

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

v.

CONCORD MANAGEMENT AND  
CONSULTING LLC

Defendant.

CRIMINAL NUMBER:

1:18-cr-00032-2-DLF

**DEFENDANT CONCORD MANAGEMENT AND CONSULTING LLC’S MOTION TO  
COMPEL DISCOVERY FROM THE UNITED STATES**

Defendant Concord Management and Consulting LLC (“Defendant” or “Concord”), by and through undersigned counsel, respectfully requests pursuant to Fed. R. Cr. P. 16(d) that this Court compel the Special Counsel to provide discovery as to how the Special Counsel obtained confidential information the Defendant provided to Firewall Counsel pursuant to the Protective Order. In support of this motion, Defendant states as follows:

On August 23, 2018, in connection with a request (“Concord’s Request”) made pursuant to the Protective Order entered by the Court, Dkt. No. 42-1, Concord provided confidential information to Firewall Counsel. The Court was made aware of the nature of this information in the sealed portion of Concord’s Motion for Leave to Respond to the Government’s Supplemental Briefing Relating to Defendant’s Motion to Dismiss the Indictment, filed on October 22, 2018. Dkt. No. 70-4 (Concord’s “Motion for Leave”). Seven days after Concord’s Request, on August 30, 2018, Assistant Special Counsel L. Rush Atkinson took investigative action on the exact same information Concord provided to Firewall Counsel. Undersigned counsel learned about this on October 4, 2018, based on discovery provided by the Special Counsel’s Office. Immediately upon identifying this remarkable coincidence, on October 5, 2018, undersigned

counsel requested an explanation from the Special Counsel's Office, copying Firewall Counsel on the e-mail. The Special Counsel's Office responded to the email on October 7, 2018, but did not explain how it obtained the confidential information, stating instead that the trial team was unaware that undersigned counsel was in communication with Firewall Counsel and that "[n]o criminal process that has been turned over in discovery is derived from [those] communications."

Having received no further explanation or information from the government, undersigned counsel raised this issue with the Court in a filing made on October 22, 2018 in connection with the then-pending Motion to Dismiss. In response to questions from the Court, Firewall Counsel denied having any communication with the Special Counsel's Office. Undersigned counsel takes Firewall Counsel at his word that he did not disclose to the Special Counsel's Office the confidential information provided by Concord. However, Firewall Counsel has not substantively responded to requests from undersigned counsel to explain whether he communicated the confidential information to any other prosecutor or investigator who may have provided the information to the Special Counsel. Further, the Special Counsel has not explained how it came into possession of information that is identical to the confidential information Defendant provided to the Firewall Counsel.

Surely a remarkable coincidence is possible; that is, the Special Counsel obtained and acted on the confidential information from a source other than Defendant's communication with Firewall Counsel. But the refusal of both the Special Counsel and Firewall Counsel to explain belies any such conclusion.

In light of the foregoing, and to ensure ongoing compliance with the Protective Order, Concord requests that the Court order the Special Counsel's Office to provide discovery as to the manner by which it became aware of the exact same confidential information Defendant

provided to Firewall Counsel. *See, e.g., Al-Zarnouqi v. Obama*, 964 F.Supp.2d 1, 3-4 (D.D.C. 2013) (ordering government to submit information regarding violation of protective order). A proposed order is attached.

Dated: December 20, 2019

Respectfully submitted,

CONCORD MANAGEMENT AND  
CONSULTING LLC,

By Counsel,

/s/Eric A. Dubelier

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