



United States of America
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION
1120 20th Street, N.W., Ninth Floor
Washington, DC 20036-3457

SECRETARY OF LABOR,

Complainant,

v.

JTF CONSTRUCTION, INC.,

Respondent.

OSHRC DOCKET NO. 18-1840

ORDER REGARDING RESPONDENT'S
MOTION TO COMPEL

This matter is before the Occupational Safety and Health Review Commission (the Commission) pursuant to section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651 *et seq.* (the Act).

Respondent filed a Motion for an order compelling the Secretary to produce “appropriately-redacted witness statements and other information in their entirety that the Secretary has in OSHA’s investigatory file,” under Commission Rules 52(f) and 53, Federal Rules of Civil Procedure 26 and 37, and the Freedom of Information Act (FOIA)¹ (Resp. Motion).² Resp.

¹ Respondent filed a Reply in further support of its Motion to compel. In its Reply, Respondent states that it is not seeking the witness statements withheld from document production by the Secretary pursuant to FOIA. Resp. Reply p. 1.n.1.

² With the Motion, Respondent filed a supporting Memorandum (Resp. Memo) and five Exhibits. Exhibit A is Respondent’s February 4, 2019 First Set of Interrogatories and Requests for Production of Documents to Complainant; and Complainant’s March 5, 2019 Answers, Objections, and Responses to Respondent’s First Set of Interrogatories and Requests for Production of Documents to Complainant. Exhibit B includes several completely redacted pages, Bates numbered as follows: pages entitled Note Take Sheet SECDOL 248-249; pages following and entitled Employee Interview Statement SECDOL 250-251, 252-253, 254-255; pages entitled Employee On-Site Information SECDOL 257-259. Exhibit C includes Mr. Marta’s letter to Mr. Vance dated May 23, 2019. Exhibit D includes Mr. Marta’s letter to Mr. Vance dated June 7, 2019. Exhibit E is the May 14, 2019 deposition transcript of CSHO Guillermo (Gil) Venegas.

Motion p. 1. Respondent contends the Secretary's redactions pursuant to the government informer's privilege are inappropriate and overbroad, as the redactions include non-identifying information. Resp. Memo pp. 3-5.

Respondent filed a Reply in further support of its Motion to compel discovery³ (Resp. Reply). Respondent emphasizes that it seeks only the non-identifying content of the witness statements gathered by OSHA during the investigation, with witness identifying information appropriately redacted. Resp. Reply pp. 1-4. Because of the relief requested, Respondent's Motion is regarded as a Motion to compel pursuant to Commission Rule 52(d) *Privilege*.⁴

Complainant, the Secretary of Labor (Secretary), filed an Objection to Respondent's Motion (Sec'y Objection). The Secretary asserts that the government informer's privilege was properly invoked by the Secretary to protect the confidentiality of non-supervisory employee statements provided to OSHA during the inspection. The Secretary asserts that the privilege protects the identities of the individuals who provided information to OSHA and also the contents of their communications with OSHA. Sec'y Objection pp. 2-3. The Secretary contends that Respondent has not shown that Respondent's need for the privileged information outweighs the government's interest in invoking the privilege and withholding the identity of the informants and the informants' privileged communications. Sec'y Objection pp. 3-4. The Secretary also filed a Sur-reply in further opposition to Respondent's Motion to compel.

As stated below, the Secretary is ordered to properly invoke the government informer's privilege; provide a detailed privilege log, in support of the Secretary's government informer's

³ With the Reply, Respondent filed two Exhibits. Exhibit A is a copy of the Commission decision in *Quality Stamping Products Co.*, OSHRC Docket No. 78-235 (1979), also found at 7 BNA OHRC 1285. Exhibit B is a copy of Complainant's March 5, 2019 Answers, previously submitted as part of Resp. Motion Exh. A.

⁴ On June 10, 2019, revised Commission Rules became effective. All references contained herein refer to these revised Rules.

OSHRC Rules of Procedure (Revised), Final Rule, 84 Fed. Reg. 14554 (April 10, 2019) (to be codified at 29 C.F.R. pt. 2200) (<https://www.federalregister.gov/documents/2019/04/10/2019-06581/rules-of-procedure>)

privilege claim; and complete a review the OSHA inspection file to ascertain if any additional information may be disclosed to Respondent (un-redacted), without compromising the government informer's privilege.

