

## Question MPT-2 – July 2025 – Selected Answer 1

**To:** Anita Hernandez, partner  
**From:** Examinee  
**Date:** July 29, 2025  
**Re:** Gourmet Pro Response to CPSC

---

You have asked me to address whether the attorney-client privilege will be applicable to Documents One through Three for Gourmet Professional Grilling Co. (Gourmet Pro). This memorandum will include the legal standard to be applied and will not include other issues related to the subpoena. Please see my findings below.

### **Governing Law**

In *Franklin*, the attorney-client privilege applies to "communications made between a client and their professional legal advisor, in confidence for the purpose of seeking, obtaining, or providing legal assistance to the client. *Franklin Mut. Ins. Co. vs DJS Inc.* (Fr. Sup. Ct. 1982). In the corporate context, the privilege typically extends to such communications between the company's lawyers and its board of directors, executives and managerial employees who seek legal advice on behalf of the company.

The advice given by corporate counsel can serve the dual purposes of (1) providing legal advice and (2) providing business information and advice. When a report contains both business and legal advice, the protection of the attorney-client privilege "applies to the entire document only if the predominant purpose of the attorney-client consultation is to seek legal advice or assistance. If the predominant purpose is business, attorney-client privilege will still protect any portions of the document that contain legal advice. When assessing a document where the predominant purpose is business, care must be taken to identify any distinct portions that are protected by privilege, if such portions of legal advice are severable, they should be withheld from disclosure to preserve the protection of the attorney client privilege.

To determine the predominant purpose of a document, courts are required to consider the "totality of circumstances" including relevant factors such as (1) purpose of the communication (2) content of the communication (3) context of the communication (4) receipts of the communication (5) whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure.

### **1). Document One**

Document one is protected under attorney-client privilege because its predominant purpose is legal advice or assistance.

## i. Predomiant Purpose

### *1. Purpose of the Communication*

In *Booker v ChemCo Inc.*, the Franklin Supreme Court found that the report prepared by outside ocunsel was primarily intended to assit the company in complying with state tax regulations.

Here, the purpose of the communication from Trisha Washington, as General Counsel was to protect Gourmet CO from implications from the Main Street investigation. This is demonstrated by subject line identifying its purpose as "Main Street class-action litigation" which indicates that the purpose for this email was to provide legal assistance in the current affairs of Gourmet Co and how to best avoid being implicated by the ongoing investigation. Similar to *Booker*, where the report was primarily intended to assist the company, here Ms. Washington's email was primarily intended to assist the company to conform with safety practice in an effort to provide legal advice on the pending class action lawsuit.

### *2. content of the communication*

In *Booker v ChemCo. Inc.*, the Franklin Supreme Court found that the report was predominatly a legal analysis of state statutes and regulations.

Here, Document One's content is to prepare for the possible implications for Gourmet Pro of the high profile litigation against Main Street. Although the first paragraph discusses marketing trends that should be followed, the content is predominatly legal. This email contains legal considerations to ensure the safety of Gorumet Pro's producets, similar to *Booker* which contained analysis of state statutes, and here Ms. Washington discusses possible naviagtions to the regulatory standards set by the Federal Trade Commission. This is a similar content as the Supreme Court found in *Booker* because they both empahisze the statutory regulations and legal advice pertianing to that.

### *3. context of the communication*

In *Franklin Dep't of Labor v ValueMart*, the Franklin Supreme Court found the FDOL enforcement action was not yet pending when the Middleton report was written, and a different result might be compelled if the enforcement action were pending when counsel was retained to produce the report.

Here, Ms. Washington is advising Gourmet Co as general counsel while there is a pending investigation of their competitor, Main Street. This demonstrates the context

of the predominant purpose as providing legal advice under the threat of investigation from being implicated. Unlike *Dep't of Labor*, where the report was made before litigation was pending, here there is already litigation which might implicate Gourmet Co and the legal advice in attempt to prevent such investigation and following class-actions.

#### 4. Recipient of the communication

In *Franklin Dep't of Labor v ValueMart*, the report was prepared for management and the company's board, but the focus of the report was on an analysis of the facilities itself.

Here, Document One was addressed only to Maria Johnson, the CEO of Gourmet Pro, this is unlike *Franklin Dep't of Labor* because it addressed the head of the company and directly discussed possible implications for the company and how to adhere to the regulations in order to prevent such implications. Although the addressing of the email to the CEO, alone does not determine the purpose, the document contains legal advice and analysis pertinent to the investigation of the competitor.

5. whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure.

