

1 IN THE CIRCUIT COURT OF MISSOURI
2 19TH JUDICIAL CIRCUIT, DIVISION I
HONORABLE JON E. BEETEM, JUDGE

3 MISSOURI ALLIANCE FOR)
FREEDOM, INC.,)
4)
Plaintiff,)
5)
vs.) 17AC-CC00365
6)
STATE AUDITOR NICOLE)
7 GALLOWAY,)
8 Defendant.)

9
10 TRANSCRIPT OF PROCEEDINGS
11 SEPTEMBER 29, 2017

12
13 APPEARANCES

14
15 For the Plaintiff:
EDWARD D. GREIM AND J. BENTON HURST
16 Graves Garret
1100 Main Street - Suite 2700
17 Kansas City, Missouri 64105
(816) 285-3047

18 For Defendant:
19 JOEL E. ANDERSON
Chief Litigation Counsel
20 Missouri State Auditor's Office
301 West High Street - Suite 880
21 Jefferson City, Missouri 65101
(573) 751-4213

22
23
24 Kaye F. Asel, Certified Court Reporter
25 Official Court Reporter, 19th Judicial Circuit
Cole County, Missouri

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1 P R O C E E D I N G S

2 THE COURT: All right. All right. We're on the
3 record in 17AC-CC00365, styled Missouri Alliance for
4 Freedom, Inc., versus Nicole Galloway. For the Petitioners
5 I've got Ed Greim and Ben Hurst and for the Respondent,
6 Nicole Galloway -- Is that the Auditor? Is that right?

7 MR. ANDERSON: Yes.

8 THE COURT: Is that the Auditor individually or in her
9 official capacity?

10 MR. ANDERSON: Official.

11 THE COURT: -- I've got Joel Anderson and Paul Harper.
12 We're here today, it says for a brief evidentiary
13 hearing, but I'm not quite sure on what. Mr. Greim.

14 MR. GREIM: Well, this is a motion that was filed.

15 MR. ANDERSON: May I interrupt? It is our motion.

16 MR. GREIM: That's right. Go ahead.

17 MR. ANDERSON: Our motion.

18 THE COURT: All right.

19 MR. ANDERSON: He would probably explain it better,
20 but it is our motion.

21 Judge, we filed a motion to dismiss in the alternative
22 for a protective order. Counsel and I agreed we won't call
23 it a motion to dismiss due to wanting to avoid triggering
24 summary judgment procedures because we have some affidavits
25 attached.

1 THE COURT: Okay.

2 MR. ANDERSON: It doesn't really matter because the
3 motion for protective order is based on the same legal
4 arguments, ripeness being one of those. We are in the
5 midst or we have some discovery that is pending. You,
6 through our agreement, issued an order staying discovery
7 until this hearing, the determination at the end of this
8 hearing. Due to the fact we have pending Sunshine Law
9 requests that we contend are still going on, we are going
10 to offer some evidence on the status of those requests,
11 whether that is ripe and what it means to the litigation
12 and to try to avoid some duplication with the discovery and
13 things associated with that.

14 THE COURT: We're taking up the motion for protective
15 order?

16 MR. ANDERSON: Yes.

17 THE COURT: Okay.

18 MR. GREIM: And just in terms of the rules of the
19 road, first, the witness will be called and then we will
20 have maybe a few minutes at the end to give a small
21 version, because we did make a filing at the end of the day
22 yesterday our response to the motion.

23 THE COURT: Okay.

24 MR. GREIM: That is written, but maybe based on the
25 evidence we will have a few remarks.

1 THE COURT: Okay.

2 MR. ANDERSON: I would suggest we kind of limit it to
3 get the time in.

4 MR. GREIM: Yeah.

5 MR. ANDERSON: I will be asking for time because I did
6 receive it at the end of yesterday. I don't have a
7 complaint with that, but I would like to look at it.

8 THE COURT: Our goal is to get the evidence in as to
9 what the facts are and then we --

10 MR. ANDERSON: Right.

11 THE COURT: -- we can work around the rest of it.

12 MR. ANDERSON: Sounds good.

13 THE COURT: Fair enough. On your motion.

14 MR. ANDERSON: Okay. Defendant would call Barbara
15 Wood.

16 THE COURT: Okay.

17 (Witness sworn)

18 THE COURT: All right.

19 MR. ANDERSON: Again, Judge, I have a packet of
20 exhibits for you.

21 THE COURT: All right.

22 MR. ANDERSON; and for you, Ben.

23 MR. HURST: Thank you.

24 MR. GREIM: While we're doing that, I have a little
25 aid that I was going to use while talking. We will

1 probably use it on cross. I've given it to the opponents.
2 It is a little chart of the requests and theories.

3 THE COURT: Okay.

4 BARBARA JANE WOOD,
5 having been duly sworn or affirmed by the Court, was
6 examined and testified as follows:

7 DIRECT EXAMINATION BY MR. ANDERSON:

8 Q. Ms. Wood, would you please state your full name
9 for the record.

10 A. Barbara Jane Wood.

11 Q. And how are you employed, Ms. Wood?

12 A. I'm senior counsel at the Missouri State
13 Auditor's office.

14 Q. How long have you been in that position?

15 A. About eight months.

16 Q. I'm going to have some questions for you,
17 specific questions about some Sunshine Law requests you
18 received from the Missouri Alliance for Freedom. Are you
19 familiar with those?

20 A. Yes, I am.

21 Q. Okay. Before I go into those, you were at some
22 point working on reviewing documents and producing
23 documents pursuant to those requests?

24 A. Yes.

25 Q. Can you tell us today approximately how many

1 records or pages of records you have produced pursuant to
2 the three requests received from the Missouri Alliance for
3 Freedom?

4 A. Approximately 14,000.

5 Q. And do you have any sense of how many
6 documents -- Is that pages or documents?

7 A. That would be pages.

8 Q. Including exhibits or attachments?

9 A. Yes. It is including attachments.

10 Q. Okay. And do you have a sense, as you sit here
11 today and up to this date, how many pages of documents you
12 have reviewed in preparing those 14,000 that were produced?

13 A. I've reviewed about 26,000.

14 Q. Okay. And have you determined at this point how
15 many more documents you have reviewed to complete the
16 request that they made?

17 A. About 28,000.

18 Q. And that's 28,000 that you'll need to be
19 reviewing in the future?

20 A. Correct.

21 Q. And when we're talking about reviewing, what are
22 we talking about? Are you just clicking documents one way
23 or the other, produce or review, or how do you review a
24 document?

25 A. The documents are -- Because the requests were

1 for all communication to and from Paul Harper, who is the
2 general counsel, and Doug Nelson and Auditor Galloway, we
3 have to go through every document to make sure that there
4 is no attorney-client privilege, there is no audit work
5 paperwork, there is no communications between auditor and
6 auditee, there is no personnel records, so I have to read
7 every document.

8 Q. Okay. And that's what I was getting to, you
9 have to read each page of the document?

10 A. Yes, I do.

11 Q. When you were giving us the number of pages, I
12 don't know if I asked the question right. The total number
13 of pages produced, is that pages plus attachments or does
14 the pages include all the attachments?

15 A. I believe that the 14,000 includes the
16 attachments.

17 (Defendant's Exhibit No. 1, May 2, 2017 Request for
18 Records, was marked for identification.)

19 BY MR. ANDERSON:

20 Q. Okay. Let me hand you what is marked as
21 Defendant's Exhibit 1. Can you tell us what that is.

22 A. That is a Sunshine Law request that our office
23 received on May 2nd of 2017.

24 Q. And what did -- What was your involvement with
25 this letter, how did you get it?

1 A. I received this as part of my job doing Sunshine
2 Law for the Missouri Auditor's office and I reviewed it and
3 started through our Sunshine Law process.

4 Q. I apologize. Before we get into that, can you
5 tell us a little bit about your job generally, because this
6 isn't the only thing you do with the Auditor's office, is
7 it?

8 A. No.

9 Q. What are your other duties, in general?

10 A. What I do at the State Auditor's office is, I
11 work with our general counsel to give advice to the office,
12 answer legal questions across the office. I do work with
13 our staff to do bond certifications. I work with our staff
14 on tax rate certifications. I work on Sunshine Law. I
15 also do all the personnel work, and I do some of the
16 administrative work.

17 Q. Do you have a staff of your own?

18 A. No.

19 Q. All right. Back to Defendant's Exhibit 1, this
20 is the May 2nd letter from the Missouri Alliance for
21 Freedom requesting some information?

22 A. Yes.

23 Q. Okay. Would you just describe briefly what they
24 are requesting.

25 A. They are requesting records related to the audit

1 of the Missouri Department of Revenue, specifically the
2 audit of timeliness. And then their next request -- And
3 underneath that they have their specific requests of
4 categories of records. Then they are requesting
5 communications to or from Paul Harper from April 27, 2015
6 to present, which would have been May 2, 2017, and then
7 they have the same request, same time frame, for Douglas
8 Nelson.

9 Q. Okay. I believe --

10 MR. ANDERSON: Should we just admit our exhibits in
11 mass, do you all have an objection?

12 MR. HURST: I see these last round of exhibits here.

13 MR. ANDERSON: Those are the last letters we sent you.

14 MR. HURST: I've never seen them come through the way
15 we have been doing this, so that would be my --

16 MR. ANDERSON: Why don't we admit all except 18 and
17 19. I'll offer all except Exhibits 18 and 19.

18 THE COURT: Exhibits 1 through 17, inclusive, are
19 deemed admitted.

20 BY MR. ANDERSON:

21 Q. Okay. With respect to Defendant's Exhibit 1,
22 once you got this request, what is the standard or do you
23 have a standard procedure that you follow in handling
24 Sunshine requests?

25 A. We do. When we get a request in, we look at the

1 Sunshine Law request. We determine if it is records that
2 can be produced within three days. If it is, then we
3 produce them within the three days. If it is not, then we
4 send a three-day letter notifying the individuals of how
5 much time it is going to take us or, depending upon the
6 scope and nature of the request, we may have to state to
7 them we start the process and give them status updates.

8 Q. And is that your standard procedure pretty much
9 for all Sunshine requests?

10 A. Yes.

11 Q. And you followed that procedure in this case?

12 A. Yes.

13 Q. Now, the first -- I'm looking at three separate
14 requests here. One, all records relating to your audit of
15 the Missouri Department of Revenue, and then there is some
16 specifications about a subpoena and other communications
17 under that. Did you take that as one request?

