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| IN THE FOURTH JUDICIAL DISTRICT COURTUTAH COUNTY, STATE OF UTAH |
| STATE OF UTAH,Plaintiff,v.JOHN DOE,Defendant. | MOTION FOR COURT ORDER TO OBTAIN POLICE REPORTS PURSUANT TO THE GOVERNMENT RECORDS ACCESS MANAGEMENT ACTCase No. 000000000Judge XXXXX |

Defendant JOHN DOE (“Mr. Doe”), by and through his attorney of record, BENJAMIN R. ALDANA, hereby moves this Court pursuant to Rule 12 of the Utah Rules of Criminal Procedure and Utah Code § 63G-2-202, to order the Draper City Police Department in Draper, Utah, to release the following records to Mr. Doe:

Any and all police/initial contact reports or other documents/information related to the September 10, 2010 arrest and/or investigation of Jane Doe, conducted by the Draper City Police, Law Enforcement Agency case number 2010-00000, citation number C000000000, Draper City Justice Court case number 000000000.

**FACTS**

1. In this matter, Mr. Doe has been accused of committing several domestic violence offenses against Jane Doe. *See Information*.
2. Jane Doe was previously married to Mr. Doe, and during that marriage Ms. Doe’s legal last name was Doe.
3. On September 28, 2010, Ms. Doe was cited for committing various domestic violence offenses against her husband, John Doe. *See Docket for Draper Justice Court case 000000000*.
4. In Draper Justice Court case 000000000, Ms. Doe was charged with 3 offenses: class B misdemeanor assault; class B misdemeanor domestic violence in the presence of a child; and class B misdemeanor domestic violence in the presence of a child. *See id.* at 1, 3 (showing charges and that the assault charge was amended to disorderly conduct pursuant to a plea in abeyance agreement).
5. In the final resolution of Draper Justice Court case 000000000, Ms. Anderson plead guilty to the amended charge of disorderly conduct as a class C misdemeanor (from class B misdemeanor assault), and both charges of domestic violence in the presence of a child were dismissed. *See id.*
6. Ms. Doe’s plea to the charge of class C misdemeanor disorderly conduct was eventually dismissed pursuant to a plea in abeyance agreement. *See id.*
7. The Draper City Police was the agency that investigated the incident which led to the filing of Draper Justice Court case 000000000. *See. id.* at 1.

**ARGUMENT**

**THE RECORDS IDENTIFIED AND REQUESTED IN THiS MOTION**

**ARE IMPEACHMENT MATERIAL AND MR. DOE HAS THE**

**RIGHT TO HAVE HIS ATTORNEYS OBTAIN THEM FOR**

**uSe in THE DEFENSE OF THIS CASe**

The United States and Utah Constitutions protect Mr. Doe’s right to meaningfully present a *complete* defense and to confront the witnesses against him. *Crane v. Kentucky*, 476 U.S. 683 (1986) (“Whether rooted in the Due Process Clause . . . or the Sixth Amendment . . . the Constitution guarantees criminal defendants ‘a meaningful opportunity to present a complete defense.’”); *see, e.g.*, *State v. Fulton*, 742 P.2d 1208 (Utah 1987), cert. denied, 484 U.S. 1044 (1988) (recognizing right to a fair trial under state and federal due process provisions); *see also* *State v. Kendrick*, 538 P.2d 313 (Utah 1975) (recognizing the right to confrontation under Utah Const. Art. I § 12); *see* Utah Const. Art. I § 7 (“No person shall be deprived of life, liberty or property, without due process of law.”). Additionally, In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the Supreme Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment.” In *United States v. Giglio*, the Court extended the holding of *Brady v. Maryland* to include evidence that affects the credibility/reliability of a government witnesses, in which the *Giglio* Court specifically stated that “[w]hen the ‘reliability of a given witness may well be determinative of guilt or innocence,’ nondisclosure of evidence affecting [that] credibility falls within this general rule.” 405 U.S. 150, 154 (1972) (quoting *Napue v. Illinois*, 360 U.S. 264, 269 (1959)). This principle of required disclosure was reaffirmed in *United States v. Bagley*, where the Supreme Court further explained that the *Brady* rule extends to “[i]impeachment evidence . . . as well as exculpatory evidence . . . [because] if disclosed and used effectively, [impeachment evidence] may make the difference between conviction and acquittal.” 473 U.S. 667, 676 (1985).

