

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

BENJAMIN ESPINOSA,

Plaintiff,

v.

FILSON, et al.,

Defendants.

3:18-cv-00298-MMD-CLB

**ORDER**

11 Before the court is Plaintiff Benjamin Espinosa's ("Espinosa") motion to compel  
12 discovery from Defendants Romeo Aranas, Gloria Carpenter, James Dzurenda, Michele  
13 Ewing, Gail Holmes, Scott Mattinson, Noreen Borino, and William Reubart (collectively  
14 "Defendants").<sup>1</sup> (ECF No. 97), which Defendants opposed. (ECF No. 99.) Having  
15 considered all the above, the motion is granted, in part and denied, in part as stated  
16 below.

17 **I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

18 Espinosa is an inmate in the custody of the Nevada Department of Corrections  
19 ("NDOC"), and currently housed at the Ely State Prison ("ESP") in Ely, Nevada. (See  
20 ECF No. 76.) Proceeding *pro se*, Espinosa filed the instant civil rights action pursuant to  
21 42 U.S.C. § 1983 alleging six counts and seeking declaratory, injunctive, and monetary  
22 relief against multiple defendants for events occurring while Espinosa was incarcerated  
23 at ESP. (ECF No. 47 at 21, 23-24.)

24 The alleged events giving rise to Espinosa's case are as follows: Espinosa  
25 became depressed and suicidal following a series of tragic events occurring around the  
26 time of his incarceration and shortly thereafter. (ECF No. 47 at 7.) While incarcerated at

27  
28  

---

<sup>1</sup> As of March 11, 2020, Defendant Borino has not been served as a party in this case. (See ECF No. 104.)

1 Lovelock Correctional Center, Espinosa began mental health treatment and was  
2 prescribed anti-depressants beginning in 2014. (*Id.* at 7-8.) Prior to moving to ESP,  
3 Espinosa discontinued taking the anti-depressants because he believed he was no  
4 longer depressed. (*Id.* at 8.)

5 Upon arrival at ESP, Espinosa's depression symptoms worsened, and he was  
6 placed on suicide watch for a time, and then was moved to a mental health unit. (*Id.* at  
7 9.) Espinosa made several requests to obtain a new anti-depressant prescription from  
8 ESP medical staff, all of which were denied. (*Id.*) Espinosa was eventually removed  
9 from the mental health unit and program, which escalated his depression and irritability  
10 symptoms further. (*Id.* at 10.) Eventually, Espinosa made comments to ESP staff that he  
11 feared he might kill himself, which got him placed into the infirmary under mental health  
12 observation. (*Id.*)

13 While in the infirmary, Espinosa attempted suicide by taking all his high blood  
14 pressure medication and an entire bottle of ibuprofen, which was followed by a "mental  
15 breakdown." (*Id.* at 10-11.) Following his attempted suicide, Espinosa was ordered to be  
16 restrained by the ESP medical staff, placed in four-point restraints, strapped naked,  
17 spread-eagle, face-down, by the wrists and ankles, for nearly four hours. (*Id.* at 11.)  
18 After being restrained, Espinosa was placed into suicide isolation for a period of five  
19 days, into mental health observation for an additional three days, and then was returned  
20 into the general population. (*Id.* at 12-13.)

21 Espinosa continued to have depressive symptoms, including irritability, trouble  
22 sleeping, and emotional outbursts, and requested placement into administrative  
23 segregation, which was denied. (*Id.* at 13.) Espinosa slammed his head against a wall  
24 out of frustration, and a nearby nurse said she would make sure he was moved to  
25 administrative segregation. (*Id.*) Espinosa alleges after spending a year at ESP, making  
26 multiple requests to have his anti-depressant prescription renewed and to receive  
27 treatment for his depression, making multiple mental health visits, and attempting  
28 suicide, he has still not received necessary medical treatment. (*Id.* at 13-14.)

1 On July 24, 2018, the court entered a screening order on Espinosa's initial  
2 complaint (ECF No. 4), which allowed an Eighth Amendment conditions of confinement  
3 claim to proceed against Defendants Ewing, Holmes, and Borino, and, an Eighth  
4 Amendment deliberate indifference to serious medical needs claim to proceed against  
5 Defendants Borino, Clay, Ewing, and Holmes. (See ECF No. 3 at 9-11.)

