BENJAMIN R. ALDANA (16769)

UTAH COUNTY PUBLIC DEFENDER ASSOCIATION

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| IN THE FOURTH JUDICIAL DISTRICT COURT  UTAH COUNTY, STATE OF UTAH | |
| STATE OF UTAH,  Plaintiff,  v.  JANE DOE,  Defendant. | MOTION FOR COURT  ORDER TO OBTAIN DCFS RECORDS PURSUANT TO GRAMA  Case No. 000000000  Judge XXXXX |

Defendant JANE DOE (“Ms. Doe”), by and through her 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 Division of Child and Family Services (“DCFS”) to release the following records to her attorney:

Copies of any and all records related to DCFS referral/case 0000000, including but not limited to: reports, caseworker notes, and any other document(s) prepared for or received in conjunction with the DCFS referral/case 0000000.

**FACTS RELATED TO THE RECORDS AT ISSUE IN THIS MOTION**

1. Ms. Doe has been charged with one count of class A misdemeanor child abuse in this matter. *See Information*.
2. As of the date this Motion was filed, the Utah County Attorney’s Office has provided two pages of official documentation from DCFS as discovery.
3. A medical report from the CJC has also been provided by the Utah County Attorney’s Office as discovery.
4. The police investigation into the allegations against Ms. Doe began at the request of DCFS, and the DCFS case/referral number is 0000000.

**ARGUMENT**

**MS. DOE is entitled to THE RECORDS IDENTIFIED AND**

**REQUESTED IN THiS MOTION AS PART OF Her DEFENSE**

The United States and Utah Constitutions protect Ms. Doe’s right to meaningfully present a *complete* defense. *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). Additionally, in *Brady v. Maryland*, 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.” 373 U.S. 83, 87 (1963).

While Ms. Doe is not currently alleging that the prosecution is suppressing anything, the requested DCFS records are material to this case, and they are being sought as part of the defense investigation into the facts underlying the charges.

But the records at issue are non-public records, the release of which is controlled by the Government Records Access Management Act (“GRAMA”), found in §§ 63G-2-101, *et seq*. The classification of DCFS records is provided in § 62A-4a-412(1), and they are classified as “private, protected, or controlled records under” GRAMA. *See* § 62A-4a-412(1)(a)-(o) (listing those who may be granted access to DCFS records). And although § 62A-4a-412(k) provides a specific allowance for DCFS to provide the records sought by Ms. Doe to “any person identified in the report as a perpetrator or possible perpetrator of abuse or neglect,” DCFS routinely ignores requests for its records and/or refuses to provide its records in response to those requests.

Because of the specific classification of DCFS’s records (private, protected, or controlled) and DCFS’s routine refusal to simply provide those records in response to properly made requests pursuant to GRAMA, Ms. Doe seeks an order directing DCFS to provide her attorney with access to the records requested in this Motion.

§ 63G-2-202(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**; Ms. Doe has been accused of engaging in criminal behavior, and a charge of child abuse is now pending against her in this case. And since the criminal investigation which resulted in the State filing charges against Ms. Doe in this case was prompted by the investigation conducted into the matter by DCFS, 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 DCFS to disclose the records, Ms. Doe will be deprived of her right to have her attorney fully investigate her case. *See, e.g.*, *State v. Templin*, 805 P.2d 182, 188 (Utah 1990) (“If counsel does not adequately investigate the *underlying facts* of a case . . . counsel’s performance cannot fall within the ‘wide range of reasonable professional assistance.’”) (emphasis added). Thus, Ms. Doe’s interests—and frankly the public’s interests—in ensuring that Ms. Doe and her attorney are permitted to have access to information that is within the DCFS’s possession and control, so that Ms. Doe’s right to a fair trial is protected, far outweighs DCFS’s interest in being permitted to restrict Ms. Doe’s access to the records she is seeking because Ms. Doe has a clear Sixth Amendment right to have a full and fair defense in this case.

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 Ms. Doe is requesting in this Motion.

And the **interests favoring Ms. Doe being granted access** to the records identified in this Motion are more than equal to, and in fact substantially outweigh, any interests favoring restriction of access. While DCFS does have an interest in safeguarding the privacy of its records, Ms. Doe has a far greater interest in ensuring that the allegations against her in this case are fully and fairly adjudicated. And any *potential* harm to DCFS can be prevented by the Court ordering appropriate limitations on any further dissemination of the records. When compared against Ms. Doe’s current state and federal constitutional rights to a fair trial and the effective assistance of counsel, the Court should allow access to the records.

**CONCLUSION**

Ms. Doe has the right to have her attorney fully investigate the underlying facts of this case. Being granted access to the records sought in this Motion is the only way in which a full investigation into the underlying facts of the case can occur. Therefore, Ms. Doe asks that the Court order disclosure of the requested records. In the alternative, the Court should construe this Motion as a specific discovery request and direct the State to obtain and disclose the requested records pursuant to *Brady* and *Gigilio*, wherein the United States Supreme Court has found that the government must disclose evidence that is material either to guilt or punishment.

DATED this 29th day of June, 2021.

*/s/ Benjamin R. Aldana*

Benjamin R. Aldana

Attorney for Ms. 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 29th day of June, 2021.

Additionally, the following individual was served by email:

Assistant Attorney General

Attorney for DCFS

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