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To: Kenneth Flaxman <knf@kenlaw.com>

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Counsel,

Please accept this e-mail as our response to your letter dated June 1st, 2021.

The Chicago Police Department is asserting the deliberative process privilege over deliberative material contained in Task File 19-004. Please find the requisite affidavit attached to this correspondence.

Regarding the Chicago Police Department forms, Special Orders, and court forms referenced in your correspondence, Defendant City of Chicago has produced the non-deliberative final forms and orders under FCRL 1484-1521, 1555-1558, 1562-1564, 1614, 1630, 1657-1658, 1672-1673, and 1684-1686. I believe this addresses that concern in your letter.

As for the claim of attorney-client privilege, Defendant City of Chicago has updated its privilege log and maintains that the updated and produced privilege log sufficiently asserts the attorney-client privilege. Unlike the Cook County State's Attorney's privilege log in *Schaeffer*, which only provided Bates numbers, privilege asserted, source, and "Partial Redaction[.]" the current privilege log identifies, in addition to what was provided in *Schaeffer*, dates of the protected communications and whether the communication involve the seeking or rendering of legal advice. As for any requirement that all communications require a licensed attorney, Defendant City of Chicago maintains that the attorney-client privilege also extends to subordinates of licensed attorneys, such as paralegals and support staff working under a licensed attorney. As such, the City believes its indication of the Chicago Police Department's Office of Legal affairs meets that requirement.

As to the issue of the deliberative process privilege applying in this matter, the cases cited in your letter are distinguishable from the instant case. For **Plaintiffs' Exhibit 04B** v. Board of Education of the City of Chicago **CityResponseTo37.2Letter**

East Orange. In that case, the plaintiff sought deliberative information regarding his termination of employment. The plaintiff in *Scott* was fired for failing to obtain approval prior to purchasing certain supplies. However, the plaintiff believed that he was actually fired for failing to participate in an illegal bidding scheme. The court in *Scott* explained that because the plaintiff was alleging that he was fired based on issues the board improperly took into consideration, he was attacking their integrity, which allowed for inquiry into the boards pre-decisional mental impressions and discussions.

However, in the instant matter, your clients claim that the written policy of the Chicago Police Department violated their rights. Unlike the claims in *Scott*, the operative complaint does not claim that your clients' rights were violated under the masquerade of legality, but instead attacks the written policies of the Chicago Police Department. As such, the deliberative information in the instant matter is irrelevant, which weighs in favor of upholding the deliberative process privilege, as the information needed in the case is the final policy. To the extent your clients need to know the changes made to the policies at issue, previous versions have been provided for comparison.

The instant case is more similar to *Rodriguez v. City of Chicago*, 17 C 7249, 2019 WL 3562683 (N.D. Ill. Aug. 1, 2019). In *Rodriguez*, the plaintiff sought documents from a COPA log file, which COPA exerted the deliberative process privilege over. *Id.* at 1. COPA asserted the deliberative process privilege over various drafts, including draft summary reports, findings, allegations, and notes. *Id.* at 4. The court, after finding that a *prima facie* case was established, held that the drafts were subject to the deliberative process privilege because the plaintiff did not show a particularized need sufficient to break the privilege in light of the fact that the plaintiff was provided the final investigation, minus the deliberative material. *Id.* at 7. Notably, the court held that “[e]arlier **draft** iterations of these reports or summaries, or portions of them, containing editorial comments and questions, or edits made upon those comments, add nothing relevant to the evidence Plaintiff already has.” *Id.* See also *Guzman v. City of Chicago*, 09 C 7570, 2011 WL 55979 (N.D. Ill. Jan. 7, 2011)(Upholding IPRA’s exertion of the deliberative process privilege and holding that the deliberative process privilege does apply to municipal entities such as IPRA and that production of non-deliberative documents served the same purpose as the deliberative information sought.).

The instant matter is analogous to *Rodriguez*. Similar to the final documents provided to plaintiff, here the Plaintiffs have been provided both the current and immediate prior versions of the order at issue, with changes between the two underlined. Further, Plaintiffs have now received the non-deliberative documents contained in the task file at issue. Further like *Rodriguez*, here Plaintiffs have not identified a particularized need sufficient to break the deliberative process privilege. As such, as was held in *Rodriguez*, Defendant City of Chicago maintains that the deliberative material identified in the applicable privilege log have been withheld appropriately.

As always, please feel free to reach out with any questions or concerns. We look forward to speaking with you tomorrow at 3p.m.!

Very respectfully,

Nick