

No. 40361-7-II

10 NOV 30 1993

**IN THE COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION II**

ARTHUR WEST

Vs.

**WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES**

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY [Signature] DEPUTY

**Appeal from the rulings of
the honorable Judge McPhee**

APPELLANT'S REPLY BRIEF

**Arthur West
120 State Ave N.E. #1497
Olympia, Washington, 98501**

PM 11-30-10

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III SUMMARY OF REPLY ARGUMENT

The DNR in its reply brief raises a number of irrelevant issues, none of which address the fundamental issues of this appeal, which can be summarized in four parts.

1. The DNR unlawfully destroyed Public Records in violation of the requirements of RCW 40.14 RCW.

2. The Appellant's Superior Court "actions" were reasonably necessary to compel the DNR's "litigation related" recovery and disclosure, which did not commence prior to the second suit.

3. DNR's withholding of the "litigation related" Email recovery communications demonstrates that the recovery was related to the litigation and/or waive the privilege.

4. DNR's overbroad use of attorney client exemption to withhold records that were not sent to or only cc'd to an attorney and which were not subject to work product exemption violated the narrow construction of exemptions required under the PRA.

Even by the DNR's own admission it can be shown that the DNR destroyed communications of its chief financial officer in violation of RCW 40.14, that Appellant was forced to file two Court actions to induce the

DNR to recover even a portion of the “lost” communications, and that DNR then attempted to assert the attorney client privilege to withhold records related to the recovery effort as litigation related while at the same time inconsistently claiming that the recovery had nothing to do with the lawsuit. In addition, DNR's position suffers from the defect that the attorney-client privilege was improperly asserted for records that were not sent to or at most were only cc'd to counsel, and records that were necessary for plaintiff as evidence.

Clearly, DNR's arguments attempt to apply incorrect standards of law and muddle the facts is a transparent attempt to deny the undeniable, that the Appellant's court actions were reasonably necessary to induce the recovery of even a portion of unlawfully destroyed Emails, and that the “litigation related” records of the recovery effort were the product of a “litigation related” recovery effort.

In this case, the DNR itself, by asserting a “litigation related” exemption for the records of the recovery effort, demonstrates incontrovertibly that the recovery of the records was “litigation related” and reasonably related to the plaintiff's suit. By maintaining inconsistent positions and denying disclosure of evidence which appellant had a

substantial need of, respondent DNR improperly applied the attorney client exemption to prevent the facts related to the cause and sufficiency of its recovery efforts to be known.

IV ARGUMENT

1. The DNR unlawfully destroyed Public Records in violation of the requirements of RCW 40.14 RCW.

It is important to recognize that DNR does not deny that the provisions of RCW 40.14 apply to the DNR. (See Brief, page 27, lines 9-11), and that the DNR admits to the destruction of public records without a retention and destruction schedule in violation of RCW 40.14. However, despite the illegal destruction of public records of its chief financial officer, the DNR seeks to invalidate the precedent of both *Yacobellis v. Bellingham*, 55 Wn. App. 706, 780 P.2d 272 (1989) and *O'Neil v. Shoreline* that penalties are appropriate when an agency illegally destroys such public records. Significantly, in *Yacobellis*, the Court found a violation of the PRA even when *Yacobellis* failed to demonstrate that the records had been destroyed after the request.

Further, in O'Neill, in regard to the sufficiency of the recovery effort, the Court held...

We affirm the Court of Appeals and hold that the City may not have provided all public records to the O'Neills in accordance with the PRA. On remand, the trial court must give the City the opportunity to inspect Fimia's home computer's hard drive to consider whether all public records were properly disclosed. If the City refuses to inspect Fimia's home computer's hard drive, they have indisputably not provided all public records to the O'Neills, and the trial court should find that the City violated the PRA. Furthermore, if the City inspects Fimia's home computer's hard drive but cannot find the metadata associated with the September 18 e-mail, or metadata from the September 18 e-mail that is different from the metadata already released to the O'Neills, the trial court must determine, consistent with this court's opinion, whether the City's deletion of the metadata violated the PRA. If appropriate, the trial court should determine the monetary penalty under the PRA. O'Neill v. City of Shoreline, 145 Wn. App. 913, 936, 187 P.3d 822, 832 (2008))

Obviously, the DNR's arguments in this case concerning their destruction and withholding of records and the sufficiency of their recovery

effort are based upon a view of the law at variance with the clear precedent of both Yacobellis and O'Neill, a view that allows agencies to destroy public records with impunity.

