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FILED  
4/15/2020 10:57 AM  
DOROTHY BROWN  
CIRCUIT CLERK  
COOK COUNTY, IL  
2018CH06576

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

CHICAGO JUSTICE PROJECT, )  
)  
Plaintiff, )  
) 18 CH 06576  
v. )  
) Hon. Caroline K. Moreland  
CHICAGO POLICE DEPARTMENT, )  
)  
Defendant. )

9080143

**PLAINTIFF’S MOTION TO RECONSIDER**

Plaintiff, Chicago Justice Project (“CJP”), by and through its attorneys, Loevy & Loevy, respectfully asks this honorable Court to reconsider the order that it entered on March 16, 2020 (attached as Exhibit A), as it pertains to the ruling on Count III (“Comprehensive Staffing Analysis”). In support of its motion, CJP states as follows:

1. Section 2-1203(a) of the Code of Civil Procedure states:

(a) In all cases tried without a jury, any party may, within 30 days after the entry of the judgment or within any further time the court may allow within the 30 days or any extensions thereof, file a motion for a rehearing, or a retrial, or modification of the judgment or to vacate the judgment or for other relief.

735 ILCS 5/2-1203(a). Motions to reconsider may be brought in order to call the court’s attention to “newly discovered evidence that was not available at the time of the original hearing, changes in existing law, or errors in the court's application of the law.” *Evanston Ins. Co. v. Riseborough*, 2014 IL 114271, ¶ 36. “The purpose of a motion to reconsider is to bring to the trial court's attention ... errors in the previous application of existing law to the facts at hand.” *River Village I, LLC v. Central Insurance Cos.*, 396 Ill. App. 3d 480, 492-93 (2009).

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2. On December 17, 2019, this Court heard oral arguments from the parties on their cross-motions for summary judgment regarding Counts II, III, and VIII. *See* Ex. B (transcript of the Dec. 17, 2019 hearing).

3. For Counts II and III, which sought the disclosure of Michael Bromwich's report on CPD's training academy and the comprehensive staffing analysis that led to the decision to hire 1,000 new police officers respectively, Defendant Chicago Police Department ("CPD") represented that all of the responsive records are contained within the Bromwich Report. CPD contended that the comprehensive staffing analysis that is responsive to Count III is entirely contained within the Bromwich Report and exempt under Section 7(1)(m). *See* CPD Second XMSJ at 3-4. CJP disputed that the Bromwich Report contained comprehensive staffing analysis and that if the Bromwich Report did contain comprehensive staffing analysis, then those portions are not exempt under Section 7(1)(m).

4. This Court then reviewed the Bromwich Report *in camera*. When conducting *in camera* review, the first question for this Court to resolve, for Count III, was whether the Bromwich Report contained records responsive to CJP's September 26, 2016 (Count III) request:

A. The top to bottom comprehensive analysis that top Chicago Police Department officials repeatedly referenced in a September 21, 2016 briefing with alderman at City Hall saying that this comprehensive analysis was the basis for why Superintendent Johnson had requesting the hiring of a 1,000 additional officers for the Chicago Police Department.

B. Any analysis, reports, memos, or documents that the Chicago Police maintains on the subject of Chicago Police Department staffing or allocation of Chicago Police Department resources from Jan 1, 2011 - September 26, 2016.

*See* Ex. B at 9:3-7; Compl. Ex. D

5. On March 16, 2020, this Court ruled "[p]ursuant to an *in camera* review of the Bromwich Report, it did not contain any comprehensive staffing analysis; therefore, there is no

non-exempt information within the Bromwich Report. The Court grants Count III of the Chicago Police Department's Motion for Summary Judgment." Ex. A.

6. Because the Court determined that the Bromwich Report did not contain any comprehensive staffing analysis, reports, memos, or other documents pertaining to CPD's September 21, 2016 announcement to hire 1,000 other officers; the Court did not reach a determination on whether the requested records for Count III are exempt under Section 7(1)(m) because CPD was only asserting Section 7(1)(m) to the extent that the comprehensive staffing analysis was present in the Bromwich Report. Thus, for Count III, there has been no finding that the records are exempt under Section 7(1)(m). The only question addressed by the Court was whether CPD performed an adequate search for the comprehensive staffing analysis.

