

presence of blood, fibers, hairs and other kinds of evidence which could have been connected to the murders.

11. If I had observed the presence of blood, fibers, hairs or any other evidence, on the ropes, then those findings would have been documented in the body of my Michigan State Police lab report 14402-78.

12. There was no blood, fibers, hairs or any other evidence on the ropes. Had the presence of any blood been identified on the ropes, further testing would have been conducted and documented in an attempt to gather more evidence, such as the "typing" the blood observed on the ropes or making a comparison of the known blood samples preserved from the victims. There was no further testing made on the ropes.

13. In the review of my Michigan State Police lab report in case #14402-78, I can conclude without reservation that no blood, hair or fibers were detected on the ropes submitted by the Bloomfield Township Police Department that were recovered from the scene of the Christopher Busch suicide.

That I have personal knowledge of the facts contained in the Affidavit and if sworn as a witness I can testify competently to the facts contained in the Affidavit.

*David A. Metzger*

David Metzger  
Retired Michigan State Police Forensic Scientist

Dated: 4/7/2012

Subscribed and sworn to  
before me on this 7th day  
of APRIL, 2012

*Brenden Gray*  
Notary Public



P121

000125

White - MASTER  
 Yellow - WORKSHEET  
 Card - FILE

**TIP # 370**

PRIORITY EVALUATION

- Low Medium High

SUBJECT

TIP NO.

INFORMANT

TIP NO.

Last: **GREENE** First: **GREGORY** Middle: **WOODARD**

Name: Last: **FLINT** First: **P.D.** Middle:

Address: \_\_\_\_\_ City: \_\_\_\_\_

Address: **TOM WALDREN** City: \_\_\_\_\_

Direction to Locate (Hangouts, girlfriends, etc.)

Can be Contacted At

Born \_\_\_\_\_ Ht \_\_\_\_\_ Wt \_\_\_\_\_ Eyes \_\_\_\_\_ Hair \_\_\_\_\_

Veh. Make: **CHEV** Style: **VAN** Color: **BRN** Yr: **74** Lic. No. \_\_\_\_\_

Home Phone \_\_\_\_\_ Office Phone: **706-7102**

Works: **UNEMPLOYED** City: \_\_\_\_\_ Occupation: \_\_\_\_\_

Informant was Contacted At: **FLINT P.D.**

Home Phone \_\_\_\_\_ Other Phone \_\_\_\_\_

Associates

INFORMATION REFERENCE SUBJECT	Yes	No		Yes	No		Yes	No
Criminal Record Obtained (IB)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sex Motivated Crime File Check	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Handwriting Specimen Obtained	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Record Section Checked	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Intelligence Check	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Hair Specimen Obtained	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Photo Available	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Operator's License Check	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Written Statement Obtained	<input type="checkbox"/>	<input checked="" type="checkbox"/>
LEIN Checked	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fingerprints Obtained	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Recorded Statement Obtained	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Gun File Check	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Palmprints Obtained	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Updated Photo Obtained	<input checked="" type="checkbox"/>	<input type="checkbox"/>

DETAILS OF TIP: *Subject gave information on Subject Orin Busch as a suspect in this case. Turned out to be more of a suspect than informant.*

REPORT

1-25-77 INTERVIEW OF GREENE IN FLINT P.D. - DOAN-SIMMONS

1-26-77 GREENE ON POLYGRAPH REF INFO HE GAVE US. - GREENE ON POLYGRAPH AS A SUSPECT IN THIS CASE - GREENE INTERVIEWED BY DICK TOMPSON, GARY HAWKINS+LT. SIMMONS

1-29-77 GREENE INTERVIEWED BY DOAN-CATTEL-WALDREN

Received by: **J. Simmons** Date: **1-25-77** Time: **5PM**

Forwarded to: **Doan** Date: **1-25-77** Time: **5PM**

Analyzed/Closed by: \_\_\_\_\_ Date: \_\_\_\_\_

Subject Not Cleared

Subject Cleared by:

Witnesses  Was Working  Polygraph

000126

Thomas Grden

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**From:** Brasier, Lori <lbrasier@freepress.com>  
**Sent:** Friday, October 05, 2012 2:58 PM  
**To:** Cooper, Jessica  
**Cc:** pwalton@oakgov.com; Nash, Amalie  
**Subject:** FOIA

Oct. 5, 2012

Jessica Cooper  
Oakland County Prosecutor

Dear Prosecutor Cooper,

This a Freedom of Information Request under MCL 15.231. We are seeking the following public documents:

Please provide us access and/or copies of all documents related to the Oakland County Child Killer investigation, except those specifically exempted by FOIA. As you know, FOIA requires a response within five working days. As we are a newspaper with wide circulation, we ask that you waive fees in the interest of public disclosure. If the fees are to be implemented, please notify us if the cost is above \$200.

I can be reached at my desk, or via email if my request requires more specificity.

Thank you for your assistance in this matter,

Lori Brasier  
Staff Writer  
Detroit Free Press  
248-858-2262

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Office of the Prosecuting Attorney  
County of Oakland



JESSICA R. COOPER  
Prosecutor

Paul T. Walton  
Chief Assistant Prosecutor

October 10, 2012

Lori Brasier  
Detroit Free Press  
615 West Lafayette Boulevard,  
Detroit, MI 48226

Re: FOIA OCCK Investigation

Madam:

This is in response to your Freedom of Information Act request sent via email on October 5, 2012, and received October 8, 2012. Your request for information is granted. Enclosed please find a copy of the file in the criminal case charging Christopher Busch with two counts of third degree criminal sexual conduct. A copy of the preliminary exam transcript from that matter, an affidavit from retired MSP scientist David Metzger, and a one page tip sheet from 1977. Also included is a copy of the Bill of Particulars that this Office provided to Judge Potts and Barry King, along with several attachments to that Bill of Particulars. The search based on your request has revealed there are 161 pages of records.

The reproduction fee is \$64.40 based on \$.40 per photocopy. Please forward your check for this amount made payable to *Oakland County Prosecutor's Office* and mail to County of Oakland, Office of the Prosecuting Attorney, 1200 N. Telegraph Road, Pontiac, MI 48341.

Not included are several hundred pages of pleadings filed in two lawsuits. Our understanding is that you are not requesting these pleadings at this time.

Exempt from the information is any personal identifying information that would clearly constitute an unwarranted invasion of an individual's privacy; such as dates of birth, addresses, and phone numbers. LEIN information and a confidential case evaluation were removed. As explained within the body of the Bill of Particulars attorney work product has not been disclosed as these materials are exempt. See MCL 15.243(1)(a), MCL 28.214 and MCL 15.243(1)(h).

Sincerely,

JESSICA R. COOPER  
PROSECUTING ATTORNEY

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Paul T. Walton  
Chief Assistant Prosecutor

Enclosure

STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

BARRY L. KING  
Plaintiff,

v

HON. WENDY L. POTTS  
Case 2012-125171-CZ

OAKLAND COUNTY PROSECUTOR'S OFFICE,  
Defendant

LISA T. MILTON (P38129)  
4967 Crooks Road, Suite 150  
Troy, MI 48098  
Attorney for Plaintiff

JESSICA R. COOPER (P23242)  
OAKLAND COUNTY PROSECUTING ATTORNEY  
By Paul T. Walton (P45278),  
Thomas R. Grden (P39288) and  
Jeffrey M. Kaelin (P51249)  
Assistant Prosecuting Attorneys  
1200 N. Telegraph  
Pontiac, MI 48341  
248-858-0656

BILL OF PARTICULARS

Paul T. Walton, the Chief Assistant Prosecuting Attorney for the County of Oakland, in support of this Bill of Particulars says:

1. The Michigan State Police (MSP) is currently and has always been the lead agency in the ongoing criminal investigation commonly known as the Oakland County Child Killer(s) (OCCK) case. The OCCK investigation is active and ongoing, and absorbs resources of the Oakland County Prosecutor's Office (OCPO) and other law enforcement agencies.
2. I have been actively involved in meetings with the Oakland County Child Killer Task Force (Task Force). I have consulted with Task Force members on scientific and forensic evidence that may be sent to laboratories for testing and reviewing matters for potential legal admissibility. I was specifically concerned given the many legal challenges since *Crawford*

and its prodigies. See *Crawford v. Washington*, 541 US 36 (2004). Because of the sensitive nature of this investigation, access to information related to this investigation is limited even within OCPO.

