

Defendant has never even sought a protective order. To the contrary, Defendant initially responded to each of the Interrogatories and Requests at issue, noting that Defendant either possessed no responsive documents “at this time,” or *would provide the information* when obtained from the Board of Medical Examiners. Doc. 20-2 at 4–6; Doc. 20-3 at 2–4. Only after Plaintiff filed its Motion to Compel to protect its ability to obtain the requested information and documents did Defendant contest his obligation to produce them. Nevertheless, on October 31, 2024, the Magistrate Judge ordered Defendant to “obtain the information and documents” requested by Plaintiff and “supplement his responses to discovery.” Doc. 24 at 1. The Court should affirm the Magistrate’s Order.

I. DEFENDANT DOES NOT OBJECT TO PRODUCING INFORMATION AND DOCUMENTS POSSESSED BY THE BOARD OF MEDICAL EXAMINERS

In Defendant’s opposition to Plaintiff’s Motion to Compel, Doc. 22 at 5–6, Defendant stated that the information responsive to the Interrogatories at issue, as well as some documents responsive to Request for Production No. 12, were requested from the Board of Medical Examiners but not provided. After Plaintiff pointed out that both heads of the Louisiana Department of Health—the Department under which the Board operates—“report directly to” Defendant, Doc. 23 at 3, the Magistrate Judge found that Defendant “has the legal right or practical ability to obtain information from the board” Doc. 24 at 1. Defendant’s Objection does not contest the Magistrate Judge’s findings concerning the Board of Medical Examiners. *See* Doc. 25. As a result, Defendant has articulated no reason that the Order compelling full responses to Interrogatory Nos. 7–10 and 12–13, as well as production

of documents possessed by the Board responsive to the Requests for Production, should not be affirmed by the Court.

II. THE MAGISTRATE JUDGE DID NOT CLEARLY ERR IN FINDING THAT DEFENDANT CAN OBTAIN DOCUMENTS FROM THE STATE ARCHIVES

Defendant asserts that the Magistrate Judge erred in finding that Defendant “has the legal right or practical ability to access” records in the possession of the Archives Division of the Louisiana Secretary of State. Doc. 25 at 4. Aside from noting that Defendant “neither possesses nor controls” documents requested by Plaintiff, Defendant claims that possible disclosure exemptions might apply to those documents. *Id.* What those exemptions might be, Defendant does not say. In any event, Defendant did not raise any concerns about potential exemptions from disclosure in his opposition to the Motion to Compel or include objections to the relevant requests in Defendant’s discovery responses. *See* Doc. 20-2; 20-3. Defendant’s instant Objection is the first time that Defendant has raised this speculative and unexplained argument.

Contrary to Defendant’s claim that the Magistrate Judge failed to “properly identify[] who has control over the requested documents,” Doc. 25 at 4, the Magistrate acknowledged that certain documents were in the possession of the Archives but found that Defendant “has the legal right or practical ability to access” those records and “that it would be much easier for the Governor to obtain the information and documents than it would be for Plaintiff.” Doc. 24 at 1. Defendant even agrees that his right and ability to access the records “is equal to Plaintiff’s.” Doc. 25 at 7.

Defendant's disagreement with the Magistrate Judge is thus solely over whether it is easier for Defendant to obtain the records from the Archives than for Plaintiff.¹ The Magistrate did not clearly err in finding it would be easier for Defendant, and Defendant makes no substantive argument to the contrary.

Defendant's Objection also raises additional speculative concerns about privileged material that may be included in the information sought by Plaintiff. *See* Doc. 25 at 7–8. Defendant does not articulate how dry, factual information pertaining to members of and applicants for membership on the Board of Medical Examiners could implicate any privilege, and Plaintiff can think of no reason that would be true. Nevertheless, Plaintiff does not seek to obtain documents subject to any applicable privilege, and Defendant may protect such information through typical use of the Federal Rules of Civil Procedure or Evidence. To date, Defendant has not sought any such protection, nor even broached the subject with Plaintiff.²

Finally, Defendant's sweeping contention that “[c]ompelling a current Governor to review the records of a previous governor, which he did not create, use, or retain, is unduly burdensome and violates the protections of Fed. R. Civ. P. 26,” Doc. 25 at 10, is astonishing. Were Defendant correct, then all litigants in cases where

¹ It should be obvious that counsel for the Governor, in responding to discovery requests in federal litigation, would have an easier time obtaining records from the Archives than would an out-of-state membership organization utilizing the general public records statute to request documents. Indeed, as the requested records *come from the Governor's office*, his staff likely knows specifically which files contain the relevant records. Plaintiff does not possess that helpful knowledge.

² It is unlikely that there is a “substantial” volume of documents responsive to Plaintiff's requests, *contra* Doc. 25 at 8, as the challenged statute was only enacted in 2018 and appointments to the Board of Medical Examiners typically occur no more than once or twice per year.

a government official is sued in his or her official capacity would be severely constrained in obtaining relevant discovery when the challenged actions or policies span multiple administrations. Defendant cites no authority for his sweeping statement, and Fed. R. Civ. P. 26 provides no basis for it.

CONCLUSION

For the foregoing reasons, Defendant's objections fail to satisfy the "clearly erroneous" standard and this Court should affirm the Magistrate Judge's order compelling Defendant to supplement Defendant's discovery responses and produce documents to Plaintiff.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2024, I presented the foregoing document to the Clerk of Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following:

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