6 On October 23, 2018, Espinosa filed a motion for leave to amend complaint. (ECF  
7 No. 25.) Defendants filed a non-opposition on January 11, 2019, instead requesting the  
8 First Amended Complaint ("FAC") be rescreened. (ECF No. 44.) The FAC asserts six  
9 causes of action, seeking declaratory and injunctive relief and monetary damages. (ECF  
10 No. 47.) The Court re-screened the FAC on May 6, 2019 (ECF No. 46), and permitted  
11 Espinosa to proceed with the following: (1) Eighth Amendment conditions of confinement  
12 claim against Defendants Ewing, Holmes, Borino, Mattinson, Reubart, Carpenter,  
13 Aranas, and John Doe; (2) Eighth Amendment deliberate indifference to serious medical  
14 needs claim against Defendants Borino, Clay, Ewing, Holmes, Filson, Mattinson,  
15 Sandoval, Carpenter, Aranas, and Reubart; (3) Nevada Constitution Article I, § 6  
16 violations against Defendants Ewing, Holmes, Borino, Mattinson, Reubart, Carpenter,  
17 Aranas, Clay, Filson, Sandoval, and John Doe; and (4) NRS Chapter 433 violations  
18 against Defendants Dzurenda, Aranas, and Filson.<sup>2</sup> (*Id.*)

19 The court entered the discovery scheduling order on July 29, 2019, which  
20 required discovery to be completed by October 28, 2019, dispositive motions to be filed  
21 by November 27, 2019, and a proposed joint pretrial order due by December 27, 2019.  
22 (ECF No. 70.) Both Espinosa and Defendants filed motions to extend discovery on  
23 October 7, 2019. (ECF Nos. 83, 86.) The court granted Defendants' and Espinosa's  
24 motions to extend discovery (ECF Nos. 83, 86), with discovery due December 30, 2019,  
25 dispositive motions due January 29, 2020, and a joint pretrial order due February 28,  
26 2020. (ECF No. 92.)

---

27  
28 <sup>2</sup> The claim related to NRS Chapter 433 violations has since been dismissed. (See  
ECF Nos. 103, 105.)

1 Presently before the court is a motion related to a discovery dispute between  
2 Espinosa and Defendants. (ECF Nos. 97, 99.) Specifically, on July 30, 2019, Espinosa  
3 mailed Defendants a request for production of documents (“RFPD”). (ECF No. 97 at 1.)  
4 Espinosa received Defendants’ response to the RFPD on or about September 29, 2019.  
5 (*Id.*) On October 8, 2019, Espinosa sent a “meet and confer” letter pursuant to LR  
6 26(f)(1) to Defendants to resolve discovery issues, to which Defendants responded on  
7 November 29, 2019. (*Id.* at 1-2.) The parties could not informally resolve their dispute,  
8 and Espinosa filed the current motion to compel.

## 9 **II. LEGAL STANDARDS**

10 “[B]road discretion is vested in the trial court to permit or deny discovery.” *Hallett*  
11 *v. Morgan*, 296 F.3d 732, 751 (9th Cir. 2002). The “scope of discovery” encompasses  
12 “any nonprivileged matter that is relevant to any party’s claim or defense and  
13 proportional to the needs of the case[.]” Fed. R. Civ. P. 26(b)(1). Relevance is to be  
14 construed broadly to include “any matter that bears on, or that reasonably could lead to  
15 other matter that could bear on” any party’s claim or defense. *Oppenheimer Fund, Inc. v.*  
16 *Sanders*, 437 U.S. 340, 351 (1978) (citation omitted). In analyzing proportionality, the  
17 Court must consider the need for the information sought based upon “the importance of  
18 the issues at stake in the action, the amount in controversy, the parties’ relative access  
19 to relevant information, the parties’ resources, the importance of discovery in resolving  
20 the issues, and whether the burden or expense of the proposed discovery outweighs its  
21 likely benefit.” Fed. R. Civ. P. 26(b)(1).

