

January 14, 2010

Sent Via Hand-Delivery

Special Agent in Charge
Federal Bureau of Investigation
Miami Field Division
16320 NW 2nd Avenue
North Miami Beach, FL 33169

RE: Jeffrey Epstein

Dear Mr. Gillies:

Pursuant to 28 C.F.R. 16.21 *et seq*, enclosed are two subpoenas *duces tecum* to the Custodian of Records, Miami Field Division, Federal Bureau of Investigation, for documents relevant to civil suits filed in both State and Federal Courts against my client, Jeffrey Epstein. I have also enclosed a copy of the Federal Court Order Consolidating Cases for Discovery Purposes.

These lawsuits are occurring in the United States District Court for the Southern District of Florida and in the Circuit Court for the Fifteenth Judicial Circuit, in and for Palm Beach County, Florida. The United States is not a party to these ongoing proceedings.¹ We request that you forward this request to the United States Attorney for the Southern District of Florida pursuant to 28 C.F.R. § 16.22(b). Enclosed is a summary of the information sought and its relevance to the current proceedings. See 28 C.F.R. § 16.22(d)

The subpoenas compel the production of records of interviews (Form FD-302 or other) and/or any audio tape recordings of interviews of plaintiffs and material witnesses. These interviews were conducted during a criminal investigation of Mr. Epstein that was resolved through a non-prosecution agreement. The subpoenas also compel production of any records of correspondence between the FBI and the plaintiffs and/or material witnesses

¹ USAO has filed pleadings as a *de facto* amicus on several discovery matters. Neither the plaintiffs nor the defendants in any of the cases seek monetary or injunctive relief from the Government. The Government does not seek any affirmative relief in these cases.

relating to Mr. Epstein. For the reasons stated below, we submit that you should not object to the disclosure of these documents. See 28 C.F.R. § 62.24(b)(1). We further submit that the requested disclosure is appropriate under the factors specified in 28 C.F.R. § 16.26(a) and that none of the factors specified in 28 C.F.R. § 16.26(b) exist.

Summary of the information Sought and its Relevance to the Current Proceedings

In or about February 2005, the Palm beach Police Department initiated an investigation into allegations that Mr. Epstein was having inappropriate sexual interaction with underage females. During that investigation, each of the plaintiffs was interviewed under oath by the Palm Beach Police Department, as were other females who allegedly had similar interaction with Mr. Epstein. A Grand Jury was convened and the Palm Beach County State Attorney's Office filed charges against Mr. Epstein for one count of Felony Solicitation of Prostitution and one count of Procuring a Person Under the Age of 18 for Prostitution. While those charges were pending, the FBI and the United States Attorney for the Southern District of Florida started an investigation into whether Mr. Epstein had violated any federal laws under Chapters 109A and 110 of Title 18, United States Code. As it pertained to these plaintiffs, the federal investigation encompassed the same conduct as the Palm Beach Police Department Investigation. He entered into a non-prosecution agreement with the United States Attorney's Office. As part of that agreement, Mr. Epstein was precluded from asserting certain defenses if persons designated by the United States as victims brought civil suits against him solely under 18 U.S.C. §2255.

Several "identified victims" filed civil complaints against Mr. Epstein for monetary damages. None of these plaintiffs limited their claims to § 2255. The complaints alleged factual conduct that was investigated by the Palm Beach Police and the FBI. Discovery is ongoing. As part of the discovery process, plaintiffs have been deposed. During these depositions, each of the plaintiffs deposed to date testified that she was interviewed by the FBI during its criminal investigation of Mr. Epstein, and that the substance of the interview related to the plaintiff's alleged sexual interactions with Mr. Epstein.²

The requested materials are relevant to the current proceedings because they may show that the plaintiffs made statements to the FBI that are inconsistent with statements made under oath at other times, and/or are inconsistent with statements made prior to meeting with the FBI. There has been evidence produced in the civil cases that the plaintiffs changed their views on or about Mr. Epstein after they spoke to the FBI. All of these situations are relevant to the plaintiffs'/witnesses' credibility; there are no other independent witnesses with direct evidence of the plaintiffs' allegations, so the plaintiff's credibility is a crucial issue in these cases. In addition, the statements are believed to contain information that could lead to identifying other potential witnesses in the civil cases.

