

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
CLERMONT COUNTY

GARY ROSENHOFFER, et al.,	:	CASE NO. CA2025-07-056
Appellees,	:	
vs.	:	<u>OPINION AND</u>
	:	<u>JUDGMENT ENTRY</u>
	:	8/17/2026
VILLAGE OF BATAVIA, OHIO, et al.,	:	
Appellants.	:	
	:	

CIVIL APPEAL FROM CLERMONT COUNTY COURT OF COMMON PLEAS
Case Nos. 2025CVH00271, 2025CVH00343

The Law Firm of Curt C. Hartman, and Curt C. Hartman, for appellees.

Schroeder, Maundrell, Barbieri & Powers, and Lawrence E. Barbieri and Katherine L. Barbieri, for appellants.

OPINION

HENDRICKSON, P.J.

{¶ 1} Appellants, the Village of Batavia, the Village of Batavia's mayor and vice mayor, and four members of the Batavia Village Council (collectively referred to as "the

Village Defendants"), appeal a decision of the Clermont County Court of Common Pleas granting the motion of appellees, Gary Rosenhoffer and Raymond Neiser, to compel and denying the Village Defendants' motion for a protective order. The Village Defendants contend that the trial court's discovery order requires the disclosure of privileged and confidential information. For the reasons discussed below, we conclude the trial court did not err in granting appellees' motion to compel but remand the matter for the trial court to limit the scope of its decision and to review the information sought by appellees to determine if it is privileged or confidential before ordering disclosure. We accordingly affirm in part, reverse in part, and remand the matter for further proceedings consistent with this opinion.

I. Factual and Procedural Background

{¶ 2} On February 12, 2025, Rosenhoffer, a resident and taxpayer of the Village, filed a complaint against the Village Defendants and Bauman Development, LLC in Case No. 2025 CVH 00271. In the complaint, Rosenhoffer alleged that the Village Council members had violated or threatened to violate the Open Meetings Act ("OMA"), R.C. 121.22, by inappropriately conducting various Village Council meetings in executive session. Specifically, Rosenhoffer alleged that on October 28, 2024, December 9, 2024, and January 27, 2025, the Village Council members and mayor improperly conducted parts of the Village Council meetings in violation of the OMA. Rosenhoffer claimed the Village Council illegally entered executive session and considered or discussed matters during those sessions that were beyond the scope of permissible matters that may be discussed or considered pursuant to the OMA. In his prayer for relief, Rosenhoffer sought declaratory judgment, injunctive relief, an award of the civil forfeiture, and any other relief to which he may be entitled.

{¶ 3} On February 26, 2025, Rosenhoffer and Neiser, as relators on behalf of the

Village, filed a complaint against the Village Defendants in Case No. 2025 CVH 00343. In the complaint, the relators sought injunctive and declaratory relief based upon the Village Council's failure to comply with the explicit notice requirements of R.C. 713.12. Specifically, the relators claimed the Village Council failed to properly issue notice of a public hearing before considering and enacting certain zoning legislation.

{¶ 4} The Village Defendants filed answers to the complaints, in which they denied the claims alleged by appellees. Thereafter, the parties proceeded to engage in discovery. On May 7, 2025, appellees' counsel took the deposition of Chip Stewart, the Assistant Village Administrator and Zoning Director. During the deposition, counsel attempted to question Stewart regarding the discussions held during the executive sessions that took place during the October 28, 2024, December 9, 2024, and January 27, 2025 Village Council meetings. The Village Defendants' counsel objected to a number of questions on the basis that the information sought was privileged either based upon an executive session privilege or attorney-client privilege.¹ As such, the Village Defendants' counsel instructed Stewart not to answer several questions and stated the following:

And for the record, with respect to all the witnesses who are going to testify, both Batavia and all the defendants are taking the position that discussions held in executive session are entitled to a privilege. And we're not going to – they are not permitted by law to testify with respect to what took place during executive session.

In addition to that, he's already testified that counsel was present during executive session. And what is discussed with counsel in an executive session is also protected by the

1. Examples of questions counsel instructed Stewart not to answer include the following:

- (1) "During the executive session that was held on October 28, 2024, did the discussions involve the personal financial statements for an applicant for economic development assistance?"
- (2) "Was [sic] the discussions during that executive session involving pending court action or imminent court actions?"
- (3) "During that executive session, were there discussions or debates amongst the council members?"
- (4) "Did discussions in executive session concern pending court action or imminent court action?"

attorney-client privilege.