22 When a party fails to provide discovery and the parties’ attempts to resolve the  
23 dispute without Court intervention are unsuccessful, the opposing party may seek an  
24 order compelling that discovery. Fed. R. Civ. P. 37(a). The party seeking to avoid  
25 discovery bears the burden of showing why that discovery should not be permitted.  
26 *Blankenship v. Hearst Corp.*, 519 F.2d 418, 429 (9th Cir. 1975). The party resisting  
27 discovery must specifically detail the reasons why each request is irrelevant or otherwise  
28 objectionable, and may not rely on boilerplate, generalized, conclusory, or speculative

1 arguments. See, e.g., *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 552 (D. Nev. 2013).  
 2 Arguments against discovery must be supported by “specific examples and articulated  
 3 reasoning.” *U.S. E.E.O.C. v. Caesars Ent.*, 237 F.R.D. 428, 432 (D. Nev. 2006).

### 4 III. DISCUSSION

5 Espinosa’s motion argues Defendants should be compelled to provide the  
 6 following items of discovery, which he claims were not adequately responded to by  
 7 Defendants:

Request for Discovery No.	Interrogatory
1	Espinosa’s medical/mental health records in its entirety, including, but not limited to reports, logs, orders, classifications, notes, restriction orders, and hearing records, documents, notices, etc.
5	Recorded video on December 14, 2017 approximately at 4:30-9:30 p.m. at ESP, Unit 9, Cell 17 or 18, of restraints used on Espinosa.
9	All documents associated with Grievance No. 2006-30-62921, including, but not limited to, outcomes, reports, investigative documents, findings, reports and documents from Inspector General’s (“IG”) office regarding their investigation into allegations made within said grievance.
10	All documents and information setting forth the substantial standards and criteria used within the psychological community concerning depression, malingering, and suicidal ideation/attempt.
12	Produce DSM-V test, or copy thereof, that was taken/given to Espinosa by Defendant Ewing at ESP between September 1, 2017 and December 31, 2017, including, but not limited to, any and all documents relating to such, as well as any examination notes of results, responses, scoring results with explanation of scoring techniques.
15	Any and all documents, notes, evaluation results, etc. concerning psychological evaluation done at High Desert State Prison (“HDSP”) on or about September 7, 2018.

19 (See ECF No. 97). Espinosa asserts several broad arguments and factual contentions  
 20 to support his motion. However, more specifically, Espinosa argues Defendants should  
 21 be required to produce the discovery he has identified because: (1) the discovery  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1 requests relevant information; and (2) his discovery requests relate directly to Espinosa's  
2 Eighth Amendment deliberate indifference to medical needs claim. (ECF No. 97.)

3 In response, Defendants argue the motion should be denied in its entirety. First,  
4 Defendants assert Espinosa cannot have possession of his medical records in his cell  
5 pursuant to administrative regulation ("AR") 639. (ECF No. 99 at 2-3.) Second,  
6 Defendants oppose Espinosa's request to compel discovery of the September 2017  
7 video because that video, to the best of Defendants' knowledge, is nonexistent. (*Id.* at 3-  
8 4.) Third, Defendants argue Espinosa's request for the IG's documents related to  
9 Grievance No. 2006-30-62921 is confidential information pursuant to the provisions of  
10 AR 457 and as such cannot be produced in discovery. (*Id.* at 4.) Finally, Defendants  
11 argue Espinosa's request for all documents and information setting forth standards and  
12 criteria used in the psychological community exceeds the scope of discovery and  
13 Defendants have no obligation to do research on Espinosa's behalf. (*Id.* at 4-5.)

14 A. Espinosa's Medical Records

15 Three of the six items requested by Espinosa are generally related to Espinosa's  
16 medical records. Specifically, Espinosa requests (1) "Plaintiff's medical/mental health  
17 records in its entirety, including but not limited to reports, logs, orders, classifications,  
18 notes, restriction orders, and hearing records, documents, notices, etc." (See ECF No.  
19 97 at 3); (2) Defendants "produce test (DSM-V), or copy thereof, that was taken/given to  
20 [P]laintiff by Def. Ewing at [ESP] between the time of September 1, 2017 to December  
21 31, 2017; including but not limited to, any and all documents relating to such, as well as,  
22 any examination notes of results, responses, scoring results with explanation of scoring  
23 techniques." (*Id.* at 13-15); and, (3) "[a]ny and all documents, notes, evaluation results,  
24 etc. concerning psychological evaluation done at HDSP on or about September 7,  
25 2018." (*Id.* at 15-17.)