### **Background related to the OCCK Task Force Investigation**

3. A historical perspective of the investigation is necessary, to fully understand the ongoing aspects of this investigation, and the interference with this investigation that would occur if ongoing aspects of the investigation are disclosed before potential leads are fully exhausted.
  - a. In December of 2006, the Wayne County Prosecutor was quoted by media as publically announcing that a suspect named Theodore Lamborgine was "the most promising suspect at this particular time" in the OCCK investigation. As a result, Troy attorney David Binkley sued Lamborgine in October 2007, on behalf of the family of Mark Stebbins. See 2007-08665-NO and 2008-093591-NO.
  - b. On March 9 of 2009, the Wayne County Prosecutor made a presentation to members of the Oakland County Prosecutor's Office, including Prosecutor Cooper, John Skrzynski, Barbara Morrison and myself alleging that Christopher Busch was the most promising lead in the OCCK investigation. A copy of the unofficial police report<sup>1</sup> from which this presentation was based was provided to us, and appeared very conclusory.
  - c. Later in March of 2009, we were invited to the Michigan State Police Post to meet with the Wayne County Prosecutor, the Michigan State Police and the FBI, to talk about the OCCK investigation. There were no police agencies from Oakland County present. At this meeting the Oakland County Prosecutor's Office was asked by the Wayne County Prosecutor's Office to (1) accompany a Wayne County Prosecutor, an MSP investigator, a Livonia police office and an FBI agent to Montana, the next day to interview a

<sup>1</sup> It is this copy upon which I used and made extensive work-product notations.

potential suspect in the OCCK investigation, and (2) to grant immunity to this potential witness/suspect, because the Wayne County Prosecutor did not have jurisdiction to grant immunity for the crimes associated with the OCCK investigation. Lacking substantive information regarding this potential witness/suspect, and because of convoluted theory as to the witness/suspect involvement, the Oakland County Prosecutor requested time to review the information and obtain a psychological profile of the witness/suspect before any interview was attempted.

- d. I learned that the following week a Wayne County Assistant Prosecutor, a Livonia Officer (later hired as a Wayne County Investigator), a MSP Detective and a Special Agent with the FBI flew out to Montana to speak with the witness/suspect, instead of waiting until the psychological profile was prepared.
- e. In October of 2009, we were again invited back to the MSP police post, where a FBI representative showed us a front-page story in a newspaper, with pictures, showing details of an affidavit from an October 2008 search warrant. The 2008 search warrant was prepared by the Gorcyca administration and executed on a residence that had been substantially remodeled over the years and was occupied by new owners. The home was allegedly previously owned by the family of Christopher Busch. The affidavit and warrant were sealed, pursuant to a Court order. Our office did not leak the story, the FBI and MSP indicated that they did not leak the story.
- f. During this meeting, the Wayne County Prosecutor indicated that she had hired the Livonia officer who authored the conclusory reports regarding Mr. Busch and the Montana witness/suspect.
- g. To my surprise, the families of the OCCK victims, including Plaintiff King, were invited to this meeting. There were still no police agencies from Oakland County present. At this meeting, the Livonia Police Chief indicated that the Wayne County Prosecutor

would have indicted Mr. Busch for the OCCK murders, if Mr. Busch was still living.

