

RUDY GIULIANI APPEARS TO BE CLAIMING PRIVILEGE OVER HUNDREDS OF ITEMS HE ALREADY AGREED WERE NOT

Based on statements that Rudy Giuliani and his attorney Robert Costello have made in the Ruby Freeman suit, he should be claiming privilege over no more than 43 items total.

He is claiming privilege over around 400.

We can say that based on two claims, made in sworn declarations.

First, Rudy submitted this declaration stating that all his comms from the coup conspiracy would be in the materials archived by TrustPoint as part of the SDNY search of his devices.

Mind you, there's a claim in that declaration that Costello's declaration debunks – and it explains a lot about Rudy's failure to provide discovery. Rudy claims that all his iCloud emails would be in the TrustPoint materials.

All of my [redacted]@icloud.com iCloud data would have also been included in the TrustPoint data because I synced my iCloud to my devices.

But Costello's declaration reveals that *prior to October 18, 2021*, he had observed to the Special Master that many of the email files, "contain no 'body' text" and by October 18, 2021, he learned that the reason for that is that "this is the way the iPhone stores backup data."

Rudy's lawyer, at least, learned *before this lawsuit was filed* that the TrustPoint material wouldn't have his emails intact. Nevertheless,

Rudy claimed his emails would be available in the TrustPoint materials, and apparently never checked his existing iCloud, Gmail, and ProtonMail accounts for relevant emails.

Meanwhile Costello confirmed something still more damning: that ultimately he and Rudy never appealed any of the designations that the Special Master in that case, Barbara Jones, came to on his content.

Trustpoint would then send me sections of the electronic material, so that I could designate whatever communications I believed were covered by attorney client, work product, or executive privilege. Those identified communications would then be sent to Judge Jones for her ruling. If there was a dispute between Judge Jones and myself, the matter would be referred to Judge J. Paul Oetken, the sitting SDNY Judge who had authorized the search warrants. We never needed to have Judge Oetken resolve a dispute.

That's important, because we know how many files, total, Barbara Jones ultimately deemed to be privileged: 43.

Content	Phones	Warrant date	Known Warrant Scope	Privilege Review Scope	Status	Special Master Results
Devices of Rudy and Giuliani partners	7 devices	4/21/21	8/1/18 to 12/31/19	1/1/18 through seizure	Completed 11/2/21	2,223 items provided to govt 3 items deemed privileged
	Device 1805	4/21/21	8/1/18 to 12/31/19	1/1/18 through seizure	Initial release 11/11/21 Balance released 1/19/22	25,533 items provided with no privilege claim 43 items deemed privileged 56 privilege claims withdrawn, provided to govt
	8 devices	4/21/21	8/1/18 to 12/31/19	Initial review 12/1/18 through 5/31/19	Completed 1/19/22	3,204 items provided to govt

Remember: per Judge Paul Oetken's order, this privilege review covered all material post-dating January 1, 2018, regardless of topic.

Here's what Jones said about the results of her review in a January 22, 2022 filing (filed before this lawsuit moved towards discovery):

As indicated in my November 2, 2021 Report, I initially reserved decision on the first 3 items that were designated as privileged by Mr. Giuliani's counsel. After further discussions regarding these items, I agree that they are

privileged and should not be turned over to the Government's investigative team.

B. Device 1B05 – Chats and Messages

I next assigned for review the chats and messages that post-dated January 1, 2018 on Device 1B05, which is a cell phone. There were originally 25,481 such items, which later increased to 25,629 after a technical issue involving document attachments was identified. An initial release of non-designated items was made to the Government's investigative team on November 11, 2021.¹

Of the total documents assigned for review, Mr. Giuliani designated 96 items as privileged and/or highly personal. Of those 96 designated items, I agreed that 40 were privileged, Mr. Giuliani's counsel withdrew the privilege designation over 19, and I found that 37 were not privileged. I shared these determinations with Mr. Giuliani's counsel, and they indicated that they would not challenge my determination that the 37 items are not privileged. The 40 privileged documents have been withheld from the Government's investigative team and the remaining 56 were released on January 19, 2022.

43 documents total, across Rudy's 16 devices, were privileged. Most were on an iPhone referred to as 1B05.

Rudy actually used the device identifiers from the search in his privilege log. Most are from 1B05 – and the Bates numbers show that there were over 21,000 items on that phone.

1B05A_00212335	mes-575.eml	eml	4/16/2021 15:02
1B05A_00212492	mes-434.eml	eml	4/20/2021 19:04
1B05A_00212538	mes-393.eml	eml	4/21/2021 17:43
1B05A_00212621	mes-317.eml	eml	4/23/2021 14:21
1B05A_00212878	mes-81.eml	eml	4/27/2021 13:43
1B05A_00394319	Extra Files	eml	4/1/2021 22:18

Indeed, we can see that around 40 really are privileged – because they pertain to Rudy’s own representation by Joe Sibley (indeed, those appear to be the only emails that were preserved).

That says Rudy and Costello already agreed that all the rest of the things in this privilege log (save potentially 3 files) – around 220 of which are just from that one phone – are not privileged.

That is, if you put Costello’s declaration together with Rudy’s, it suggests that Rudy claimed, in the Ruby Freeman lawsuit, that hundreds of things were privileged when he and his attorney had already agreed, *before this case moved towards discovery*, they were not.

I emailed both Costello and Freeman’s attorney Michael Gottlieb to check whether I understand these details correctly and got no response from either.