

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF VIRGINIA
 Alexandria Division



RICHARD ROE *et al.*,)
)
 Plaintiffs,)
)
 v.)
)
 PATRICK SHANAHAN *et al.*,)
)
 Defendants.)
 _____)

Civil Action No. 1:18-cv-01565 (LMB/IDD)

ORDER

This matter is before the Court on Plaintiffs’ Motion to Compel Production of Documents [Dkt. No. 95]. Based on upon a sample provided for *in camera* review and in accordance with the Court’s ruling and reasoning in the companion case *Harrison et al., v. Shanahan et al.*, 18-cv-641 (ECF. No. 175), it is hereby

ORDERED that Plaintiffs’ Motion is **GRANTED in part and DENIED in part**. Some documents provided for *in camera* review are factual rather than deliberative, such as InCamera 1035. This document contains discussion points in the form of questions and refers to current Air Force (“AF”) policies. Nothing about this document references ongoing discussions/deliberations about possible new policy or modifications to current policy. The document simply refers to discussion points. Other documents, such as InCamera 847, do appear to be deliberative in nature. However, based upon the Court’s decision in *Harrison*, the documents should still be produced to Plaintiffs because they are relevant, there is no other source of the information, and the possible chilling effect on government deliberation is outweighed by Plaintiffs’ need for the information. *See* Mem. Op., *Harrison et al., v. Shanahan et al.*, 18-cv-641, ECF. No. 175; *Cipollone v. Liggett Grp. Inc.*, Nos. 86-1198, 86-1223, 1987 WL 36515 (4th Cir. Feb. 13, 1987).

In addition, unlike in *Harrison*, many documents in this sample appear to reference current Department of Defense (“DoD”) instructions rather than an on-going unfinalized version of DoD or AF policy.

However, there is one document that the Court finds should be withheld, based on relevancy grounds rather than deliberative process privilege grounds. InCamera 835 shall not be produced because, even if it were subject to the deliberative process privilege protection, the document is not relevant to Plaintiffs’ case. It is an appeal of the Formal Physical Evaluation Board Hearing for an individual that is not a party to the case. Additionally, Plaintiffs can obtain this information from another source: the individual himself. Accordingly, this Court finds that Defendants must produce all withheld documents to Plaintiffs except for InCamera 835. It is further

ORDERED that Defendants shall redact any personal identifiers contained throughout the documents. Defendants shall also redact information relating to HIV in InCamera 841.

The Clerk is directed to forward copies of this Order to all counsel of record.

ENTERED this 18^h day of June 2019.

 /s/ _____
Ivan D. Davis
United States Magistrate Judge

Alexandria, Virginia