The nature of the records destroyed and concealed by DNR is also relevant in this case. Unlike the single E mail concerning Council matters of a single City in O'Neill or the municipal Golf Survey in Yacobellis, the records DNR destroyed and concealed included virtually all of the 2006-7 communications of the primary financial and budget officer of the DNR, an agency entrusted with discretionary oversight and regulation of a wide range of State lands and resources. These records are not some incidental technical data, but the very type of public records that the Public Disclosure Act was designed to require disclosure of, so that the citizens could be informed of the operation of their government.

If the records relating to a crucial administrative position like the finance and budget director of the DNR are not required to be preserved, what likelihood is there that smaller State agencies and local government will ensure the preservation of less important records?

2. The Appellant's Superior Court “actions” were reasonably necessary to compel the DNR's “litigation related” recovery and disclosure, which did not commence prior to the second suit.

The second glaring defect in the DNR's argument is that it completely misstates the test for determining if a plaintiff's action is a reasonably necessary action and a factor in the disclosure of the records, and attempts to obscure the fact that the DNR failed to engage in any recovery of the destroyed records until after plaintiff had filed a second legal action.

Contrary to the false legal representations of respondent DNR, it is not necessary for a plaintiff to demonstrate beyond a shadow of a doubt that the record would not have been disclosed absent an action on his part. Such a rule would completely eviscerate the PRA and make any enforcement meaningless, as all an agency like DNR would have to do is “voluntarily” disclose the records at some point after plaintiff was forced to file a court action to completely evade any responsibility for its initial withholding - or in this case destruction and withholding - of records.

As the Court in Spokane research Center recognized...

The harm occurs when the record is improperly withheld. The requester should recover his costs, and the agency should be penalized, if the requester has to resort to litigation (the reason for the later disclosure is irrelevant). This rule promotes the PDA's broad mandate of openness. *Spokane R & D. Fund v. Spokane*, 155 Wn.2d 89, at 103 (2005)

3. DNR's withholding of the "litigation related" Email recovery communications demonstrates that the recovery was related to the litigation and/or waive the privilege.

The basic inconsistent and irrational nature of DNR's position in this case can be demonstrated by the fundamentally contrasting claims that (1) the recovery of a portion of the destroyed E mails was not related to the litigation and (2) that the only existing records of the recovery effort are exempt from disclosure as "litigation related" records.

Clearly, either the recovery of the E mails was related to the litigation or it was taken in the ordinary course of business. If the recovery was related to the litigation, then plaintiff West has demonstrated more than sufficient nexus between the court action and disclosure to compel a penalty.

On the other hand, if the destroyed R mail records of the DNR's Director of Budget and Finance were recovered in the ordinary course of business, as DNR inconsistently attempts to claim, there is no basis for a claim of attorney client privilege or work product exemption for such records, and they should have been disclosed as their disclosure was necessary for evidenciary purposes and could not be reasonably discovered by other means.

As the Courts of Washington have recognized the assertion of such inconsistent positions erodes respect for the judicial process and the courts. *Ashmore v. Estate of Duff*, 165 Wn.2d 948, (2009). Commons sense and the doctrine of equitable estoppel require that DNR should not be allowed to assert such fundamentally inconsistent positions in this matter.

4. DNR's overbroad use of attorney client exemption to withhold records that were not sent to or only cc'd to an attorney violate the narrow construction of exemptions

The attached index of the recovery effort related records withheld by DNR demonstrates that large portions of the withheld records were not created or sent to an attorney, or were at most only copied to DNR counsel

as an afterthought, or for the express purpose of establishing the confidentiality of records which would otherwise be required to be disclosed.

Of the attached index, Records No 42-47, 88-89, 99-100, 110, 115-116, 118, 121-122, 125-126, 129-130, 132, 134, 137-138, 140, 142, and 144, including all of the records designated on pages 7 and 8 of the index fit into this category of communications between nonlawyers.

