

March 14, 2024

Gregg J. Corbo
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BY ELECTRONIC MAIL ONLY (pre@sec.state.ma.us)

Ms. Manza Arthur
Supervisor of Records
Public Records Division
One Ashburton Place, Room 1719
Boston, MA 02108

Re: Town of Carver – SPR24/051

Dear Ms. Arthur:

KP Law, P.C. represents the Town of Carver (“Town”) as Town Counsel. I am writing in response to your determination in the above-referenced appeal in which you require that the Town provide more detailed information concerning its assertion of the Attorney/Client Privilege in response to a request pursuant to the Public Records Law.

As described in the Privilege Log provided by the Town of February 1, 2024, on January 31, 2023, the Town’s Town Administrator Robert Fennessey sent an e-mail to Town Counsel Gregg Corbo requesting a legal opinion. As an employee of the Town of Carver, the Town Administrator is entitled to seek the advice of Town Counsel and any discussions between the Town Administrator and Town Counsel are protected by the Attorney Client Privilege. Suffolk Const. Co., Inc. v. Division of Capital Asset Management, 449 Mass. 444 (2007). **While I am not at liberty to disclose the substance of that communication, the e-mail involved a request for advice concerning the need for an earth removal permit in connection with work to be conducted on behalf of the Town of Plymouth.** Because the e-mail involved a request for legal advice between a client and his attorney, the communication is not subject to disclosure pursuant to the Public Records Law.

On February 7, 2023, Town Counsel Gregg Corbo responded to his client with the advice requested. The e-mail was sent to the Town Administrator and the then Chair of the Earth Removal Committee Robert Ieromino. For the above-stated reasons, Town Counsel’s response to a request for legal advice is protected by the Attorney/Client Privilege and is not subject to disclosure pursuant to the Public Records Law.

The substance of Town Counsel’s opinion was not shared with any third-party. On February 8, 2023, the Town Administrator shared the opinion with the Chair of the Earth Removal Committee. Both individuals as Town officials, are clients of Town Counsel. On February 14, 2023, the Earth Removal Committee Chair wrote to the Director Marine and Environmental Affairs for the Town of Plymouth informing him that the work did not require an Earth Removal Permit. In that correspondence, the Chair states that he consulted with Town Counsel. The Chair did not disclose the substance of that consultation. The disclosure of the fact that a client has consulted with

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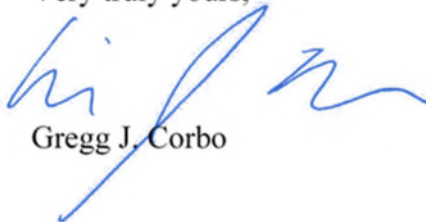
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an attorney and even that they followed the attorney's advice does not result in a waiver of the privilege. Willmore v. Savvas Learning Company LLC, 344 F.R.D. 546 (D.Kan. 2023).

In light of the foregoing, it remains the Town's position that the documents described in the Privilege Log provided on February 1, 2024 are protected by the Attorney/Client Privilege and are not subject to disclosure pursuant to the Public Records Law.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Gregg J. Corbo", is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke at the end.

Gregg J. Corbo