

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)

Plaintiff)

RACHEL TUDOR,)

Plaintiff-Intervenor)

v.)

CASE NO. 5:15-CV-00324-C

SOUTHEASTERN OKLAHOMA)

STATE UNIVERSITY, and)

THE REGIONAL UNIVERSITY)

SYSTEM OF OKLAHOMA,)

Defendants.)

**PLAINTIFF UNITED STATES' RESPONSE IN OPPOSITION TO
DEFENDANTS' MOTION TO COMPEL DISCOVERY RESPONSES**

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I. INTRODUCTION

Plaintiff United States of America (“Plaintiff” or “United States”) hereby opposes Defendant Southeastern Oklahoma State University’s (“SEOSU”) and Defendant Regional University System of Oklahoma’s (“RUSO”) (collectively, “Defendants”) Motion to Compel Discovery Responses (“Motion” or “ECF No. 67”). The United States has fully and properly asserted the privileges at issue here, produced all discoverable responsive documents, and answered all interrogatories appropriately. As a result, the Defendants’ Motion must fail.

II. ARGUMENT

A. **Defendants provided the Court with an out-of-date privilege log and, thus, the Court should disregard their objections to the United States’ privilege log.**

The Defendants appended an out-of-date privilege log to their Motion. ECF No. 67-7. The United States amended its privilege log on May 20, 2016—over a month before the Defendants filed their Motion—but the Defendants did not provide this amended privilege log (the “First Amended Privilege Log”) to the Court. The United States’ First Amended Privilege Log is attached here as Exhibit 1. The United States’ produced the First Amended Privilege Log, in part, to respond to the Defendants’ request for more detailed information about the privileged documents that the United States withheld. The Defendants have never expressed any objection to the United States’ First Amended Privilege Log. Thus, if the Defendants raise any objections to the First Amended Privilege Log in their reply brief, they will run afoul of Fed. R. Civ. P. 37(a)(1) and Local Rule 37.1, which require litigants to confer over discovery disputes before

bringing them to the Court. Furthermore, there is no need for the Court to consider the Defendants' objections to the level of detail in the initial privilege log (ECF No. 67 at 18-19)¹ since the United States' First Amended Privilege log contains more detail about the documents than the initial privilege log.²

B. Defendants' Motion violates Local Rule 37.1 because Defendants did not meet and confer regarding the document requests in the Motion.

The Defendants have violated Local Rule 37.1 because their Motion addresses responses to their Requests for Production that the parties have not conferred about. Local Rule 37.1 states that the Court "shall refuse to hear" any motion relating to discovery if the parties have not personally, or in some instances telephonically, met to discuss the subject of the motion in an attempt to resolve their differences. While the Defendants noted their concerns with the United States' responses to some of their Requests for Production in their January 5, 2016, letter (ECF No. 67-2 at 3-5), when the parties conducted their February 2, 2016, discovery teleconference, the Defendants chose not to discuss any of the United States' responses to those requests. *See* ECF No. 67-4 and A. Townsend email dated Feb. 16, 2016 (Exhibit 2). Instead, during the February 2

¹ For ease of reference to the Court, the United States' citations to the Defendants' Motion includes the page number at the top of each page, which the Court's electronic filing system supplied when the Motion was filed, instead of the paginated numbers that the Defendants inserted at the bottom of each page.

² The United States served the Defendants with a Second Amended Privilege Log after the Defendants filed their Motion. In this Second Amended Privilege Log, the United States withdrew some assertions of government deliberative process privilege over documents that are protected by other privileges. This Second Amended Privilege Log is attached to Exhibit 4. *See* Exhibit 4 at 15.

teleconference, the only issues that the parties discussed regarding the Defendants' discovery requests concerned (1) the Defendants' request for an amended privilege log; (2) the Defendants' request that the United States identify which documents were responsive to their Freedom of Information Act ("FOIA") request; (3) the Defendants' request that the United States provide further information regarding which produced documents corresponded to each of the Defendants' Requests for Production; and (4) certain responses to the Defendants' Interrogatories. *Id.*³

To date, the parties have never had a teleconference or in-person meeting where they discussed the Defendants' concerns about the Requests for Production identified in their January 5 letter. Thus, the Defendants have never met and conferred in compliance with Local Rule 37.1 regarding any of the Requests for Production covered in their Motion (ECF No. 67 at 25-27).

If the Defendants had complied with their obligations under Local Rule 37.1, the parties almost certainly would have resolved some of the issues that the Defendants have raised in their Motion because the Defendants apparently did not carefully read the United States' responses to their Requests for Production. In their Motion, the Defendants identified certain Requests for Production that they believe the United States objected to on the grounds of privilege; but the Defendants' beliefs about these privilege assertions are, in many instances, incorrect. To wit, the Defendants represented to the

³ To address the concerns that the Defendants raised during the February 2 call, the United States supplemented its responses to Interrogatories (ECF No. 67-5); agreed to provide further information to the Defendants on which documents produced corresponded to each of the document requests; and produced the First Amended Privilege Log.

Court in their Motion that the United States asserted the government deliberative process privilege in its objections to Requests for Production 1, 3, 8, 9, 10, 11, 12, 14, 15a, 16, 17, 25, 26, 27, and 30. ECF No. 67 at 16. In fact, contrary to the Defendants' representation to the Court, the United States did not assert the government deliberative process privilege in response to Requests for Production 1, 12, 25, 26, and 27. ECF No. 67-1 at 18, 21, 26, and 27. Similarly, the Defendants inaccurately claim that the United States asserted attorney work product objections to the Defendants' Requests for Production 1, 12, 25, 26, and 27 (*compare* ECF No. 67 at 13 *with* ECF No. 67-1 at 18, 21, 26, and 27). They also inaccurately claim that the United States asserted attorney-client privilege objections to the Defendants' Requests for Production 1, 12, 19, 21, 25, 26, and 27 (*compare* ECF No. 67 at 15 *with* ECF No. 67-1 at 18, 21, 25, 26, and 27).

If the Defendants had spoken to the United States about their incorrect reading of the United States' discovery responses, as Local Rule 37.1 requires, some of their concerns with the United States' responses to their Requests for Production could have been easily addressed. Because the Defendants violated Local Rule 37.1, the Court should deny their Motion to compel responses to their Requests for Production.⁴

⁴ In the interest of narrowing the issues before the Court, the United States has decided to withdraw its assertions of privilege over the documents under the headings "Emails between DOJ counsel and DOE [U.S. Department of Education] counsel regarding DOE's file on Dr. Tudor's complaint of discrimination" and "DOE FILE" in the First Amended Privilege Log. *See* Exhibit 1 at 13 and 17. The United States has also decided to withdraw its assertions of privilege over the documents Bates numbered EEOC4572-73, 4588, 4597-98, 4600-01, 5326-28, and 5333. *Id.* at 14, 15, 16, and 17. The United States will produce those documents to the Defendants.

C. The United States properly asserted privilege.

For the reasons discussed below, the Court should reject the Defendants' arguments that the United States' claims of privilege lack merit. It bears noting that the Defendants have not identified any specific documents or categories of documents that the United States has withheld as privileged which the Defendants believe are not privileged. If the Defendants identify any specific documents or categories of documents in their reply brief that they argue are not privileged, the Court should disregard those arguments or, alternatively, permit the United States to address the arguments in a surreply because it is improper for a movant to make new arguments in a reply brief. *See, e.g., Thompson v. TCI Products Co.*, 81 F. Supp. 3d 1257, n.3 (N.D. Okla. 2015) and *E.E.O.C. v. Outback Steakhouse of Fla., Inc.*, 520 F. Supp. 2d 1250, 1260-61 (D. Colo. 2007).

1. The fact that Defendants did not specifically request attorney work product does not mean the United States may not withhold attorney work product which is responsive to the Defendants' discovery requests.

The Defendants argue that the United States' attorney work product objections lack merit because none of the Defendants' discovery requests "sought divulgence of attorney's strategies or legal impressions." ECF No. 67 at 13. The Defendants seem to misunderstand why the United States raised the work product doctrine in response to certain of the Defendants' discovery requests. It does not matter that the Defendants did not specifically request attorney work product in their discovery requests. Simply put, to the extent there are attorney work product protected documents that are responsive to the

Defendants' requests, the United States must assert privilege objections over those documents in order to preserve the privilege. *See* Fed. R. Civ. P. 34(b)(2)(C). For example, the Defendants' Request for Production 3 asks for all "factual and opinion reports, records, or statements, in your possession, custody, or control regarding events at issue in this lawsuit." ECF No. 67-1 at 18. This request is so broad that it would include, among other things, internal Department of Justice ("DOJ") reports regarding the events at issue in this lawsuit which are clearly work product.⁵

The Defendants cannot dispute that the United States has logged the documents in question, described them, and specified the documents to which the work product doctrine applies. Indeed, the Defendants have failed to identify any examples of documents withheld based on the work product doctrine that they believe are not privileged; instead, they merely list the discovery requests at issue (this list, as discussed above, is inaccurate). Thus, the Court should reject the Defendants' argument that the attorney work product doctrine does not apply to its Requests for Production.

2. The United States has properly asserted both attorney-client privilege and the common interest rule.

The Defendants argue that attorney-client privilege is not a proper objection to its Requests for Production, in part, because communications disclosed to a third party

⁵ There can be no dispute that such internal DOJ memoranda are privileged; indeed, the Defendants have stipulated that the United States does not even have to include them in its privilege log. *See* Exhibit 3.

besides the attorney and client are not privileged. ECF No. 67 at 15.⁶ While that is generally true, Defendants themselves acknowledge that the common interest rule is an exception to this general rule. *Id.* And that is precisely why the United States invoked the attorney-client privilege and common interest rule here: to assert that the responsive communications, which are in some cases with Plaintiff-Intervenor, are still protected by attorney-client privilege even though they are not solely between attorney and client. Defendants did not argue in their Motion that there is any fault in asserting this privilege either between DOJ and Plaintiff-Intervenor or her counsel.⁷ Therefore, the Defendants' Motion raises no basis upon which these assertions should be overturned.

The Defendants also take issue with how the United States invoked attorney-client privilege, arguing that the United States merely asserted the privilege without more. But a review of the United States' First Amended Privilege Log demonstrates that the United States described the parties to each communication and identified how each communication relates to the provision of legal advice. Exhibit 1. In the one case the Defendants cite in support of their argument, *Peat, Marwick, Mitchell & Co. v. West*, 748 F.2d 540, 542 (10th Cir. 1984), the party asserting the privilege made a blanket objection

⁶ Defendants have incorrectly stated in their Motion that Oklahoma law regarding attorney-client privilege applies in this case. ECF No. 67 at 14. Because the United States and Dr. Tudor have only asserted federal claims in this case, the Court must apply the federal common law regarding attorney-client privilege—not Oklahoma law. *See e.g., Roe v. Catholic Health Initiatives of Colorado*, 281 F.R.D. 632, 635-36 (D. Colo. 2012) (citing Fed R. Evid. 501).

⁷ If the Defendants raise such an argument in their reply brief, the Court should disregard it or, alternatively, permit the United States to file a surreply to respond to the argument since it is improper for a movant to raise new arguments in a reply brief. *Thompson*, 81 F. Supp. 3d at n.3 and *Outback Steakhouse of Fla., Inc.*, 520 F. Supp. 2d at 1260-61.

as to attorney-client privilege and never identified the documents they believed were privileged. This case, therefore, has no application to the facts presented here. The United States properly asserted attorney-client privilege and that assertion should be sustained.⁸

3. The United States properly asserted government deliberative process privilege.

The United States has withheld certain documents on the basis of the government deliberative process privilege. The government deliberative process privilege protects “documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.” *U.S. Dep’t of Interior v. Klamath Water Users Protective Ass’n*, 532 U.S. 1, 8 (2001) (quoting *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975)). The privilege also covers documents that contain factual information if the government employees who created the documents chose what facts to include in them based on what they believed would be relevant to the agency’s decisionmaking process. *Leopold v. Central Intelligence Agency*, 89 F. Supp. 3d 12, 21-22 (D.D.C. 2015). The government deliberative process privilege “rests on the obvious realization that officials will not communicate candidly among themselves if each remark is a potential item of discovery and front page news,

⁸ The Defendants also have not challenged the United States’ claim that communications with the EEOC are protected by attorney-client privilege or, alternatively, the common interest rule. If the Defendants make such an argument in their reply brief, the Court should disregard it or, alternatively, permit the United States to file a surreply because of the rule that a movant may not raise new arguments in its reply brief. *Thompson*, 81 F. Supp. 3d at n.3 and *Outback Steakhouse of Fla., Inc.*, 520 F. Supp. 2d at 1260-61.

and its object is to enhance the quality of agency decisions by protecting open and frank discussion among those who make them within the Government.” *Ridenour v. Kaiser-Hill Co.*, 397 F.3d 925, 939 (10th Cir.) (internal citations omitted), *cert. denied*, 126 S. Ct. 341 (2005).

The deliberative process privilege protects communications within federal agencies as well as communications between federal agencies. *Renegotiation Bd. v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 188 (1975) and *United States v. Farley*, 11 F.3d 1385, 1389 (7th Cir. 1993) (holding that referral memorandum from FTC to DOJ was privileged as part of DOJ’s deliberative process). In this case, the protection of communications between the DOJ and EEOC are crucially important to effective enforcement of Title VII.

