

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

SUPERIOR COURT
C.A. NO. 2483CV00692PAUL O'KEEFE¹, et al²*Plaintiffs,*

v.

C&C HOSPITALITY, LLC, d/b/a C.F.
MCCARTHY'S, et al³*Defendants.***ORDER RELATIVE TO MOTION TO COMPEL
MASSACHUSETTS STATE POLICE TO PRODUCE DOCUMENTS**

A review of the written submissions reveals that the remaining issue relates to 473 emails the non-party witness claims are subject to protection based on "privilege/attorney work-product".

Ms. Read suggests that the non-party Massachusetts State Police (MSP) has waived any objections as well as the right to make any privilege claim for two reasons.

First, Ms. Read contends that because the MSP did not respond within ten days of the subpoena and did not provide information enabling her to assess the claim of privilege, the MSP has waived any objection and should produce all the documents. Such a drastic result is unwarranted particularly where the discovery response is expected to be voluminous and complicated.

Second, Ms. Read contends that the emails can no longer be privileged because the criminal prosecution is over. I do not agree. The work product nature of documents does not cease to exist after the litigation for which the documents were created has ended. See, e.g., *Commonwealth v. Fall River Motor Sales, Inc.*, 409 Mass. 302, 309 (1991) (requested internal documents created by Attorney General's Office on prior related litigation would not be discoverable in accordance with work product doctrine); *Cambridge Place Inv. Mgmt., Inc. v. Morgan Stanley & Co.*, No. CIV.A. 10-2741-BLS1, 2014 WL 840988 at *2-*4 (Mass. Super. 2014) (Billings, J.) (document prepared by attorney for previous litigation was protected work product); *Stamps v. Town of Framingham*, 38 F.Supp.3d 134, 143-146 (D. Mass. 2014) (acknowledging that while work product protection does not extend under Rule 26, it may still exist based on the purposes underlying the doctrine). I am not persuaded by Ms. Read's reliance on *Ward v. Peabody*, 380 Mass. 805, 817 (1980).

¹ Individually and as Personal Representative of the Estate of John Joseph O'Keefe III

² John O'Keefe II, and Margaret O'Keefe, Individually and as Grandparent/Guardian of Kayley Furbush.

³ G&S Hospitality, LLC d/b/a C.F. McCarthy's, Waterfall Bar & Grill, Ltd. d/b/a Waterfall Bar & Grill, and Karen Read.

Ms. Read argues that even if the emails are privileged work product, she is entitled to them in discovery because under Rule 26 (b)(3), she has a “substantial need of the materials in the preparation of [her] case and . . . [s]he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.” That might ultimately be the case, but the record before me does not provide enough information to assess the documents and draw such a conclusion. As a result, I am issuing the following order.

The MSP is to produce a privilege log, as it should have a long time ago.⁴ Such privilege log is to be produced on or before 3:00 p.m. on July 3, 2026.⁵

Mark C. Gildea

June 26, 2026

Mark C. Gildea
Justice of the Superior Court

⁴ It is hard for me to get too worked up about the MSP’s failure to produce a privilege log in this instance given, in another discovery dispute in this case, the plaintiffs claim Ms. Read has not produced a privilege log in response to a request for production served in October 2025. Ms. Read did not dispute the claim but rather points to a Rule 9C Conference not yet occurring to talk about the timing of when Ms. Read will give the plaintiffs the privilege log.

⁵ I am hopeful that the process will reduce the number of emails that it may be necessary for the court to review in camera.