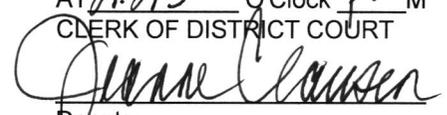


FILED 01/03/2023

AT 2:25 O'Clock P. M  
CLERK OF DISTRICT COURT

  
Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE  
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

**THE HAGADONE CORPORATION,** )  
**d/b/a COEUR D'ALENE PRESS,** )  
 )  
*Plaintiff,* )  
vs. )  
**NORTH IDAHO COLLEGE, a community** )  
**college in the State of Idaho; and LAURA** )  
**RUMPLER, a public official acting on** )  
**behalf of North Idaho College,** )  
 )  
*Defendants.* )

Case No. **CV28-23-1273**

**MEMORANDUM DECISION AND  
ORDER GRANTING PLAINTIFF'S  
MOTION TO COMPEL**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

This matter is before the Court on a Motion to Compel brought by the plaintiff, the Hagadone Corporation, d/b/a the Coeur d'Alene Press ("Coeur d'Alene Press"), filed on June 13, 2023, against the defendants, North Idaho College and Laura Rumpler ("Rumpler"). The Coeur d'Alene Press requests that this Court compel North Idaho College to more fully answer Interrogatories 1 - 5, 10, 11, 13, 14, and 15.

On January 5, 2023<sup>1</sup>, January 11, 2023, and February 10, 2023, prior to the initiation of this lawsuit, the Coeur d'Alene Press submitted a Public Records Request to North Idaho College. Compl. 3, ¶ 17; 7, ¶ 28.; 9, ¶ 48; 10, ¶ 54. The Coeur d'Alene Press states that the various responses received include numerous redactions which

<sup>1</sup> The Complaint in this matter alleges that the request was made on January 4, 2023. Compl. 3, ¶ 17. The Memorandum in Support of Motion to Compel asserts that the request was made on January 5, 2023. Mem. in Supp of Mot. to Compel. 2, ¶ 3.

“appear to include non-exempt information that should not have been redacted.” *Id.* at 9, ¶ 45; 10, ¶ 52, ¶ 56.

The Coeur d’Alene Press, filed a Complaint for Violations of the Public Records Act against defendants on February 28, 2023. The defendants filed their Answer on March 27, 2023.

On March 31, 2023, the Coeur d’Alene Press filed a Notice of Service, stating that it served a copy of Plaintiff’s First Discovery Requests Propounded to Defendant North Idaho College on March 31, 2023. The parties both allege that North Idaho College served their responses to the Coeur d’Alene Press on May 1, 2023. Decl. of Markus W. Louvier ISO Mot. to Compel (“Louvier Decl.”) 1, ¶ 2, Ex. A; Decl. of Kelly M. Drews in Supp. of Def.’s Mem. of Opp’n to Pl.’s Mot. to Compel (“Drews Decl.”) 2, ¶ 8.

The Coeur d’Alene Press alleges that it sent a letter to North Idaho College on May 24, 2023, in an attempt to explain the alleged deficiencies of the response, (Louvier Decl. 1, ¶ 3, Ex. B.), and thereafter, the parties claim that they attempted to meet and confer via conference call on May 30, 2023. Louvier Decl. 2, ¶ 5.; Drew Decl. 3, ¶ 10. During this meet and confer conference call, North Idaho College claims that:

during that conference, counsel for Plaintiff and Defendants agreed that this lawsuit is based solely on whether Idaho Code § 74-106 required Defendants to produce employment contracts and attorney-client privileged invoices in response to various requests submitted by Plaintiff, and that the sole issue to be adjudicated at the time of show cause hearing is whether Idaho Code § 74-106 requires disclosure of these documents. *Id.* ¶ 11.

Def.’s Mem. in Opp’n to Pl.’s Mot. to Compel 4. (*italics and bold in original*). The Coeur d’Alene Press claims that North Idaho College agreed, “[t]o provide supplemental details concerning their objections and supplement their responses to Interrogatories 1-3,” “[t]o provide clarification of their responses to Interrogatories 4-5,” and “to clarify

their response to Interrogatory No. 10” by June 5, 2023. Louvier Decl. 2, ¶¶ 6(a), (b), (c); 9.

On June 13, 2023, the Coeur d’Alene Press filed a Motion to Compel Written Discovery Requests, and a Memorandum and Declaration of Markus Louvier in Support. On June 21, 2023, North Idaho College filed a Memorandum in Opposition to Plaintiff’s Motion to Compel, and supporting Declaration of Counsel, Kelly Drew. On June 23, 2023, the Coeur d’Alene Press filed a Reply Brief in Support of their Motion to Compel, and supporting declaration of counsel, Rachel K. Platin.

