

ENTERED

February 10, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

TARGETED JUSTICE, INC.,

Plaintiff,

VS.

OFFICE OF THE ATTORNEY
GENERAL,

Defendant.

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CIVIL ACTION NO. 6:24-CV-00016

PROTECTIVE ORDER

Pending before the Court are Defendant Office of the Attorney General's motion for protective order, Plaintiff Targeted Justice's response and motion to compel production of records, and Defendant's reply. D.E. 11, 14, 18. For the reasons set out below, the Court **GRANTS** Defendant's motion for protective order, **ORDERS** discovery in this case to be stayed, and **ORDERS** Defendant to file its motion for summary judgment within 14 days of this order.

BACKGROUND

Plaintiff filed this suit on May 30, 2024, seeking injunctive relief under the Freedom of Information Act (FOIA), 5 U.S.C. § 522. D.E. 1. Plaintiff claimed that Defendant had failed to make a reasonable effort to search for and make available the records requested by Plaintiff in its original FOIA inquiry. *Id.* at pp. 3-4.

The Court held a status conference on October 2, 2024, in which the Court expressed its understanding that the parties were not cooperating in such a way as to expect resolution

of the issues, and its expectation that the parties would file motions for discovery and protective orders. The Court ordered Defendant to file a status report every 60 days. On November 14, 2024, Plaintiff received a “final response” from Defendant, notifying it that no records responsive to its FOIA request were located. D.E. 11-2.

On October 22, 2024, Plaintiff sent its first set of interrogatories and request for production of documents to Defendant. D.E. 11-1. On November 20, 2024, Defendant filed a motion for protective order against Plaintiff’s discovery requests. D.E. 11.

In its response, Plaintiff contends that the motion for protective order was not made in good faith because Defendant did not carry out a meaningful attempt to resolve the dispute without court action as required by Federal Rule of Civil Procedure 26(c). D.E. 14, pp. 6-7. Plaintiff also argued that discovery was reasonable because the information sought was that requested through its original FOIA inquiry. D.E. 14, pp. 9-14. Additionally, Plaintiff states that Defendant has not established good cause which would justify the Court’s issuance of a protective order. *Id.* at p. 7.

STANDARD OF REVIEW

A court may, for good cause, grant a motion for protective order forbidding, limiting, or halting discovery “to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense;” the motion must include a certification that the affected parties have conferred in good faith. Fed. R. Civ. P. 26(c).

A party may obtain discovery “regarding any nonprivileged matter” that is “relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P.

26(b). It is within a district court's discretion to limit or halt discovery. *Negley v. F.B.I.*, 589 F. App'x 726, 732 (5th Cir. 2014).

FOIA is intended as a judicially enforceable public right to government agency information with the objective of “open[ing] agency action to the light of public scrutiny.” *Dep't of the Air Force v. Rose*, 425 U.S. 352, 360–62 (1976) (quoting *Rose v. Dep't of Air Force*, 495 F.2d 261, 263 (2d Cir. 1974)). However, there are limited exemptions from compelled disclosure, which are specifically set out in the statute. *Id.*

Generally, discovery is not favored in FOIA cases. *E.g. Schiller v. I.N.S.*, 205 F. Supp. 2d 648, 653 (W.D. Tex. 2002) (collecting cases). However, discovery may be available concerning the adequacy of an agency's search after the defendant has moved for summary judgment. *Exxon Mobil Corp. v. U.S. Dep't of Interior*, No. CIV.A. 09-6732, 2010 WL 4668452, at *4 (E.D. La. Nov. 4, 2010), *objections overruled*, No. CIV.A. 09-6732, 2011 WL 39034 (E.D. La. Jan. 3, 2011).

DISCUSSION

I. Conference

Plaintiff first argues that there was no good-faith conference between the parties as required by Rule 26, and therefore the Court cannot grant the motion for protective order. D.E. 14, p. 6. Defendant has included a certificate of conference in its motion. D.E. 11, p. 6.