Here, legal advice permeates the document because the entire document is discussing the possible implications for Gourmet Pro, and discusses the possible strategies to avoid the investigation that is currently already occurring to Main Street.

Therefore, Document One's predominant purpose is for legal advice.

#### ii. Privileged material

When a report contains both business and legal advice, the protection of the attorney-client privilege "applies to the entire document only if the predominant purpose of the attorney-client consultation is to seek legal advice or assistance.

Here, Document One's predominant purpose is to provide legal assistance in the face of a possible investigation by implication of a competitor. The Document itself, shall therefore be entirely privileged because it is under the protection of the attorney-client privilege due to its purpose of providing Gourmet Co with legal assistance on the regulations and safety to adhere to in order to avoid implication.

#### iii. Conclusion

Therefore, the entire Document One is protected under attorney-client privilege.

## 2). Document Two

Document Two is a predominantly business advice document.

### i. Predominant Purpose

#### *1. Purpose of the Communication*

In *Franklin Dep't of Labor v ValueMart*, the Franklin Supreme Court found that the stated purpose to "gather information about ValueMart's facilities" demonstrated business advice.

Here, like *Franklin Dep't of Labor*, where the primary purpose was stated to "gather information", Document Two's primary purpose, is stated in paragraph 2. This primary purpose is to "learn the company's processes and practices and to develop recommendations to make the company even better when it comes to dealing with safety concerns." This is a similar purpose as demonstrated in *Franklin Dep't of Labor*, because while WatsonSmith attempts to provide advice for safety concerns as required by the regulations, the primary purpose is to learn the Gourmet Co's business and processes and practices, thereby demonstrating the business advice of the document.

#### *2. content of the communication*

In *Franklin Dep't of Labor v ValueMart*, the Court found that the content of the report was largely an analysis of each of ValueMart's facilities and other factual information. Here, the content of the communication is mainly business advice, because Document Two merely describes facts of Gourmet Co, such as their revenues from sales and employees throughout the world. This is similar to *Franklin Dep't of Labor*, because Document Two is largely an analysis of each of Gourmet Co's sales and manufacturing of propane gas with other factual information. Although the report contains a subheading describing "Business Recommendations" this does not break it from the business advice, as again WatsonSmith is describing Gourmet Co should be "proud" and merely lists different recommendations that are not of privileged material.

#### *3. context of the communication*

In *Franklin Dep't of Labor*, the FDOL enforcement action was not yet pending when the Middleton report was written, and a different result might be compelled if the enforcement action were pending when counsel was retained to produce the report

Here, similar to *Franklin Dep't of Labor*, where the enforcement action was not yet pending, Document Two was written in June 30, 2024, and the current pending investigatory litigation did not arise until early 2025, almost a year later. Further,

Document Two was created by WatsonSmith, an outside law firm that explicitly states it "has not been hired in connection with any pending, litigation, or government investigation", again demonstrating that this document is solely for business advice.

#### *4. receipts of the communication*

In *Franklin Dep't of Labor v ValueMart*, the Franklin Supreme Court held, the identity of the recipients of the communication does not determine the predominant purpose of the document.

Here, although Document Two was prepared for the Management and Board of Directors of Gourmet Co, under the Franklin Supreme Court in *Franklin Dep't of Labor*, these intended recipients are not dispositive of an attorney-client privileged document. Instead it merely states who it is intended for, while the main purpose is still for business advice.

#### *5. whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure.*

Here, there is no legal advice that permeates the document, because it is primarily for business advice. The section "Business Recommendations" does not provide any legal advice or assistance, it only discusses what steps Gourmet Co should take to better their performance in the business space. Paragraph 4 is also not a severable legal advice because it simply asks Gourmet to use WatsonSmith to conduct a survey and then discuss results, and this advice to use WatsonSmith is premature and does not demonstrate any legal advice.

#### ii. Privileged Material

If the predominant purpose is business, attorney-client privilege will still protect any portions of the document that contain legal advice.

Here, as established above, the predominant purpose is business, and there are no portions of the document that contain legal advice, because it is all premature and asking Gourmet Co to retain WatsonSmith so they eventually can provide legal advice.

#### iii. Conclusion

Therefore, because Document Two's predominant purpose is for business advice, the entire document is discoverable and no paragraphs are protected by privilege.

