



Complaint Counsel seeks an order compelling Respondents to provide privilege logs that comply with the requirements of 16 C.F.R. § 3.38A. Motion at 1. Complaint Counsel argues that seven Respondents have failed to file any privilege log and that the log filed by the other two Respondents fails to comply with the requirements of Rule 3.38A. Motion at 4-7.

Rule 3.38A identifies the requirements for privilege logs, stating:

(a) Any person withholding material responsive to a subpoena issued pursuant to § 3.34, written interrogatories requested pursuant to § 3.35, a request for production or access pursuant to § 3.37, or any other request for the production of materials under this part, shall assert a claim of privilege or any similar claim not later than the date set for production of the material. Such person shall, if so directed in the subpoena or other request for production, submit, together with such claim, a schedule of the items withheld which states individually as to each such item the type, title, specific subject matter, and date of the item; the names, addresses, positions, and organizations of all authors and recipients of the item; and the specific grounds for claiming that the item is privileged.

16 C.F.R. § 3.38A(a). Rule 3.38A clearly states that the privilege log must state individually as to each item the date and the name and address of all authors and recipients.


The privilege log submitted by Respondents Basic Research and Ban does not provide the information required by Rule 3.38A. Motion, Exhibit 2. For example, the names, addresses, positions, and organizations of all authors and recipients are not listed. *Id.*

Moreover, on November 15, 2004, Basic Research filed a motion to compel Complaint Counsel to provide a privilege log that complied with Rule 3.38A. Dec. 1, 2004 Order. In their opposition to Basic's motion to compel, Complaint Counsel indicated that Basic's privilege log was deficient. Dec. 1, 2004 Order. In the December 1, 2004 Order granting Basic's motion to compel, this Court stated that "if the parties are unable to reach an agreement [to limit the privilege log requirements], the privilege logs must conform to the requirements of Rule 3.38A." Dec. 1, 2004 Order. Nonetheless, Respondents have failed to provide a privilege log in compliance with Rule 3.38A.

Claims of privilege may be waived for documents that are not listed on a privilege log, or that are listed without the information required by Rule 3.38A. The parties are hereby put on notice that claims of privilege may be waived by failure to comply with the requirements of this Order or by further violations of the discovery rules.

For the above-stated reasons, Complaint Counsel's motion to compel privilege logs is **GRANTED**. Complaint Counsel's unopposed motion for an extension of time to file a complete privilege log is **GRANTED**. All parties will have fifteen days from the date of this Order to exchange complete privilege logs or to provide notice that they have not withheld any privileged documents.

ORDERED:

  
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Stephen J. McGuire  
Chief Administrative Law Judge

Date: December 29, 2004