



U.S. Department of Justice
Civil Rights Division

JMS:CEL:JLM:ks
207-44-5

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

May 29, 2012

Mr. Fred Van Valkenburg
County Attorney
Missoula County Courthouse
200 West Broadway
Missoula, Montana 59802

Re: Investigation of the Missoula County Attorney's Office: Document Request

Dear Mr. Van Valkenburg:

We write regarding the Civil Rights Division's investigation of the Missoula County Attorney's Office ("MCAO"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141"), and the pattern or practice provisions of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"). As we wrote earlier this week, we remain hopeful that our offices can work cooperatively so that we can resolve our investigation promptly and, if our investigation leads to findings, avoid unnecessary litigation.

Please find attached to this letter our second request for documents. The attached document request is intended to supplement, and not to replace or duplicate, the first request for documents articulated in Section Chief Jonathan M. Smith's May 4, 2012 letter to you. Accordingly, your response to the attached response should not affect the timing of your response to Mr. Smith's May 4 letter. Unless otherwise indicated, please provide electronic copies of all of the documents and information requested. If this information is not available in an electronic format, please provide a hard copy. For all computer files, please identify the software program and version required to read the file, and provide any explanatory information necessary to understand the structure of the file (in the case of databases, for example.) Please clearly indicate the paragraph number(s) to which the document is responsive. Please do not hesitate to provide documents or information that we have not identified, but that you believe would assist in our review of relevant issues as set forth below. If any of the requested documents do not exist, please let us know that and provide any other documents that provide substantially the same information. In addition, to the extent you may have already provided us with information responsive to the attached request, you need not produce additional copies of that information; rather, if applicable, please specifically identify which requests you have previously responded to and what information is responsive to those requests. Also, particularly in light of the recent media coverage regarding the circulation and release of e-mails relating to allegations of sexual assault in Missoula, we remind you of your obligations under the Federal

Rules of Civil Procedure to preserve all records, documents, and other evidence potentially relevant to this investigation. Please provide documents for the time period from January 1, 2008 through the present, unless otherwise indicated.

We will work with you and MCAO officials to ensure a complete and timely production of the documents that creates no more burden than necessary to complete a thorough and reliable investigation. Mr. Smith's May 4, 2012 letter to you contained a proposed set of protocols to address the concerns you had expressed regarding the handling of confidential information; we propose that the same protocols outlined in that letter apply to your response to the attached document request. Please feel free to contact us to discuss any questions or concerns regarding this request or the proposed protocols for responding to this request. In particular, if any request seems unduly burdensome, please do not hesitate to contact us to discuss.

We will be contacting you shortly to arrange a visit during early July. In the interest of promoting the efficiency of our investigation, please provide the information described in the attached request by June 25, 2012. We look forward to working with you in the coming weeks and months as our investigation proceeds. Please do not hesitate to contact me at (202) 305-3176 with any questions about this request. Thank you in advance for your assistance with this inquiry.

Sincerely,

/s/ Jennifer L. Mondino

Jennifer L. Mondino
Trial Attorney
Special Litigation Section

cc: Michael W. Cotter
United States Attorney
District of Montana

Enclosure

US DOJ REQUEST FOR DOCUMENTS AND INFORMATION

Please provide the following information:

I. ORGANIZATIONAL STRUCTURE AND LEADERSHIP

- a. The current number of Missoula County Attorney's Office ("MCAO") personnel, broken down by bureaus, divisions, or comparable sectors (if applicable), delineating title, including attorneys, investigators, and other staff.
- b. The title, name, and unit(s) of each MCAO employee, including attorneys, investigators, and other staff, responsible for classifying, responding to, investigating, or supervising the response or investigation of, reports of sexual assault¹.
- c. For each unit within the MCAO organizational structure, including but not limited to specialized units, include a current description of:
 - i. The function of the unit;
 - ii. The number of attorneys in each unit; and
 - iii. The criteria used to select attorneys for assignment to these units.
- d. All studies, reports, analyses, audits, and inspections, from all review or investigative components or entities, whether ad hoc or standing, both internal and external to MCAO, relating to MCAO's response to reports of sexual assault, that have been conducted since January 1, 2008. Include a copy of any MCAO response to such documents.
- e. All materials related to any plan or program for addressing sexual assaults that MCAO is currently implementing or has considered implementing at any time from June 1, 2010 to the present.

II. POLICIES, PROCEDURES, AND RELATED MATERIALS

- a. A description of how policies, procedures, protocols, orders, operating manuals, or similar documents that govern or provide guidance to MPD officers and employees regarding the classification of, response to, or investigation of reports of sexual assault, or the treatment of victims of these crimes, are distributed, disseminated, or otherwise communicated to MCAO attorneys, investigators, and/or other staff.

¹ For the purpose of this document request, the term "sexual assault" includes all crimes involving sexual violence, including rape, pursuant to the most recent Uniform Crime Report definition of that crime; incidents of sexual assault that may not involve vaginal, anal, or oral penetration; child sexual abuse; sexual assault of male victims; and sexual assault involving perpetrators and victims of the same sex. "Reports of sexual assault" includes reports of sex crimes classified as felonies or misdemeanors, as well as miscellaneous reports of sex crimes that have not been classified as misdemeanor or felony crimes.