The Coeur d’Alene Press’ Motion to Compel came for hearing in front of this Court on June 28, 2023. At oral argument, counsel for the Coeur d’Alene Press, in her reply argument, for the first time cited to a case not included by either party in their previous briefing; *Henry v. Taylor*, 152 Idaho 155, 267 P.3d 1270 (2012). Citing a case not cited in the briefs amounts to an ambush to both counsel for North Idaho College and Rumpler, as well as this Court. That ambush is compounded by not only waiting until oral argument, but waiting until the reply argument, when counsel for North Idaho College would have no opportunity to respond. As a result, the Court instructed the parties to set provide further briefing by the end of the day (June 28, 2023), discussing the relevance of that case on the Coeur d’Alene Press’ Motion to Compel, and the Court took this matter under advisement. Both sides submitted such brief to the Court directly, but neither side *filed* their brief regarding *Henry v. Taylor* with the Clerk of Court. So that the record is clear as to what this Court has considered, the Court on its own files such briefs today.

This Court has now had the opportunity to read *Henry v. Taylor*. The Court has read the briefs submitted by each side regarding *Henry v. Taylor*. This Court finds

*Henry v. Taylor* to not be all that pertinent in deciding the Coeur d'Alene Press' Motion to Compel, although it may be quite pertinent to the show cause hearing set before this Court on July 12, 2023. This is discussed more thoroughly below.

## **II. STANDARD OF REVIEW**

A district court enjoys broad discretion in determining whether to grant a motion to compel, and such decisions will only be reversed by a reviewing court when there has been a clear abuse of that discretion. *Griffin v. Ste. Michelle Wine Ests. LTD.*, 169 Idaho 57, 66, 491 P.3d 619, 628 (2021) (citing *Kirk v. Ford Motor Co.*, 141 Idaho 697, 700-01, 116 P.3d 27, 30-31 (2005)). To determine whether the district court abused its discretion, the Idaho Supreme Court applies a four-prong test: whether the trial court “(1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion; (3) acted consistently with the legal standards applicable to the specific choices available to it; and (4) reached its decision by the exercise of reason.” *Lunneborg v. My Fun Life*, 163 Idaho 856, 867, 421 P.3d 187, 198 (2018).

## **III. ANALYSIS**

The Coeur d'Alene Press moves this Court for an Order compelling the production of documents and information, pursuant to Idaho Rules of Civil Procedure 37, related to Interrogatory Numbers 1 - 5, 10, 11, 13, 14, and 15. The Court will address these in turn.

### **A. INTERROGATORIES 1-3**

North Idaho College provided the Coeur d'Alene Press redacted invoices from its attorney Art Macomber. Compl. 9, ¶¶ 41-43. The Coeur d'Alene Press alleges that the following is the 1<sup>st</sup> Interrogatory it propounded in North Idaho College and the alleged response received:

**INTERROGATORY NO. 1:** Provide the statutory basis, if any, for each redaction made to Art Macomber's invoices which were requested by and produced to Plaintiff as described in Paragraphs 41- 43 of the Complaint.

**RESPONSE:**

*Responding Party objects to this interrogatory on the basis that it calls for a legal conclusion. Responding Party further objects to this interrogatory to the extent it invades the attorney work product doctrine by seeking to obtain information through counsel's mental impressions, conclusions, opinions, or legal theories.*

*Subject to and without waiving the foregoing, the redactions were made pursuant to NIC Policy 2.01.07, Idaho Code Title 74 Chapter I § 74-101 et seq., and Idaho Code 3-204.<sup>2</sup>*

Mem. in Supp. of Mot. to Compel 2, ¶¶ 4, 5.<sup>3</sup> (italics in original).

The Coeur d'Alene Press claims that:

This response does not permit the CDA Press to assess NIC's claims of privilege. As to Policy 2.01.07, NIC cannot adopt a policy to eliminate its disclosure obligations under the Public Records Act. Nor can an institutional policy create or expand the scope of privilege. NIC's general citation to the Public Records Act is likewise unhelpful in explaining the legal basis for redactions.

Mem. of Auth. in Supp. of Pl.'s Mot. to Compel Written Disc. Resp. ("Mem. in Supp. of Mot. to Compel.") 7. Further, the Coeur d'Alene Press states:

Interrogatories 1-3 seek relevant and potentially admissible evidence concerning the heavy redactions which were conducted upon legal invoices. The records themselves are discoverable and are public records. Plaintiff should be permitted to evaluate the basis for the redactions to determine whether they were properly made.

*Id.* at 9.

North Idaho College argues many different points to this, including that it "provided the statutory basis upon which NIC redacted the invoices." Def.'s Mem. in Opp'n to Mot. to Compel 5, 6. However, as stated above, North Idaho College simply cited to the Public Records Act as a whole.