- h. Upon exiting this meeting, local media cameras were waiting in the front of the MSP Post, to interview the participants of this meeting. Fortunately, we were parked on the side of the building.
- i. After this meeting, the Oakland County Prosecutor called the Oakland County Sheriff and the seven police chiefs of the cities or townships where the children were last seen or where their bodies were found to inquire whether they even knew about the existence of this Task force and to inquire as to their interest in becoming actively involved. The Sheriff and the Oakland Police Chiefs, with the possible exception of Birmingham P.D. were not aware of the ongoing Task Force. However, there was enthusiastic response by the local Oakland County law enforcement agencies, as well as by the MSP to join forces and make good use of the additional resources.
- j. On December 10, 2010, a meeting with the Sheriff's command staff and Oakland County police chiefs along with MSP representatives and representatives from Livonia P.D. and the Wayne County Prosecutor's Office was then held at OCPO. MSP was scheduled to give a PowerPoint presentation, summarizing the current aspects of the ongoing OCCK investigation, but MSP had not prepared this PowerPoint. The meeting was adjourned, and Prosecutor Cooper asked me to prepare an extensive review going back to the source documents and to prepare a PowerPoint presentation outlining the investigation and any recent developments.
- k. To prepare my PowerPoint presentation, detailing the strengths and weaknesses of the ongoing aspects of the OCCK investigation, I spent in excess of 200 hours of work, and reviewed literally thousands of pages of documents for source information from FBI and State Police files. During this extensive review of the FBI and State Police files, investigators from the FBI and State Police remained present with their records, acting



as both custodians of these records as well as sources of information, as they were almost continuously queried during the review of these records. Upon completion of the review of these records, the materials were returned in their entirety to the FBI and State Police and are not now, nor were they at the time of Plaintiff's FOIA requests, in the possession of the Oakland County Prosecutor's Office. These materials were also not copied or logged by the Oakland County Prosecutor's Office, but returned after being reviewed.

- l. I presented my PowerPoint presentation to the expanded Task Force at a meeting at the Oakland County Prosecutor's Office on February 26, 2010.
- m. While the MSP has always been, and remains, the lead agency in the Task Force, the Wayne County Prosecutor then requested that her investigator, the former Livonia Officer who authored the conclusory report alleging that Christopher Busch was the Oakland County Child Killer, be allowed to work with the Task Force. This investigator was allowed to participate in the Task Force for a few months, but was ultimately asked by the leaders of the Task Force to leave because he refused to follow the Task Force's directions. After their investigator was asked to leave to the Task Force, the Wayne County Prosecutor's Office began issuing subpoenas to MSP Command Officers, to compel them to continue to disclose updates on the information obtained in this ongoing investigation. Despite these draconian measures, another Wayne County investigator was allowed to return to the Task Force. However, this investigator also refused to follow the investigative direction of the lead agency. Additionally, information related to the investigation again began leaking into the public domain; including a circumstance where the Wayne County investigator, a Wayne County Assistant Prosecutor, and a news crew all 'happened' to travel to the same cottage in a small town in northern Michigan, that was formerly owned by the Busch family. The Wayne County

investigator was ultimately again asked to leave the Task Force.

- n. Several months later, the Wayne County Prosecutor again issued subpoenas to MSP command staff to once again compel the testimony regarding the information obtained by the Task Force.

#### 1977 Prosecution of Christopher Busch

4. With regard to investigating the details surrounding the 1977 prosecution of Mr. Busch by the Oakland County Prosecutor's Office<sup>2</sup>, the following was learned or confirmed, through a review of the file and discussions with the former Chief Assistant Prosecutor, Richard Thompson.
  - a. That a 14-year-old male victim disclosed to police that in the summer of 1976, Mr. Busch engaged in multiple counts of fellatio with the 14-year-old victim.
  - b. That a search of Mr. Busch's residence (at a N. State Street address) by police after this disclosure uncovered marijuana, and a suitcase of Mr. Busch's that contained approximately 115 different sexually related books, magazines, films, etc., that related to sexual relations with young boys.
  - c. That when interviewed by police, Mr. Busch **admitted** to engaging in fellatio with the then 14-year-old boy.
  - d. That Mr. Busch was originally charged with two counts of third degree criminal sexual conduct, each being a fifteen-year felony, for allegedly engaging in two counts of fellatio with a then 14-year-old boy.
  - e. That during the preliminary examination on this case, held on April 14, 1977, the first count of Criminal Sexual Conduct, Third Degree, was bound over as charged to the Circuit Court for trial, and the second count of Criminal Sexual Conduct, Third Degree,

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<sup>2</sup> Mr. Busch's Oakland County prosecution file would have otherwise been scheduled for destruction, due to its age and the death of Mr. Busch, but it was retained because it was deemed relevant to the ongoing aspects of OCCK investigation.

was bound over to the Circuit Court for trial on the reduced charge of Criminal Sexual Conduct, Fourth Degree.