26 Defendants' opposition generally objects to Espinosa's request for various  
27 reasons not to give Espinosa his medical/mental health records. (See ECF No. 99 at 2-  
28 3.) The court finds most objections made by Defendants improper. Whether Espinosa

1 can get his medical records or review them in their entirety or not from the institution is  
2 less than clear. Defendants claim Espinosa's request to review or obtain his medical  
3 records in their entirety is irrelevant and disproportionate are false. (See ECF No. 99-4 at  
4 2-3.) Espinosa's claims in the instant case directly relate to his mental health and  
5 medical care received while incarcerated. Records for a single inmate for the period  
6 from the time of his incarceration through the date of the incident in question are not  
7 disproportionate.

8 Defendants' opposition relies on AR 639, which governs NDOC medical records.  
9 (See ECF No. 99-3.) Specifically, Defendants assert for prison safety and security  
10 reasons, inmates are generally prohibited from possessing their medical records in their  
11 cells. (ECF No. 99 at 2; see *also* AR 639.03.1.) Defendants argue Espinosa seeks to  
12 compel the production of medical records for his possession, which is prohibited by  
13 prison regulations.

14 AR 639 authorizes inmates to review their medical records, including their  
15 psychiatric/psychological medical records, "under the direct supervision of medical staff"  
16 and are generally permitted to review their medical records "once per calendar year" and  
17 restricts the inmate to "one hour to review the medical record" and that an inmate  
18 needing additional time for review is permitted to request an additional review at a date  
19 and time that is convenient and does not conflict with staff workload priorities. (See ECF  
20 No. 99-3 at 5; see *also* AR 639.03.2, 639.03.4(A), 639.03.4(A)(b).) Additionally, AR  
21 639.02.8 creates an exception from the general restriction from inmates directly  
22 receiving copies of the health record "when an inmate is personally involved in a lawsuit  
23 directly involving medical issues that would require the use of his/her medical records, as  
24 verified by the Office of the Attorney General." (*Id.* at 3-4.) Defendants acknowledge the  
25 exception, but argue "while this provision addresses the release of medical records to  
26 the inmate, it does not address or authorize subsequent in-cell or on-yard possession of  
27 the records... [and] does not proscribe a manner or method in which such a release  
28 must occur." (See ECF No. 99 at 2, n. 1.)

1 While the court recognizes NDOC's need to ensure the safety and security of the  
2 prisons, it is concerned that the apparent blanket prohibition in AR 639 from allowing  
3 inmates to only receive copies of the medical records, but to maintain those copies in  
4 their cells, may not comply with the Health Insurance Portability and Accountability Act  
5 ("HIPAA") regarding individual inmate access to their personal medical records.  
6 Specifically, the court cannot find that a blanket denial is permitted by 45 C.F.R. §  
7 164.524(a)(2)(ii). Further, nothing in 45 C.F.R. § 164.524(c)(3)(i) authorizes a "covered  
8 entity" to limit an individual's access to one hour to review their medical records. As  
9 such, the court orders the Defendant to submit supplemental briefing detailing how the  
10 provisions of AR 639 comply with the HIPAA requirements contained in 45 C.F.R. §  
11 164.524. Defendants shall have 14 days from the date of this order to file a supplement  
12 brief as stated in this order. Espinosa shall have 14 days to file a response to  
13 Defendant's supplemental brief on these issues. Upon receipt of these briefs, the court  
14 will hold its ruling on whether Espinosa is entitled to receive copies of his medical  
15 records, which he can maintain in his cell, in abeyance.

16 In the meantime, however, Defendants shall make all of Espinosa's medical  
17 records available to him to review under appropriate supervision for a minimum of four  
18 hours on or before **Friday, May 8, 2020**. Espinosa shall be permitted to take notes  
19 related to the items contained in these records and to tab those records that he believes  
20 should be used for either exhibits to motions or as trial exhibits.

21 B. Video Evidence

22 Espinosa requests "[r]ecord[ed] video on December 14th, 2017 approximately at  
23 4:30-9:30 p.m. at Ely State Prison Unit 9 Cell 17 or 18, of restraints used on Plaintiff."  
24 (See ECF No. 97 at 7-8.) Defendants' opposition claims "no video of this incident exists  
25 to their knowledge." (See ECF No. 99 at 3-4.) The court finds because no video of the  
26 incident exists, Espinosa's motion to compel request is denied.