---

<sup>2</sup> North Idaho College asserts that this cite to Idaho Code 3-204, entitled Notice of Change, was instead supposed to be to Idaho Code 3-201, entitled Duties of Attorneys. Def.'s Mot. In Opp'n to Compel. 5, Fn. 5.

<sup>3</sup> Because the Coeur d'Alene Press asserts that "Interrogatory No. 2 and Interrogatory No. 3 relate to identical public records requests for invoices of attorneys Marc Lyons and additional invoices of attorney Art Macomber" and that the "responses to Interrogatory 2 and 3 were identical to [North Idaho College's] response to Interrogatory No. 1." *Id.* at 3, ¶¶ 7, 8) the Court will only

Further, North Idaho College alleges that “the importance of the attorney-client privilege for public entities is recognized by § 74-107 (11) which provides as follows: ‘nothing in this subsection is intended to limit the attorney-client privilege or attorney work product privilege otherwise available to any public agency.’” *Id.* at 5-6. However, the entirety of Idaho Code § 74-107(11), entitled “Records Exempt From Disclosure — Trade Secrets, Production Records, Appraisals, Bids, Proprietary Information, Tax Commission, Unclaimed Property, Petroleum Clean Water Trust Fund” provides that:

Records of any risk retention or self-insurance program prepared in anticipation of litigation or for analysis of or settlement of potential or actual money damage claims against a public entity and its employees or against the industrial special indemnity fund except as otherwise discoverable under the Idaho or federal rules of civil procedure. These records shall include, but are not limited to, claims evaluations, investigatory records, computerized reports of losses, case reserves, internal documents and correspondence relating thereto. At the time any claim is concluded, only statistical data and actual amounts paid in settlement shall be deemed a public record unless otherwise ordered to be sealed by a court of competent jurisdiction. Provided however, nothing in this subsection is intended to limit the attorney-client privilege or attorney work product privilege otherwise available to any public agency.

North Idaho College cannot simply find a statute that has a favorable assertion in it and ignore the remaining wording. North Idaho College’s citing to the final line of this statute, with no other information provided, is both misplaced, and borderline misleading to the Court.

Further, North Idaho College states that it is “well-recognized that correspondence, bills, ledgers, statements, and time records which also reveal litigation strategies, or the specific nature of services provided, fall within attorney-client privilege.” Def.’s Mem. In Opp’n to Pl.’s Mot. to Compel 6 (citing to *Clarke v. Am. Com. Nat. Bank*,

974 F.2d 127, 129 (9th Cir. 1992)). However, the entirety of the Court's holding in that case provides that:

Not all communications between attorney and client are privileged. Our decisions have recognized that the identity of the client, the amount of the fee, the identification of payment by case file name, and the general purpose of the work performed are usually not protected from disclosure by the attorney-client privilege. See, e.g., *Tornay*, 840 F.2d at 1426; *In re Grand Jury Witness (Salas and Waxman)*, 695 F.2d 359, 361–62 (9th Cir.1982); *Hodge and Zweig*, 548 F.2d at 1353; *United States v. Cromer*, 483 F.2d 99, 101–02 (9th Cir.1973). However, correspondence, bills, ledgers, statements, and time records which also reveal the motive of the client in seeking representation, litigation strategy, or the specific nature of the services provided, such as researching particular areas of law, fall within the privilege. *Salas*, 695 F.2d at 362. The burden of establishing that the attorney-client privilege applies to the documents in question rests with the party asserting the privilege. *Tornay*, 840 F.2d at 1426.

*Clarke*, 974 F.2d at 128 (underlining added). Additionally, North Idaho College states that:

Defendants duly answered the call of the questions by referring to statutes which supported the redactions in responding to Plaintiff's interrogatories. Whether the statutory basis relied on by Defendants was *proper* is a wholly separate legal issue. The mere fact that Plaintiff appears dissatisfied by Defendants' response is a not a basis for a motion to compel.

Def.'s Mem. in Opp'n to Pl.'s Mot. to Compel. 6. (emphasis in original).

As stated by the Idaho Supreme Court, "[t]he burden of showing information is privileged, and therefore exempt from discovery, is on the party asserting the privilege." *Kirk v. Ford Motor Co.*, 141 Idaho 697, 704, 116 P.3d 27, 34 (2005) (citing *Ex parte Niday*, 15 Idaho 559, 563–64, 98 P. 845, 846–47 (1908)). Here, the burden is on North Idaho College to show that the information that it redacted from the invoices provided to the Coeur d'Alene Press was privileged. North Idaho College has not met this burden. The Court does not know what information was redacted, or the reason that it would be redacted, apart from North Idaho College claiming that the entirety of the Public Records Act is the statutory basis for their redaction.

