IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JUDICIAL WATCH, INC.,
Plaintiff,

v.

FANI WILLIS,
Defendant.

CIVIL ACTION FILE NO. 24CV002805

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S ASSERTION OF ATTORNEY WORK PRODUCT EXEMPTION

On August 20, 2025, the Court entered an order finding 212 pages of materials submitted for *in camera* inspection by Defendant were exempt from disclosure under the Open Records Act pursuant to O.C.G.A. § 50-18-72(a)(4), the "pending prosecution" exemption. In the same Order, the Court directed Defendant to produce additional documents for *in camera* inspection. The Court has not yet entered an order as to any exemptions applicable to the second batch of documents.

On November 26, 2025, the underlying criminal prosecution (*State v. Trump,* et al., Fulton County Superior Court case No. 23SC188947) was dismissed. On January 13, 2026, the Court observed that the "pending prosecution" exemption no longer applies and directed the parties to notify the Court if there is any reason the Court should not release the documents to Plaintiff. Defendant now claims that ***all*** documents are subject to the attorney work product exemption, O.C.G.A. § 50-18-72(a)(42). For the reasons discussed below, Plaintiff opposes Defendant's position.

Argument

1. The Court Has Not Found Any Records to Be Exempt as Attorney Work Product

The Court already conducted an *in camera* inspection on the first batch of documents,

containing 212 pages. The Court found them to be exempt under the "pending prosecution" provision. Notably, the Court did not find any of the documents to be exempt under the "attorney work product" provision. To the extent Defendant is asking the Court to conduct another *in camera* inspection on the same documents, hoping the Court will find yet another exemption, Plaintiff objects to this obvious waste of judicial resources and continued delay. It has been two and a half years since Plaintiff submitted its request for the documents. It is time for Defendant to release them.

Nevertheless, if the Court determines that another *in camera* inspection is necessary, it should consider whether Defendant has waived the exemption by providing the documents to third parties, such as the January 6 Committee (any such shared documents would by their nature be responsive the Request).

2. The Attorney Work Product Exemption Does Not Apply

Somewhat surprisingly, Defendant did not cite the statutory language of the exemption upon which she depends. Had she done so, she would have revealed that the attorney work product exemption does not apply in cases such as this one. O.C.G.A. § 50-18-72(a)(42) provides that records that contain "legal conclusions, of an attorney conducting an investigation on behalf of an agency [are exempt from disclosure] so long as such investigation does not pertain to pending or potential litigation … brought or to be brought by or against the agency…."

Defendant admits, as she must, that the documents sought pertain to pending or potential litigation brought or to be brought by Defendant. After all, the records pertain to the criminal prosecution of several people by Defendant, the District Attorney. Because the records fit this description, the attorney work product exemption does not apply.

3. Even if the Exemption Can Apply, It Only Applies to Legal Conclusions and Not Factual Findings

O.C.G.A. § 50-18-72(a)(42) explicitly only protects "legal conclusions" of an attorney, but not "factual findings." But Defendant has argued that factual findings are also exempt. She in effect argues that if a lawyer touched it, it is exempt. For example, she seeks to protect "the strategy of the attorneys, investigators, and support staff investigating and preparing potential and/or actual cases… [and] the investigation methodology, potential sources of information, and development of evidence…." Clearly, Defendant is attempting to expand the scope of the exemption way beyond the "legal conclusions" to which the statute limits the exemption.

Defendant's arguments reveal that she is confusing the attorney work product ***privilege*** that applies to litigation with the attorney work product ***exemption*** applicable to the Open Records Act. They are not the same. As already noted above, the exemption does not apply to attorney investigations pertaining to litigation, but that is the cornerstone of the privilege. Indeed, Defendant cites only one case that considers the exemption (*Fulton DeKalb Hosp.Auth. v. Miller & Billips,* 293 Ga.App. 601 (2008) – all the rest pertain to the privilege. And, *Fulton DeKalb* was decided when the Open Records Act contained only a simple sentence, the former O.C.G.A. § 50-18-72(e), which said simply, "This article shall not be construed to repeal … [t]he confidentiality of attorney work product." *Fulton DeKalb,* FN 12.

In 2012, the General Assembly passed a major overhaul of the Open Records Act. Ga.L. 2012, p. 218, § 2 (HB 397). That overhaul included the repeal of the former O.C.G.A. § 50-18-72(e) and replacing that subsection with the current language on attorney work product. The current language is much more narrow than the former language and than the attorney work product privilege that applies in litigation. Every case cited by Defendant predates the 2012 overhaul and therefore does not even purport to interpret the current exemption.