Issue

Has the Secretary properly invoked the government informer's privilege in this case to withhold from disclosure the identities of individuals who provided information to OSHA and also the contents of their communications with OSHA?

Pleadings

The OSHA Cincinnati, Ohio Area Office conducted an inspection of Respondent's job site, located in West Chester, Ohio, between July 31, 2018 and October 19, 2018. On October 31, 2018, OSHA issued to Respondent a nine-item serious citation and notification of penalty (citation). The total proposed penalty is \$ 89,246.00. The citation alleges a violation of OSHA construction and demolition standards as follows.

Citation 1, item 1 alleges a serious violation of § 1926.20(b)(2) regarding frequent and regular inspections of job sites, materials, and equipment by a competent person at a commercial demolition site. Citation 1, item 2 alleges a serious violation of § 1926.21(b)(2) regarding the instruction of employees in the recognition and avoidance of unsafe conditions and the regulations applicable to their work environment to control or eliminate any hazards or other exposure to illness or injury while performing demolition work at the jobsite. Citation 1, item 3 alleges a serious violation of § 1926.454(b) regarding the training requirements for employees operating a Genie SX-150 extendable boom lift, to be conducted by a competent person to recognize hazards associated with the work. Citation 1, item 4 alleges a serious violation of § 1926.501(b)(1) regarding the employer's duty to provide fall protection for each employee on a walking / working surface with an unprotected side or edge which is 6 feet or more above a lower level. Citation 1, item 5 alleges a serious violation of § 1926.501(b)(4)(ii) regarding the employer's duty to provide fall protection for each employee on a walking / working surface from tripping in or stepping into or through holes by covers. Citation 1, item 6 alleges a serious violation of §1926.850(g), during demolition operations, where a hazard exists to employees falling through wall openings, the

opening shall be protected to a height of approximately 42 inches. Citation 1, item 7 alleges a serious violation of § 1926.851(b), during demolition operations, all stairs, passageways, ladders and incidental equipment thereto, covered by this section, shall be periodically inspected and maintained in a clean safe condition. Citation 1, item 8, alleges a serious violation of § 1052(a)(3) regarding employees gaining access to elevated work areas for the purpose of demolition allegedly exposed to trip and fall hazards as stair treads were damaged and not uniform within each flight of stairs. Citation 1, item 9 alleges a serious violation of § 1926.1052(c)(12) regarding employees gaining access to elevated work areas, for the purpose of demolition, allegedly exposed to fall hazards while using fixed exterior stairs for which the stairway top landing did not have a guardrail system.

Respondent filed a notice of contest bringing this case before the Commission. The Secretary filed a complaint on January 9, 2019, incorporating the citation. Complaint ¶ V. Respondent filed an answer and affirmative defenses on January 27, 2019. Respondent's answer denied violating the Act as alleged in the citation and denied the appropriateness of the classification, proposed penalties, and abatement date. The answer raised several affirmative defenses, including no hazard existed, unpreventable employee misconduct, and no knowledge of the practices or noncompliance alleged.

On July 11, 2019, Respondent filed a Motion for leave to file a first amended answer to add the additional and alternative defense of the actions or omission of a rogue supervisor. On July 17, 2019, during a conference call with Counsel for the Secretary Marta and Respondent Counsel Vance, Mr. Marta stated that as the prehearing depositions in this case will proceed forward, as set forth in the Order granting the Secretary's Motion to take depositions issued today, the Secretary did not object to Respondent's Motion to file a first amended answer. During the call, the parties were advised that Respondent's unopposed Motion to file a first amended answer was Granted.

Respondent's Motion to Compel

Respondent, in its Motion and Reply in further support, broadly requests an order that the Secretary produce to Respondent the appropriately redacted OSHA investigative file. The focus of Respondent's Motion to compel is the Secretary's Response and Objection to Respondent's

Document Request no. 10. *See* Resp. Memo p. 2; Exh. A. The Secretary's Objection to Respondent's Document Request no. 10 states:

Any and all statements, affidavits and / or any other documents which in any way relate to an interview with any of JTF's non-managerial or non-supervisory employees are protected from disclosure during the discovery phase of this action by the government informer's privilege. On that basis, no such document that might be in the Secretary's possession, custody, or control will be produced to JTF.