With such, Coeur d'Alene Press' Motion to Compel as it relates to Interrogatory 1, 2, and 3 is granted. North Idaho College must produce to the Coeur d'Alene Press by Noon on Friday, July 7, 2023 (in light of the hearing on the Petition to Show Cause scheduled for July 12, 2023), the unredacted responses to the discovery requested, and **any** redaction(s) still made must by North Idaho College must set forth with particularity what privilege is claimed on each redaction made to the invoices of Art Macomber which North Idaho College has provided. All of North Idaho College's objections (calls for a legal conclusion, invades the attorney work-product doctrine) are all overruled and have no legal merit. The new, unredacted responses must also be filed with the Court. If there are any redactions still made by North Idaho College, an unredacted copy of such billing must be submitted to the Court under seal, along with the particular privilege claimed.

## **B. INTERROGATORIES 4-5**

### **1. Interrogatory 4**

Coeur d'Alene Press alleges that the following are the 4<sup>th</sup> and 5<sup>th</sup> Interrogatories it propounded in North Idaho College and the alleged responses received:

**INTERROGATORY NO. 4:** Identify every public record or document in North Idaho College's possession, custody, or control which is described by the public records requests identified in Paragraph 17 of the Complaint.

**RESPONSE:**

*Responding Party objects to this interrogatory on the basis that the term "identify" is undefined, vague, and ambiguous. Responding Party further objects to this interrogatory on the basis that it lacks foundation by assuming that there are any responsive documents.*

*Subject to and without waiving the foregoing, there are no "public records" that are responsive to this request; all such documents identified are not subject to disclosure per state statute and NIC Policy. Responding Party has personnel information of the following individuals: Sarah Garcia, Kassie Silvas, Karen Hubbard, Ken Wardinsky, and Laura Rumpler.*

**INTERROGATORY NO. 5:** Identify every public record or document in North Idaho College's possession, custody, or control which is described by the public records requests identified in Paragraph 28 of the Complaint.

**RESPONSE:**

*Responding Party objects to this interrogatory on the basis that the term "identify" is undefined, vague, and ambiguous. Responding Party further objects to this interrogatory on the basis that it lacks foundation by assuming that there are any responsive documents.*

*Subject to and without waiving the foregoing, the only "public records" that are responsive to this request is Deborah DeThomas' consulting contract; all other documents are not subject to disclosure per state statute and NIC Policy. Responding Party has personnel information of the following individuals: Peggy Bradford and Jim Forkum.*

Mem. in Supp. of Mot. to Compel 3 - 4, ¶ 9. (italics in original).

Paragraph 17 of the Complaint identifies "employment contracts" "and/or all related non-exempt info per Idaho Code 74-106 for Sarah Garcia, Kassie Silvas, Karen Hubbard, Ken Wardinsky, and Laura Rumlper." Compl. 3-4, ¶ 17. Paragraph 28 of the Complaint identifies "copies of the contracts of Peggy Bradford, Deborah DiThomas and Jim Forkum [sic]." *Id.* at 7.

The Coeur d'Alene Press claims that:

Each of these interrogatories requires NIC to identify "every public record or document" which is described by the public records requests submitted by the CDA Press. Each interrogatory refers to specific public records request all such requests NIC has admitted it received. Each response from NIC infers that it does not know what the term "identify" means and argues that the requests lack foundation "by assuming that there are any responsive documents." Next, NIC claims that such documents are "not subject to disclosure per state statute and NIC Policy." NIC then admits that it has "personnel information" for the individuals specified in the original requests. No documents were identified.

As to NIC's objections, NIC cannot adopt policy to avoid its obligations under the Public Records Act. The term "identify" is uncomplicated. We would like to know what documents NIC has which fit the description of the CDA Press's requests. The interrogatories direct NIC to identify each document in its possession which fits the categories of information requested by the CDA Press regardless of whether such documents constitute public records. The CDA Press is entitled to know what documents NIC has that it (NIC) claims are not subject to disclosure.

IRCP 26(b)(5) compels NIC to expressly make claim of privilege and to “describe the nature of the documents, communications, or tangible things not produced or disclosed, and **do so in manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim.**” (emphasis added).

Mem. in Supp. of Mot. to Compel. 8. Further claiming that,

Interrogatories 4-5, 10, and 11 require NIC to identify all of the potentially disclosable documents which exist. That is, Plaintiff seeks to know what documents are or may have been responsive to its public records requests.

*Id.* at 9.