The EEOC and DOJ share authority for the enforcement of Title VII with respect to state and local governmental employers. Under Title VII, the EEOC receives and investigates charges of discrimination against state and local governmental employers but DOJ is the sole federal entity that has the authority to sue state and local government employers for Title VII violations. 42 U.S.C. § 2000e-5(f). Because of this statutory scheme, the EEOC and DOJ share an interest in ensuring that enforcement of Title VII is consistent, effective, and not duplicative. Effective coordination and cooperation between the EEOC and DOJ is important to further the public interest in eliminating and remedying unlawful employment discrimination. Indeed, the cooperative relationship between EEOC and DOJ is so important that the two agencies have entered into a Memorandum of Understanding regarding their relationship which memorialized and

standardized a cooperative relationship that has stood for many years. *See* Memorandum of Understanding Between the U.S. Equal Employment Opportunity Commission and the U.S. Department of Justice – Civil Rights Division Regarding Title VII Employment Discrimination Charges Against State and Local Governments, <https://www.eeoc.gov/laws/mous/eeoc-doj.cfm> (visited July 26, 2016).⁹

As some courts require government agencies to do when they defend assertions of the government deliberative process privilege, the United States has submitted with this brief declarations from the heads of DOJ’s Civil Rights Division and the EEOC. *Landry v. F.D.I.C.*, 204 F.3d 1125, 1135-36 (D.C. Cir. 2000). These declarations further attest to the importance of keeping these deliberative materials confidential. *See* Exhibits 4 and 5. As these declarations explain, the United States has withheld, as privileged, documents reflecting communication between EEOC employees as well as communications between DOJ and EEOC employees. The documents that the United States has withheld because of the government deliberative process privilege informed decisions on such issues as what actions to take during the EEOC’s investigation and whether the EEOC should find reasonable grounds that the Defendants violated Title VII.

The Defendants argue that the Court should reject the United States’ assertions of government deliberative process privilege because their discovery requests “pertained to

⁹ In their Motion, the Defendants do not argue that communications between DOJ and EEOC cannot be protected by the government deliberative process privilege. If the Defendants raise such an argument in their reply brief, the Court should disregard the argument or, in the alternative, permit the United States to file a surreply to respond to it because it is improper for a movant to raise new arguments in reply briefs. *Thompson*, 81 F. Supp. 3d at n.3 and *Outback Steakhouse of Fla., Inc.*, 520 F. Supp. 2d at 1260-61.

factual as opposed to deliberative information and records.” ECF No. 67 at 17. The Defendants seem to misunderstand why the United States raised the government deliberative process privilege in response to certain of the Defendants’ discovery requests. It does not matter that the Defendants did not specifically request any privileged material in their discovery requests. Simply put, to the extent the United States has privileged documents that are responsive to the Defendants’ requests, the United States is required to log these documents and assert the relevant privileges or risk waiving them. For example, memoranda written by EEOC staff recommending that EEOC decisionmakers make a finding that there is reason to believe the Defendants’ violated Title VII would be responsive to the Defendants’ Requests for Production 3 and 16 (ECF No. 67-1 at 18 and 23) but they are privileged.¹⁰

The Defendants also argue that none of the documents they requested can “be said to have been prepared specifically to assist the Plaintiff at arriving at any particular decision.” ECF No. 67 at 17. However, this is not the correct legal standard. A government agency does not have to “identify a specific decision” to which a document relates in order to properly assert the government deliberative process privilege. *S.E.C. v. Nacchio*, 704 F. Supp. 2d 1099, 1110 (D. Colo. 2010) (quoting *N.L.R.B. v. Sears, Roebuck & Co.*, 421 U.S. 132, 151 (1975)). “Agencies are, and properly should be,

¹⁰ The Defendants have not cited any particular documents or categories of documents that the United States has withheld which the Defendants contend are not privileged. If they do so in their reply brief, the Court should disregard those arguments or permit the United States to file a surreply to respond to the arguments. *Thompson*, 81 F. Supp. 3d at n.3 and *Outback Steakhouse of Fla., Inc.*, 520 F. Supp. 2d at 1260-61.

engaged in a continuing process of examining their policies; this process will generate memoranda containing recommendations which do not ripen into agency decisions; and...courts should be wary of interfering with this process.” *Id.* In any event, all of the documents that the United States has withheld based on the government deliberative process privilege relate to particular decisions that the DOJ or EEOC made. For example, DOJ and EEOC employees prepared all of the documents under the heading “Emails between DOJ counsel and EEOC reflecting deliberations regarding investigation and finding on Dr. Tudor’s charge of discrimination” in the First Amended Privilege Log (Exhibit 1 at 2-8) to assist the EEOC in making investigatory decisions and decisions on the merits of Dr. Tudor’s charge of discrimination.¹¹

The Defendants also make fallback arguments in which they argue that, even if documents are protected by the government deliberative process privilege, the Court should still order that they be produced because the Defendants claim (1) that all of the documents are “clearly” relevant and there are no alternate sources of the information; (2) the United States is a party to the litigation and, thus, may not assert government deliberative process privilege; and (3) disclosure of the documents would not hamper future governmental decisionmaking. ECF No. 67 at 17. For the reasons discussed below, the Defendants’ fallback arguments all lack merit.

The Defendants’ conclusory assertion that there are no alternative sources for the information they seek is incorrect. The Defendants have the same—if not more—access

¹¹ This category of documents is also identified in the United States’ Second Amended Privilege Log. See Exhibit 4 at 16.

to all relevant evidence as the United States. The United States and EEOC did not create any evidence relevant to the issue of whether the Defendants discriminated or retaliated against Dr. Tudor. Employees of the United States and EEOC were not involved in the discriminatory or retaliatory actions against Dr. Tudor. All witnesses with relevant information are just as available—if not more available—to the Defendants as the United States. The only information in the documents withheld on the basis of government deliberative process privilege that is not available to the Defendants is the United States' and EEOC's internal deliberations, which are not relevant to the claims asserted in the United States' and Dr. Tudor's Complaints.

The Defendants' argument that the United States cannot assert the government deliberative process privilege because it is a party to this case also lacks merit. First of all, the EEOC is not a party to this case and, thus, this argument cannot apply to privileged communications involving the EEOC. The Defendants have also stipulated that intra-agency communications within the Department of Justice are privileged. *See* Exhibit 3 at 1-2. As such, the only documents the United States has withheld on the basis of the government deliberative process privilege, that the Defendants have not already agreed are privileged, are communications involving the EEOC. Secondly, courts have rejected the Defendants' argument that a government agency may not assert the government deliberative process privilege when it pursues an enforcement action. *See e.g. Nacchio*, 704 F. Supp. 2d at 1112 and *Export-Import Bank of the U.S. v. Asia Pulp & Paper Co., Ltd.*, 232 F.R.D. 103, 110 (S.D.N.Y. 2005).

Finally, the Defendants' argument that disclosure of documents protected by the government deliberative process privilege would not harm government decisionmaking is baseless. As the attached declarations from the heads of the DOJ's Civil Rights Division and the EEOC make clear, if the types of documents that the United States has withheld were discoverable, open and frank communication among government employees would be inhibited and the quality of government decisionmaking would suffer. *See* Exhibits 4 and 5.

E. Arguments regarding Dr. Tudor's medical records are not ripe.

In the Defendants' Motion, they seek an order compelling production of Dr. Tudor's medical records. ECF No. 67 at 19-21. Dr. Tudor, who is a party to this case in her own right, has objected to production of these medical records for a variety of reasons, including the psychotherapist-patient privilege. She has expressed those objections in response to a separate set of Requests for Production that the Defendants served on her. *See* Exhibit 6. She has also raised these objections in a Motion to Quash a subpoena directed at her former psychotherapist, which Motion has not been fully briefed yet. ECF No. 71. The United States agrees with Dr. Tudor's objections but since Dr. Tudor—not the United States—holds any applicable privilege over these records, it would be inappropriate for the United States to make decisions on whether these records should be produced. Dr. Tudor's counsel and the Defendants are in the process of conferring over Dr. Tudor's objections to the requests for her medical records and if they cannot resolve the dispute, one of them will likely bring the dispute to the Court. At that time, the dispute would be ripe for resolution by the Court.

F. The Court should reject the Defendants' remaining arguments regarding the United States' objections to the Defendants' discovery requests.

The Defendants have also moved to compel supplemental or amended responses to some of their Interrogatories and Requests for Production. The Defendants argue that the United States' objections "on grounds other than privilege" lack merit. ECF No. 67 at 21. The Court should reject the Defendants' arguments for the reasons discussed below. Furthermore, as discussed above, the Defendants failed to satisfy their obligations under Local Rule 37.1 with respect to their Requests for Production; thus, the Court should reject their arguments regarding their Requests for Production on that basis. *See* Section II.B *supra*.

Interrogatory 2: The Defendants argument with respect to this Interrogatory is unusual because they do not claim that the United States provided them with too little information. Instead, they claim that the United States provided them with *too much* information. ECF No. 67 at 22. The Defendants have asked the United States to remove examples of complaints that Dr. Tudor made from its response to Interrogatory 2. The United States simply has a difference of opinion with the Defendants over whether a complaint is related to sexual discrimination or harassment. The United States is aware of no authority which would require a responding party to remove information from an Interrogatory response. To the extent that the Defendants believe that complaints identified in response to the Interrogatory are non-responsive, they are free to disregard them.

Interrogatory 3: This Interrogatory asked the United States to “identify each RUSO or SEOSU agent or employee who has admitted to you that he or she discriminated against, or harassed, Intervenor.” The United States responded as follows: “Lucretia Scoufos, Douglas McMillan, and Larry Minks have all made statements which evidence that they discriminated against Dr. Tudor.” The crux of the dispute appears to center around the term “admitted” in Interrogatory 3. The United States interpreted this term to ask whether any witnesses had made admissions, as that term is used for purposes of applying the Federal Rules of Evidence, which evidenced that they discriminated against or harassed Dr. Tudor. After the Defendants objected to the United States’ response, the United States asked the Defendants to re-word their Interrogatory to be more precise about what information they wanted but they did not do so.

Interrogatory 6: As the United States has informed the Defendants, the United States provided all responsive information that it had in its answer to this Interrogatory.

Interrogatory 8: The United States objected to this Interrogatory because it sought “all factual details” supporting a contention. Interrogatories of this nature are overly broad and unduly burdensome because “Interrogatories should not require the answering party to provide a narrative account of its case.” *Williams v. Sprint/United Mgmt. Co.*, 235 F.R.D. 494, 502-03 (D. Kan. 2006) (interrogatories asking for all facts that support a contention are overly broad and unduly burdensome). The United States provided information in response to the Interrogatory, both in its initial and supplemental Interrogatory responses, but it did not supply the narrative that the Defendants desired because such a narrative response would have been unduly burdensome. Furthermore,

the United States has provided an expert report to the Defendants on the subject of this Interrogatory. As such, the Defendants have ample information on this topic.

Interrogatories 11 and 12: These Interrogatories suffer from the same defect as Interrogatory 8 because they request “all facts” supporting a contention. The United States provided responsive information in its initial and supplemental Interrogatory responses. However, it did not supply the narrative that the Defendants requested because that would have been unduly burdensome.

Interrogatories 16 and 17 and Request for Production 15: The United States cannot state what new policies, practices, and programs or training that RUSO and SEOSU should institute until the conclusion of trial in this case. The United States is conducting discovery on such issues as what types of training the Defendants require of their employees and what their discrimination policies require. The United States must consider all of the evidence collected during discovery and presented at trial before it can make a motion to the Court for equitable relief which may include requests for training and changes to SEOSU’s and RUSO’s policies, practices, and programs.

Request for Production 5: Although the Defendants stated that their argument about this Request for Production concerns only objections not related to privilege (ECF No. 67 at 21) they fail to acknowledge that the United States objected to this request on the grounds of attorney work product (ECF No. 67-1 at 19). Producing this background report would reveal the United States’ thought processes and the mental impressions of its attorneys because it would show what information the United States chose to include in the report, and what information it chose not to include in the report. This in turn

would reveal the judgment of counsel for the United States as to what information was significant in determining to pursue its claims in this case. The Defendants' need for this document cannot overcome these privilege assertions because, as Defendants' acknowledge, Defendants can procure their own background report on Dr. Tudor.

Requests for Production 7, 23, 24, and 25: The United States did not object to these requests. All responsive documents in the United States' possession, custody or control have been produced.

Requests for Production 28 and 29: The United States objected to these requests as overly broad and unduly burdensome because they would require production of "every pay stub, payroll record, personnel record, and similar documents" related to Dr. Tudor's employment since the Defendants terminated her. Without waiving this objection, all responsive documents in the United States' possession, custody, and control were produced and the Defendants have not indicated that they are having any difficulty calculating Dr. Tudor's back pay. As such, producing additional documents would be unnecessarily burdensome.

Request for Production 31: The Defendants argue in their Motion that "to the extent that attorney fees are an element of damages sought in this action, they are relevant and must be produced." ECF No. 67 at 27. However, Title VII does not permit the United States to recover attorney fees like a private litigant. 42 U.S.C. § 2000e-5(k). Thus, attorney fees are not an element of damages that the United States is seeking. The United States will seek reimbursement for litigation costs if it becomes a prevailing party. But because information about litigation costs would not become relevant until after the

United States became a prevailing party, such information is not yet discoverable. *Stevens v. DeWitt Cnty., Ill.*, 11-CV-3162, 2013 WL 819372, at *2 (C.D. Ill. Mar. 6, 2013) (holding that costs and attorney fees only become relevant if and when plaintiff becomes prevailing party). The United States also asserted a work product objection to this request because providing information on what the United States has chosen to spend money on in connection with this case would reveal the attorneys' thought processes.

III. CONCLUSION

For the foregoing reasons, the Court should deny the Defendants' Motion.

Respectfully submitted,

Date: July 26, 2016

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division

DELORA L. KENNEBREW
Chief
Employment Litigation Section

MEREDITH L. BURRELL (MD no number issued)
Deputy Chief
Employment Litigation Section

/s/ Allan K. Townsend
ALLAN K. TOWNSEND (ME Bar No. 9347)
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Shayna.Bloom@usdoj.gov
Valerie.Meyer@usdoj.gov

CERTIFICATE OF SERVICE

I certify that I served this document on all counsel of record through the Court's electronic filing system on the date below.

Date: July 26, 2016

/s/ Allan K. Townsend

United States et al. v. Southeastern Oklahoma State University et al.,
Case No. 5:15-CV-00324-C (W.D. Okla.)

