

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

In the Matter of the)
2021 REDISTRICTING PLAN.) Case No. 3AN-21-08869CI
_____)

**ORDER GRANTING IN PART ARB MOTION TO RECONSIDER FOLLOWING
FURTHER *IN CAMERA* REVIEW**

This court has been asked to conduct an *in camera* review documents withheld from discovery by the Board on the grounds of privilege. The Court has issued two previous orders addressed to the *in camera* review. Following the Second Order, the Board filed a Motion for Partial Reconsideration. In its Motion, the Board sought further review of the documents based upon the procedure set forth by the Alaska Supreme Court in *In Re Mendel*.¹ The Motion is granted in part and denied in part.

The Court has further reviewed the documents identified in the Second order², and now makes the following revision to that order.

612.1	This document was inadvertently included in both sections A and B of the Court’s order. It is an email between 2 lawyers acting for the Board, and is classified as attorney-work product. It need not be produced.
1019.1 1135.1-1135.51 1245.1-1245.34	These documents reflect an email communication between attorney and client. Although not obvious on the face of the email, the package as a whole reflects a client seeking advice, and a lawyer responding to that request. That is the essence of the attorney-client privilege. However, guided by <i>Griswold</i> , the court is to narrowly construe the privilege when dealing with public entities. In this instance, the documents do not <i>disclose the content of the advice</i> , nor the specific request by the client. These documents should be produced.

¹ 897 P.2d 68, 75 Alaska 1995).

²² This Order does not address the additional documents produced by the ARB on Sunday, January 23, 2022 in response to the Court’s second Order. The Court will address its *in camera* review of those documents by separate order when that process is completed.

10500.1	This document is an email to the Board which upon further review reflects the lawyer's legal advice to the board. It need not be produced.
10540.1	This is an email from lawyer to client. It reflects the lawyer's advice. It need not be produced.
13550.1 13754.1-13754.34	Duplicate of 1019.1, and1245.1-1245.34. The documents should be produced.
16320.1	Email from Board staff to lawyer. In the Court's view, this document does not reflect the client seeking legal advice, nor the rendering of that advice by a lawyer. The document should be produced.
21811.1-21811.2	Email from Board staff to board member and copied to lawyer, along with an email to lawyer from board member. In the Court's view, the initial email from the member to the lawyer reflects the act of seeking advice, but not the advice or the question itself. The email from the staff to the member does not appear to the court to reflect legal advice. The document should be produced.
27681.1-27681.2	This is a duplicate of 21811.1-21811.2, plus a brief response from the board member back to staff. In the Court's view, the initial email from the member to the lawyer reflects the act of seeking advice, but not the advice or the question itself. The email from the staff to the member does not appear to the court to reflect legal advice. The document should be produced.
28942.1028942.2	These documents reflect an email communication between a board member and the lawyer relating to a request for legal advice. The documents need not be produced.
44593.1 44594.1-44594.2	These documents an email from a board member to herself, summarizing a communication between attorney and client. Although not obvious in the body of the email, the email as a whole reflects the client's summary of a communication with the lawyer in which the lawyer's advice was discussed. It reflects attorney-client privileged communications. The documents need not be produced.

In summary, the following additional documents should be produced by the Board:

16320.1
21811.1-21811.2
27681.1-27681.2

1019.1
1135.1-1135.51
1245.1-1245.34

13550.1
13754.1-13754.34

The Plaintiff's Opposition to the Board's Motion notes that the privilege should be applied narrowly as an exception to the Open Meetings Act. That statement is true. Nonetheless, the Court wishes to emphasize that its *in camera* review *at this stage* is to determine if the documents are in fact privileged. While that privilege is narrowly construed under both the OMA and the PRA, the original Motion to Determine the Law was addressed under the OMA.

The Court has previously rejected the Plaintiffs' request that the court review all of the Board's claims of privilege as identified on the privilege log. The Court agreed to review a narrower subset focused on the board's executive sessions because of the argument that the board violated the OMA. The Court has not made any determination that the Board has violated the OMA, or that waiver of the privilege would necessarily result from any such violation.³

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 25th day of January, 2022.



Thomas A. Matthews
Superior Court Judge

³ Whether a violation should result in a waiver is a question is a question of first impression and is not addressed by this Order, or the Court's prior orders on *in camera* review.

I certify that 1/25/22 a copy of this Order was sent to the following:

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