

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM AMIN HASSOUN,

Petitioner,

Case No. 1:19-cv-370-EAW

v.

JEFFREY SEARLS, in his official capacity
as Acting Assistant Field Office Director and
Administrator, Buffalo Federal Detention
Center,

Respondent.

**RESPONDENT’S BRIEF REGARDING DISPUTED DISCOVERY DOCUMENTS AND
NOTICE OF *EX PARTE*, *IN CAMERA* SUBMISSION**

As directed by the Court’s order of March 17, 2020 (ECF No. 108), Respondent files this “response to Petitioner’s submission regarding the disputed [discovery] documents,” and provides notice that he is submitting the contested documents to the Court *ex parte* for *in camera* review.

The parties have continued to narrow their discovery dispute such that Petitioner now contests privilege assertions in only four documents, totaling eleven pages. Those documents, and Petitioner’s explanation for his continued challenges, are as follows:

- DEF-00000393: “The subject line of this email is “11/22 Surveillance,” which does not give Petitioner enough information to challenge the invocation.” Pet’r’s Letter (ECF No. 137).
- DEF-00000394: “The subject line of this email is redacted; the sender and recipient do not give Petitioner enough information to challenge the invocation.”

Id.

- DEF-00000395: “The subject line of this email is redacted; the sender and recipient do not give Petitioner enough information to challenge the invocation.” *Id.*
- DEF-00005348: “The subject line of this email is “RE: Detention Assistance - A074 079 096 HASSOUN – Lebanon,” which does not give Petitioner enough information to challenge the invocation.” *Id.*

Respondent maintains that his privilege logs comply with the federal and local rules. *See also* Resp.’s Opp. to Pet’r’s Mot. to Compel at 10–14 (ECF No. 96). A privilege log “should be specific enough to permit the court or opposing counsel to determine whether the privilege asserted applies.” *Burns v. Imagine Films Entm’t, Inc.*, 164 F.R.D. 589, 594 (W.D.N.Y. 1996). But while a log must “enable other parties to assess the claim,” it need not “reveal[] information itself privileged or protected.” Fed. R. Civ. P. 26(b)(5); *accord* LCvR 26(b)(1)(B) (requiring a party to provide descriptions “unless to divulge such information would cause disclosure of the allegedly privileged information”).

The law enforcement privilege protects from dissemination information contained in both criminal and civil investigatory files. *See Friedman v. Bache Halsey Stuart Shields, Inc.*, 738 F.2d 1136, 1341 (D.C. Cir. 1984). The privilege acknowledges the strong public interest in safeguarding the integrity of investigations, *In re Sealed Case*, 856 F.2d 268, 272 (D.C. Cir. 1988), and it may be invoked to protect the ongoing or future effectiveness of investigatory techniques, *see Ass’n for Women in Sci. v. Califano*, 566 F.2d 339, 343 (D.C. Cir. 1977). “The privilege serves to preserve the integrity of law enforcement techniques and confidential sources, protects witnesses and law enforcement personnel, safeguards the privacy of individuals under

investigation, and prevents interference with investigations.” *Tuite v. Henry*, 181 F.R.D. 175, 176 (D.D.C. 1998), *aff’d*, 203 F.3d 53 (D.C. Cir. 1999).

With respect to the four documents challenged here, Petitioner claims that the subject lines are redacted or vague, and thus that the logs do not provide him enough information to challenge the invocation. Pet’r’s Letter. Providing more information in a log, however, would “reveal[] information itself privileged or protected” from disclosure under the investigatory files privilege. Fed. R. Civ. P. 26(b)(5). The redacted information in each document explicitly evinces a Federal Bureau of Investigation or U.S. Immigration and Customs Enforcement investigative action that has not previously been disclosed to Petitioner. For the same reason Respondent cannot provide more detail in a privilege log, Respondent is unable to divulge more detail in this public filing, but submits that the documents will clearly evince the privileged nature of the information redacted.

Therefore, Respondent asks the Court to find that he has properly claimed the investigatory files privilege over these documents.

Respondent is contemporaneously sending the following disputed documents to the Court for its *ex parte* review *in camera*: (1) DEF-00000393, (2) DEF-00000394, (3) DEF-00000395, and (4) DEF-00005348.

Date: April 8, 2020

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