### **3). Document Three**

Document Three is a dual purpose document

## i. Predominant purpose

### *1. Purpose of the Communication*

Here, the purpose of Document Three is a request for help by Lionel Alexander, Chief Auditor. This document's primary purpose is to ask the General Counsel for advice, because Ms. Washington is also a trusted member of the executive team and is often involved in high-level business discussions that are not limited to legal issues. Mr. Alexander is asking for advice on business matters, demonstrating the primary purpose is for advice.

### *2. content of the communication*

In *Franklin Dep't of Revenue v Hewitt & Ross LLP*, the Franklin Court of Appeals held that the privilege extends to a lawyer's advice interpreting tax regulations or assessing legal liabilities arising from the results of a tax audit.

Here, the content of Document Three contains both business advice and seeks some legal advice as well. Similar to *Franklin Dep't of Revenue v Hewitt & Ross LLP*, where the attorney was to interpret tax regulations and legal liabilities from a tax audit, here, Ms. Washington is being asked to discuss accounting and safety audits. The first issue in Document Three discusses the annual report that will be published on Gourmet Co's public website, and the discussion of whether graphs or charts are suitable. Issue One, however, contains possible legal protected information as it discusses the possible breakdown of the audit by how many personal perform safety compliance work, this compliance is regulated by the statutes so legal advice on how to best present those to the public is also implicated.

Issue Two in Document Three also combines business advice and legal advice, Mr. Alexander seeks business advice on how to sit down and talk to the managers about complaints from products, Mr. Alexander is asking Ms. Washington through her role on the executive team, since she used to work with some of the managers, again demonstrating seeking business advice. There is also legal advice being sought, as Mr. Alexander asks Ms. Washington in her legal capacity because the conversation with the managers are being sought due to complaints from customers in products manufactured, and there being a potential exposure of these possible issues in manufacturing. This requests legal advice on how best to talk to the employees about the manufacturing process without making them "uncomfortable". These two issues thereby contain a mix of the business advice and legal advice.

### *3. context of the communication*

Here, the context of the communication again demonstrates the dual purpose of the document. Mr. Alexander is reaching out to Ms. Washington to help understand different audit analysis, and how to best present those, while also Ms. Washington is to analyze the audit results in her legal capacity. Further, the context arises after the completion of the safety audit and following numerous customer complaints. The context of the email again demonstrates its dual purpose.

#### *4. recipients of the communication*

In *Franklin Dep't of Labor v ValueMart*, the Franklin Supreme Court held, the identity of the recipients of the communication does not determine the predominant purpose of the document.

Here, the recipient of the email is Ms. Washington, General Counsel, however as stated in *Franklin Dep't of Labor v ValueMart*, the email being addressed to Ms. Washington does not establish the email as a pure legal advice document under protection. Instead, the content of the email further illustrates the purpose is being asked of Ms. Washington for business advice and legal advice.

#### *5. whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure.*

Here, the business advice predominates the document, however, there are privileged matters that can be easily separated. Although the privileged matters are embedded in the paragraph, they can still be severable.

#### ii. Privileged Material

Here, because this document is for business purposes and for legal advice, the legal advice can be severed. These specific lines in Issue One include the sentence beginning with "I would like your take on how to best present..." and "I could also see a breakdown....". In Issue Two, the lines to be protected are "Also, we're noticing...." and "We've been tracking them for a while....".

#### **4). Conclusion**

As demonstrated in my analysis above, the attorney-client privilege is applicable to the whole of Document One and the specific lines mentioned in Document Three. Document Two was purely for business purposes so it is not protected under this privilege.

## Question MPT-2 – July 2025 – Selected Answer 2

### MEMORANDUM

To: Anita Hernandez

From: Examinee

Date: July 29, 2025

Re: Gormet Pro Response to CPSC

### LEGAL STANDARD

In *Franklin*, the attorney-client privilege applies to "communications made between a client and their professional legal adviser, in confidence, for the purpose of seeking, obtaining, or providing legal assistance to the client." *Franklin Mut. Ins. Co. v. DJS Inc.* In the corporate context, the privilege typically extends to such communications between the company's lawyers and its board of directors, executives, and managerial employees who seek legal advice on behalf of the company. The threshold inquiry in a privilege analysis is determining whether the contested document embodies a communication in which legal advice is sought or rendered.

Non-legal work does not become cloaked with the attorney client privilege just because the communication is with a licensed lawyer. Where a report contains both business and legal advice, the protection of the attorney-client privilege applies "to the entire document only if the predominant purpose of the attorney-client consultation is to seek legal advice or assistance. *Federal Ry. v. Rotini*. Where the predominant purpose of the document is business advice, a more tailored approach is used and legal advice set out in the document will still be protected. *Franklin Machine Co. v. Innovative Textiles*. If portions of legal advice are easily severable, they should be withheld from disclosure to preserve the protection of the attorney client privilege.