- f. That the preliminary examination transcript showed that Mr. Busch had posted bond, and was not incarcerated in any jail.
- g. That the crimes for which Mr. Busch were charged and the prosecution of Mr. Busch occurred during the same time period of the Oakland County Child Killings.
- h. That "No Deals - R. Thompson" was the very first entry on the file jacket of the prosecutor's case file for Mr. Busch's Oakland County prosecution.
- i. That "No Deals R. Thompson" was also written on the complaint, issued by the Oakland County Prosecutor's Office that charged Mr. Busch with two counts of Third Degree Criminal Sexual Conduct.
- j. There was nothing in the file to explain why Mr. Busch was offered a plea deal at the height of predators targeting and murdering pre-pubescent boys and girls, particularly after Mr. Thompson wrote "No Deals" all over the file. After the FOIA denial, I was able to arrange an interview in Ann Arbor with attorney Richard Thompson who was the Chief Assistant Prosecutor for the Oakland County Prosecutor's Office in 1977, when Mr. Busch was prosecuted for these crimes. I personally went to Ann Arbor to interview Mr. Thompson early in 2012. He stated that as Chief Assistant Prosecutor, he was the second in charge of the prosecutor's office. Mr. Thompson's prosecutorial decisions, as Chief Assistant Prosecutor, could only be overruled by one person, the then elected county prosecutor.
- k. That on June 8, 1977, Mr. Busch was given a plea and sentence deal. He was originally bound over to Circuit Court of one count of Criminal Sexual Conduct in the Third Degree, a fifteen-year felony and one count of Criminal Sexual Conduct in the Fourth Degree, a two-year felony. He was allowed to plead guilty to one count of Assault with

Intent to Commit Criminal Sexual Penetration, a ten-year felony and one count of Criminal Sexual Conduct in the Fourth Degree. It was additionally noted in the file that if the court could not sentence Busch to probation, the defendant had a right to withdraw his plea.

- l. That on July 29, 1977, Mr. Busch was sentenced to probation for this offense.
- m. That former Chief Assistant Prosecutor Thompson indicated that he had no recollection of approving the plea deal given to Mr. Busch.
- n. That former Chief Assistant Prosecutor Thompson indicated that when plea deals were given, a written memorandum or other documentation explaining this plea deal should be to be included in the file.
- o. That no written memorandum, or other documentation explaining the plea deal given to Mr. Busch, was found in the Oakland County Prosecutor's file, when it was reviewed by the undersigned.
- p. That in 1977, Mr. Busch was investigated and ultimately charged with other child-related sexual misconduct crimes in other counties. Mr. Busch received probation on those other cases that reached the sentencing stage of the proceedings.
- q. That information from a prosecution brought against Mr. Busch in a different county indicated that Mr. Busch's mother attempted to bribe a victim with money, if the victim agreed not to cooperate with law enforcement.

#### **Investigation after FOIA denial and prior to disclosure of Busch documents**

5. That while the OCCK Task Force focused their efforts primarily on other aspects of the investigation, such as the Sloan lead, Defendant looked into three circumstances related to Mr. Busch that remained troubling to Defendant. Specifically, Defendant made inquiry into (1) the 1977 Oakland County prosecution of Mr. Busch, to attempt to determine why this confirmed pedophile was given a plea deal that included probation, during the height of the

Oakland County Child killings; (2) whether the MSP forensic scientist had found any blood on the ropes seen in the photograph of Christopher Busch's bedroom; and (3) whether Mr. Busch truly committed suicide, in light of the unusual circumstances surrounding Mr. Busch's death.