7. Summary Judgment should have been granted in CJP's favor on Count III. CPD has the burden to show that its search was adequate. *See BlueStar Energy Servs., Inc. v. Illinois Commerce Comm'n*, 374 Ill. App. 3d 990, 996-97 (2007). CPD "must show beyond material doubt that it has conducted a search reasonably calculated to uncover all relevant documents." *Morley v. CIA*, 508 F.3d 1108, 1114 (D.C. Cir. 2007); *see also, e.g., Lee v. U.S. Attorney for So. Dist. of Fla.*, 289 F. App'x 377, 380 (11th Cir. 2008). CPD "must set forth sufficient information in its affidavits for a court to determine if the search was adequate." *Nation Magazine, Washington Bureau v. U.S. Customs Serv.*, 71 F.3d 885, 890 (D.C. Cir. 1995) ("Conclusory statements that the agency has reviewed relevant files are insufficient to support summary judgment."). CPD has never disputed that the staffing analysis exists. CPD never provided an affidavit attesting to the adequacy of the search for the Count III records or any affidavit mentioning the comprehensive staffing analysis, and this Court determined that the Bromwich Report does not contain the Count III records, contrary to what CPD claimed. Thus, the Court

should have concluded that CPD has failed to perform an adequate search for the Count III records.

8. If the Court's *in camera* review of the records reveals that CPD failed to perform an adequate search for the records, then summary judgment should be granted in favor of CJP because CPD failed to meet its burden. For Count III, CPD has provided no law or evidence to support summary judgment in CPD's favor. Through *in camera* review, this Court determined that CPD did not provide any records to the Court that are responsive to the Count III request. Thus, the Court's determination entitles CJP to summary judgment because CPD failed to perform an adequate search for the Count III records. However, this Court granted summary judgment in favor of CPD on Count III.

9. Therefore, CJP respectfully seeks reconsideration of the Court's ruling with regards to Count III.

WHEREFORE, for the foregoing reasons, CJP respectfully asks this honorable Court to reconsider its grant of summary judgment in favor of CPD on Count III.

RESPECTFULLY SUBMITTED,

*/s/ Merrick J. Wayne*

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Attorneys for Plaintiff  
CHICAGO JUSTICE PROJECT

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**CERTIFICATE OF SERVICE**

I, Merrick J. Wayne, certify that on April 15, 2020, I caused the foregoing PLAINTIFF'S MOTION TO RECONSIDER to be served via electronic mail on all counsel of record.

/s/ Merrick J. Wayne

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

CHICAGO JUSTICE PROJECT, )  
)  
Plaintiff, ) Case No. 18 CH 6576  
v. ) Hon. Caroline K Moreland  
) Judge Presiding  
CHICAGO POLICE, ) Cal. 10  
)  
Defendants. )

ORDER

This matter coming before the Court for ruling on Counts II and III. Count II pertains to whether the Bromwich Report is considered attorney-client privilege. Count III pertains to a comprehensive staffing analysis, which, if included in the Bromwich Report, may be subject to attorney-client privilege.

The Bromwich Report was prepared at the request of the Chicago Police Department pursuant to a Department of Justice investigation. Pursuant to an affidavit submitted by Kathleen Hill, Assistant Corporate Counsel of the City of Chicago Department of Law, it was established that the Bromwich Group entered into a consulting services agreement that work done by the Bromwich Group in relation to the Department of Justice investigation would be considered attorney-client privilege. The City has shown by clear and convincing evidence that the Bromwich Report falls within the work-product exemption of attorney-client privilege. The Court grants Count II of the Chicago Police Department's Motion for Summary Judgment.

Pursuant to an *in camera* review of the Bromwich Report, it did not contain any comprehensive staffing analysis; therefore, there is no non-exempt information within the Bromwich Report. The Court grants Count III of the Chicago Police Department's Motion for Summary Judgment.