18 A. Yes.

19 Q. Okay. What did you do to meet that request?

20 A. We looked at that and determined that they were
21 asking for documents related to our audit, which our
22 auditors would be performing, and so when we looked at
23 that, we responded back within the three days that the
24 information was confidential under our audit work papers,
25 as well as communications between auditor and auditee, and

1 the only aspect of the documents that were part of the
2 audit file that would have been public was a subpoena that
3 was issued to the Department of Revenue and a corresponding
4 letter, and so we provided the information that was public.

5 Q. The second part of the request, communications
6 to or from Paul Harper from April 27, 2015 to present.

7 What did you do with respect to that request?

8 A. Because of the scope and the nature of that
9 request, we responded in three days that it would take us
10 30 days to look at it. When we immediately started working
11 on it, I immediately started working with our staff to
12 collect documents, the correspondence, hard copy
13 correspondence, as well as e-mail correspondence of both
14 Paul Harper and Douglas Nelson, knowing it was two years.

15 Q. And I would have asked you the same question
16 about Douglas Nelson, it was the same process?

17 A. Same process, yes.

18 Q. Okay. And I'm sure we all know this, but Paul
19 Harper serves a function in the Auditor's office?

20 A. He serves as general counsel.

21 Q. And Doug Nelson is no longer employed by the
22 Auditor's office?

23 A. That is correct.

24 Q. What was his position when he was employed?

25 A. He was senior policy adviser.

1 Q. Did he occasionally serve in a counsel function
2 as well?

3 A. I believe he did.

4 (Defendant's Exhibit No. 2, May 5, 2017 Response to
5 May 2, 2017 Request for Records, was marked for
6 identification.)

7 BY MR. ANDERSON:

8 Q. Let me ask you to identify what is marked as
9 Defendant's Exhibit 2.

10 A. That is our letter we sent on May 5, 2017, the
11 three-day letter.

12 Q. That's the three-day letter you referred to in
13 reference to the May 2, 2017 letter?

14 A. Yes.

15 Q. And what are you communicating in this three-day
16 letter?

17 A. We're communicating that we're giving them the
18 information, a copy of the subpoena, and the related
19 April 18, 2017 letter, the remaining information is
20 confidential, we cite the statutory provisions that keep it
21 confidential, and that because of the scope of the request,
22 their last two requests, that we will provide them of an
23 updated status in no more than 30 days.

24 Q. Now, the records relating to the audit of the
25 Department of Revenue -- this is the audit of the

1 timeliness of tax refunds -- the records they requested
2 related to that audit, why weren't those turned over?

3 A. Those are statutorily confidential, which is
4 what we cited in the letter.

5 Q. And that's --

6 A. That would be provisions 29.070, 29.200.17 and
7 32.057, which is tax records.

8 Q. Okay. And that particular -- Go ahead.

9 A. I apologize. And 610.021, subsection 17.

10 Q. The chapter 32 reference, that applies to the
11 Department of Revenue. Is that correct?

12 A. That's correct.

13 Q. And is that the provision that protects certain
14 records of the Department of Revenue and prohibits their
15 release by anyone?

16 A. Yes.

17 Q. Now, after this May 5th letter that you sent,
18 and this is addressed to Ms. Kristen Blanchard Ansley of
19 the Missouri Alliance For Freedom, did you receive a
20 response to this letter?

21 A. No.

22 Q. Okay. And no written response, no e-mail?

23 A. No.

24 Q. No phone call?

25 A. No.

1 Q. Was there any expression of any dissatisfaction
2 with your estimate of the time period it would take to
3 review the request --

4 A. No.

5 Q. -- of these documents?

6 (Defendant's Exhibit No. 3, June 2, 2017 Response to
7 May 2, 2017 Request for Records, was marked for
8 identification.)

9 BY MR. ANDERSON:

10 Q. I'll show you what is marked as Defendant's
11 Exhibit 3. Can you briefly tell us what that is?

12 A. That is our 30-day letter that we sent based on
13 our May 5 letter, telling them that we were still in the
14 process of reviewing the requests and that we would need an
15 additional 60 days.

16 Q. What necessitated or what occurred to
17 necessitate an extension? You originally estimated 30.
18 Why is that being changed?

19 A. When we were requesting the documents, we were
20 requestinge-mail, hard copy correspondence, we had over
21 40,000 e-mails just for our general counsel; so when we
22 realized that, we knew it was going to take us longer than
23 30 days to go through all of those documents and determine
24 what's confidential under audit records and what is
25 confidential under attorney-client, so we would have to

1 read every document, and that was simply the e-mails and
2 that's not the hard copy correspondence that we were in the
3 process of collecting, so we knew at that point. Also, at
4 that point we had received two more Sunshine Law requests,
5 one being at the end of May for Nicole Galloway's e-mails
6 and correspondence and we were also in the process of
7 compiling all of those.

8 Q. All right. Now, we have a room full of lawyers
9 here. What is involved in reviewing a general counsel's
10 correspondence? Is there a particular challenge there?

11 A. There is, because you have to go through every
12 record and make sure that there is no attorney-client
13 privilege, that there is no, you know, any kind of
14 personnel type confidential information. You also have --
15 And I think for the Auditor's office, you have to go
16 through and make sure that there is no audit work
17 paperwork, that there is no communications involving an
18 audit that are required to be confidential, so I'm
19 literally reading every document.

20 Q. Mr. Harper obviously is the agency's lawyer,
21 will be involved in legal questions. Are you able to
22 describe for us how Mr. Harper, sitting here in Jefferson
23 City, might get involved in legal questions for audit staff
24 who might be anywhere in the state?

25 A. That would be through either e-mail or phone

1 call.

2 Q. And how would those questions arise, what are
3 they doing?

4 A. During the process of conducting audits of both
5 state agencies as well as political subdivisions.

6 Q. Okay. And an example of what kind of questions
7 might Mr. Harper be asked by audit staff?

8 A. They might be there and have a question about
9 some process of an auditee or some decision an auditee made
10 and then he would have to respond to that request.

11 Q. With respect to the June 2nd letter that is
12 Defendant's Exhibit 3 -- again, this is in reference to the
13 May 2nd request from the Missouri Alliance for Freedom --
14 did you receive any communication from the Missouri
15 Alliance in response to this letter?

16 A. No.

17 Q. Did you -- At that time had you gotten any
18 indication that there was anything wrong with your proposed
19 plan for turning over documents or the time schedule that
20 you proposed?

21 A. No.

22 (Defendant's Exhibit No. 4, August 1, 2017 Response to
23 May 2, 2017 Request for Records, was marked for
24 identification.)

25 BY MR. ANDERSON:

1 Q. I'm handing you what is marked as Defendant's
2 Exhibit 4. Briefly tell us what that is.

3 A. That is an August 1, 2017 letter. It is our
4 letter within the 60 days giving them their first set of
5 documents, and then letting them know that we were still in
6 the process of reviewing and that we would give them
7 updates every 30 days.

8 Q. Okay. I have a few questions about this letter.
9 Now, this letter was sent out after the lawsuit was filed.
10 Is that correct?

11 A. Yes.

12 Q. Okay. And at the time you sent this letter were
13 you aware of the lawsuit, had you actually seen it?

14 A. Yes.

15 Q. And when I say "the lawsuit," I'm talking about
16 the lawsuit we're here on today?

17 A. Yes.

18 Q. Okay. So this was the letter that you promised
19 within 60 days of the last letter and you attached, it
20 appears, almost 3,000 pages of documents, plus attachments,
21 that represented communications from Paul Harper and Doug
22 Nelson for the period April 27, 2015 through October 31,
23 2015. Is that correct?

24 A. Yes.

25 Q. Okay.

1 A. We also provided documentation for the
2 Department of Revenue.

3 Q. I'm sorry?

4 A. We also provided documentation for the
5 Department of Revenue.

6 Q. Yes. In your third paragraph about midway down
7 there is a sentence there I want to ask you about. It
8 says: As subsequent communication has indicated that you
9 intended your request to be broader than records with the
10 parties related to the conduct of the audit, I have
11 attached documents responsive to this expanded request. Do
12 you see that sentence there?

13 A. Yes.

14 Q. Had you received some kind of communication from
15 the Missouri Alliance for Freedom, or what communication is
16 this that informed you that the request was broader than
17 you had originally interpreted?

18 A. The lawsuit.

19 Q. It wasn't a letter or phone call?

20 A. No.

21 Q. And what was different in the lawsuit than the
22 way you had interpreted it originally?

23 A. Well, the way we interpreted it initially for
24 the Department of Revenue, is that they were asking for
25 records related to the audit, which would be our auditors

1 performing an audit. And then when we reviewed their
2 litigation, they reference things like communications that
3 referenced the Department of Revenue's audit,
4 communications with the press, so we did a subsequent
5 search to look for those documents.

6 Q. Was that the first notice you had that that is
7 what they were looking for?

8 A. Yes.

9 Q. And, again, with this letter you promise another
10 30 day update?

11 A. Yes.

12 Q. And other than the lawsuit, did you get a
13 response to this letter from Plaintiff?

14 A. No.

15 (Defendants' Exhibit No. 5, May 8, 2017 Request for
16 Records, was marked for identification.)

17 BY MR. ANDERSON:

18 Q. I'm handing you what is marked as Defendant's
19 Exhibit 5 and tell us briefly what that is.

20 A. That is, that is a May 8, 2017 letter, Sunshine
21 Law request, we received requesting records relating to the
22 audit of the State Treasurer.

23 (Defendant's Exhibit No. 17, August 31, 2017 Response
24 to May 2, 2017 Request for Records, was marked for
25 identification.)

1 BY MR. ANDERSON:

2 Q. Okay. I'm going to switch up on you here.
3 Defendant's Exhibit 17. We will come back to the other
4 one. Defendant's Exhibit 17, can you tell us what that is?

5 A. That is our second response to the Sunshine Law
6 request, our 30-day response after our August 1st.

7 Q. Okay. And that's just to follow up on the
8 continued efforts you had doing your search on the May 2nd
9 request?

10 A. Yes.

11 Q. And did you receive a response from the
12 Plaintiff's to that, to that?

13 A. No.

14 (Defendant's Exhibit No. 19, September 27, 2017
15 Response to May 2, 2017 Request for Records, was marked for
16 identification.)