Idaho Code § 74-106, entitled Records Exempt from Disclosure — Personnel Records, Personal Information, Health Records, Professional Discipline, provides that the following records are exempt from disclosure:

(1) Except as provided in this subsection, all personnel records of a current or former public official other than the public official’s public service or employment history, classification, pay grade and step, longevity, gross salary and salary history, including bonuses, severance packages, other compensation or vouchered and unvouchered expenses for which reimbursement was paid, status, workplace and employing agency. All other personnel information relating to a public employee or applicant including, but not limited to, information regarding sex, race, marital status, birth date, home address and telephone number, social security number, driver’s license number, applications, testing and scoring materials, grievances, correspondence and performance evaluations, shall not be disclosed to the public without the employee’s or applicant’s written consent. . .

I.C. § 74-106(1).

North Idaho College claims that it “did not produce the employment contracts/personnel records requested by Plaintiff in its public records requests, as employment contracts are ‘personnel records of a current or former public official’ which are exempt from disclosure and are not among the itemized list of disclosable information.” Def.’s Mem. in Opp’n to Mot. to Compel. 8. Despite North Idaho College citing to the above statute, in their Reply Brief, the Coeur d’Alene Press asserts that, “NIC claims that ‘employment contracts are ‘personnel records of current or former

public official' which are exempt from disclosure,' without any statutory basis supporting the same. NIC's non-compliance in producing these public records will be addressed at the show cause hearing." Reply Br. in Supp. of Mot. to Compel. 3.

At oral argument on this matter, the Coeur d'Alene Press cited to *Henry v. Taylor*, 152 Idaho 155, 267 P.3d 1270 (2012), to state that the employment contracts requested are public records. This argument is not applicable at the point in the case's juncture, as the question being asked now is if the identity of the documents that North Idaho College claim is privileged should be disclosed, not if the contents of the documents itself. This argument is best addressed at the show cause hearing set in front of this Court on July 12, 2023.

Continuing, North Idaho College further claims that Coeur d'Alene Press is asking them to produce the "the equivalent of a privilege log. However, Defendants cannot identify the documents withheld because they are inherently private and non-discoverable, as protected by an employee's right to privacy. Indeed, this is the very basis upon which [North Idaho College] could not produce the personnel documents in the first place, pursuant to Plaintiff's public records request." Def.'s Mem. in Opp'n to Pl.'s Mot. to Compel. 2. (See also: "such a disclosure – in and of itself – would inherently violate the statute, as it would disclose **the identity** of certain personnel records (which are non-disclosable). As such, Defendants should not be compelled to provide this information." *Id.* at 8 (emphasis in original))

Idaho Rule of Civil Procedure 26(b)(5) provides that "when a party withholds information otherwise discoverable by claiming that the information is privileged" the party must: "(i) expressly make the claim; and (ii) 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.” I.R.C.P. 26(b)(5). (formatting altered).

Here, North Idaho College is claiming that the documents requested are privileged pursuant to Idaho Code § 74-106. Nothing in that statute protects the identity of the exempt documents. Turning to Idaho Rule of Civil Procedure 26(b)(5), North Idaho College, as the entity claiming that the requested documents are privileged, must then provide the nature of the document, communication, or tangible thing not produced. This includes the identity of such document, communication, or tangible thing.

All of North Idaho College’s objections are overruled. There is nothing “vague” about the word “identify”, especially in the context of discovery under I.R.C.P. 26. No “NIC Policy” has been shown to prohibit disclosure in discovery.

Therefore, the Motion to Compel in regards to Interrogatory 4 and 5 is granted. North Idaho College will, pursuant to Idaho Rule of Civil Procedure 26(b)(5), describe the nature of the document, communication, or tangible thing not produced in a manner that, without revealing information which is itself privileged or protected. Again, this must be accomplished with disclosures to the Coeur d’Alene Press and the Court by Noon on Friday, July 7, 2023.

## **C. INTERROGATORIES 10 - 11**

### **1. Interrogatory 10**

The Coeur d’Alene Press alleges that the following are the 10<sup>th</sup> and 11<sup>th</sup> Interrogatories it propounded in North Idaho College and the alleged responses received:

**INTERROGATORY NO. 10:** Identify every public record or document described in Interrogatory 4-8 which was in the possession, custody, or control of North

Idaho College but was not produced to Plaintiff in response to the public records requests described in Paragraphs 17, 28, 38, 48, and/or 54 of the Complaint.

**RESPONSE:**

*Responding Party objects to this interrogatory on the basis that the term “identify” is undefined vague, and ambiguous. Responding Party further objects to this interrogatory on the basis that it lacks foundation by assuming that there are any responsive documents. Responding Party further objects to this interrogatory to the extent it invades the attorney work product doctrine by seeking to obtain information through counsel’s mental impressions, conclusions, opinions, or legal theories.*

*Subject to and without waiving the foregoing, Responding Party produced all public records responsive to this request to Plaintiff’s all other documents (including the personnel information identified herein) are not subject to disclosure per state statute and NIC Policy.*

**INTERROGATORY NO. 11:** Provide the legal authority under which North Idaho College contends that each public record or document identified in Interrogatory Number 10 was withheld.

