

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

RICHARD ROE, VICTOR VOE and
OUTSERVE-SLDN, INC.,

Plaintiffs,

v.

MARK T. ESPER, in his official capacity as acting Secretary of Defense; MATTEW DONOVAN, in his official capacity as the Acting Secretary of the Air Force; and the UNITED STATES DEPARTMENT OF DEFENSE,

Defendants.

NO. 1:18-CV-01565-LMB-IDD

**PLAINTIFFS' MOTION TO COMPEL DOCUMENTS AND INFORMATION
WITHHELD ON THE BASIS OF DELIBERATIVE PROCESS PRIVILEGE**

Pursuant to Fed. R. Civ. P. 37 and the Local Rules of the U.S. District Court for the Eastern District of Virginia, Plaintiffs hereby move to compel the production of documents and information withheld on the basis of the deliberative process privilege.

Defendants are currently withholding portions of eight documents on the basis of the deliberative process privilege, even though such information falls within the Court's prior reasoning in this case, *see* ECF No. 158, Order Granting in Part Pls.' Mot. to Compel, and the companion case *Harrison v. Esper*. *See Harrison, et al. v. Esper, et al.*, No. 18-cv-641, ECF No. 175-76, Order and Mem. Op. Overruling in Part Sustaining in Part Defs.' Objs.

As detailed in the accompanying Memorandum, the balancing test of *Cipollone v. Liggett Grp., Inc.*, 812 F.2d 1400 WL 36515 (4th Cir. 1987) (unpublished table decision), compels the production of these documents because the information requested is highly relevant to Plaintiffs' claims, Defendants are the only source of information, the government is integral to the case, and

disclosure of the information to Plaintiffs would not hinder frank and independent discussion. Accordingly, Defendants should be required to produce the information that has been withheld on the basis of the deliberative process privilege.

Pursuant to Local Rule 37(E), Plaintiffs hereby certify they have made a good faith effort to resolve this dispute with counsel for Defendants.

Dated: July 12, 2019

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on the 12th day of July, 2019, I caused this document to be filed electronically through the Court's CM/ECF system, which automatically sent a notice of electronic filing to all counsel of record.

Dated: July 12, 2019

Respectfully submitted,

/s/ John W. H. Harding

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