

EXHIBIT 1

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

JUANITA ARRINGTON, as Independent
Administrator of the Estate of RONALD
ARRINGTON, deceased,

Plaintiff,

v.

CITY OF CHICAGO, an Illinois municipal
corporation, et al.,

Defendants.

No. 17 C 05345

Judge Thomas M. Durkin

ISIAH STEVENSON and MICHAEL COKES,

Plaintiffs,

v.

CITY OF CHICAGO, an Illinois municipal
corporation, et al.,

Defendants.

No. 17 C 04839

Judge Thomas M. Durkin

ORDER

Plaintiffs moved *in limine* to admit records and findings from a review conducted by the Civilian Office of Police Accountability (“COPA”) regarding the vehicle collision at issue in this case. Defendants opposed and filed motions seeking to bar related evidence. The Court heard argument at a Final Pretrial Conference on August 5, 2022, and reserved its ruling on these motions. The Court now denies Plaintiffs’ motion and grants Defendants’ motions. These rulings are without prejudice and are subject to the explanation below.

Discussion

The claims in this case arise from a collision between a Chicago Police vehicle driven by defendant Dean Ewing and another vehicle driven by Jimmy Malone, in which the Plaintiffs in this case (Stevenson; Malone; and Ronald Arrington, decedent) were passengers. Following the incident, COPA (and its predecessor entity, the Independent Police Review Authority) conducted an investigation to determine whether Ewing had violated any applicable rules or laws via his conduct. COPA conducted multiple interviews with Ewing, other officers, and witnesses. COPA also reviewed physical, video, and other documentary evidence of the incident and the events leading up to it. It concluded that “three factors caused the accident: 1.) The alleged unlawful acts and subsequent traffic violations of the armed robbery subjects; 2.) The problematic and delayed Zone-9 radio communications; and 3.) Officer Ewing’s lack of due care and due regard when operating his vehicle.” In particular, COPA concluded that Ewing violated certain CPD General Orders and Illinois law by operating his emergency vehicle without due regard for the safety of all vehicle and pedestrian traffic. It recommended a 90-day suspension based on these violations. Ewing is currently in the process of appealing these determinations.

Plaintiffs moved *in limine* to admit the COPA records and findings, while Defendants moved to exclude evidence of COPA’s investigation and any conclusions it reached. Defendants argued the investigation is inadmissible under Federal Rule

of Evidence 407 as a subsequent remedial measure. They also contend the COPA evidence is unfairly prejudicial and should be excluded under Rule 403.¹

The Court does not agree that the COPA investigation and its findings are inadmissible under Rule 407 as subsequent remedial measures. The investigation's purpose was to determine whether Ewing's conduct violated the law and to assess whether any disciplinary action was warranted. Although isolated portions of COPA's report may be encompassed by the rule (for example, its discussion of shortcomings in inter-agency communications between CPD and the Illinois State Police), a factual finding regarding the cause of a traffic accident is not a subsequent remedial measure—it is not an affirmative act undertaken to reduce the risk of future accidents.

However, the Court finds that the COPA report is nonetheless inadmissible under Rule 403 because it carries a substantial risk of unfair prejudice and confusion that outweighs its probative value. Several factors exacerbate the risk of this evidence. First, COPA's findings are closely related to disputed issues the jury in this case will be tasked with deciding, including whether Ewing's conduct was willful and wanton, or negligent, at the time of the crash. Introducing evidence of COPA's findings therefore risks usurping the role of the jury, which may feel compelled to accept (or reject) those findings uncritically. *See City of New York v. Pullman Inc.*, 662 F.2d 910, 915 (2d Cir. 1981) (trial judge properly held government report

¹ The Court assumes that some or all of the COPA report would be admissible over potential hearsay objections under FRE 803(8).

inadmissible under Rule 403 in part because the jury would have considered it presumptively reliable); *Coffin v. S.C. Dep't of Soc. Servs.*, 562 F. Supp. 579, 591 (D.S.C. 1983) (expressing concern that government report “may unduly prejudice the jury whose responsibility it is to make a *de novo* determination of plaintiffs’ claims”). Short of that, there remains a serious risk the jury will simply be confused by the contents of the report, which are relevant to some of Plaintiffs’ claims but not others. *See English v. District of Columbia*, 651 F.3d 1, 10 (D.C. Cir. 2011) (holding trial court properly excluded portions of internal police investigation report based on potential jury confusion that would have necessitated multiple jury instructions to remedy).

Second, admitting the report is likely to prompt a complicated digression into its details. Notably, COPA’s investigation was not carried out under the same standards or evidentiary rules that apply in this case. Furthermore, Ewing disputes COPA’s findings and is appealing its determination, and so would likely expend significant effort at trial seeking to undermine the report. The result would be the oft-feared “trial within a trial” that Rule 403 is meant to guard against. *See Doe v. Lima*, 2020 WL 728813, at *8 (S.D.N.Y. Feb. 13, 2020).

The Court concludes that the COPA report and its conclusions are inadmissible under Rule 403 because its probative value is substantially outweighed by its prejudicial impact. The Court therefore denies Plaintiffs’ motion *in limine*² and grants Defendants’ motions *in limine*.³ While Plaintiffs may not use the report itself

² MIL No. 39, R. 270, 17-cv-5345; MIL No. 2, R. 351, 17-cv-4839.

³ MIL Nos. 7, 14, 25, R. 344, 17-cv-4839.

or make direct allusions to its conclusions, statements Ewing made to COPA as part of the investigation may be admitted as admissions. Statements by Ewing and other witnesses in the investigation can also be used for impeachment purposes. If such statements are used, Plaintiffs should not identify COPA as the entity to which they were made. The parties should agree on neutral language that may be used in such an instance or raise the issue with the Court for a ruling if no agreement can be reached. Plaintiffs may not ask questions meant to raise the subject of the COPA report, but will be permitted to use this evidence should Ewing open the door via his own volunteered testimony or testimony he elicits from others.

ENTERED:

A handwritten signature in cursive script, reading "Thomas M. Durkin", is written over a horizontal line.

Honorable Thomas M. Durkin
United States District Judge

Dated: August 8, 2022