While under some circumstances nonattorneys may author documents constituting work-product, this is only the case so long as they act under the general direction of attorneys. *See, e.g., Exxon Corp. v. FTC*, 466 F. Supp. 1088, 1099 (D.D.C. 1978), *aff'd*, 663 F.2d 120 (D.C. Cir. 1980)

Further, cases interpreting Fed. R. Civ. P. 26(b)(3) have generally held that to justify disclosure, a party may show the importance of the information to the preparation of his case and the difficulty the party will face in obtaining substantially equivalent information from other sources if production is denied. *In re Intl. Systems and Controls Sec. Litigation*, 693 F.2d 1235 (5th Cir. 1982); 4 J. Moore, *FEDERAL PRACTICE* 26.64 (1984). The clearest case for ordering production is when crucial

information is in the exclusive control of the opposing party. See *Loc-Tite Corp v. Fel-Pro, Inc.*, 667 F.2d 577 (7th Cir. 1981).

Such concerns are especially important in Public Records actions which are designed to be an expedited process, and which almost always involve a determination of bad faith.

Given the unique nature of bad faith actions, and considering the protection available in the form of in camera inspections, we hold that mental impressions, etc., are discoverable in a bad faith action if they are directly in issue, and if the discovering party makes a stronger showing of necessity and hardship than is normally required under CR 26. See *Upjohn v. U. S.*, 449 U.S. 383, 66 L. Ed. 2d 584, 101 S. Ct. 677 (1981) (Court declining to hold that such material is always protected by the work product rule, and implying that a stronger showing of necessity and unavailability would be required for disclosure). See *Heidebrink v. Moriwaki*, 104 Wn.2d 392, 706 P.2d 212 (1985)

As the Supreme Court held in *Escalante*...

Thus, under *Heidebrink*, Washington courts are required to evaluate the specific parties and their expectations in order to determine whether the materials sought were prepared in anticipation of litigation. *Heidebrink* also

clearly states that even if a particular object of discovery is found to be protected by the work product doctrine, the material sought is still discoverable if the discovering party shows substantial need. Heidebrink, at 401. Since a determination of the parties' "expectations" is presumably, in part, a factual inquiry, and since the "substantial need" test is essentially a FACTUAL determination "vested in the sound discretion of the trial judge", (Heidebrink, at 401), we must remand all discovery requests to which Sentry objected on the basis of work product for the trial court to determine which documents are subject to the work product doctrine, and to determine whether substantial need has been shown. Escalante v. Sentry Ins. Co., 49 Wn.App 375, 743 P. 2d 832 (1987)

Similarly, in this case, the issues of whether the records of the DNR's recovery effort were necessary for evidenciary purposes should be determined.

CONCLUSION

The DNR failed to respond to West's request as required by law. The DNR destroyed public and official public records without a valid retention and discovery schedule. Plaintiff West was required to maintain a suit to

compel disclosure, unreasonable delays and only a partial recovery of the destroyed records resulted, mandating a finding of violation and a penalty.

Defendants have waived their claim that the recovery of the DNR's Director of Finance and Budget E-mails was not litigation related by asserting that communications regarding their recovery are exempt because they were made for the purposes of litigation, and have waived any privilege that might have existed by disclosing their communications to third parties.

The defendants cannot have their records and destroy them too, and keep the records of their recovery exempt under attorney client privilege while asserting the recovery had nothing to do with the lawsuit. The ruling of the trial Court should be reversed and this matter remanded for further proceedings.

Done November 30, 2010.



ARTHUR WEST

CERTIFICATE OF SERVICE

I certify that Appellant's Reply Brief and the appendix was served on respondent DNR personally or by mail on November 30, 2010, by delivering it or mailing it to the DNR's Address of record.

I certify the foregoing to be correct and true under penalty of perjury. Done November 30, 2010.