4. Defendant Has Failed to Carry Her Burden of Proving an Exemption

Defendant has the duty to disclose all public records that are not explicitly exempted. *Blau*

v. Department of Corrections, 364 Ga.App. 1, 5 (2022), citing O.C.G.A. § 50-17-70. Any exemptions must "be interpreted narrowly to exclude only those portions of records addressed by such exception." *Id.* Defendant therefore has a duty to disclose the records requested unless she can point to an exemption that explicitly applies. She has failed to do so, not even pointing to the wording of an exemption.

Conclusion

Willis concedes the only open records exemption found by this Court to apply to the records in this case, pending prosecution, no longer applies. Her attempt to apply the attorney work product exemption is misplaced and that exemption does not apply. It would be an unnecessary waste of judicial resources conduct another *in camera* inspection, but the Court believes it necessary, the inspection should be conducted without further delay.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JUDICIAL WATCH, INC. Plaintiff, v. FANI WILLIS, in her official capacity as District Attorney of the Atlanta Judicial Circuit. Defendant.	CIVIL ACTION FILE NO: 24CV002805

DEFENDANT'S RESPONSE TO ORDER RE: CONTINUED VIABILITY OF ORA EXCEPTION

COMES NOW Defendant, District Attorney of the Atlanta Judicial Circuit Fani Willis, in her official capacity ("Defendant") and responds to the Court's January 13, 2026, Order Re: Continued Viability of ORA Exception as follows:

A. Pending Prosecution Status

Madam District Attorney Willis acknowledges the related, underlying criminal case, *State v. Donald Trump, et al.,* 23SC188947, has been closed and no longer pending. Consequently, the pending prosecution exemption from disclosure provided for in O.C.G.A. § 50-18-72(a)(4) no longer applies to the potentially responsive documents previously submitted for in camera inspection.

B. Attorney Work Product

While the prosecution of the underlying case is no longer active, the documents provided for in camera inspection remain exempt from disclosure pursuant to O.C.G.A. § 50-18-72(a)(42) as confidential attorney work product.

Attorney work product includes documents and other tangible things prepared by or for a party "in anticipation of litigation or for trial." *Fulton DeKalb Hosp. Auth. v. Miller & Billips*, 293 Ga. App. 601, 603 (2008) (internal quotations and citations omitted). Material is "prepared in anticipation of litigation ... if reasonable grounds exist to believe that litigation is probable." *Id.* In determining whether material is prepared in anticipation of litigation, courts "focus on when the document was created, and why it was created." *Kallas v. Carnival Corp.*, 2008 WL 2222152, *3 (S.D. Fla. May 27, 2008), and they distinguish between work "prepared in anticipation of litigation" and documents "prepared in the regular course of business." *Alta Refrigeration, Inc. v. AmeriCold Logistics, LLC*, 301 Ga. App. 738, 749, 688 S.E.2d 658, 667 (2009) (citing *Fulton DeKalb Hosp. Auth.,* 293 Ga.App. at 667.

State and federal courts have recognized the applicability of the work-product doctrine to prosecutorial work. *See Waldrip v. Head*, 279 Ga. 826, 827 (2005) (observing that most of "a prosecutor's work product" is not subject to disclosure to defendant under *Brady*); *United States v. Armstrong*, 517 U.S. 456, 463 (1996) (noting that Federal Rules of Criminal Procedure prohibit a defendant's access to attorney work product); *Franklin v. State*, 166 Ga. App. 375, 377 (1983) (noting that defendants cannot are not entitled to "district attorney's work product"); *5; Wilson v. State*, 246 Ga. at 62, 62(1) (1980) (same).

Ultimately, the work product doctrine "protects the adversarial system by allowing attorneys to prepare cases without concern that their work will be used against their clients." *Fulton DeKalb Hosp. Auth.*, 293 Ga. App. at 603. As the Supreme Court observed in explicitly extending the work-product privilege to criminal cases:

> Although the work-product doctrine most frequently is asserted as a bar to discovery in civil litigation, its role in assuring the proper functioning of the criminal justice system is even more vital. The interests of society and the accused in obtaining a fair and accurate resolution of the question of guilt or innocence

> demand that adequate safeguards assure the thorough preparation and presentation of each side of the case.

United States v. Nobles, 422 U.S. 225, 238 (1975).