**RESPONSE:**

*Responding Party objects to this interrogatory on the basis that it calls for a legal conclusion. Responding Party further objects to this interrogatory to the extent it invades the attorney work product doctrine by seeking to obtain information through counsel’s mental impressions, conclusions, opinions, or legal theories.*

*Subject to and without waiving the foregoing, the redactions were made pursuant to NIC Policy 2. 01.07 and Idaho Code Title 74 Chapter I Title 74 § 74-101 et seq. and Idaho Code 3-204.*

Mem. in Supp. of Mot. to Compel 4, ¶ D. (italics in original).

When arguing, the parties group Interrogatories 4 and 5 with Interrogatories 10 and 11. Mem. In Supp. of Mot. to Compel 9; Def.’s Mem. In Opp’n to Pl.’s Mot. to Compel. 7.

Thus, for the same reason stated above, pursuant to Idaho Rule of Civil Procedure 26(b), the Coeur d’Alene Press’ Motion to Compel regarding Interrogatory 10 and 11 are granted. With granting the Motion to Compel Interrogatory 10 and Interrogatory 11, the legal basis for such claimed privilege, is overruled. All of North Idaho College’s objections are overruled. As stated above, there is nothing “vague”

about the word “identify” in the context of discovery under I.R.C.P. 26. The objection as to “work product doctrine” and “legal conclusions” are without merit.

#### **D. INTERROGATORY 13**

The Coeur d’Alene Press alleges that the following is the 13<sup>th</sup> Interrogatory it propounded in North Idaho College and the alleged response received:

**INTERROGATORY NO. 13:** Describe any education, training, and experience Laura Rumpler received at any point prior to January of 2023 on the Public Records Act (1C § 74-101, et seq).

#### **RESPONSE:**

*Responding Party objects to this interrogatory on the basis that “education, training, and experience” are undefined, vague, and ambiguous. Responding Party further objects to this interrogatory on the basis that it is irrelevant and harassing given the scope and needs of this case. Responding Party further objects to this interrogatory on the basis that it is overbroad and unduly burdensome as it is not limited in time or scope.*

*Subject to and without waiving the foregoing, Ms. Rumpler has twelve years’ of experience working on public records requests in Idaho, including various training associated therewith.*

Mem. in Supp. of Mot. to Compel 5, ¶ E. (italics in original). The Coeur d’Alene Press asserts that:

The response, that Ms. Rumpler “has twelve years’ of experience working on public records requests in Idaho, including various training associated therewith” is insufficient to describe her education, training, and experience.

....

Interrogatory 13 requests information concerning Ms. Rumpler’s background. This is relevant and discoverable information insofar as this Court may be required to evaluate whether Ms. Rumpler’s decisions to withhold documents were made in good faith.

*Id.* at 9.

North Idaho College argues that it provided a substantive response, that North Idaho College has provided that Rumpler has 12 years of experience. Def.’s Mem. in Opp’n to Mot. to Compel 9. This Court agrees that such is a substantive response, but this Court finds such response woefully incomplete. North Idaho College has not

answered whether or not Rumpler has had any education or training, and what that education and training consisted of. North Idaho College has not described where Rumpler obtained her 12-years of experience and in what capacities she obtained that experience. Additionally, North Idaho College's objections as to those terms being "vague" are overruled as they are without legal merit. What the Coeur d'Alene Press seeks is not irrelevant and it is not harassing. It is not overbroad. It is not unduly burdensome. And North Idaho College has already established the "scope" (12 years of experience).

The Coeur d'Alene Press' Motion to Compel regarding Interrogatory 13 is granted.

## **E. INTERROGATORIES 14 AND 15**

### **1. Interrogatory 14**

The Coeur d'Alene Press alleges that the following are the 14<sup>th</sup> and 15<sup>th</sup> Interrogatories it propounded in North Idaho College and the alleged response received:

**INTERROGATORY NO. 14:** Identify each and every attorney Laura Rumpler consulted with concerning the public records requests described in Paragraphs 17, 28, 38, 48, and 54 of the Complaint.

#### **RESPONSE:**

Responding Party objects to this interrogatory on the basis that the term "identify" is undefined, vague, and ambiguous. Responding Party further objects to this interrogatory on the basis to the extent it invades the attorney work product doctrine by seeking to obtain information through counsel's mental impressions, conclusions, opinions, or legal theories, which Responding Party will not waive.

**INTERROGATORY NO. 15:** Identify each and every person Laura Rumpler consulted with concerning the public records requests described in Paragraphs 17, 28, 38, 48, and 54 of the Complaint.

