

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MOHAMED FORNAH,	:	CIVIL ACTION
Plaintiff	:	
vs.	:	
	:	NO.: 2:08-CV-01262
THE CITY OF PHILADELPHIA, et al.,	:	
Defendants	:	Oral Argument Requested

ORDER

AND NOW, this _____ day of _____, 2008, upon consideration of Plaintiff's Motion to Strike Objections and Answers of Defendant, City of Philadelphia to Plaintiff's Interrogatories and Request For Production of Documents, and Defendant City of Philadelphia's Response thereto, it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED** and Defendant's Response and Objections to Plaintiff's Interrogatories and Request for Production of Documents are Stricken. Defendant City of Philadelphia is **ORDERED** to answer Plaintiff's Interrogatories and Request for Production of Document within ten (10) days hence or be subject to sanctions upon further application to the Court.

J.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MOHAMED FORNAH, Plaintiff	:	CIVIL ACTION
vs.	:	
THE CITY OF PHILADELPHIA, et al., Defendants	:	NO.: 2:08-CV-01262
	:	Oral Argument Requested

**PLAINTIFF’S MOTION TO STRIKE OBJECTIONS AND ANSWERS OF DEFENDANT
CITY OF PHILADELPHIA AND TO
COMPEL COMPLETE RESPONSES TO INTERROGATORIES AND PRODUCTION
OF DOCUMENTS**

Plaintiff moves this Court to Strike Objections and Answers of Defendant City of Philadelphia to Plaintiff’s Interrogatories and Request for Production of Documents dated August 20, 2008, and in support thereof avers:

1. On August 20, 2008, Plaintiff’s counsel served Interrogatories and Request for Production of Documents upon Defendant’s counsel by first class mail, attached hereto as Exhibit “A.”
2. On October 22, 2008 Plaintiff filed a motion to compel said answers to Plaintiff’s discovery requests.
3. On October 24, 2008 Defendant City responded to Plaintiff’s motion to compel by informing the Court that Plaintiff’s discovery requests had been responded to and suggested that Plaintiff’s motion to compel was “moot.”
4. On October 24, 2008, Defendant City objected to and responded in part to Plaintiff’s Interrogatories and Request for Production of Documents, attached hereto as Exhibit “B.”
5. Defendants’ responses to Plaintiff’s Interrogatories and Request for Production of Documents are legally insufficient and must be stricken; moreover, Defendant City’s statement that Plaintiff’s discovery requests are “moot’ is premature and inaccurate.
6. Plaintiff has been prejudiced by Defendant’s failure to properly respond to his legitimate discovery requests.
7. Pursuant to the Local Rule 7.1, moving Plaintiff has made reasonable efforts to resolve this dispute with Defendant City prior to filing this motion.

WHEREFORE, Plaintiff, Mohamed Fornah prays this Honorable Court to enter the attached Order in accordance with Federal Rules of Civil Procedure 37(a) and Local Rule 7.1 and 26.1, compelling Defendant City to respond fully and completely to Plaintiff's Interrogatories and Request for Production of Documents of August 20, 2008 and striking Defendant City's answers and objections to same.

BY: _____
STUART A. CARPEY, ESQUIRE
ATTORNEY FOR PLAINTIFF

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MOHAMED FORNAH, Plaintiff	:	CIVIL ACTION
vs.	:	
	:	
	:	NO.: 2:08-CV-01262
THE CITY OF PHILADELPHIA, et al., Defendants	:	Oral Argument Requested

**PLAINTIFF’S MEMORANDUM OF LAW IN SUPPORT OF MOTION TO STRIKE
ANSWERS AND OBJECTIONS AND COMPEL COMPLETE RESPONSES TO
PLAINTIFF’S INTERROGATORIES AND REQUEST FO PRODUCTION OF
DOCUMENTS**

This cause of action stems from Defendants City and City employees named in the complaint placing Plaintiff Mohamed Fornah in a solitary confinement prison cell with another prisoner, one Antwon Williams, who had a known history of psychiatric problems and violence. Mr. Williams viciously attacked, beat, choked, sodomized and raped plaintiff to the point of near-death. The rape was so forceful that Plaintiff involuntarily defecated. Mr. Williams forced Plaintiff’s feces into Plaintiff’s throat, to the point where a large portion of the feces entered his lungs, causing a life-threatening infection. Defendants trapped Plaintiff in that cell and failed to intervene to stop this torture, despite Defendants’ knowledge of Williams’ violent history and temperament. Plaintiff’s theory of liability is a 1983 action for violation of his constitutional rights.