- b. Sample copies of all forms currently used by MCAO to document its classification of, response to, or investigation of reports of sexual assault.
- c. All written materials currently available or given to members of the public that explain MCAO's process for individuals to report incidents of sexual assault, and a description of how this information is made available to the public.
- d. Copies of any agreements or memoranda of understanding between the MCAO and the University of Montana ("UM"), the University of Montana Office of Public Safety ("OPS"), the Missoula Police Department ("MPD"), and/or other law enforcement agencies or victim's services organizations in Missoula, regarding the response to or investigation of reports of sexual assault.
- e. Any materials that indicate or describe the governmental interest, law enforcement purpose, and/or public safety interest, if any, that is served by classifying, responding to, or investigating sexual assaults differently than other types of assault addressed by MCAO.
- f. Any materials that indicate or describe the governmental interest, law enforcement purpose, and/or public safety interest, if any, that is served by classifying, responding to, or investigating sexual assaults differently than the manner in which sexual assaults are classified, responded to, or investigated by law enforcement outside of Missoula, Montana.
- g. All materials in MCAO's possession relating to the rate at which sexual assaults occur in Missoula as compared to other jurisdictions.
- h. All materials in MCAO's possession relating to the credibility of victims of sexual assault.
- i. All materials in MCAO's possession relating to the public safety risk, including lethality risk, involved in sexual assaults in Missoula and/or in other jurisdictions.

III. TRAINING

- a. Current MCAO training plan for MCAO attorneys, investigators, and other staff, including number of training hours mandated each year in total and by topic; training schedule for June 1, 2011 to June 1, 2012, including the training topics to be covered, and the date, time, and location of the training; criteria for the selection and retention of instructors, and list of instructors for each topic.
- b. Current MCAO training plan for any specialized training provided or offered to MCAO attorneys, investigators, and other staff responsible for classifying, investigating, prosecuting, or supervising the investigation or prosecution of sex crimes, including number of training hours mandated each year in total and by topic; training schedule for June 1, 2011 to June 1, 2012, including the training topics to be covered, and the date, time, and location of the training; criteria for the selection and

retention of instructors, and list of instructors for each topic.

- c. All materials related to the training identified in response to paragraph III(b) and provided to MCAO employees during the past five years. Please indicate when and to whom the training materials were provided.
- d. Information indicating MCAO compliance rate for participation in training identified in response to paragraph III(a).
- e. Information indicating MCAO compliance rate for participation in training identified in response to paragraph III(b).

IV. RESPONSE TO REPORTS OF SEXUAL ASSAULT

- a. List of all classifications and/or codes used to identify crimes in MCAO internal documentation.
- b. Classification manual or other document(s) instructing MCAO attorneys or employees regarding use of classifications and/or codes identified in response to paragraph IV(a), and a description of how that manual or document(s) is disseminated, distributed, or otherwise communicated to MCAO employees.
- c. List of all reports of sexual assault referred to MCAO by MPD from January 1, 2008 to the present.
- d. List of all reports of sexual assault referred to MCAO by UM or OPS from January 1, 2008 to the present.
- e. List of all reports of sexual assault otherwise considered by MCAO for prosecution from January 1, 2008 to the present.
- f. For each case identified in response to paragraphs IV(c)-(e), provide the following information:
 - i. Identification of the manner in which the case was referred to MCAO, the source of the referral, the date of the referral, copies of any and all documentation of the referral, and any documentation of subsequent communications between MCAO and the referring entity, including MCAO evaluations of the referral.
 - ii. Identification of the initial classification code used for the report and, if the classification code was subsequently changed, all other classification codes used for the report, the date of the change(s) of the classification code(s), and a description of the reason for the change(s).
 - iii. Sex and age of the victim(s) of the alleged sexual assault. Please indicate whether the victim(s) of the alleged sexual assault was a University of Montana student at the time of the incident.

- iv. Sex and age of the suspected perpetrator(s) of the alleged sexual assault. Please indicate whether the suspected perpetrator(s) of the alleged sexual assault was a University of Montana student at the time of the incident.
 - v. The date that MCAO first undertook consideration of prosecution.
 - vi. A list of any and all dates in which MCAO attorneys or investigators contacted the victim of the alleged sexual assault, including identification of the means of communication used (i.e., telephone, e-mail, in-person interview, etc.) for each such contact.
 - vii. A list of any and all dates in which MCAO attorneys or investigators contacted identified witnesses of the alleged sexual assault, including identification of the means of communication used (i.e., telephone, e-mail, in-person interview, etc.) for each such contact.
 - viii. A list of all charges, whether for sexual assault, rape, or other crimes related to the incident of sexual assault, filed by MCAO in connection with the case.
 - ix. In cases in which charges were not filed for sexual assault, rape, or other crimes related to the incident of sexual assault, a description of the reason for the determination not to file such charges.
 - x. Final disposition of the case.
 - xi. Date of final disposition of the case.
- g. All documentation of communications between MCAO and MPD, the University of Montana, the University of Montana Office of Public Safety, the City of Missoula (including officials representing the City of Missoula, such as the Missoula Mayor and the Missoula Chief Administrative Officer), media outlets, and/or the public, relating to MCAO's response to or investigation of any specific reports of sexual assault and/or relating to MCAO's response to or investigation of sexual assaults, generally. Such documentation should include but not be limited to written correspondence, electronic mail and attachments, instant messages, text messages, voice mail messages, calendars, and telephone logs.
- h. List of any instances in which MCAO has prosecuted or considered prosecuting a victim of sexual assault in connection with conduct by the victim related to making a complaint about sexual assault, including identification of the name of the victim, the charges filed or considered against the victim, the date that MCAO first undertook consideration of prosecution of the victim, the final disposition of the case, and the date of final disposition of the case.