27  
28



1 C. Inspector General's Documents

2 Espinosa requests “[a]ll documents associated with Grievance No. 200630-62921  
3 including but not limited to outcomes, reports, investigative documents, findings, reports  
4 and documents from the Inspector General’s office regarding their investigation into  
5 allegations made within said grievance.” (See ECF No. 97 at 9-11.) Defendants argue  
6 the documentation associated with an Inspector General’s investigation are privileged  
7 and confidential pursuant to AR 457.06.1. (See ECF No 99 at 4.) Defendants assert  
8 because the IG is “an independent authority,” Defendants are not privy to the IG’s  
9 investigative documents, and Espinosa is seeking “privileged, confidential material that is  
10 not in [Defendants’] possession or control.” (*Id.*; AR 457.01.2.)

11 Privileged information is not discoverable. Fed. R. Civ. P. 26(b)(1). In a civil rights  
12 case brought under § 1983, questions of privilege are resolved by federal law. *NLRB v.*  
13 *N. Bay Plumbing, Inc.*, 102 F.3d 1005, 1009 (9th Cir. 1996). As a result, state law,  
14 including state regulations and administrative codes, does not control the applicability of  
15 privilege here. *Hooks v. Bannister*, 2014 WL 6772989, at \*6 (D. Nev. Dec. 2, 2014). This  
16 does not mean that federal courts can just ignore state privilege doctrine, however.  
17 *Cross v. Jaeger*, 3:13-cv-00433-MMD-WGC, 2015 WL 1412845, at \*4 (D. Nev. Mar.  
18 27, 2015) (“federal courts generally should give some weight to privacy rights that are  
19 protected by state constitutions and state statutes”). Strong policy considerations  
20 underlie this choice of law, as other courts have explained:

21 It ... would make no sense to permit state law to determine what evidence  
22 is discoverable in cases brought pursuant to federal statutes whose central  
23 purpose is to protect citizens from abuses of power by state and local  
24 authorities. If state law controlled, state authorities could effectively insulate  
25 themselves from constitutional norms simply by developing privilege  
26 doctrines that made it virtually impossible for plaintiffs to develop the kind  
27 of information they need to prosecute their federal claims.

28 *Walker v. No. Las Vegas Police Dept.*, 2:14-cv-01475-JAD-NJK, 2015 WL 8328263, at  
\*2 (D. Nev. Dec. 8, 2015) (quoting *Kelly v. City of San Jose*, 114 F.R.D. 653, 656 (N.D.  
Cal. 1987)). As a result, while the court may give some weight to the State confidentiality

1 interests contained in AR 457, they do not *ipso facto* control the determination of the  
2 applicability of privilege in this case. *Cross*, 2015 WL 1412845, at \*4.

3 In contrast to many state law privileges, “[f]ederal law governing privilege has not  
4 been codified.” *Hooks*, 2014 WL 6772989, at \*6. Rather, privileges have developed at  
5 common law. *Id.* (citing Fed. R. Evid. 501). Federal courts recognize a qualified privilege  
6 for official information, into which courts incorporate the confidentiality interests  
7 embodied in some state law privileges. *Id.* (integrating confidentiality interests reflected  
8 in state administrative regulations into official information privilege analysis). For  
9 example, “[p]ersonnel files and complaints made against government employees have  
10 been considered official information.” *Pinder v. Baker*, 3:13-cv-00572-MMD-WGC, 2015  
11 WL 540431, at \*2 (D. Nev. Feb. 10, 2015) (citing *Sanchez v. City of Santa Ana*, 936 F.2d  
12 1027, 1033 (9th Cir.1990)). However, the “official information privilege” is a qualified  
13 privilege, which must be formally asserted and delineated in order to be raised properly.  
14 *Santos v. Baca*, 2:11-cv-01251-KJD-NJK, 2015 WL 7307054, at \*2 (D. Nev. Nov. 17,  
15 2015). The party invoking this privilege must make a substantial threshold showing,  
16 after which, courts must engage in a balancing analysis to determine whether the  
17 potential benefits of disclosure outweigh the potential disadvantages. *Id.*