So I'm going to instruct Mr. Stewart not to answer any questions about what took place in executive session. And I'm going to instruct him not to answer with respect to any advice given by counsel in executive session.

Throughout the deposition, Stewart declined to answer, on the advice of counsel, any question that "would implicate what was said in executive session."

{¶ 5} In light of Stewart's failure to answer any questions regarding the discussions held during executive session on October 28, 2024, December 9, 2024, and January 27, 2025, appellees moved the court to compel discovery from Stewart. In their motion, appellees sought information arising from and related to matters discussed or considered in various executive sessions. Appellees detailed Stewart's refusal to answer any questions concerning any matters related to or occurring in executive session during his deposition, despite such information being directly related to appellees' claims.

{¶ 6} The Village Defendants filed a memorandum in opposition to appellees' motion to compel, wherein they argued the motion sought to compel privileged, protected information from the Village Defendants through deposition testimony. According to the Village Defendants, the material sought by appellees is protected by the executive session privilege, as well as the attorney-client privilege. In their memorandum, the Village Defendants moved the trial court for a protective order to prevent the harm that would result from the disclosure of privileged material.

{¶ 7} On July 23, 2025, the trial court issued a decision and entry granting appellees' motion to compel and denying the Village Defendants' request for a protective order. In so doing, the court held that there is no absolute executive session privilege under Ohio law and that any protective order sought on that basis was denied. The court further held that any protective order on the basis of attorney-client privilege was

premature, as the court did not have sufficient information to determine whether the information sought is covered by the attorney-client privilege.

II. The Appeal

{¶ 8} The Village Defendants now appeal, raising the following assignment of error for this court's review:

{¶ 9} THE TRIAL COURT ERRED IN GRANTING APPELLEES-PLAINTIFFS' MOTION TO COMPEL AND IN DENYING DEFENDANTS-APPELLANTS' MOTION FOR PROTECTIVE ORDER (2025 CVH 00271, T.D. 36; 2025 CVH 00343, T.D. 42).

A. Standard of Review

{¶ 10} "Appellate courts generally review a discovery dispute under an abuse-of-discretion standard, but if the dispute involves an alleged privilege, it is a question of law, subject to de novo review." *Torres Friedenber* *v. Friedenber*, 2020-Ohio-3345, ¶ 22. "Generally, 'whether the information sought is confidential and privileged from disclosure is a question of law[.]'" *Evans v. Gardner*, 2023-Ohio-558, ¶ 15 (12th Dist.), quoting *Total Quality Logistics, L.L.C. v. BBI Logistics, L.L.C.*, 2022-Ohio-1440, ¶ 18 (12th Dist.). In this case, the trial court's order not only regulated discovery, but made a privilege determination. Accordingly, we review the trial court's order de novo. *Morgan v. Arick*, 2022-Ohio-1987, ¶ 11 (12th Dist.).

{¶ 11} In general, Civ.R. 26(B)(1) permits parties to obtain discovery regarding any matter that is relevant and not privileged. *Evans* at ¶ 17. When discoverable information is withheld on a claim of privilege, "the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim." Civ.R. 26(B)(8). A court may require that the withheld information be submitted to it for a determination of the privilege claim. And a court may issue a protective order defining the

scope of discovery. See Civ.R. 26(C).

1. Executive Session Privilege

{¶ 12} The Village Defendants first argue the trial court erred in granting appellees' motion to compel and in denying the Village Defendants' request for a protective order because the information sought by appellees is protected by an "executive session privilege" and the disclosure of such information would be harmful for various reasons. According to the Village Defendants, based upon the language of R.C. 121.22(G) and 102.03(B), the General Assembly has created a "clear policy that discussions held in executive sessions of local governing bodies are so confidential that present or former public official[s] or employee[s] are indefinitely prohibited from disclosing them." Thus, "all Village employees and officials present at the executive sessions held on October 28, 2024, December 9, 2024, and January 27, 2025 are forbidden to testify regarding discussions that took place during those executive sessions and those conversations are privileged under Ohio law."

