

Privilege Logs

A privilege log is a list of documents the parties in a case believe are privileged and immune from disclosure in the lawsuit.

Federal and some state rules apply to the creation of privilege logs. Always check the rules.

Fed. R. Civ. P. 26(b)(1) states:

Parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense – including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.

Just because one party designates certain documents as being privileged, does not make them privileged. The party seeking protection from disclosure has the burden of proving that the materials are legally privileged.

Types of Privilege:

1. Attorney/Client Privilege: communications between a client and his attorney.
2. Privacy Laws: Right to privacy under the Constitution or any law enacted by the government.
3. Attorney Work Product: Trial preparation documents, reports, statements, correspondence, and other documents prepared in anticipation of litigation that reveal the attorney's thoughts and mental impressions.
4. Trade Secrets: Documents that reveal formulas, practices, processes, designs, patterns, and/or other information not generally known, with which a business can obtain economic advantage over competitors or customers.

A proper privilege log must contain:

1. The type of document for which the privilege is claimed.
2. The name and designation or capacity of the provider/author of the document.
3. The name and designation or capacity of each recipient.
4. The date of the information or the date on which the document was prepared, sent, or shared.

5. The title and/or description of the information or document.
6. The subject matter addressed in the information or document.
7. The purpose(s) for which it was prepared or communicated.
8. The privilege claimed.

Sample Privilege Log

	Bates No.	Document Type	Date of Document	Author/ Capacity	Recipient	Persons with access	Subject Matter	Category of Privilege
1	HHC 1340 - HHC 1345	Letter	12/22/2010	XYZ Corp.	ABC, LLP	Dan Smith	Meeting of shareholders	Trade secret
2	HHC 1420 - HHC 1421	Contract	5/6/1999	XYZ Corp.	ABC, LLP	None	Terms for agreement	Trade secret
3	HHC 1500 - HHC 1502	Letter	8/20/2004	Robert Kincaid	XYZ Corp.	None	Litigation	Attorney/Client Privilege
4	HHC 1650 - HHC 1655	Emails	3/3/2004	Sandra Jones	Robert Kincaid XYZ Corp.	Dan Smith	Deposition summaries	Attorney Work Product