



CITIZENS FOR  
RESPONSIBILITY &  
ETHICS IN WASHINGTON

April 24, 2024

**VIA FOIA.gov & eousafoia.usdoj.gov**

Carmen Smith Carter  
Assistant Counsel for the FOIA and the Privacy Act  
Office of Professional Responsibility  
U.S. Department of Justice  
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Washington, D.C. 20530

Arla Witte-Simpson  
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Executive Office for United States Attorneys  
U.S. Department of Justice  
175 N Street, NE, Suite 5.400  
Washington, DC 20530-0001

**Re: Freedom of Information Act Request**

Dear Carmen Smith Carter & Arla Witte-Simpson:

Citizens for Responsibility and Ethics in Washington (“CREW”) makes this request for records pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and U.S. Department of Justice (“DOJ”) regulations.

Specifically, CREW requests the following records from January 1, 1994 to the date this request is processed:

1. All records, relating to former Assistant United States Attorney Terra Morehead (AUSA Morehead) at the Office of the United States Attorney for the District of Kansas (USAO Kansas), that pertain to proven or alleged violations by AUSA Morehead of any provisions of law or constitution, any provisions of the United States Attorneys' Manual adopted by the Department of Justice, any ethical duties imposed upon AUSA Morehead in her capacity as a government prosecutor as set forth in the Kansas Rules Relating to Discipline of Attorneys, or any other professional misconduct.
2. All records, relating to AUSA Morehead's conduct as a prosecutor for the State of Kansas or any political subdivisions thereof, that pertain to proven or alleged violations by Morehead of any provisions of law or

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constitution, any ethical duties imposed upon Morehead in her capacity as a government prosecutor as set forth in the Kansas Rules Relating to Discipline of Attorneys, or any other professional misconduct.

3. All records relating to any DOJ investigations, actions (including but not limited to case reassignments and disciplinary measures), or decisions not to take action, in regard to AUSA Morehead's conduct as an AUSA or prosecutor for the State of Kansas, including those relating to proven or alleged violations by AUSA Morehead of any provisions of law or constitution, any provisions of the United States Attorneys' Manual adopted by the Department of Justice, any ethical duties imposed upon AUSA Morehead in her capacity as a government prosecutor as set forth in the Kansas Rules Relating to Discipline of Attorneys, or any other professional misconduct.

The above request excludes agency records consisting solely of court filings, news articles, press clippings, and other publicly-available material. Please search for responsive records regardless of format, medium, or physical characteristics. We seek records of any kind, including paper records, electronic records, audiotapes, videotapes, photographs, data, and graphical material. Our request includes without limitation all correspondence, letters, emails, text messages, facsimiles, telephone messages, voice mail messages, and transcripts, notes, or minutes of any meetings, telephone conversations, or discussions. Our request also includes any attachments to emails and other records, and anyone who was cc'ed or bcc'ed on any emails. If it is your position any portion of the requested records is exempt from disclosure, CREW requests that you provide it with an index of those documents as required under *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973). If some portions of the requested records are properly exempt from disclosure, please disclose any reasonably segregable non-exempt portions of the requested records. See 5 U.S.C. § 552(b). If it is your position that a document contains non-exempt segments, but that those non-exempt segments are so dispersed throughout the document as to make segregation impossible, please state what portion of the document is non-exempt, and how the material is dispersed throughout the document. See *Mead Data Central v. U.S. Dep't of the Air Force*, 566 F.2d 242, 261 (D.C. Cir. 1977).

Please be advised that CREW intends to pursue all legal remedies to enforce its rights under FOIA. Accordingly, because litigation is reasonably foreseeable, the agency should institute an agency wide preservation hold on all documents potentially responsive to this request.

### **Fee Waiver Request**

In accordance with 5 U.S.C. § 552(a)(4)(A) and agency regulations, CREW requests a waiver of fees associated with processing this request for records. The subject of this request concerns the operations of the federal government, and the disclosures likely will contribute to a better understanding of relevant government procedures by CREW and the general public in a significant way. See *id.* § 552(a)(4)(A)(iii). Moreover, the request primarily and fundamentally is for non-commercial purposes. See, e.g., *McClellan Ecological v. Carlucci*, 835 F.2d 1282, 1285 (9th Cir. 1987).