The requested Draper City Police records are records sought for the purpose of impeaching a key government witness. But they are non-public records, the release of which is controlled by the Government Records Access Management Act (“GRAMA”), which is found in Utah Code §§ 63G-2-101 *et al*. Police/initial contact reports—which is essentially what is being requested in this Motion—are defined in § 63G-2-103(14), and they are classified as *protected* records under § 63G-2-305. *See* § 63G-2-305(10)-(12), (51)(a)-(b), (68) (describing various records/information often found in police/initial contact reports). In this case, GRAMA requires that a court order be obtained before access to the records requested in this Motion may be granted. § 63G-2-207(7) states that “[a] governmental entity shall disclose a record pursuant to a court order signed by a judge from a court of competent jurisdiction, provided that:

1. the record deals with a matter in controversy over which the court has

 jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester’s use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case . . .; and

(iii) privacy interests or the public interest in the case of other protected

 records;

(d) to the extent the record is properly classified private, controlled, or protected, *the interests favoring access, considering limitations thereon, are greater than or equal to the interests favoring restriction of access*; and

(e) where access is restricted by a rule, statute, or regulation referred to in § 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

§ 63G-2-202(7) (emphasis added).

 Here, there is a matter in controversy before the Court; Mr. Doe has been accused of engaging in criminal behavior, and multiple serious charges are pending against him in this case.

The merits of the request made in this Motion weigh heavily in favor of the Court ordering disclosure of the record(s) because if the Court does not order disclosure, without access to the requested record(s), Mr. Doe will be deprived of his right to a fair trial since without the records his attorneys would be unable to fully cross-examine the government’s most important witness—Ms. Doe. The allegations in this case are based on Ms. Doe’s accusation that Mr. Doe committed various acts of domestic violence against her. The requested records pertain to Ms. Anderson having been the aggressor in a domestic violence situation, in which she was eventually convicted of an offense relating to her aggression. Given that Mr. Doe adamantly denies that he was the aggressor in this case, or even that he engaged in any of the behavior he is accused of engaging in which respect to the allegations against him, obtaining the records sought in this Motion is critical to Mr. Doe’s ability to present a complete defense because they affect Ms. Doe’s credibility.

The Court can also order any limitations that it deems appropriate regarding any further dissemination of the records, consistent with § 63G-2-202(7)(c), in order to prevent any use of the requested records beyond the use that Mr. Doe is requesting in this Motion, which is to exercise his right to have a constitutionally adequate defense.

And the interests favoring Mr. Doe’s access to the records identified in this Motion are more than equal to, and in fact substantially outweigh, any interests favoring restriction of access. The records requested in this Motion pertain to a police investigation that concluded nearly a decade ago in a misdemeanor domestic violence case. Compared against Mr. Doe’s *current* state and federal constitutional right to a fair trial, the Court should allow access.

**CONCLUSION**

Mr. Doe has the right to have his attorneys fully and fairly cross-examine all government witnesses, and being given access to the requested records is the only way in which full cross-examination of Ms. Doe can occur. Therefore, he asks that the Court order the Draper City Police Department to disclose the requested records.

DATED this 26th day of July, 2020.

 */s/ Benjamin R. Aldana*

 Benjamin R. Aldana

 Attorney for Mr. Doe

CERTIFICATE OF SERVICE

Via the court’s electronic filing system a copy of the foregoing was sent to the Utah County Attorney’s Office, this 26th day of July, 2020.

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|  |  | */s/ Benjamin R. Aldana* |