17 BY MR. ANDERSON;

18 Q. I'll take that one back for a minute. I'm
19 handing you what is marked as Defendant's Exhibit 19.

20 A. That would be the document --

21 Q. Go ahead.

22 A. That would be a letter we sent on Wednesday
23 which would have been our next 30-day response to the
24 document. Because, as we told them, we would respond every
25 30 days as we were completing our review, this is our

1 30-day -- our next 30-day letter.

2 Q. We don't have an agreement on this one with the
3 Plaintiffs, so would you tell me that is a fair and
4 accurate copy of the letter that you sent to the Missouri
5 Alliance for Freedom?

6 A. Yes.

7 Q. Okay. And that was sent out in what manner?

8 A. My understanding, one, we put it in the mail, as
9 the way they requested in their Sunshine Law request, we
10 mailed it to them, and so we did that. And we mailed
11 them -- Since the lawsuit, we mailed the letters directly
12 to the law firm, to Eddie Greim's law firm.

13 Q. And sent by e-mail as well?

14 A. My understanding, it was sent also by e-mail
15 with a cover letter to Mr. Greim.

16 Q. Okay. In this September 27th production, do you
17 know how many pages of documents you turned over to the
18 Plaintiff at that time?

19 A. We turned over 4,995 pages of documents, plus
20 attachments.

21 Q. So the attachments were additional to this?

22 A. Yes.

23 Q. Okay. And this is all referenced to the May 2nd
24 request, correct?

25 A. Correct.

1 MR. ANDERSON: All right. We would offer Defendant's
2 Exhibit 19.

3 MR. HURST: Objection, Your Honor.

4 THE COURT: Okay.

5 MR. HURST: At this point this hearing was the first
6 time that I've ever seen these two exhibits, 18 and 19. I
7 wonder if it would be possible, Your Honor, if I could voir
8 dire the witness for a couple of questions.

9 THE COURT: Okay. What is the objection? What is the
10 basis for the objection?

11 MR. HURST: The objection will be relevance, Your
12 Honor. If they are offering it, if they are offering it as
13 evidence of how they complied and the process that they've
14 gone through the Sunshine Law and we haven't actually
15 received it, we would say they haven't laid a relevant
16 foundation for the document.

17 THE COURT: Are you telling me that you've not
18 received this letter, is that what you are telling me?

19 MR. HURST: Yes, Your Honor.

20 THE COURT: Objection will be overruled. 19 comes in.

21 (A discussion was held off the record.)

22 THE COURT: All right.

23 MR. GREIM: Your Honor, just to briefly interrupt
24 here. I received this just myself, these letters we said
25 that we didn't receive. It actually came just to my e-mail

1 address on Wednesday. We've asked -- I'm not a very
2 reliable intake person, because I get so many, so only I
3 got it. It is my only unopened e-mail I see right here on
4 my phone, so, you know, we withdraw our objection because
5 clearly it was e-mailed right to me, and we will -- When we
6 send things to you, we will make sure to involve paralegals
7 and other folks. It's a little embarrassing.

8 MR. ANDERSON: Which is one I sent rather than Paul.
9 Never send to the boss alone.

10 THE COURT: We've all done that before. All right.
11 So I'm going to take in without further discussion.

12 MR. GREIM: Yes.

13 THE COURT: 1 through 19 are all in.

14 BY MR. ANDERSON:

15 Q. Ms. Wood, I've handed you Defendant's Exhibit 5
16 a little bit earlier and we're coming back to that now.
17 Can you tell us briefly what that is.

18 A. This is a Sunshine Law request that we got for
19 documents relating to an audit of the Missouri State
20 Treasurer, specifically related to the management of
21 unclaimed property.

22 Q. And that's May 8th of 2017?

23 A. Yes.

24 Q. When did we receive that, do you know?

25 A. Well, we received it -- It came into the office

1 around May 8th. However, that was a holiday so we actually
2 received it on May 9th.

3 Q. And, again, this one, does it have some
4 similarity to the May 2nd one in terms of requesting audit
5 related information?

6 A. Yes.

7 (Defendant's Exhibit No. 6, May 12, 2017 Response to
8 May 8, 2017 Request for Records, was marked for
9 identification.)

10 BY MR. ANDERSON:

11 Q. I'm handing you Defendant's Exhibit 6. Tell us
12 what that is.

13 A. That is our three-day letter to the May 9th
14 request providing them a link to the Treasurer's audit and
15 then informing them that the remaining information is
16 confidential.

17 Q. Okay. And, again, the remaining information
18 would refer to what? How did you interpret audit-related
19 information in this request?

20 A. It would have been audit-related documents,
21 other related supporting materials to the audit, and
22 communications between auditor and auditee.

23 Q. And those were not turned over based on Missouri
24 statutes on audit workpapers?

25 A. Correct. We also had the Department of Revenue

1 statute on tax records was also a part of that.

2 Q. Okay. This May 12th letter that is Defendant's
3 Exhibit 6, did you receive a response from the Plaintiff in
4 any way on this request?

5 A. No.

6 Q. Okay. Now, I notice in this request you don't
7 say that you are going to update them in 30 days?

8 A. No.

9 Q. Was there anything else to look at as far as you
10 were concerned at that time?

11 A. No, there was not.

12 (Defendant's Exhibit No. 7, May 26, 2017 Request for
13 Records, was marked for identification.)

14 BY MR. ANDERSON:

15 Q. All right. I'm handing you Defendant's
16 Exhibit 7. Can you tell us briefly what that is.

17 A. This is a Sunshine Law request that we received
18 on May 26, 2017, and it is for all records of communication
19 that Auditor Galloway has sent or received while serving as
20 Auditor, so for about two years.

21 Q. Okay. So everything sent or received by the
22 Auditor for a two-year time period?

23 A. Yes.

24 Q. How did you -- Did you follow your usual
25 procedure for researching and locating documents in

1 response to this request?

2 A. Yes.

3 Q. Anything peculiar about this request in terms of
4 your search?

5 A. Well, similar to Paul Harper's Sunshine Law
6 request, Auditor Galloway's documentation also has to be
7 looked at for audit-related documents, anything that would
8 be confidential under state law; so the same process
9 applied to it, you have to read every document.

10 Q. Okay. And as she is the State Auditor, is her
11 name on virtually every document in the agency?

12 A. Well, that was a challenge because we did a
13 search for Nicole Galloway and a search for Nicole R.
14 Galloway in our drives and she is on a lot of the headings
15 or most of the headings in the office, so I worked with our
16 IT staff to make sure that we were only looking at
17 documents that otherwise would possibly apply to this
18 request; otherwise, we would be looking at every document
19 in our office. So I worked very closely with our IT staff
20 to address that and then obviously worked with her
21 administrative staff to get hard copy correspondence so all
22 of that information could be reviewed.

23 (Defendant's Exhibit No. 8, June 1, 2017 Response to
24 May 26, 2017 Request for Records, was marked for
25 identification.)

1 BY MR. ANDERSON:

2 Q. Okay. I'm handing you Defendant's Exhibit 8.
3 Tell us briefly what that is.

4 A. That would be our three-day letter response to
5 their Sunshine Law request, where we notified them of what
6 public documents would be on our website. The audit
7 reports and other records of communication that are on our
8 website, we notified them about that. And then we told
9 them that we would give them a status update in 30 days.

10 (Defendant's Exhibit No. 9, June 30, 2017 Response to
11 May 26, 2017 and May 1, 2017 Request for Records, was
12 marked for identification.)

13 BY MR. ANDERSON:

14 Q. I'm handing you Defendant's Exhibit 9.

15 A. That would be our 30-day response letter to
16 their May 26th request, where we notified them that we were
17 still in the process of reviewing the request and that we
18 would need an additional 60 days. We also notified them
19 that we were also working on the May 2nd response for Paul
20 Harper and Doug Nelson, so because of the scope and the
21 nature that we would need additional time to review
22 documents.

23 Q. Okay. And, again, these letters, did you
24 receive any response from the Plaintiff, positive,
25 negative, any requests, anything at all, any communication

1 other than the lawsuit itself?

2 A. No. I actually have not received any
3 communication from them at all.

4 (Defendant's Exhibit No. 16, August 29, 2017 Response
5 to May 26, 2017 Request for Records, was marked for
6 identification.)

7 BY MR. ANDERSON:

8 Q. I'm handing you Defendant's Exhibit 16.

9 A. That would -- This is our 30-day response to the
10 Sunshine Law request we got on May 26th. And on this one,
11 we released -- we disclosed the information that we had
12 finished reviewing, explained to them why the information
13 was confidential, and then we said that we were still
14 looking at documents and we would respond to them in
15 30 days with a projected completion date of December 1,
16 based on an estimate of December 1, because of the scope
17 and nature of the request.

18 Q. And, again, you didn't get a response to that?

19 A. No.

20 Q. Ms. Wood, you testified earlier about the time
21 you've put in basically reviewing documents for this
22 Sunshine request, and how many documents did you say that
23 you would have to -- you are looking at having to do here
24 in the future?

25 A. Approximately 28,000 more.

1 Q. At one point in our exhibits you estimated that
2 the request should be completed by December 1st. Is that
3 correct?

4 A. That was our estimate.

5 Q. Okay. And what was that estimate based on?

6 A. It was based on the fact that when we initially
7 did the compilation we had over 50,000 records to review,
8 so we were responding to each one of the Sunshine Law
9 requests, we were working on them simultaneously, so based
10 on the volume of the records we estimated that we could
11 complete by December 1, was our goal.

12 Q. Okay. And each of these estimates is made as
13 you are finding documents, expecting how much you have to
14 go through?

15 A. That's correct. It took us awhile to compile
16 all the documentation; we were doing all that at one time,
17 compiling and reviewing all at the same time.

18 Q. I'm handing you what is Defendant's Exhibit 17
19 because I skipped over. Can you briefly tell us what that
20 is.

21 A. That is the -- That is our next 30-day response
22 that we did for, for Paul Harper and Doug Nelson. I think
23 that was between. That was our second set of documents for
24 Paul Harper and Doug Nelson, where we released 2,130 pages.

25 Q. And in terms of the -- especially to Paul Harper

1 e-mails, do you have to meet with Paul Harper himself at
2 some point before you can determine what can be released?

3 A. Yes.

4 Q. You are looking for attorney-client privilege?

5 A. Attorney-client privilege. I'm looking for
6 audit work paperwork, personnel information; so what I do
7 is, I go through them and then I meet with Paul Harper to
8 go through, to go through the documents and to ask him any
9 questions that I might have.

