

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HOPE COLEMAN, individually and as
the legal representative of the ESTATE OF
TERRENCE J. COLEMAN,

Plaintiff,

v.

CITY OF BOSTON, et al.,

Defendants.

No. 18-cv-10646-MLW

MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFF HOPE COLEMAN'S MOTION TO COMPEL
DISCOVERY FROM DEFENDANTS CITY OF BOSTON, WILLIAM EVANS,
GARRETT BOYLE, AND KEVIN FINN

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INTRODUCTION

Plaintiff Hope Coleman's only son, Terrence Coleman, a 31-year-old Black man living with a mental health disability, was shot and killed on October 30, 2016, outside their family home at 245 Shawmut Avenue by Defendants Garrett Boyle and Kevin Finn, two inexperienced and poorly trained police officers with the Boston Police Department ("BPD").

Although BPD investigators insisted on questioning Ms. Coleman and other family members (including minor children) immediately after the fatal shooting, in the middle of the night on October 30, 2016, they did not interview the Emergency Medical Technicians ("EMTs") involved in the incident, Kyle MacKinnon and Terrence Mentele, until the afternoon of October 31, 2016, and Boyle and Finn until the afternoon of November 1, 2021. In the interim, investigators did not sequester Boyle, Finn, MacKinnon, and Mentele, or otherwise instruct them not to speak with each other; data from their cellphones was neither preserved nor searched; and all four were collectively represented by the same law firm. The attorney representing Boyle and Finn met with them together, shortly before they made their official statements to the BPD's Firearms Discharge Investigation Team ("FDIT"). By then, Boyle and Finn had also met, repeatedly, with representatives from the Boston Police Patrolmen's Association ("BPPA" or "Union"), including its then-President Pat Rose.

Defendants claim that Boyle and Finn justifiably shot Terrence because they feared for their lives and the safety of EMTs, who had responded to a 911 call from Ms. Coleman for medical assistance. Specifically, Defendants claim that Terrence violently attacked the EMTs and the officers with a kitchen knife and that, while no one was stabbed or cut, they suffered physical and psychological injuries.

In their depositions, Boyle and Finn testified that, after the fatal shooting, they were "out" on paid medical leave for about two months. Yet almost one year later – nearly four years after Ms.

Coleman filed this lawsuit – the City first produced documents indicating that Boyle and Finn were physically and psychologically cleared to return to duty, and were re-issued new firearms, *on November 2, 2016*, only three days after Terrence was killed and when the FDIT’s investigation was only beginning. The BPD’s Internal Affairs Division (“IA”) approved the re-issuance of firearms to Boyle and Finn, ostensibly based on its review of “IAD records and other information.” Ex. 1. Yet Defendants have refused to produce those underlying records.

Despite repeated attempts to meet and confer, the City Defendants also have failed to produce an adequately prepared witness (or witnesses) to answer questions on behalf of the City, pursuant to Fed. R. Civ. P. 30(b)(6), concerning the BPD’s investigation of and response to the Coleman shooting. They have failed to produce all responsive documents concerning: the BPD’s hasty re-issuance of firearms to the officers, under troubling circumstances; its clearance of the officers as physically and/or psychologically “fit” to return to duty; and any other medical and mental health records concerning injuries the officers allegedly sustained during the events at issue in this case. Finally, Defendants have failed to produce BPD training materials concerning investigations of officer-involved shootings, like the Coleman shooting. Accordingly, Ms. Coleman now seeks relief from this Court.

FACTUAL BACKGROUND

A. The shooting of Terrence Coleman

In the early morning hours of October 30, 2016, Ms. Coleman was concerned about the mental health of her 31-year-old son, Terrence, and she called 911 to request help transporting him from the family home at 245 Shawmut Avenue to Tufts Medical Center. First Amended Complaint (“FAC”), D.E. 62, ¶¶ 1-2. Ms. Coleman had already spoken with people at Tufts, so the hospital was expecting Terrence and prepared to treat him. *Id.* ¶ 32. Ms. Coleman explained the situation to the 911 operator, and she also asked that BPD not respond, because she was concerned that the

presence of police officers would be counterproductive, agitate her son, and prevent him from receiving medical care. *Id.* ¶¶ 3, 37-38.

More than 10 years before his death, Terrence had been diagnosed with schizophrenia, and on rare occasions, he would experience episodes where he withdrew, became introverted, and did not interact with people. *Id.* ¶¶ 2, 26, 28. Ms. Coleman believed that he was currently experiencing such an episode because he had been sitting outside their shared home on the front steps for many hours on a cold October evening, refusing to speak or come inside. *Id.* ¶¶ 2, 28.

Despite Ms. Coleman's explicit request for medical assistance rather than police involvement, two police officers, Boyle and Finn, arrived at 245 Shawmut Avenue. On the sidewalk, Ms. Coleman immediately told them, "I didn't call you. I called for an ambulance...My son don't need you, my son needs an ambulance." Coleman T.100 (Ex. 2). By this time, Terrence had gone inside the building.

EMTs Mentele and MacKinnon arrived a few minutes later. FAC ¶ 3. Although the officers and EMTs had planned to enter the Coleman home together, Boyle and Finn left to investigate an unrelated disturbance down the street in a nearby park. *See* Finn T.133 (Ex. 3); Boyle T.70-71 (Ex. 4). At that point, Mentele and MacKinnon accompanied Ms. Coleman into the apartment. While MacKinnon waited in the living room with Ms. Coleman, Mentele entered Terrence's bedroom, where he found Terrence calmly sitting on the floor. FAC ¶ 48. When Mentele tried to talk to Terrence about going to the hospital, Terrence stood up and, without speaking, walked out of his bedroom, down the hall, and out of the apartment. *Id.* ¶ 50.

As the EMTs and Ms. Coleman followed Terrence into the building's small foyer, Terrence noticed the police car's flashing lights in the street just outside the door, and he suddenly became agitated. *Id.* ¶ 52. Terrence told the EMTs that he did not want to go to the hospital and began to

speak nonsensically. In response, both EMTs raised their voices, insisting that Terrence had to go with them, and MacKinnon moved toward Terrence. *Id.* ¶ 53.

At that point, Finn and Boyle were outside the building on the sidewalk. *See* Finn T.134-137; Boyle T.72-73. Hearing raised voices, the officers charged into the small foyer, purportedly because they feared the EMTs were in danger. *See* FAC ¶ 54. But in their depositions, Boyle and Finn testified that they had *not* heard any cries for help, any reference to a weapon, or any threats to the EMTs. Finn T.141 (Q. Did you hear anyone call for help specifically? A. I don't remember. I don't specifically remember someone saying "help," no... Q. Before I asked you whether you heard anyone specifically shout "help" or specifically shout "knife," and I think you said no, you hadn't heard those words. Did you hear anything—any specific words that made threats to the EMTs? A. No. I didn't hear any threats being made.); Boyle T.84 (Q. Prior to that time had you heard anyone yell knife? A. No.).

