

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

GERALD LYNN BOSTOCK,	)	
	)	
Plaintiff,	)	CIVIL ACTION
	)	File No. 1:16-CV-01460-ELR-WEJ
v.	)	
	)	
CLAYTON COUNTY,	)	
	)	
Defendant.	)	

**PLAINTIFF’S REPLY IN SUPPORT OF OBJECTIONS TO MAGISTRATE  
JUDGE’S ORDER REGARDING CONFIDENTIAL DESIGNATION**

**I. INTRODUCTION**

In his opening brief in support of his Objections, Mr. Bostock established that the Magistrate Judge erred in denying Plaintiff’s request to remove Defendant’s designation of retired Judge Steven Teske’s diary excerpts as confidential.

Defendant raises several meritless arguments in opposition. As set forth below, and in Plaintiff’s initial brief, these arguments fail. Mr. Bostock respectfully requests that this Court overrule the Magistrate Judge’s order, and either order that the designated material is not confidential or order Defendant to withdraw the confidential designation.

## II. ARGUMENT AND CITATION OF AUTHORITY

Defendant argues that diaries can be an appropriate subject of a protective order. That may be true in some cases, but it does nothing to address the issue here. There is nothing inherently sacrosanct about a journal or diary. It is the *content* of the allegedly confidential material that matters, not the mere fact that someone chose to record it in a diary or journal.

In fact, cases Defendant cites in supposed support of its position bear this out. For example, in *Hawkins v. St. Clair Cty., Ill.*, No. CIV. 07-142-DRH-CJP, 2008 WL 4279994, at \*2 (S.D. Ill. Sept. 17, 2008), the diary entries were relevant to a party's alleged sexual assault, "her veracity regarding the alleged assault and her damages-including revelation of other events that may have contributed to her claimed depression." *Id.* The court even stated that it "appreciates the embarrassing nature of the issues in this action, for all concerned." *Id.* at \*3. In *Topol v. Trustees of Univ. of Pa.*, 160 F.R.D. 476, 477 (E.D. Pa. 1995), the plaintiff's diary contained entries relating to her sexual relationship with a professor.<sup>1</sup>

The diary content in those cases is an order of magnitude different than what is at issue here. The excerpts at issue here discuss the thought processes of the

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<sup>1</sup> The court in *Topol* stated that it had "approved a confidentiality stipulation that limits the parties' use and disclosure of material marked confidential" but did not specifically address whether certain diary entries would be within the scope of that stipulation.

undisputed decisionmaker regarding Plaintiff, Plaintiff's termination, and Teske's reasons for doing so. That is *the pivotal issue in this case*. Plaintiff has already stated that it does not seek to file any portions of the excerpts that do not reference Plaintiff, his sexuality, or Plaintiff's termination and that Plaintiff is willing to redact any other parts, regardless of whether they are truly "confidential." But Judge Teske's own statements or admissions regarding his reasons for firing Plaintiff are simply not "private and highly sensitive information" under the Consent Protective Order. Defendant might like to keep them under wraps. But there is no basis for doing so.

Defendant argues that "[u]nder Plaintiff's analysis, Plaintiff's personnel and medical records would lose their confidential designation simply because they contain discoverable information." (Doc. 116 at 7.) This "straw man" argument is, of course, completely baseless. The reason medical records and information such as social security numbers are confidential, even if relevant, is because they are in fact private and sensitive information. As Plaintiff stated at the outset of this reply, it is the content that drives the confidentiality analysis, not the form of the document. And Judge Teske's entries concerning his reasons for firing Plaintiff are not confidential under the protective order, relevant caselaw, or the rules of the Court.

Defendant also argues that there is no prejudice to Plaintiff because “Plaintiff may cite to [the diary] as he pleases in his filings and present to the Court whatever arguments he wants to make with respect to Judge Teske’s diary.” This goes to the same issue Plaintiff raised in his Objections (doc. 115 at 4 n.2) concerning exactly what is and is not permitted with respect to diary materials or content. And, Defendant’s argument seeks to put some burden of showing prejudice on Plaintiff when it is in fact Defendant’s burden to designate “only those documents which truly contain private and highly sensitive information.” (Doc. 85 at 3.)

Finally, Defendant contends, without any basis, that Plaintiff “has ulterior motives” and that “Plaintiff and his counsel are itching to disseminate Judge Teske’s personal diary to the media in hopes of advancing their narratives about this case to potential jurors.” (Doc. 116 at 8-9.) There is no “narrative” to advance here. Judge Teske wrote what he wrote. His words speak for themselves. The more relevant question may be why Defendant is so desperate to keep his statements concerning his reasons for firing Plaintiff off of the public record.

### III. CONCLUSION

For the foregoing reasons, and for the reasons raised in his initial brief in support of his Objections, Mr. Bostock requests that the Court reverse the Magistrate Judge's order and either order that the designated material is not confidential or order Defendant to withdraw its confidential designation.

Respectfully submitted this 24th day of February 2022.

*/s/ Thomas J. Mew, IV*

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Thomas J. Mew, IV

Georgia Bar No. 503447

Edward D. Buckley

Georgia Bar No. 092750

Andrew M. Beal

Georgia Bar No. 043842

Rachel Berlin Benjamin

Georgia Bar No. 707419

**BUCKLEY BEAL LLP**

600 Peachtree Street, NE, Suite 3900

Atlanta, GA 30308

Telephone: (404) 781-1100

Facsimile: (404) 781-1101

[tmew@buckleybeal.com](mailto:tmew@buckleybeal.com)

[edbuckley@buckleybeal.com](mailto:edbuckley@buckleybeal.com)

[abeal@buckleybeal.com](mailto:abeal@buckleybeal.com)

[rberlin@buckleybeal.com](mailto:rberlin@buckleybeal.com)

*Counsel for Plaintiff*

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**CERTIFICATE OF COMPLIANCE**

The undersigned certifies that the foregoing has been prepared in Times New Roman 14 font, as approved by the Court in LR 5.1B.

*/s/ Thomas J. Mew*  
Georgia Bar No. 503447

BUCKLEY BEAL, LLP  
1230 Peachtree Street NE, Suite 900  
Atlanta, GA 30309  
Phone: (404) 781-1100  
Facsimile: (404) 781-1101

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to counsel for Defendant:

Jack Hancock, Esq.  
Michael Hill, Esq.  
William H. Buechner, Esq.  
FREEMAN MATHIS & GARY, LLP  
100 Galleria Parkway, Suite 1600  
Atlanta, Georgia 30339

*/s/ Thomas J. Mew*  
Georgia Bar No. 503447