



The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

MICHAEL W. MORRISSEY  
DISTRICT ATTORNEY

45 SHAWMUT ROAD  
CANTON, MA 02021  
(781) 830-4800  
FAX (781) 830-4801

May 9, 2023

Joshua S. Levy  
First Assistant United States Attorney  
United States Attorney Office  
District of Massachusetts  
1 Courthouse Way, Suite 9200  
Boston, MA 02210

Dear First Assistant Levy:

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I write to follow up on our conversations regarding the issuance of federal grand jury subpoenas to at least two witnesses to the Commonwealth's investigation into the death of John O'Keefe. As you know, indictments have issued in Norfolk Superior Court and the prosecution is ongoing. See Commonwealth v. Karen Read, No. 2282CR00117.

As a prosecuting agency, the Norfolk District Attorney's Office has the constitutional duty to provide the defendant with exculpatory evidence. The obligation in Massachusetts to provide exculpatory information pursuant to *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and its progeny means "not only the constitutional obligation to disclose exculpatory information but also the broad obligation under our rules to disclose any facts that would tend to exculpate the defendant or tend to diminish his or her culpability." *In the Matter of a Grand Jury Investigation*, 485 Mass. 641, 649 (2020). Under the Massachusetts Rules of Criminal Procedure, mandatory discovery includes all facts of an exculpatory nature and all statements of witnesses. See Mass. R. Crim. P. 14(a)(1)(ii), (iii) & (vii).

To effectuate our discovery obligations, we are requesting, at the earliest possible opportunity, discovery of all statements of witnesses to the investigation of the death of John O'Keefe, and resulting prosecution, including both statements to investigators and grand jury minutes. The Commonwealth also has the duty, at the time we become aware that statements of witnesses exists, to notify the defendant of items under Rule 14 that the prosecutor knows to exist but are not within the care, custody, or control of the prosecution, and to provide all information known as to the item's location and the identity of the persons possessing that item.<sup>1</sup>

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<sup>1</sup> While at this time, given the limited disclosure of information, this office is aware only that your investigation is likely to produce statements of witnesses through their grand jury testimony and through any interviews of those

See Mass. R. Crim. P. 14(a)(1)(E)(i); *Commonwealth v. Mitchell*, 444 Mass. 786, 796 n.16 (2005). We appreciate the sensitivity and need for discretion as to any ongoing federal investigation. While we are unaware of the parameters of federal activity, we cannot forgo our constitutional or state duties. We are willing to file a motion for a protective order under Mass. R. Crim. P. 14(a)(6) to request limitation of the disclosure of the information to defense counsel only; any decision of such request, of course, is solely within the authority of the Norfolk Superior Court judge.<sup>2</sup> Similarly, we are willing to facilitate the process or to a request under Fed. R. Crim. P. 6(e)(3)(E)(i) or (iv) for authorization from a federal district court judge for production of the grand jury minutes and related material, if any.

Additionally, this Office has constitutional and state obligations to provide exculpatory information of which we are aware in all cases, including exculpatory information relating to all witnesses and or members of the prosecution. *Committee for Public Counsel Services v. Attorney General*, 480 Mass. 700, 730-733 (2018); *Commonwealth v. McFarlane*, 102 Mass. App. Ct. 264 (2023), *petitions for further appellate review pending*. This would include any investigations into misconduct related to professional duties. *Id.* at 275 & n.16. If any such information exists, it is imperative that we learn of it in a timely manner.

In sum, while we appreciate the notification that subpoenas issued, it is imperative that at the earliest opportunity we are able to provide discovery to the defendant.

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Sincerely,



Lynn Beland  
First Assistant District Attorney

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witnesses, the duty of notification in Mass. R. Crim. P. 14(a)(1)(E)(i) also applies to: statements by Karen Read, the defendant in this state criminal homicide prosecution; statements of any person who testified before a grand jury; facts of an exculpatory matter; and material and relevant police reports, photographs, reports of physical examinations of any person, and scientific tests and experiments.

<sup>2</sup> Under Mass. R. Crim. P. 14(a)(1)(E)(ii), a party to the state criminal proceeding may move for an order for any individual, agency, or other entity in possession, custody, or control of items relating to the state criminal case, to preserve such items for a specified time.