AUSA Morehead has been repeatedly criticized by courts for her serious misconduct as a federal prosecutor related to undue influence of witnesses, failure to disclose material information, and unauthorized access to attorney-client communications. A federal court found AUSA Morehead to have interfered with a defense witness before he testified, by threatening consequences in the witness's own criminal prosecution.<sup>1</sup> In another case, a court found her to have failed to disclose material information about the prosecution's witness to the defense.<sup>2</sup> In two other cases, the court found her to be involved in USAO Kansas's unauthorized access to attorney-client communications, and resisted efforts to reveal and rectify the incident.<sup>3</sup>

Morehead was also scrutinized by the public for her role as prosecutor under the State of Kansas in the manifest injustice of numerous defendants, particularly Black defendants. Perhaps the most notable of these examples was her prosecution of Lamonte

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<sup>1</sup> In *United States v. Orozco*, 291 F. Supp. 3d 1267 (D. Kan. 2017), *rev'd on other grounds*, 916 F.3d 919 (10th Cir. 2019), AUSA Morehead spoke to the attorney for a defense witness before the witness was supposed to testify, after which the witness decided not to testify. It was later revealed that AUSA Morehead told witness counsel that witness "could be charged with perjury if he testified and that [he] could experience ramifications in his own case 'if he testified' in this case." *Id.* at 1277-78. The Court found "strong evidence that AUSA Morehead communicated a veiled threat of prosecution or threat of creating further complications in [witness's] case if he 'got in her way' by testifying in Defendant's case." *Id.* at 1278.

<sup>2</sup> In *United States v. Giannukos*, No. 15-cv-20016 (D. Kan. May 10, 2021) (ECF No. 198), the court decided to impose a variance downward for the defendant's sentence "because it is persuaded that the prosecutor who tried this case [Morehead] failed to conduct herself as a prosecutor must. To be specific, the court is persuaded the prosecutor failed to provide defendant and defense counsel with a full criminal history and failed to be truthful about [witness's] attempt to take his own life ... It's evident that she disclosed some of the truth to the defense. But the court finds that she failed to disclose the whole truth to defense counsel, and that is not acceptable conduct for any prosecutor. She failed in her duty to do justice and that misconduct provides the reason for the substantial variance reflected in the custody component of Mr. Giannukos' sentence."

<sup>3</sup> In *United States v. Carter*, 429 F. Supp. 3d 788, 798 (D. Kan. 2019), it was uncovered that USAO Kansas, which AUSA Morehead was a part of, "possessed soundless video recordings of attorney visitation rooms at CCA, and possessed and distributed audio recordings of telephone calls between several detainees and their counsel." In particular, "between May 24, 2013 and September 27, 2016, Morehead requested calls at least 33 times for 28 different defendants. In at least nine of those cases, attorney-client calls were recorded. Yet Morehead never excluded any attorney numbers from her requests." *Id.* at 857. In *CCA Recordings 2255 Litig. v. United States*, 2021 WL 5833911 (D. Kan. Dec. 9, 2021), the court found that AUSA Morehead or one of her agents "obtained three sets of [Defendant] Hohn's phone calls from CCA during the course of his prosecution. The prosecution team made no effort to exclude recordings of Hohn's attorney-client calls from any of these requests, including using a filter team or any other procedure to identify and protect attorney-client communications among the recorded calls produced by CCA." *Id.* at \*10. Further, "'AUSA Morehead had every opportunity to explain how, when, and why she obtained access and became privy to Hohn's attorney-client call during her August 9, 2021 testimony. Instead, she continued to minimize, deflect, and obfuscate her role in Hohn's Sixth Amendment claim. When the USAO began the process of disgorging calls to the Court, she resisted.'" *Id.* at \*23.

McIntyre, who was subsequently exonerated.<sup>4</sup> “Acting on a case built by disgraced former Kansas City, Kansas Police detective Roger Golubski, Morehead presented no physical evidence tying McIntyre to the murders. She relied upon the testimony of a witness, Niko Quinn, who later recanted. Quinn said Morehead threatened to throw her in jail and take her children if she didn’t lie about what she saw the day of the double homicide. Morehead also failed to disclose that she had a past romantic relationship with the judge on the case.”<sup>5</sup> According to a civil complaint filed in the United States District Court for the District of Kansas, *Houcks v. Unified Government of Wyandotte County and Kansas City, Kansas*, No. 23-cv-2489 (D. Kan. Nov. 3, 2023), she allegedly pressured a witness into giving false testimony by threats such as “this is how it’s going to be done, or I’ll send someone to get your kids and you’ll be put in jail for perjury,” and “[i]f you don’t do what we discussed, I’ll throw your Black ass in jail. I’ll send them to get your kids, and you’ll never see them again.”<sup>6</sup>

As the D.C. Circuit held, “the public has an interest in knowing that a government investigation itself is comprehensive, that the report of an investigation released publicly is accurate, that any disciplinary measures imposed are adequate, and that those who are accountable are dealt with in an appropriate manner. That is how FOIA helps to hold the governors accountable to the governed. That interest crescendos when the misfeasance of a federal prosecutor with the power to employ the full machinery of the state in scrutinizing any given individual is at stake. The public must have assurance that those who would wield this power will be guided solely by their sense of public responsibility for the attainment of justice.” *Bartko v. U.S. Dep’t of Just.*, 898 F.3d 51, 69 (D.C. Cir. 2018) (cleaned up). Any privacy interest at stake must be balanced against the “frequency, nature, and severity of the allegations” of misconduct. *Id.* at 66.