ARTHUR WEST

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DIVISION II
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STATE OF WASHINGTON
BY _____
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Bates No.	DOCUMENT DESCRIPTION	RULING
DEF-0000015- DEF-0000023	<p>07/10/2008 - 10:46 a.m. Email to Peggy Murphy (DNR) from Tom Martin (DNR) cc: Gordon Ice (DNR); Pat Gebhardt (DNR)</p> <p>07/10/2008 - 11:31 a.m. Email to Michael Rollinger (AGO) from Peggy Murphy (DNR)</p> <p>Attachment: Department of Natural Resources email Discovery/Recovery</p>	<p>E-mail string from DNR PRA supervisor/coordinator Murphy to AAG Rollinger with various versions and suggested edits of paper discussing response to plaintiff's lawsuit over destruction of Van Schorl emails. Information clearly intended for then current litigation initiated by plaintiff. Exemption granted.</p>
DEF-0000027- DEF-0000029	<p>05/16/2008 - 3:39 p.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR)</p> <p>05/17/2008 - 2:18 p.m. Email to Terry Pruitt (AGO) from Peggy Murphy (DNR)</p>	<p>E-mail string that preceded Record #2. Attorney-client and work product exemption is granted.</p>
DEF-0000031	<p>05/28/2008 - 4:07 p.m. Email to Gordon Ice (DNR); Wendy Huff (DNR) from Terry Pruitt (AGO) cc: Peggy Murphy (DNR)</p>	<p>E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>
DEF-0000034- DEF-0000035	<p>07/08/2008 - 1:08 p.m. Email to Michael Rollinger (AGO) from Peggy Murphy (DNR)</p> <p>07/08/2008 - 1:50 p.m. Email to Peggy Murphy (DNR) from Michael Rollinger (AGO)</p> <p>07/08/2008 - 2:27 p.m. Email to Michael Rollinger (AGO) from Peggy Murphy (DNR)</p>	<p>E-mail string. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>

*Denotes communications between non lawyers
 Appendix I

Bates No.	DOCUMENT DESCRIPTION	RULING
<p>* DEF-0000042- DEF-0000047</p>	<p>05/29/2008 - 9:14 a.m. Email to Jim@einvestigate.com from Gordon Ice 05/29/2008 - 7:39 a.m. Email to Gordon Ice (DNR) from Joseph Caruso-GDF cc: Robert Knudsen-GDF; David Gitkos-GDF 05/29/2008 Email to Joseph Caruso-GDF from Gordon Ice (DNR) cc: Robert Knudsen-GDF; David Gitkos-GDF 05/29/2008 - 7:53 a.m. Email to Gordon Ice (DNR) from Joseph Caruso-GDF 05/29/2008 11:20 a.m. Email to Joseph Caruso-GDF from Gordon Ice (DNR) 05/29/2008 12:05 p.m. Email to Gordon Ice (DNR) from Joseph Caruso-GDF 06/06/2008 - 6:45 a.m. Email to Joseph Caruso-GDF from Gordon Ice (DNR) 06/09/2008 - 5:42 a.m. Email to Gordon Ice (DNR) from David Gitkos-GDF 06/09/2008 - 12:18 p.m. Email to Joseph Caruso-GDF from Gordon Ice (DNR) cc: David Gitkos-GDF 06/09/2008 - 12:21 p.m. Email to Gordon Ice (DNR) cc: Joseph Caruso-GDF 06/10/2008 - 6:23 a.m. Email to Terry Pruitt (AGO) from Gordon Ice (DNR) cc: Peggy Murphy (DNR); Tom Martin (DNR) 06/10/2008 - 10:22 a.m. Email to Peggy Murphy (DNR) from Terry Pruitt (AGO)</p>	<p>Very short redaction of a long e-mail string. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted. *</p>
<p>DEF-0000053- DEF-0000057</p>	<p>07/11/08 Email to Tom Martin (DNR) from Michael Rollinger (AGO) cc: Peggy Murphy (DNR) Attachment: Department of Natural Resources email Discovery/Recovery</p>	<p>Follow on e-mail and attachment relating to Record #2. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>