The Chicago Police Department's Motion for Summary Judgment on Counts II and III are granted.

This matter is continued for status on May 13, 2020 at 10:30 AM.

Judge Caroline Kate Moreland

MAR 16 2020

Circuit Court 2033

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Judge Caroline Kate Moreland No. 2033

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY DEPARTMENT - CHANCERY DIVISION

CHICAGO JUSTICE PROJECT, )

Plaintiff, )

-vs- ) No. 18 CH 06576

CHICAGO POLICE DEPARTMENT, )

Defendant. )

TRANSCRIPT OF PROCEEDINGS had in the  
above-entitled cause in Courtroom 2302 of the  
Richard J. Daley Center, on the 17th day of  
December, A.D. 2019, commencing at 11:06 A.M.

BEFORE: HONORABLE CAROLINE KATE MORELAND

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1 PRESENT:

2 LOEVY & LOEVY

3 (311 North Aberdeen Street, Suite 300

4 Chicago, Illinois 60607

5 (312) 243-5900), by:

6 MR. MERRICK WAYNE

7 merrick@loevy.com

8 appeared on behalf of the Plaintiff;

9

10 CITY OF CHICAGO

11 DEPARTMENT OF LAW

12 (30 North LaSalle Street, Suite 1720

13 Chicago, Illinois 60602

14 (312) 744-8791), by:

15 MR. MARC AUGUSTAVE

16 marc.augustave@cityofchicago.org

17 appeared on behalf of the Defendant.

18

19

20

21

22 REPORTED BY: Cynthia Moreno, C.S.R. No. 84-3635

1 MR. WAYNE: Good morning, your Honor.  
2 Merrick Wayne on behalf of the plaintiff.

3 MR. AUGUSTAVE: Good morning, your  
4 Honor. Marc Augustave on behalf of the City.

5 THE COURT: Okay. So before we begin,  
6 I just want you to know, I've read all of the  
7 pleadings and everything you provided. I am  
8 inclined to do an in-camera inspection of both  
9 documents, if that's how we want to refer to  
10 it, the report and comprehensive thing.

11 So if you would like to make oral  
12 arguments with regard to that, you may do so,  
13 but that's what I would like to do.

14 MR. WAYNE: Okay, your Honor. Then  
15 afterwards, I would like to make a point about  
16 the OEMC data as well.

17 THE COURT: Okay. What's going on  
18 with that?

19 MR. WAYNE: So counsel did provide  
20 data to us. We do have some issues with it,  
21 some questions about aspects that are missing.  
22 I did e-mail counsel about what those are.

1                   We're hoping we can resolve that  
2                   because my client would like an affidavit from  
3                   CPD that's attesting that all of the nonexempt  
4                   fields in the database were provided regardless  
5                   whether that data is viewed as credible to  
6                   provide CPD because it's not up to CPD what's  
7                   relevant to my client. That's up to my client  
8                   to decide. So we would like all the data  
9                   fields that they have.

10                   MR. AUGUSTAVE: Okay. CPD will  
11                   provide an affidavit as to what was provided  
12                   and what was not provided.

13                   THE COURT: Okay. You want an  
14                   affidavit.

15                   MR. WAYNE: Yes, your Honor.

16                   MR. AUGUSTAVE: No problem with CPD.

17                   MR. WAYNE: Then if I may, your Honor,  
18                   about the Bromwich report and the analysis.

19                   While you can conduct an  
20                   in-camera review, if you do determine that CPD  
21                   failed to meet their burden of proof and their  
22                   affidavits are entirely conclusory, you do not

1 need to take the step of conducting an  
2 in-camera review.

3 That can be resolved because  
4 their affidavits do not even mention  
5 comprehensive staffing analysis to begin with.  
6 It does not do an analysis of the  
7 attorney/client privilege like the work-product  
8 doctrine.