a. The OMA and Executive Session Exception

{¶ 13} The OMA, as set forth in R.C. 121.22, seeks to prevent public bodies from engaging in secret deliberations on public issues with no accountability to the public. *Cincinnati Enquirer v. Cincinnati Bd. of Edn.*, 2011-Ohio-703, ¶ 9 (1st Dist.). Under the act, public officials are required "to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." R.C. 121.22(A). R.C. 121.22(C) likewise requires "[a]ll meetings of any public body . . . to be public meetings open to the public at all times." Thus, the OMA requires public bodies to deliberate public issues in public.

{¶ 14} If specific procedures are followed, public officials may discuss certain sensitive information in a private executive session from which the public is excluded.

Tobacco Use Prevention & Control Found. Bd. of Trustees v. Boyce, 2009-Ohio-6993, ¶ 64 (10th Dist.). An executive session "is one from which the public is excluded and at which only such selected persons as the board may invite are permitted to be present." *State ex rel. Hardin v. Clermont County Bd. of Elections*, 2012-Ohio-2569, ¶ 15 (12th Dist.). R.C. 121.22(G) lists various matters that a public body may consider in executive session. A public body may convene in executive session only after a motion and vote that specifically identifies the permissible topic. R.C. 121.22(G). The exceptions contained in R.C. 121.22(G) are to be strictly construed and Ohio law requires this court to liberally construe R.C. 121.22(G) to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law. R.C. 121.22(A); *In re Removal of Kuehnle*, 2005-Ohio-2373, ¶ 93 (12th Dist.).

{¶ 15} Relevant to the instant appeal are the exceptions contained in R.C. 121.22(G)(3) and (8), which provide the following:

the members of a public body may hold an executive session only after a majority of a quorum of the public body determines, by a roll call vote, to hold an executive session . . . for the sole purpose of the consideration of any of the following matters:

(3) Conferences with an attorney for the public body concerning disputes involving the public body that are the subject of pending or imminent court action;

. . .

(8) To consider confidential information related to the marketing plans, specific business strategy, production techniques, trade secrets, or personal financial statements of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, provided that

both of the following conditions apply:

(a) The information is directly related to a request for economic development assistance that is to be provided or administered under [certain Revised Code provisions], or that involves public infrastructure improvements or the extension of utility services that are directly related to an economic development project.

(b) A unanimous quorum of the public body determines, by a roll call vote, that the executive session is necessary to protect the interests of the applicant or the possible investment or expenditure of public funds to be made in connection with the economic development project.

R.C. 121.22(G)(3); R.C. 121.22(G)(8).

{¶ 16} Further, pursuant to R.C. 121.22(H), any "resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized" in R.C. 121.22(G) and conducted at an executive session "held in compliance with this section."

b. Ohio Courts' Application of R.C. 121.22(A) and 102.03(B)

{¶ 17} In this case, appellees provided meeting minutes from the meetings held on October 28, 2024, December 9, 2024, and January 27, 2025. Those minutes establish that, at each meeting, the Village Council members motioned and voted to hold part of the meeting in executive session.² In their complaint, appellees allege the council conducted those executive sessions in violation of the OMA by (1) failing to follow the

2. Appellees dispute whether the Village Council followed the proper procedures prior to entering each executive session. Specifically, they allege the Village Council members did not identify one of the topics within R.C. 121.22(G)(1)-(8) as the basis for entering executive session. This issue is not before this court on appeal, and we do not make any finding or holding regarding that dispute.

proper procedures to enter executive session on October 28, 2024, December 9, 2024, and January 27, 2025; and (2) discussing matters aside from the limited topics expressly permitted by R.C. 121.22(G). In an effort to prove their claims, appellees seek to compel Stewart to provide information regarding the discussions held during the October 28, 2024, December 9, 2024, and January 27, 2025, executive sessions. The Village Defendants, in response, claim any information discussed during the executive sessions is absolutely privileged and non-discoverable.

