

UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND

CHAMBERS OF
BETH P. GESNER
CHIEF UNITED STATES MAGISTRATE JUDGE
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March 15, 2019

Memorandum to Counsel

Subject: Brown et al. v. Department of Public Safety and Correctional Services et al.
Civil No.: RDB-16-945

Dear Counsel:

I have received defendants' letter dated March 13, 2019 (ECF No. 157) providing me with a summary of the law they rely upon in support of their claims of executive/deliberative process privilege in accordance with my letter order dated March 12, 2019 (ECF No. 154). I have also received plaintiffs' letter dated March 13, 2019 (ECF No. 158) providing me with a summary of the law they rely upon in support of their position that the privilege does not apply in this case.

While I appreciate the parties providing me with the applicable general statements of law governing the executive/deliberate process privilege as I requested, I write to clarify that the parties have not, at this time, presented me with a discrete discovery dispute for my consideration. Accordingly, the parties are directed to meet and confer regarding all outstanding objections on the basis of privilege. If the parties are unable to reach an agreement, plaintiffs are to bring these issues to my attention in the form of a motion to compel. Prior to filing a motion, however, counsel are to agree upon and propose an expedited briefing schedule to include the motion to compel (no more than ten pages), an opposition in response to the motion to compel (no more than ten pages), and a reply in support of the motion to compel (no more than four pages) for my approval.¹

Notwithstanding the informal nature of this letter, it is an Order of the court and will be docketed accordingly.

Very truly yours,

/s/

Beth P. Gesner
Chief United States Magistrate Judge

¹ I note that neither party cited to Heyer v. U.S. Bureau of Prisons, No. 11-03118D, 2014 WL 454946 (E.D.N.C. Sept. 12, 2014). I bring this case to counsel's attention, as I believe its analysis is helpful to the issues presented herein. Accordingly, if plaintiffs file a motion to compel, the parties should include in their papers a copy of the privilege log, summaries of any documents at issue, and evidence in support of their respective positions as to whether the documents constitute deliberative and predecisional materials. See id. at *3. The parties should also provide evidence in support of their respective positions as to whether plaintiffs' need for the documents outweighs the risk of harm from disclosure. See id. at *5.