9 They are completely conclusory  
10 and the same exact -- or very similar to the  
11 affidavits that were rejected by the First  
12 District in Day v. Chicago and the Supreme  
13 Court in Illinois Education Association, the  
14 Illinois State Board of Education.

15 They use the board's  
16 attorney/client privilege or work product to  
17 get secrecy and wave it in our face without  
18 providing the actual showing of how staffing  
19 analysis or any other aspect of the Bromwich  
20 report was created in anticipation of  
21 litigation or has legal advice in it.

22 On top of that, your Honor, as

1 the First District said in Day, accepting these  
2 types of conclusory affidavits would be  
3 rubber-stamped judicature, and it should be --  
4 the affidavits should just be rejected as they  
5 are.

6                   Your Honor, if you do determine  
7 that portions of the records could be exempt,  
8 that CPD has met its burden to an extent then  
9 in-camera review would certainly be the  
10 preferable option there.

11                   But I would like to mention it  
12 should be each word, sentence, clause, phrase  
13 has to be reviewed.

14                   They -- we need to show that  
15 7(1)(m) applies to every portion of it, not an  
16 overall showing. That's all, your Honor.

17                   MR. AUGUSTAVE: Okay. Your Honor, the  
18 City would counter that by stating that the  
19 affidavit provided by the first assistant  
20 corporation counsel for the City of Chicago at  
21 the time, Catherine Gill, acknowledges that the  
22 law firm which was hired by the City to

1 represent the City and the Chicago Police  
2 Department engaged the Bromwich Group to  
3 conduct an analysis that squarely falls within  
4 the 7(1)(m) exemption.

5           The City agrees and thinks that  
6 your review of this -- these materials would  
7 allow for your expert eyes to see whether or  
8 not these documents that were withheld by the  
9 City falls within the exemption or not, and,  
10 therefore, we agree that the in-camera review  
11 should be conducted.

12           To that end, upon your judgment,  
13 we would follow either releasing the documents  
14 if you deem they are not within the exemption  
15 or find that the City properly executed or used  
16 a 7(1)(m) exemption.

17           MR. WAYNE: Your Honor, as far as  
18 conducting an in-camera review goes, there is  
19 four main questions that your Honor should  
20 consider.

21           First one being whether there is  
22 staffing analysis within the Bromwich report

1     itself which CPD claims that all of the  
2     responsive staffing analysis is entirely within  
3     the report. We do dispute that. So that is  
4     one key point to look for.

5                     Second, whether Section 7(1)(m)  
6     exempts the Bromwich report in its entirety.  
7     As I discussed before, they need to prove that  
8     it exempts each word, phrase, clause, sentence,  
9     etcetera of the report.

10                    Third, whether Section 7(1)(m)  
11     exempts the staffing analysis that CPD claims  
12     is in the Bromwich report.

13                    Even if there is staffing  
14     analysis in there, CPD hasn't shown that  
15     staffing analysis is legal advice or staffing  
16     analysis was put in there in anticipation of  
17     any type of litigation or even that the  
18     Bromwich Group was retained to conduct staffing  
19     analysis. That showing just hasn't been made  
20     at all to begin with.

21                    Fourth, whether there are any  
22     nonexempt portions in the Bromwich report

1     itself, as I said.

2                     That's it, your Honor.

3                     THE COURT:   Okay.   So I'm looking to  
4     see if there is staffing analysis in the  
5     Bromwich report and does 7(1)(m) exempt the  
6     Bromwich report in its entirety or just  
7     portions of it.   So that's two and four.

8                     MR. WAYNE:   Yes, your Honor.

9                     THE COURT:   Number three is does  
10    7(1)(m) exempt the staffing analysis and if  
11    it's in the Bromwich report also, right?  
12    Aren't they separate?   Aren't there two  
13    reports?

14                    MR. AUGUSTAVE:   I do not know for  
15    sure, but to the extent that they are separate,  
16    they were related to the --

17                    THE COURT:   It wasn't really clear to  
18    me.   They may or may not be included with one  
19    and the other or there may be separate reports.

