

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re: WATTS COORDINATED PRETRIAL PROCEEDINGS	Master Docket Case No. 19 C 1717 Judge Rebecca R. Pallmeyer Chief Judge
--	--

ORDER

Plaintiffs in 57 pending cases have alleged false arrests by current and former Chicago Police Department (“CPD”) officers. Specifically, Plaintiffs allege that the Defendant officers—led by former Sergeant Ronald Watts and, in a majority of cases, former Officer Kallat Mohammed—fabricated drug or gun charges against Plaintiffs. The cases have been consolidated for coordinated pre-trial proceedings before Judge Andrea Wood. Watts and Mohammed’s corrupt police activity drew the attention of federal prosecutors, and the two officers both ultimately pleaded guilty to one count of theft of government property before Judge Sharon Coleman of this court. See *United States v. Watts et al.*, No. 12 CR 87.¹

Plaintiffs in the civil cases now seek grand jury material related to the federal charges against Watts and Mohammed. Eighteen Defendant CPD Officers (not including Watts or Mohammed) support Plaintiffs’ motion [66], suspecting some of the materials Plaintiffs are seeking will support their defense. Mohammed filed a brief [59] opposing all aspects of Plaintiffs’ motion; Watts has not weighed in on the matter. For its part, the Government does not object to providing Plaintiffs with grand jury materials but has urged the court to review those materials *ex parte* and *in camera* to determine whether release of the materials is authorized by Federal Rule of Criminal Procedure 6(e). After a hearing in November 2019, the court took Plaintiffs’ motion

¹ Although the coordinated pre-trial proceedings are overseen by Judge Wood, the motion is before this court pursuant to Local Rule of Criminal Procedure 6.1, which provides that “[a]ll matters pertaining to grand juries shall be heard by the chief judge or his or her designee.” Plaintiffs’ motion also seeks Title III wiretaps; that aspect of the motion is before Judge Wood.

under advisement and ordered [73] the Government to produce documents for *in camera* review with explanations for any proposed redactions.

After reviewing the materials produced by the Government, the court now denies Plaintiffs' motion. As explained here, the materials provided by the Government for *in camera* review do not appear relevant to the civil suits. Plaintiffs, who all moved jointly on this discovery claim, have therefore not demonstrated a particularized need for them. If Plaintiffs conclude, from the brief descriptions set forth here, that the grand jury materials are in fact relevant to their cases, they are free to seek production of those documents from the original sources of the records.

STATEMENT

Facts

In fifty-seven cases consolidated for pre-trial proceedings, Plaintiffs allege that current and former CPD officers fabricated drug or gun charges, prepared false police reports, or testified falsely in criminal proceedings leading to their wrongful convictions. A defendant in each case, Watts is accused of having led these Defendant Officers' efforts. Mohammed is a defendant in the vast majority of cases, as well. Many Plaintiffs allege that Watts and Mohammed attempted to shake them down for money, drugs, or information prior to fabricating evidence of a crime. Each Plaintiff has had one or more convictions overturned.

In 2012, Watts and Mohammed were charged with one count of theft of government funds after stealing drug proceeds from an FBI cooperating witness (see Information [27], 12 CR 87, at 1), to which both pleaded guilty (see Mohammed Plea Agreement [43] ¶¶ 1–5; July 19, 2019 Order [73]). Mohammed's plea agreement stipulated that he, along with Watts, demanded money from drug dealers working in the Ida B. Wells Housing Complex in exchange for not arresting them. (Mohammed Plea Agreement [43] ¶ 7.) Additional scrutiny of Watts and Mohammed's tactics resulted in the convictions of dozens of people being vacated. See Christine Hauser, 'A Stain on the City': 63 People's Convictions Tossed in Chicago Police Scandal, NEW YORK TIMES

(Feb. 13, 2019), <http://www.nytimes.com/2019/02/13/us/chicago-exonerations-drug-sentences.html> (last visited Aug. 3, 2020).

Each Plaintiff in the fifty-seven consolidated cases is among those who had a criminal conviction overturned after Watts' and Mohammed's arrests. Plaintiffs assert numerous federal and state law claims against Watts, Mohammed (in most of the fifty-seven cases), and other CPD officers. (See, e.g., First Am. Compl. [24], *Baker v. City of Chicago, et al.*, 16 C 8940, ¶¶ 154–247.) Plaintiffs also contend that the City of Chicago is liable under *Monell v. Dep't of Social Servs. of City of New York*, 436 U.S. 658 (1978), and for the officers' state law violations under principles of *respondeat superior* and state-law indemnification. (See, e.g., *id.* ¶¶ 162–207, 248–53.)

