



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

MOTION TO COMPEL GRANTED IN PART: June 12, 2026

CBCA 8487

JANNIE M. HORACE,

Appellant,

v.

AGENCY FOR INTERNATIONAL DEVELOPMENT,

Respondent.

Jannie M. Horace, pro se, Monrovia, Liberia.

Robert J. Anderson and Aaron J. Pound, Office of General Counsel, General Services Administration, Washington, DC, counsel for Respondent.¹

NEWSOM, Board Judge.

¹ Due to an agency restructuring and reduction in force, counsel for the United States Agency for International Development (USAID or agency) withdrew from the case, effective March 6, 2026. Attorneys from the General Services Administration filed notices of appearance “on behalf of USAID” on March 16, 2026.

ORDER²

This order addresses the remaining issues raised in appellant's October 29, 2025, Motion to Compel. By order dated November 19, 2025, the Board resolved many issues but needed additional information to resolve appellant's request (b), in which she seeks production of contracting officer's final decisions (COFD) pertaining to claims brought by persons other than herself, and appellant's requests (c), (d), and (e), in which she seeks production of certain internal government communications and legal opinions, which respondent contends are protected from disclosure due to various privileges. The Board, having received and assessed the parties' submissions, resolves each request below.

Discussion

I. COFDs on Claims Submitted by Persons Other than Appellant (Request (b))

In appellant's request (b), she seeks to compel respondent to produce COFDs pertaining to meal break claims submitted by persons—other than herself—who signed settlement agreements with respondent. We find that COFDs issued to persons other than appellant are not within the scope of discovery. Under the Federal Rules of Civil Procedure (FRCP), parties may obtain discovery of any nonprivileged matter that is “relevant to any party's claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). Unless otherwise ordered, the scope of discovery at the Board is the same as under FRCP 26(b)(1). *See* Board Rule 13(b) (48 CFR 6101.13(b) (published in eCFR)).

Appellant argues that these COFDs would reveal how respondent interprets and applies the legal standards for paid meal breaks in different fact patterns and, in particular, whether respondent applied a consistent approach. These arguments are not persuasive. How respondent applied legal standards in fact patterns different from appellant's claim has no bearing on whether respondent correctly applied those standards to appellant. Respondent is not required to produce documents responsive to request (b).

² This order is being published to assist in providing greater transparency to the public about the manner in which the Board has addressed issues in cases before it. Although single-judge orders like this one are binding in the appeals in which they are issued, they are, consistent with Board Rule 1(d) (48 CFR 6101.1(d) (published in eCFR)), not precedential in other appeals before the Board.

II. Internal Government Communications and Legal Opinions (Requests (c), (d), and (e))

In requests (c), (d), and (e), appellant seeks production of internal government communications and legal opinions about the issues in her claim. We previously ordered respondent to produce nonprivileged responsive documents. At issue is whether the remaining documents are protected from discovery by various privileges. Respondent submitted a privilege log and provided the documents to the Board confidentially for in camera review, together with explanatory information. Having reviewed these submissions, we render the following determinations.

A. Legal Standards for Various Privileges

Respondent bears the burden to prove its assertions of privilege. *Siler v. Environmental Protection Agency*, 908 F.3d 1291, 1297 (Fed. Cir. 2018). For respondent to carry its burden, it must demonstrate that each of the elements of the claimed privilege is satisfied for each document. *AAB Joint Venture v. United States*, 75 Fed. Cl. 432, 445-46 (2007). Respondent asserts three different privileges or protections, each applying to a subset of the documents: (1) the attorney-client privilege; (2) the work product doctrine; and (3) the deliberative process privilege.

The attorney-client privilege protects confidential communications between a client and its attorney for the purpose of obtaining legal advice or legal services. *Siler*, 908 F.3d at 1297. Respondent must show that the allegedly-protected communication was made in confidence between the agency and its attorney for the purpose of securing either a legal opinion, legal services, or assistance in a legal proceeding. *Id.*

The work product doctrine protects from discovery documents that were prepared in anticipation of litigation. *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947). The purpose of the work product doctrine is to “shelter[] the mental processes of the attorney, providing a privileged area within which he can analyze and prepare his client’s case.” *United States v. Nobles*, 422 U.S. 225, 238 (1975). Work product protections are set forth in FRCP 26(b)(3), which reads, “Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative.” Such protection is not absolute and may be overcome by a showing of substantial need. *Id.*; see *In re EchoStar Communications Corp.*, 448 F.3d 1294, 1301-02 (Fed. Cir. 2006).