{¶ 18} It is well established that a witness may not refuse to testify in a judicial proceeding in the absence of a privilege created by statute enacted by the General Assembly or by principles of common law as interpreted by the courts of this state. Evid.R. 501; *Eddy v. Farmers Property Cas. Ins. Co.*, 2026-Ohio-626, ¶ 18; see also *In re Frye*, 155 Ohio St. 345, (1951), paragraph one of the syllabus. This rule applies to all stages of the proceeding, including discovery. Evid.R. 101(B).

{¶ 19} On appeal, the Village Defendants do not cite to any Ohio statute or case law that expressly creates an evidentiary privilege for matters discussed in an executive session under any of the exceptions to the open meeting requirement. Instead, the Village Defendants assert the executive session privilege is implicitly created through R.C. 121.22(G), discussed above, and R.C. 102.03(B), which provides the following:

No present or former public official or employee shall disclose or use, without appropriate authorization, any information acquired by the public official or employee in the course of the public official's or employee's official duties that is confidential because of statutory provisions, or that has been clearly designated to the public official or employee as confidential when that confidential designation is warranted because of the status of the proceedings or the circumstances under which the information was received and preserving its confidentiality is necessary to the proper conduct of government business.

{¶ 20} According to the Village Defendants, the General Assembly passed R.C. 121.22(G) to create explicit exceptions to the OMA for executive sessions, which inherently recognizes that confidentiality is essential. They also claim the General Assembly's passage of R.C. 102.03(B) "underscores the confidential nature of executive session communications and prohibits their disclosure." Thus, according to the Village Defendants, the statutes create an "executive session privilege" that prohibits any current or former Village employee or public official from disclosing the information discussed in executive session.

{¶ 21} In support, the Village Defendants cite to various decisions by Ohio federal courts that have interpreted R.C. 102.03(B) and 121.22(G) as creating an "executive session privilege" that makes confidential any communications that occur during the executive sessions of political subdivisions and effectively prohibits trial courts from compelling the disclosure of information discussed during executive sessions. See *Humphries v. Chicarelli*, 554 Fed.Appx. 401 (6th Cir. 2014); *Talismanic Properties L.L.C. v. Tipp City*, 309 F.Supp. 3d 488 (S.D.Ohio 2017); *Myers v. City of Centerville*, 2023 U.S. Dist. LEXIS 8297 (S.D. Ohio Jan. 17, 2023); *Univ. Estates, Inc. v. City of Athens*, 2011 U.S. Dist. LEXIS 19262 (S.D. Ohio Feb. 25, 2011). Notably, the Village Defendants have not identified, nor can this court locate, any state court from Ohio that has applied an "executive session privilege" to exclude discovery of any and all information disclosed during executive session.

{¶ 22} As this court has acknowledged, decisions of federal courts are not controlling upon this court but instead constitute persuasive authority only. See *State v. Steele*, 2005-Ohio-943, ¶ 42 (12th Dist.), citing *State v. Burnett*, 2001-Ohio-1581, ¶ 16. As such, we are not bound by the federal courts' rulings above that an "executive session

privilege" exists pursuant to R.C. 121.22(G) and 102.03(B), and effectively bars any discovery regarding the discussions or communications held during executive session.

{¶ 23} After a review of the relevant case law, at least one court in Ohio has expressly declined to recognize an "executive session privilege" pursuant to R.C. 102.03(B) and 121.22(G). See *Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emp. Local 530*, 106 Ohio App.3d 855, 869 (9th Dist. 1995). In that case, the Ninth District considered whether a trial court erred when it granted a protection order that prohibited the appellant from deposing certain board members about matters discussed, at least in part, during executive session and pertained to collective bargaining proposals, negotiations, and strategies. *Id.* at 868. In analyzing this issue, the appellate court found that "there is no absolute privilege to be accorded discussions held in executive session" but "a trial court, in its discretion, may limit discovery." *Id.* Ultimately, the court remanded the matter for the trial court to conduct an in-camera inspection of the records the appellee had asserted a confidentiality interest in and to determine whether the appellant's interest in discovery outweighed the public interest in the confidentiality of the information. *Id.* at 870.

