IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

THE CITY OF GREENSBORO, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	1:15CV559
	)	
GUILFORD COUNTY BOARD OF ELECTIONS, et al.,	)	
	)	
Defendants,	)	
	)	
MELVIN ALSTON, et al.,	)	
	)	
Defendant-Intervenors.	)	

ORDER

This matter is before the Court upon Plaintiffs' Lewis A. Brandon III, Joyce Johnson, Nelson Johnson, Richard Alan Koritz, Sandra Self Koritz, Charli Mae Sykes, and Maurice Warren II's (collectively "Individual Plaintiffs") motion to compel (Docket Entry 74) compliance with subpoenas served upon Senator Robert A. Rucho, Senator Trudy Wade, Representative John Faircloth, Representative Jon Hardister, Representative Charles Jeter, Representative Tim Moore, Representative David Lewis, and Attorney Erika Churchill's (collectively "Legislative Respondents"). Also before the Court is Senator Wade's objections and motion to quash subpoena served on state legislator. (Docket Entry 79.) A hearing was held on this matter on September 8, 2016. (Minute Entry Dated 9/8/2016.) The undersigned ordered Legislative Respondents to submit a privilege log within thirty (30) days for an *in-camera* inspection. (*Id.*) Legislative Respondents thereafter filed a motion for reconsideration of the undersigned's previous order. (Docket Entry 92.) On November

1, 2016, the undersigned denied the motion for reconsideration and ordered Legislative Respondents to prepare a privilege log for an *in-camera* inspection. (Docket Entry 97.)

In the November 1, 2016 Court Order, the undersigned clearly provided that a privilege log would be found insufficient if it "lack[s] the information necessary to determine whether a privilege applies." *Rambus, Inc. v. Infineon Techs. AG*, 220 F.R.D. 264, 273 (E.D. Va. 2004). Under Rule 26 of the Federal Rules of Civil Procedure, when a party withholds information based upon a privilege, the party shall "expressly make the claim" and "describe the nature of the documents, communications, or tangible things not produced or disclosed--and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim." Fed. R. Civ. P. 26(b)(5)(A). Ultimately, "the [privilege] log must as to each document . . . set[ ] forth specific facts that, if credited, would suffice to establish each element of the privilege or immunity that is claimed." *Kelly v. United States*, 281 F.R.D. 270, 277 (E.D.N.C. 2012) (internal quotation and citation omitted); *see also N.L.R.B. v. Interbake Foods, LLC,* 637 F.3d 492, 501-02 (4th Cir. 2011) (setting forth standard for privilege log); *Neuberger Berman Real Estate Income Fund, Inc. v. Lola Brown Trust No. 1B*, 230 F.R.D. 398, 406 n.14 (D. Md. 2005) (internal quotation and citation omitted) ("The focus is on the specific descriptive portion of the log, and not on conclusory invocations of the privilege or work-product rule, since the burden of the party withholding documents cannot be discharged by mere conclusory or ipse dixit assertions.").

After review of the privilege logs submitted by Legislative Respondents, the Court finds as a matter of law that the logs are woefully inadequate for the Court to properly assess whether the privileges asserted are applicable. Here, each log contains an identification of the

production document number, author and recipients, the dates and times of its transmission,[1] the email subject (which appears to be the title of the email), and the file type.[2] The logs, however, do not contain any information describing the contents of the emails/documents beyond the email subject line, nor does the logs provide specific privileges asserted as to each log.[3] While the Court is not suggesting that detailed information be provided such that the asserted privileged information is itself revealed, the privilege logs should have enough information for a proper assessment by the Court. *See*, e.g., *Kelly*, 281 F.R.D. at 277 ("The court notes that the privilege log does more than simply state that a document is confidential work product; instead, the log provides a description of the document, the author, addressee, type of document, and the specific reasons privilege is claimed."); *Vaughan v. Celanese Americas Corp.*, No. CIV. 3:06CV104-W, 2006 WL 3592538, at *3 (W.D.N.C. Dec. 11, 2006) ("The privilege log is . . . quite detailed-providing the document request numbers to which the document would be responsive, the corresponding bates number (many of the documents were actually produced in redacted form), the date, the authors and recipients (including 'cc' recipients), a *description of the document*, and the privilege asserted.") (emphasis added).

As such, the Court will afford Legislative Respondents one additional opportunity to submit privilege logs that provide sufficient information for a meaningful review by the Court. Specifically, each document identified in the privilege logs shall be supplemented to contain:

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[1] Some logs contain dates and times the recipients obtained the documents.

[2] Some logs indicate whether there is an attachment by designation of "TRUE" or "FALSE".

[3] Legislative Respondents have asserted claims of legislative privilege, statutory legislative confidentiality, and attorney-client privilege.

(1) Nature/description of each document;[4]

(2) Specific privileges claimed as to each document; and

(3) Reasons for claimed privileges as to each document.

Legislative Respondents shall provide the revised privilege logs to the Court no later than **Wednesday, December 7, 2016 at 5pm**. Upon receipt of the logs, the Court will review the information provided to determine the applicability of each privilege asserted. The Court cautions Legislative Respondents to carefully assess the revised privilege logs they intend to submit for review as to avoid the risk of the Court's finding of waiver. *See Johnson v. Ford Motor Co.*, 309 F.R.D. 226, 235 (S.D.W. Va. 2015) (internal quotations and citations omitted) (recognizing waiver as a remedy for an inadequate privilege log).

SO ORDERED. This the 23rd day of November, 2016.

Joe L. Webster
United States Magistrate Judge

[4] The Court notes that "vague and uninformative document descriptions do not satisfy Rule 26(b)(5)(A)(ii)[.]" *In re McDonald*, No. 13-10661, 2014 WL 4365362, at *4 (Bankr. M.D.N.C. Sept. 3, 2014).