Respondent notes that in response to Respondent's Document Request no. 10, the Secretary "redacted the subject witness statements in their entirety." Resp. Memo p. 2; Exh. B. Respondent contends that the Secretary's redactions pursuant to the government informer's privilege are inappropriate and overbroad, as the redactions include non-identifying information. Respondent contends that the government informer's privilege protects the identify of the informer, not the information provided by the informant. Respondent asserts that "it is inconceivable that every word and letter of the witnesses' statements contain personal-identifying information." Resp. Memo p. 4; pp. 3-5; Resp. Reply pp. 1-4, n.2.

By redacting the subject witness statements in their entirety, the Secretary appears to take the position that each and every word of the statements constitutes "identifying information" of the person making the statement. Such a position is nonsensical given the statements most certainly contain words such as: "a"; "and"; "an"; "of"; "the"; "I"; "me"; "JTF"; etc., which in no way identify the witness, but which nevertheless remain redacted.

Resp. Memo p. 3.

Respondent requests an order compelling the Secretary to produce appropriately redacted witness statements and other information in the OSHA investigative file, in their entirety. It is Respondent's contention that the identifying information that may be appropriately redacted pursuant to the government informant's privilege is very limited.

Here, the Secretary must redact personal-identifying information from the requested statements (such as names, ages, birthdates, social security numbers, length of tenure with the company, title at the company, phone numbers, etc.), and produce the remaining substance of the statement to JTF.

Respondent Memo p. 5.

Respondent also asserts that the government informant's privilege only protects confidential informants. In this case, Respondent contends that "[c]onfidentiality is a moot point,"

as Respondent management and ownership already know the identifies of the witnesses interviewed by the OSHA Compliance Officer. Resp. Memo pp. 3-4.

Respondent contends that without receipt from the Secretary of the appropriately redacted OSHA investigative file, including properly redacted witness statements, Respondent cannot prepare for additional depositions or trial, including cross-examination of the OSHA Compliance Officer and other witnesses, and Respondent cannot fully develop its defenses. Resp. Memo p. 2.

In its Objection, the Secretary asserts that in this case the government informer's privilege was properly invoked by the Secretary to protect the confidentiality of non-supervisory employee statements provided to OSHA during the inspection. The Secretary asserts that the privilege protects the identities of the individuals who provided information to OSHA and also the contents of their communications with OSHA. Sec'y Objection pp. 2-3. The Secretary states that the justification for the government informer's privilege is the "public's interest in the free flow of information to the government concerning violations of the law and the informer's interest in being protected from retaliation." Sec'y Objection p. 3.

The Secretary contends that Respondent has not shown that Respondent's need for the privileged information outweighs the government's interest in invoking the privilege and withholding the identity of the informants and the informants' privileged communications. Citing the Commission decision in *Massman-Johnson*, the Secretary asserts that if any of the non-supervisory employees who provided statements and information to OSHA during the inspection are called by the Secretary as hearing witnesses, the statements and information provided by the witness to OSHA will be fully disclosed to Respondent at the hearing. *Massman-Johnson*, 8 BNA OSHC 1369, 1375-76. Sec'y Objection pp. 3-4.

The Secretary confirms that the OSHA Compliance Officer interviewed four non-supervisory Respondent employees during the investigation. The Secretary asserts that the non-employee interview statements are "presumptively confidential." The Secretary notes that Respondent admits knowing the identity of Respondent's employees who were interviewed by the OSHA Compliance Officer. The Secretary contends that Respondent's stated knowledge of the identity of the employee witnesses who were interviewed by OSHA increases the risk of retaliation against the interviewed employees should Respondent learn of and be displeased by the content of

the information the informants provided to OSHA. Sec’y Objection p. 4. The Secretary further contends that the prehearing disclosure of witness statements risks interference with OSHA’s administrative enforcement proceedings, including in the instant case. “That risk of interference entails employers coercing or intimidating employees who have given statements into changing their testimony or refraining from testifying at all.” Sec’y Objection pp. 5-6; Sec’y Sur-reply pp. 1-2.

Analysis

The government informer’s privilege - generally

The scope of discovery in Commission proceedings is broad.

Scope of discovery. The information or response sought through discovery may concern any matter that is *not privileged* and that is relevant to the subject matter involved in the pending case and proportional to the needs of the case, considering the importance of the issues at stake, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Commission Rule 52(b) (emphasis added). In Commission proceedings, privilege claims shall be raised in accord with Commission Rule 52(d).