It is Plaintiff’s contention that Defendant City and its employees had the requisite knowledge of the psychiatric condition of the inmate who raped and beat the Plaintiff, and therefore failed to protect the Plaintiff. Plaintiff’s discovery requests are designed to seek written answers and documents which go to the core of Defendant City’s knowledge of the rapist’s psychiatric condition, to the classification of inmates, and the reasons why Mr. Fornah was placed in the same cell as Williams and allowed to remain there when City employees and guards knew of Williams predisposed condition to attack Plaintiff based upon Williams’ known psychiatric history.

Fed.R.Civ. P. 26(b) provides that discovery is appropriate to “any matter, not privileged, which is relevant to the claim or defense of the party seeking discovery, or to the claim or defense of any other party... the information sought need not be admissible at trial if the information

sought appears reasonably calculated to lead to the discovery of admissible evidence.”

Under Fed.R.Civ.P. 26(b) relevancy for discovery purposes is broadly defined as “any matter that bears on, any issue that is or may be in the case.” Oppenheimer Fund, Inc. v. Sanders, 437 U.S. 340, 351 (1978).

In the instant matter, the Defendant City has failed to establish a sound basis for its objections. Plaintiff has a right under Fed.R.Civ.P. 26 to seek discovery regarding all of the issues which form the basis of his cause of action. Surely the interrogatories and documents at issue about which Defendant City is avoiding any meaningful discovery responses fit into the category of material which the Federal courts and specifically the Eastern District have found to be discoverable.

Below are listed the Interrogatories and Request for Production of Documents at issue and Defendant City’s responses which Plaintiff contends are wholly inadequate. The City’s response to each discovery request is italicized.

Interrogatories

1. Identify any and all individuals who performed or were involved in any investigation on your behalf regarding the beating, assault and rape of Mohamed Fornah and/or the circumstances that led to the beating assault and rape of Mohamed Fornah in the Curran Fromhold Correctional Facility. For all such individuals, please identify the precise nature of their involvement in such investigation. *Response: Please see the Prisons Investigation, produced herewith.*

This response is inadequate because the document produced did not identify any individuals who were involved in the investigation, nor did it identify the precise nature of the individual(s) involvement. As such, this response must be stricken because it is non-responsive.

2. Identify any and all individuals who had contact with Mohamed Fornah during his incarceration and detention at the Curran Fromhold Correctional Facility. In identifying these individuals, please identify whether or not they were inmates or individuals working for or on behalf of you. Please also identify the dates, places and times of their contact with Mohamed Fornah. *Response: Objection. This interrogatory is overbroad, and seeks information not relevant to the issues in this lawsuit.*

This response is inadequate on its face, and is not up to the Defendant City to determine what is relevant in Plaintiff's discovery requests. The interrogatory speaks for itself and places no burden on Defendant City to properly answer the interrogatory.

4. Identify all inmates and/or detainees who are known to have had contact with Mohamed Fornah during the course of Mr. Fornah's detention. Please identify any and all individuals by alias, prison tracking or other number. For each such individual, please list the reason for their detention and their present whereabouts. *Response: Objection. This interrogatory is overbroad, and seeks information not relevant to the issues in this lawsuit.*

5. Identify all inmates and/or detainees who are known to have had contact with Antwon Williams during the course of Mr. Williams's detention. Please identify any and all individuals by alias, prison tracking or other number. For each such individual, please list the reason for their detention and their present whereabouts. *Response: Objection. This interrogatory is overbroad, and seeks information not relevant to the issues in this lawsuit.*