Bates No.	DOCUMENT DESCRIPTION	RULING
DEF-0000059	<p>07/15/2008 - 9:51 a.m. Email to Tom Martin (DNR) from Michael Rollinger (AGO) cc: Pat Gebhardt (DNR); Peggy Murphy (DNR); Cara Ponzini (AGO)</p>	<p>E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>
DEF-0000061	<p>08/21/2008 - 1:13 p.m. Email to Michael Rollinger (AGO from Tom Martin (DNR) cc: Peggy Murphy (DNR)</p>	<p>E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>
DEF-0000064- DEF-0000065	<p>09/04/2008 - 2:37 p.m. Email to Michael Rollinger (AGO); Peggy Murphy (DNR) from Tom Martin (DNR) 09/04/2008 - 2:53 p.m. Email to Tom Martin (DNR) from Michael Rollinger (AGO) 09/08/2008 - 2:07 p.m. Email to Michael Rollinger (AGO) from Tom Martin (DNR) cc: Peggy Murphy (DNR)</p>	<p>E-mail and reply. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>
DEF-0000067	<p>07/02/08 - 11:17 a.m. Email to Terry Pruitt (AGO) from Michael Rollinger (AGO) 07/02/08 - 11:33 a.m. Email to Michael Rollinger (AGO) from Terry Pruitt (AGO) 07/09/2008 - 7:26 a.m. Email to Peggy Murphy (DNR) from Michael Rollinger (AGO)</p>	<p>E-mail string. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>
DEF-0000069	<p>07/02/08 - 1:58 p.m. Email to Gordon Ice (DNR) from Terry Pruitt (AGO) 07/02/08 - 4:28 p.m. Email to Terry Pruitt (AGO) from Tom Martin (DNR) cc: Peggy Murphy (DNR); Tom Martin (DNR)</p>	<p>E-mail and reply relating to subject matter of Record #2. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>
DEF-0000071	<p>05/19/2008 - 7:08 a.m. Email to Terry Pruitt (AGO); Peggy Murphy (DNR) from Gordon Ice (DNR) 05/19/2008 - 7:16 a.m. Email to Gordon Ice (DNR) from Terry Pruitt (AGO) cc: Peggy Murphy (DNR)</p>	<p>E-mail and reply relating to subject matter of Record #2. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.</p>

Bates No.	DOCUMENT DESCRIPTION	RULING
DEF-000074- DEF-000075	08/15/2008 - 8:46 a.m. Email to Bonnie Bunning (DNR); Stephen Saunders (DNR) Pat Gephardt (DNR) from Michael Rollinger (AGO) cc: Simon Kihia (DNR); Tom Martin (DNR); Peggy Murphy (DNR); O'Brien, Patricia (AGO); Christa Thompson (AGO)	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-000077	08/14/2008 - 12:00 p.m. Email to Peggy Murphy, DNR from Michael Rollinger (AGO) cc: Simon KIHIA (DNR); Stephen Saunders (DNR)	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-000079	07/23/08 - 8:46 a.m. Email to Michael Rollinger (AGO); Peggy Murphy (DNR) from Tom Martin (DNR) cc: Pat Gebhardt (DNR); Bonnie Bunning (DNR) 07/30/08 - 7:05 a.m. Email to Tom Martin (DNR); Peggy Murphy (DNR) from Michael Rollinger (AGO)	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-000081	07/15/2008 - 8:16 a.m. Email to Peggy Murphy (DNR) from Michael Rollinger (AGO) cc: Simon Kihia (DNR); Stephen Saunders (DNR); Cara Ponzini (DNR)	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-000084- DEF-000085	07/08/2008 - 4:32 p.m. Email to Terry Pruitt (AGO) from Peggy Murphy (DNR) 07/09/2008 - 9:23 a.m. Email to Peggy Murphy (DNR) from Terry Pruitt (AGO) 07/09/2008 - 9:47 a.m. Email to Terry Pruitt (AGO) from Peggy Murphy (DNR) 07/09/2008 - 11:53 a.m. Email to Peggy Murphy (DNR) from Terry Pruitt (AGO) cc: Michael Rollinger (AGO) 07/09/2008 - 12:15 p.m. Email to Terry Pruitt (AGO) from Peggy Murphy (DNR) cc: Michael Rollinger (AGO)	E-mail string. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.