As part of the discovery in these coordinated pre-trial proceedings, Plaintiffs served Rule 34 requests for production of any federal investigative material concerning Watts and Mohammed. Watts and Mohammed acknowledged that they had received such material in the discovery process in their criminal cases but noted that they returned those materials to the federal prosecutors pursuant to a protective order issued by Judge Coleman. Plaintiffs moved to intervene in the criminal case to compel production of those documents from Mohammed and Watts, but Judge Coleman denied the motion, suggesting that Plaintiffs instead issue *subpoenas duces tecum* to the federal agencies involved in the investigation. Plaintiffs did so, as did the eighteen Defendant CPD Officers; they issued subpoenas to the FBI, ATF, and DEA, which produced some documents but redacted any material obtained through grand jury subpoenas or Title III wiretaps. Plaintiffs now seek an order from this court authorizing the disclosure of grand jury material. See FED. R. CRIM. P. 6(e)(3)(E) (“The court may authorize disclosure—at a time, in a manner, and subject to any other conditions that it directs—of a grand-jury matter: (i) preliminary to or in connection with a judicial proceeding. . . .”).

The Government has provided the court with grand jury materials for *ex parte* and *in camera* review. As explained here, the court sustains the Government's objections to production

of these materials.²

DISCUSSION

“Information from a grand jury inquiry is presumptively secret.” *United States v. Tingle*, 880 F.3d 850, 855 (7th Cir. 2018) (citing FED. R. CRIM. P. 6). “To obtain grand jury materials, the moving party ‘must show that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure is greater than the need for continued secrecy, and that the request is structured to cover only material so needed.’” *Id.* (quoting *Douglas Oil Co. v. Petrol Stops Northwest*, 441 U.S. 211, 222 (1979)). Ultimately, the party seeking disclosure must demonstrate a “compelling necessity” or “particularized need” before the court will order production of the materials. *Matter of Grand Jury Proceedings, Special Sept.*, 1986, 942 F.2d 1195, 1198 (7th Cir. 1991) (quoting *Douglas Oil*, 441 U.S. at 222).

Plaintiffs have not shown such a need for the materials reviewed by the court *in camera*. The court received eight different sets of documents from the Government, but none appear relevant to any of Plaintiffs’ claims.³ Nor do any of the documents appear exculpatory for the other Defendant CPD Officers.⁴ First, there is a portion of a transcript from one grand jury witness

² With its *ex parte* submission, the Government explained to the court that the Assistant U.S. Attorneys who worked on the Watts and Mohammed prosecutions are no longer with the office and that it remained in contact with other federal agencies to determine whether they possess additional grand jury material.

³ The Government observed that there might be a low volume of grand jury materials because Watts and Mohammed waived indictment in their prosecutions and proceeded by information.

⁴ The Defendant CPD Officers contend that the grand jury materials could be exculpatory for three reasons. (Def. Officers’ Reply to Gov’t’s Resp. [66] at 3.) First, the materials might reveal a lack of evidence against them. Second, the materials could be used to challenge a Plaintiff’s or 404(b) witness’ credibility. Third, they argue that any claims a Plaintiff or 404(b) witness made during the course of the investigation would remain relevant in this case. In the court’s view, disclosure of the grand jury materials does not obviously advance any of these purposes. The fact that the grand jury files contain little evidence against uncharged officers does not constitute a defense, nor is it exculpatory. Defendant Officers have not explained how any prior consistent statements by Plaintiffs will be useful, nor have they identified any grand jury witness whose credibility will be relevant in these consolidated civil cases.

from 2009. That witness read a brief statement to the grand jury in which the witness recounts identifying an unnamed individual via a photograph to an Illinois State Police Special Agent and telling the agent the make, model, and license plate number of that individual's car.⁵ The significance of this statement is unclear—as is its relation to any of Plaintiffs' claims, though the Government assured the court in its submission that it was continuing to gather information about this witness and testimony.

The second set of documents is the registration and title information for Watts' and Mohammed's cars. Third, the outgoing and incoming phone calls from November 18 to 21, 2011, on a prepaid cell phone purchased by the FBI. Fourth, outgoing and incoming calls from November 14 to 28, 2011, on a phone subscribed to by Mohammed. Fifth, telephone subscriber information for a number subscribed to by Watts. Sixth, outgoing and incoming calls from November 14 to 23, 2011, on another phone subscribed to by Mohammed. Seventh, subscriber information as well as incoming and outgoing calls from November 14 to 23, 2011, on a telephone number subscribed to by Alvin Jones, one of the Defendant CPD Officers in numerous of Plaintiffs' cases.⁶ And eighth, Watts' auto loan contract. The Government acknowledged in its submission that some of this material may not be subject to Rule 6(e). For instance, some of these documents may “not tend to reveal what took place in the grand jury room or [are] derived independently from the grand jury process.” 1 FED. PRAC. & PROC. CRIM. § 106 (4th ed.). Even if not subject to 6(e), the material this court has reviewed does not appear to be “relevant to any party's claim or defense and proportional to the needs of the case.” FED. R. CIV. P. 26(b)(1). Importantly, with the

⁵ Based on the other information produced for *in camera* review, the car identified in that witness's statement is different from any of the cars owned by Watts and Mohammed discussed in the other grand jury materials.

