sic) We do not have the responsive records." (Complaint, Ex. 3).

[1] O.C.G.A. § 50-18-70 *et seq.*

This response was perplexing and eventually suspicious to Plaintiff, given that Plaintiff subsequently uncovered through own effort at least one document that should have been in the District Attorney's Office's possession that was patently responsive to the request. (Complaint, Ex. 4). This discovery prompted the current litigation, filed in March 2024, seeking an order directing Defendant to comply with the ORA and provide all responsive records. During the pendency of the litigation, Defendant thrice more denied the existence of any responsive records, once in a request for admission and twice via answers to interrogatories. Every time: we have searched and there is nothing.

Defendant ultimately defaulted and this Court entered an Order on 2 December 2024 directing Defendant "to conduct a diligent search of her records for responsive materials" and to provide any responsive records that were not legally exempted from disclosure. (2 December 2024 Order at 4-5). If Defendant elected to withhold all or part of any responsive records, she was further directed to comply with O.C.G.A. § 50-18-71(d) by identifying the bases for the withholding. (*Id*. at 5).

Defendant's compliance with the Court's 2 December Order consisted of an undated, unsigned two-page memo to Plaintiff from Defendant's "Open Records Department". (Attached to Plaintiff's 17 December 2024

Notice of Filing). In this memo, Defendant announced that there still were no records responsive to one set of Plaintiff's requests (communications with former Special Counsel Jack Smith) but that there *were* in fact records responsive to Plaintiff's second set of requests (communications with the United States House January 6th Committee) -- but those were exempt from disclosure.[2] Defendant, despite these reservations, did gamely attach to her memo a copy of the letter she wrote to the Chairman of the House Committee that (1) does not appear to be covered by any of the exemptions identified in the memo and (2) had already been identified by Plaintiff as a responsive record that was wrongly withheld.

Somehow something had changed. Despite having previously informed Plaintiff *four* separate times that her team had carefully searched but found no responsive records, now there suddenly were -- but they were not subject to disclosure under the ORA. Plaintiff's deposition of Defendant's Records Custodian shed some light on this mystery: he admitted that there was no search for records back in August 2023. Just a "no, go away." He further clarified that, when Plaintiff did not go away but instead sued, there still was no organized, comprehensive examination of

[2] Defendant's Open Records Department identified the exemptions as O.C.G.A. § 50-18-72(a)(4), (a)(41), and (a)(42), excepting from the ORA's disclosure requirements those materials involving pending investigations, attorney-client privilege, and work product, respectively.

the District Attorney's Office's records. That would await the Court's 2 December 2024 Order.

The ORA is not hortatory; it is mandatory. Non-compliance has consequences. One of them can be liability for the requesting party's attorney's fees and costs of litigation. To recover its relevant and reasonable fees and costs under the ORA, Plaintiff must do two things. First, it must show that Defendant violated the ORA. Second, Plaintiff must also demonstrate that Defendant lacked "substantial justification" for the violation(s). O.C.G.A. § 50-18-73(b); *Jaraysi v. City of Marietta*, 294 Ga. App. 6, 11 (2008). Here, Plaintiff has done both.

Most basically, by operation of law Defendant acknowledged violating the ORA when she defaulted. But actual evidence proves the same: per her Records Custodian's own admission, the District Attorney's Office flatly ignored Plaintiff's original ORA request, conducting no search and simply (and falsely) informing the County's Open Records Custodian that no responsive records existed.[3] We know now that that is simply incorrect: once pressed by a Court order, Defendant managed to identify responsive records, but has categorized them as exempt. Even if the records prove to be just that -- exempt from disclosure for sound public policy reasons -- this

[3] And even after litigation began, Defendant's Records Custodian initially merely asked certain employees if they thought they had any responsive records; there was no rigorous review of e-mails or case files.

late revelation is a patent violation of the ORA. And for none of this is there any justification, substantial or otherwise: no one searched until prodded by civil litigation.

Given this, the Court finds that relevant and reasonable attorney's fees and costs of litigation are properly awardable to Plaintiff pursuant to O.C.G.A. § 50-18-73(b). The evidence from the Court's 20 December 2024 hearing on attorney's fees shows that Plaintiff's counsel's billing rate is reasonable and that the items for which he billed are, for the most part, relevant to Defendant's ORA violation. From the record made at the 20 December 2024 hearing, the Court finds that Plaintiff incurred $19,360 in attorney's fees related to Plaintiff's efforts to enforce compliance with the ORA. Related litigation expenses are $2,218. Defendant is thus liable to Plaintiff for $21,578 pursuant to O.C.G.A. § 50-18-73(b). That amount shall be paid within two weeks of the entry of this Order.

SO ORDERED this 3rd day of January 2025.

JUDGE ROBERT C.I. MCBURNEY
Superior Court of Fulton County
Atlanta Judicial Circuit