Determining the predominant purpose of a document is a fact specific inquiry which requires the court to look at the totality of the circumstances. *In re Grand Jury*.

Relevant factors include (1) the purpose of the communication, (2) the content of the communication, (3) the context of the communication, (4) the recipients of the communication, and (5) whether legal advice permeates the document or whether any privileged matter can be easily separated and removed from any disclosure. *Privilege Law Applied to Factual Investigations*.

In *Franklin Dep't of Labor v. Value Mart*, the court was faced with whether a report produced after ValueMart retained outside counsel to do an audit of their records was considered protected by attorney-client privilege. The court held that the report itself was not protected by attorney client privilege but that certain portions of the report were protected by attorney-client privilege. The report itself was found to be of a business purpose because (1) it's stated purpose was to "gather information about ValueMart's facilities, (2) the content of the Middleton Report was largely an analysis of each facility and factual information, (3) there was no pending enforcement action



against ValueMart, (4) although the report was sent to the board, the focus on the report was the analysis of the facilities themselves rather than the legal implications of the facilities, and (5) the legal portions of the report were not "intimately intertwined" or "difficult to distinguish" from the nonlegal portions.

### **ANALYSIS**

I. Document 1, is likely protected by Attorney-Client privilege because the purpose of the email is stated to be "Main Street class-action litigation" and because the legal advice in the email is intimately intertwined with the non-legal portions of the emails

First, the document 1 email is an email that was made responding to a request for legal advice. In the corporate context, the board of directors and officers have the authority to go to their general counsel and seek legal advice which has been done here by the CEO of Gormet pro. The subject line of the email is "Main Street Class Action Litigation" and is sent to the general counsel of Gormet Pro. The email goes on to state a purpose that the general counsel has given some thought to the "implications for Gormet Pro" of the pending litigation on a competitor.

Second, the content of the communication is legal advice in nature. The general counsel here provides legal advice as to what should be done with regard to the safety of the products as well as reveals that the report done by WatsonSmith could create sources of liability to the company. The general counsel goes on to give advice on how to insulate the company from legal liability. For this reason, the content of the communication is legal in nature.

Third, the context of the communication is neutral as to how it affects the document's legal nature. On the one hand, the communication is discussing legal obligations that Gormet Pro has but no action has actually been taken at the point that this email has sent. The subpoena was sent well after this email was sent, so there was no impending action against GormetPro and thus this document was not made in anticipation of pending litigation.

Fourth, as stated above, this was sent to a corporate officer who was qualified to ask for and receive legal advice on behalf of the company.

Fifth, the legal advice in this case permeates the document because the email is in response to a previous email asking for legal advice. The general counsel of the firm responded with at least two full paragraphs of legal advice in this email. A court may find that these paragraphs are severable enough from the rest of the email to be redacted but it is likely that the whole email is protected by privilege.

It is likely that a court would protect this whole document because the legal advice of the document permeates.

II. Document 2 likely is not protected by Attorney-Client privilege because it's predominant purpose is non-legal as there is no legal advice contained within the document

First, the stated purpose of the "Embracing Safety as a Business Priority" report produced by WatsonSmith is stated as "to learn the company's processes and practices and develop business recommendations to make the company even better when it comes to dealing with safety concerns." Although the paragraph that sets out the purpose of this report says that it is confidential in nature, courts have found that that is not dispositive. Here, the purpose of the report is stated as being more like the *ValueMart* case where the report is made not in anticipation of any litigation but as a business recommendation.

Second, the content of the report is not legal in nature. There is no part of the report that is legal advice at all. It could be argued that when the report says "the company has not been found liable in any lawsuit that has gone to trial, and the company's public financial reports confirm that payments for legal settlements have not been substantial" is legal advice but as the statement itself says, these are both things that are publicly available, thus would not fall under the protections of privilege.

Third, this report was prepared before the MainStreet litigation was started. This report was solely an internal review of safety standards, policies, and processes which is precisely what the report in *ValueMart* was.

Fourth, the recipients of the communication are the board of directors of Gourmet Pro which lends itself to being found confidential as they can ask for legal advice on behalf of the company. However, that is not what happened here.

Finally, there are no discernible legal portions of the report, thus there are no portions of the report that are so intertwined with legal advice that they are not severable.

Document 2 is very similar to the report in the *ValueMart* case because it is predominantly business in nature and thus will not be protected by privilege.