{¶ 24} More recently, the Fifth District analyzed the disclosure of information discussed during executive session. See *Look Ahead Am. v. Stark Cty. Bd. of Elections*, 2023-Ohio-2494 (5th Dist.), *rev'd on other grounds*, 2024-Ohio-2691. In that case, the trial court limited the plaintiffs' inquiry during discovery and cross-examination to "the nature of topics discussed at the executive sessions in question, specifically to determine whether the topics discussed related to" an exception identified by R.C. 121.22(G). *Id.* at ¶ 44. The plaintiffs in that case alleged, in part, that discussions held or decisions made during executive session were outside the scope of the stated purpose for those sessions. *Id.* at ¶ 39.

{¶ 25} In discussing how a trial court should manage discovery and the admission of evidence in an OMA case, the appellate court sought guidance from the Ohio Supreme Court's decision in *State ex rel. Hicks v. Clermont County Board of Commissioners*, 2022-Ohio-4237. In that case, the supreme court did not discuss whether an executive session privilege applied to prevent discovery or disclosure of information discussed during executive session, but it did touch on the evidentiary burden a plaintiff faces in OMA cases. *Hicks* at ¶ 18. In so doing, the supreme court noted that, despite the difficulty in proving a violation of the OMA, a plaintiff "will have access to the same evidence as the public body through discovery." *Id.* The court added the caveat that, if a public body follows the requirements of R.C. 121.22, it may not have any evidence of what occurred in executive session beyond what is recorded in the meeting minutes. *Id.*

{¶ 26} Using the supreme court's holding in *Hicks* as a guide, the Fifth District in *Look Ahead America* determined that the trial court did not err in restricting the plaintiffs' inquiries to those that were relevant to whether improper topics were discussed during the executive sessions.³ *Look Ahead America* at ¶ 48. In so doing, the appellate court distinguished between general questions concerning whether a topic outside of R.C. 121.22(G) was discussed and questions concerning the substance of discussions held during the executive sessions. *Id.* at ¶ 47. The court reiterated that the trial court's rulings below were based upon relevance, not confidentiality. *Id.*

c. Analysis of the "Executive Session Privilege"

{¶ 27} With the above in mind, as well as the general principle that this court is required to strictly construe the exceptions set forth by R.C. 121.22(G), we turn to the

3. During trial, the trial court allowed the plaintiffs to question whether anything outside the purpose identified as the reason for entering executive session was discussed during the executive sessions at issue. At one point, the court stated the plaintiffs were permitted to ask, "Did you discuss anything beyond the scope of [the identified R.C. 121.22(G) exception]." *Look Ahead America*, 2023-Ohio-2494, at ¶ 41 (5th Dist.).

facts of this case. After review, we agree with the Ninth District's holding in *Local School Dist. Bd. Of Edn.* that there is no absolute privilege to be accorded discussions held in executive session. First, Ohio privilege law is largely codified in R.C. 2317.02, and the information sought by appellees does not fall within any of the enumerated privileged communications within that statute. This court could not otherwise locate any statute, nor have the Village Defendants identified any, that expressly creates such a testimonial privilege. If the General Assembly intended to create an absolute privilege to the communications that occur during executive session, it could have done so. While we agree with the Village Defendants that the matters discussed during executive session, and as set forth in R.C. 121.22(G), may be confidential in nature, there is no statutory authority that clearly and unambiguously states that executive session discussions are absolutely privileged from disclosure or discovery.

{¶ 28} We further disagree with the Village Defendants that R.C. 121.22(G) and 102.03(B) can be interpreted to create any such absolute privilege. As discussed above, the Village Defendants argue that R.C. 102.03(G) absolutely prohibits any current or former Village employee or public official from disclosing the information discussed in executive session. Notwithstanding the Village Defendants' interpretation, the plain language of R.C. 102.03(B) expressly permits disclosure of such information if appropriate authorization is acquired beforehand. See R.C. 102.03(B). Although the Village Defendants contend there is no exception within R.C. 102.03(B) for litigation, and that the Ohio Civil Rules do not authorize the disclosure of privileged information in other contexts, the Village Defendants essentially conceded at oral argument before this court that a court order could provide appropriate authorization pursuant to R.C. 102.03(B).