Claims of privilege. The initial claim of privilege shall specify the privilege claimed and the general nature of the material for which the privilege is claimed. In response to an order from the Commission or the Judge, or in response to a motion to compel, the claim shall: Identify the information that would be disclosed; set forth the privilege that is claimed; and allege the facts showing that the information is privileged. The claim shall be supported by affidavits, depositions, or testimony and shall specify the relief sought. The claim may be accompanied by a motion for a protective order or by a motion that the allegedly privileged information be received and the claim ruled upon in camera, that is, with the record and hearing room closed to the public, or ex parte, that is, without the participation of parties and their representatives. The Judge may enter an order and impose terms and conditions on the Judge’s examination of the claim as justice may require, including an order designed to ensure that the allegedly privileged information not be disclosed until after the examination is completed.

Commission Rule 52(d)(1).

It has long been recognized that the government informer's privilege is applicable in proceedings before the Commission. The government informer's privilege protects the government's right to withhold from disclosure the identity of individuals who furnish information on violations of the law to law-enforcement officers, including OSHA Compliance Officers. *Birdair, Inc.*, 23 BNA OSHC 1493, 1494 (No. 10-0838, 2011); *Donald Braasch Constr., Inc.*, 17 BNA OSHC 2082, 2083 (No. 94-2615, 1997); *Massman-Johnson (Luling)*, 8 BNA OSHC 1369, 1371 (No. 76-1484, 1980); *Quality Stamping Products Co.*, 7 BNA OSHC 1285, 1287 (No. 78-235, 1979). It is the Secretary's burden to prove facts in support of the privilege. *Massman-Johnson*, 8 BNA OSHC at 1372.

The government informer's privilege is justified by the public interest in the free flow of information to the government concerning violations of the law and by the protection of informers from retaliation. The Secretary may invoke the government informer's privilege to prevent the disclosure of the identity of an individual who assisted OSHA in the inspection. The privilege is applicable "because providing any information to the Secretary could lead to the retaliation the privilege is intended to prevent." *Birdair*, 23 BNA OSHC at 1495. *See Massman-Johnson*, 8 BNA OSHC at 1371-73; *Mitchell v. Roma*, 265 F.2d 633, 635, 637 (3d Cir. 1959).

The privilege protects the identity of informers. Privileged identifying information regarding an informant is not narrowly limited to an informant's name, address, age, and social security number. Resp. Memo. pp. 3, 5. The privilege also protects the content of any statement or communication that may identify an individual as an informer. *Birdair*, 23 BNA OSHC at 1494; *Donald Braasch*, 17 BNA OSHC at 2083. The privilege protects from disclosure factual statements relevant to the investigation, where the disclosure may reveal the identity of the informer. *See Massman-Johnson*, 8 BNA OSHC at 1371-73 (the privilege applies to factual statements relevant to an investigation that may reveal the informer's identity, for example, where the tone and manner of the statement tends to indicate whether the individual giving the statement cooperated voluntarily or reluctantly with the government during the inspection). *See also Reich v. Great Lakes Collection Bureau, Inc.*, 172 F.R.D. 58, 62 (W.D.N.Y. 1997) (In case alleging FLSA violations, employee interview statements recorded by the investigator were protected from disclosure by the informer's privilege, redaction of the employee's name and other identifying

information alone was insufficient, “because the detailed information contained in [the] statements could provide a basis for identification of the employee.”)

The government informer’s privilege is not absolute. “Where the disclosure of the contents of a communication [by the informer to the government] will not tend to reveal the identity of an informer, the contents are not privileged.” *Roviaro v. United States*, 353 U.S. 53, 60 (1957); *Solis v. Delta Oil Co.*, 2012 WL 1680101, at *3 (S.D. Ohio May 14, 2012); *Chao v. Raceway Petroleum, Inc.*, 2008 WL 2064354, at *3 (D.N.J. May 14, 2008).

The informer’s privilege is a qualified privilege. “[I]f on balance an employer’s need for the information to prepare its defense outweighs the government’s interest in withholding the identity of the informer,” the privilege must yield. *Donald Braasch*, 17 BNA OSHC at 2083; *Quality Stamping*, 7 BNA OSHC at 1288. Where disclosure of the privileged information is essential to the fair determination of the case, the privilege must yield. *Massman-Johnson*, 8 BNA OSHC at 1371, 1374, 1376, 1378.