### III. Document 3 is partially protected by Attorney-Client privilege because the legal advice is severable from the non-legal advice

First, the email here is about two different things: first, it is asking about the marketing of the audit report that they publish on their website, and second, it is asking about legal advice related to potential legal liability. The first portion of the email is wholly about a matter that is non-legal in nature and is severable as a separate, labeled paragraph. The second portion of the email is legal in nature because it asks for an assessment of liability and asks for advice on how to handle that potential exposure and liability.

Second, this has both legal and business aspects incorporated into it. It asks for marketing advice in the first portion of the email and it asks for legal advice regarding liability and exposure in the second portion of the email.

Third, this was made in the regular course of business, but the second portion of the email was made in anticipation of litigation because it discusses fears of potential legal exposure as well as asks to conduct interviews to determine liability.

Fourth, this email was made by an officer of the corporation, the chief auditor, who is allowed to ask the general counsel of the office for legal advice and did just that. Finally, here the legal portions of the email are distinctly severable from the non-legal portions of the email. They are separated into paragraphs and clearly labeled as distinct issues. This is similar to *Infusion Technologies v. Spinex Therapies*, where the court found that paragraphs with legal advice could be distinguished from each other and redacted so that the rest of the document could be transmitted. Document 3 is partially protected by Attorney-Client privilege because the legal advice is severable from the non-legal advice.

### **CONCLUSION**

Here, document 1 is likely protected by attorney client privilege because the legal advice contained within the document is so intertwined that it is not severable from the rest of the document. Document 2 is not protected by attorney-client privilege because the document's purpose is not legal in nature. Finally, document 3 is partially protected by attorney-client privilege and paragraph two of the document should be protected where paragraph one is not protected by the privilege.

### **Question MPT-2 – July 2025 – Selected Answer 3**

To: Anita Hernandez  
From: Examinee  
Date: July 29, 2025  
Re: Gourmet Pro response to CPSC

#### **Memorandum**

##### **Standard:**

The attorney client privilege applies to "communications made between a client and their professional legal adviser, in confidence, for the purpose of seeking, obtaining, or providing legal assistance to the client." (*Franklin Mut. Ins. Co. v. DJS Inc.* & *Franklin Dep't of Labor v. ValueMart*). In the corporate context the privilege typically extends to communications between the company's attorney's and its board of directors, executives, and managerial employees who seek legal advice on behalf of the company. The threshold inquiry in a privilege analysis is whether the contested document embodies a communication in which legal advice is sought or rendered. A document will not be considered privileged just because it is labeled "confidential" or "privileged". The key question is whether legal advice is being sought, non-legal information will not be considered legal advice just because it is a communication with a licensed attorney.

When a report contains both legal advice and business advice, the protection of the attorney- client privilege will only protect the entire document when the predominant purpose of the consult between attorney and client is seeking legal advice or assistance. *Federal Ry. v. Rotini*. When business advice is the predominant purpose of the consult a tailored assessment is required, and the attorney- client privilege will only protect portions of the document that contains legal advice.

Factors the court will consider when determining a document's predominant purpose include: 1) the purpose of the communication, 2) the content of the communication. 3) the context of the communication, 4) the recipients of the communication, 5) whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure. ( *Privilege Law Applied to Factual Investigations, Univ. of Franklin; In re Grand Jury*).

*In Franklin Dep't of Labor v. ValueMart*, the court indicated that if an enforcement action was pending when counsel was retained to produce a report and if the counsel represented the client in the pending case enforcement litigation this would make it more likely attorney-client privilege should be allowed.

However, in *Franklin Dep't of Labor v. ValueMart*, the court indicated if an enforcement action was not pending when counsel was retained to produce a report and if the counsel did not represent the client in the pending case enforcement litigation this would make it more likely attorney-client privilege should not be allowed.

**1) The email from general counsel to chief executive officer, is a close call, but is likely protected wholly by attorney- client privilege.**

**1) The purpose of the communication:** The purpose of this communication is to provide thoughts as to the implications of Gourmet Pro of the high profile litigation against their competitor Main Street. This factors somewhat weighs in favor of the report being privileged because the purpose is related to legal advice on how the company is implicated with on going litigation; however, Gourmet Pro is not a party to this case so, this factor is somewhat neutral.

**2) the content of the communication:** The content of the communication discusses ways to avoid liability based on the safety report and public concerns about similar products. It explains the lawsuit against Main Street (their competitor) and to suggest the course or action Gourmet Pro should take in regard to this litigation and public perception. It also discusses the safety report and recommendations to be taken based on the safety report. This factors should weigh in favor of the report being privileged

because the content is related to legal advice to avoid liability based on the safety report and public concerns about similar products.

