

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, *et al.*, :
 :
 Plaintiffs, :
 :
 v. : Civil Action No. 00-2445 (JR)
 :
 ANN V. VENEMAN, Secretary, :
 United States Department of :
 Agriculture, :
 :
 Defendant. :

MEMORANDUM ORDER

After reviewing the remarkably acrimonious papers filed by the parties supporting and opposing plaintiffs' motion to compel,¹ a number of principles are clear:

- The government's invocation of the deliberative process privilege has not been waived, but neither has it been properly invoked.
- The government's invocation of the attorney-client privilege and attorney work product protection for documents whose authors are unknown is improper.

¹ It has been the Court's observation, during the motions hearings and status conferences in this case, that plaintiffs' counsel have initiated much of the acrimony that has characterized the relationships between counsel, although neither side deserves a halo. Plaintiffs' charge that the government's opposition "follows an all-too-familiar pattern of misrepresentation and misdirection," and defendant's charge that plaintiffs' objection to the deliberative process privileges is a "manufactured dispute," are two examples of uncivil argument.

- Documents withheld on claims of privilege that were not set forth in the privilege log were improperly withheld.
- The government's inadvertent production of privileged documents waived the privilege as to those documents, but not generally as to the entire attorney-client privilege in the case.

It is accordingly

ORDERED that plaintiffs' motion to compel [100] is **granted**. The Court will entertain a motion pursuant to F.R.Civ.P. 37(a)(4) for plaintiffs' reasonable expenses incurred in making their motion, including attorneys' fees. It is

FURTHER ORDERED that, on **February 6, 2004 at 10:00 a.m.**, defendant produce for *in camera* inspection every document responsive to plaintiffs' discovery requests that defendant continues to withhold from production after reviewing the principles set forth above. A representative from each side is directed to attend the *in camera* inspection.

JAMES ROBERTSON
United States District Judge