

From: "[REDACTED] (USANYS)" <[REDACTED]>

To: [REDACTED] (USANYS)" <[REDACTED]>

Subject: RE: Following up Witness PA

Date: Mon, 29 Jun 2020 17:20:11 +0000

Inline-Images: image001.png; image002.png; image003.png; image004.png

On the subject never ends, the State Department would like us to modify our proposed confidentiality language as follows:

- Absent a court order directing otherwise, **U.S. authorities** will not use or disclose the content of the witness's statements in an interview **with U.S. authorities** in any matter other than a U.S. criminal investigation or proceeding, and any non-criminal judicial or administrative proceeding directly related to a U.S. criminal investigation or proceeding, pursuant to Article 7 of the Treaty.

Do you have thoughts on whether that would be broad enough to include any potential civil action we might pursue in connection with the Epstein estate in USVI? Not sure we would ever plan to do so, but was trying to preserve the option. That said, if this is the language of the treaty, not sure how hard we can push back.

From: [REDACTED] (USANYS) <[REDACTED]>

Sent: Friday, June 26, 2020 3:27 PM

To: [REDACTED] (USANYS) <[REDACTED]>

Subject: RE: Following up Witness PA

I think that's OK. Note that *Touhy* is not entirely discretionary—it applies after a subpoena issues, and our denial can be reviewed in court. But we can easily insist on a court order. At the beginning of the 302 (and any notes) the following should be stated:

Note that for purposes of any FOIA request, subpoena/*Touhy* request, Privacy Act routine use disclosure, or any other disclosure this document is subject restrictions on disclosure pursuant to the MLAT pursuant to which the interview took place. Absent a court order directing otherwise, the SDNY **or** FBI will not use or disclose the content of the witness's statements in an interview with law enforcement in any matter other than a criminal investigation, prosecution, or related civil action or asset forfeiture action initiated by the United States government.

The FBI should really understand that any leak of any of this would be pretty terrible.

From: [REDACTED] (USANYS) <[REDACTED]>

Sent: Friday, June 26, 2020 2:58 PM

To: [REDACTED] (USANYS) <[REDACTED]>

Subject: FW: Following up Witness PA

[REDACTED] – See below for the language of the treaty. In light of that, [REDACTED] has signed off on the following language, but let me know if you have any concerns:

- Absent a court order directing otherwise, the SDNY **or** FBI will not use or disclose the content of the witness's statements in an interview with law enforcement in any matter other than a criminal investigation, prosecution, or related civil action or asset forfeiture action initiated by the United States government.

From: [REDACTED] (CRM) <[REDACTED]>
Sent: Friday, June 26, 2020 8:11 AM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up Witness PA

The UK could impose conditions on any evidence provided under the MLA treaty. Once the evidence is provided they typically send a letter to us saying that the evidence is to be used only for the purposes specified in the MLA request. Our MLA requests track the language of the Treaty, which gives us use in criminal cases and related forfeiture and administrative actions. It doesn't deal with FOIA or Touhy. (Since *Touhy* is discretionary, I assume we would just reject any requests for agent testimony on this topic.)

Here is the link to the treaty on OIA's intranet page:

http://crmln05.crm.doj.gov:7778/pls/portal/docs/PAGE/OIA/TAB_TREATY_LIBRARY/MLAT/DATA/USEU.MLA.UK.PDF

Here are the relevant sections:

1bis. Mutual legal assistance shall also be afforded to a national administrative authority, investigating conduct with a view to a criminal prosecution of the conduct, or referral of the conduct to criminal investigation or prosecution authorities, pursuant to its specific administrative or regulatory authority to undertake such investigation. Mutual legal assistance may also be afforded to other administrative authorities under such circumstances. Assistance shall not be available for matters in which the administrative authority anticipates that no prosecution or referral, as applicable, will take place. Requests for assistance under this paragraph shall be transmitted between the Central Authorities designated pursuant to Article 2 of this Treaty, or between such other authorities as may be agreed by the Central Authorities.

ARTICLE 7

Confidentiality and Limitations on Use

1. The Requested Party shall, upon request, keep confidential any information which might indicate that a request has been made or responded to. If the request cannot be executed without breaching confidentiality, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed.