10 Q. Okay. And this long category or this long list
11 of potentially protected documents that you are looking for
12 here, these could appear anywhere in Paul Harper's e-mails,
13 in Doug Nelson's e-mails, in Auditor Galloway's e-mails.
14 Is that correct?

15 A. Yes.

16 Q. And are you aware that, especially for
17 audit-related documents, it could be a felony for the
18 information to be released related to an audit to someone
19 other than the Auditor?

20 A. Yes.

21 (Defendant's Exhibit No. 10, Plaintiff's First
22 Interrogatories dated July 21, 2017, was marked for
23 identification.)

24 BY MR. ANDERSON:

25 Q. I'm handing you what is marked as Defendant's

1 Exhibit 10. To save time, I'll represent that that is the
2 Plaintiff's first set of interrogatories to the Defendant.

3 You're not representing the agency in this case,
4 correct?

5 A. No.

6 Q. But you have taken a look at the interrogatories
7 and request for production of documents filed in this case?

8 A. Yes.

9 Q. Okay. I just want to point out a few things to
10 you and ask you some questions. Have you found in your
11 review of the interrogatories and request for documents in
12 this case that you are being asked in many cases to produce
13 documents already produced in the Sunshine --

14 A. Yes.

15 Q. -- request itself?

16 A. Yes.

17 Q. Okay. Additionally, on Defendant's Exhibit 10,
18 drawing your attention to interrogatory number 4. And in
19 that interrogatory you're asked to please identify and
20 describe each instance when you have corresponded with any
21 party concerning public business while serving as Auditor
22 using any account previously identified. And referring to
23 the definitions on the front of the page, the term "you"
24 includes not only the Auditor but each and every person
25 acting or alleged to have acted on her behalf.

1 Okay. Do you have a sense of what would be required
2 in identifying, describing, summarizing each instance of
3 correspondence with virtually anyone in the office?

4 A. Well, I don't remember how many employees we
5 have exactly, but we have, I want to say well over 100, and
6 so if you had to respond to every single correspondence on
7 their behalf, that would be every document in the office,
8 that would be hundreds of thousands of pages.

9 Q. And then in interrogatory number 5 -- I promise
10 I'm not going through every piece of discovery here. In
11 interrogatory number 5 you are asked to describe each
12 instance when Paul Harper has corresponded with any party
13 concerning public business. Do you see that there, too?

14 A. I do.

15 Q. You've done a search of Paul Harper's
16 communications, correct?

17 A. Yes.

18 Q. Would you describe the communications that have
19 popped up in that search to be largely public business,
20 even though it might be protected by attorney-client
21 privilege?

22 A. Oh, yes. Yes.

23 Q. So you're being asked to identify and describe,
24 identify the date, the author, the address, type of
25 document; describe, explaining in full and in detail all

1 elements of the process, each and every document of Paul
2 Harper's, do you have a sense of what though would involve?

3 A. His e-mails alone are over 40,000; so when you
4 add that on top of the hard copy correspondence, there
5 would be thousands of pages because you have to go through
6 each one and describe what it is.

7 Q. I'm going to refer you to interrogatory number
8 19 where you are asked to identify and describe each
9 instance that you corresponded with any party, whether
10 inside or outside of the office, concerning the audit of
11 the Department of Revenue or the audits of the Treasurer's
12 office. Do you see that?

13 A. Yes.

14 Q. Okay.

15 A. Yes.

16 Q. Identification and description of those
17 documents, would that involve identifying and describing
18 audit files in addition to potentially attorney-client
19 privileged matters?

20 A. Yes.

21 Q. And is that a large set of documents or do you
22 know how many documents?

23 MR. HURST: Objection, Your Honor. Leading.

24 THE COURT: Sustained.

25 BY MR. ANDERSON:

1 Q. In your review of the discovery, have you found
2 that in addition to the interrogatories there is often a
3 corresponding request for production of documents that
4 refers directly to the interrogatory describing documents?

5 A. Yes.

6 Q. Can you tell us to date approximately how much
7 time, your time have you spent just working on the Sunshine
8 Law requests alone?

9 A. Just my time?

10 Q. Just your time.

11 A. Not any other staff?

12 Q. Yes.

13 A. Over 300 hours.

14 Q. Okay. And you still have quite a few documents
15 to look at, but over 300 hours?

16 A. Yes. Probably have another 300 hours left to
17 go.

18 Q. And that is just on the Sunshine Law requests?

19 A. Yes.

20 Q. When you add in the discovery where you are
21 essentially revisiting the Sunshine Law requests, in
22 addition to cataloging the documents that were not produced
23 in response to the Sunshine Law request, do you have a
24 sense of how to add up how much time it would take to go
25 through all of those?

1 A. No. It would be -- No. It would be months and
2 months. I don't know how you would do it.

3 Q. Can you tell me approximately what your salary
4 is?

5 A. A little over 91,000.

6 Q. We are only talking about your time. What other
7 staff did you consult with?

8 A. In this process I consulted with obviously our
9 IT staff, and I consulted with anybody who would have
10 access to the records that I might need, like it might be
11 administrative staff, if it is hard copy correspondence.
12 We would talk to anyone who had access to the records, work
13 with our staff, our division directors. I go to everybody
14 who I think would have access to records.

15 MR. ANDERSON: Judge, I believe we've offered 1
16 through 19 at this point. If we left anything out, we'd
17 offer it now.

18 THE COURT: And they have been admitted.

19 MR. ANDERSON: Okay. No further questions.

20 THE COURT: Cross-examination.

21 MR. HURST: Thank you, Your Honor.

22 With your permission, I would like to work from over
23 there where the exhibits are.

24 THE COURT: I have no problem with that, as long as
25 Mr. Anderson --

1 MR. HURST: We can work from our exhibits, either way
2 is find with me.

3 MR. ANDERSON: I just shuffled mine.

4 MR. HURST: We will work with ours. That is not a
5 problem with me.

6 CROSS-EXAMINATION BY MR. HURST::

7 Q. Good afternoon, Ms. Wood. I apologize it is
8 taking me a minute to get organized here.

9 I think I'm going to work in reverse chronological
10 order, so we're going to start with the May 26th request.
11 I believe we have here Defendant's Exhibit 7. I'm going to
12 hand you Defendant's Exhibit 7. Would you take a look at
13 that? It is the case that MAF requested production on a
14 rolling basis. Isn't that true?

15 A. Yes.

16 Q. And --

17 A. And we're rolling every 30 days.

18 Q. And this is the request for the court that
19 requests the communications to and from Auditor Galloway
20 for the period she served as Auditor. Isn't that right?

21 A. Yes.

22 Q. And you didn't make a production on that request
23 within the three days. Isn't that true?

24 A. No, that is not correct. Oh, I didn't make a
25 production but I did respond in the three days. Well,

1 actually no. Can I look at the letter we sent? I believe
2 we did make a production. I believe we gave a link to the
3 publicly available documents that would be on the website,
4 like our audit reports on the website, our press releases
5 are on the website, so we linked for you all everything
6 that was publicly available.

7 Q. You produced things that were already available
8 on the website?

9 A. Yes. We notified you what was available on the
10 website.

11 Q. But you didn't produce any other communications
12 from the Auditor?

13 A. No. We started collecting.

14 Q. And when you say you started collecting, did you
15 look in her e-mail account?

16 A. I started working with our IT staff to get her
17 e-mails where I could review them and so we did that
18 process.

19 Q. And you started that on the day you received the
20 request?

21 A. I don't remember the exact date I started the
22 request. It may not have been on this day, but it was
23 probably easily pretty quickly after that I started working
24 on the --

25 Q. So within the next three days?

1 A. I don't remember the exact date.

2 Q. Okay. And did you work with your IT staff to
3 collect e-mails from the Auditor's e-mail account within
4 the next 30 days, before your next 30-day production?

5 A. I believe so.

6 Q. So you worked with the IT staff to gather
7 e-mails from the Auditor's governmental official e-mail
8 account before your next production?

9 A. Before my production for this?

10 Q. Yes. Before you -- Let me rephrase that
11 question. That was ambiguous.

12 You worked with IT staff to gather documents,
13 responsive documents from the Auditor's e-mail account
14 before your 30-day status update?

15 A. We started working on it immediately, yes; so we
16 knew it would take awhile to gather them and review them,
17 so yes.

18 Q. So you say "immediately." Within a week?

19 A. I don't remember the day I made it. It would
20 have been within the 30 days, yes.

21 Q. At the next 30-day reply -- So we're now looking
22 at June 30th. So we have this Exhibit 9.

23 I'll take that back. Thank you.

24 You didn't produce any documents from the Auditor's
25 e-mail account at this 30-day update?

1 A. No. We were still in the process of collecting
2 and reviewing.

3 Q. You were in the process of collecting and
4 reviewing.

5 A. Because we had the other Sunshine Law requests
6 going on at the same time. We actually got three from the
7 same organization in a 30-day period and we're working on
8 all of them, so we were still in the process of collecting
9 and reviewing.

10 Q. How many documents had you reviewed before that
11 request from the Auditor's e-mail account?

12 A. I could not tell you where I was in the review
13 process.

14 Q. But you didn't produce any?

15 A. No. We were still in the process of reviewing.

16 Q. Okay. Thank you. I'm going to show you your
17 August 1st response. They were naturally in a different
18 order when I was working on my copy. This is your response
19 on August 1st, this would be 30 days after your first
20 30-day response.

21 A. The one for the Department of Revenue and --

22 Q. And we're only talking about the request for the
23 Auditor's communications.

24 A. This isn't the letter for the Auditor's
25 communications. This is for Department of Revenue and Paul

1 Harper and Doug Nelson.

2 Q. You're correct. Got the wrong one.

3 We will go out to Exhibit 16. You didn't actually
4 produce any e-mails from the Auditor until your August 31st
5 production either?

6 A. No, because there were no e-mails during that
7 period of time.

8 Q. There were no e-mails during the period of time?

9 A. Correct.

10 Q. So there were no e-mails from the Auditor --
11 Let's go to that request. I believe that request is, that
12 response from you covers the period of time from
13 April 27th, 2015 until May 31, 2016. Is that correct?

14 A. If I could see the letter.

15 Q. I was trying to avoid looking through the
16 papers. That's all right. This is Defendant's Exhibit 16.
17 You'll see the dates on there are from April 27th, 2015 to
18 May 31, 2016.

