

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS

SUPERIOR COURT DEPARTMENT

PAUL O'KEEFE, as Personal
Representative of the Estate of JOHN
JOSEPH O'KEEFE III, PAUL O'KEEFE,
Individually, JOHN O'KEEFE II,
MARGARET O'KEEFE, and MARGARET
O'KEEFE as Grandparent/
Guardian of KAYLEY FURBUSH,

Plaintiffs,

v.

C&C HOSPITALITY, LLC d/b/a C.F.
MCCARTHY'S, G&S HOSPITALITY,
LLC d/b/a C.F. MCCARTHY'S,
WATERFALL BAR & GRILL, LTD d/b/a
WATERFALL BAR & GRILL, and
KAREN READ,

Defendants.

Civil Action No. 2483cv00692

**DEFENDANT KAREN READ'S REPLY IN SUPPORT OF MOTION TO COMPEL THE
MASSACHUSETTS STATE POLICE TO PRODUCE DOCUMENTS
PURSUANT TO NON-PARTY SUBPOENA**

After Defendant Karen Read ("Read") served her Motion to Compel the Massachusetts State Police ("MSP") to produce documents, MSP agreed to produce the four categories of documents it had previously withheld as non-responsive. But MSP still refuses to produce any of the 473 emails MSP claims are subject to protection based on "privilege/attorney work-product."

MSP's Opposition entirely ignores Read's explanation, supported by extensive case law, that, even if MSP had properly asserted the objection it now stands on, (1) not every communication between MSP and the NDAO is per se subject to work product protection; and

(2) communications between MSP and the Norfolk District Attorney's Office concerning a criminal case that ended a year ago are not protected by the work product doctrine.

However, the Court need not – and cannot – even evaluate the substance of this objection because MSP has never provided – to either Read or the Court – any detail regarding the materials it claims are protected beyond the conclusory statement that “[t]he 473 emails withheld from production in response to the non-party subpoena to MSP constitute internal communications and notes containing attorney work product and/or mental impressions.” Opp., p. 3. That is wholly insufficient to support a work product claim. A third party subpoena recipient must make any privilege claim “expressly and provide information that will enable the parties to assess the claim.” Mass. R. Civ. P. 45(d)(1), 45(f)(2)(A). MSP has the burden of establishing that the protection applies to the specific documents in question. *Attorney General v. Facebook, Inc.*, 487 Mass. 109, 121 (2021). MSP has plainly failed to do so, nearly a year after the subpoena in question was served, and has thus waived any protections that may have applied. *See Santiago v. Lafferty*, 2014 U.S. Dist. LEXIS 19793, at *12-*13 (D. Mass. Feb. 19, 2015) (holding that Essex and Middlesex District Attorneys’ Offices had waived privilege claims by – among other things – “not provid[ing] any information about the withheld documents that would have allowed Plaintiffs to assess the merits of [their] claims”).

MSP also never served a Rule 45(d) objection to Read’s subpoena stating any basis for withholding anything, including work product materials. It has, therefore, waived such objections on this basis as well. *See Lease Resolution Corp. v. Aut-A-Wash, Inc.*, No. 92-1767, 2021 Mass. Super LEXIS 2 at *3-4 (Jan. 8, 2001) (failure to timely object to discovery requests constitutes waiver of objections); *see also In re Grand Jury Subpoena*, 274 F.3d 563, 576 (1st Cir. 2001) (explaining that “party that fails to submit a privilege log is deemed to waive” claims

or privilege or work product protection.); *Pons v. Walter Kidde Portable Equip. Inc.*, No. 2025 U.S. Dist. LEXIS 93919 at *6 (D. Mass. May 16, 2025) (“Failure to timely and properly object to the subpoena generally constitutes a waiver of all grounds for objection, including privilege.”); *Burroughs Corp. v. Dataware Sources, Inc.*, No. 86-608, 1987 U.S. Dist. LEXIS 10334 at *2 (D. Mass. Apr. 28, 1987) (“When objections [to a subpoena] are not filed within the time provided by the Rule, the objections are waived.”).

The Court should allow Read’s Motion and order MSP to produce all documents it has thus far withheld based on “privilege/attorney work-product.”

Respectfully submitted,

KAREN READ,

By her attorneys,

/s/ Aaron D. Rosenberg

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Dated: June 10, 2026

CERTIFICATE OF SERVICE

I certify that a copy of this document was served on all counsel of record by email on June 10, 2026.

/s/ Aaron D. Rosenberg

Aaron D. Rosenberg