{¶ 29} Upon review, this court located several cases where current or former employees or public officials testified regarding specific discussions held during executive

sessions. See, e.g., *State ex rel. Hardin v. Clermont Cty. Bd. of Elections*, 2012-Ohio-2569, ¶¶ 59-60 (12th Dist.); *Bode v. Concord Twp.*, 2019-Ohio-5062, ¶¶ 46-52 (11th Dist.); *Keystone Commt. v. Switzerland of Ohio Sch. Dist. Bd. Of Edn.*, 2016-Ohio-4663, ¶ 28 (7th Dist.). Although confidentiality was not at issue in those cases, it is apparent that current or former employees or public officials routinely testify during court proceedings regarding executive session discussions. As such, we decline to hold that R.C. 102.03(B) creates an absolute bar upon any former or current employee or public official from testifying in this regard and instead conclude that appropriate authorization can be ascertained through a court order, such as a court order compelling a public official or employee to provide certain deposition testimony.

{¶ 30} Pursuant to the Village Defendants' interpretation of the law, if public officials properly enter executive session pursuant to R.C. 121.22, a plaintiff may be barred from discovering any information, no matter how generalized, regarding the discussions held during that session. Such an interpretation is unreasonable given the General Assembly's decision to invalidate any resolution, rule, or formal action adopted in an open meeting that is passed after an improper executive session. R.C. 121.22(H). It is also inconsistent with R.C. 121.22(A)'s mandate that public officials are to conduct all deliberations upon official business in open meetings "*unless the subject matter is specifically excepted by law.*" (Emphasis added.) R.C. 121.22(A). Because the General Assembly expressly limited the topics that can be discussed during executive session, and invalidates any resolution or action resulting from improper executive session, parties must have some mechanism available to confirm, at least in a general sense, that improper matters or topics were not discussed during executive session. Otherwise, a litigant could never determine whether the discussions held during executive session were specifically excepted by law or went beyond the matters identified by R.C.

121.22(G).

{¶ 31} Accordingly, in light of all the above, we conclude the trial court did not err in granting appellees' motion to compel on the basis that, under Ohio law, there is no absolute, blanket executive session privilege.

d. Protective Order and Confidential Statements

{¶ 32} Having concluded that no absolute executive session privilege applies in this case, we now turn to the trial court's decision to deny the Village Defendants' motion for a protective order on that basis. After review, we conclude the trial court's decision to deny the Village Defendants' protective order is overly broad and could result in the disclosure of confidential information.

{¶ 33} As other courts have recognized, in some circumstances, it may be error for the court to order discovery without conducting an in-camera inspection or providing the objecting party the opportunity to provide more-specific information to support its privilege claims. *See, e.g., Cousino v. Mercy St. Vincent Med. Ctr.*, 2018-Ohio-1550, ¶ 45-47(6th Dist.); *Grace v. Mastruserio*, 2007-Ohio-3942, ¶ 35-40 (1st Dist.). In general, the purpose of a protective order is to encourage the full disclosure of all relevant information while protecting the unnecessary disclosure of confidential information. In denying the Village Defendants' request for a protective order, the trial court determined that because an executive session privilege does not exist, a protective order on that basis was unwarranted. However, such a broad denial ignores the potentially confidential nature of topics properly discussed in executive session. As discussed by the Ohio Ethics Commission, "if it is clearly demonstrated that a public body has met all of the legal requirements necessary to appropriately discuss a specific matter in executive session, and the information discussed is confidential by statute . . . the information discussed *may be considered confidential under R.C. 102.03(B).*" (Emphasis added.) 2020 OH Eth. Op.

No. 2020-02.

{¶ 34} When considering this advisement, as well as the plain language of R.C. 102.03(B) and 121.22(G), we conclude the trial court's decision to deny the Village Defendants' protective order, in its entirety, is overly broad. In order to prevent the potential disclosure of confidential information, the trial court must ascertain the nature of the information sought prior to ordering disclosure. In so doing, the court should determine whether the information requested (1) falls under one of the topics identified in R.C. 121.22(G) or (2) falls beyond the scope of those topics. If the information is covered under a topic identified in R.C. 121.22(G), appellees cannot inquire into the substance of those executive session discussions given the circumstances of this case. However, any information not classified as potentially confidential pursuant to R.C. 102.03(B), i.e., information that falls outside the topics specifically identified by R.C. 121.22(G)(1)-(8), can be explored in more detail by appellees.