19 A. Correct.

20 Q. And during that time you produced or from that
21 period of time you produced 173 pages of documents?

22 A. Yes.

23 Q. So that is the first year and about a month of
24 the Auditor's term and the communications you produced
25 173 pages?

1 A. Yes.

2 Q. And you didn't produce any e-mails from that
3 period?

4 A. No.

5 Q. To or from the Auditor?

6 A. No.

7 Q. And that is because there were no e-mails to or
8 from the Auditor at all?

9 A. That is correct.

10 Q. How did you go about searching for the Auditor's
11 e-mails for that period?

12 A. I worked with our IT staff to have them get for
13 me the e-mails for the State Auditor.

14 Q. You say you worked with your IT staff. Does the
15 IT staff work for the Auditor or does the IT staff work for
16 the Office of Administration?

17 A. Our IT staff works for our office.

18 Q. You have your own internal IT staff?

19 A. Yes.

20 Q. You say you worked with them. What did you do?
21 How did you work with them?

22 A. I go to them and tell them the request we are
23 looking for and they work with me to make the request
24 for -- to pull those e-mails so that I can look at that
25 particular set of e-mails.

1 Q. And they told you that there was no e-mails from
2 the Auditor for that period?

3 A. That's correct, because her e-mail account did
4 not start until late '16.

5 Q. And what's the name of the person you talked to?

6 A. Renee Ruter.

7 Q. Who is she?

8 A. She is our IT staff.

9 Q. Can you spell her last name, I'm sorry?

10 A. R-u-t-e-r.

11 Q. We're not from Cole County.

12 (Defendant's Exhibit No. 18, September 27, 2017
13 Response to May 26, 2017 Request for Records, was marked
14 for identification.)

15 BY MR. HURST:

16 Q. I see here, this is Defendant's Exhibit 18, and
17 I see you say as your remaining records request of State
18 Auditor to this date runs April 27, 2016 to May 21, 2017,
19 and this would be the full response?

20 A. Correct.

21 Q. You said 4,479 pages of documents you produced.
22 Is that right?

23 A. That's correct.

24 Q. Did you produce any documents or any e-mails
25 from the Auditor during that period?

1 A. Yes.

2 Q. When is the first e-mail, the date of the first
3 e-mail?

4 A. I would have to look at the document request. I
5 couldn't give you the exact date of the first e-mail
6 because it is 4,700 pages.

7 Q. But none of them are before May 31, 2016?

8 A. That's correct.

9 Q. So you produced 173 pages of hard copy documents
10 in that first year. Is that correct?

11 A. Yes.

12 Q. And that included hard copy correspondence?

13 A. Yes.

14 Q. And where did you look for that correspondence?

15 A. I worked with her administrative assistants. I
16 also looked at records of previous administrative
17 assistants.

18 A. I also worked with our IT staff to do a drive
19 search for Nicole Galloway and Nicole R. Galloway.

20 Q. And you say your drives. Are they organized by
21 the kind of document you have?

22 A. No.

23 Q. How are they organized?

24 A. They are organized by "G" drive.

25 Q. Within a drive?

1 A. They are organized by drive. And we searched
2 all of our drives.

3 Q. For her name?

4 A. For any document with her name on it. I worked
5 with our IT staff to kind of, like we said earlier, limit
6 it so we weren't looking -- otherwise, we would have to
7 look at every piece of paper in the office because her name
8 is on the heading.

9 Q. So the number of documents you have left to
10 review, does that include all the documents that were
11 returned in those searches?

12 A. No. Partially, if it was for Paul Harper or
13 Doug Nelson.

14 Q. But it doesn't include the Auditor's e-mails or
15 the Auditor's communication?

16 A. Can you ask your question again?

17 Q. I'm sorry. Let me rephrase it. You did a
18 search for all your drives for the Auditor's name?

19 A. Yes.

20 Q. And you gave us an estimate today that you have
21 28,000 more documents to review?

22 A. Yes.

23 Q. Does that 28,000 documents include all of the
24 hits that you got from that searching of the Auditor's
25 name?

1 A. No. Those are completed.

2 Q. You've finished those already?

3 A. Yes.

4 Q. And so the previous number of documents that you
5 stated you had reviewed, 24,000, give or take, you said you
6 reviewed 24,000 documents, does that include every document
7 that was returned in those searches?

8 A. That was 26,000 actually, and, yes, it does
9 include those.

10 Q. So in response to a request for the Auditor's
11 communications, you read every document that the Auditor's
12 office maintains that has her name on it?

13 A. I read every document that would have been --
14 not that it was like in the heading, you know, like your
15 letterhead, but every other document, yes.

16 Q. You read all of them?

17 A. Yes. That is why there were 26,000.

18 Q. Thank you. Have you ever called the Auditor on
19 the phone?

20 A. Do I call her on the phone?

21 Q. Yes. Ever spoken with her on the phone?

22 A. A few times.

23 Q. Have you ever sent a text message to her?

24 A. Not that I remember.

25 Q. Have you ever received one from her?

1 A. Not that I remember.

2 Q. Does the Auditor have a phone provided by the
3 state?

4 A. Yes.

5 Q. Did you search that phone for communications?

6 A. Yes.

7 Q. You did. And so --

8 A. I did not search the phone for communications.

9 Q. Your IT staff?

10 A. But it was part of our collection process.

11 Q. So you didn't produce any voicemails -- Let me
12 back up. The request for records included voicemail
13 transcripts and text messages. Is that correct?

14 A. Yes.

15 Q. And for the period of April 27, 2015 to May 31,
16 2016, you produced 173 hard copy documents?

17 A. Yes.

18 Q. You didn't produce any text messages from that
19 period?

20 A. There were no text messages.

21 Q. Did you produce any voicemail transcripts?

22 A. No.

23 Q. In the most recent production of 4,400 documents
24 did you produce any text messages?

25 A. No.

1 Q. You didn't produce any text messages?

2 A. No.

3 Q. And you didn't produce any voicemail transcripts
4 either?

5 A. No.

6 Q. But they were responsive?

7 A. If we had them, yes.

8 Q. So there were no text --

9 A. Depending upon -- Let me rephrase that. They
10 might have been responsive but they would had to have been
11 looked at, but we did not have any.

12 Q. So I'm sorry, I'm going to back up. For the
13 period -- For the entire period that was subject to the
14 request, from April 27th, 2015 to now, you did search the
15 Auditor's phone for text messages?

16 A. I didn't search them.

17 Q. Okay. What was the person's name who searched
18 them?

19 A. I consulted with our general counsel.

20 Q. Okay. So the person -- And that's Paul Harper,
21 the general counsel?

22 A. Yes.

23 Q. Did Paul Harper search the Auditor's cell phone
24 for text messages?

25 A. I don't know.

1 Q. Okay. In your response, in either of your
2 responses, have you ever produced a text message from the
3 Auditor?

4 A. No.

5 Q. Have you ever produced a voicemail transcript?

6 A. No.

7 Q. Have you ever seen a text message from the
8 Auditor?

9 A. Me personally?

10 Q. Yes.

11 A. Not that I remember.

12 Q. You did not review them?

13 A. I did not review them, no.

14 Q. But are you aware that such text messages and
15 voice messages from the Auditor exist?

16 A. I did not see them.

17 Q. Are you aware that they exist?

18 A. I didn't see them, so no.

19 Q. I'm going to ask. Do you have any reason -- Let
20 me ask the question differently. I'm not asking if you saw
21 them personally. I'm asking if you have knowledge that
22 they exist. Do you have any knowledge that they exist?

23 A. For that time period we do not have any that
24 exist.

25 Q. That time period being the time period from

1 April 27th of 2015 -- I'm sorry, April 27th, 2015 to the
2 date of the request, May 26, 2017?

3 A. Correct.

4 Q. So you do not have any knowledge of any text
5 messages to or from the Auditor on her governmental cell
6 phone for that period?

7 A. That is correct.

8 Q. Thank you. I do want to explore one more thing
9 on that. You said you spoke to the general counsel about
10 the text messages?

11 A. Yes.

12 Q. What did you speak -- What was the substance of
13 that conversation?

14 MR. ANDERSON: Well, I'm just going to caution the
15 witness to the extent it gets into attorney-client
16 privilege, fashioned in some way. We don't waive
17 attorney-client privilege, if that's the nature of the
18 communication.

19 THE WITNESS: I think that is probably attorney-client
20 privilege based on what he and I discussed.

21 BY MR. HURST:

22 Q. When was the conversation?

23 A. Oh, I don't remember.

24 Q. Was it last week?

25 A. Oh, no.

1 Q. Was it last month?

2 A. No. It would have probably been sometime after
3 the request came in in June maybe. I honestly couldn't
4 tell you. It was during the process of collecting the
5 documents.

6 Q. During the -- So you spoke to Paul Harper about
7 the Auditor's text messages. Why did you speak to Paul
8 Harper about the Auditor's text messages?

9 A. Because he is our general counsel.

10 Q. So he would have access to her text messages?

11 A. I don't know if he would have access to them or
12 not. I had a question about them and I went and talked to
13 him about them.

14 Q. Did you discuss the Auditor's text messages with
15 the Auditor herself?

16 A. Not that I remember.

17 MR. HURST: Excuse me, Your Honor.

18 BY MR. HURST:

19 Q. And I made a mess out of my documents here. The
20 May 8th request, a request for documents relating to the
21 Treasurer, the audit of the Treasurer, specifically
22 unclaimed property issue, where did you look for those
23 documents?

24 A. I consulted with the general counsel. And the
25 response was for documents relating to the audit, which is

1 our auditors performing their audit, so they keep an audit
2 file and that is statutorily confidential. Those are the
3 documents that auditors have gone through and determined to
4 preserve in accordance with auditing standards, so I knew
5 they were in that file so I did not go look at that file
6 because the auditors have already made that determination.

7 Q. So it is a hard copy file?

8 A. I don't know if there is a hard copy file. I
9 know there's an electronic file.

10 Q. You don't know if there is a hard copy file?

11 A. There may be.

12 Q. There may be, you didn't look?

13 A. Well, that is because the audit file is
14 something auditors have already determined was confidential
15 so I did not go look at the file.

16 Q. So prior to this Sunshine request, the auditors
17 determined that those documents are closed?

18 A. Yes. They put together an audit file and that
19 audit file is what our auditors look at and make a
20 determination that that information needs to be preserved
21 for auditing standards and they have an audit file they put
22 together.