**First Amended Privilege Log for United States' Response to Regional University System of
Oklahoma's First Set of Discovery Requests**

Bates Numbers	Document Type	Date	Document Description	Privilege
N/A	Emails	1/24/2014 – present	Emails between Department of Justice (DOJ) counsel and Dr. Tudor and/or Dr. Tudor's counsel	Common Interest Rule; Attorney Client Privilege
N/A	Declaration	7/21/2015 and 5/2/2016	Declarations prepared by DOJ for witness's signature	Attorney Work Product
N/A	Emails, memoranda, and invoices	3/25/2015 – present	Communications with potential experts and litigation consultants	Attorney Work Product
N/A	Background report for Dr. Tudor	3/7/2013	Report generated in connection with deliberative process over what claims, if any, to litigate if EEOC referred charge	Attorney Work Product; Government Deliberative Process
N/A	Notes	2/8/2012 and 2/9/2012	DOJ counsel's notes from witness interviews during EEOC investigation	Attorney Work Product; Government Deliberative Process
N/A	Transcripts	4/20/2015	Transcripts of digital recordings from witness interviews that have been produced	Attorney Work Product
N/A	Notes	4/22/2014	DOJ counsel's outlines for witness interviews	Attorney Work Product; Government Deliberative Process
N/A	Notes	7/21/2015 and 7/22/2015	DOJ counsel's notes from witness interviews and	Attorney Work Product; Common Interest

			related outlines	Rule
N/A	Emails	2/18/2015 – present	Emails between DOJ attorneys and EEOC attorneys regarding litigation of charge	Attorney Work Product; Government Deliberative Process; Common Interest Rule

Emails between DOJ counsel and EEOC reflecting deliberations regarding investigation and finding on Dr. Tudor’s charge of discrimination

Bates Numbers	Document Type	Date	Document Description	Privilege
N/A	Emails	6/16/2011	Emails between EEOC attorney and DOJ attorney discussing EEOC’s plans for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	6/24/2011	Emails between EEOC attorney and DOJ attorney discussing EEOC’s plans for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	7/6/2011	Emails between EEOC investigator and DOJ attorneys regarding preparation of Dr. Tudor’s charge	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	7/20/2011 – 7/21/2011	Emails between EEOC investigator and DOJ attorney regarding preparation of information request to Defendants	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	8/10/2011	Email from EEOC investigator to DOJ attorney regarding EEOC’s efforts to	Government Deliberative Process; Attorney Client

			obtain documents and strategy for proceeding	Privilege; Common Interest Rule
N/A	Emails	8/31/2011	Emails between EEOC investigator and DOJ attorney regarding EEOC's strategy for review and evaluation of documents	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	9/13/2011	Emails between EEOC investigator and DOJ attorney discussing EEOC's strategy for review and evaluation of documents	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	9/21/2011 – 9/22/2011	Emails between EEOC investigator and DOJ attorney discussing strategy and recommendations concerning the investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	10/5/2011	Emails between EEOC investigator and DOJ attorney discussing strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	11/1/2011 – 11/2/2011	Emails between EEOC investigator and DOJ attorney discussing strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	11/22/2011	Emails between EEOC attorney and DOJ attorney discussing strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule

N/A	Email	11/22/2011	Email from EEOC official to DOJ attorney discussing strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	11/23/2011	Email from DOJ attorney to EEOC investigator regarding EEOC investigator's strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	12/7/2011	Email from EEOC investigator to DOJ attorney regarding EEOC investigator's strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	12/14/2011	Email provided by EEOC investigator to DOJ to seek advice about investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	12/22/2011	Email from DOJ attorney to EEOC investigator regarding investigation process and strategy	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	12/28/2011	Email from EEOC investigator to DOJ attorney regarding investigation process and strategy	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	12/29/2011	Email from EEOC investigator to DOJ attorney seeking advice on	Government Deliberative Process; Attorney Client

			investigation	Privilege; Common Interest Rule
N/A	Email	1/5/2012	Email provided by EEOC investigator to DOJ attorney to seek advice about investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	1/11/2012	Email provided by EEOC investigator to DOJ attorney to seek advice about investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	1/11/2012 – 1/12/2012	Emails between DOJ attorney and EEOC investigator regarding plans to conduct witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	2/1/2012	Email from EEOC investigator to DOJ attorney regarding strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	2/22/2012	Email from EEOC investigator to DOJ attorney regarding strategy for witness interview	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	2/26/2012 – 2/27/2012	Emails between DOJ attorney and EEOC investigator regarding strategy and recommendations for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	2/29/2012	Emails between	Government

			EEOC investigator and DOJ attorney in seeking advice and discussing strategy and recommendations for investigation	Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	3/5/2012	Email from DOJ attorney to EEOC investigator providing recommendations regarding investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	3/20/2012	Email from EEOC investigator to DOJ attorney discussing EEOC's strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	3/29/2012	Emails between EEOC investigator and DOJ attorney regarding investigation process	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	4/25/2012	Email from EEOC investigator to EEOC officials and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	5/18/2012	Email from DOJ attorney to EEOC investigator regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	6/20/2012 – 6/21/2012	Emails between EEOC investigator and DOJ attorney regarding strategy	Government Deliberative Process; Attorney Client

			for investigation	Privilege; Common Interest Rule
N/A	Emails	7/13/2012	Emails between DOJ attorneys, EEOC officials, and EEOC attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	7/19/2012	Email from EEOC investigator to DOJ attorney regarding information received from Dr. Tudor	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	8/8/2012	Emails between EEOC investigator, EEOC officials, and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	8/9/2012	Email from EEOC investigator to DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	8/10/2012	Emails between EEOC investigator, EEOC officials, and DOJ attorneys regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	8/14/2012	Email from EEOC official to EEOC investigator, other EEOC officials, and DOJ attorneys regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	8/28/2012 –	Emails between	Government

		8/29/2012	EEOC investigator and DOJ attorney regarding strategy for investigation	Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	9/5/2012	Emails between EEOC officials, EEOC investigator, and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule

Emails between DOJ counsel and EEOC regarding EEOC's conciliation process

Bates Number	Document Type	Date	Document Description	Privilege
N/A	Email	9/13/2012	Email from EEOC investigator to DOJ attorney seeking advice regarding conciliation	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Email	9/24/2012	Email from EEOC investigator to DOJ attorney regarding information provided by Dr. Tudor during conciliation	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Email	10/24/2012	Email from EEOC investigator to DOJ attorney regarding information provided by Dr. Tudor during	Government Deliberative Process; Attorney Client Privilege; Statutory

			conciliation	Protection of Conciliation Communications; Common Interest Rule
N/A	Email	11/7/2012	Email from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Email	11/14/2012	Email from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Emails	12/19/2012	Emails from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Email	3/14/2013	Email from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation

				Communications; Common Interest Rule
N/A	Email	3/28/2013	Email from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Emails	4/3/2013 – 4/4/2013	Emails between EEOC investigator, EEOC official, and DOJ attorneys regarding correspondence related to conciliation and advice on conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Email	4/18/2013	Email from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Email	5/2/2013	Email from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest

				Rule
N/A	Email	5/28/2013	Email from EEOC investigator to Dr. Tudor and DOJ attorney regarding conciliation	Statutory Protection of Conciliation Communications
N/A	Emails	5/28/2013	Emails between EEOC investigator and DOJ attorney regarding conciliation communications	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
N/A	Email	5/29/2013	Email from EEOC investigator to Dr. Tudor and DOJ attorney regarding conciliation	Statutory Protection of Conciliation Communications
N/A	Emails	5/29/2013	Emails between EEOC officials, EEOC attorney, and DOJ attorney regarding conciliation failure and next steps in EEOC's process	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule

Emails between DOJ attorneys and EEOC attorneys/staff regarding referral of Dr. Tudor's charge to DOJ for litigation and decision to litigate charge

Bates Numbers	Document Type	Date	Document Description	Privilege
N/A	Emails	6/12/2013 – 6/13/2013	Emails between EEOC investigator and DOJ attorney regarding charge referral to DOJ	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	6/26/2013	Email from EEOC investigator to DOJ attorney regarding	Government Deliberative Process;

			charge referral to DOJ	Attorney Client Privilege; Common Interest Rule
N/A	Emails	7/15/2013	Emails between EEOC investigator and DOJ attorney regarding charge referral to DOJ	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	7/24/2013	Email from EEOC investigator to DOJ attorney regarding question from Dr. Tudor	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	10/24/2013	Email from EEOC attorney to DOJ attorney regarding DOJ's evaluation of the charge	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Emails	3/5/2014	Emails between EEOC attorneys and DOJ attorneys regarding selection of a mediator	Government Deliberative Process; Attorney Work Product; Common Interest Rule
N/A	Email	5/6/2014	Email from EEOC investigator to DOJ attorney regarding DOJ's evaluation of the charge	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
N/A	Email	7/15/2014	Email from EEOC attorney to DOJ attorney regarding DOJ's evaluation of the charge	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule

**Emails between DOJ counsel and DOE counsel regarding DOE's file on Dr. Tudor's
complaint of discrimination**

Bates Numbers	Document Type	Date	Document Description	Privilege
N/A	Email	8/22/2013	Emails between DOE attorney and DOJ attorney regarding DOJ attorney's request for information	Government Deliberative Process
N/A	Email	8/26/2013	Emails between DOE attorney and DOJ attorney regarding DOJ attorney's request for information	Government Deliberative Process

**Emails between DOJ attorneys and EEOC attorneys and staff regarding how to respond to
requests for documents from Defendants**

Bates Numbers	Document Type	Date	Document Description	Privilege
N/A	Email	4/28/2015	Email from EEOC official to DOJ attorney regarding response to Defendants' request for documents	Government Deliberative Process
N/A	Emails	5/12/2015	Emails between EEOC official and DOJ attorney regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule
N/A	Letter	5/12/2015	Letter from DOJ attorney to EEOC official regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule
N/A	Emails	6/2/2015 – 6/3/2015	Emails between DOJ attorney and	Government Deliberative

			EEOC official and staff regarding response to Defendants' request for documents	Process; Attorney Work Product; Common Interest Rule
N/A	Email	6/12/2015	Email from EEOC official to DOJ attorney regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule
N/A	Emails	6/15/2015 – 6/16/2015	Emails between DOJ attorney and EEOC staff regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule
N/A	Email	6/22/2015	Email from DOJ attorney to EEOC official and staff regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule

EEOC FILE

Bates Numbers	Document Type	Date	Document Description	Privilege
EEOC4569 – 4571	Case Log	4/13/2011 – 5/2/2013	Log entries recording deliberations between EEOC staff/attorneys and DOJ and EEOC staff/attorneys have been redacted	Government Deliberative Process
EEOC4572 – 4573	Closure/Cause Charge Data Sheet	5/29/2013	Form with coding for EEOC's internal data tracking	Government Deliberative Process
EEOC4578 – 4585	Memorandum	8/15/2012	Memorandum from EEOC investigator to supervisory EEOC staff regarding investigative	Government Deliberative Process

			findings	
EEOC4588	File Table of Contents	N/A	Form used by EEOC for its internal recordkeeping	Government Deliberative Process
EEOC4589	Categorization Sheet	N/A	Form documenting internal deliberations regarding the charge	Government Deliberative Process
EEOC4590 – 4591	Charge Detail Inquiry	N/A	EEOC database report showing internal charge data tracking	Government Deliberative Process
EEOC4597 – 4598 and EEOC4600 – 4601	Database screenshot	N/A	Screenshot of EEOC database showing internal charge data tracking	Government Deliberative Process
EEOC4599	Memorandum	N/A	EEOC's draft statement of particulars for charge of discrimination	Government Deliberative Process
EEOC4607 – 4609	Emails	9/17/2012 - 9/26/2012	Emails between EEOC and Dr. Tudor regarding conciliation efforts	Statutory Protection of Conciliation Communications
EEOC4616	Redacted email	12/29/2011	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4671	Redacted document	N/A	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4673	Redacted document	N/A	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4705 – 4728	Letters	11/1/2012 - 5/29/2013	Correspondence between EEOC and RUSO regarding conciliation efforts	Statutory Protection of Conciliation Communications
EEOC4801	Redacted document	N/A	EEOC investigator's notations reflecting investigator's thoughts have been	Government Deliberative Process

			redacted	
EEOC4859 - 4866	Notes	N/A	EEOC investigator's notes related to internal deliberation with EEOC attorney regarding interview questions	Attorney-Client Privilege; Government Deliberative Process
EEOC4904- 4905	Letter	10/12/2010	Correspondence between EEOC and DOE attorneys regarding referral of Dr. Tudor's charge of discrimination	Government Deliberative Process
EEOC4910 - 4936	Emails	9/17/2012 – 5/28/2013	Correspondence between EEOC and Dr. Tudor regarding conciliation efforts	Statutory Protection of Conciliation Communications
EEOC4971	Memorandum	N/A	Draft statement of particulars for charge of discrimination	Government Deliberative Process
EEOC5283 - 5324	Emails and notes	12/29/2011 and 1/4/2012	Communications between DOJ attorneys and EEOC related to investigation of charge and EEOC investigator's notes about those emails	Attorney-Client Privilege; Government Deliberative Process; Common Interest Rule
EEOC5325	Email	9/1/2011	Email from EEOC attorney to EEOC attorneys, EEOC supervisory staff, and DOJ attorneys reflecting deliberations concerning proposed content of correspondence	Attorney-Client Privilege; Government Deliberative Process; Common Interest Rule
EEOC5326 - 5328	Email		Email from DOJ to EEOC inquiring about charge	Government Deliberative Process
EEOC5329 - 5331	Emails	6/12/2013 – 7/29/2013	Emails between EEOC and attorneys with DOJ regarding referral of charge	Attorney-Client Privilege; Government Deliberative Process;

				Common Interest Rule
EEOC5333	Email	7/29/2013	Email between EEOC and DOJ staff regarding referral of charge	Government Deliberative Process

DOE FILE

Bates Numbers	Document Type	Date	Document Description	Privilege
DOE1	Letter	8/26/2013	Letter from DOE to DOJ regarding DOJ's investigation of charge	Government Deliberative Process
DOE2	Letter	10/12/2010	Letter from DOE to EEOC regarding referral of charge from DOE to EEOC	Government Deliberative Process
DOE7-9	Emails	9/20/2010 – 10/12/2010	Emails within DOE regarding decision to refer charge to EEOC	Government Deliberative Process
DOE30-31	Database reports	N/A	DOE database report showing internal data tracking used to facilitate investigation and determinations related to charge	Government Deliberative Process

Townsend, Allan (CRT)

From: Townsend, Allan (CRT)
Sent: Friday, May 20, 2016 10:24 PM
To: Dixie Coffey; Jeb Joseph
Cc: Jillian Weiss; Ezra Young; Brittany Novotny; Meyer, Valerie (CRT); Bloom, Shayna (CRT)
Subject: First Amended Privilege Log
Attachments: Privilege log for response to 1st set of requests 1st AMENDED.pdf

Counsel,

Attached please find the First Amended Privilege Log for United States' Response to Regional University System of Oklahoma's First Set of Discovery Requests.