Finn and Boyle claim that, once inside, they observed Terrence with a knife threatening the EMTs. According to Defendants, Finn and Boyle engaged in a physical altercation with Terrence, and when the "chaotic" and "traumatic" situation escalated, they had no choice but to shoot Terrence in defense of themselves and/or the EMTs. *See* Finn T.146-157, 205 ("...the most traumatic thing I've ever been involved with in my life"); Boyle T.79-81, 96 (A. I mean it was chaotic. We were all kind of doing things. Like, you know, we were just trying to figure out the situation...It was just a lot of chaos going on). According to Finn, Boyle had to shoot and kill Terrence because it "was the only thing we could do to get out of there alive." Finn T.207.

Neither Boyle nor Finn was stabbed or cut, but they both claimed to have suffered physical and psychological injuries during the incident. *See* Finn T.44, 79-80, 91-92 (knee injury); 43, 81, 89-90 (nerves); Boyle T.119 (bruised knee and stress). They also testified that, after the incident, they were placed on medical leave for one to two months, *see* Finn T.88. But the records that Ms.

Coleman has requested, and that Defendants have only partly produced, show that the BPD deemed Boyle and Finn were evaluated and medically and/or psychologically cleared to return to duty and possess firearms only days after Terrence was killed. Full production of the records the City continues to withhold will shed light on the alleged injuries, including any “trauma,” that Boyle and Finn claim to have suffered. *See* Finn T.79-80 (noting one visit to BPD “psychologist”); Boyle T.122-23 (noting three visits to BPD “psychologist” and one visit to the Boston Police Stress Team clinician).

One critical factual dispute in this action is whether Terrence did, in fact, possess a knife in the foyer of 245 Shawmut Avenue and threaten the EMTs or officers with it.¹ Contrary to Defendants’ account, Ms. Coleman has remained steadfast that she was present for the entire incident (a fact that Boyle and Finn do not dispute, *see* Finn T.147; Boyle T.79, 82-83) and that Terrence did *not* have a knife. Coleman T.II 117-18. Ms. Coleman made that clear to investigators when she was questioned at the hospital only hours after the fatal shooting, *id.*, Evans T.309 (Ex. 5), and again in her sworn testimony at her deposition. *See* Coleman T.II 90, 99, 122-23.

B. Post-shooting collusion

Although BPD investigators insisted on questioning Ms. Coleman and several of her minor grandchildren only hours after the fatal shooting, in the middle of the night, they did not interview the EMTs for another day and a half and the officers until two and a half days after the shooting. By then, Boyle and Finn had spoken with their Union representatives, each other, and the lawyer who jointly represented them. During that time, Boyle and Finn (along with the EMTs, who were jointly represented by an attorney from the same law firm) had multiple opportunities to coordinate their

¹ *Even if* Terrence had a knife, which Ms. Coleman vigorously disputes, Defendants remain liable because they were not justified in fatally shooting Terrence. In addition, , the entire incident resulted from the defendants’ failure to make required accommodations for Terrence under the Americans with Disabilities Act.

accounts. Indeed, almost immediately after the shooting, Thomas Antonino, a BPPA official, met Boyle and Finn at 245 Shawmut Avenue and made sure they did not speak to BPD investigators. *See* Boyle T.104, 106. (Q. After Terrence Coleman is removed by the EMTs, what happens next? A. I meet my union representative at the threshold of the front door. You know, he kind of walks me out. He asked if I shot. I said, “Yes.” He kind of walked me over to the ambulance He said, “Don’t say anything.”). Antonino even rode in the ambulance to Boston Medical Center (“BMC”) with the officers. *See* Finn T.33-35 (“Q. Who else was in the ambulance with you? A. It was Officer Thomas Antonino and Garrett Boyle....”); Boyle T.108.

At the hospital, Boyle, Finn, and Antonino were joined by Rose, then-President of the BPPA (the same union also represents EMTs).² Before they left BMC in the early morning on October 30, Boyle and Finn made statements to Rose and Antonino about the fatal shooting of Terrence. *See* Boyle T.109-110 (Q. At any point that night, did you give a more detailed description of the incident to Antonino? A. I believe so. Q. What were the circumstances of that? A. While at the hospital, him and the union president were there I think. I think they were in touch with the Commissioner, who wanted to know what happened.). But no recordings or contemporaneous documentation of those statements was created or retained. Rose apparently gave an account of the incident to Commissioner Evans:

Q. You mentioned earlier that -- you said you believed Antonino and Rose were in touch with the Commissioner, who wanted to know what was going on and that that was why or part of why you described the events on October 30th to them; is that correct?

A. Yes.

² Rose has been indicted on multiple counts of sexual abuse of children, including abuse the BPD is alleged to have concealed for decades. *See, e.g.,* <https://www.bostonglobe.com/2021/04/10/metro/years-boston-police-kept-secret-union-president-was-an-alleged-child-molester/>

Q. What led you to believe that they were in touch with the Commissioner?

A. Pat Rose was on his phone.... Someone was on the other end of his phone. It was someone at the scene. I assumed it was the Commissioner.

Q. So what led you to believe that Rose was on the phone with the Commissioner as he talked to you?

A. I can't recall. He may have mentioned it. Maybe he said, "The Commissioner just wants a synopsis of what happened."

Boyle T.135-36. During his deposition, Evans did not mention his communications with Rose on the night of the shooting. *See* Evans T.240-42.

Meanwhile, Boyle and Finn did not make any official, recorded statements to BPD investigators until the afternoon of November 1. Evans cited "stress" as the reason for the delay. *See id.* 307 ("a lot of these officers underwent a stressful condition, and the protocol is sometimes we will get them medical care, and then when events settle down, they will interview them as soon as we can"); *id.* 313 ("[f]or whatever reason, that determination [not to interview them] was made by the detectives. We don't have a policy on when we do interviews"). Sergeant Thomas Pratt, the lead FDIIT investigator, offered a different reason. He testified that neither the officers nor the EMTs were interviewed on the night of the shooting because they had been given medication, which could "cloud or impair their judgment." Pratt T.212 (Ex. 6) ("I wouldn't do an interview if someone was on medication or taking any type of muscle relaxant or anything that would cloud or impair their judgment or their speech"); *id.* 213-14 (EMT Mentele was not interviewed that night because "he started to break down... he was visibly shaken. He was crying. We didn't get -- other than, you know, the fact that he was on medication, I kind of just said uh-oh, we better back out of this one").³

³ In contrast, investigators insisted on interviewing Ms. Coleman immediately, despite her intense distress. She testified, "I was screaming and screaming. I believe I ran out of the hospital.... [M]y sister-in-law said you've got to go ahead and make a statement.... I think it was the detective. It wasn't a uniformed officer, and I asked him to go in there to see my son, and I wanted to go in there. I went in there, and I was just freaking out, and I just wanted to hug my son, and they said,

Despite those excuses, Boyle and Finn testified that they *could* have given statements, but that no BPD investigators asked to speak with them:

Q. Did ... anybody in law enforcement request to speak with you about what happened before [the FDIT interview on Nov. 1]?