23 Q. So every single document that is in the audit
24 file is privileged?

25 A. Yes. It would be confidential as audit work

1 paperwork, other related supported materials or
2 communications between auditor and auditee.

3 Q. Are all communications related to the audit in
4 the audit file?

5 A. They may not all be there, not all the audit
6 paperwork may be in there, but anything related to that
7 audit file that our auditors would have would be
8 confidential.

9 Q. Auditors talk by e-mail, communicate by e-mail
10 all the time?

11 A. Yes.

12 Q. And they communicate about all sorts of things?

13 MR. ANDERSON: Object to the question as being vague.

14 MR. HURST: I'll withdraw the question.

15 BY MR. HURST:

16 Q. Members of the or employees of the Auditor
17 communicate with third parties about audits. Is that true?

18 A. If they are conducting an audit, they may need
19 to inject a third party, yes, as a part of their audit
20 process and audit standards.

21 Q. Those documents could relate to an audit?

22 A. They could and they would be confidential, just
23 like any documents within our office.

24 Q. So all communications of third parties are
25 confidential?

1 A. All communications between audit and auditee,
2 all communications that are audit work paperwork or related
3 supported material of the audit as our auditors conducting
4 the audit and they are collecting information is
5 confidential.

6 Q. And communications with a third party is not the
7 auditee?

8 A. Correct. They would be audit work paperwork or
9 other supported related material.

10 Q. Communication with the press would be covered?

11 A. Our audit staff, I don't know if our audit
12 staff, there would be no communications with the press.

13 Q. Did you look?

14 A. For communications with the press?

15 Q. Yes.

16 A. No.

17 Q. There could be audit-related communications with
18 the press and you didn't look for them?

19 A. If it is an audit-related communication with the
20 press, it would be confidential because it would be a part
21 of the audit process. I'm not sure I understand your
22 question. But if it is audit related, if for some reason
23 we would have to reach up for the press for a part of one
24 of our audits, then that would be confidential as audit
25 work paperwork or other supported related material, if I

1 understand your question.

2 Q. Who decides what is audit work product?

3 A. Our auditors work on that part of their process.

4 Q. The auditors decide?

5 A. The auditors decide as a part of their audit
6 process what they are going to put in their file and their
7 communications back and forth with each other, they would
8 decide what would be audit related.

9 Q. What is the standard for audit work product?

10 A. What do you mean?

11 Q. Well, that's the question. How do you decide
12 what is audit work product?

13 A. That is something that our auditors would
14 decide.

15 Q. You didn't make that decision?

16 A. No. The only time I would make a decision is if
17 I was going through e-mails and I would see something that
18 was related to an audit. Like if I was going through Paul
19 Harper's e-mails, for example, because this entity had
20 three very large scope Sunshine Law requests, 40,000 of
21 Paul's e-mails are going to have audit paperwork and
22 communication in them, so when I'm going through those, if
23 they are related to an audit, then they are pulled out as
24 being confidential.

25 Q. So you make the determination in that case?

1 A. I would make that determination in consultation
2 with the general counsel.

3 Q. And these requests sought all documents related
4 to the audit?

5 A. Correct.

6 Q. Including communications with anyone outside the
7 Auditors's office?

8 A. If it was part of the audit, it would have been
9 audit work paperwork.

10 Q. In the Auditor's view, they are all
11 confidential?

12 A. Correct.

13 Q. The May 8th request, you responded on May 12th.
14 Is that correct?

15 A. That's correct.

16 Q. And that response, Exhibit 6 -- if I can find it
17 quickly. Outstanding. -- it states, as to your request
18 for records relating to the audit of State Treasurer's
19 office, I attached a copy of documents responsive to your
20 request. A copy of the audit is also available at the
21 website. That's the audit. You produced the audit in
22 response to the request?

23 A. Right. That is what is public.

24 Q. The remaining requested information is
25 confidential under five sections of the code?

1 A. Correct.

2 Q. So you're not working on that request any more?

3 A. No.

4 Q. You're not producing any more documents on that
5 request?

6 A. No.

7 Q. That request is closed from the perspective of
8 your office?

9 A. Yes.

10 Q. This particular request, there is nothing more
11 to be done?

12 A. Yes.

13 Q. The May 2nd request asks for Paul Harper and
14 Douglas Nelson's e-mails?

15 A. Yes.

16 Q. And I want to talk about Douglas Nelson's
17 e-mails. I haven't seen the production that you guys just
18 made. In the first two -- That request was made on
19 May 2nd?

20 A. Yes.

21 Q. And you didn't produce any of his e-mails on
22 May 5th?

23 A. That is correct, we were in the process of
24 collecting them.

25 Q. And you didn't produce any of his e-mails on

1 June 1st, which June 2nd was the response?

2 A. Correct.

3 Q. And on June 30th you produced 114 pages of
4 Douglas Nelson's e-mails?

5 A. Correct.

6 Q. From the period of April 27, 2015 to October 21,
7 2016?

8 A. I would have to look at the letter.

9 Q. The letter doesn't split them out. I have them
10 if you want to look at them.

11 Let me ask you this question. None of those e-mails
12 were to or from Douglas Nelson, were they?

13 A. When we did our search for Douglas Nelson, which
14 is all you asked for, what your client asked for, our IT
15 staff gave to me all of the e-mails that were to and from
16 Douglas Nelson from April 27, 2015 to May 2, 2017, for us
17 to look at, which we were in the process of reviewing. He
18 was not employed at the Auditor's office at the time, so
19 those were the e-mails that came up. So we went ahead --
20 And there is a long list of people on those e-mails. So
21 because it came up in our search, we went ahead and turned
22 those over.

23 Q. You went and reviewed the documents?

24 A. I reviewed all the documents, yes.

25 Q. So there is an additional group of e-mails that

1 aren't actually responsive to the request but you did
2 review them?

3 A. I don't understand your question.

4 Q. Those e-mails weren't to or from Douglas Nelson,
5 were they?

6 A. What e-mails are you talking about?

7 Q. The e-mails you produced in the first
8 production.

9 A. I don't know if they are to or from him. When
10 we did the search for e-mails to or from him, they came up
11 so we went ahead and disclosed those.

12 Q. Did you search for e-mails to or from his
13 account?

14 A. What do you mean account? His account as
15 Commissioner of OA?

16 Q. Douglas Nelson has or had, when he worked for
17 the Auditor's office, an e-mail address, correct?

18 A. Yes.

19 Q. And he used that e-mail address to send and
20 receive e-mails?

21 A. Yes.

22 Q. And that e-mail address is attached to an e-mail
23 account?

24 A. Yes.

25 Q. Did you search that e-mail account for Douglas

1 Nelson's e-mails?

2 A. Yes. That is what we're in the process of
3 looking at right now. We're doing it at the same time
4 we're doing Paul's. They came in together and we're doing
5 them simultaneously, that is why you're getting them at the
6 same time.

7 Q. Fair enough. I understand that. The first
8 production that you made didn't include any e-mails to or
9 from Douglas Nelson. Is that correct?

10 A. I would not agree to that because when we did
11 our search, those were the e-mails that came up to or from
12 him so we went ahead and produced those. Is his name on
13 there? I did not see it but because that was our search,
14 we turned it over.

15 Q. Okay. So you didn't see his name in any of the
16 two or from --

17 A. No. In transparency we turned it over because
18 if I missed a name in that big block of people, if I missed
19 his name in that, I didn't want to inadvertently not turn
20 it over, so we erred on the side of transparency and turned
21 them over.

22 Q. And in the 26,000 documents that you've reviewed
23 so far, you included those e-mails?

24 A. Yes.

25 Q. We have one more section we want to work through

1 and then quit having my raspy voice in your ear.

2 In your June 1st -- So now we're going to talk about
3 the Revenue related e-mails. So e-mails we sought that
4 were related to, MAF client sought, they were related to
5 the Auditor's decision to audit Revenue for unclaimed --
6 for the timing of unclaimed property, that is where we're
7 going. That's part of the May 2nd request.

8 I kind of want to work through it this way. In the
9 first response on May 5th, you provided nine pages of
10 documents. Is that right?

11 A. That's correct.

12 Q. So subpoena and some audit and some
13 communications between auditor and auditee?

14 A. We provided the subpoena, the attached exhibits
15 to the subpoena, and a corresponding letter.

16 Q. And that letter was from the auditor to the
17 auditee?

18 A. Well, it was the final refusal by the Department
19 of Revenue which resulted in the subpoena.

20 Q. Okay. So it was a communication from the
21 auditee to the auditor?

22 A. Yes.

23 Q. Okay. And it was nine pages of documents and
24 you stated in the letter that the remaining information is
25 confidential?

1 A. Yes.

2 Q. So at that point you were done producing
3 documents?

4 A. Yes.

5 Q. There was nothing more to be done on that
6 request?

7 A. Yes.

8 Q. And then on June 21st or June 17th, I guess, MAF
9 filed this lawsuit?

10 A. Yes.

11 Q. And on June 21st the Auditor was served with a
12 copy of it?

13 A. Okay.

14 MR. ANDERSON: I'm going to object. Maybe we should
15 take judicial notice of the -- I hate to object. We're in
16 the wrong month, is what I'm saying. July.

17 MR. HURST: I'm sorry, July. I apologize.

18 MR. ANDERSON: No problem.

19 BY MR. HURST:

20 Q. July 21st --

21 A. Yes.

22 Q. -- the Auditor received notice of the lawsuit
23 and on August 1st, nine days later --

24 A. Yeah, the day we said we would respond.

25 Q. Right. But we're talking about the Revenue

1 related and you just told me that you were done producing?

2 A. Right.

3 Q. There was nothing more to be produced after the
4 May 5th response --

5 A. Right.

6 Q. -- you were done with that ? But then on
7 August 1st you produced an additional 697 documents?

8 A. That is based on the fact we said in the letter,
9 when we got the lawsuit, we looked at it and realized,
10 based on the reference in your lawsuit, that we had not
11 provided information like to the press, you had like
12 twitter account, so what we did was, when we first looked
13 at it, it was related to the audit. When we go to your
14 lawsuit, we looked at it and, again, erring on the side of
15 transparency, we went back and did a search for everything
16 that had to do with the Department of Revenue in terms of
17 the audit and produced everything where there was a
18 reference to the Department of Revenue audit, even if it
19 was not, as we first interpreted, relating to the
20 performance of the audit.