Allan K. Townsend
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section--PHB
601 D Street, NW
Washington, DC 20579
(202) 305-3302

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Civil Rights Division

DLK:MLB:AT/SB
DJ 170-76-405

Employment Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530
www.usdoj.gov/crt/emp

Via U.S. Mail

May 23, 2016

Jeb Joseph
Oklahoma Attorney General's Office
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Re: *United States & Tudor v. Southeastern Okla. Univ. & Reg. Univ. Sys. of Okla.* 5:15-CV-00324-C (W.D. Okla.)

Dear Jeb:

Enclosed please find the First Amended Privilege Log for the United States' Response to Regional University System of Oklahoma's First Set of Discovery Requests.

Sincerely,

Adriene A. Colbert
Paralegal Specialist
Employment Litigation Section

Townsend, Allan (CRT)

From: Townsend, Allan (CRT)
Sent: Tuesday, February 16, 2016 11:24 AM
To: Dixie Coffey; Jeb Joseph
Cc: bnovotny@nationlit.com; jweiss@jtweisslaw.com; eyoung@jtweisslaw.com; Bloom, Shayna (CRT)
Subject: RE: USA v SOSU and RUSO - CIV-15-324

Dixie,

Your February 8, 2016, letter inaccurately describes some of the positions that the United States took during our February 2, 2016, conference call. Below, I have corrected your description of our positions.

Contrary to your assertion on page one of your letter, the United States did not agree that our privilege log failed to comply with Fed. R. Civ. P. 26. We did, however, agree to consider amending the privilege log to provide you with more detail with the goal of resolving the dispute.

Contrary to your assertion on page one of your letter, the United States did not agree to specifically identify which documents have been withheld that are responsive to your FOIA request. Your document requests did not reference your FOIA request. Requests 16 and 17, however, appear to ask for the same documents that you asked for in your FOIA request. We agreed to consider providing you with an amended privilege log to provide you with more information about the documents that we withheld as privileged, including the documents that we withheld in response to Requests 16 and 17.

With respect to the interrogatories, we did not agree to supplement them as you indicated in your letter. Instead, we agreed to consider your request to supplement them in light of the points you raised during our teleconference and any refinements to the interrogatories that you decided to make. We are still in the process of considering your requests for supplementation.

Sincerely,
Allan

From: Lori Cornell [<mailto:lori.cornell@oag.ok.gov>]
Sent: Monday, February 08, 2016 4:51 PM
To: Townsend, Allan (CRT); Bloom, Shayna (CRT)
Cc: bnovotny@nationlit.com; jillian.t.weiss@gmail.com; jweiss@jtweisslaw.com; eyoung@jtweisslaw.com; Dixie Coffey; Jeb Joseph
Subject: USA v SOSU and RUSO - CIV-15-324

Counsel:

Please see attached correspondence from Ms. Coffey regarding follow up to your February 2, 2016 discussion on Plaintiff's insufficient discovery responses. Should you have any questions, please do not hesitate to contact us.

Thanks,

Lori Cornell
Office of the Attorney General
Paralegal
313 N.E. 21st Street

Oklahoma City, Oklahoma 73105

Telephone: 405.521.3921

Direct: 405.522.2906

Facsimile: 405.521.4518



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Townsend, Allan (CRT)

From: Townsend, Allan (CRT)
Sent: Thursday, July 16, 2015 4:28 PM
To: 'Dixie Coffey'; 'Kindanne Jones'; Bloom, Shayna (CRT); 'Brittany Novotny'; 'Jillian T. Weiss, Esq.'
Cc: 'Jeb Joseph'; 'Nikki Carter'; 'Ezra Young'
Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

Dixie,

Your summary of what we agreed to and did not agree to regarding what communications would need to be identified in a privilege log is correct. As you indicated in your email, Shayna or I will send you some authority to support our position on the privileged nature of the communications in the "No Agreement Regarding the Privilege Log" categories. In the meantime, please identify the witnesses that you believe are in the SEOSU control group so that we can better assess your request that you not have to identify communications with them in a privilege log.

With respect to the question at the end of your email, that is not the United States' position. During the call, I was trying to communicate that I thought we made a reasonable proposal on what categories of communications did not need to be included in a privilege log. We based our proposal on the desire to reduce unnecessary burdens for all parties during discovery and I thought your rejection of our proposal seemed unreasonable. I did not mean to imply that we would insist on a privilege log for the "No Privilege Log Needed" categories of communications merely because you did not accept our proposal. I hope that we will be able to persuade you that our proposal is reasonable but, if not, we will continue to agree that the communications under the "No Privilege Log Needed" heading in your email do not need to be identified in a privilege log.

Thank you,

Allan K. Townsend
Senior Trial Attorney
U.S. Department of Justice
Civil Rights Division
Employment Litigation Section--PHB
601 D Street, NW
Washington, DC 20579
(202) 305-3302

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and delete the original message.*



From: Dixie Coffey [mailto:dixie.coffey@oag.ok.gov]
Sent: Wednesday, July 15, 2015 6:31 PM
To: Townsend, Allan (CRT); Kindanne Jones; Bloom, Shayna (CRT); Brittany Novotny; Jillian T. Weiss, Esq.
Cc: Jeb Joseph; Nikki Carter; Ezra Young
Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

Allan,

It was our understanding that the parties agreed that communications that fall within the following categories of documents do not need to be detailed in privilege logs:

NO PRIVILEGE LOG NEEDED

1. Communications among attorney general/assistant attorney generals/their staff
2. Communications between Attorney General and general counsel of RUSO
3. Communications among DOJ attorneys and their staff
4. Communications between Dr. Tudor and her attorneys/staff

NO AGREEMENT REGARDING THE PRIVILEGE LOG

The parties have not reached an agreement regarding the need to identify other types of communications in privilege logs, including:

1. Communications between DOJ attorneys/staff and EEOC (DOJ to provide legal authority to support privilege claims of these communications)
2. Communications between Attorney General/staff and the SEOSU control group
3. Communications between DOJ and Dr. Tudor (and her attorneys) (DOJ to provide legal authority to support privilege claims of these communications)

However, at the end of the call, it appeared that DOJ's position was that DOJ would not agree to the "No Privilege Log Needed" categories in light of the parties' inability to agree on the log requirement for the remaining types of communications. Is that DOJ's position?

Dixie L. Coffey
Assistant Attorney General
Litigation Division, Office of the Attorney General
Phone:(405)522-2891; Fax (405) 521-4518

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From: Townsend, Allan (CRT) [<mailto:Allan.Townsend@usdoj.gov>]
Sent: Wednesday, July 15, 2015 9:14 AM
To: Kindanne Jones; Bloom, Shayna (CRT); Brittany Novotny; Dixie Coffey; Jillian T. Weiss, Esq.
Cc: Jeb Joseph; Nikki Carter; Ezra Young
Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

Yes, we will conference in everyone. Thank you.

From: Kindanne Jones [<mailto:kindanne.jones@oag.ok.gov>]
Sent: Wednesday, July 15, 2015 10:12 AM
To: Bloom, Shayna (CRT); Brittany Novotny; Dixie Coffey; Jillian T. Weiss, Esq.
Cc: Jeb Joseph; Nikki Carter; Townsend, Allan (CRT); Ezra Young

Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

We will call in. Does Allan have conference call abilities or some way of connecting all parties?

Kindy

From: Bloom, Shayna (CRT) [<mailto:Shayna.Bloom@usdoj.gov>]

Sent: Friday, July 10, 2015 9:07 AM

To: Brittany Novotny; Dixie Coffey; Jillian T. Weiss, Esq.

Cc: Jeb Joseph; Kindanne Jones; Nikki Carter; Townsend, Allan (CRT); Ezra Young

Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

We are available at 9:30 CDT on Wednesday. Allan's direct line is (202) 305-3302. Thanks.

Shayna

Shayna Bloom
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
Telephone: [\(202\) 305-1450](tel:(202)305-1450)
Fax: [\(202\) 514-1005](tel:(202)514-1005)

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From: Bloom, Shayna (CRT)

Sent: Friday, July 10, 2015 10:00 AM

To: 'Brittany Novotny'; Dixie Coffey; Jillian T. Weiss, Esq.

Cc: Jeb Joseph; Kindanne Jones; Nikki Carter; Townsend, Allan (CRT); Ezra Young

Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

I am not 100% certain of our availability for 9:30 am CDT yet, but assuming that works, you can call Allan's direct number and we can conference all parties together.

Shayna

Shayna Bloom
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
Telephone: [\(202\) 305-1450](tel:(202)305-1450)

Fax: [\(202\) 514-1005](tel:(202)514-1005)

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From: Brittany Novotny [<mailto:BNovotny@nationlit.com>]

Sent: Friday, July 10, 2015 9:57 AM

To: Dixie Coffey; Jillian T. Weiss, Esq.; Bloom, Shayna (CRT)

Cc: Jeb Joseph; Kindanne Jones; Nikki Carter; Townsend, Allan (CRT); Ezra Young

Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

I can do Wed, July 15 at 9:30 a.m. Is someone setting up a conference call that we can call into?

Brittany

Brittany M. Novotny

Managing Attorney



National Litigation Law Group, PLLC

42 Shepherd Center

2401 Northwest Twenty Third Street

Oklahoma City, Oklahoma 73107

405.429.7626 – DIRECT

405.835.6244 – facsimile

844.NATL.LIT – toll-free

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Dallas Denver Miami New York Oklahoma City St. Louis Washington D.C.

From: Dixie Coffey [<mailto:dixie.coffey@oag.ok.gov>]
Sent: Thursday, July 09, 2015 5:18 PM
To: Brittany Novotny; Jillian T. Weiss, Esq.; Bloom, Shayna (CRT)
Cc: Jeb Joseph; Kindanne Jones; Nikki Carter; Allan Townsend; Ezra Young
Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

We're not available on Monday, July 13. Would Wed, July 15 at 9:30am work for everyone?

Dixie L. Coffey
Assistant Attorney General
Litigation Division, Office of the Attorney General
Phone:(405)522-2891; Fax (405) 521-4518

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From: Brittany Novotny [<mailto:BNovotny@nationlit.com>]
Sent: Thursday, July 09, 2015 10:33 AM
To: Jillian T. Weiss, Esq.; Bloom, Shayna (CRT)
Cc: Jeb Joseph; Dixie Coffey; Kindanne Jones; Nikki Carter; Allan Townsend; Ezra Young
Subject: RE: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

I am available on Monday, July 13, after 11:30 a.m. I have meetings scheduled before then.

Brittany

Brittany M. Novotny
Managing Attorney



National Litigation Law Group, PLLC

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Dallas Denver Miami New York Oklahoma City St. Louis Washington D.C.

From: jillian.t.weiss@gmail.com [<mailto:jillian.t.weiss@gmail.com>] **On Behalf Of** Jillian T. Weiss, Esq.
Sent: Thursday, July 09, 2015 10:28 AM
To: Bloom, Shayna (CRT)
Cc: Jeb Joseph; Dixie Coffey; Kindanne Jones; nikki.carter@oag.ok.gov; Allan Townsend; Ezra Young; Brittany Novotny
Subject: Re: FW: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

We are available on Monday, July 12. Please note that my correct email address is jweiss@jtweisslaw.com, not jtweiss@jtweisslaw.com.

Jillian

Jillian T. Weiss
Law Office of Jillian T. Weiss, P.C.
P.O. Box 642
Tuxedo Park, NY 10987
Tel: (845) 709-3237
Fax: (845) 915-3283
Email: jweiss@jtweisslaw.com
Web: jtweisslaw.com

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On Thu, Jul 9, 2015 at 11:15 AM, Bloom, Shayna (CRT) <Shayna.Bloom@usdoj.gov> wrote:

Hi Jill. This bounced so I am resending. Thanks.

Shayna

Shayna Bloom
Trial Attorney
United States Department of Justice
Civil Rights Division
Employment Litigation Section
Telephone: [\(202\) 305-1450](tel:(202)305-1450)
Fax: [\(202\) 514-1005](tel:(202)514-1005)

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From: Bloom, Shayna (CRT)
Sent: Thursday, July 09, 2015 11:04 AM
To: 'Jeb Joseph'; Townsend, Allan (CRT); Dixie Coffey; Kindanne Jones; Nikki Carter; eyoung@jtweisslaw.com; jtweiss@jtweisslaw.com; bnovotny@nationlit.com
Subject: RE: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

Counsel:

In light of the order we received this morning, we would like to schedule our Rule 26(f) conference for as soon as possible. Are you all available this coming Monday? If so, please let us know of any specific times that will not work. Thank you.

Shayna

Shayna Bloom
Trial Attorney
United States Department of Justice
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Employment Litigation Section
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Fax: [\(202\) 514-1005](tel:(202)514-1005)

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From: Jeb Joseph [<mailto:jeb.joseph@oag.ok.gov>]
Sent: Thursday, July 02, 2015 9:57 AM
To: Townsend, Allan (CRT); Dixie Coffey; Kindanne Jones; Nikki Carter; eyoung@jtweisslaw.com; jtweiss@jtweisslaw.com; bnovotny@nationlit.com
Cc: Bloom, Shayna (CRT)
Subject: RE: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

Dear Allan,

Thank you for your kind response and cooperative attitude. Have a great Fourth of July weekend.