As previously asserted in this case, the records provided are confidential attorney work product protected from disclosure under O.C.G.A. §50-18-72(a)(42). The documents in question were undisputedly prepared in anticipation of litigation - namely, the prosecution that underlies this particular litigation. Both individually and collectively, the documents represent and disclose the strategy of the attorneys, investigators, and support staff investigating and preparing potential and/or actual cases. Disclosure of the investigation methodology, potential sources of information, and development of evidence is the epitome of attorney work product and the disclosure of this confidential information would severely impair the ability of not only Madam District Attorney Willis and her office, but any District Attorney's Office, to investigate and prosecute crimes within their discretion free of outside interference.

THEREFORE, Defendant respectfully requests this Honorable Court ORDER the records provided are and remain exempt from disclosure under the Open Records Act. In the alternative, Should the Court determine any of the documents provided are not exempt and must be produced, Defendant requests the opportunity to make appropriate redactions to documents due to the presence of at least one instance each of a personal cell phone number and personal email address included in the documentation.

Respectfully submitted this 23rd day of January, 2026.

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JUDICIAL WATCH, INC. Plaintiff, v. FANI WILLIS, in her official capacity as District Attorney of the Atlanta Judicial Circuit. Defendant.	CIVIL ACTION FILE NO: 24CV002805

CERTIFICATE OF SERVICE

This is to certify that I have electronically filed the foregoing **DEFENDANTS' RESPONSE TO ORDER RE: CONTINUED VIABILITY OF ORA EXCEPTION** with the Clerk of Court using the CM/ECF system, which will provide email notification of said filing to all attorneys of record:

This 23rd day of January, 2026.

/s/Brad Bowman
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IN THE SUPERIOR COURT OF FULTON COUNTY

STATE OF GEORGIA

JUDICIAL WATCH, INC., Plaintiff, v. FANI WILLIS, in her official capacity As District Attorney of the Atlanta Judicial Circuit, Defendant.	)	CIVIL ACTION FILE NO. 24CV002805

NOTICE OF DISMISSAL OF CRIMINAL CASE

Plaintiff Judicial Watch, Inc. hereby provides notice that the underlying criminal case, which is related to the open records requests that are the subject of this case, has been dismissed. On November 26, 2025, the Superior Court of Fulton County, the Hon. Scott McAfee, dismissed in its entirety *State v. Trmp,* et al., No. 23SC188947.

This dismissal is significant because Defendant Willis in the present case has claimed that some records sought are exempt from disclosure pursuant to O.C.G.A. § 50-18-72(a)(4) ("Records of . . . prosecution . . . in any pending investigation or prosecution or criminal or unlawful activity . . . provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving such investigation and prosecution has become final or otherwise terminated. . . ."

It is therefore no longer necessary for the Court to conduct an *in camera* inspection of any records Defendant claims are exempt under the cited statute. Instead, Defendant should turn over those records immediately, directly to Plaintiff. The Court's *in camera* inspection of the remaining

records, including whether such records are covered by any other exceptions or privileges (and, if so, whether such exceptions or privileges have been waived), should continue.

Dated: January 13, 2026

Respectfully submitted,

/s/ John R. Monroe

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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

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

ORDER RE: CONTINUED VIABILITY OF ORA EXCEPTION

This long-running litigation was triggered by an unfulfilled request by Plaintiff made pursuant to the State's Open Records Act (ORA), O.C.G.A. § 50-18-70 *et seq.,* for records in Defendant's possession concerning her office's interactions with then-Special Counsel Jack Smith and the United States House January 6th Committee. After a default and a court order, Defendant eventually provided the Court with over 200 pages of search protocols, e-mails, text messages, and written correspondence. The Court reviewed these materials and, in an Order dated 20 August 2025, concurred with Defendant that, *at that time*, given that the criminal case related to these records was still open (if not particularly active), the records were exempt from disclosure pursuant to the "pending investigation or prosecution" exception set forth in O.C.G.A. § 50-18-72(a)(4).

Things have changed. That related criminal case -- 23SC188947 State v. Donald Trump *et al.* -- is now closed, having been dismissed at the State's request on 26 November 2025. There is no more "pending prosecution". And, in a parallel move, the judge overseeing that criminal case recently terminated the protective order he had entered that restricted the public dissemination of some of the discovery in the criminal case. That ruling is consistent with the theme that the originally protected materials are no longer sensitive; their disclosure will not compromise an ongoing case.

Given this, the Court DIRECTS both parties to notify the Court **within ten days of the entry of this Order**, whether there remains any reason to continue to withhold the requested materials from Plaintiff. If not, then the Court will provide Plaintiff with the documents Defendant submitted for *in camera* review and this matter will stand closed.

SO ORDERED this 13th day of January 2026.

Judge Robert C.I. McBurney
Superior Court of Fulton County

Filed and served electronically via eFileGA