21 Q. So this says all records -- This is Defendant's
22 Exhibit 1, our May 2nd request. All records of
23 communication between or among the office of the Auditor,
24 including any agent, and any other party or parties related
25 to the audit.

1 A. Relating -- Which letter are you looking at?

2 Q. I'll hand it to you. We're on the second to
3 last paragraph.

4 A. Relating to the audit. Relating to the
5 performance of the audit.

6 Q. And these 697 pages of documents are all about
7 communications with the press about the audit?

8 A. They reference the audit, but they are not about
9 the performance of the audit by our auditors. So on the
10 issue of transparency we just did a global search for the
11 Department of Revenue, anything having to do with the
12 timeliness, any reference to it.

13 Q. All of the documents that were related to the
14 audit?

15 A. Well, related to -- We had documents that were
16 related to the performance of the audit which is what you
17 originally asked for.

18 Q. I'm going to ask you to read me the -- this
19 paragraph, I'm going to point, the second paragraph, just
20 read that for me. This is from Defendant's Exhibit 1.

21 A. Relating to your audit.

22 Q. Not relating to the performance of the audit?

23 A. But when you look at relating to an audit, has
24 to do with relating to the performance of an audit. If you
25 want every document that mentions the word Department of

1 Revenue and audit, that is a different request.

2 Q. Okay. And that is not the search you did
3 originally?

4 A. No. Our interpretation was that it was related
5 to our audit our auditors are performing.

6 Q. One last question. Isn't it true that
7 communications that the Auditor's office has with the press
8 are confidential?

9 A. Say that question again.

10 Q. Isn't it true that the communications the
11 Auditor's office has with the press are confidential?

12 A. What kind of communication?

13 Q. Well, you told me earlier today, when I asked
14 you about communications between Auditor's office and the
15 press, that those were confidential?

16 A. That is not what I said. I said, if for some
17 reason we were to reach out to the press for communication
18 relating to the performance of an audit, that would be
19 confidential.

20 Q. Okay. And this request --

21 MR. HURST: I have no further questions.

22 MR. ANDERSON: Just about two or three and I'll be
23 done.

24 THE COURT: All right.

25

1 REDIRECT EXAMINATION BY MR. ANDERSON:

2 Q. While we're talking about the May 2nd request
3 for the audit-related material, you provided a copy of the
4 subpoena and a couple of letters that were related to the
5 performance of the audit?

6 A. We produced the subpoena with the attached
7 exhibits and then a letter, which I would have to see the
8 letter, but a letter that was the final refusal by the
9 Department of Revenue that resulted in the subpoena.

10 Q. Okay. Why did you produce those letters?

11 A. Because it has been --

12 Q. Let me rephrase it. Why weren't those letters
13 confidential?

14 A. Because it has been determined by our office
15 that if you are going to issue a subpoena and you finalize
16 the issuance of a subpoena, we know that is going to be
17 attached to an appendix of the audit so we know it is going
18 to be public; so in the interest of transparency, if we do
19 a subpoena, we go ahead and turn that over.

20 Q. Was there a subpoena in the Treasurer's office?

21 A. No.

22 Q. There was nothing to turn over there?

23 A. No.

24 Q. There has been requests both in the discovery
25 and at least by implication in the lawsuit that the

1 Plaintiffs may have been due some kind of a log of
2 documents that weren't turned over. Are you familiar with
3 that?

4 A. Yes.

5 MR. HURST: Objection, Your Honor. It is beyond the
6 scope.

7 THE COURT: Overruled.

8 BY MR. ANDERSON:

9 Q. And just real quickly, if you were to create a
10 log showing the date, the name of correspondent, to, from
11 and subject line, what is the harm in doing that? Is there
12 something that could be revealed in audit-related paperwork
13 that would be violating the law to do such a log?

14 A. Well, you would have to go through each document
15 and make sure that whatever you put in that log did not
16 give any indication of confidential audit information.

17 Q. And when the audit -- What the auditor doesn't
18 audit, the audit staff does go out and audits and contacts
19 people, they take notes of people they speak with. Is that
20 correct?

21 A. I believe they do.

22 Q. Okay. And there may be information in those
23 files about whistleblowers, people who may have called the
24 Auditor's hot line to report such information that the
25 auditor may look in to. Is that correct?

1 A. Yes.

2 Q. And that is protected by law as well?

3 A. Yes.

4 Q. And is it the case that if some information were
5 released, such as the name of a secretary who talked to an
6 audit staff person doing an audit, that person's job might
7 be in jeopardy, you don't know?

8 A. I don't know. It could be.

9 Q. That is all protected in that coverage of
10 audited paperwork?

11 A. That is why our whistleblower protection is in
12 place to make sure people are protected.

13 Q. The searches that we've done and the production
14 that we've done, all the work that you've done on these
15 three Sunshine Law requests, how much has been charged to
16 the Plaintiff for that?

17 A. Nothing. No money. Nothing has been charged.

18 Q. And, in fact, in their three requests they asked
19 for a waiver of fees. Is that correct?

20 A. Yes, they did.

21 Q. We never charged them, did we?

22 A. No.

23 MR. ANDERSON: Judge, I would like the court to just
24 take judicial notice of its record or of its file of the
25 service dates of the discovery relative to the filing of

1 the petition, or I should say the service of the petition.
2 The first request for production of documents in the first
3 interrogatories were served with the petition July 21st.
4 The second interrogatory and second request for production
5 of documents was served August 16th, and the third
6 interrogatories and request for production of documents was
7 served August 23rd.

8 That is all we have, Your Honor.

9 THE COURT: Anything else?

10 MR. HURST: No thank you, Your Honor.

11 THE COURT: Thank you, ma'am. You may step down.

12 Anything else in support of your motion?

13 MR. ANDERSON: No further evidence, Judge.

14 THE COURT: Do you wish to offer any evidence for your
15 motion?

16 MR. GREIM: No, Your Honor.

17 THE COURT: All right. Am I correct in understanding,
18 and you are welcome to look back at Ms. Wood with this,
19 that the May 2nd -- you believe that the May 2nd request
20 has been fully complied with?

21 MR. ANDERSON: Yes. No, sorry.

22 MR. HARPER: Sorry.

23 THE COURT: Are we all in agreement, we do not
24 dispute the May 2nd request, it has been made, it has been
25 responded to, whatever you're going to respond with has

1 been done?

2 MR. ANDERSON: Not for May 2nd.

3 THE COURT: Not for May 2nd.

4 MR. ANDERSON: No.

5 THE COURT: How about May 9th?

6 MR. ANDERSON: That's the Treasurer, we're done with
7 the Treasurer.

8 THE COURT: Okay. But not May 2nd.

9 MR. ANDERSON: Not May 2nd, not May 26th.

10 THE COURT: Okay. I thought that's what was said.

11 MR. ANDERSON: In terms of what we received. It was
12 sent May 26th.

13 MR. HURST: Are you done with that one?

14 THE COURT: All right. Make sure I understood that
15 correctly.

16 So the issue really is, you would like a protective
17 order which says, you know, let me finish responding to
18 everything and then look at the discovery.

19 MR. ANDERSON: Yes. And --

20 THE COURT: Okay.

21 MR. ANDERSON: Well, there is not actually an "and" to
22 that, but the fill in is this, Judge. We're not trying to
23 do something dramatic, just throw them out on their ear or
24 don't give them any discovery, because that is just plainly
25 bizarre. The discovery is tied to the pleadings. The

1 pleadings were filed before they really got many documents,
2 even though they were receiving communications as to our
3 timetable, unopposed communications. They are not required
4 to communicate with us by law, but I've worked with enough
5 state departments and Sunshine Law requests there is
6 usually a fair amount of communication, someone makes a
7 request especially if they are not getting what they want,
8 not getting it fast enough, too much, or whatever the
9 complaint is. It was critics in this case and it still is.

10 So what we want to see, let's get to the end of all
11 this work that we are doing and then we want to take a look
12 at the pleadings of the case, because right now, even the
13 facts as they exist today make the pleadings that were
14 filed back in July practically fiction. There is hardly
15 any facts alleged in that case, other than the fact that
16 letters were sent back and forth. We need something in the
17 petition that alleges facts. Because it is a fact pleading
18 case, then we know what to litigate, and we know what is
19 relevant about the discovery; otherwise, we're going to be
20 in here law day about some argument why something
21 doesn't -- isn't relevant or should be asked. I don't
22 think it really makes a lot of sense to carve it up. They
23 filed the claim. But why carve up their claims, this piece
24 is done, that piece isn't done, this piece will be done in
25 another few weeks, that kind of thing, because we're back

1 to where we started, still based on the same pleadings
2 which really don't state the case, they really don't
3 summarize this case. We want to get to the point, we're
4 done with the Sunshine Law requests, because that usually
5 is when you file the lawsuit. You get done with the
6 Sunshine Law requests, they file their case, state the
7 facts, we may have arguments over whether the facts are
8 sufficient or not, but right now it is almost like a
9 federal court case.

10 THE COURT: All right.

11 MR. ANDERSON: That is a bad word.

12 THE COURT: Mr. Greim.

13 MR. GREIM: Respectfully, I don't think that
14 accurately states the claim or what the claims in the case
15 are. And this little chart that I handed out earlier is a
16 way to look at this. The May 2nd request that we all refer
17 to really has three parts. And the heavy document side of
18 this case, the part that is actually still unfolding is
19 really the top row and the bottom row. The top and the
20 bottom. That is where all the documents are because the
21 top request is all the Harper and Nelson communications.
22 The bottom line is the Galloway. I think we just learned
23 today that Galloway is done. I think I understood that
24 correctly. So the only piece that still exists is what are
25 they going to produce for the later time period that they

1 haven't marched through for yet on Harper and Nelson,
2 that's the only issue.

3 But, Your Honor, when we filed this case, there were
4 problems already. For one, there was delay and that's
5 alleged. I won't go through all the pleadings. There is
6 an allegation there is really no facts in the pleading. I
7 think that the petition is fact pled and it runs through
8 each of these problems. But the May 8th one is really
9 important. That is communications with other people about
10 the audit of the Treasurer. That was done. When we filed
11 the lawsuit, Galloway had claimed that basically you get
12 the audit and everything else is closed. And we knew that
13 that can't be right, there has got to be other
14 communications out there. The claim of closure was made
15 before we filed the lawsuit. They've admitted that they
16 are all done there.

