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Fri, Jun 11, 2021 at 11:02 AM

To: Kenneth Flaxman <knf@kenlaw.com>

Cc: Bret Kabacinski <Bret.Kabacinski@cityofchicago.org>, Stephanie Sotomayor <Stephanie.Sotomayor@cityofchicago.org>, Joel Flaxman <jaf@kenlaw.com>

Counsel,

I've incorporated your language into the below summary of our June 10th, 2021, 37.2 conference. If I missed anything, please let me know!

Plaintiffs' position is that the deliberative process privilege should not be recognized under Rule 501 of the Federal Rules of Evidence. If the district court recognizes the privilege, Plaintiffs contend that the affidavit provided by Defendant City of Chicago fails to provide the specificity required to invoke the privilege.

Defendant City believes that the numerous cases enforcing the deliberative process privilege correctly show that the privilege, although qualified, exists and is applicable to the task file at issue. Defendant City also believes that the affidavit of Director Karen Conway establishes the *prima facie* case required by applicable case law. Notably, paragraph three asserts that Director Conway reviewed the task file at issue and paragraphs seven and eight explain the need to exercise the privilege.

Further, Defendant City believes that, due to the fact that Plaintiffs are attacking a written policy, Plaintiffs have no need for the task file. As such, Defendant City believes that the privilege will be upheld because Plaintiffs have access to the current and previous version of the order at issue, which show any changes or lack thereof to the order.

The parties agreed that Defendant City will again assert the deliberate process privilege to production of Plaintiffs' recent request for the earlier task file.

Lastly, we discussed the assertion of attorney-client privilege in the privilege log. Defendant City informed Plaintiffs' counsel that additional language regarding the seeking, rendering, or discussing of legal advice was included in the updated privilege log, which Defendant City believes meets its burden.

After meeting and conferring, it appears that the parties are unable to reach an agreement and will likely seek judicial intervention.

As always, please feel free to reach out with any questions or concerns. Have a great weekend!

Very respectfully,

Nick

Nicholas Peluso

Assistant Corporation Counsel

City of Chicago, Department of Law

Plaintiffs' Exhibit 04C
Rule37.2Confer

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