2. The Requesting Party may use any evidence or information obtained from the Requested Party:

- (a) for the purpose of its criminal investigations and proceedings;
- (b) for preventing an immediate and serious threat to its public security;
- (c) in its non-criminal judicial or administrative proceedings directly related to investigations or proceedings:
 - (i) set forth in subparagraph (a); or
 - (ii) for which mutual legal assistance was rendered under Article 1 (1 bis) of this Treaty;
- (d) for any other purpose, if the evidence or information has been made public within the framework of proceedings for which they were transmitted, or in any of the situations described in subparagraphs (a), (b) and (c); and
- (e) for any other purpose, only with the prior consent of the Requested Party.

3. (a) This Article shall not prejudice the ability of the Requested Party in accordance with this Treaty to impose additional conditions in a particular case where the particular request for assistance could not be complied with in the absence of such conditions. Where additional conditions have been imposed in accordance with this subparagraph, the Requested Party may require the Requesting Party to give information on the use made of the evidence or information.

(b) Generic restrictions with respect to the legal standards of the Requesting Party for processing personal data may not be imposed by the Requested Party as a condition under subparagraph (a) to providing evidence or information.

4. Where, following disclosure to the Requesting Party, the Requested Party becomes aware of circumstances that may cause it to seek an additional condition in a particular case, the Requested Party may consult with the Requesting Party to determine the extent to which the evidence or information can be protected.

ARTICLE 15

Return of Documents and Articles

The Central Authority of the Requesting Party shall return any documents or articles furnished to it in the execution of a request under this Treaty as soon as is practicable unless the Central Authority of the Requested Party waives the return of the documents or articles.

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Thursday, June 25, 2020 11:48 PM
To: [REDACTED] <[REDACTED]>
Cc: [REDACTED] (CRM) <[REDACTED]>; [REDACTED]
Subject: Re: Following up

Thanks, [REDACTED]. And I'm sorry, my email was not clear - [REDACTED] do you have a copy of the actual treaty? Curious as to whether the treaty itself contemplates limitations on use of information.

Sent from my iPhone

On Jun 25, 2020, at 6:45 PM, [REDACTED] <[REDACTED]> wrote:

The MLAT is attached for reference, thanks.

From: [REDACTED] (USANYS) <[REDACTED]>
Sent: Thursday, June 25, 2020 6:28 PM
To: [REDACTED] (CRM) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

Thanks, [REDACTED] I appreciate the concern and am open to working to address it, to the extent possible. We, of course, would never simply turn this material over to a civil litigant, as you suggest. The problem is, irrespective of our intent, this is not Rule 6 material (unless, of course, he testifies before a grand jury), and we are trying to be mindful of not simply our criminal case, but obligations we may have under other aspects of U.S. law, FOIA and/or *Touhy*, spring to mind, for example. Again, we never voluntarily turn this stuff over, and we frequently oppose FOIA requests and the like to the extent we can under the law. But particularly given the history and concern, we don't want to make promises we may not be able to keep.

Do you by any chance have handy a copy of the MLAT itself (if not, certainly happy to locate myself, just figured you might have it already). I'd like to see what, if anything, the treaty says about this subject.

From: [REDACTED] (CRM) <[REDACTED]>
Sent: Thursday, June 25, 2020 2:47 PM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

Thanks. This is helpful. One clarification which they will seek – because it seems to loom large in their suspicions – is whether his statement will be provided to victims for purposes of civil litigation. I know this is not something that ordinarily happens (I don't think I have ever done this) – but I think we need to say something about that to move this forward.

Maybe something like, “Absent a court order directing otherwise, the SDNY will not use or disclose the statement in any matter other than a criminal investigation, prosecution, or related asset forfeiture action initiated by the United States government.”

What do you think?

From: [REDACTED] (USANYS)
Sent: Thursday, June 25, 2020 7:36 PM
To: [REDACTED] (CRM) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

[REDACTED] – Thanks for your patience. I've now had a chance to raise your suggestion on our end, and we are amenable to discussing a confidentiality agreement along the lines you propose, with some revisions. Below is our proposed language which we would be comfortable with. Happy to discuss our position further at your convenience. Thanks, Ted

Prior to the in-person interview:

- From now until August 14, 2020, neither the witness nor any person representing him will make any statement to anyone (other than counsel) about the plans for or terms of the interview. Likewise, the SDNY agrees to make no public comment about the matter during this period. If an interview has not been concluded by August 14, this confidentiality agreement will not bar any further public or private comments on the matter.