-Jeb

Jeb Joseph
Assistant Attorney General
Litigation Division
Office of the Attorney General
313 N.E. 21st Street
Oklahoma City, OK 73105
[\(405\) 522-8940](tel:(405)522-8940) - Office
[\(405\) 521-4518](tel:(405)521-4518) - Fax

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From: Townsend, Allan (CRT) [<mailto:Allan.Townsend@usdoj.gov>]
Sent: Tuesday, June 30, 2015 11:03 AM
To: Dixie Coffey; Kindanne Jones; Jeb Joseph; Nikki Carter; eyoung@jtweisslaw.com; jtweiss@jtweisslaw.com; bnovotny@nationlit.com
Cc: Bloom, Shayna (CRT)
Subject: RE: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

Counsel,

I am writing with respect to the letter from Jeb that was attached to the email below. The United States would prefer not to wait until after the Court rules on the Defendants' partial motion to dismiss before we conduct the Rule 26(f) conference in part because we do not believe that a ruling in favor of Defendants would substantially limit the scope of discovery. However, in light of the Defendants' position, we are willing to postpone scheduling the Rule 26(f) conference for a little while so that we can see if the Court quickly rules on the motion. If the Court sets a date for a scheduling conference before ruling on the motion, we will want to conduct the Rule 26(f) conference prior to that scheduling conference because we will need to present our joint discovery plan at that scheduling conference.

Allan K. Townsend

Senior Trial Attorney

U.S. Department of Justice

Civil Rights Division

Employment Litigation Section--PHB

601 D Street, NW

Washington, DC 20579

[\(202\) 305-3302](tel:(202)305-3302)

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From: Nikki Carter [<mailto:nikki.carter@oag.ok.gov>]

Sent: Monday, June 29, 2015 12:12 PM

To: eyoung@jtweisslaw.com; Bloom, Shayna (CRT); Townsend, Allan (CRT); jtweiss@jtweisslaw.com; bnovotny@nationlit.com

Cc: Dixie Coffey; Kindanne Jones; Jeb Joseph

Subject: United States of America v. Southeastern Oklahoma State University and the Regional University System of Oklahoma

Dear Counsel:

Please see attached.

Nikki Carter

Legal Assistant

Office of the Oklahoma Attorney General

Litigation unit

313 Northeast 21st Street

Oklahoma City, Oklahoma 73102

Telephone: [\(405\) 521-3921](tel:(405)521-3921)

Direct: [\(405\) 522-4389](tel:(405)522-4389)

Facsimile: [\(405\) 521-4518](tel:(405)521-4518)

Nikki.Carter@oag.ok.gov

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
Plaintiff)
)
RACHEL TUDOR,)
)
Plaintiff-Intervenor)
v.)
)
SOUTHEASTERN OKLAHOMA)
STATE UNIVERSITY, and)
)
THE REGIONAL UNIVERSITY)
SYSTEM OF OKLAHOMA,)
)
)
Defendants.)

CASE NO. 5:15-CV-00324-C

DECLARATION OF VANITA GUPTA

1. I, Vanita Gupta, am the Principal Deputy Assistant Attorney General for the Civil Rights Division (“Division”) of the United States Department of Justice (“DOJ”). As the Principal Deputy Assistant Attorney General, I am the senior management official of the Division. As part of my official duties, I am responsible for the overall supervision of the Division’s enforcement of the federal statutes and regulations that fall within the Division’s mission, including Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* (“Title VII”). Among the matters under my supervision is *United States and Tudor v. Southeastern*

Oklahoma State University and the Regional University System of Oklahoma,
Civil Action No. 5:15-CV-00324-C. The statements made in this declaration are based upon my personal knowledge as well as information obtained during the course of my official duties.

2. I have been informed that defendant Regional University System of Oklahoma (“RUSO”) has moved to compel the United States to produce, among other things, documents that the United States believes should be protected from disclosure under the government deliberative process privilege.
3. As the senior management official of the Division, I have been authorized by the Attorney General of the United States of America (“United States”) to assert the government deliberative process privilege on behalf of the United States in the Division’s enforcement proceedings and in other matters in which disclosure of the Division’s deliberative information is sought. I am submitting this declaration as a formal assertion of that privilege in response to RUSO’s motion to compel.
4. My formal assertion of the deliberative process privilege is based both on my personal knowledge of the deliberative and decision-making processes of the Division, including the manner in which enforcement matters are identified, investigated, and evaluated, as well as my personal review of: (a) the Second Amended Privilege Log for United States’ Response to Regional University System of Oklahoma’s First Set of Discovery Requests (“Second Amended Privilege Log”) created by the Division’s attorneys, which is attached to this declaration as Exhibit A; (b) the initial and First Amended privilege logs that

preceded the Second Amended Privilege Log; (c) the DOJ documents and communications identified in the Second Amended Privilege Log as protected from disclosure by the government deliberative process privilege; (d) Defendant RUSO's motion to compel.

5. The Second Amended Privilege Log reflects DOJ's current assertions of the government deliberative process privilege following my personal review, as well as its assertion of other applicable privileges. The Second Amended Privilege Log also reflects the EEOC's current assertions of the government deliberative process privilege and other applicable privileges. The Second Amended Privilege Log (Exhibit A) contains a new set of Bates numbers with the prefix "PRIVDOJ" that were added to documents for purposes of my review. These PRIVDOJ Bates numbers were added to the un-redacted versions of the documents which reflect communications involving DOJ employees that DOJ withheld on the basis of government deliberative process privilege. DOJ asserts that the following Bates-numbered documents are protected, in whole or in part, by government deliberative process privilege: PRIVDOJ000002-19; PRIVDOJ000078-189; PRIVDOJ000195-206; PRIVDOJ000209-239; PRIVDOJ000241-264; PRIVDOJ000266-268; PRIVDOJ000271-274; PRIVDOJ000276-296; PRIVDOJ000298-309; PRIVDOJ000315-318; PRIVDOJ000325-329; PRIVDOJ000337-354; PRIVDOJ000358-417; PRIVDOJ000428-430; PRIVDOJ000443-445; PRIVDOJ000449-471; PRIVDOJ000473-475; PRIVDOJ000480-553; PRIVDOJ000556-586; PRIVDOJ000589-595;

PRIVDOJ000597-602; PRIVDOJ000605; PRIVDOJ000607-621; and
PRIVDOJ000624.

6. The operation of the DOJ as a federal law enforcement agency requires the free expression by DOJ employees of their analyses, advice, recommendations and conclusions made in conjunction with the DOJ's enforcement responsibilities. The frank and candid exchange of ideas and thorough evaluation of the merits of respective positions is vital to the informed and effective decision-making by DOJ. Without the assurance of confidentiality, the ability of DOJ employees to fully identify and evaluate competing ideas and options by expressing to each other their analyses and judgment regarding these ideas and options would be impaired.
7. On the basis of my personal review of the documents at issue, I have determined that disclosure of the documents on which DOJ's deliberative process privilege is asserted would impair DOJ's decision-making concerning its enforcement of Title VII by discouraging open and frank discussion within DOJ. Disclosure of these documents would also impair DOJ's decision-making by inhibiting open and frank inter-agency communication between DOJ and other Executive Branch agencies with statutory authority to investigate allegations of unlawful discrimination and to refer unresolved meritorious claims to the DOJ for further enforcement, including the Equal Employment Opportunity Commission ("EEOC").
8. As discussed more fully below, each document for which this privilege is asserted was prepared prior to a decision that DOJ or the EEOC made, and each such document was prepared to assist these agencies in making those decisions. The

assertion of the government deliberative process privilege in these circumstances is consistent with the purpose of the privilege in that it promotes the candid intra- and inter-agency discussions that are necessary for effective decision making.

9. Defendant RUSO did not challenge the application of the deliberative process privilege to any particular documents or categories of documents identified on the United States' initial privilege log or its First Amended Privilege Log.

Nevertheless, to assist the Court in its evaluation of the United States' privilege assertions, the next section of this declaration explains the general nature and subject matter of deliberations that typically occur between the Division and the EEOC. The following sections discuss the deliberative nature of the communications appearing in the United States' Second Amended Privilege Log, organized to correspond with the document categories identified in that privilege log.

DOJ and EEOC Authority for Enforcing Title VII as to Public Employers

10. The EEOC and DOJ share authority for the enforcement of Title VII with respect to state and local governmental employers. As set forth in Title VII, the EEOC receives and investigates charges of discrimination against state and local governmental employers. 42 U.S.C. § 2000e-5(f). Following an investigation of such a charge, the EEOC determines whether there is reasonable cause to believe that the state or local governmental employer violated Title VII. This determination may be set forth in a Letter of Determination ("LOD") issued to the

charging party and the respondent. If the EEOC finds cause to believe that a Title VII violation has occurred, it attempts to remedy the violation through the statutory conciliation process.

11. Under Title VII, DOJ is the sole federal entity that has the authority to sue state and local government employers for Title VII violations. 42 U.S.C. § 2000e-5(f). That authority has been delegated to the Division. Therefore, if the EEOC determines that efforts to conciliate a Title VII charge against a state or local government are unsuccessful, the EEOC formally refers the charge and its investigative file to the Employment Litigation Section of the Division.
12. Following a charge referral from the EEOC, the Division makes a determination whether to bring a lawsuit in the name of the United States based on the charge. In making this determination, the Division relies on the information obtained by the EEOC in its investigation, as well as the results of any supplemental investigation that the Division may conduct.
13. Given their shared and overlapping responsibilities, the EEOC and the Division share an interest in ensuring that enforcement of Title VII is consistent, effective, and not duplicative. With respect to individual charges of discrimination, the EEOC and the Division share an interest in ensuring that allegations of discrimination in violation of Title VII are effectively investigated and, where a violation is found, appropriate remedies are obtained. Thus, effective coordination and cooperation between the EEOC and the Division is important to further the public interest in eliminating and remedying unlawful employment discrimination.

14. This coordination and cooperation may include deliberations between EEOC and Division employees at various stages of each agency's decision-making process. For instance, prior to the EEOC's issuance of an LOD, Division attorneys and EEOC staff may evaluate and make recommendations regarding the manner in which an investigation should proceed, develop recommendations regarding testimony and documents to be sought, evaluate information or documents obtained or created by the EEOC, or collaborate regarding strategy for witness interviews. Before or after the EEOC's formal referral of a charge to DOJ, Division attorneys and EEOC attorneys and staff may consult regarding other matters that implicate both agencies' interests, such as third party requests for information compiled during the EEOC's investigation of a discrimination charge.

DOJ Documents not shared with EEOC or DOE

15. It is my understanding that the Defendants in this action stipulated that internal DOJ communications between DOJ attorneys and staff were privileged and would not be recorded on a privilege log. Nevertheless, in an abundance of caution, the United States' Second Amended Privilege Log identifies as privileged the following documents that were created and used exclusively for communications within DOJ: (a) DOJ counsel's notes from witness interviews and (b) DOJ counsel's outlines for witness interviews.

16. The Second Amended Privilege Log identifies witness interview notes and outlines related to (a) interviews conducted during the EEOC's investigation, (b)

interviews conducted after the EEOC concluded its investigation but before the United States decided to file a lawsuit in this case, and (c) interviews that occurred after the United States filed the lawsuit. The notes and outlines created before the filing of this lawsuit were prepared to assist DOJ in deciding what claims DOJ would pursue. The notes and outlines created after the filing of the lawsuit were prepared to assist DOJ in deciding what types of discovery to seek in litigation.

17. The witness interview notes and outlines represent the opinions and impressions of DOJ's counsel regarding the facts that should be marshalled for evaluation of the United States' legal claims. These documents reflect choices about what types of information DOJ counsel wanted to obtain from witnesses, what information they chose to document, and their impressions about what witnesses said for purposes of making recommendations to DOJ decision-makers. Disclosure of these notes and outlines would impair DOJ decision-making by inhibiting open and frank discussion and evaluation of what information should be gathered during an investigation and what DOJ counsel's impressions were of witnesses.

Emails between DOJ attorneys and EEOC attorneys regarding litigation of charge

18. DOJ informed the Defendants in a letter dated February 18, 2015, that it believed the Defendants violated Title VII and invited the Defendants to engage in discussions over the terms of a consent decree. The letter further informed the Defendants that it would file a lawsuit against them by March 23, 2015.

19. The emails between DOJ attorneys and EEOC attorneys regarding the litigation sent on or after February 18, 2015, for which DOJ asserts deliberative process privilege, were written in whole or in part to assist DOJ in making decisions about the litigation and contain discussion bearing on litigation strategy. Disclosure of these emails would impair DOJ decision-making and the effective enforcement of Title VII by discouraging open and frank discussions between DOJ and EEOC regarding litigation decisions that affect both agencies' legal interests.

Emails between DOJ counsel and EEOC reflecting deliberations regarding investigation and finding on Dr. Tudor's charge of discrimination

20. The emails in this category of documents for which DOJ asserts deliberative process privilege were written in whole or in part to provide advice and recommendations to the EEOC prior to its issuance of an LOD setting forth its decision on the merits of the charge. The investigatory decision-making to which these communications relate include decisions about what information should be included in the charge of discrimination; what documents the EEOC should request during its investigation; and what information the EEOC should seek through witness interviews.
21. Disclosure of these emails would impair government decision-making in Title VII matters involving state or local governmental employers by inhibiting open and frank inter-agency discussions regarding what facts should be gathered to evaluate legal claims for which DOJ and EEOC share statutory enforcement authority.

Specifically, disclosure would reveal the recommendations and opinions of DOJ attorneys and EEOC staff regarding: (a) how the EEOC should investigate charges of discrimination, (b) what factual information gathered during the investigation should be evaluated by both agencies; (c) whether the facts gathered during the investigation indicate a statutory violation, and (d) whether and how a statutory violation should be remedied. Without the assurance of confidentiality over discussions of these subjects, DOJ and EEOC personnel would be far less likely to communicate openly about the strengths and weaknesses of matters under investigation and the pros and cons of various investigatory actions. As a result, the effective enforcement of Title VII against state and local government employers would be materially impaired.

