Courts Apply an Expansive View of Privilege Protection for Corporations' Internal Data

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In his August 7, 2013 “Privilege Points” release, Tom Spahn discusses privilege protection for clients’ compilations of data.

The attorney-client privilege protects communications between clients and their lawyers involving the former's request for legal advice. Although the privilege can extend to corporations' collections of internal data, most courts conclude that business rather than legal concerns motivated such compilations, and find they are not protected.

On the other hand, some courts take a broad view. In Lopez v. Longs Drug Stores California, Inc., the court upheld privilege protection for a six-page document "listing the names, job titles and employment locations of 139 employees" being considered for a reduction in force. No. A131638, 2013 Cal. App. Unpub. LEXIS 3399, at *36 (Cal. Ct. App. May 14, 2013). The court noted that the Human Resource department prepared the interim list for lawyers' use, and that only they viewed the list. Nine days later, another court took a similarly expansive view. In Church of Christ at Azalea Drive v. Forest River, Inc., C.A. No. 2:11-cv-3371-PMD, 2013 U.S. Dist. LEXIS 72968 (D.S.C. May 23, 2013), the court protected a spreadsheet detailing vehicle certifications. The court cited the general manager's declaration that the company's "attorney requested that particular information be pulled from the files of Starcraft Bus, that certain calculations be made using variables he requested, and that the data be compiled in a certain way to aid his analysis." Id. at *12. The declaration further stated that "the spreadsheets have never been shared with any third party or government agency, were not used in the normal course of business, and were not required by any regulatory agency." Id.

Not all courts would be this expansive, but lawyers should be on the lookout for such helpful cases.