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<sup>4</sup> Peggy Lowe, *An innocent Kansas Man Spent 23 years in Prison. His Release Exposed Decades of Police Corruption*, KCUR (Oct. 19, 2022), <https://www.kcur.org/news/2022-10-19/an-innocent-kansas-man-spent-23-years-in-prison-his-release-exposed-decades-of-police-corruption>.

<sup>5</sup> Peggy Lowe, *Kansas Prosecutor who Framed Innocent Man Surrenders Law License, Will Soon Be Disbarred*, KCUR (Apr. 16, 2024), <https://kansaspublicradio.org/2024-04-16/notorious-kansas-prosecutor-surrenders-law-license-will-soon-be-disbarred>.

<sup>6</sup> According to the complaint, “Quinn insisted that McIntyre was taller and had different facial features than the man who killed her cousins. Morehead rejected each attempt and instead told Quinn she would ask very direct, leading questions designed to force Quinn to identify McIntyre as the shooter. When Quinn rebuffed the strategy, Morehead threatened ‘this is how it’s going to be done, or I’ll send someone to get your kids and you’ll be put in jail for perjury.’ This meeting occurred within the Unified Government’s offices. Morehead explained she could arrest Quinn and hold her in jail until it was time to go to court, because she had done this before to other witnesses. Morehead repeated her threat that Quinn would be jailed and would lose her children if she did not identify McIntyre on the witness stand at trial.” *Id.* at 33-34. “During McIntyre’s trial, Morehead came into a witness room to tell Quinn it was her turn to testify. Knowing McIntyre was not the killer, Quinn balked at making the false identification. Quinn again stated that McIntyre was too tall, and his ears were too big ... Morehead then again threatened Quinn, stating: ‘If you don’t do what we discussed, I’ll throw your Black ass in jail. I’ll send them to get your kids, and you’ll never see them again.’ Quinn believed Morehead’s threats that she would be punished and would lose her children if she failed to identify McIntyre as the killer of her cousins Doniel Quinn and Donald Ewing.” *Id.* at 34.

The court in *CCA Recordings* noted that even the “Acting United States Attorney Slinkard” himself testified that “Morehead's reputation for veracity is poor,” *CCA Recordings*, 2021 WL 5833911 at \*10. “[D]espite evidence of her conduct in both this and other criminal cases, the government has confirmed that it has not imposed internal sanctions or discipline against AUSA Morehead on the basis of untruthfulness.” *Id.* at \*24. Given the frequent, norm-breaking, and severe allegations listed above, the public has a significant interest in the disclosure of DOJ's knowledge of and response to Morehead's misconduct.

CREW is a non-profit corporation, organized under section 501(c)(3) of the Internal Revenue Code. CREW is committed to protecting the public's right to be aware of the activities of government officials, to ensuring the integrity of those officials, and to highlighting and working to reduce the influence of money on politics. CREW uses a combination of research, litigation, and advocacy to advance its mission. CREW intends to analyze the information responsive to this request and to share its analysis with the public through reports, press releases, or other means. In addition, CREW will disseminate any documents it acquires from this request to the public through its website, [www.citizensforethics.org](http://www.citizensforethics.org). The release of information obtained through this request is not in CREW's financial interest.

CREW further requests that it not be charged search or review fees for this request pursuant to 5 U.S.C. § 552(a)(4)(A)(ii)(II) because CREW qualifies as a member of the news media. *See Nat'l Sec. Archive v. U.S. Dep't of Defense*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (holding non-profit a “representative of the news media” and broadly interpreting the term to include “any person or organization which regularly publishes or disseminates information to the public”).

CREW routinely disseminates information obtained through FOIA to the public in several ways. For example, CREW's website receives hundreds of thousands of page views every month. The website includes blogposts that report on and analyze newsworthy developments regarding government ethics, corruption, and money in politics, as well as numerous reports CREW has published to educate the public about these issues. These reports frequently rely on government records obtained through FOIA. CREW also posts the documents it obtains through FOIA on its website. Under these circumstances, CREW satisfies fully the criteria for a fee waiver.

### Conclusion

If you have any questions about this request or foresee any problems in fully releasing the requested records, please email me at [jtsoi@citizensforethics.org](mailto:jtsoi@citizensforethics.org) and [foia@citizensforethics.org](mailto:foia@citizensforethics.org) or call me at (202) 408-5565. Also, if CREW's request for a fee waiver is denied, please contact our office immediately upon making such a determination.

Where possible, please produce records in electronic format. Please send the requested records to [jtsoi@citizensforethics.org](mailto:jtsoi@citizensforethics.org) and [foia@citizensforethics.org](mailto:foia@citizensforethics.org) or by mail to Chun Hin Jeffrey Tsoi, Citizens for Responsibility and Ethics in Washington, [REDACTED]  
[REDACTED] Thank you for your assistance in the matter.

Sincerely,



Chun Hin Jeffrey Tsoi  
Senior Legal Fellow



Laura Iheanachor  
Senior Counsel