

November 21, 2018

By Email

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Re: *Centro de Periodismo Investigativo v. Financial Oversight and Management Board for Puerto Rico*, Civ. No. 17-01743

Dear Judith:

This letter is in response to your request, included in your letter of November 6, 2018, for a privilege log informing CPI “whether or not there are in fact additional documents corresponding to the federal communications, which the [Board] is withholding either in their entirety or partially.” A privilege log is unnecessary for that purpose. Below are the categories of documents that fall within the scope of CPI’s requests which the Board did not include in its voluntary provision of communications with the federal government, which was completed on October 12, 2018.

First, the Board has not provided documents within the scope of the deliberative process privilege. Documents in this category are confidential, pre-decisional, and deliberative communications and attachments which played a role in the Board’s policy deliberations, including communications and attachments containing substantive discussions or expressing viewpoints in connection with the Board’s decision-making process. These communications discuss several Board policies, including the planning and development of the Commonwealth Fiscal Plans; federal funding and its impact on the Commonwealth Fiscal Plans; the planning and development of the PREPA Fiscal Plans; the planning and development of the HTA Fiscal Plans; the planning and development of the PRASA Fiscal Plans; the planning and development of the COSSEC Fiscal Plans; the planning and development of the UPR Fiscal Plans; the planning, development, and implementation of Title V of PROMESA; and decisions relating to Board governance. This category includes communications with individuals from the House of Representatives, the Senate, and several agencies within the executive branch, including the Department of the Treasury, the Department of Homeland Security, the Executive Office of the President, and the Environmental Protection Agency.

Second, the Board has not provided documents that are part of the Title III mediation. Documents in this category include confidential communications and attachments transmitted between and among the Board and its staff, the Title III mediation team, and other parties to the Title III mediation. These documents fall within the scope of the mediation privilege, and are



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protected from disclosure by the Title III Court's order that the mediation process "will remain confidential." Case No. 17-bk-3283, ECF No. 329, at 3.

Third, the Board has not provided documents relating to law-enforcement investigations. Documents in this category include confidential communications and attachments, the disclosure of which would interfere with pending law enforcement proceedings and/or reveal law enforcement investigative techniques and procedures. These documents include communications by Board members and staff with individuals from the Department of Justice and the Department of Homeland Security.

Fourth, the Board has not provided documents relating to issues that it believes, if made public, would cause significant harm to Puerto Rico's economy. Documents in this category include confidential communications and attachments the disclosure of which may affect financial markets and could have a significant adverse effect on Puerto Rico's economy. These documents include communications by Board members and staff with individuals from the Department of the Treasury and other federal agencies.

Fifth, the Board has not provided a small number of documents it believes the disclosure of which would be harmful to the public interest and harm the Board's ability to perform its statutory duties. Documents in this category include confidential communications for which the public interest served by not disclosing the record clearly outweighs any public interest in their disclosure. These documents include communications with Members of Congress and their staff.

Sincerely,

A handwritten signature in blue ink, appearing to read "G. Brenner".

Guy Brenner

cc: Luis F. del Valle, Esq.
Steven Lausell, Esq.
Margaret Dale, Esq.
Laura Stafford, Esq.