A. No.

Q. Did you volunteer to speak with anybody in law enforcement about what happened before that?

A. No.

Q. Why not?

A. I knew I had a meeting set up to sit down in an interrogation room. You know, I was advised by the union that I would have an interview.

Q. Were you advised not to speak with anybody before the FDIT interview?

A. Yes.

Q. By whom?

A. The union. I don't know if it was Pat or Tom.

Q. Did they explain why they were giving you that advice?

A. I was told at the hospital because I was on Ativan, it's not reasonable that I would be, you know, volunteering for an official interview while on the medication.

Q. How long were you on Ativan?

A. Just for the day.

Q. So you had, like, one dose at the hospital?

A. Yes.

Q. Did that affect your ability to recall or think?

no, ma'am, you can't do that. I'm screaming after I made my statement. I just wanted to have my son." Coleman T.II at 116-18; *see* Pratt T.219 (concerning BPD's rush to interview Ms. Coleman); *id.* 222 (testifying, concerning the rush to interview the children at BPD Headquarters at 2:30 am, "I don't believe [their father] said they needed any medical attention").

A. No.

Q. Had it worn off by the next day?

A. Yes.

Boyle T.130-31; *see also* Finn T.44-45 (“I was not asked to speak to an investigator.... I was not given the opportunity to speak to an investigator that night, so I was really not thinking about speaking to an investigator”).

BPD did not sequester Boyle and Finn, or otherwise instruct them not to speak with each other or the EMTs, during the two-and-a-half days that elapsed between the shooting and their FDIT interviews. *See* Finn T.29-32. Nor were the EMTs sequestered or instructed not to communicate. *See* MacKinnon T.217 (Ex. 10) (Q. Did anyone ever tell you not to talk to anyone about what happened? A. No, no one told me not to speak with anybody. Q. So, for instance, when the detectives spoke to you in the hospital, they didn’t tell you not to talk to anyone about what happened? A. No....); Mentele T.26-28 (Ex. 11) (Q. So prior to that meeting with Peter Pasciucco, had anyone instructed you not to communicate with other witnesses in this case? A. No. Q. Did you think it was okay to talk to Mr. MacKinnon, for instance? A. Yes, me and Kyle spoke.... Q. When did that happen? A. The days following the incident).

During that critical period, BPD did not obtain any data from Boyle’s and Finn’s cell phones, or from the EMTs cell phones, and it did not tell them to preserve that potential evidence. *See* Finn T.27-28 (Q. Were there any text messages back and forth with anyone about the incident that you deleted before you got this notice to please preserve communications? A. Yes. I would delete text messages on my phone to save space. Yes. So there probably was.....); Boyle T.117; MacKinnon T.20-21 (Q. So no one has ever told you not to delete messages or throw away documents? A. Correct...); Mentele T.24 (Q... [H]ad anyone instructed you not to destroy or delete any kind of communications? A. No).

Finn and Boyle were jointly represented by Attorney Kenneth Anderson, a law partner of Peter Pasciucco, who represented both of the EMTs.⁴ On November 1, before their FDIT interviews, Finn and Boyle met together with Anderson at Anderson and Pasciucco's office. *See* Boyle T.127-29; Finn T.11-13. The day before, the EMTs met with Pasciucco before their FDIT interviews and Anderson apparently attended that session. *See* Mentele T.10-11; MacKinnon T.10-11, 236. Boyle, Finn, and the EMTs were not advised of the obvious potential for a conflict of interest arising from the concurrent representation by the same law firm of the four individual participants in a fatal police shooting that was being investigated by the BPD and the Suffolk County District Attorney's Office. *See* Finn T.11-13; Boyle T.127-29; MacKinnon T.10-11; Mentele T.10-11.

Within one day of the FDIT interviews of Boyle and Finn – and three days of the fatal shooting – two divisions within the BPD, IA and Occupational Health, had deemed both officers “fit” to be re-issued firearms. *See* Ex. 1 at COB 3885, 3887(signed Nov. 2, 2016). Within the same timeframe, Rose arranged for them to be issues new firearms – while the FDIT had taken custody of their weapons, before the officers were returned to duty, and even though neither had a license to carry (“LTC”) as a private citizen. Finn and Boyle testified:

A.... Pat Rose called me. He asked me if I had my license to carry, which I didn't at the time. He said, “Well, your name is going to come out. The media is going to put your name out. You will want to go to the range. You will want a firearm at home because your name is coming out....Go to the range. They will know you are coming. They are going to give you a gun just to have a gun at home.

* * *

Q. Let's see if I understand how this worked, then. You are involved in an officer-involved shooting in the early morning hours of October 30, 2016. You turn over your gun belt in connection with the FDIT investigation just as it begins. While that investigation is ongoing and while you are not

⁴ *See* <https://www.andersongoldman.com/>.

working as a Boston police officer, at the advice of the union president, you go down to the BPD range, and they just give you another gun to take home for your own personal use?

A. Well, I think “personal use,” I think it was more of a self-defense thing.... I didn’t petition for a firearm. Pat told me to go the range to get a firearm. I followed the advice of the union president. I went to the range. I was given a firearm.

Finn T.186, 190-93; *see also* Boyle T.123-25 (Q. So even though you were on medical leave, you were reissued a service weapon? A. Yes. Q. Was this something done sort of through the D-4, or was it something that, like, the union had arranged? A. The union arranged it). Rose made those arrangements “literally moments after [Boyle]’s FDIT interview” and, based on an internal report (or reports), Evans approved them. Boyle T.137-38.

In sum, only two-and-one-half days after Boyle and Finn shot and killed Terrence, and after extensive discussions with each other, their union representatives, and their shared attorney, the officers finally sat down for formal investigative interviews by the FDIT. And almost immediately after those interviews, the BPD deemed Boyle and Finn “fit” to carry weapons and return to duty, even though both officers claimed to have suffered physical and psychological injuries and remained out on medical leave for months.

