

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

COOK COUNTY, ILLINOIS,

et al.,

Plaintiffs,

v.

CHAD F. WOLF, in his official capacity as
Acting Secretary of U.S. Department of
Homeland Security; U.S. DEPARTMENT OF
HOMELAND SECURITY,

et al.,

Defendants.

Case No. 19-cv-6334

Judge Gary Feinerman

JOINT STATUS REPORT REGARDING DISCOVERY

Pursuant to this Court's order dated December 2, 2020, Dkt. 233, Plaintiff ICIRR and Defendants submit the following joint status report addressing metadata and attorney-client-privilege issues.

I. Discovery Status Update

Since the last status hearing, Defendants produced amended privilege logs for their first and second productions, and the parties met and conferred by phone on December 10, 2020 regarding discovery issues in the first and second privilege logs. Defendants produced the privilege log for their third production on December 14, 2020. Defendants do not currently anticipate future productions.

II. Metadata and Custodians

The parties' discussion regarding metadata has been productive. Defendants agreed to produce metadata for all documents produced to date that do not have an associated privilege claim (e.g., attorney-client privilege (ACP) or deliberative process privilege (DPP)) in the coming days. Defendants agreed this will include metadata for documents that Defendants have determined contain personal privacy information, subject to the Confidentiality Order, Dkt. 212

at ¶ 2(d).

The parties reached a compromise that Defendants may at this time hold back the metadata for documents that are subject to a claim of privilege. Defendants explained that releasing the metadata for these documents would require an additional step of attorney review. The parties agreed to negotiate in good faith the release of metadata for the documents subject to a claim of privilege after the Court's ruling on the applicability of the deliberative process privilege to the documents, as the bulk of the documents are withheld on that basis.

III. Attorney-Client Privilege

Defendants reviewed the 20 ACP documents that Plaintiff ICIRR previously flagged for discussion from the first and second productions. Defendants amended the privilege log descriptions for seven entries and removed the tag for one document. The amended privilege logs also provide the names that were initially anonymized (but are now marked as confidential pursuant to the confidentiality order).

Defendants' privilege log for the third production was produced after the parties' December 10, 2020 phone conference, and the parties recognize their duty to meet and confer regarding any privilege issues within.

A. DPP and ACP Overlap

Plaintiff ICIRR noted during the parties' December 10, 2020 meet and confer that for some of the remaining ACP documents at issue, the log demonstrates that they are drafts of the Rule and include some amount of "legal input from attorneys" but were withheld in full on the ACP/DPP claim of privilege. Defendants explained that if the DPP privilege is lifted, Defendants will undergo an individual review of the document and redact where appropriate ACP material. Defendants agreed that they will not take the position that because a document was withheld in full previously under an ACP/DPP claim, it should necessarily remain withheld in full on ACP alone.

B. ACP Descriptions

Putting aside documents for which alleged ACP material could be redacted if the DPP privilege were to fall away (*see* III.A.), the parties are at impasse on four ACP documents in the first and second productions (DHS_NDILL_0000018, 22, 839, and 841) even after they have met and conferred by telephone.

Plaintiff asserts that these entries do not establish that the predominant purpose of these nine documents was to render or solicit *legal* advice from an attorney. Plaintiff asserts that the entries for these documents instead indicate that they may have been policy or other discussions involving attorneys that would not satisfy the claim of privilege. Defendants assert these documents were properly coded ACP, and that their privilege descriptions are adequate.

Furthermore, all four of these documents were also withheld on DPP grounds, and thus Defendants assert a determination that ACP is inapplicable to these documents would have no material effect.

After receiving Defendants' third privilege log on the evening of December 14, Plaintiff raised on December 15, 2020, five additional documents with descriptions it asserts are insufficient to establish ACP. The parties are meeting and conferring over these documents.

Dated: December 15, 2020

Respectfully submitted,

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