Bates No.	DOCUMENT DESCRIPTION	RULING
* DEF-0000088- DEF-0000089	04/29/2008 - 1:20 p.m. Email to Gordon Ice (DNR) from Peggy Murphy (DNR) 04/29/2008 - 2:20 p.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR) 04/29/2008 - 3:22 p.m. Email to Gordon Ice (DNR) from Peggy Murphy (DNR) 05/20/2008 - 12:18 p.m. Email to Wendy Huff (DNR); Tom Martin (DNR) from Gordon Ice (DNR)	E-mail string concluding with an e-mail from Murphy to Pruitt dated 4/29/2008. The string does not include the Ice to Huff-Martin e-mail identified here. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000091	05/20/2008 - 3:47 p.m. Email to Gordon Ice (DNR); Terry Pruitt (AGO); Peggy Murphy (DNR) from Gordon Ice (DNR); cc: Wendy Huff (DNR); Tom Martin (DNR)	E-mail relating to subject matter of Record #2. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000093	05/01/2008 - 1:09 p.m. Email to Terry Pruitt (DNR) from Peggy Murphy (DNR)	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000095- DEF-0000096	07/23/08 - 8:46 a.m. Email to Michael Rollinger (AGO); Peggy Murphy (DNR) from Tom Martin (DNR) cc: Pat Gebhardt (DNR); Bonnie Bunning (DNR) 07/30/08 - 7:05 a.m. Email to Tom Martin (DNR); Peggy Murphy (DNR) from Michael Rollinger (AGO)	E-mail string relating to subject matter of Record #2. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
* DEF-0000099- DEF-0000100	05/12/2008 - 2:39 p.m. Email to Gordon Ice (DNR) from Peggy Murphy (DNR) cc: Terry Pruitt (AGO) 05/13/2008 - 11:04 a.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR) cc: Terry Pruitt (AGO); Chuck Griffin (DNR); Happy Jenkins (DNR) cc: Terry Pruitt (AGO) 05/13/2008 - 2:52 p.m. Email to Michael Rollinger (AGO) from Peggy Murphy (DNR)	E-mail and reply regarding plaintiff's litigation with DNR, with AGO copied. Exemption granted.
* DEF-0000102	08/07/2008 - 9:53 a.m. Email to James Smego (DNR); Peggy Murphy (AGO) from Tom Martin (DNR) cc: Michael Rollinger (AGO) and Pat Gebhardt (DNR)	Claim for exemption of a single sentence from a paragraph regarding plaintiff's litigation with DNR. Exemption granted. Not clear why claim was not made for entire paragraph.

Bates No.	DOCUMENT DESCRIPTION	RULING
DEF-0000104	<p>07/11/2008 - 10:41 a.m. Email to Michael Rollinger (AGO) from Tom Martin (DNR)</p> <p>07/11/2008 - 11:12 p.m. Email to Tom Martin (DNR) from Michael Rollinger (AGO)</p> <p>07/11/2008 - 11:14 p.m. Email to Michael Rollinger (AGO) from Tom Martin (DNR)</p>	E-mail string. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption partially granted. This string has redacted the identity and address of the last recipient and the subject lines of all three e-mails - a change from the previous redaction pattern. These parts should be disclosed; redaction is denied as to those parts. This is a <i>de minimus</i> violation.
DEF-0000106	<p>06/10/2008 - 3:40 p.m. Email to Peggy Murphy (DNR); Terry Pruit (AGO) from Gordon Ice (DNR) cc: Tom Martin (DNR)</p>	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000108	<p>06/20/2008 - 2:44 p.m. Email to Peggy Murphy (DNR); Terry Pruit (AGO) from Gordon Ice (DNR)</p>	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000110	<p>07/10/2008 - 10:46 a.m. Email to Peggy Murphy (DNR) from Tom Martin (DNR) cc: Gordon Ice (DNR); Pat Gebhardt (DNR)</p>	E-mail relating to subject matter of Record #2. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000112	<p>7/14/2008 - 11:24 a.m. Email to Michael Rollinger (AGO); Peggy Murphy (DNR) from Tom Martin (DNR) cc: Gordon Ice (DNR); Pat Gebhardt (DNR)</p>	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000114	<p>7/15/2008 - 1:25 p.m. Email to Michael Rollinger (AGO); Peggy Murphy (DNR) cc: Pat Gebhardt (DNR); Bonnie Bunning (DNR)</p>	E-mail. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000115- DEF-0000116	<p>7/23/2008 - 9:28 a.m. Email to Peggy Murphy (DNR) from Tom Martin (DNR)</p>	E-mail. Communication to DNR PRA supervisor/coordinator Murphy regarding plaintiff's litigation with DNR. Work product. Exemption granted.
DEF-0000118	<p>8/7/2008 - 2:59 p.m. Email to Peggy Murphy (DNR) from Tom Martin (DNR)</p>	E-mail. Communication to DNR PRA supervisor/coordinator Murphy regarding plaintiff's litigation with DNR. Work product. Exemption granted.