PROCEDURAL HISTORY

A. Request for an adequately prepared witness to answer questions on behalf of the City pursuant to Rule 30(b)(6) concerning the BPD’s investigation of and response to the Coleman shooting.

Pursuant to Fed. R. Civ. P. 30(b)(6), Ms. Coleman noticed the City’s deposition and provided a list of topics on which she intended to question its designated witness(es). Among those topics was the Coleman shooting, including the BPD’s response to and investigation of the incident. *See* Pl. 30(b)(6) notice Topic 1 (Mar. 30, 2021) (Ex. 7).

The City designated BPD Sergeant Pratt, who led the FDIT’s investigation, to testify on that topic and others, but he was unprepared and unable to answer numerous questions. For example,

Pratt could not clearly answer on the City's behalf whether the FDIT's investigation considered potential violations of any BPD rules other than Rule 303 (the use of deadly force). *Compare* Pratt T.85 (“[the goal of a FDIT investigation is to make sure that] the officer involved in the shooting ... did not break any Boston police rules or regulations or procedures”), *id.* 112 (the purpose of the FDIT investigation is to ask, “Has there been a rule or reg violation[?]”), and *id.* at 117 (“[i]f there was a rule or reg violation, my five-day report would have something the th[at] effect”), *with id.* (“I would not do the rule and reg violation. I may identify the rule and reg violation but I wouldn't investigate the rule and reg violation”), *id.* at 123 (“[the] FDIT team ... investigate[s] the discharge of a Boston police officer's firearm ... for the Suffolk County [DA's] office”), and *id.* at 125 (“I'm working for the district attorney at that point”).⁵

Pratt was also unable to address the re-issuance of firearms to Boyle and Finn at a time when the FDIT was only starting its investigation and before it made even preliminary findings:

Q. ... I'm still asking the question of whether[,] while you don't know whether ... the use of deadly force was proper, you would want those officers to be armed.

A. Not my decision. I just don't have the evidence in front of me at that particular time.

Q. Right. And by not knowing, then you may want to be cautious and assure that they're not, correct?

A. Well, the patrol supervisor has taken their weapons from them. They were involved in a shooting so at that particular time, in my purview, my role, my

⁵ The distinction between a criminal and an administrative investigation is significant. IA, a civil investigation, vindicates the public's interest in uncovering the truth and instituting appropriate reform measures. *See, e.g.*, U.S. Dept. of Justice Civil Rights Division, letter to City of Seattle (Nov. 23, 2011) at 6-7, https://www.cabq.gov/council/documents/police-oversight-task-force-documents/Garrity_Protections_DoJ.pdf (“[t]here is no question that [a police department] has its own need to determine what happened in an officer-involved shooting [as distinct from a criminal investigation] Thorough, fair, and timely administrative investigations are one of the most critical responsibilities of a police department. Effective investigations of a shooting ... can quickly identify whether there are any policy, training, officer-safety, or accountability concerns”).

lane, I have their weapons. I don't -- I don't know of any police officers in the City of Boston that's allowed to carry two weapons at the same time.

Q. Would it trouble you to learn that the officers that you were investigating in the Terrence Coleman shooting were offered by their union an alternate department-issued weapon while you were still investigating the matter and did not know whether or not the discharge was proper?

....

A. The police commissioner determines who has a firearm. I'm not trying to be argumentative. He's the final say in the Boston Police Department

Pratt T.90-91, 93; *see also id.* 57-60 ("I wouldn't make that decision. That's way above my pay grade").

Pratt could not answer basic questions about Rule 303 or the BPD's policies and procedures concerning the investigation of fatal shootings:

Q. Do you know whether or not Rule 303 has ever been sort of reevaluated or reexamined to be updated?

A. Yes.

Q. Do you know when that was?

A. I don't know the exact date, no.

Q. Do you know when the most recent time was that it was reevaluated or reexamined?

A. Not exactly, no.

Id. 46-47; *see also id.* 139 (Q. To the best of your knowledge, does anybody at BPD evaluate the FDIT investigation process for BPD against any other law enforcement agency procedure either in Massachusetts or across the country? [Objection.] A. I don't know. I do not have the answer for that. I don't know who does that); Pl. Ltr. to COB, Sept. 27, 2021 (Ex. 9 at 26-30).⁶

Subsequently, the City designated BPD Sergeant Marc Sullivan to answer questions about the FDIT. But Sullivan claimed to have no knowledge of the Coleman shooting:

⁶ Exhibit 9 contains all of the attorney correspondence referenced in this Memorandum, in chronological order. Page number references are to the pagination of the combined pdf.

Q. Did the City investigate whether any other rules, policies or laws were violated in the Terrence Coleman shooting other than the FDIT investigation of Rule 303?

MS. O'CONNOR: Objection. You can answer if you know, Sergeant Detective Sullivan.

A. I don't know.

Q. Who else would know?

A. On the Terrence Coleman case?

Q. Yes.

A. I think Sergeant Detective Pratt had the case. I would think he would know, or Internal Affairs would know. I wouldn't have that information.

Q. Did the City look into whether Officers Boyle and Finn could have de-escalated the Terrence Coleman situation?

MS. O'CONNOR: Objection. You can answer if you know.

A. I have no idea.

Q. Well, from your participation in the investigation -- well, let me ask you this. Did the FDIT team look into whether Officers Boyle and Finn could have de-escalated the Terrence Coleman situation?

A. I personally don't know. I had very limited involvement in that investigation. Sitting here, I can't answer what happened in that investigation.

Q. So what was your role on the FDIT team for the Terrence Coleman shooting?

A. So I had a medical issue. I had just come back. I was very light duty at that point. I had just come back from having cancer. Again, in 2016 I had very limited involvement at that point.

Q. In preparation for the deposition today, did talk to anyone else on the FDIT team or anyone else in Boston Police about what specifically went on in the investigation of the Terrence Coleman shooting?

A. No. I think I answered that earlier. No.

Sullivan T.11-12 (Ex. 8).

In another instance, Sullivan testified:

Q. Do you know whether the City has looked at any national standards or best practices in promulgating policies around officer-involved shooting investigations?

A. Again, I can't answer that. I was not part of the conversation.

Q. Well, even before the modification in 2021, are you aware of whether the City looks at national standards or best practices in formulating policies around investigations of officer-involved shootings?

A. Not to my knowledge, no, but, again, that would be at the Command Staff level.

Q. When an officer-involved shooting is being investigated, is it typical to give a sequestration order to the officers who were at the scene?

A. Not an order, but we train the supervisors to separate the officers as witnesses, yes, and not to speak to each other before their formal interviews, yes.