#### **RESPONSE:**

*Responding Party objects to this interrogatory on the basis that the term “identify” is undefined, vague, and ambiguous. Responding Party further objects to this interrogatory on the basis to the extent it invades the attorney work product doctrine by seeking to obtain information through counsel’s mental impressions, conclusions, opinions, or legal theories, which Responding Party will not waive.*

Mem. in Supp. of Mot. to Compel 5-6, ¶ F. (italics in original).

The Coeur d’Alene Press alleges that:

Interrogatories 14 and 15 relate to whether Ms. Rumpler consulted with attorneys when responding to the records requests. This information is a permissible inquiry under IC Section 74- 103(5).

*Id.* at 9-10. Idaho Code § 74-103(5) provides:

The notice of denial or partial denial shall state that the attorney for the public agency has reviewed the request or shall state that the public agency has had an opportunity to consult with an attorney regarding the request for examination or copying of a record and has chosen not to do so. The notice of denial or partial denial also shall indicate the statutory authority for the denial and indicate clearly the person’s right to appeal the denial or partial denial and the time periods for doing so.

However, as pointed out by North Idaho College:

This statute does not require Defendants to **waive** the attorney client privilege as Plaintiff asserts. Rather, the statute makes clear that any response to a Public Records Act request shall state **either** that an attorney **has reviewed the request** or that the public agency had **an opportunity** to consult with an attorney regarding the request. The statute certainly does not require the disclosure of any attorney-client privileged communications, including whether a public employee **actually consulted with (and thus communicated) with an attorney on a request**. Put differently, answering Plaintiff’s Interrogatories Nos. 14 and 15 would not simply provide Plaintiff with information regarding **whether Defendant Rumpler had an opportunity to consult with counsel on the subject requests, but whether she actually did**. This is a categorical and gross invasion of the attorney-client privilege. Defendants should not be compelled to provide further responses.

Def.’s Mem. in Opp’n to Pl.’s Mot. to Compel. 11. (emphasis in original). North Idaho College further asserts that “[i]f Plaintiff sought to determine Defendants’ compliance with the statute, Plaintiff could have propounded discovery that inquired whether counsel for NIC reviewed any of Plaintiff’s Public Records Act requests or if

Defendant Rumpler had the opportunity to consult with counsel for NIC.” *Id.* at fn, 7. Coeur d’Alene Press asserts that it would be “a distinction without a difference.” Reply Br. 5. This Court disagrees. What the Coeur d’Alene Press is attempting to illicit with current questions is if Rumpler consulted with an attorney, and if so, the identity of the attorney. What the Coeur d’Alene Press would be asking with the proposed question is if North Idaho College complied with Idaho Code § 74-103.

The question that the Court is being asked is thus if attorney-client privilege protects whether a client met with an attorney, and the identity of the attorney. North Idaho College claims that it does, because the consult would be a communication. Def.’s Mem. in Opp’n to Pl.’s Mot. to Compel. 11.

The “general rule” of Lawyer-client privilege provided for in Idaho Rule of Evidence 502(b) states:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client which were made (1) between the client or the client's representative and the client's lawyer or the lawyer's representative, (2) between the client's lawyer and the lawyer's representative, (3) among clients, their representatives, their lawyers, or their lawyers' representatives, in any combination, concerning a matter of common interest, but not including communications solely among clients or their representatives when no lawyer is a party to the communication, (4) between representatives of the client or between the client and a representative of the client, or (5) among lawyers and their representatives representing the same client.

This rule additionally provides that “[a] communication is ‘confidential’ if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication.” I.R.E. 502(a)(5).

If North Idaho College were to state that an attorney was consulted, and the name of the attorney, it would logically flow that the attorney communicated to North

Idaho College that the requested disclosures did not need to be made. This is the information, or communications, that the Coeur d'Alene Press is asking to be disclosed with these Interrogatories. Thus, in this instance, the information of whether an attorney was consulted is protected by attorney-client privilege.

With such, Coeur d'Alene Press' Motion to Compel as to Interrogatory 14 (which asks which *attorney* Rumpler consulted with) is denied. As to Interrogatory 15 (which asks which *person* Rumpler consulted with), the Coeur d'Alene Press' Motion to Compel is granted, except as to the name of any attorney. The attorney-client privilege does not apply to non-attorney persons. Interrogatory 15 must be answered, *if* there were non-attorneys with whom Rumpler consulted. As with the rulings above, the objections by North Idaho College that the term "identify" is "vague" is without merit and is overruled.