Bates No.	DOCUMENT DESCRIPTION	RULING
DEF-0000121- DEF-0000122	<p>04/29/2008 - 1:20 p.m. Email to Gordon Ice (DNR) from Peggy Murphy (DNR)</p> <p>04/29/2008 - 2:20 p.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR)</p> <p>04/29/2008 - 3:22 p.m. Email to Gordon Ice (DNR) from Peggy Murphy (DNR)</p> <p>05/20/2008 - 12:18 p.m. Email to Wendy Huff (DNR); Tom Martin (DNR) from Gordon Ice (DNR)</p>	E-mail. Communication to/from DNR PRA supervisor/coordinator Murphy regarding plaintiff's litigation with DNR. Work product. Exemption granted.
DEF-0000125- DEF-0000126	<p>06/09/2008 - 5:42 a.m. Email to Gordon Ice (DNR) from Joseph Caruso-GDF cc: David Gitkos-GDF</p> <p>06/09/2008 - 12:18 p.m. Email to Joseph Caruso-GDF from Gordon Ice (DNR) cc: David Gitkos-GDF</p> <p>06/09/2008 - 12:21 p.m. Email to Gordon Ice (DNR) from David Gitkos-GDF cc: Joseph Caruso-GDF</p> <p>06/10/2008 - 6:23 a.m. Email to Terry Fruit (AGO) from Gordon Ice (DNR) cc: Peggy Murphy (DNR); Tom Martin (DNR)</p> <p>06/10/2008 - 1:43 p.m. Email to Tom Martin (DNR) from Gordon Ice (DNR)</p>	E-mail string with short redaction. Attorney-client communication regarding plaintiff's litigation with DNR. Exemption granted.
DEF-0000129- DEF-0000130	<p>05/22/2008 - 3:55 p.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR) cc: Terry Fruit (AGO); Wendy Huff (DNR); Tom Martin (DNR)</p> <p>05/22/2008 - 4:07 p.m. Email to Gordon Ice (DNR) from Peggy Murphy (DNR) cc: Terry Fruit (AGO); Wendy Huff (DNR); Tom Martin (DNR)</p> <p>05/22/2008 - 4:21 p.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR) cc: Terry Fruit (AGO); Wendy Huff (DNR); Tom Martin (DNR)</p>	E-mail. Communication to/from DNR PRA supervisor/coordinator Murphy regarding plaintiff's litigation with DNR. Work product. Exemption granted.

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Bates No.	DOCUMENT DESCRIPTION	RULING
DEF-0000132	<p>05/20/2008 - 2:25 p.m. Email to Gordon Ice (DNR) from Tom Martin (DNR) 05/20/2008 - 3:25 p.m. Email to Tom Martin (DNR) from Gordon Ice (DNR)</p>	<p>E-mail and reply. Communication between investigators regarding plaintiff's litigation with DNR. Work product. Exemption granted.</p>
DEF-0000134	<p>07/09/2008 - 3:21 p.m. Email to Gordon Ice (DNR) from Tom Martin (DNR) 07/10/2008 - 6:54 a.m. Email to Tom Martin (DNR) from Gordon Ice (DNR)</p>	<p>E-mail and reply. Communication between investigators regarding plaintiff's litigation with DNR. Work product. Exemption granted.</p>
DEF-0000137- DEF-0000138	<p>05/28/2008 - 5:09 p.m. Email to Gordon Ice (DNR) from Wendy Huff (DNR) cc: Tom Martin (DNR) 05/29/2008 - 7:45 a.m. Email to Wendy Huff (DNR) from Gordon Ice (DNR) cc: Tom Martin (DNR)</p>	<p>E-mail and reply. Communication between investigators regarding plaintiff's litigation with DNR. Work product. Exemption granted.</p>
DEF-0000140	<p>06/12/2008 - 12:41 p.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR) cc: Tom Martin (DNR)</p>	<p>E-mail. Communication to DNR PRA supervisor/coordinator Murphy regarding plaintiff's litigation with DNR. Work product. Exemption granted.</p>
DEF-0000142	<p>06/09/2008 - 2:57 p.m. Email to Peggy Murphy (DNR) from Tom Martin (DNR) cc: Pat Gebhardt (DNR)</p>	<p>E-mail. Communication to DNR PRA supervisor/coordinator Murphy regarding plaintiff's litigation with DNR. Work product. Exemption granted.</p>
DEF-0000144	<p>06/06/2008 - 3:53 p.m. Email to Peggy Murphy (DNR) from Gordon Ice (DNR)</p>	<p>E-mail. Communication to DNR PRA supervisor/coordinator Murphy regarding plaintiff's litigation with DNR. Work product. Exemption granted.</p>