It is absolutely relevant for Plaintiff to seek discovery pertaining to the contact other inmates and/or detainees may have had with Williams during the time of his detention or during Mr. Fornah's detention. Defendant City has access to these individuals who were witnesses to the events which are the subject of this lawsuit. Plaintiff is seeking information such as statements that may have been made by Williams about his intention towards Plaintiff or other information which provided Defendant City with the requisite knowledge needed to have segregated Williams from Plaintiff. Defendant City's attempt to paint a picture with broad brush strokes that Plaintiff's discovery into this particular area is not relevant is simply an attempt to pull the proverbial wool over the eyes of the Court. Defendant City cannot be allowed to provide piecemeal discovery responses to Plaintiff as it sees fit, for the sole purpose of avoiding providing relevant discoverable information to Plaintiff.

6. Identify the time that Antwon Williams began to beat, assault and rape Mohamed Fornah. *Response: C/O Shawn Jay first heard screaming from so #5 around 6:20 p.m.*

This answer is nonresponsive. If Defendant City does not know the exact time it needs to say so.

8. Identify any and all steps and measures taken to protect Mohamed Fornah from Antwon Williams. *Response: Please see the Prisons Investigation, produced here with. Additionally, please see the CERT team video, already produced. Answering defendant reserves the right to supplement this answer through oral testimony, or otherwise.*

This response on the part of Defendant City is completely nonresponsive to the interrogatory. It does not identify any steps taken to protect Plaintiff from Williams. Moreover, if there are any additional videos other than that which has been produced, Defendant City is obligated to identify them.

9. Identify any and all past instances where Antwon Williams had assaulted someone or otherwise engaged in violent conduct while Mr. Williams was an inmate and/or detainee at the Curran Fromhold Correctional Facility, or threatened to assault someone while incarcerated there. *Response: Documents containing Antwon Williams' disciplinary history will be produced when available to answering defendant.*

Plaintiff believes and therefore avers that Defendant City is in possession, custody and control of not only the disciplinary history of Williams but also the psychiatric file of Williams both of which are relevant to Plaintiff's claims against Defendant City. In fact, the City has not denied the fact that it is possessed of these documents which are in part the crux of Plaintiff's case.

10. Identify any and all steps or measures that were taken to protect other inmates from Mr. Williams. *Response: please see the Philadelphia Prisons System Index of Policies and Procedures. Specific procedures can be produced upon request.*

Not only has the Defendant City failed to provide its System Index of Policies and Procedures, but this response is completely nonresponsive to the specific interrogatory.

14. Identify the Correction Officer(s) and/or supervisor(s) who made the decision to place Mr. Fornah in the same cell as Antwon Williams. Please also identify the reason for this placement. *Response: This information is still being ascertained. It will be provided as soon as possible.*

Simply put, the response of Defendant City is unacceptable. Defendant City makes no excuse for why the information is "still being ascertained". Rather, Defendant City is purposely delaying in providing this information.

15. Identify inmates who observed and/or heard Mr. Fornah being beaten, assaulted and raped on March 24, 2006. Please identify any and all individuals by alias, prison tracking or other number. For each such individual, please list the reason for their detention and their present whereabouts.
16. Identify the precise time that your employees patrolled and/or investigated Mr. Fornah's jail cell on March 24, 2006 for each time, please identify the individual performing the patrol/investigation. Please also identify all Correctional Officers or other employees charged with this responsibility on March 24, 2006.
17. Identify the last employee and/or Correction Officer who saw Mohamed Fornah prior to the beating, assault and rape provided the time that this individual last saw Mohamed Fornah before the beating, assault and rape.

The response of Defendant City to interrogatories numbers 15, 16 and 17 direct Plaintiff to the logs from A1 Pod 4 on March 24, 2006. The response states: *These will be produced when available.* First, the logs were never produced. Secondly, it is inexcusable that Defendant City thinks that it is acceptable to "produce the logs when they are available." Plaintiff requires the discoverable documentation now.