#### **IV. AN ARGUMENT THE COURT WILL NOT CONSIDER.**

At oral argument on the Coeur d'Alene Press' Motion to Compel, at the conclusion of the argument by counsel on behalf of North Idaho College and Rumpler, the Court heard the following from counsel for North Idaho College:

In closing your honor, the only other point that I would like to make is that, I don't think its any secret to this Court, that anyone in the public or, you know any of the parties involved, that NIC is in a really precarious position in terms of accreditation. Accreditation is a central issue that NICD currently faces. And the accreditation committee has routinely pointed to the fact that NIC has three pending lawsuits as a central area of concern. What NIC cannot risk at this time is lawsuit number four. And lawsuit number four could be right around the corner if NIC discloses confidential personnel information and an employee comes forward and decides that he or she is going to sue NIC for releasing that information. These employees are highly educated, one of them has a law degree, and there is a very, very real concern that unless NIC treads lightly, lawsuit number four is right around the corner, and accreditation is at risk, and for that reason, NIC is more than happy to comply with any order issued by this court immediately. That is not the issue. The issue is that NIC cannot risk lawsuit number four.

When the Court heard this argument, it cringed. At the time, it almost sounded like counsel for North Idaho College were making the argument that this Court's decision on this Motion to Compel might impact North Idaho College negatively. If so, that would be a factor which should never enter into any Court's decision.

After listening to that portion of the oral argument again, the Court concludes that counsel for North Idaho College seemed to be making a justification to the Court that North Idaho College was resisting discovery more stringently than it otherwise would, due to the specter of an additional lawsuit. Again, this would be an argument which should never enter into any Court's decision.

The decision of any court to grant or deny a motion to compel or a motion for a protective order, is based on factors set forth in the Idaho Rules of Civil Procedure, the Idaho Rules of Evidence, the Idaho statutes regarding public records, and Idaho appellate case law, all as applied to the facts of the case. It is not a defense to a party resisting a discovery motion, that it is on heightened alert due to the prospect of future litigation. That is simply not a factor which should enter into the Court's decision making process. This Court mentions this argument to clearly state that said argument was summarily disregarded by this Court in deciding the Coeur d'Alene Press' Motion to Compel. Nor will said argument enter into the Court's decision on attorney fees, as discussed below.

To the above quoted argument by counsel for North Idaho College, counsel for the Coeur d'Alene Press simply responded: "Whether this is a precarious issue or not, the records are still public records." The Court agrees with that statement. These are public records, the discovery request must be complied with by North Idaho College and Rumpler (save for Interrogatory 14). North Idaho College and Rumpler have not complied with the Idaho Rules of Civil Procedure 37 (save for Interrogatory 14), and

now they must comply with that rule and with this Court's memorandum decision and order. The reason for any non-compliance is truly not relevant.

**V. COSTS AND ATTORNEY FEES.**

Under Idaho Rule of Civil Procedure 37, when a discovery motion is granted in part and denied in part, the Court, "after giving an opportunity to be heard, may apportion the reasonable expenses for the motion." I.R.C.P. 37(a)(5)(A)-(C). This Court finds that the Coeur d'Alene Press has prevailed on ten of its interrogatories, and North Idaho College has prevailed on one of the Coeur d'Alene Press' interrogatories. The Court is placing the parties on notice that apportionment is warranted, should the Coeur d'Alene Press seek attorney fees for bringing this motion, it must follow the method set forth in the Idaho Rules of Civil Procedure.

**VI. CONCLUSION AND ORDER.**

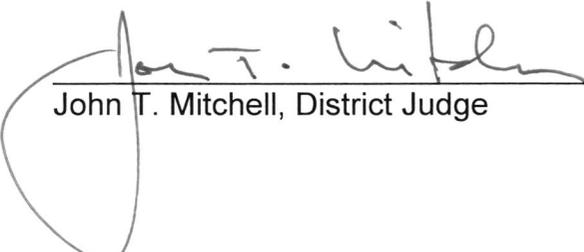
For the reasons set forth above,

**IT IS HEREBY ORDERED** the Coeur d'Alene Press' Motion to Compel is **GRANTED** as to the issue of Interrogatories 1-5, 10, 11, 13 and 15.

**IT IS FURTHER ORDERED** the Coeur d'Alene Press' Motion to Compel is **DENIED** as to the issue of Interrogatory 14.

**IT IS FURTHER ORDERED** the Coeur d'Alene Press is entitled to its attorney fees for bringing its Motion to Compel, subject to apportionment.

Entered this 3<sup>rd</sup> day of July, 2023.

  
John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the 3<sup>rd</sup> day of July, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail, email or facsimile to each of the following:

**Lawyer**  
Markus W. Louvier  
Rachel Platn

**email**  
mlouvier@ecl-law.com ✓  
rplatin@ecl-law.com ✓

**Lawyer**  
Kelly M. Drew  
Brittney C. Adams

**email**  
kdrew@grsm.com ✓  
badams@grsm.com ✓

  
\_\_\_\_\_  
Jeanne Clausen, Deputy Clerk