

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

United States District Court
Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

VIETNAM VETERANS OF AMERICA,	Case No.: 09-cv-0037 CW (JSC) ORDER RE: MAY 30 & 31, 2012 IN CAMERA SUBMISSIONS OF DOCUMENTS
et al.,	
Plaintiffs,	
v.	
CENTRAL INTELLIGENCE AGENCY,	
et al.,	
Defendants.	

Pursuant to the Court’s Orders of May 14 and 23, 2012, Defendant Department of Veterans Affairs (“DVA”) has resubmitted four previously illegible documents for review *in camera*. (Dkt. Nos. 423, 430). DVA asserted the deliberative process privilege over these documents and those addressed in the Court’s November 23, 2011, April 6, 2012, May 14, 2012 and May 23, 2012 Orders. (Dkt. Nos. 327, 408, 423 & 430). The Court previously found that with respect to some of the documents over which DVA asserted the deliberative process privilege, the privilege either did not apply or Plaintiffs had shown a substantial need for the documents sufficient to overcome the claim of privilege. The Court incorporates

1 these prior orders by reference and makes the following findings with respect to the four
2 outstanding documents.

3 The Court's May 14 and May 23 Orders directed Defendant to resubmit four
4 documents for *in camera* review because the copies previously provided to the Court were
5 illegible. On May 30, 2012, Defendant submitted two documents and on May 31, 2012
6 Defendant submitted the remaining two documents. The Court finds as follows:

- 7 • Defendant does not need to produce DVA078 004458-4469.
- 8 • To the extent that DVA078 004748-4751 is deliberative, Plaintiffs have a
9 substantial need for the document sufficient to overcome the claim of privilege.
10 Defendant shall produce this document to Plaintiffs.
- 11 • DVA078 003366-3368 and 4179-4181 are duplicate documents, which appear
12 to summarize the state of Defendant's legislative proposals as of January 23,
13 2007. These documents do not appear to be deliberative, and if even they are,
14 Defendant has indicated that there is no final version of these documents.
15 Accordingly, Defendant shall produce the documents to Plaintiffs.

16 With respect to the two points of clarification sought in DVA's May 30, 2012 filing,
17 the Court responds as follows. The Court found that Defendant had waived any claim of
18 privilege with respect to the six documents identified because they were referenced in the
19 Spinelli Declaration (Dkt. No. 371-1), but the documents were neither contained in the
20 privilege log accompanying the *in camera* production, nor in the *in camera* submission itself.
21 See DVA078 24-26, 2700-2703, 1867, 2045-2055, 2681 and 4221. Defendant alleges that
22 the documents were not included because they are duplicates of documents which the Court
23 previously reviewed *in camera*, and following review, the Court sustained Defendant's claim
24 of privilege. The Court accepts this representation as true; however, the Court notes these
25 documents were not listed as duplicates on Exhibit G to Plaintiffs' Motion to Compel (Dkt.
26 Nos. 404, n.1; 405-6) and the Court relied on this list for purposes of determining which
27 documents were duplicates. Accordingly, if Plaintiffs disagree with Defendant's
28 characterization of these documents, they should bring this to the Court's attention

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

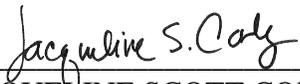
immediately. In the absence of any filing by Plaintiffs on this matter, the Court finds that Defendant has not waived the privilege and need not produce these six documents.

Second, the Court's May 23, 2012 Order inadvertently indicated that Defendant should produce documents DVA078 3100-4103. Defendant is only ordered to produce the single document at DVA078 3100-3104.

Based on the foregoing, Defendant shall produce DVA078 004748-4751, 3366-3368 and 4179-4181 to Plaintiffs by June 7, 2012. This Order resolves all outstanding matters regarding those documents over which Defendants have asserted the deliberative process privilege.

IT IS SO ORDERED.

Dated: May 31, 2012



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE