

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2706/May 21, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16383

In the Matter of

CHARLES L. HILL, JR.

ORDER GRANTING IN PART SUBPOENA
REQUEST

On May 13, 2015, Respondent Charles L. Hill, Jr., submitted a request that I issue a subpoena to the Securities and Exchange Commission. In his request, Mr. Hill described ten sets of “documents and communications” that he seeks. Because the Division of Enforcement promptly notified my Office that it intended to oppose Mr. Hill’s request, I did not issue the requested subpoena. As promised, the Commission’s Office of Litigation and Administrative Practice within the Office of the General Counsel filed an opposition on May 20, 2015. Mr. Hill’s response is thus due May 28, 2015. *See* 17 C.F.R. §§ 201.160(a), .232(e)(1).

I have determined to immediately grant Mr. Hill’s request as it relates to the fifth and eighth items listed in his request. The fifth item seeks “documents and communications” that:

identify any and all administrative proceedings brought by the Commission, other than this proceeding, in which the Commission chose to pursue insider trading claims against an unregulated individual solely under Section 14(e) of the Securities Exchange Act of 1934 (“Exchange Act”) and Rule 14e-3 promulgated thereunder.

The Office of the General Counsel argues that this request is protected by the deliberative process privilege because it “seek[s] documents related to the Commission’s decision to pursue insider-trading claims under Section 14(e) of the Exchange Act.” *Opp’n* at 4. The Office of the General Counsel further asserts that the identity of the other administrative proceedings is covered by attorney-client privilege and the work-product doctrine. *Id.* at 5-7. The Office of the General Counsel does not allege that the identity of other proceedings is irrelevant, assert that Mr. Hill could easily find the requested information himself, or argue that the request is “unreasonable, oppressive[,] or unduly burdensome.” *See* 17 C.F.R. § 201.232(e)(2).

The identity of administrative proceedings is a matter of public record. As such, documents that identify administrative cases brought “against . . . unregulated individual[s] solely under Section 14(e) of the Securities Exchange Act . . . and Rule 14e-3 promulgated thereunder,” are not protected by the privileges asserted.

Insofar as documents and communications exist that are responsive to item five—that is documents and communications that list administrative proceedings of the type described—they must be disclosed. To the extent responsive documents contain information not pertinent to the request in item five, the unrelated information may be redacted before disclosure.

Item eight requests:

All documents and communications that support, or reflect or are related to the allegations made by Lillian McEwen, a former SEC administrative law judge, as reported by the Wall Street Journal on May 6, 2015, that chief administrative law judge Brenda Murray “questioned [her] loyalty to the SEC” as a result of finding too often in favor of defendants and that SEC administrative law judges are expected to work on the assumption that “the burden was on the people who were accused to show that they didn’t do what the agency said they did.”

The Office of the General Counsel objects to this request asserting that “[i]t is difficult to perceive how” the requested documents could be relevant. Opp’n at 8. I disagree. Documents and communications responsive to the request in item eight shall be disclosed.

Because I have granted Mr. Hill’s request as it relates to items five and eight, he need not address those items in his response. I will address the balance of Mr. Hill’s request after reviewing his response. Mr. Hill is directed to submit a revised subpoena covering only the matters described in items five and eight.

IT IS SO ORDERED.

James E. Grimes
Administrative Law Judge