Q. I take it you don't know whether that occurred or did not occur in the Terrence Coleman investigation?

MS. O'CONNOR: Objection. You can answer.

A. I have no idea.

Id. 19-20; *see also id.* 7-8. The City took the position that Sullivan was an adequate Rule 30(b)(6) designee because he was “not designated for the specifics of the Terrence Coleman case,” but only FDIT investigations *in general*. *Id.* 12.

Plaintiff now seeks an order compelling the City to designate an adequately prepared witness to answer questions pursuant to Rule 30(b)(6) concerning the BPD's investigation of and response to the Coleman shooting.

B. Request for documents concerning BPD's decisions to permit Boyle and Finn to return to duty and to re-issue firearms to the officers.

The City's actions in the aftermath of the shooting of Terrence Coleman are important in evaluating both what happened during the shooting and the City and Evans' role in and liability for what happened. Ms. Coleman requested all documents concerning the BPD's determinations, within days of the Coleman shooting, that Boyle and Finn were “fit” to return to duty and should be re-

issued firearms, even though the FDIT's investigation had barely begun and the officers were purportedly on leave due to injuries. Those decisions, in which Evans was directly involved, were based on evaluations by multiple BPD divisions, including IA and Occupational Health. *See* Ex. 1.

For more than two years after Ms. Coleman filed this lawsuit, the City failed to disclose the existence of any IA investigation concerning the Coleman shooting. *See* COB Auto. Discl. at 11-12 (Mar. 12, 2019); Pl. 1st Request for the Production of Documents ("1st RFP") 6 (Sept. 6, 2019). The City neither disclosed IA records nor logged any withheld documents. Then, on December 4, 2020, during the deposition of then-Commissioner Gross, counsel for the City revealed: "Just to be clear, I can represent that there is an Internal Affairs investigation on this case. . . . Whether it's pending or not is a different story." Gross T.241 (Ex. 12). Plaintiff immediately requested all IA documents. Email from S. Hall to E. Reis, Dec. 7, 2020 (Ex. 9 at 2). Then, on December 11, 2020, the City finally produced a seven-page IA report, dated Apr. 30, 2018. The City repeatedly asserted that it possessed no other IA documents. *See* Pl. Ltr., Feb. 12, 2021 re: RFP 6.A.i-v, B, C (Ex. 9 at 3-4); COB Ltr, Oct. 15, 2021 re: RFP 6.A.iv-v, B, C. (Ex. 9 at 38).

During the depositions of Finn and Boyle, on March 9 and 11, 2021, respectively, it came to light that within several days of the shooting, and prior to any investigative findings by the FDIT, Rose arranged for the BPD to issue both officers new firearms. Almost a year later, after multiple refusals to produce any documents concerning this re-issuance of firearms, *see* Pl. Ltr, Apr. 22, 2021 re: RFP 6.C-D (Ex. 9 at 13) & COB Ltr., Aug. 18, 2021 re: RFP 6.C-D (Ex. 9 at 24), the City finally produced Exhibit 1, four pages of documents containing certifications by both Occupational Health and Internal Affairs that the officers were fit to receive firearms, *as of November 2, 2016*. Moreover, the documents reference "physical/medical and/or psychological exam[s]," "attached sheet[s]," "IAD records," and "other information":

BUREAU OF ADMINISTRATION & TECHNOLOGY (if applicable)

- Occupational Health Services Unit reports that the above officer has passed a physical/medical and/or psychological exam, and may carry a firearm without restrictions (see attached sheet).
- Occupational Health Service Unit reports that above officer has passed a physical/medical and/or psychological exam, and may carry a firearm with restrictions (see attached sheet).
- Occupational Health Service Unit recommends that above officer should not have his/her firearm re-issued at this time.

Mary Discoll _____ Date 11-2-16
 Chief, Bureau of Administration & Technology

Based on a review of IAD records and other information supplied to me, I recommend the following:

- Officer may immediately be issued a firearm if he/she has qualified at the range during the current qualification period.
- Officer may be issued a firearm only after re-qualification at the range.
- Due to pending restraining orders, legal action/and or administration action, the officer may be issued a firearm, but must sign such firearm in and out for duty purposes only.
- Officer should not have his/her firearm re-issued until further notice.

[Signature] _____ Date 11/2/16
 Chief, Bureau of Professional Standards

Ex. 1.

Ms. Coleman has never seen the referenced “exam[s],” “IAD records,” “attached sheet[s],” and “other information.” Either such documents exist and should be produced to Ms. Coleman, or the certifications by the BPD concerning Boyle and Finn were false. To date, however, the City has refused to search for or produce any related materials—or other responsive documents concerning Boyle’s and Finn’s return to duty, receipt of replacement firearms from BPD, or licenses to carry such firearms. *See* COB 1st Resp. to 2d RFP 14 (Jan. 21, 2022) (Ex. 9 at 82-83) (asserting the information is “not relevant, is not likely to lead to the discovery of admissible evidence, and is not proportional to the needs of this case” and declining to “search[] for any records regarding personal license[s] to carry firearms”); *see also* COB Ltr., Feb. 9, 2022 (Ex. 9 at 100-101).

C. Request for Boyle and Finn’s medical and mental health records, including evaluation(s) by BPD provider(s) in connection with their return to duty

For years, the City has objected to producing any medical records concerning the physical and/or psychological injuries that Boyle and Finn claim to have suffered as a result of the Coleman incident, without specifying any basis for the objection. *See* Pl. 1st RFP 6 to Boyle & Finn (Sept. 6, 2019); COB Ltr., Oct. 15, 2021 (Ex. 9 at 41). Instead, the City maintained that it satisfied discovery obligations because the officers had “testified generally about the treatment they received.” *Id.* Ms. Coleman again requested the records, *see* 2d RFP 28 to City; 2d RFP 4 to Boyle & Finn; *see also* 2d RFP 16 to City (seeking “all documents concerning your clearance to return to active or full duty”); 2d RFP 3 to Boyle & Finn (same). The City objected, asserting that the medical records were not relevant, not proportional, and/or were protected by the patient/psychotherapist privilege. COB 1st Resp. to Pl. 2d RFP 28, Jan. 21, 2022 (Ex. 9 at 87). But it then agreed to provide medical records, but not psychological records, stating the latter were “privileged.” COB Ltr., Feb. 9, 2022 (Ex. 9 at 100). To date, the City has produced only partial medical records for Boyle and Finn and agreed to produce additional records for Finn, but it has refused to produce any mental health records for either officer, including evaluations by BPD providers in connection with the officers’ return to duty. Although Boyle and Finn each met with at least one BPD provider (whether physician, psychologist, counselor, etc.), the City has not produced all responsive documents concerning those meetings, including any notes, diagnoses, certifications or findings.