² Copies of the relevant pages of the deposition transcript(s) are attached.

The Request Should be Approved

The Department of Justice's stated policy is that it will not stand in the way of the normal civil discovery process unless there is a compelling law enforcement or security reason: "The [C.F.R.] regulations neither create new privileges nor supersede discovery obligations that exist under the Federal Rules of Civil Procedure. They merely serve as a procedural vehicle to allow the Department the opportunity to protect information from unwarranted and unconsidered disclosure." United States Attorney's Manual §1-6.400 (citation omitted). Where, as here, no such compelling factor exists, the requested disclosure should be approved:

"As a general policy, the Department [of Justice] favors cooperation in state and federal cases in which the testimony of one of its employees is sought or in which information obtained by the Department is sought. Authorization in one form or another is usually granted if it is appropriate under the rules of procedure governing the case or matter in which the demand arose, and if it is appropriate under relevant substantive law concerning privilege. A denial is not usually approved [by the Deputy Attorney General] unless one of the factors set forth in 28 C.F.R. §16.26(b) is present. These factors include such things as that the disclosure will cause a violation of a statute or regulation or the revelation of a confidential source, classified information, trade secrets, the existence of a criminal investigation, or investigative techniques."

United States Attorney's Manual, §1-6.240(citations omitted).

The requested disclosures are appropriate under the rules of procedure governing the cases or matters in which the demand arises. 28 C.F.R. §16.26(a)(1). Statements or summaries of statements made by the plaintiffs and witnesses and/or inducements given to the plaintiffs or witnesses would be discoverable under both the Florida Rules of Civil Procedure and the Federal Rules of Civil Procedure because they are relevant to an issue in dispute and are reasonably likely to lead to discoverable evidence. See Fed. R. Civ. P. 26; Fla. R. Civ. P. 1.280. Had these statements been made to any third party other than the FBI, they would be discoverable in this litigation from that third party.

The requested disclosures are appropriate under the relevant substantive law concerning privilege. See 28 C.F.R. §16.26(a)(2). We are not aware of any privilege that attaches to a witness' statement during an FBI interview. No privilege was asserted by the plaintiffs during their depositions.

The requested disclosures are not barred by statute, such as 26 U.S.C. §6103 or Federal Rules of Criminal Procedure 6(e). See 28 C.F.R. §16.26(b)(1). To our knowledge, the requested disclosures would not violate a specific regulation, reveal classified information, reveal a confidential source or informant, nor reveal trade secrets. See 28

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C.F.R. §16.26(b)(2)-(4), (6). The existence of the federal investigation of Mr. Epstein is widely known, as is the fact that the investigation overlapped with the matters alleged in the civil complaints. Under the Florida Sunshine Law, all of the Palm Beach Police Department investigative records are open to the public. Thus, even if the requested documents are "investigatory records compiled for law enforcement purposes," their disclosure would not interfere with enforcement proceedings or disclose investigative techniques and procedures, the effectiveness of which would thereby be impaired. See 28 C.F.R. §16.26(b)(5).

In addition to being authorized by the applicable rules of procedure and not being barred by any privilege, the disclosure of the requested information is necessary to the fair administration of justice. As discussed above, the requested information is highly relevant to a crucial issue in the civil cases. Mr. Epstein should not be deprived of this relevant evidence merely because it was collected by the FBI.

Further, it is the plaintiffs, not Mr. Epstein, who made the requested materials relevant. Under the non-prosecution agreement with the United States Attorney's Office, Mr. Epstein was precluded from contesting liability of persons designated by the United States as victims brought suit solely under 18 U.S.C. §2255. None of these plaintiffs limited their claims to §2255. As such, Mr. Epstein is free to assert all defenses in these cases. Moreover, he is permitted to challenge the credibility of the plaintiffs by, among other things, impeaching them with prior inconsistent statements to the FBI and/or statements that changed after they spoke to the FBI and witness statements which contradict a plaintiff's testimony. It would be unjust to deny him access to this relevant and probative evidence, and would be inconsistent with the search for the truth, whatever that may be.

I look forward to your response to this request. Please contact me at (561) 842-2820 if you have any questions.

Cordially yours,

Robert D. Critton, Jr.

cc: United States Attorney
AUSA [REDACTED]

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