Emails between DOJ counsel and EEOC regarding EEOC's conciliation process

22. The emails in this category of documents for which DOJ asserts deliberative process privilege relate in whole or in part to the evaluation of available remedies and strategy for conciliation. The emails were written prior to the EEOC's determination that conciliation was not successful and that the charge must be referred to DOJ. Disclosure of these emails would impair the effective enforcement of Title VII by inhibiting open and frank discussion of the options available for conciliation prior to the EEOC's formal referral of a charge to DOJ.

Emails between DOJ attorneys and EEOC attorneys/staff regarding referral of Dr. Tudor's charge to DOJ for litigation and decision to litigate charge

23. Some of the emails identified under this heading for which DOJ asserts deliberative process privilege contain discussions between EEOC and DOJ personnel leading up to the EEOC's decision on how to internally process its file before referring it to DOJ. The decision-making to which these communications relate include decisions about the procedures for preparing a file that might depend on anticipated decisions by the DOJ about steps after referral. One of the emails under this heading relates to DOJ's decision-making on whether to litigate the charge. Disclosure of these emails would inhibit open and frank discussion between EEOC and DOJ about the processing of files and delay decisions related to the processing of files.
24. The other emails under this heading and subject to deliberative process privilege relate to DOJ's decision-making regarding the selection of a mediator to assist with settlement negotiations with the Defendants. The advice in these emails was used by DOJ to evaluate potential mediators. Disclosure of these emails would inhibit frank and open discussion between DOJ and EEOC about the strengths and weakness of different mediators.

Emails between DOJ attorneys and EEOC attorneys and staff regarding how to respond to requests for documents from Defendants

25. After the filing of the lawsuit in this case, the Defendants requested documents from DOJ and the EEOC related to Dr. Tudor's charge of discrimination through

the Freedom of Information Act (“FOIA”) and the EEOC’s procedure for providing copies of documents to respondents (“Section 83”). DOJ and EEOC communicated regarding these FOIA and Section 83 requests. The emails under this heading in the Second Amended Privilege Log for which DOJ asserts deliberative process privilege include pre-decisional deliberations between DOJ and EEOC on how the agencies should respond to the Defendants’ requests for documents.

26. Disclosure of these emails would inhibit open and frank discussions between DOJ and EEOC as they deliberate over how to respond to FOIA and Section 83 requests.

EEOC File

27. I have personally reviewed the following Bates numbered documents under the heading “EEOC File”: EEOC004569-71; EEOC005283-5331; and EEOC005333. (Un-redacted versions of these documents were Bates numbered with Bates prefix PRIVDOJ and those PRIVDOJ Bates numbers are also included in the Second Amended Privilege Log.)
28. Document EEOC004569-71 is a Case Log created by the EEOC. A redacted version of this Case Log was produced to the Defendants in discovery. The redacted Case Log entries over which deliberative process privilege is asserted show instances where DOJ communicated with the EEOC to provide advice to the

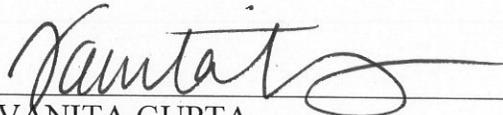
EEOC before the EEOC made decisions related to its investigation and conciliation of Dr. Tudor's charge of discrimination. The redacted information could be used to infer what decisions the EEOC deliberated with the DOJ about, and what decisions they chose not to deliberate about. Disclosing this information could impair DOJ decision-making and the effective enforcement of Title VII by inhibiting open and frank discussions between DOJ and EEOC regarding decisions on investigative process and strategy.

29. Documents EEOC005283-5325 are communications between DOJ attorneys and the EEOC where the DOJ attorneys offered advice regarding investigative strategy prior to the EEOC's issuance of its LOD. Disclosure of these emails would impair DOJ decision-making and the effective enforcement of Title VII by inhibiting open and frank discussions between DOJ and EEOC regarding investigative process and strategy.

30. Document EEOC005331 is an email between a DOJ attorney and DOJ staff which, as discussed above, the Defendants have stipulated are privileged and did not need to be included in the United States' privilege logs. It was mistakenly logged under the EEOC file heading. Based on Defendants' stipulation of privilege, I do not understand Defendant RUSO to be challenging the privileged status of this document.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. (28 U.S.C. § 1746).

Date: 7/26/16



A handwritten signature in cursive script, appearing to read "Vanita Gupta", written over a horizontal line.

VANITA GUPTA
Principal Deputy Assistant Attorney General
Civil Rights Division
U.S. Department of Justice

United States et al. v. Southeastern Oklahoma State University et al.,
Case No. 5:15-CV-00324-C (W.D. Okla.)

**Second Amended Privilege Log for United States' Response to Regional University System
of Oklahoma's First Set of Discovery Requests**

Bates Numbers	Document Type	Date	Document Description	Privilege
N/A	Emails	1/24/2014 – present	Emails between Department of Justice (DOJ) counsel and Dr. Tudor and/or Dr. Tudor's counsel	Common Interest Rule; Attorney Client Privilege
N/A	Declaration	7/21/2015 and 5/2/2016	Declarations prepared by DOJ for witness's signature	Attorney Work Product
N/A	Email	6/2/2016	Witness' response to DOJ attorney's question	Attorney Work Product
N/A	Emails, memoranda, and invoices	3/25/2015 – present	Communications with potential experts and litigation consultants	Attorney Work Product
PRIVDOJ00020-77	Background report for Dr. Tudor	3/7/2013	Report generated in connection with deliberative process over what claims, if any, to litigate if EEOC referred charge	Attorney Work Product
PRIVDOJ00078-143	Notes	2/8/2012 and 2/9/2012	DOJ counsel's notes from witness interviews during EEOC investigation	Attorney Work Product; Government Deliberative Process
N/A	Transcripts	4/20/2015	Transcripts of digital recordings from witness interviews that have been produced	Attorney Work Product
PRIVDOJ00017-19	Notes	4/22/2014	DOJ counsel's outlines for witness interviews	Attorney Work Product; Government

				Deliberative Process
N/A	Notes	7/21/2015 and 7/22/2015	DOJ counsel's notes from witness interviews and related outlines	Attorney Work Product; Common Interest Rule
PRIVDOJ000337-621	Emails	2/18/2015 – present	Emails between DOJ attorneys and EEOC attorneys regarding litigation of charge	Attorney Work Product; Common Interest Rule
PRIVDOJ000337-354; 358-417; 428-430; 443-445; 449-471; 473-475; 480-553; 556-586; 589-595; 597-602; 605; and 607-621.	Emails	2/18/2015 – present	Pre-decisional emails between DOJ attorneys and EEOC attorneys in which they deliberated over decisions related to this litigation	Attorney Work Product; Common Interest Rule; Government Deliberative Process

Emails between DOJ counsel and EEOC reflecting deliberations regarding investigation and finding on Dr. Tudor's charge of discrimination

Bates Numbers	Document Type	Date	Document Description	Privilege
PRIVDOJ000226-230	Emails	6/16/2011	Emails between EEOC attorney and DOJ attorney discussing EEOC's plans for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000231-232	Emails	6/24/2011	Emails between EEOC attorney and DOJ attorney discussing EEOC's plans for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000233-237	Emails	7/6/2011	Emails between EEOC investigator and DOJ attorneys regarding preparation of Dr. Tudor's charge	Government Deliberative Process; Attorney Client Privilege; Common

				Interest Rule
PRIVDOJ000238-239	Emails	7/20/2011 – 7/21/2011	Emails between EEOC investigator and DOJ attorney regarding preparation of information request to Defendants	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000240	Email	7/21/2011	Emails between EEOC investigator and DOJ attorney regarding information request	Attorney Client Privilege; Common Interest Rule
PRIVDOJ000241	Email	8/10/2011	Email from EEOC investigator to DOJ attorney regarding EEOC's efforts to obtain documents and strategy for proceeding	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000242-244	Emails	8/31/2011	Emails between EEOC investigator and DOJ attorney regarding EEOC's strategy for review and evaluation of documents	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000245-248	Emails	9/13/2011	Emails between EEOC investigator and DOJ attorney discussing EEOC's strategy for review and evaluation of documents	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000249-255	Emails	9/21/2011 – 9/22/2011	Emails between EEOC investigator and DOJ attorney discussing strategy and recommendations concerning the investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000256-257	Emails	10/5/2011	Emails between EEOC investigator and DOJ attorney discussing strategy	Government Deliberative Process; Attorney Client

			for witness interviews	Privilege; Common Interest Rule
PRIVDOJ000258-260	Emails	11/1/2011 – 11/2/2011	Emails between EEOC investigator and DOJ attorney discussing strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000261-262	Emails	11/22/2011	Emails between EEOC attorney, EEOC official, and DOJ attorney discussing strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000263-264	Email	11/23/2011 and 12/7/2011	Emails between DOJ attorney and EEOC investigator regarding EEOC investigator's strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000265	Email	12/14/2011	Email provided by EEOC investigator to DOJ to seek advice about investigation	Attorney Client Privilege; Common Interest Rule
PRIVDOJ000266-267	Email	12/22/2011 and 12/28/2011	Emails between DOJ attorney and EEOC investigator regarding investigation process and strategy	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000268	Email	12/29/2011	Email from EEOC investigator to DOJ attorney seeking advice on investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000269-270	Email	1/5/2012	Email provided by EEOC investigator to DOJ attorney to	Attorney Client Privilege; Common

			seek advice about investigation	Interest Rule
PRIVDOJ000271-273	Email	1/11/2012	Email provided by EEOC investigator to DOJ attorney to seek advice about investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000273-274	Email	1/11/2012 – 1/12/2012	Emails between DOJ attorney and EEOC investigator regarding plans to conduct witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000275	Email	2/1/2012	Email from EEOC investigator to DOJ attorney regarding strategy for witness interviews	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000276	Email	2/22/2012	Email from EEOC investigator to DOJ attorney regarding strategy for witness interview	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000277	Emails	2/26/2012 – 2/27/2012	Emails between DOJ attorney and EEOC investigator regarding strategy and recommendations for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000278-280	Email	2/29/2012	Emails between EEOC investigator and DOJ attorney in seeking advice and discussing strategy and recommendations for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000281-	Email	3/5/2012 and	Emails between	Government

82		3/20/2012	DOJ attorney and EEOC investigator regarding DOJ attorney's recommendations for investigation	Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000283-284	Emails	3/29/2012	Emails between EEOC investigator and DOJ attorney regarding investigation process	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000285	Email	4/25/2012	Email from EEOC investigator to EEOC officials and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000286	Email	5/18/2012	Email from DOJ attorney to EEOC investigator regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000287-290	Emails	6/20/2012 – 6/21/2012	Emails between EEOC investigator and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000291-296	Emails	7/13/2012	Emails between DOJ attorneys, EEOC officials, and EEOC attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000297	Email	7/19/2012	Email from EEOC investigator to DOJ attorney regarding information received from Dr.	Government Deliberative Process; Attorney Client Privilege;

			Tudor	Common Interest Rule
PRIVDOJ000298-300	Emails	8/8/2012	Emails between EEOC investigator, EEOC officials, and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000301	Email	8/9/2012	Email from EEOC investigator to DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000302-308	Email	8/10/2012	Emails between EEOC investigator, EEOC officials, and DOJ attorneys regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000309	Email	8/14/2012	Email from EEOC official to EEOC investigator, other EEOC officials, and DOJ attorneys regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000624	Emails	8/28/2012 – 8/29/2012	Emails between EEOC investigator and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000622-23 and PRIVDOJ000625	Emails	9/5/2012	Emails between EEOC officials, EEOC investigator, and DOJ attorney regarding strategy for investigation	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule

Emails between DOJ counsel and EEOC regarding EEOC's conciliation process

Bates Number	Document Type	Date	Document Description	Privilege
PRIVDOJ000315	Email	9/13/2012	Email from EEOC investigator to DOJ attorney seeking advice regarding conciliation	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000316-317	Email	9/24/2012	Email from EEOC investigator to DOJ attorney regarding information provided by Dr. Tudor during conciliation	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000318	Email	10/24/2012	Email from EEOC investigator to DOJ attorney regarding information provided by Dr. Tudor during conciliation	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000319	Email	11/7/2012	Email from EEOC investigator to DOJ attorney regarding conciliation process	Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000320	Email	11/14/2012	Email from EEOC	Attorney Client

			investigator to DOJ attorney regarding conciliation process	Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000321-322	Emails	12/19/2012	Emails from EEOC investigator to DOJ attorney regarding conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000323	Email	3/14/2013	Email from EEOC investigator to DOJ attorney regarding conciliation process	Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000324	Email	3/28/2013	Email from EEOC investigator to DOJ attorney regarding conciliation process	Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000325-328	Emails	4/3/2013 – 4/4/2013	Emails between EEOC investigator, EEOC official, and DOJ attorneys regarding correspondence related to conciliation and advice on conciliation process	Government Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000329	Email	4/18/2013	Email from EEOC	Government

			investigator to DOJ attorney regarding conciliation process	Deliberative Process; Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000330	Email	5/2/2013	Email from EEOC investigator to DOJ attorney regarding conciliation process	Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000331	Email	5/28/2013	Email from EEOC investigator to Dr. Tudor and DOJ attorney regarding conciliation	Statutory Protection of Conciliation Communications
PRIVDOJ000332	Emails	5/28/2013	Emails between EEOC investigator and DOJ attorney regarding conciliation communications	Attorney Client Privilege; Statutory Protection of Conciliation Communications; Common Interest Rule
PRIVDOJ000333	Email	5/29/2013	Email from EEOC investigator to Dr. Tudor and DOJ attorney regarding conciliation	Statutory Protection of Conciliation Communications
PRIVDOJ000334-336	Emails	5/29/2013	Emails between EEOC officials, EEOC attorney, and DOJ attorney regarding conciliation failure and next steps in EEOC's process	Attorney Client Privilege; Common Interest Rule

