

1999 WL 407610
Only the Westlaw citation is currently available.
United States District Court, E.D. Louisiana.

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
v.
WINDSOR COURT HOTEL, INC., et al.
No. Civ.A. 98–2765. | June 17, 1999.

Opinion

HEARING ON MOTION

SHUSHAN, Magistrate J.

APPEARANCES: Submitted on briefs

MOTION: DEFENDANTS' MOTION TO COMPEL PRODUCTION OF
DOCUMENTS

DENIED IN PART.

*1 Before the court is the motion of Windsor Court Hotel, Inc. of Delaware, Orient Express Hotels of Louisiana, Inc. and Windsor Court Hotel Limited Partnership (collectively “Windsor Court”), to compel production of documents from the Equal Employment Opportunity Commission (EEOC), pursuant to a Fed.R.Civ.P. 45 subpoena.

The parties have resolved all disputes except two: 1) all documents pertaining to communications between the EEOC and the Windsor Court concerning the investigation and conciliation of the EEOC charge filed by Kawanta Singleton (Charge number 270–98–0129); and 2) four sets of case file documents related to the investigation and conciliation of the Singleton EEOC charge against the Windsor Court.¹

The communications between EEOC and the Windsor Court.

The Windsor Court has requested all documents which evidence communications between the parties related to the EEOC’s investigation of the Singleton charge against the Windsor Court. The EEOC argues that it has provided all non-privileged documents responsive to this request, and that its privilege log is sufficient to show that the withheld documents are protected under the attorney-client privilege, the work product doctrine, or the deliberative process privilege.² The EEOC also argues that notes and communications between its investigator, Manuel Fernandez, and EEOC lawyers are protected as attorney-client privilege, or work product.

U.S. E.E.O.C. v. Windsor Court Hotel, Inc., Not Reported in F.Supp.2d (1999)

A EEOC investigator's personal notes and evaluations, as well as interagency communications and critiques, fall within the deliberative process privilege. *Scott v. PPG Industries, Inc.*, 142 F.R.D. 291, 292 (N.D.W.Va.1992). However underlying factual material must be disclosed. *Id.*

The court notes that the EEOC has already produced redacted versions of Fernandez's notes and memoranda disclosing the underlying facts of dates and subject matter of communications. The privilege log reflects that the remaining information is privileged communications among the EEOC staff. The court has no reason to believe, nor has the Windsor Court shown any reason why the EEOC's privilege log is inaccurate or deceptive. Therefore, the court deems these documents privileged.

The case file documents

The next group of requested documents are case file documents which were identified during the deposition of EEOC investigator Fernandez as Exhibits D-1, D-6, D-7, as well as a fourth "catch-all" group of documents, including an internal memorandum by Fernandez (Bates number 21-26). The EEOC has already provided redactions of D-1, D-6, and D-7.

The EEOC describes the documents on page 9 of its opposition, and a review of those descriptions indicates that the eight documents are in fact privileged or work product. Once again, the court does not have reason to believe that these descriptions are inaccurate or misleading.

With regard to the "catch-all" fourth category, the internal memorandum containing recommendations by EEOC investigator Fernandez (Bates 21-26) appears to be primarily mental impressions and opinions which are protected as work product or deliberative process privilege, and the EEOC does not need to produce it.

*2 With regard to any other documents requested in the two categories above, and not identified as privileged, the EEOC shall certify to the Windsor Court in writing that no other documents exist, or shall produce any remaining documents by 1:00pm on Thursday, June 17, 1999, so that the Windsor Court may review those documents in preparation for the evidentiary hearing regarding conciliation set before the District Court on June 18, 1999.

Footnotes

¹ These two items are numbers two and three respectively of the six items requested by the Windsor Court from the EEOC. All other requests were satisfied by production of documents on June 14 and 15, 1999.

² *See, e.g., Government Suppliers Consolidating Services, Inc. v. Bayh*, 133 F.R.D. 531, 534 (S.D.Ind.1990) (deliberative process privilege available to federal executive branch and to state officials).