18 While the State regulation, AR 457, invoked by Defendants does not govern the  
19 assertion of privilege in a federal question case, the court is mindful of the State’s  
20 interest in protecting private personnel or otherwise confidential information. *Pinder*,  
21 2015 WL 540431, at \*3. The court is also cognizant of NDOC’s concerns for the safety  
22 and security of its inmates, employees, and the public, and takes these interests into  
23 account in balancing the benefits versus the potential harms that would result from  
24 disclosure of Espinosa’s requested information. *Id.* The “balancing test” enunciated by  
25 *Kelly* (and followed by this district in *Carillo v. Las Vegas Met. Police Dept.*, 2:10-cv-  
26 02122-KJD-GWS, 2013 WL 592893 (D. Nev. Feb. 14, 2013) and followed in part in  
27 *Manley v. Zimmer, et al.*, 3:11-cv-00636-RCJ-WGC, 2013 WL 5592328 (D. Nev. Oct. 9,  
28

1 2013)) requires a state defendant asserting confidentiality or privilege to follow a certain  
2 protocol. *Pinder*, 2015 WL 540431, at \*3.

3 As a threshold matter, under the *Kelly* protocol, “the party asserting the privilege  
4 is required to submit a declaration or affidavit under oath and penalty of perjury from the  
5 head of the department that has control over the information.” *Carrillo*, 2013 WL 592893,  
6 at \*3. Such an affidavit must include:

7 (1) an affirmation that the agency generated or collected the material in  
8 issue and has in fact maintained its confidentiality (if the agency has  
9 shared some or all of the material with other governmental agencies it must  
10 disclose their identity and describe the circumstances surrounding the  
11 disclosure, including steps taken to assure preservation of the  
12 confidentiality of the material), (2) a statement that the official has  
13 personally reviewed the material in question, (3) a specific identification of  
14 the governmental or privacy interests that would be threatened by  
disclosure of the material to plaintiff and/or his lawyer, (4) a description of  
how disclosure subject to a carefully crafted protective order would create  
a substantial risk of harm to significant governmental or privacy interest,  
and (5) a projection of how much harm would be done to the threatened  
interests if the disclosure were made.

15 *Id.*

16 For inmate conditions of confinement cases brought pursuant to § 1983, the court  
17 requires the parties to follow the protocol for objecting or responding to discovery set  
18 forth in the Federal Rules of Civil Procedure. *Manley*, 2013 WL 5592328, at \*15. That is  
19 to say, a defendant asserting the official information privilege in a § 1983 conditions of  
20 confinement case should be required to invoke the privilege in its responses to  
21 discovery, and serve with its responses a privilege log which adequately states the basis  
22 for invoking the privilege (in conformity with Rule 26(b)(5)(A)) so as to enable the  
23 requesting party to thereafter challenge the asserted privilege if he or she sees fit. *Id.* If  
24 the responding party finds it would be unduly burdensome to prepare and provide a  
25 privilege log to the plaintiff, the responding party may seek a protective order. *Id.*; see  
26 Fed. R. Civ. Pro. 26(b)(5) advisory committee comment. Likewise, if a privilege log is  
27 provided and the plaintiff determines it is not in conformity with Rule 26(b)(5), the inmate  
28

1 plaintiff may seek appropriate relief through a motion to compel (after pursuing efforts to  
2 resolve the dispute informally). *Id.*

3 After making a meaningful effort to meet and confer to resolve the dispute, if the  
4 plaintiff determines the objection is inappropriate or should otherwise not be sustained,  
5 he or she may file a motion to compel. *Id.* Any motion to compel must demonstrate the  
6 relevance of the requested documents in accordance with Rule 26(b)(1). *Id.* In addition,  
7 the plaintiff should identify which of the plaintiff's interests would be harmed if the court  
8 ordered the information not be disclosed. *Id.* In an opposing brief, the party asserting  
9 the official information privilege has the burden of showing the information requested  
10 information is privileged. *Id.* As in *Kelly*, the opposing party should specifically address  
11 the disadvantages of disclosure so that the court may properly engage in a balancing of  
12 the potential benefits of disclosure against the disadvantages. *Id.* The court suggests  
13 this argument be supported by appropriate declarations establishing the government or  
14 privacy interests that would be harmed if the information is disclosed and why a carefully  
15 crafted protective order will not alleviate those concerns. *Id.* The plaintiff will then submit  
16 a reply brief, and once the matter is fully briefed and the court has had a chance to  
17 review all the parties' arguments, it will determine whether to order *in camera* review of  
18 the documents. *Id.*