Emails between DOJ attorneys and EEOC attorneys/staff regarding referral of Dr. Tudor's charge to DOJ for litigation and decision to litigate charge

Bates Numbers	Document Type	Date	Document Description	Privilege
PRIVDOJ000001	Email	6/12/2013	Email between EEOC investigator and DOJ attorney regarding charge referral to DOJ	Attorney Client Privilege; Common Interest Rule
PRIVDOJ000002-3	Emails	6/26/2013	Emails between EEOC investigator and DOJ attorney regarding charge referral to DOJ	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000004	Email	7/15/2013	Email from EEOC investigator to DOJ attorney regarding status of charge referral	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000005-8	Emails	7/15/2013	Emails between EEOC investigator and DOJ attorney regarding charge referral to DOJ	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000009	Email	7/24/2013	Email from EEOC investigator to DOJ attorney regarding question from Dr. Tudor	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000010	Email	10/24/2013	Email from EEOC attorney to DOJ attorney regarding DOJ's evaluation of the charge	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000011-	Emails	3/5/2014	Emails between	Government

14			EEOC attorneys and DOJ attorneys regarding selection of a mediator	Deliberative Process; Attorney Work Product; Common Interest Rule
PRIVDOJ000015	Email	5/6/2014	Email from EEOC investigator to DOJ attorney regarding DOJ's evaluation of the charge	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule
PRIVDOJ000016	Email	7/15/2014	Email from EEOC attorney to DOJ attorney regarding DOJ's evaluation of the charge	Government Deliberative Process; Attorney Client Privilege; Common Interest Rule

Emails between DOJ attorneys and EEOC attorneys and staff regarding how to respond to requests for documents from Defendants

Bates Numbers	Document Type	Date	Document Description	Privilege
PRIVDOJ0000196	Email	4/28/2015	Email from EEOC official to DOJ attorney regarding response to Defendants' request for documents	Government Deliberative Process
PRIVDOJ000197-205	Emails	5/12/2015	Emails between EEOC official and DOJ attorney regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule
PRIVDOJ000209-214	Emails	6/2/2015 – 6/3/2015	Emails between DOJ attorney and EEOC official and staff regarding response to Defendants'	Government Deliberative Process; Attorney Work Product; Common

			request for documents	Interest Rule
PRIVDOJ000215-216	Email	6/12/2015	Email from EEOC official to DOJ attorney regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule
PRIVDOJ000217-225	Emails	6/15/2015 – 6/16/2015	Emails between DOJ attorney and EEOC staff regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule
PRIVDOJ000206	Email	6/22/2015	Email from DOJ attorney to EEOC official and staff regarding response to Defendants' request for documents	Government Deliberative Process; Attorney Work Product; Common Interest Rule

EEOC FILE

Bates Numbers	Document Type	Date	Document Description	Privilege
EEOC4569 – 4571 PRIVDOJ000144-146	Case Log	4/13/2011 – 5/2/2013	Log entries recording deliberations between EEOC staff/attorneys and DOJ and EEOC staff/attorneys have been redacted	Government Deliberative Process
EEOC4578 – 4585	Memorandum	8/15/2012	Memorandum from EEOC investigator to supervisory EEOC staff regarding investigative findings	Government Deliberative Process
EEOC4589	Categorization Sheet	N/A	Form documenting	Government Deliberative

			internal deliberations regarding the charge	Process
EEOC4590 – 4591	Charge Detail Inquiry	N/A	EEOC database report showing internal charge data tracking	Government Deliberative Process
EEOC4599	Memorandum	N/A	EEOC's draft statement of particulars for charge of discrimination	Government Deliberative Process
EEOC4607 – 4609	Emails	9/17/2012 - 9/26/2012	Emails between EEOC and Dr. Tudor regarding conciliation efforts	Statutory Protection of Conciliation Communications
EEOC4616	Redacted email	12/29/2011	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4671	Redacted document	N/A	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4673	Redacted document	N/A	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4705 – 4728	Letters	11/1/2012 - 5/29/2013	Correspondence between EEOC and RUSO regarding conciliation efforts	Statutory Protection of Conciliation Communications
EEOC4801	Redacted	N/A	EEOC	Government

	document		investigator's notations reflecting investigator's thoughts have been redacted	Deliberative Process
EEOC4859 – 4866	Notes	N/A	EEOC investigator's notes related to internal deliberation with EEOC attorney regarding interview questions	Attorney-Client Privilege; Government Deliberative Process
EEOC4910 – 4936	Emails	9/17/2012 – 5/28/2013	Correspondence between EEOC and Dr. Tudor regarding conciliation efforts	Statutory Protection of Conciliation Communications
EEOC4971	Memorandum	N/A	Draft statement of particulars for charge of discrimination	Government Deliberative Process
EEOC5283 –5324 PRIVDOJ000147-188	Emails and notes	12/29/2011 and 1/4/2012	Communications between DOJ attorneys and EEOC related to investigation of charge and EEOC investigator's notes about those emails	Attorney-Client Privilege; Government Deliberative Process; Common Interest Rule
EEOC5325 PRIVDOJ000189	Email	9/1/2011	Email from EEOC attorney to EEOC attorneys, EEOC supervisory staff, and DOJ attorneys reflecting deliberations concerning proposed content of correspondence	Attorney-Client Privilege; Government Deliberative Process; Common Interest Rule
EEOC5329 PRIVDOJ000193	Emails	6/12/2013 – 6/13/2013	Emails between EEOC and	Attorney-Client Privilege;

			attorneys with DOJ regarding status of charge referral	Common Interest Rule
EEOC5330 PRIVDOJ000194	Emails	6/12/2013 – 7/29/2013	Emails between EEOC and attorneys with DOJ regarding referral of charge	Attorney-Client Privilege; Common Interest Rule
EEOC5331 PRIVDOJ000195	Emails	7/17/2013	Emails between DOJ attorneys and staff regarding charge	Attorney-Client Privilege; Government Deliberative Process

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
RACHEL TUDOR,)	Case No. CIV-15-324-C
)	
Plaintiff-Intervenor)	
v.)	DECLARATION OF EEOC
)	CHAIR JENNY R. YANG
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
Defendants.)	

DECLARATION

I, Jenny R. Yang, state the following:

1. I am the Chair of the United States Equal Employment Opportunity Commission (the “Commission”). The Commission is responsible for the administration, interpretation, and enforcement of, among other statutes, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§2000e et seq. (“Title VII”). As Chair, I am responsible for the implementation of Commission policy and the overall operation of the Commission. I am authorized to invoke on behalf of the Commission the governmental deliberative process privilege.
2. The operation of the Commission as a law enforcement agency requires the free expression by Commission employees of analyses, advice, recommendations, and conclusions regarding charges processed by the Commission. I have personally reviewed the documents listed in Exhibit A attached hereto which the EEOC claims are protected from disclosure under the deliberative process privilege. These documents fall into two categories: (1) email

communications between EEOC investigators/attorneys and DOJ attorneys regarding strategy for the investigation and analysis of evidence during the EEOC's investigation; and (2) documents from the EEOC's investigation file concerning Charge No. 564-2011-00849C.

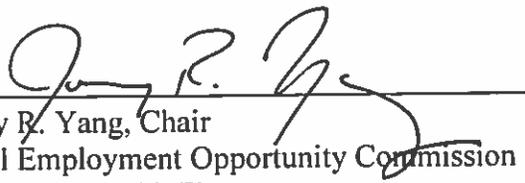
3. The documents withheld from the EEOC's investigation file contain Commission employee analyses, advice, mental impressions, deliberations, recommendations, conclusions, internal procedures, investigative methods, and other information protected from disclosure by the deliberative process privilege. The email correspondence between the EEOC investigators/attorney and the Department of Justice attorneys concern investigation strategy, advice, recommendations and analyses of the Charge upon which the above-captioned lawsuit is based.

4. I conclude that disclosure to individuals outside the Commission of the information sought in these documents would interfere with the Commission's decision making with respect to processing and investigating charges of discrimination by inhibiting the free expression of opinions by Commission employees. Such disclosure would materially impair the Commission's ability to enforce the statutes within its authority.

5. For the reasons stated above, I hereby claim, on behalf of the Commission, the governmental deliberative process privilege for the documents referenced in paragraph 2 above and listed in Exhibit A hereto.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of July, 2016.



Jenny R. Yang, Chair
Equal Employment Opportunity Commission
131 M St. NE, 6th Floor
Washington, DC 20507

United States et al. v. Southeastern Oklahoma State University et al.,
Case No. 5:15-CV-00324-C (W.D. Okla.)

**EXHIBIT A TO DECLARATION OF
EEOC CHAIR JENNY R. YANG**

The EEOC asserts the deliberative process privilege (and other privileges) for the documents listed below which were withheld or redacted by the Department of Justice and are set forth on its First Amended Privilege Log for United States' Response to Regional University System of Oklahoma's First Set of Discovery Requests.

Emails between DOJ counsel and EEOC reflecting deliberations regarding investigation and finding on Dr. Tudor's charge of discrimination

Bates Numbers	Document Type	Date	Document Description	Privilege
N/A	Emails	6/16/2011	Emails between EEOC attorney and DOJ attorney discussing EEOC's plans for investigation	Government Deliberative Process
N/A	Emails	6/23/2011 and 6/24/2011	Emails between EEOC attorney and DOJ attorney discussing EEOC's plans for investigation and mental impressions	Government Deliberative Process
N/A	Emails and attachments	7/6/2011	Emails between EEOC investigator and DOJ attorneys regarding preparation of Dr. Tudor's charge	Government Deliberative Process
N/A	Emails	7/20/2011 – 7/21/2011 and 8/10/2011	Emails between EEOC investigator and DOJ attorney regarding preparation of information request to Defendants and mental impressions	Government Deliberative Process
N/A	Emails	8/31/2011	Emails between EEOC investigator and DOJ attorney	Government Deliberative Process

			regarding EEOC's strategy for review and evaluation of documents	Privilege;
N/A	Emails	9/13/2011	Emails between EEOC investigator and DOJ attorney discussing EEOC's strategy for review and evaluation of documents	Government Deliberative Process
N/A	Emails	9/21/2011 - 9/22/2011 and 11/02/11	Emails between EEOC investigator and DOJ attorney discussing strategy and recommendations concerning the investigation	Government Deliberative Process
N/A	Emails	11/22/2011	Emails between EEOC attorney and DOJ attorney discussing strategy for witness interviews	Government Deliberative Process
N/A	Email	11/22/2011	Email from EEOC official to DOJ attorney discussing strategy for witness interviews	Government Deliberative Process
N/A	Email	12/7/2011	Email from EEOC investigator to DOJ attorney regarding EEOC investigator's strategy for witness interviews	Government Deliberative Process
N/A	Email	12/29/2011, 1/11/2012 - 1/12/2012 and 2/01/2012	Email from EEOC investigator to DOJ attorney seeking advice on witness interviews	Government Deliberative Process
N/A	Email	2/22/2012	Email from EEOC investigator to DOJ attorney regarding strategy for witness interview	Government Deliberative Process

N/A	Emails	2/26/2012 – 2/27/2012	Emails between DOJ attorney and EEOC investigator regarding strategy and recommendations for investigation	Government Deliberative Process
N/A	Email	2/29/2012 and 3/29/2012	Emails between EEOC investigator and DOJ attorney in seeking advice and discussing strategy and recommendations for investigation	Government Deliberative Process
N/A	Email	3/5/2012 and 3/20/2012	Email from DOJ attorney to EEOC investigator providing recommendations regarding investigation	Government Deliberative Process
N/A	Email	4/25/2012	Email from EEOC investigator to EEOC officials and DOJ attorney regarding strategy for investigation	Government Deliberative Process
N/A	Emails	5/31/2012, 6/20/2012 - 6/21/2012, 7/13/2012	Emails between EEOC investigator and DOJ attorney regarding strategy for investigation and documents to review	Government Deliberative Process
N/A	Emails	7/19/2012	Emails between EEOC investigator and DOJ attorney regarding strategy for investigation.	Government Deliberative Process
N/A	Emails	8/08/2012 – 8/10/2012	Emails between EEOC investigator, EEOC officials, and DOJ attorney regarding strategy for investigation	Government Deliberative Process

N/A	Email and attachments	8/14/2012	Email from EEOC official to EEOC investigator, other EEOC officials, and DOJ attorneys regarding strategy for investigation	Government Deliberative Process
N/A	Emails	8/28/2012 – 8/29/2012	Emails between EEOC investigator and DOJ attorney regarding strategy for investigation	Government Deliberative Process
N/A	Emails and attachments	9/5/2012	Emails between EEOC officials, EEOC investigator, and DOJ attorney regarding strategy for investigation	Government Deliberative Process

Emails between DOJ counsel and EEOC regarding EEOC's conciliation process

Bates Number	Document Type	Date	Document Description	Privilege
N/A	Emails	9/13/2012, 9/24/2012, 10/24/2012, 4/3/2013 - 4/4/2013	Emails between EEOC investigator, EEOC official, and DOJ attorneys regarding correspondence related to conciliation and advice on conciliation process	Government Deliberative Process
N/A	Emails and attachments	12/19/2012 and 4/18/2013	Emails between EEOC officials, EEOC attorney, and DOJ attorney regarding conciliation and next steps in EEOC's process	Government Deliberative Process

EEOC INVESTIGATION FILE

Bates Numbers	Document Type	Date	Document Description	Privilege
EEOC4569 – 4571	Case Log	4/13/2011 – 5/2/2013	Log entries recording deliberations between EEOC staff/attorneys and DOJ and EEOC staff/attorneys have been redacted	Government Deliberative Process
EEOC4578 – 4585	Memorandum	8/15/2012	Memorandum from EEOC investigator to supervisory EEOC staff regarding investigative findings	Government Deliberative Process
EEOC4589	Categorization Sheet	N/A	Form documenting internal deliberations regarding the charge	Government Deliberative Process
EEOC4590 – 4591	Charge Detail Inquiry	N/A	EEOC database report showing internal charge data tracking	Government Deliberative Process
EEOC4599	Memorandum	N/A	EEOC's draft statement of particulars for charge of discrimination	Government Deliberative Process
EEOC4616	Redacted email	12/29/2011	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4671- 4675	Redacted document	N/A	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4801	Redacted document	N/A	EEOC investigator's notations reflecting investigator's thoughts have been redacted	Government Deliberative Process
EEOC4859 – 4866	Notes	N/A	EEOC investigator's notes related to internal deliberation	Government Deliberative Process

			with EEOC attorney regarding interview questions	
EEOC4904-4905	Letter	10/12/2010	Correspondence between EEOC and DOE attorneys regarding referral of Dr. Tudor's charge of discrimination	Government Deliberative Process
EEOC4971	Memorandum	N/A	Draft statement of particulars for charge of discrimination	Government Deliberative Process
EEOC5283 - 5324	Emails and notes	12/29/2011 and 1/4/2012	Communications between DOJ attorneys and EEOC related to investigation of charge and EEOC investigator's notes about those emails	Government Deliberative Process
EEOC5325	Email	9/1/2011	Email from EEOC attorney to EEOC attorneys, EEOC supervisory staff, and DOJ attorneys reflecting deliberations concerning proposed content of correspondence	Government Deliberative Process

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA, and)	
)	
DR. RACHEL TUDOR)	CASE NO. 5:15-CV-00324-C
)	
Plaintiffs,)	
)	
v.)	
)	
SOUTHEASTERN OKLAHOMA)	
STATE UNIVERSITY, and)	
)	
THE REGIONAL UNIVERSITY)	
SYSTEM OF OKLAHOMA,)	
)	
)	
Defendants.)	