6. As stated previously that inquiry occurred after the denial of Plaintiff's FOIA request was my own inquiry into the circumstances surrounding Mr. Busch's 1977 plea deal, including a trip I took to Ann Arbor, to interview then Chief Assistant Prosecutor Richard Thompson. The information that I discovered regarding the circumstances surrounding this plea deal is detailed in previous paragraphs of this document.
7. Another part of the ongoing investigation, that occurred after the denial of Plaintiff's FOIA request, was our inquiry into the rope that was photographed in Mr. Busch's bedroom. We tracked down the MSP forensic scientist who wrote the actual report in 1978. This scientist confirmed that there was no blood or other collectible evidence on this rope. (See Attachment A, being an affidavit from this forensic scientist, dated April 7, 2012, three months after the denial of Plaintiff's FOIA request)
8. An additional part of the ongoing investigation, that occurred after the denial of Plaintiff's FOIA request, was our inquiry into the possibility that Mr. Busch's death was not a suicide. Our concerns were that Mr. Busch was killed by a single shot, from a long gun, that struck Mr. Busch directly between his eyes. One of Mr. Busch's arms was under a pillow at the time of his death, meaning that if this gunshot was self-inflicted, he would have had to make this difficult shot with only one hand. This seemingly difficult task was made even more improbable because Mr. Busch registered a BAC in excess of .40, when his body was examined by the medical examiner after his death. Unfortunately, despite a thorough review of the evidence surrounding Mr. Busch's death, we were unable to uncover any other evidence supporting the possibility that Mr. Busch's death was not a suicide.

## Subsequent developments

9. In June of 2012, Defendant received an unrelated FOIA request seeking factual material on Mr. Busch's 1977 prosecution. Because, of the discussion with Mr. Thompson and because we had obtained the affidavit of the forensic scientist who had examined the ropes collected from Mr. Busch "suicide scene." The Task Force was now satisfied that there was no conclusive physical evidence linking Mr. Busch to the Oakland County Child killings, and therefore, release of this particular file on Mr. Busch would no longer interfere with the ongoing Task Force investigation. As such, this file was released through this subsequent unrelated FOIA request.
10. Once this information about Mr. Busch was determined to be publically releasable, a copy was given to Plaintiff, without charge.
11. While Plaintiff has stated repeatedly that he has received no contact with OCPO throughout this administration involvement with the investigation, the Oakland County Prosecutor wrote a detailed letter to Plaintiff that was included in many pleadings and had two lengthy meetings with his attorney David Binkley. I have met with Plaintiff several times, including one meeting where I personally briefed Mr. King for several hours about the information on Mr. Busch that had become publically discloseable after the denial of his FOIA request.
12. During all of this time, the Task Force continued to investigate all leads and sent items of evidence to laboratories for analysis.
13. One of the leads being followed by the OCCK Task Force was the potential mitochondrial DNA match between hairs found in a vehicle owned by Arch Sloan and the two male victims. A hair found in Timothy King's nose was identified by MSP as not previously tested in 2010. We requested that this hair be sent to the FBI for Mitochondrial DNA testing. When we received oral confirmation from the FBI lab that this fourth hair was also consistent with the hair received from the Sloan vehicle, and the other two hairs linking the

other two male victims, we had a meeting with Task Force members to discuss this great significance break in the case. This led to extensive follow-up interviews and scientific briefing with MSP lab personnel and evidence continued to be sent and tested, during this active and ongoing investigation. Throughout this time, much discussion amongst the Task Force members took place regarding whether a request to the public for more information regarding Sloan and his various vehicles should take place. Ultimately, the Task Force asked Defendant to call the press conference. At the July 17, 2012, press conference, the MSP Captain-in-Charge of this region, the Oakland County Sheriff and Command Officers, the Police Chief of Troy, the Assistant Chief from Royal Oak, the Chief from Ferndale, the acting Chief from Franklin and a ranking Task Force member from Southfield stood together while the Defendant read a carefully prepared statement appealing to the public for assistance. The public was asked to call into a hotline number if they had any information on Mr. Sloan, or the vehicles potentially linked to this investigation. Public appeals for information are frequently used by law enforcement.

