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November 8, 2021

BY EMAIL



United States Attorney's Office
Southern District of New York
1 St. Andrew's Plaza
New York, NY 10007

Re: *United States v. Ghislaine Maxwell*, S2 20 Cr. 330 (AJN)

Dear Counsel:

Pursuant to the Court's Order dated June 2, 2021 (Dkt. 297), we write to provide the government with the defense's disclosures under Rule 16(b)(1)(A) and (b)(1)(B) of the Federal Rules of Criminal Procedure.

As the government is aware, the defense is under no obligation to present a defense case and whether we will do so remains subject to the developments at trial. Nevertheless, in accordance with the Court's order, we provide below a preliminary list of documents that the defense may use in its case-in-chief, should we decide to present a defense case.

We note that Rule 16(b)(1)(A) requires disclosure only of documents and other items that are "within the defendant's possession, custody, or control; and ... [that] the defendant intends to use ... *in the defendant's case-in-chief at trial.*" Fed. R. Crim. P. 16(b)(1)(A) (emphasis added). Rule 16(b)(1)(A) does not require the defense to disclose, for example, potential impeachment evidence or documents that the defense may use to refresh a witness's recollection during the government's case-in-chief. *See United States v. Medearis*, 380 F.3d 1049, 1057 (8th Cir. 2004) (Rule 16(b)(1)(A) does not require disclosure of impeachment evidence); *United States v. Moore*, 208 F.3d 577, 579 (7th Cir. 2000) (same); *United States v. Hatfield*, No. 06 Cr. 550 (JS), 2009 WL 10673619, at *1-2 (E.D.N.Y. Apr. 22, 2009) (same) (citing *Medearis* and *Moore*); *see also United States v. Gray-Burriss*, 791 F.3d 50, 57-58 & n.2 (D.C. Cir. 2015) (using documents to refresh recollection of government's witnesses not covered by Rule 16); *United States v. King*, 703 F.2d 119, 126 n.6 (5th Cir. 1983) (noting that "even though the documents were excluded from evidence" because of defendant's failure to make a Rule 16 disclosure, "[d]efense counsel was allowed to use the documents to refresh the recollection of witnesses").

We also note the following: First, the defense continues to investigate and prepare its case for trial, which is still three weeks away. The defense has not made final determinations about which documents it may use in the defense case-in-chief, should we decide to present one. Indeed, those decisions will depend heavily on developments at trial. Second, the defense may receive documents from Rule 17 subpoenas or other document requests which the defense may want to use in any case-in-chief. Third, the government is still producing Rule 16 discovery, 3500 material, and *Giglio* material, which may require additional investigation and may, in turn, yield additional documents that the defense may wish to use in any case-in-chief.

To that end, the defense reserves its right to supplement these disclosures. The defense further recognizes that its disclosure obligations under Rule 16 are ongoing, and we will produce any additional Rule 16 materials to the government as we identify them. *See* Fed. R. Crim. P. 16(c).

Defense Rule 16 Disclosure

Pursuant to Rule 16(b)(1)(A), below is the preliminary list of the documents that the defense may use should it elect to present a case-in-chief. We have attached copies of the documents listed below if they were not provided to the defense by the government in discovery. Otherwise, we provide the Bates numbers for the produced documents. Because we have already provided the government with the defense expert notice, which referenced articles, reports, and other materials they relied upon to prepare their testimony, we have not repeated that information here. *See* Fed. R. Crim. P. 16(b)(1)(B) & (b)(1)(C).

1. AT&T phone records
SDNY_GM_00514773-00514915
Certification – attached as Exhibit A
2. Federal Express records
SDNY_GM_00338750-343831
Certification – attached as Exhibit B
List of certified invoices (highlighted in yellow) – attached as Exhibit C
3. Customs and Border Patrol records
SDNY_GM_02753139-02753143
SDNY_GM_00000799-00000833
4. Interlochen records
SDNY_GM_00004784-00005076
SDNY_GM_02753433-02753440
SDNY_GM_02753466-02753528
Additional records – attached as Exhibit D

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5. Shopper's Travel records
SDNY_GM_00006061-00006079
6. Larry Visoski flight manifests
SDNY_GM_00405330-00405565
SDNY_GM_00405788-00405969
7. General Release, Epstein Victims' Compensation Program [REDACTED]
Attached as Exhibit E
8. General Release, Epstein Victims' Compensation Program [REDACTED]
Not attached – pending release by Judge Koeltl in *Doe v. Indyke*, 20 Civ. 484
(JGK) (S.D.N.Y. 2020)
9. Floorplans, Palm Beach residence
SDNY_GM_00328519-00328521
10. Palm Beach Police Department incident reports
E.g., 3501.014-004
11. Jeffrey Epstein Non-Prosecution Agreement
Attached as Exhibit F
12. February 29, 2016 Meeting Materials
SDNY_GM_02742753-02742762
SDNY_GM_02742878-02742892
SDNY_GM_02742895-02742962

Sincerely,

/s/ Christian R. Everdell
Christian R. Everdell
COHEN & GRESSER LLP

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cc: All counsel of record (by email)

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