{¶ 35} One could argue, pursuant to the language in R.C. 102.03(B), that in very limited circumstances, a trial court may issue an order authorizing the disclosure of information within the topics included in the R.C. 121.22(G)(1)-(8) exceptions. However, in this case, and under these circumstances, appellees have not established a need for the substantive information within the R.C. 121.22(G) exceptions that was discussed during the executive sessions. As such, we conclude appellees' ability to obtain substantive information regarding the executive sessions at issue in this case is limited to information or communications pertaining to topics beyond the scope of the exceptions specifically identified in R.C. 121.22(G)(1)-(8).

{¶ 36} In order for the court to determine whether the information sought by appellees is confidential, the Village Defendants must detail their claim of confidentiality. Although the Village Defendants must provide enough information regarding the withheld

information and the underlying executive session communications to enable the demanding party to contest the claim, they need not contain more detailed descriptions that may risk revealing confidential information. One way to sufficiently detail their claims, if they pertain to documents or electronically stored information, is to complete a privilege log. *Cargotec, Inc. v. Westchester Fire Ins. Co.*, 2003-Ohio-7257, ¶ 10, 13 (6th. Dist.).

{¶ 37} Accordingly, we reverse the trial court's decision to the extent that it would require the production or disclosure of confidential information. We remand the matter for the trial court to conduct an in-camera review of the information alleged to be confidential, and to limit the court ordered disclosure of evidence to only those discussions that pertained to topics outside those identified by R.C. 121.22(G)(1)-(8). This scope should include consideration of permissible interrogatories or deposition questions related to the general topics discussed during the executive sessions at issue, and general questions related to whether topics outside of OMA exclusions defined above were discussed.

2. Attorney-Client Privilege

{¶ 38} The Village Defendants also contend that the trial court erred by denying their request for a protective order and in granting appellees' motion to compel because discussions that occurred during the October 28, 2024, December 9, 2024, and January 27, 2025 executive sessions are protected by the attorney-client privilege.

{¶ 39} "In Ohio, the attorney-client privilege is governed both by statute, R.C. 2317.02(A), which provides a testimonial privilege, and by common law, which broadly protects against any dissemination of information obtained in the confidential attorney-client relationship." *State ex rel. Dawson v. Bloom-Carroll Local Sch. Dist.*, 2011-Ohio-6009, ¶ 27, citing *State ex rel. Toledo Blade Co. v. Toledo-Lucas Cty. Port Auth.*, 2009-Ohio-1767, ¶ 24. "The attorney-client privilege encourages 'full and frank communication' between attorneys and clients because 'sound legal advice . . . depends on the lawyer's

being fully informed by the client." *Eddy*, 2026-Ohio-626, at ¶ 16, quoting *State ex rel. Leslie v. Ohio Hous. Fin. Agency*, 2005-Ohio-1508, ¶ 20.

{¶ 40} In this case, the trial court denied the Village Defendants' motion for a protective order regarding attorney-client privilege on the basis that they had merely stated the bare-bones assertion that an attorney was present during the executive sessions at issue. The court concluded that this was an insufficient basis to establish the existence of an attorney-client privilege and that any such claim was, therefore, premature. On appeal, the Village Defendants contend the trial court's decision is flawed, and that the attorney-client privilege applies to the information communicated during the executive sessions because the village solicitor was present at all sessions at issue and because Stewart testified in his deposition that the village solicitor "gave legal advice" to the Village Council during those sessions.

{¶ 41} "Under the attorney-client privilege, '(1) [w]here legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) unless the protection is waived.'" *Leslie* at ¶ 21, quoting *Reed v. Baxter*, 134 F.3d 351, 355-356 (6th Cir. 1998). It is well settled that privileges are to be strictly construed and "[t]he party claiming the privilege has the burden of proving that the privilege applies to the requested information." *Westfield Ins. Group v. Silco Fire & Sec.*, 2019-Ohio-2697, ¶ 47 (5th Dist.). "The burden of showing that testimony sought to be excluded under the doctrine of privileged attorney-client communications rests upon the party seeking to exclude it." *Waldmann v. Waldmann*, 48 Ohio St.2d 176, 178 (1976); see also *Total Quality Logistics, L.L.C.*, 2022-Ohio-1440, at ¶ 22 (12th Dist.).