After an in-person interview:

- If the witness completes an interview with U.S. law enforcement, both parties may confirm publicly or privately that: "the witness has met with law enforcement authorities in the United States and answered questions about matters under investigation. We will not comment further." Further comment by the witness or any person representing or speaking for him will void this agreement.
- The content of the witness's statements to law enforcement as part of any interview arranged pursuant to the MLA will only be used or disclosed as permitted under U.S. law, including in connection with a criminal investigation or proceeding, as ordered or authorized by a court in the United States, or as otherwise required by law.

Nothing in this agreement will bar any party from disclosing to a Court any communications related to setting up or executing the interview or the contents of the interview.

From: [REDACTED] (CRM) <[REDACTED]>
Sent: Tuesday, June 23, 2020 5:00 AM
To: [REDACTED] (USANYS) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

Sounds good.

From: [REDACTED] (USANYS)
Sent: Monday, June 22, 2020 10:06 PM
To: [REDACTED] (CRM) <[REDACTED]>; [REDACTED] <[REDACTED]>
Cc: [REDACTED]
Subject: RE: Following up

Thanks, John. I am in the process of raising this internally on our end, but given recent events, and as I'm sure you can imagine, it may take me a bit more time than usual to get back to you. I can tell you the conditions below are unlikely to be acceptable to us as drafted, but provided it is in fact a rough outline, I am working on some proposed modifications that folks here may be able to get comfortable with. I will circle back when I know more.

From: [REDACTED] (CRM) <[REDACTED]>
Sent: Monday, June 22, 2020 6:50 AM
To: [REDACTED] <[REDACTED]>; [REDACTED] (USANYS) <[REDACTED]>
Cc: [REDACTED]
Subject: Following up

Before this weekend's events, I was planning on writing an email proposing that you put together some very specific terms for an in-person interview that we can share with the Home Office and the police force which makes the first formal approach to the witness's solicitors. Most of the terms are already noted in the MLA request: who will be present, where it will take place (UK), whether it will be recorded or written, etc. What isn't covered is any kind of a description or agreement about confidentiality. Absent this, a MLA police interview will get hung up like your efforts at a voluntary interview.

This weekend's events, which are troubling on many levels, also provide an opportunity in this case. Blackford's and the witness's anger have been focused on your former USA's public statements. They may now have some greater confidence that they can rely on any statements of confidentiality. Or at least they can now save face by agreeing to an interview. In any event, given the history of this, I think absent a mutual agreement on confidentiality, this matter will get mired in litigation, and you may never get the interview.

Here is a rough outline of what might be acceptable on confidentiality. This may give you heartburn, but I think it is the most expeditious way forward:

Prior to the in-person interview:

- An agreement that for a period lasting no longer than eight (8) weeks, neither the witness nor any person representing him will make any statement to anyone (other than counsel) about the plans for or terms of the interview. Likewise, the USDOJ agrees to make no public comment about the matter during this period. If an interview has not been concluded within eight weeks, this confidentiality agreement will not bar any further public or private comments on the matter.

After an in-person interview:

- If the witness makes a statement, both parties may confirm publicly or privately that: "the witness has provided a formal statement to law enforcement authorities in the United States about matters under investigation. Further comment would not be appropriate." Further comment by the witness or any person representing or speaking for him will void this agreement.
- The content of witness's statement will be treated in the same manner as testimony taken before a Federal Grand Jury under Fed.R.Crim.P. 6(e). Among other things, unless used in connection with a criminal proceeding, required to be disclosed in connection with a criminal proceeding, or otherwise ordered disclosed by a court in the United States, the content of the statement will not be made public.

Nothing in this agreement will bar any party from disclosing to a Court any communications related to setting up or executing the interview or the contents of the interview.

Putting something like this together will pave the way for getting the interview done.

Thanks,



[Redacted]
U.S. Department of Justice Attaché
United States Embassy - London

[Redacted]
[Redacted]
From the U.S.: [Redacted]

<Material Witness PA 4.02 Final _ signed.pdf>

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