It is Respondent’s burden to show that the need for disclosure of the privileged information outweighs the strong public interest in protecting the confidentiality of government sources. *Massman-Johnson*, 8 BNA OSHC at 1374, 1378. See *Chao v. Raceway Petroleum*, 2008 WL 2064354, *3. To overcome the privilege the need for the information must be substantial. The mere claim that the information may be helpful to Respondent’s defense or is necessary to defend against the citation is not enough to overcome the privilege. In Commission proceedings, to overcome the privilege Respondent must show that the privileged information is essential to Respondent’s hearing preparation and Respondent is unable to obtain the withheld information by other means. *Donald Braasch*, 17 BNA OSHC at 2085; *Massman-Johnson*, 8 BNA OSHC at 1376, 1378. See *Chao v. Raceway Petroleum*, 2008 WL 2064354, *1, 3-4 (In case alleging FLSA violations, defendant’s ability to independently gather information from its current and former employees enabled defendant to adequately prepare for trial, therefore, defendant did not meet its burden to show that production of the privileged statements was necessary to ensure a fair determination of the case). Respondent’s need for the disclosure of privileged information is not established where Respondent can obtain the information from other sources, such as through interviews or depositions of individuals who were present at the inspected worksite or who have

information relevant to the issues raised in the violations alleged and defenses claimed. *See Donald Braasch*, 17 BNA OSHC at 2085; *Massman-Johnson*, 8 BNA OSHC at 1377.

In *Massman-Johnson* the Commission held as follows.

Considering the possibilities for identification and intimidation of prospective witnesses based on pretrial disclosure of their statements, . . . we conclude that on balance the identities of persons who have given the government statements regarding alleged OSHA violations that are the subject of an ongoing investigation along with the contents of the statements themselves should not be disclosed before the hearing unless the respondent shows that the information is essential to prepare adequately for the hearing and that it is unable to obtain the information by other means.

8 BNA OSHC at 1375-76; 1378.

During the hearing, after a witness for the Secretary has completed their direct testimony, upon motion by the Respondent, the Secretary must turn over all of the witness' prior statements that related to the witness' testimony. Prior to cross-examination of the witness, Respondent must have an opportunity to review and evaluate the statements. Respondent is entitled to an opportunity, during cross-examination, to test the veracity and accuracy of the witness' hearing testimony against prior statements the witness gave to the government. *Massman-Johnson*. 8 BNA OSHC at 1376, 1378. *See Film Allman, LLC*, 25 BNA OSHC 1901, 1905-06 (No. 14-1385, 2015) (ALJ). In this case, the Secretary asserts that if any of the non-supervisory employees who provided statements and information to OSHA during the inspection are called by the Secretary as hearing witnesses, the statements and information provided by the witness to OSHA will be fully disclosed to Respondent at the hearing. Sec'y Objection pp. 3-4.

The informer's privilege is waived once the identity of the informer is disclosed. *Roviaro v. United States*, 353 U.S. 53, 60 (1957). To be a waiver the disclosure of the informer's identity must have been voluntary. The Secretary does not waive the privilege by submitting a witness list or a summary of anticipated witness testimony in a proceeding before the Commission. The privilege is not waived where an employer *claims* to know the identity of employees who cooperated with the OSHA inspection or where the *informer's identities appear obvious*. *Film Allman*, 25 BNA OSHC at 1906; *Donald Braasch*, 17 BNA OSHC at 2084-85; *Massman-Johnson*, 8 BNA OSHC at 1373. *See Mitchell v. Roma*, 265 F.2d at 637 (In case alleging FLSA violation, no waiver of informer's privilege found, where plaintiff's list of individuals known or believed to

have knowledge of the matter did not mean that any of the named individuals informed others of their knowledge.) *See generally*, Resp. Motion Exh. A, Complainant’s Answer and Objection to Interrogatory no. 4 (list of individuals with knowledge of the alleged violations).

Invocation of the government informer’s privilege

In *United States v. Reynolds*, 345 U.S. 1 (1953), the Supreme Court articulated the appropriate manner for a government agency to invoke a claim of executive privilege:

There must be a formal claim of privilege, lodged by the head of the department which has control over the matter, after actual personal consideration by that officer. The court itself must determine whether the circumstances are appropriate for a claim of privilege . . .