The deliberative process privilege protects government pre-decisional and deliberative information. *Active Construction, Inc. v. Department of Transportation*, CBCA 6597, 22-1 BCA ¶ 38,072, at 184,861-62. The purpose of the deliberative process privilege is to enhance “‘the quality of agency decisions’ by protecting open and frank discussion among those who

make them within the Government.” *Department of the Interior v. Klamath Water Users Protective Association*, 532 U.S. 1, 8-9 (2001) (quoting *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975)). The privilege protects information from disclosure that is “predecisional” (generated before the agency adopts a policy or reaches a decision) and “deliberative” (prepared to assist an agency decision-maker in arriving at a decision through the give-and-take of the collaborative process). *Active Construction*, 22-1 BCA at 184,861. Government deliberations whether to pursue a particular course of action in litigation are among the deliberations that are protected by this privilege. *See Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 939 (10th Cir. 2005). To establish that a document is protected by the deliberative process privilege, respondent must submit a declaration from the head of the agency (or a person to whom the agency head has delegated authority) invoking the privilege after a personal review of the documents and explaining the harm that could ensue from disclosure. *Marriott International Resorts, L.P. v. United States*, 437 F.3d 1302, 1306-08 (Fed. Cir. 2006).

B. Analysis of Privilege Assertions

The analysis of respondent’s privilege assertions follows. The documents are identified by the number assigned on the privilege log.

1. Documents 1 Through 6

Documents 1 through 6 are written communications between agency personnel and lawyers retained by the agency. Respondent asserts that they are protected by the attorney-client privilege and the work product doctrine, and we agree. Each of these documents contains requests for legal advice and/or legal advice provided by an attorney to their client. The documents indicate that an attorney prepared these documents in anticipation of litigation. Respondent additionally asserts that Document 6 is protected from discovery under the deliberative process privilege. In light of the decision that the document is protected from disclosure by the attorney-client privilege and the work product doctrine, it is unnecessary to reach this question. **Documents 1 through 6 are protected from disclosure.**

2. Documents 7 Through 10

Document 7 is a cover email from an agency non-lawyer human relations employee forwarding an attorney’s legal opinion to non-lawyer agency personnel. The attachment (the legal opinion) is not included, so we address only the cover email. Respondent asserts that the email is protected by the attorney-client privilege and work product doctrine. We conclude that the email is not protected by the attorney-client privilege because it was not a communication between an attorney and their client. The email is, however, protected by the

work product doctrine, although it is a close call. The email does not expressly state that it was prepared in anticipation of litigation, but the act of forwarding a legal opinion suggests that the sender and recipients were anticipating litigation. **Document 7 is protected from disclosure.**

Document 8 is an email chain. First is an email from a non-lawyer agency employee stating that they seek “L’s advice,” which we understand to be a request for legal advice. Next is a follow-up email repeating the request. Respondent asserts that both emails are protected by the attorney-client and deliberative process privileges. We conclude that the emails are protected by the attorney-client privilege because they reflect a client’s request to their lawyer for legal advice. In light of this conclusion, it is unnecessary to reach the deliberative process privilege assertion. **Document 8 is protected from disclosure.**

Document 9 is a draft of an employee handbook that contains edits and comments. Respondent asserts that it is protected from disclosure by the deliberative process privilege, and we agree. This handbook articulates agency policies, and the comments and edits reflect pre-decisional comments on proposed modifications to that policy. Respondent submitted a memorandum from a senior official, asserting that the comments reflect internal deliberations on agency policy and that divulging these documents would “chill” internal deliberations. **Document 9 is protected from disclosure.**

Document 10 is an email chain containing emails dated from May 11, 2024, through September 26, 2024. Respondent asserts that the entire chain is protected by the attorney-client and deliberative process privileges. We conclude that most of the emails are privileged, but one is not. We address them in chronological order.

The email dated May 11, 2024, is from a person outside of the agency. None of the privileges or protections apply. It does not contain a request for legal advice or legal advice or reflect deliberations on an agency policy. It must be produced.

The emails dated from May 13, 2024, to September 9, 2024, contain requests for legal advice and responses from an attorney. They are protected by the attorney-client privilege. In light of this conclusion, it is unnecessary to determine whether they are also protected by the deliberative process privilege. This determination applies to two emails dated May 13; two emails dated May 14; one email dated June 14; one email dated June 21; three emails dated June 25; one email dated June 27; one email dated July 28; two emails dated August 19; and single emails dated August 23, August 27, September 5, September 8, and September 9.

This determination does not apply to the email dated September 21, 2024. That email is not subject to the attorney-client privilege because it is neither a request for legal advice nor

a response to a request for legal advice. The September 21, 2024, email is, however, subject to the deliberative process privilege because it includes comments on proposed changes to an agency policy. As such, it reflects pre-decisional, deliberative comments on proposed agency decisions. Respondent submitted a memorandum from a senior official, asserting that the comments reflect internal deliberations on agency policy and that divulging this document would “chill” internal deliberations.

Document 10 also includes four emails dated September 26, 2024. The first two emails (bearing the times 2:48 p.m. and 3:51 p.m.) are not subject to the attorney-client privilege because they do not contain either a request for legal advice or legal advice. These two emails are, however, subject to the deliberative process privilege. They contain comments on proposed changes in agency policy. Respondent submitted a memorandum from a senior official, asserting that the comments reflect internal deliberations on agency policy and that divulging these documents would “chill” internal deliberations.