D. Requests for BPD’s training materials concerning FDIT’s investigations

Given the scant guidance in the BPD’s published rules and procedures concerning FDIT investigations of officer-involved shootings, Ms. Coleman requested the BPD’s training materials concerning FDIT investigations. *See* Pl. 2d RFP 19 to COB (outlining specific trainings referenced by deponent). The City declined to provide those materials, stating that such training is not relevant, *see* City Resp. to 2d RFP 19 (Jan. 21, 2022), even though it was FDIT investigators who conducted the BPD’s primary investigation of the Coleman shooting.

LEGAL STANDARD

“[T]he purpose of pretrial discovery is to make trial less a game of blindman’s bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent.” *Macaulay v. Anas*, 321 F.3d 45, 53 (1st Cir. 2003), quoting *United States v. Procter & Gamble Co.*, 356 U.S. 677, 682 (1958). Accordingly, the “scope of discovery is broad, and to be discoverable, information need only appear to be reasonably calculated to lead to the discovery of admissible evidence.” *Remexcel Managerial Consultants, Inc. v. Arlequin*, 583 F.3d 45, 52 (1st Cir. 2009) (citations omitted); Fed. R. Civ. P. 26(b)(1). “As a general matter, relevancy must be broadly construed at the discovery stage such that information is discoverable if there is any possibility it might be relevant to the subject matter of the action.” *E.E.O.C. v. Electro-Term, Inc.*, 167 F.R.D. 344, 346 (D. Mass. 1996). The disputed discovery requests here easily meet this low threshold.

ARGUMENT

I. The City should produce an adequately prepared witness who can answer questions pursuant to Fed. R. Civ. P. 30(b)(6) concerning the BPD’s investigation of and response to the Coleman shooting.

Pursuant to Fed. R. Civ. P. 30(b)(6), the City is required to produce a witness (or witnesses) who are adequately knowledgeable and adequately prepared to “give knowledgeable and binding answers” for the City as a defendant in this case. *Calzaturificio S.C.A.R.P.A., v. Fabiano Shoe Co.*, 201 F.R.D. 33, 36 (D. Mass. 2001) (Wolf, J.). Thus, the City’s designee(s) must become familiar with the relevant materials and undertake to discover facts that are “clearly known to *someone* in the organization.” *FDIC v. Butcher*, 116 F.R.D. 196 (E.D. Tenn. 1986); see also *Calzaturificio.*, 201 F.R.D. at 37 (designees should “review prior fact witness deposition testimony as well as documents and deposition exhibits”).

If its designated witness is unable to answer questions, the City has a “duty to substitute an appropriate deponent.” *Alexander v. FBI*, 186 F.R.D. 137 (D.D.C. 1998). “The failure to produce a

Rule 30(b)(6) designee who is adequately educated and prepared to testify on designated topics to bind the entity amounts to a nonappearance, which could [] warrant the imposition of sanctions.” *Ballentine v. Las Vegas Metro. Police Dep’t*, No. 2:14-cv-01584-APG-GWF, 2016 U.S. Dist. LEXIS 62362, at *16 (D. Nev. May 9, 2016); see *Int’l Ass’n of Machinists & Aero. Workers v. Werner-Matsuda*, 390 F. Supp. 2d 479, 2005 U.S. Dist. LEXIS 20271 (D. Md. 2005) (awarding attorney’s fees to deposing party under Rule 37(d) where defendant union failed to meet its obligation when it produced two deposition witnesses who had no knowledge of corporation’s positions or activities, and witnesses had not been prepared to testify).⁷

As demonstrated by the inadequate answers summarized above, with witness after witness the City failed to meet its discovery obligations. For example, none of the City’s designated witnesses could answer the basic, critical question whether the BPD’s investigation(s) of the Coleman shooting found any evidence that Boyle and Finn had attempted to de-escalate the situation with Terrence before fatally shooting him. See Sullivan T.11-12 (“I have no idea”); Walcott T.16-19 (Ex. 13) (attorney explanation that the witness would not know if the officers were asked about de-escalation).⁸

Nor does the City’s cramped reading of the topic “BPD FDIT and its investigations,” Ex. 7 Topic 7, excuse its failure to produce a knowledgeable witness who could answer questions about

⁷ Ms. Coleman does not seek sanctions at this juncture.

⁸ Ms. Coleman also complained that Pratt – the City’s designee to answer questions about the BPD’s response to and investigation of the Coleman shooting – could not answer questions about the IA investigation. See Pl. Ltr. to COB, July 14, 2021 (Ex. 9 at 20-21). The City responded that Walcott, not Pratt, was designated to speak about IA. See COB Ltr., Sept. 29, 2021 at 2 (Ex. 9 at 32-33). But Walcott was equally unprepared to testify on the City’s behalf, insisting that any IA investigation was “not [his] responsibility.” See, e.g., Walcott T. 25-26, 29 (Q. Did [IA]... ever ask to see these officers’ telephones?... A. I don’t know. Q. Did you ever ask the officers if they could have handled the situation differently? A. I never spoke to the officers. Q. Why not? A. Because that’s not my responsibility).

the BPD's investigation of and response to the Coleman shooting. *See* Sullivan T.12-13. As a matter of common sense, deposition topics must be understood to include the specified subject in the context of the underlying case. There was no need for Ms. Coleman to include a boilerplate locution — “generally and as it relates to this particular case” — in each listed topic, and its absence does not permit the City to interpret the topics as if divorced from the case.

The City should be ordered to produce an adequately prepared witness who can answer questions pursuant to Fed. R. Civ. P. 30(b)(6) concerning the BPD's investigation of and response to the Coleman shooting, including but not limited to the FDIT investigation.

II. Defendants should produce all requested documents concerning the BPD's decisions that Boyle and Finn were “fit” to return to duty and to re-issue firearms to the officers, and, if necessary, Defendants should be required to answer additional deposition questions about those documents.

The Defendants allege that Boyle was forced to fatally shoot Terrence because Terrence, wielding a knife, posed such an immediate, overwhelming physical threat that Boyle shot him in defense of either himself, his partner or the EMTs. In their depositions, Boyle and Finn testified that they suffered physical and psychological injuries from this incident and were “out” on medical leave for months. Their testimony, however, is inconsistent with the BPD's actions. Only days after Terrence was shot and killed, the BPD decided that the officers were physically and psychologically “fit” to return to duty and to be re-issued firearms. *See* Ex. 1. Although these issues are central to the case, Defendants have refused to produce all responsive documents concerning the BPD's rapid decisions to clear Boyle and Finn to as fit to return to duty and to be issued replacement firearms.