The purpose of a conference requirement under the Federal Rules of Civil Procedure is to ““encourage resolving discovery disputes without judicial involvement.” ‘Failure to confer or attempt to confer may result in unnecessary motions. When the court must resolve

a dispute that the parties themselves could have resolved, it must needlessly expend resources that it could better utilize elsewhere.” *Brown v. Bridges*, No. 12-CV-4947-P, 2015 WL 11121361, at *3 (N.D. Tex. Jan. 30, 2015) (citations omitted) (discussing Rule 37 conference requirements), *on reconsideration in part*, No. 12-CV-4947-P, 2015 WL 12532137 (N.D. Tex. June 22, 2015).

In matters where a court believes that lengthy conferences between parties would not resolve the disputes, a court can find that a limited attempt to confer suffices. *Barcosh, Ltd. v. Dumas*, No. CIVA 08-92-JVP-SCR, 2008 WL 4286506, at *2 (M.D. La. Sept. 18, 2008) (finding that sending a letter notifying defendants of motion to compel discovery satisfied conference requirements when plaintiffs were justified in assuming that the discovery dispute could not be resolved.). Due to the nature of the present dispute and in light of the October status hearing, the Court finds that further attempts to confer would not help resolve outstanding issues. The Court finds that this is not a reason to deny Defendant’s motion for protective order.

II. Motion to Compel Discovery

Plaintiff also argues that discovery is reasonable at this stage because Defendant has not produced any responsive documents to its FOIA request and has not submitted affidavits explaining the scope and method of its search. D.E. 14, p. 9. Additionally, Plaintiff contends that discovery is proper because “the only information and records

sought through the discovery were those originally requested by means of the FOIA request.” *Id.*

“It is within a district court's sound discretion to halt discovery in a FOIA case until after action on a motion for summary judgment.” *Negley*, 589 F. App'x at 732. In fact, courts routinely do so “until after the government has . . . had a chance to present the information necessary to make a decision on the applicable exemptions.” *Brewer v. United States Dep't of Just.*, No. 3:18-CV-1018-B-BH, 2018 WL 6068945, at *1 (N.D. Tex. Nov. 20, 2018). That information is usually presented in the form of affidavits, or an index listing withheld responsive documents and descriptions of any exemptions. *Id.* A factual issue may arise after the government's filings that can then be addressed by discovery. *Id.* (citing *Driggers v. United States*, No. 3:11-CV-0229-N, 2011 WL 2883283, at *1 (N.D. Tex. July 18, 2011)).

Plaintiff seeks discovery for the records requested through its initial FOIA filing. D.E. 14, p. 9. In essence, Plaintiff seeks to “us[e] discovery to replace FOIA.” *Negley*, 589 F. App'x at 732. “Allowing Plaintiff to conduct this discovery before Defendants file a motion for summary judgment would essentially provide the relief [Plaintiff] seeks through this lawsuit.” *Brewer*, 2018 WL 6068945, at *2.

At this procedural stage, it is proper for the Court to grant the protective order staying discovery in anticipation of summary judgment filings.

III. Good Cause

Finally, the Court turns to Plaintiff's argument that there is no “good cause” to justify issuance of a protective order. D.E. 14, p. 7. The good cause requirement to support


issuing a protective order “indicates that ‘[t]he burden is upon the movant to show the necessity of its issuance, which contemplates a particular and specific demonstration of fact as distinguished from stereotyped and conclusory statements.’” *In re Terra Int’l, Inc.*, 134 F.3d 302, 306 (5th Cir. 1998) (quoting *United States v. Garrett*, 571 F.2d 1323, 1326 n. 3 (5th Cir.1978)).

Defendant has met the good cause requirement. As Defendant states, it has issued its final response to Plaintiff’s FOIA request, which Plaintiff may challenge through the appropriate summary judgment filings. D.E. 11, p. 4; *see supra* Section II. Defendant has expressed its intent to move for summary judgment and provide a sworn declaration describing in detail the search Defendant conducted. D.E. 18, p. 2. The Court finds that in order to avoid undue burden, there is good cause to grant the protective order and stay discovery until Defendant moves for summary judgment and presents the Court with additional information on these requests.

CONCLUSION

For the reasons set out above, the Court **GRANTS** Defendant’s motion for a protective order, **ORDERS** that discovery is stayed, and **ORDERS** Defendant to file its motion for summary judgment within 14 days of this order.

ORDERED on February 10, 2025.


NELVA GONZALES RAMOS
UNITED STATES DISTRICT JUDGE