20                    MR. WAYNE:   As I have understood from  
21    counsel previously was that all of the staffing  
22    analysis was in the Bromwich report, and there

1 are no other documents that have staffing  
2 analysis beside the report.

3 MR. AUGUSTAVE: That's my  
4 understanding, but I cannot attest to that.

5 THE COURT: So those are the four  
6 issues I'm focusing on.

7 MR. WAYNE: And, your Honor, as a  
8 point, if the staffing analysis is in the  
9 Bromwich report, then we still need it because  
10 it hasn't been produced at all yet, and there  
11 haven't been any other exemptions claimed over  
12 it besides 7(1)(m) because of the Bromwich  
13 report.

14 MR. AUGUSTAVE: To the extent they are  
15 separate that's the exemption that was used.

16 THE COURT: So if it's separate, there  
17 would be no exemption.

18 MR. AUGUSTAVE: No. To the extent --

19 THE COURT: That it was part of the  
20 Bromwich --

21 MR. AUGUSTAVE: Yes, your Honor.

22 THE COURT: Okay. So when will I get

1 these -- or this report?

2 MR. AUGUSTAVE: I have to reach out to  
3 CPD and see how long it will take.

4 Unfortunately, I do not know. Hopefully within  
5 a month, I would like to think so.

6 THE COURT: So given that you think  
7 hopefully within a month.

8 MR. AUGUSTAVE: Because with the  
9 holidays.

10 THE COURT: I understand. People are  
11 on vacation.

12 MR. AUGUSTAVE: Yes.

13 THE COURT: What do you think? Do you  
14 want to come back January 17?

15 MR. AUGUSTAVE: I'm not in town that  
16 week. Maybe the week after.

17 THE COURT: How is January -- do you  
18 want to come back the 24th?

19 MR. AUGUSTAVE: It works for me.

20 MR. WAYNE: What are we coming back  
21 for?

22 THE COURT: To see if I've gotten the

1 report or not.

2 MR. WAYNE: So counsel would give you  
3 the report before the 24th.

4 MR. AUGUSTAVE: Hopefully.

5 THE COURT: If I have not gotten it, I  
6 will have counsel in front of me explaining to  
7 me why I haven't gotten it.

8 MR. WAYNE: So that won't necessarily  
9 be a ruling though. The 24th is fine.

10 THE COURT: No. Just to say whether I  
11 have gotten the report. I don't even know how  
12 long it is. It could be 100 pages long or 5  
13 pages long.

14 MR. AUGUSTAVE: I have never seen the  
15 report.

16 THE COURT: Then I can have an idea  
17 how long it will take me to go through it.

18 MR. WAYNE: That's fine, your Honor.

19 THE COURT: Okay. So the next Court  
20 date will be -- my ruling is entered and  
21 continued on these motions for in-camera  
22 inspection for purposes of the ruling.

1                   We will have our next date of  
2                   January 24th at 10:30 on the status of the  
3                   Court's receipt of the report.

4                   MR. WAYNE: Can we have the affidavit  
5                   put into the order for the OEMC data?

6                   THE COURT: Yes.

7                   MR. AUGUSTAVE: Thank you, your Honor.

8                   MR. WAYNE: Thank you.

9

10                   (WHEREUPON, the hearing was concluded.)

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21

22

1 STATE OF ILLINOIS )  
2 ) SS:  
3 COUNTY OF C O O K )

4 I, Cynthia Moreno, C.S.R. No. 84-3635, a  
5 Certified Shorthand Reporter of the State of  
6 Illinois, do hereby certify that I reported in  
7 shorthand the proceedings had at the hearing  
8 aforesaid, and that the foregoing is a true,  
9 complete and correct transcript of the  
10 proceedings of said hearing as appears from my  
11 stenographic notes so taken and transcribed  
12 under my personal direction.

13 IN WITNESS WHEREOF, I do hereunto set my  
14 hand at Chicago, Illinois, this 12th day of  
15 January, 2020.

16  
17 Cynthia Moreno



18 Cynthia Moreno  
19 C.S.R. No. 84-3635

20  
21  
22

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