The only document the City has produced concerning the re-issuance of firearms to Boyle and Finn, Exhibit 1 (produced on January 21, 2022), raises more questions than it can answer. At minimum, each page of Exhibit 1 refers to other materials, which the City has neither produced nor logged. And because of the late disclosure of these non-privileged, responsive documents, Ms.

Coleman was denied an opportunity to ask Boyle, Finn, Evans, or the City's Rule 30(b)(6) designees about them. For example, on the "Re-issuance of Firearm" forms:

- The BPD Chief of Administration & Technology asserted that "the above officer has passed a physical/medical and/or psychological exam, and may carry a firearm without restrictions (see attached sheet)," but City has not produced any "attached sheet[s]," and Ms. Coleman neither received nor was able to ask witnesses about the referenced "physical/medical and/or psychological exam[s]"; and
- The Chief of the Bureau of Professional Standards (of which IA is the main subdivision), on each page, attests s/he has "review[ed] IAD records and other information supplied to me," but the City has not produced those "IAD records" and "other information," and Ms. Coleman was not able to question witnesses about them.

Ex. 1. In addition, to date, the City has failed to produce documents concerning the issuance of specific firearms to Finn and Boyle. One would expect such documents to exist and to identify, for instance, the serial number of the weapon, the date and place of issuance, and a signature from the recipient. *Cf., e.g.,* Finn T.250 ("There's a logbook of every firearm that moves in and out of there. It would have been signed out at the range").

The requested documents concerning BPD's decisions that Boyle and Finn were fit to return to duty and receive replacement firearms, only days after the fatal shooting, are discoverable for several reasons. First, the documents tend to show the culture of impunity that led to the fatal shooting and colored the investigation of it. It is relevant that, by word and deed, the City (and BPD) communicates to officers, including Boyle and Finn, that they will not be held accountable for shooting and killing an individual whom they have sworn to protect and serve, such as Terrence, a person living with mental illness who needed medical treatment. It is similarly relevant that, following direct intervention by the police union, the City rushed to clear Boyle and Finn to receive firearms and issued those firearms. Finally, it is relevant that while these critical decisions were being made about Boyle and Finn, only days after Terrence died, the FDIT delayed interviewing the

officers on the record, until they had numerous opportunities to talk with each other, the police union, and their common counsel, even as investigators had insisted on questioning Ms. Coleman and her minor grandchildren on the night of the incident.

Second, the BPD's actions after the Coleman shooting are relevant to show the City's municipal liability for the officers' wrongdoing. Exhibit 1 indicates that, even before even a preliminary investigation had been completed, Evans effectively concluded that Boyle and Finn had done nothing wrong and that, as a result, they were fit to return to work and receive new firearms. The lack of any meaningful investigation – and the evidence of collusion within the BPD to cover-up the wrongdoing – evidences a “pattern of tacitly approving the use of excessive force.” *Beck v. City of Pittsburgh*, 89 F.3d 966, 972 (3d Cir. 1996) (finding the lack of an investigation into a complaint subsequent to the incident at issue in the case was relevant on this basis). By deciding, within days of the shooting, that the officers were physically and psychologically “fit,” the City ratified their conduct. *See City of St. Louis v. Praprotnik*, 485 U.S. 112, 127 (1988) (plurality opinion stating, “[i]f the authorized policymakers approve a subordinate’s decision and the basis for it, their ratification would be chargeable to the municipality”); *see also Santibanes v. City of Tomball*, 654 F. Supp. 2d 593, 611 (S.D. Tex. 2009) (“liability may also occur when the municipality’s policymakers condone or otherwise adopt the creation of a custom by knowingly ratifying the illegal or unconstitutional actions of subordinate, non-policymaking employees”).

Third, the requested discovery is relevant to establishing Evans' liability under § 1983 (Count 4) and for the tort of intentional infliction of emotional distress (Count 11). Evans' communications with Rose, the BPPA-driven process leading to the re-issuance of firearms, and any misrepresentations in the re-issuance documents are relevant to evaluating both the egregiousness of Evans' conduct and the extent to which his conduct reflects his and the City's approval and adoption of the officers' actions. *See, e.g., Ramirez-Lliveras v. Rivera-Merced*, 759 F.3d 10, 26 (1st Cir.

2014) (supervisor’s action or inaction may be causally related to subordinate’s misconduct if it amounts to “tacit approval of, acquiescence in, or purposeful disregard of, rights-violating conduct” (internal quotation marks and citations omitted)); *Chamberlain v. City of White Plains*, 960 F.3d 100, 114 (2d Cir. 2020) (supervisors may be liable under § 1983 for “grossly negligent supervision of subordinates who committed a [constitutional] violation”); *Howell v. Enter. Publ’g Co., LLC*, 455 Mass. 641, 672 (2010) (outlining elements of tort of IIED including conduct that was “extreme and outrageous” and an intent by the actor to inflict emotional distress).

Fourth, as discussed further below, the documents are relevant to the officers’ credibility regarding their account of the events that supposedly transpired in the foyer of 245 Shawmut Avenue and their “justification” for shooting and killing Terrence.

Lastly, the rapid re-issuance of new firearms to Boyle and Finn on November 2, 2016, may have been unlawful. The officers were on leave; the FDIT had taken custody of their original firearms in connection with its investigation; and no finding had cleared them of wrongdoing. *See* Boyle T.123-24; Finn T.83-84 (“I think it was a phone call and they said, you know, ‘Don’t come to work. You are going to be out until this process goes through’... So, after the incident at Shawmut Ave, ... I did not report to work”); *id.* 88 (testifying that Finn returned on December 7 and Boyle “maybe two weeks” later). Under Massachusetts law, as civilians, neither Boyle nor Finn was licensed to carry a firearm. To the extent that state law did not authorize them to possess weapons as BPD officers, while on leave pending the investigation of the Coleman shooting, the re-issuance of new weapons may have been unlawful. *See, e.g.*, M.G.L. c. 269 §10(h). The records that Ms. Coleman has requested, including LTC applications, will show Boyle and Finn were not licensed, as of November 2, and they may also contain statements about the reasons the officers sought LTCs.

To the extent that Ms. Coleman has been denied a meaningful opportunity to depose Boyle, Finn, Evans, and/or the City’s witness(es) due to the Defendants’ belated production of additional,

responsive documents about the BPD's decision to return Boyle and Evans to work, Defendants should be required to appear for further depositions and to answer additional questions about those documents and any related issues in this case.

III. Defendants should produce Boyle's and Finn's medical and psychological records, including evaluations in connection with their return to duty.

