

Exhibit 3

—LAW OFFICES—
KENNETH N. FLAXMAN P.C.

By Email

June 1, 2020

Dana Brisbon
Workers' Compensation
Civil Actions Bureau
Cook County State's Attorney's Office
500 Richard J. Daley Center
Chicago, IL 60602

Re: Subpoena Response in Schaeffer v. Chicago, 19-cv-771

Dear Counsel:

This is a follow up on the documents you produced on behalf of the State's Attorney's Office in this matter.

Your privilege log identifies 101 pages that you are withholding on 51 separate claims of privilege. The log, however, does not comply with Federal Rule of Civil Procedure 26(b)(5) because it fails to provide enough specificity to permit plaintiff to assess the claimed privileges. *See, e.g., Urban & Fox Lake Corp. v. Nationwide Affordable Hous. Fund 4, LLC*, 334 F.R.D. 149, 164 (N.D. Ill. 2020).

I therefore ask that you provide a privilege log that complies with the Federal Rules within 14 days. I also suggest that you withdraw the following asserted privileges, each of which is wholly without merit:

1. You object to 46 documents on grounds of "deliberative privilege." This privilege does not apply to state law claims, such as plaintiff's malicious prosecution claim. *Simon v. Nw. Univ.*, 259 F. Supp. 3d 848, 852 (N.D. Ill. 2017). As applied to federal claims, this privilege covers memoranda and discussions within the Executive Branch leading up to the formulation of an official position. *United States v. Zingsheim*, 384 F.3d 867, 872 (7th Cir. 2004). It is unlikely that anything in the State's Attorney file can meet this standard.
2. You object to 83 pages by invoking 725 ILCS 120/4. This claim of privilege is frivolous. The Illinois statute respecting the rights of crime victims has nothing to do with discovery. You appear to have withheld 8 documents ("CCSAO Investigations Bureau Request Forms," pages 65, 86, 103, 111, 114, 117-119) solely on the basis of this claimed privilege. Please produce those documents within the next 14 days.
3. You have asserted five separate objections to production of pages 88 and 104, "CCSAO Investigative Reports." Several of these objections, such as reliance on 725 ILCS 120/4 and Illinois Supreme Court Rule 201(b)(2) are

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plainly frivolous. Moreover, as I am sure you know, “CCSAO Investigative Reports” are routinely produced in criminal matters by the State’s Attorney’s Office as “*Brady* material.” *See, e.g., Boss v. Pierce*, 263 F.3d 734, 742 (7th Cir. 2001). Please produce those two pages within the next 14 days.

4. You raise a variety of objections to production of “Felony Minute Sheet Form 101” (page 30). We have seen this type of document in other litigation. Please provide within the next 14 days any factual basis for the claim that this simple form is protected by attorney work product privilege, attorney/client privilege, deliberative process privilege, or investigative privilege. Also, please indicate within the same 14-day period if you intend to continue to assert the claims of privilege that arise solely under state law.
5. You do not provide any details about page 101 other than to label it as “ASA Internal Memo.” More detail is required to justify the assertion of the “Work product/ mental impression/ deliberative process” claim of privilege you assert. It is possible that this “Internal Memo” shows that State’s Attorney dropped the criminal case against Mr. Schaefer “for reasons indicative of the plaintiff’s innocence.” *Ferguson v. City of Chicago*, 213 Ill. 2d 94, 102, 820 N.E.2d 455, 460 (2004). Please provide enough details about page 101 to enable plaintiff to assess the various privileges you claim for this document.

I look forward to hearing from you on or before June 15, 2020.

Sincerely,



Joel Flaxman