Id. at 7-8. This direction is applicable to government agency claims of informer’s privilege. *See United States v. O’Neill*, 619 F.2d 222, 226 (3d Cir. 1980); *Solis v. Delta Oil Co.*, 2012 WL 1680101 at *3 n.3; *Perez v. American Future Systems, Inc.*, 2013 WL 5728674, at *3 (E.D. Pa. Oct. 21, 2013); *Chao v. Raceway Petroleum*, 2008 WL 2064354, at *4-5.

In this case, the Secretary has not invoked a formal claim of the government informer’s privilege. On July 17, 2019, a conference call was held with Counsel for the Secretary Marta and Respondent Counsel Vance, to discuss the Secretary Motion to take prehearing depositions, pursuant to Commission Rule 56, and the instant Respondent Motion to compel discovery, pursuant to Commission Rule 52(d)(1). During the call, the parties were advised that the Secretary will be given an opportunity to cure the defective privilege claim. On or before, Wednesday, August 7, 2019, the Secretary must file documents formally invoking the government informer’s privilege, including an affidavit from the Secretary of Labor’s designee with authority to assert claims of governmental privileges, attesting to their personal review of the documents and materials at issue in this case, giving a specific description of the documents claimed to be privileged, and asserting “precise and certain reasons for preserving the confidentiality of the communications.” *United States v. O’Neill*, 619 F.2d at 226.

During the conference call, the Secretary’s initial, summary, privilege log, stating the basis for document redactions pursuant to the government informer’s privilege, was discussed. *See* Complainant’s Response and Objection to Respondent’s Document Request no. 1; Resp. Motion Exh. A. The initial privilege log broadly identified categories of documents, such as “Inspection

Notes,” “Violation Worksheets,” and identified Bates numbered pages that contained redactions pursuant to the government informer’s privilege. A review of the Bates numbered pages, submitted with the pending Motions and Responses, reveals several document subcategories within the broad document categories, set forth on the Secretary’s initial privilege log. For example, under the privilege log Document Description column, identified generally as Inspection Notes, a review of the Bates numbered pages reveals several document subcategories, including Note Taking Sheets, Employee Interview Statements, and Employee On-Site Information. *See* Resp. Motion, Exh A, Complainant’s Response and Objection to Respondent’s Document Request no. 1; Resp. Exh. B.

During the call, the Secretary was ordered to provide a detailed privilege log, in support of the Secretary’s government informer’s privilege claim, identifying the information that would be disclosed if the privilege was not claimed. Commission Rule 52(d)(1). The Secretary must file the detailed privilege log on or before Wednesday, August 7, 2019,

Further, during the conference call, Counsel for the Secretary Marta was ordered to review the OSHA inspection file to ascertain if any additional information may be disclosed to Respondent (un-redacted), without compromising the government informer’s privilege. Mr. Marta was instructed to review the initially redacted documents to determine whether there is any information, previously redacted, that may be disclosed as basic factual statements that do not disclose the informer’s identity, the informer’s cooperation with the government, subject the informer to retaliation, or compromise other privileged confidentiality concerns. If any of the initial redactions may be narrowed or removed, following the review, the newly redacted pages from the OSHA investigation file must be provided to Mr. Vance on or before Wednesday, August 7, 2019. These inspection pages shall not be submitted to the undersigned Judge, absent further disagreement between the parties regarding the document redactions pursuant to the government informer’s privilege. Commission Rule 8(a)(2) (Discovery documents must not be filed with the Commission Judge.).

Conclusion

The Secretary has not properly invoked the government informer's privilege in this case to withhold from disclosure the identities of individuals who provided information to OSHA and also the contents of their communications with OSHA.

Order

As stated above, on or before August 7, 2019, the Secretary must

Properly invoke the government informer's privilege;

Provide a detailed privilege log, in support of the Secretary's government informer's privilege claim; and

Complete a review of the OSHA inspection file to ascertain if any additional information may be disclosed to Respondent (un-redacted), without compromising the government informer's privilege. If any of the initial redactions may be narrowed or removed, following the review, the newly redacted pages from the OSHA investigation file must be provided to Respondent Counsel.

SO ORDERED.

Dated: July 25, 2019
Washington, D.C.

/s/ Carol A. Baumerich
Carol A. Baumerich
Judge, OSHRC