⁶ The records concerning activity in November 2011 appear to relate to the conduct that resulted in Watts and Mohammed's arrests and the FBI's use of a confidential source. (See Mohammed Plea Agreement [43] ¶ 6 (noting that the theft of government property to which the officers pleaded guilty occurred on November 21, 2011).)

exception of the witness's statement, Plaintiffs may be able to obtain all of these documents by way of a direct subpoena to the relevant phone company or bank.

"[T]he standard for determining when the traditional secrecy of the grand jury may be broken is deliberately stringent." *Matter of Grand Jury Proceedings, Special Sept. 1986*, 942 F.2d at 1198. While Plaintiffs (or the Defendant CPD Officers) might be able find some use in the materials, more is needed. See *id.* ("The fact that the transcript 'may well be' of use is insufficient to justify intruding upon the sanctity of grand jury proceedings. The district court must make the determination that the transcript is, in fact, *compellingly necessary* to the party seeking disclosure.") Plaintiffs surmise that the grand jury materials "implicate[] some of the many Plaintiffs' allegations," including their *Monell* claims, concern the "underlying criminal cases that led to their wrongful convictions," or would be useful for witness impeachment purposes. (Pls.' Mot. [46] at 7–8.) But the materials produced for *in camera* review, described above, do not apparently fulfill those ends. And the possibility that they might is not enough; "[t]he secrecy of a grand jury proceeding is not to be pierced by such a slender reed: a mere possibility of benefit does not satisfy the required showing of particularized need." *Matter of Grand Jury Proceedings, Special Sept. 1986*, 942 F.2d at 1199.

Because there has been no showing of need, this case is distinguishable from those that Plaintiffs rely on. For example, in *Mitchell v. City of Chicago*, No. 18 C 7357, 2019 WL 3287844, at *1 (N.D. Ill. July 22, 2019), the plaintiff, who had brought claims against the CPD and Cook County Assistant State's Attorney in connection with his pre-trial detention, prosecution, and imprisonment, sought disclosure of the testimony given by a CPD detective—a defendant in plaintiff's case—during the grand jury's investigation of Jon Burge. The court held that the plaintiff's request satisfied the three *Douglas Oil* factors mentioned above. Disclosure was necessary to avoid a possible injustice because the detective might refuse to testify in the case or, if he did testify, the grand jury testimony could be used to impeach him or refresh his memory. *Id.* at *2. "In such cases," the *Mitchell* court observed, "disclosure of a key witness's grand jury

testimony ‘is necessary to avoid misleading the trier of fact.’” *Id.* (quoting *Douglas Oil*, 441 U.S. at 222 n.12). The documents at issue before this court would not serve any such purpose. At most, the court could speculate about how the grand jury materials might be used for impeachment or memory-refreshing purposes. In *Mitchell*, in contrast, the testimony at issue had already been used to impeach the detective during Burge’s criminal trial, *id.*, and the request for disclosure was structured to cover only material that the plaintiff needed. *Id.* at *4. The *Mitchell* court observed that the need for continued secrecy was very low, and easily outweighed by the need for disclosure, because, among other reasons, the grand jury had completed its investigation years before, some of the Burge grand jury testimony had already been released, and the detective did not oppose disclosure. *Id.* at *3. Some of these factors are at play here, too; as already noted, however, the need for disclosure of these materials appears minimal in light of the lack of any obvious relevance to Plaintiffs’ claims. The court concludes their request does not satisfy the standard for disclosing grand jury material articulated in *Douglas Oil*.

Other arguments Plaintiffs offer are inapposite. They argue that they are entitled to the grand jury materials because Watts and Mohammed themselves were previously given access to this information.⁷ It is true, as Plaintiffs note, that discovery is supposed to be “a level playing field where rules are in place to ensure *equal* access to material information.” *Mauricio v. Duckworth*, 840 F.2d 454, 457 n.4 (7th Cir. 1988). But information is subject to discovery only if it is relevant, FED. R. CIV. P. 26(b)(1); that the grand jury materials may have been important in Watts’s and Mohammed’s criminal prosecution does not make them relevant in Plaintiffs’ civil cases. Likewise, Plaintiffs have argued that they may have no other means to obtain this information, which would weigh in favor of disclosure. *See United States v. Rogan*, No. 02 C 3310, 2005 WL 2861033, at *5 (N.D. Ill. Oct. 27, 2005) (quoting *United States v. Sells Eng’g, Inc.*,

⁷ Mohammed has insisted that he has no unfair advantage because, among other reasons, his civil attorneys never had access to this information and he received the documents many years ago. (Mohammed’s Resp. in Opp’n to Pls.’ Mot. [59] at 2.)


463 U.S. 418, 445 (1983)) (“[I]n weighing the need for disclosure, the court could take into account any alternative discovery tools available by statute or regulation to the agency seeking disclosure.”). The court is less certain. As noted above, other than the testimony of a single grand jury witness, of uncertain relevance, the court presumes Plaintiffs would be able to obtain all of the other grand jury materials through requests of the banks and telephone companies holding those records.

CONCLUSION

For the foregoing reasons, Plaintiffs’ motion for disclosure of grand jury materials [46] is denied.

ENTER:

Dated: August 10, 2020


REBECCA R. PALLMEYER
Chief District Judge