19. Describe when and why Antwon Williams was placed in the "rubber room" as discussed in the deposition of Correctional Officer, Damion Samuels. *Response: this information is still being ascertained. It will be provided as soon as possible.*

Again, Defendant City's response to the specific interrogatory is simply unacceptable. Plaintiff has the right to know when and why Williams was placed in the "rubber room" as described by City employees in prior deposition testimony. Defendant City is simply delaying in providing this information.

Request for Production of Documents

3. Produce any and all documents referring or relating to Antwon Williams, including but not limited to all medical, psychological and psychiatric and/or mental health records whatsoever.
4. Produce the City of Philadelphia's Prosecutor's Office entire investigative file into the beating, assault and rape of Mohamed Fornah by Antwon Williams.

The response of Defendant City to these two document requests state that the medical, psychological and/or psychiatric documents relating to Williams are not within the care and custody of Defendant City. Plaintiff vehemently disputes this and Plaintiff believes that, in fact, these

records are with in the City's custody and control. Plaintiff absolutely has the right to these documents in order to prove his case.

5. Produce a map or diagram of the Curran Fromhold Correctional Facility showing "A-1, Pod 4". In connection therewith, please identify each jail cell by number and identify which inmates were in each such cell at the time of Mohamed Fornah's beating, assault and rape and identify the cell in which Mohamed Fornah and Antwon Williams were placed. *Response: Please see the map of CFCFAI Pod 4, at which will be produced as soon as answering defendant receives it from the Prisons System.*

This response is unacceptable. There is absolutely no reason why Defendant City should not produce this document immediately. Defendant City can easily obtain the very map that it identifies from CFCF. Defendant City is purposely delaying.

17. Produce any and all documents discussed by Correctional Officer Damion Samuels and Shawn Jay at their deposition including but not limited to any training manuals, booklets or binders at any time in their possession or kept at the Curran Fromhold Correctional Facility regarding the policy and the procedures in place on March 24, 2006 for the housing and safety of inmates and including but not limited to any reports or documents discussed at the deposition of Correctional Officers Damion Samuels and Shawn Fay. *Response: Please see the training materials referred to by C/O's Jay and Samuels, which will be produced as soon as answering defendant receives them.*

Again, this response is simply unacceptable. There is no reason why Defendant City should not have these documents in its possession and should not produce them to plaintiff immediately. Defendant City offers no reason for the delay of the production of the discoverable documents.

Defendant's objections are without merit, and Defendant offers no reason for failing to properly respond to Plaintiff's legitimate discovery requests. Plaintiff has made more than a sufficient showing to overcome any relevancy objection.

By: _____
STUART A. CARPEY, ESQUIRE
ATTORNEYS FOR PLAINTIFF

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AFFIDAVIT OF STUART A. CARPEY

I, Stuart A. Carpey, Esquire, being duly sworn, do hereby state the following facts based on my personal knowledge and belief:

1. I have first hand personal knowledge of this manner set forth herein.
2. Upon receipt of Defendant's answers to Plaintiff's First Set of Interrogatories and Request for Production of Documents, dated August 20, 2008, I have both written and spoken with Defendant's counsel in the good faith attempt to resolve the discovery dispute and obtain responsive answers to discovery requests.
3. Despite this efforts, I was unable to resolve the dispute.

BY: _____
STUART A. CARPEY, ESQUIRE
ATTORNEY FOR PLAINTIFF

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CERTIFICATION OF SERVICE

TO: Jeffrey S. Simons, Esquire City of Philadelphia Law Department 1515 Arch Street, 14th Floor Philadelphia, PA 19102	Stephen Siegrist, Esquire 2 Penn Center Plaza, Suite 1100 15 th & JFK Boulevard Philadelphia, PA 19102
James Famiglio, Esquire Sproul Road at Williamsburg Drive Broomall, PA 19008	Wendi D. Barish, Esquire 2000 Market Street, 13 th Floor Philadelphia, PA 19103

I, Stuart A. Carpey, Esquire identify that I served a true and correct copy of Plaintiff's foregoing Motion to Strike upon Defendants' counsel by regular mail on this day of , 2008.

BY: _____
STUART A. CARPEY, ESQUIRE
ATTORNEY FOR PLAINTIFF