{¶ 42} After a review of the record, we are unconvinced that the Village Defendants

met their burden of establishing the applicability of the attorney-client privilege for all discussions held during the executive sessions at issue. At his deposition, Stewart testified, without any additional detail, that the village solicitor gave legal advice to Village Council members during the January 27, 2025 executive session. Stewart could not recall whether the village solicitor provided legal advice with respect to economic development during the October 28, 2024 meeting. Appellees' counsel did not question Stewart regarding the December 2024 executive session meeting after Stewart confirmed he would refuse to answer those questions on the advice of counsel. Thus, aside from the January 27, 2025 executive session, all Stewart's testimony establishes is that counsel was in the room during the executive sessions. As other Ohio courts have acknowledged, the mere presence of counsel in the room is insufficient to invoke the attorney-client privilege. *See Maddox v. Greene Cty. Bd. of Commrs.*, 2014-Ohio-1541, ¶ 7 (2d Dist.). As such, based upon the record before us, we find no merit to the Village Defendants' argument.

{¶ 43} We also reject the Village Defendants' contention that this court should assume the village solicitor provided legal advice to the Village Council during the relevant executive sessions because the topics discussed, i.e., planned-unit developments, are complex and necessarily require advice from counsel or at least facilitate the solicitor's legal services to the Village. Based upon the limited information disclosed during Stewart's deposition, we decline to speculate or infer that, aside from certain discussions during the January 27, 2025 executive session, the village solicitor provided legal advice throughout the duration of each executive session at issue or that his presence alone facilitated his legal services to the Village. In general, generic statements that the attorney-client privilege applies to all communications during the executive sessions are insufficient. *See Total Quality Logistics, L.L.C.*, 2022-Ohio-1440, ¶ 22 (12th Dist.).

Instead, "there must be some factual basis to support the privilege claim, such as 'stat[ing] that communications were made between attorney and client for the purpose of procuring legal advice or representation.'" *Id.*, quoting *Cargotec, Inc.*, 2003-Ohio-7257, at ¶ 13 (6th Dist.). In this case, no such factual basis is alleged or present in the record.

{¶ 44} As discussed above, when a party withholds information under a claim of privilege, "the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim." Civ.R. 26(B)(8)(a). Generally speaking, "[w]ithout identification of the [information] by the party seeking protection, the party seeking the information is unable to challenge the soundness of its claim." *Owens v. ACS Hotels, L.L.C.*, 2016-Ohio-5506, ¶ 9 (9th Dist.).

{¶ 45} As discussed above, the Village Defendants have asserted a very broad and generalized claim of attorney-client privilege for any discussions held or information disclosed during the executive sessions at issue. In so doing, they did not provide enough information to enable appellees to contest the claim as required by Civ.R. 26(B)(8)(a). As such, we find no error in the trial court's decision to deny the Village Defendants' request for a protective order at this time.

III. Conclusion

{¶ 46} In light of all the above, we find no error in the trial court's decision to grant the appellees' motion to compel on the basis that no blanket or absolute executive session privilege exists in Ohio. However, we reverse and remand the matter for the trial court to limit the scope of its discovery decision to prevent the unnecessary disclosure of information subject to an exception defined under the OMA. On remand, the trial court should conduct an in-camera review of the allegedly privileged information to determine if it is privileged or confidential before ordering disclosure. As discussed above, this

should include consideration of permissible interrogatories or deposition questions related to the general topics discussed during the executive sessions, as well as general questions concerning topics outside of OMA exclusions that were discussed.

{¶ 47} Judgment affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion.

BYRNE and SIEBERT, JJ., concur.

JUDGMENT ENTRY

The assignment of error properly before this court having been ruled upon, it is the order of this court that the judgment or final order appealed from be, and the same hereby is, affirmed in part, reversed in part, and remanded for further proceedings consistent with the above Opinion.

It is further ordered that a mandate be sent to the Clermont County Court of Common Pleas for execution upon this judgment and that a certified copy of this Opinion and Judgment Entry shall constitute the mandate pursuant to App.R. 27.

Costs to be taxed 33% to appellees and 67% to appellants.

/s/ Robert A. Hendrickson, Presiding Judge

/s/ Matthew R. Byrne, Judge

/s/ Melena S. Siebert, Judge