17 This is the important thing that this case is going to
18 explore. We got a good sense of it here today. And if we
19 can actually take the deposition of employees in the office
20 after looking at the documents, we will really explore it,
21 is this, who decides what the confidential audit file
22 actually is. What if there are communications between the
23 Auditor's office and other people about, hey, here is an
24 idea for an audit. I don't mean whistleblowers. Here is
25 why you need to go after this official or this office or,

1 hey, here is a tip, we're going to be releasing something
2 on this audit soon. There is all kind of communications,
3 Your Honor, that are not actually covered by the privilege
4 and so we need to know what is actually being claimed to be
5 closed because of this privilege. We don't know that right
6 now. All we get is a document and statutes saying, if we
7 have anything else, it is all closed under these statutes,
8 without knowing the envelope information or what is at
9 issue now. If that was really okay, if that is all the
10 Sunshine Law does, then the Sunshine Law is useless unless
11 you already know about the document and you just want to
12 get that agency's copy, that cannot be the law. We
13 wouldn't have all the information we have about the IRS, if
14 that were the law. It works the same way at the federal
15 level.

16 Your Honor, I don't want to go too far in the merits.
17 The point is that the production on on these three critical
18 ones in the middle of our chart, Counts II and III, those
19 productions are done and we should now be able to test what
20 have they withheld and what is the actual legal basis and
21 if it is a communication from someone to the press or to
22 some ally in government about the audit, and they are
23 claiming, well, that is related to the performance or
24 something and that has been pulled over, we want to know
25 and we want to litigate that and get that open, because

1 those should not be closed. And so, Your Honor, that is
2 what the case would be.

3 You know, we didn't need to have a discovery motion
4 here today because on the really heavy requests, the very
5 top set and the very bottom set, we were willing to say,
6 you go produce all the stuff that you withheld and produce
7 logs for all that. Less focus on the low document ones
8 right in the middle here and forge ahead and get those
9 materials. Let's learn about your process. A lot of our
10 logs and requests, which were not gone through here, are
11 about what is the process that was used. We heard some of
12 it today from Barbara Wood but not all of it. And so, Your
13 Honor, that is what we should forge ahead with in this
14 case.

15 We're willing to limit discovery about the on-going
16 production on the first part of the May 2nd request. We've
17 always been willing to do that, yet somehow we were steered
18 into this on and off switch of a hearing, either everything
19 is stayed or it's not. And it is almost as if these big
20 numbers, the thought was we come in and say how burdensome
21 it is and maybe we can shut everything down, and that is
22 not the state of the pleadings and not the state of the
23 dispute right now, so we would like to move ahead and we
24 continue to offer, as we have in the beginning, that on the
25 rogs and RFP's that go to the very first stripe across the

1 top here, the Harper and Nelson e-mails, we will hold off
2 on probing what was withheld, you know, what is closed.
3 The only thing we want on that one is, process information,
4 what process was used.

5 MR. ANDERSON: Brief for joinder?

6 THE COURT: Sure.

7 MR. ANDERSON: I'm not sure what hold off from the
8 beginning is referring to. This is a Sunshine Law case and
9 the first element is, there is a record that was closed and
10 that record has to be identified in some way or another.
11 If you don't know what record you're talking about, then
12 you don't really meet the first element of Sunshine Law
13 days. It isn't like FOIA. It isn't like federal court
14 either. The Missouri Sunshine Law is open records,
15 meetings. You have to talk about something you can
16 reasonably identify. If you can do what they're trying to
17 do here, which is make a request that is almost certainly
18 going to be denied, which is to go into an auditor, and
19 frankly the auditor has an unbelievable amount of authority
20 to get into the records of anybody spending state tax
21 dollars, if you can get into the -- She can get into those
22 records and look at that, the public, they can get in the
23 records simply by requesting them and getting a denial,
24 show us what we're not supposed to see and we'll check your
25 math on that, that just defies logic; so what does it mean,

1 it either is going to be on the bench for a judge review --
2 yeah, I know -- or it is going to be a team of special
3 masters to try to go through audit records. If you don't
4 have to talk about the records that you are talking about,
5 you are really not in the Sunshine Law. Maybe there is
6 another case they allege here but it is not a Sunshine Law
7 violation case.

8 So, Judge, we just think that right now they are
9 getting their records. We need to look at the pleadings
10 and proceed from what we know about or they need to tell us
11 what it is that they want. We've given them so much
12 information. They've even complained about how much
13 information we gave them, and I don't blame them, it's too
14 much information. The requests were too broad. If getting
15 confidential documents is simply by making a broad request,
16 then getting passed the confidentiality laws is basically
17 worth the price of the filing fee.

18 THE COURT: Okay. Well, the answer is somewhere in
19 the middle because this argument is not new. I made it at
20 DPS. We've made it at the Department of Corrections. I'll
21 think of some more agencies. You know, that is a public
22 governmental body. Is there a record? Should it be
23 closed, is it closed? And if it is not closed, was the
24 response in compliance with the law? So I'll do my best to
25 craft some sort of direction to go with this so that we can

1 move it forward because I think you guys are entitled to
2 respond to the request. At the same time, Mr. Greim is
3 entitled to, you know, make some progress with his lawsuit,
4 and I will see if I can't craft an answer so we can achieve
5 both of those goals. I don't hear them saying, we're done,
6 you don't get any more and by the way I'm not going to tell
7 you if you've got anything. It is just working through
8 this because, you know, the odd thing here about these
9 requests, if you made these in a lawsuit, in discovery, I
10 mean, you're not going to get them in discovery. The
11 Sunshine Law, in the wisdom of the legislature, has not
12 provided it that way. So we've got to look through what is
13 reasonable and possible and I'll do my best to do that.
14 Show the cause submitted, taken under advisement.

15 MR. ANDERSON: May we respond, what was filed
16 yesterday afternoon?

17 THE COURT: Yes. Give me that in the next ten days.

18 MR. ANDERSON: Yes. Thank you, Judge.

19 MR. GREIM: The only thing I would say quickly, we
20 learned a lot about what is being withheld just from this
21 testimony today, and I wonder if we couldn't supplement by
22 adding no more than three pages to what we just filed and
23 then they can look and see what we say and they can respond
24 to that.

25 MR. ANDERSON: If I can have ten days after that, I

1 have no problem.

2 THE COURT: Yes. Why don't you take ten, give me ten,
3 and that will give me time to take care of what else I've
4 got.

5 Thank you. We will be off the record.

6 (Defendant's Exhibit No. 11, Plaintiff's First Request
7 for Production of Documents dated July 21, 2017, was marked
8 for identification.)

9 (Defendant's Exhibit No. 12, Plaintiff's Second
10 Interrogatories Dated August 16, 2017, was marked for
11 identification.)

12 (Defendant's Exhibit No. 13, Plaintiff's Second
13 Request for Production of Documents dated August 16, 2017,
14 was marked for identification.)

15 (Defendant's Exhibit No. 14, Plaintiff's Third
16 Interrogatories dated August 23, 2017, was marked for
17 identification.)

18 (Defendant's Exhibit No. 15, Plaintiff's Third Request
19 for Production of Documents dated August 23, 2017, was
20 marked for identification.)

21 (Defendant's Exhibit No. 1, May 2, 2017 Request for
22 Records, was received into evidence.)

23 (Defendant's Exhibit No. 2, May 5, 2017 Response to
24 May 2, 2017 Request for Records, was received into
25 evidence.)

1 (Defendant's Exhibit No. 3, June 2, 2017 Response to
2 May 2, 2017 Request for Records, was received into
3 evidence.)

4 (Defendant's Exhibit No. 4, August 1, 2017 Response to
5 May 2, 2017 Request for Records, was received into
6 evidence.)

7 (Defendant's Exhibit No. 5, May 8, 2017 Request for
8 Records, was received into evidence.)

9 (Defendant's Exhibit No. 6, May 12, 2017 Response to
10 may 8, 2017 Request for Records, was received into
11 evidence.)

12 (Defendant's Exhibit No. 7, May 26, 2017 Request for
13 Records, was received into evidence.)

14 (Defendant's Exhibit No. 8, June 1, 2017 Response to
15 May 26, 2017 Request for Records, was received into
16 evidence.)

17 (Defendant's Exhibit No. 9, June 30, 2017 Response to
18 may 26, 2017 and May 1, 2017 Request for Records, was
19 received into evidence.)

20 (Defendant's Exhibit No. 10, Plaintiff's First
21 Interrogatories dated July 21, 2017, was received into
22 evidence.)

23 (Defendant's Exhibit No. 11, Plaintiff's First Request
24 for Production of Documents dated July 21, 2017, was
25 received into evidence.)

1 (Defendant's Exhibit No. 12, Plaintiff's Second
2 Interrogatories dated August 16, 2017, was received into
3 evidence.)

4 (Defendant's Exhibit No. 13, Plaintiff's Second
5 Request for Production of Documents dated August 16, 2017,
6 was received into evidence.)

7 (Defendant's Exhibit No. 14, Plaintiff's Third
8 Interrogatories dated August 23, 2017, was received into
9 evidence.)

10 (Defendant's Exhibit No. 15, Plaintiff's Third Request
11 for Production of Documents dated August 23, 2017, was
12 received into evidence.)

13 (Defendant's Exhibit No. 16, August 29, 2017 Response
14 to May 26, 2017 Request for Records, was received into
15 evidence.)

16 (Defendant's Exhibit No. 17, August 31, 2017 Response
17 to May 2, 2017 Request for Records, was received into
18 evidence.)

19 (Defendant's Exhibit No. 18, September 27, 2017
20 Response to May 26, 2017 Request for Records, was received
21 into evidence.)

22 (Defendant's Exhibit No. 19, September 27, 2017
23 Response to May 2, 2017 Request for Records, was received
24 into evidence.)

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REPORTER'S CERTIFICATE

I, Kaye F. Asel, Certified Court Reporter, hereby certify that I was the official court reporter for Division I of the 19th County Circuit Court; that on September 29, 2017, I was present and reported all the proceedings had in Missouri Alliance for Freedom, Inc., Plaintiff, vs. State Auditor Nicole Galloway, Defendant, Case No. 17AC-CC00365. I further certify that the foregoing pages 84 contain a true and accurate reproduction of the proceedings transcribed.

_____, CCR
Official Court Reporter

Transcript completed: October 3, 2017