The officers' medical and mental health records related to or referring to the Coleman shooting and any injuries the officers claim to have suffered are plainly relevant. The City's refusal to produce the documents, and its failure to provide a legitimate basis for the refusal, are improper. Indeed, the City delayed the production of these relevant materials for years, producing only partial records for the first time in January and February 2022.

First and foremost, the records are relevant to the officers' credibility concerning their account of the violent altercation that supposedly transpired in the foyer of 245 Shawmut Avenue, including a key factual dispute about whether or not Terrence possessed a knife and threatened anyone with it. Boyle and Finn testified that, after they rushed into the foyer to protect the EMTs, they were injured in a life-threatening melee with Terrence. They also contend that, as a result of their injuries, they unable to work for one or two months following the incident. *See* Finn T.44 (discussing knee injury); Boyle Tr. 119-120 (discussing knee and back injuries). Yet Exhibit 1 indicates that BPD's Occupational Health found that Boyle and Finn were physically and mentally fit to work, as of November 2. If the officers were not seriously injured, either physically or mentally, as Exhibit 1 suggests, that fact would tend to undermine their assertions about any violent altercation with Terrence, and further suggests they went on extended paid medical leave under false pretenses. Moreover, the evaluations by the BPD treatment provider(s), which were required before they returned to work, were temporally proximate to the shooting and relate directly to the events at issue in this case. Finally, the records are readily available to the City; their collection poses no significant burden, and the City has proffered no suitable basis for withholding them.

The City's blanket "privilege" objection, unaccompanied by explanation or a privilege log, is meritless. Only recently, the City produced some of the officers' medical records, but it has continued to withhold all psychological records, including those related to the BDP's decision to allow Boyle and Finn to return to duty, baldly asserting that those records are "privileged." *See* COB Ltr., Feb. 9, 2022 (Ex. 9 at 100). This is unacceptable. The Local Rules require that, "[w]hen a claim of privilege is asserted in objection to any document request...the attorney asserting the privilege **shall** identify in the objection the nature of the privilege that is being claimed." D. Mass. L.R. 34.1(e) (emphasis added). Moreover, as the party refusing production, the City bears the burden of showing the claimed privilege applies. *See In re Grand Jury Proceedings*, 183 F.3d 71, 73 (1st Cir. 1999). It has not, and cannot, meet that burden. The psychotherapist-patient privilege does not apply here, as discussed below, and there is no federal physician-patient privilege, *Stark v. Hartt Transp. Sys.*, No. 2:12-cv-195-NT, 2013 U.S. Dist. LEXIS 11220, at *20 (D. Me. Jan. 28, 2013).

The psychotherapist-patient privilege applies to "confidential communications between a licensed psychotherapist and her patients in the course of diagnosis or treatment." *Jaffee v. Redmond*, 518 U.S. 1, 15 (1996); *see In re Intuniv Antitrust Litig.*, No. 16-cv-12396-ADB, 2018 U.S. Dist. LEXIS 210817, at *7 (D. Mass. Dec. 14, 2018). The requested documents were created in connection with the BPD's evaluation of whether Boyle and Finn were "fit" to return to duty, as an employment matter, not in the course of diagnosis or treatment by a mental health professional. Thus, the psychotherapist-patient privilege does not apply to the return-to-duty clearance documents.

Second, Defendants have not provided sufficient information to determine which medical or mental health records involved psychotherapists, as opposed to other BPD employees or contractors, because they failed to log the withheld records, beyond asserting an objection to producing "any medical records concerning their psychological fitness for duty with the Department's physician." COB Ltr. Feb. 9, 2022 at 1. The basic information to be logged for each

withheld document—the fact of a treatment visit, name of the provider, date of service, and even diagnosis or nature of treatment, if any—is not privileged. *See, e.g., In re Intuniv*, 2018 U.S. Dist. LEXIS 210817, at *7 (privilege does not apply to “facts regarding the occurrence of psychotherapy, such as the name of the psychotherapist or dates and costs of treatment, or other non-communicative information such as the nature of any diagnosis or treatment for a mental health condition) (internal quotation marks and citations omitted); *Silvestri v. Smith*, No. 14-13137-FDS, 2016 U.S. Dist. LEXIS 23764, at *7 (D. Mass. Feb. 26, 2016) (Dein, M.J.) (same).

In any event, the psychotherapist-patient privilege is not absolute. *See Kronenberg v. Baker & McKenzie LLP*, 747 F. Supp. 2d 983, 986 (N.D. Ill. 2010) (a party waives psychotherapist-patient privilege when he “puts his mental state in issue through some action of his own designed to advance his interests in the case”); *cf. Redmond*, 518 U.S. at 18 (declining to determine the scope of the privilege as “it was neither necessary nor feasible to delineate [the privilege’s] full contours in a way that would govern all conceivable future questions in this area”). Here, in their defense of this case, Boyle and Finn have asserted that they were forced to shoot Terrence, because he was threatening them with a knife. They testified about the psychological injuries (*e.g.*, “trauma,” “stress,” and “nerves”) that they allegedly sustained and the treatment that they subsequently received, released selected medical records, and testified that they were cleared by BPD mental health providers as physically and psychologically “fit” to return to duty. Exhibit 1 further contains an attestation by BPD Occupational Health that each officer was cleared to receive weapons after a “medical and/or psychological exam.”

For these reasons, all records concerning the BPD’s evaluation of Boyle and Finn’s fitness to return to duty should be produced in full as no legitimate claim of privilege attaches to them. With regard to psychological records from outside treatment providers, Defendants should be ordered to identify those communicative records they claim are privileged and to provide a log of all existing

records that includes the name of the treatment provider(s), the date(s) and place(s) of service, and any other relevant non-communicative information, so that Ms. Coleman (and if necessary, this Court), can evaluate the claim of privilege.

IV. Defendants should produce the BPD's FDIT training materials.

The requested FDIT training materials should be provided. *See* Pl. 2d RFP 19 to COB. The BPD's training is relevant to evaluate whether the FDIT's investigation in this case deviated from the prescribed procedures and/or whether the prescribed procedures themselves are deficient and foster impunity, lack of accountability, and willful blindness to the BPD's organizational need for learning and growth, especially after tragic incidents such as the Coleman shooting. In light of the testimony demonstrating few hard and fast rules concerning how to conduct any kind of investigation of officer-involved shootings, whether by the FDIT or IA, the BPD's training materials should be provided.

CONCLUSION

For the reasons set forth here, the Court should grant Plaintiff's Motion to Compel and order Defendants to respond, within 14 days, to Plaintiff's outstanding discovery requests.

Respectfully submitted,

HOPE COLEMAN

by her attorneys,

/s/ Amy Barsky

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Dated: March 18, 2022

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on March 18, 2022.

/s/ Amy Barsky