The last two emails dated September 26, 2024 (bearing the times 4:41 p.m. and 5:04 p.m.) are subject to the attorney-client privilege. They contain requests for legal advice and legal advice from an attorney.

In summary, the email dated May 11, 2024, is not protected from discovery and must be produced. The remaining emails comprising Document 10 are protected from disclosure.

3. Documents 11, 11a, 11b

Document 11 is an email chain containing two emails dated May 11, 2024, and December 26, 2024. Respondent asserts that all of the emails in the chain are protected by the attorney-client and deliberative process privileges. We address them in chronological order.

The email dated May 11, 2024, is from a person outside of the agency. None of the privileges or protections apply. It does not contain a request for legal advice or legal advice or reflect deliberations on an agency policy. It must be produced.

The email dated December 26, 2024, contains a request for legal advice directed to an agency lawyer. It is protected by the attorney-client privilege.

Document 11a is a message from the Liberian Ministry of Foreign Affairs dated December 12, 2024. Document 11b is a memorandum dated December 20, 2024. Neither document contains content subject to the attorney-client privilege or appears to reflect internal

agency deliberations. Thus, they are not privileged. However, they have no discernible relevance to the appellant or this dispute and are not responsive to appellant's requests for production in its motion to compel.³ **In summary, Documents 11a and 11b do not need to be produced because they are irrelevant and nonresponsive. Only the email dated May 11, 2024, must be produced.**

4. Documents 12, 12a, 12b, and 12c

Documents 12, 12a, 12b, and 12c are a set of documents pertaining to the agency's potential settlement with some of the claimants, including a memorandum requesting approval of the proposed settlements, a draft settlement agreement, and calculations of settlement amounts. The respondent asserts that the documents are protected from disclosure by the deliberative process privilege. We agree. The documents reflect pre-decisional deliberations regarding an agency decision on a potential settlement.⁴ **Documents 12, 12a, 12b, and 12c are protected from disclosure.**

Note that there is no Document 13.

5. Document 14

Document 14 is an email chain containing emails dated from May 11, 2024, to August 30, 2024. Respondent asserts that Document 14 is protected from disclosure by the attorney-client privilege, the work product doctrine, and the deliberative process privilege. We conclude that most of the emails are privileged, but one is not. We address them in chronological order.

³ In her motion to compel, appellant requested, *inter alia*, copies of appellant's contracts; COFDs pertaining to claims submitted by other contractors; certain written communications between USAID, the United States Embassy in Monrovia management, and the Bureau of Global Talent Management Office of Overseas Employment (GTM/OE) concerning the issues in appellant's claim; "back and forth" exchanges between the United States Embassy in Monrovia and other agency officials concerning the issues in appellant's claim; and certain legal opinions. Documents 11a and 11b do not fall into any of these categories.

⁴ Although not relevant to the issue of whether the documents must be produced under FRCP 26(b)(1) or Board Rule 13(b), we note that these documents would likely be inadmissible under Federal Rule of Evidence 408.

The email dated May 11, 2024, is from a person outside of the agency. None of the privileges or protections apply. It does not contain a request for legal advice or legal advice or reflect deliberations on an agency policy. It must be produced.

The emails dated from May 13, 2024, to August 23, 2024, repeat emails in Document 10, which we have determined are protected by the attorney-client privilege. The email dated August 30, 2024, is not a copy of any email in Document 10. It is not protected by the attorney-client privilege because it does not contain a request for legal advice or legal advice. It is, however, protected from disclosure under the deliberative process privilege because it contains comments on a proposed change to agency policy. Respondent submitted a memorandum from a senior official, asserting that the comments reflect internal deliberations on agency policy and that divulging this document would “chill” internal deliberations. **In summary, the email dated May 11, 2024, is not protected from discovery and must be produced. The remaining emails comprising Document 14 are protected from disclosure.**

6. Document 15

Document 15 is a chain of three emails dated June 11, 2024, and June 12, 2024, between non-lawyers. The respondent asserts that these emails are protected by the deliberative process privilege. We agree. This document reflects pre-decisional comments on proposed modifications to an agency policy. Respondent submitted a memorandum from a senior official, asserting that the comments reflect internal deliberations on agency policy and that divulging these documents would “chill” internal deliberations. **Document 15 is protected from disclosure.**

C. Absence of Waiver

Finally, in the order dated November 19, 2025, we inquired whether respondent may have waived any privilege by including, in the appeal file, certain legal memoranda. Upon further review, we determined that those legal memoranda were not authored by respondent but rather were authored by representatives of the appellant and other contractors. Accordingly, there is no basis to conclude that respondent waived any privileges by including those memoranda in the appeal file.

Decision

As set forth above, appellant's motion to compel is **GRANTED IN PART**. Respondent shall produce the documents identified in this order within fourteen calendar days.

Elizabeth W. Newsom
ELIZABETH W. NEWSOM
Board Judge