**PLAINTIFF/INTERVENOR DR. RACHEL TUDOR’S RESPONSES TO
REGIONAL UNIVERSITY SYSTEM OF OKLAHOMA’S
THIRD SET OF DISCOVERY REQUESTS**

TO: Defendant, Regional University System of Oklahoma
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*Attorneys for Defendant State of Oklahoma
Ex rel. Regional University System of Oklahoma
& Southeastern Oklahoma State University*

REQUESTS FOR PRODUCTION

Request for Production No. 64: *Please produce all documents and materials regarding your transitioning process, including, but not limited to the following standards of care:*

- 1) *Initial psychiatric testing;*
- 2) *Ongoing psychiatric monitoring and counseling to assess the extent of condition and reaction to physical changes;*
- 3) *Health evaluations for hormone therapy;*
- 4) *Administration of female hormones; and*
- 5) *Surgical construction.*

RESPONSE: Plaintiff/Intervenor objects to this Request on the grounds that it is unduly burdensome, cumulative, and duplicative to the extent that it requests all documents and/or other materials “regarding your transitioning process” without limit.

Plaintiff/Intervenor also objects to this Request because it seeks information protected by the psychotherapist-patient and/or physician-patient privilege and interferes with the Plaintiff/Intervenor’s recognized privacy interest in one’s medical care and medical records. *See, e.g., Jaffee v. Redmond*, 518 U.S. 1 (1996) (recognizing psychotherapist-patient privilege); Health Insurance Portability and Accountability Act (HIPAA), 110 Stat. 1936, 104 P.L. 191, § 1177 (1996); *Plascencia v. City of St. George*, 2009 WL 562263, at *5–6 (D. Utah 2009) (recognizing that requester in Title VII action must establish basis for waiver of psychotherapist-patient privilege); *United States v. Carter*, 2014 WL 5469750 (W.D. Okla. 2014) (Cauthron, J.) (recognizing similar burden on requester). *See also Ortiz-Carballo v. Ellspermann*, 2009 WL 961131, at *2 (M.D.Fla. 2009) (“The majority of federal courts that have addressed the issue have held that a party does not place his mental condition in controversy merely by requesting damages for mental anguish or ‘garden variety’ emotional distress.”); *Ruhlmann v. Ulster County Dep’t of Social Servs.*, 194 F.R.D. 445, 450 (N.D.N.Y. 2000) (“a party does not put his or her emotional condition in issue by merely seeking incidental, ‘garden-variety’, emotional distress damages”); *Stevenson v. Stanley Bostitch, Inc.*, 201 F.R.D. 551, 553 (N.D.Ga. 2001) (similar).

Plaintiff/Intervenor further objects to this Request on the ground that it is overbroad as to temporal scope to the extent that it seeks all documents and/or other materials “regarding your transitioning process” without temporal limit. *See, e.g., EEOC v. Midwest Regional Medical Center, LLC*, 2014 WL 1745081 at *2 (W.D. Okla. Apr. 30, 2014) (holding that proper temporal scope of medical records pertaining to relevant medical condition is one year prior to and one year subject to plaintiff’s employment with defendant).

Plaintiff/Intervenor also objects to this Request because it is not proportionate to the needs of this case. Fed.R.Civ.P. 26(b)(1) (courts must consider the following factors: “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit”). This Request seeks production of all medical and psychological records, from any period of time, related to Dr. Tudor’s medical treatment associated with her gender

transition. This request is in no way proportionate to the claims Dr. Tudor asserts or the viable, good faith defenses that Defendants can raise in this action. *See, e.g., Rickaby v. Hartford Life and Accident Insurance Company*, 2016 WL 1597589, at *4 (D.Colo. Apr. 21, 2016) (proportionality not satisfied where discovery requested where relevance to claims and defenses is “questionable”); *Jones v. Halliburton Energy Servs., Inc.*, 2016 WL 1179210, at *2 (W.D. Okla. Mar. 24, 2016) (finding that proportionality fails where request seeks discovery beyond what is needed for specific time period pertinent to claims and/or defenses); Plaintiff/Intervenor’s claims in this litigation flow from allegations of discrimination, retaliation, and a hostile work environment. Among other things, Dr. Tudor alleges that she was treated poorly because she presented as female at work. *United States v. Southeastern Oklahoma State University*, 2015 WL 4606079, at *2 (W.D.Okla. 2015) (“Here, it is clear that Defendants’ actions as alleged by Dr. Tudor occurred because she was female, yet Defendants regarded her as male. Thus, the actions Dr. Tudor alleges Defendants took against her were based upon their dislike of her presented gender.”) The fact that Dr. Tudor started presenting at work as female in Fall 2007, that Dr. Tudor sought medical treatment associated with her gender transition during this same period, and that Dr. Tudor continued to both present as female and seek medical treatment through her termination in May 2011 are not contested in this litigation.

Plaintiff/Intervenor further objects to this Request on the ground that it is intended to harass and humiliate in the sense that, *inter alia*, medical documents, which would be responsive to this Request, are not necessary to establish the fact that Plaintiff/Intervenor transitioned during her employment with Defendants and began to present as female. It is incumbent upon Defendants to expressly point to information necessary for it to raise good faith defenses to Plaintiff/Intervenor’s allegations. The mere fact that Dr. Tudor transitioned to female on the job, does not open her up to invasive, superfluous discovery about her medical transition. *See, e.g., Roberts v. Clark Cty. Sch. Dist.*, 312 F.R.D. 594, 606 (D.Nev. 2016) (declining to find “legitimate interest” in employer obtaining medical records of aggrieved transgender employee to, *inter alia*, establish the timeline of the employee’s medical transition and/or establish timeline of physiological changes). *See also Hofer v. Mack Trucks, Inc.*, 981 F.2d 37, 380 (8th Cir. 1992) (“While the standard of relevance in the context of discovery is broader than in the context of admissibility . . . this often intoned legal tenet should not be misapplied so as to allow fishing expeditions in discovery. Some threshold showing of relevance must be made before parties are required to open wide the doors of discovery and to produce a variety of information which does not reasonably bear upon the issues in the case.”).

Subject to and without waiving these objections, please see documents previously produced with bates stamped with the prefix “PI” including, but not limited to: PI000429 (Apr. 4, 2007 Letter from Feleshia Porter “certif[ying] that TR Tudor aka Rachel is a transsexual woman”); PI000430 (May 11, 2007 invoice from Feleshia Porter); PI000431 (Apr. 4, 2007 invoice from Feleshia Porter); PI000432 (Apr. 4, 2007 Letter from Feleshia Porter expressing approval, *inter alia*, for Dr. Tudor to begin “HRT”); PI000428 (May 2, 2007 invoice from Diagnostic Laboratory of Oklahoma).

Request for Production No. 65: *Please sign and return the attached Authorization to Release Protected Health Information.*

RESPONSE: Plaintiff/Intervenor objects to this Request because compelling signed medical records authorizations is not an appropriate mechanism for obtaining discovery. *See, e.g., Morris v. City of Colo. Springs*, 2009 WL 4927618, *2 (D. Colo. 2009) (“the release of medical records should not be routinely compelled, even when it may be the most efficient manner for such discovery”).

Plaintiff/Intervenor further objects to this Request because a broad Release such as that contained in this Request is not warranted. *See, e.g., Laboy v. Emeritus Corp.*, 2014 WL 1293440, at *1 (M.D.Fla. 2014) (denying motion to compel seeking aggrieved employee agreement to sign HIPAA release for medical records relating to her mental health where only “garden variety” emotional distress damages sought).

Plaintiff/Intervenor further objects to this Request because the Release does not delineate the types of records requested, identify the doctors or other clinicians from whom records are sought, or otherwise apprise Plaintiff/Intervenor of what records are subject to the Release.

Plaintiff/Intervenor further objects to this Request because it seeks information protected by the psychotherapist-patient and/or physician-patient privilege and interferes with the Plaintiff/Intervenor’s recognized privacy interest in one’s medical care and medical records. *See, e.g., Jaffee v. Redmond*, 518 U.S. 1 (1996) (recognizing psychotherapist-patient privilege); Health Insurance Portability and Accountability Act (HIPAA), 110 Stat. 1936, 104 P.L. 191, § 1177 (1996); *Plascencia v. City of St. George*, 2009 WL 562263, at *5–6 (D. Utah 2009) (recognizing that requester in Title VII action must establish basis for waiver of psychotherapist-patient privilege); *United States v. Carter*, 2014 WL 5469750 (W.D. Okla. 2014) (Cauthron, J.) (recognizing similar burden on requester). *See also Ortiz-Carballo v. Ellspermann*, 2009 WL 961131, at *2 (M.D.Fla. 2009) (“The majority of federal courts that have addressed the issue have held that a party does not place his mental condition in controversy merely by requesting damages for mental anguish or ‘garden variety’ emotional distress.”); *Ruhlmann v. Ulster County Dep’t of Social Servs.*, 194 F.R.D. 445, 450 (N.D.N.Y. 2000) (“a party does not put his or her emotional condition in issue by merely seeking incidental, ‘garden-variety’, emotional distress damages”); *Stevenson v. Stanley Bostitch, Inc.*, 201 F.R.D. 551, 553 (N.D.Ga. 2001) (similar). Plaintiff/Intervenor has not waived the psychotherapist-patient or the physician-patient privileges. Moreover, Plaintiff/Intervenor does not intend to rely on any medical records, psychotherapist records, or medical provider testimony to support her claims for compensatory damages. Medical information unrelated to the hostilities, discrimination, and retaliation that occurred between 2007 and 2011 is therefore not reasonably calculated to lead to the discovery of admissible evidence, the disclosure of which would be harassing and oppressive. *See Combe v. Cinemark USA, Inc.*, 2009 U.S. Dist. LEXIS 73425, *5 (D. Utah Aug. 18, 2009) (medical records are not available for garden variety emotional distress); *Fitzgerald v. Casil*, 216 F.R.D. 632, 634-40 (N.D. Cal. 2003) (medical records irrelevant and psychotherapy records protected by psychotherapist-patient privilege).

Plaintiff/Intervenor also objects to this Request because it is not proportionate to the needs of this case. Fed.R.Civ.P. 26(b)(1) (courts must consider the following factors: “the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in

resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit”). This Request seeks production of all medical and psychological records, from any period of time, related to Dr. Tudor’s medical treatment associated with her gender transition. This request is in no way proportionate to the claims Dr. Tudor asserts or the viable, good faith defenses that Defendants can raise in this action. *See, e.g., Rickaby v. Hartford Life and Accident Insurance Company*, 2016 WL 1597589, at *4 (D.Colo. Apr. 21, 2016) (proportionality not satisfied where discovery requested where relevance to claims and defenses is “questionable”); *Jones v. Halliburton Energy Servs., Inc.*, 2016 WL 1179210, at *2 (W.D. Okla. Mar. 24, 2016) (finding that proportionality fails where request seeks discovery beyond what is needed for specific time period pertinent to claims and/or defenses); Plaintiff/Intervenor’s claims in this litigation flow from allegations of discrimination, retaliation, and a hostile work environment. Among other things, Dr. Tudor alleges that she was treated poorly because she presented as female at work. *United States v. Southeastern Oklahoma State University*, 2015 WL 4606079, at *2 (W.D.Okla. 2015) (“Here, it is clear that Defendants’ actions as alleged by Dr. Tudor occurred because she was female, yet Defendants regarded her as male. Thus, the actions Dr. Tudor alleges Defendants took against her were based upon their dislike of her presented gender.”) The fact that Dr. Tudor started presenting at work as female in Fall 2007, that Dr. Tudor sought medical treatment associated with her gender transition during this same period, and that Dr. Tudor continued to both present as female and seek medical treatment through her termination in May 2011 are not contested in this litigation.

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Plaintiff/Intervenor further objects to this Request because a broad Release—containing no limits as to subjectmatter, temporal scope, and not specifying any specific providers—such as that contained in this Request is not warranted. *See, e.g., Laboy v. Emeritus Corp.*, 2014 WL 1293440, at *1 (M.D.Fla. 2014) (denying motion to compel seeking aggrieved employee agreement to sign HIPPA release for medical records relating to her mental health where only “garden variety” emotional distress damages sought).

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/s/ Ezra Young
Ezra Young

CERTIFICATE OF SERVICE

This is to certify that on the 6th day of July, 2016, a true and correct copy of the above and foregoing discovery responses were electronically transmitted, and mailed via U.S. Postal Service to the following interested parties:

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/s/ Ezra Young _____
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