19 Here, Espinosa's initial RFPD requested all documents associated with the  
20 grievance, including "outcomes, reports, investigative documents, findings, reports and  
21 documents from" the IG's office "regarding their investigation into allegations made  
22 within said grievance." (*Id.* at 9.) Defendants' response to Espinosa's RFPD objected to  
23 the request because it requested confidential information. (See ECF No. 99-4 at 6.)  
24 Specifically, Defendants' response raised the following objections: (1) all IG investigation  
25 reports are confidential and cannot be disseminated; (2) request calls for confidential  
26 information wherein the disclosure could compromise the safety and security of the  
27 prison; (3) request is irrelevant, disproportional to the needs of the case, and is not  
28 reasonably calculated to lead to the discovery or production of admissible evidence; (4)

1 Espinosa failed to stated how this request was relevant to his case; and, (5) request is  
2 improper because Espinosa propounded the request on Defendants as a whole, but  
3 failed to state which Defendant is to respond. (*Id.*)

4 Espinosa's meet and confer letter asserted that Defendants' objections regarding  
5 confidentiality was a boilerplate objection with no proof of how it could compromise  
6 safety and security and/or any actual events of compromise. (See ECF No. 97 at 10.)  
7 Espinosa stated the grievance was investigated by the IG's office and could contain  
8 discoverable documents or facts relevant to the prosecution of this case and he may  
9 discover possible witnesses who may be able to testify in support of his claims. (*Id.*)  
10 Defendants' response to the meet and confer letter stated the work of the IG's office is  
11 "confidential and not discoverable", and if the IG's office did investigate "into an incident  
12 pertaining to correctional staff, their personnel files investigative reports and outcomes  
13 are protected by state law." (See ECF No. 99-2 at 3.) Espinosa's motion to compel  
14 argues Defendants "make boilerplate objections" and "provide no privilege log" as  
15 required by Fed. R. Civ. P. 26(b)(5)(A). (See ECF No. 97 at 7, 10.) Additionally,  
16 Espinosa claims that at a time during or immediately after the IG's investigation,  
17 Defendant Borino was terminated from NDOC's employment, which draws her  
18 credentials into question and her termination could be related to the instant proceedings.  
19 (*Id.* at 11.)

20 It appears the IG's report on Grievance #2006-30-62921 may relate to an  
21 investigation into an incident involving correctional staff, namely Defendant Borino. (See  
22 ECF No. 97 at 10-11.) In this case, Defendants are essentially asserting the official  
23 information privilege (without specifically naming the privilege). However, Defendants  
24 failed to either serve with their response a privilege log that adequately states the basis  
25 for invoking the privilege in conformity with Rule 26(b)(5)(A), or to seek a protective order  
26 from the court. *Manley*, 2013 WL 5592328, at \*15. Defendants merely claim privilege  
27 pursuant to state law (administrative regulation) without providing further evidence as to  
28 the harm of disclosure through declarations, affidavits or protective order. *Id.*

1 Accordingly, the court finds an *in camera* review of the documents is necessary to  
2 determine whether the requested IG's reports are relevant to Espinosa's claims. *Id.*  
3 Therefore, Defendants are ordered to submit the full IG report to the court within 14 days  
4 of this order for an *in camera* review.

5 D. Documents and Information Setting Forth Psychological Standards

6 Espinosa requests "[a]ll documents and information which sets forth the  
7 substantial standards and criteria used within the psychological community concerning"  
8 depression, malingering, and suicidal ideation/attempt. (See ECF No. 97 at 11-13.)  
9 Defendants' opposition properly objected to Espinosa's request as exceeding the scope  
10 of discovery, is not information within the care, custody, or control of the Defendants, is  
11 not proportional to the case needs, and is overbroad and vague. (See ECF No. 99 at 4-  
12 5.) Therefore, the court denies Espinosa's motion to compel such documents.

13 **IV. CONCLUSION**

14 **IT IS THEREFORE ORDERED** that Espinosa's motion to compel production of  
15 discovery (ECF No. 97) is granted, in part, and denied, in part, consistent with this order.  
16 Defendants will be required to supplement discovery responses for which the motion  
17 was granted no later than thirty (30) days from the date of this order.

18  
19 DATE: April 17, 2020.

20  
21   
22 \_\_\_\_\_  
23 UNITED STATES MAGISTRATE JUDGE  
24  
25  
26  
27  
28