**3) the context of the communication:** The context of the communication is that there is a high profile class action litigation against their competitor Main Street and they have been served a subpoena to provide information, but they are not the target on the litigation and they would like to review business records of Gourmet Pro to gain information on industry standards and safety practices. This factor somewhat weighs in favor of the email not being privileged because the context is related to gain information on industry standards and safety practices, and Gourmet Pro is not the target on the litigation.

**4) the recipients of the communication:** the recipients of the communication is the CEO of Gourmet Pro, this factor weighs in favor of the email being not privileged because the CEO is typically a person who would be covered by the attorney-client privilege.

**5) Whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure:** This document contains both legal advice and business advice, but the information cannot be easily separated. One sentence will discuss legal advice and the other or the same sentence will discuss business advice. Thus, this factor weighs in favor of the email being privileged because the legal advice permeates the document and it would be hard to distinguish or separate the legal advice.

Thus, based on these factors the email from general counsel to chief executive officer, is a close call, but is likely protected wholly by attorney-client privilege.

**2) Executive summary of report prepared by WatsonSmith, is likely not wholly privileged, but paragraph #4 may be privileged.**

**1) The purpose of the communication:** The purpose of this communication is to provide information on the company's processes and practices and develop business recommendations to make the company better with safety concerns. This factor somewhat weighs in favor of the report not being privileged because the purpose is related to business recommendations to make the company better with safety concerns.

**2) the content of the communication:** The content of the communication discusses Gourmet's company information, previous safety complaints, reasons for those

safety complaints and makes business recommendations to be taken based on the safety report. This factors should weigh in favor of the report being privileged as to paragraph #4 which discusses previous claims or complaints about potential defects by customers and users of the product. The rest of the report discusses general information and business recommendations so this is likely not privileged information.

Additionally, the content of the communication also states that it is "privileged and confidential". However, this statement does not make the communication privileged and confidential so this does not impact the factors.

**3) the context of the communication:** The context of the communication is that there is a high profile class action litigation against their competitor Main Street and they have been served a subpoena to provide information, but they are not the target on the litigation and they would like to review business records of Gourmet Pro to gain information on industry standards and safety practices. This factors somewhat weighs in favor of the report not being privileged because the context is related to gain information on industry standards and safety practices, and Gourmet Pro is not the target on the litigation and this report discusses business recommendations which is what the subpoena wanted Gourmet Pro to provide information on.

**4) the recipients of the communication:** the recipients of the communication is the Board of Directors Gourmet Pro, this factors weighs in favor of the report being not privileged because the Board of Directors is typically who would be covered by the attorney client privilege.

**5) Whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure:** This document contains both legal advice and business advice, but the information can be easily separated. Paragraph 4 contains discusses legal advice and the others will discuss business advice. Thus, this factors weighs in favor of the report not being privileged because the legal advice does not permeate the document and it would be easy to distinguish or separate the legal advice.

Thus, the executive summary of report prepared by WatsonSmith, is likely not wholly privileged, but paragraph #4 may be privileged.

**3) Email from Chief auditor to general counsel, is likely partially privileged (issue two) and partially not privileged (issue one).**

**1) The purpose of the communication:** The purpose of this communication is to ask about employees in Olypmia. This factors somewhat weighs in favor of the email not being privileged because the purpose is related to employee matters not just legal advice.

**2) the content of the communication:** The content of the communication discusses Gourmet's pro's company audit information, and about consumer complaints. So this factor is neutral somewhat privileged legal advice and some business advice.

**3) the context of the communication:** The context of the communication is that their asking about employees in Olypmia and audit advice. So this factor is neutral somewhat privileged legal advice and some business advice.

**4) the recipients of the communication:** the recipients of the communication is the general counsel this factors weighs in favor of the report being not privileged because typically the attorney is who would be covered by the attorney client privilege.

**5) Whether legal advice permeates the document or whether any privileged matters can be easily separated and removed from any disclosure:** This document contains both legal advice and business advice, but the information can be easily separated. Issue two contains discusses legal advice and issue one will discuss business advice. Thus, this factors weighs in favor of the report not being privileged because the legal advice does not permeate the document and it would be easy to distinguish or separate the legal advice.

Thus, the email from Chief auditor to general counsel, is likely partially privileged (issue two) and partially not privileged (issue one).