14. Before this press conference was held, Defendant requested that the Task Force brief the families of the OCK victims about this information, before it was disclosed to the public.
15. Plaintiff was one of the families briefed on the Sloan developments before the July 17, 2012 press conference. Defendant has been advised that during the time when Plaintiff was actually being briefed on the Sloan developments by the Task Force, Plaintiff was repeatedly talking on his phone to the media. Unsurprisingly, the nature of Defendant's July 17, 2012 press conference was reported in the media after the Plaintiff was briefed on the matter, and, yet an hour before Defendant actually held the press conference. Interestingly, Channel 4, Channel 7 and the Free Press reported the information **inaccurately** until they corrected their story after the press conference. Our press release did not describe which of

the multitude of cold cases this office has processed was the subject of the press conference. (See copy of Press release Attachment B).

16. Throughout this investigation, I have maintained contact, on a frequent basis, with investigators of the Michigan State Police, and held discussions with other law enforcement personnel on the Task Force, including a special agent of the FBI who has been assigned to the Task Force.
17. Through advancements in forensic technology, law enforcement's ability to identify and hold responsible perpetrators of criminal activity has expanded far beyond the technological capabilities in existence when this investigation began 30 years ago.
18. Since 2009, the Michigan State Police Investigators have sought and continue to seek the Oakland County Prosecutor's advice in the submission of items recovered from initial crime scenes to laboratories for forensic analysis. These items have been, and continue to be, submitted to laboratories on a regular basis.
19. The investigation in this matter warrants the continued efforts of the Task Force headed by the Michigan State Police and the continued expenditure of this agency's resources in an effort to determine those responsible.
20. That at present, there is a person of interest in the OCKK investigation who is incarcerated for life. After two years of exhausting potential leads, including interviews with Sloan and other witnesses throughout the country, the Task Force requested that Defendant seek assistance from the public, resulting in a significant number of substantial leads.

**Defendant's documents exempted from mandatory FOIA production**

21. In December of 2011, Barry King filed a request for information under the Michigan Freedom of Information Act. In January of 2012, the Oakland County Prosecutor's Office denied the request, in its entirety, with a detailed explanation of why the request was denied. Chief among the numerous reasons provided to Plaintiff was that information retained by the



prosecutor's office during this open and active investigation, consisted of documents that are work-product and thus exempt from mandatory FOIA disclosure. MCL 15.243(1)(h). As work-product, the material is privileged, just as any other attorney's work product is privileged. Items that are developed or kept in anticipation of litigation are work-product. The information was also exempt because disclosure would interfere with an open and ongoing investigation. Further, there are legal prohibitions that prevent the Oakland County Prosecutor's Office from disclosing information within its possession.

22. To aid this Court in its resolution of Plaintiff's legal challenge, a step-by-step review of the specific information requested by Plaintiff along with a detailed explanation of the reason that the documents are exempt from mandatory FOIA production follows:

#### **The First Item Sought through Plaintiff's FOIA Request**

1. The first item sought through Plaintiff's FOIA request was "All pleadings filed by your office to obtain the attached Order from the 48th District Court." Defendant denied this request.
2. The only document in the possession of Defendant that meets the Plaintiff's request is the motion Defendant filed seeking entry of the Order that was referenced in Plaintiff's request. However, an Order entered by the 48th District Court on April 24, 2011 suppressed this motion, rendering it non-discloseable. Defendant properly denied Plaintiff's request because this April 24, 2011 Order prohibits the disclosure of the very motion sought by Plaintiff. (A copy of the order is attached as Attachment C).

#### **The Second Item Sought through Plaintiff's FOIA Request**

3. The second item sought through Plaintiff's FOIA request was "Any information relied upon by your office before accusing me of notifying Kevin Dietz of Channel 4 of the existence of the Oakland County Grand Jury." This request was denied by Defendant.

4. While Defendant can neither confirm nor deny the existence of a grand jury proceeding with regard to the OCCK investigation, any documents underlying the issuance of the alleged subpoena itself are exempt from mandatory FOIA production pursuant to MCL 767.19f.
5. With regard to Plaintiff's specific request, which sought any documents confirming Plaintiff's disclosure of this grand jury subpoena to the media, Defendant has previously stated that no such documents are in its possession, something that Plaintiff himself has conceded on page 7 of Plaintiff's Brief in Response to Defendant's Motion to Seal, wherein Plaintiff acknowledged that "Walton advised Binkley that the sole basis for this accusation was the fact that King was served with a subpoena to appear before the Grand Jury" followed by an immediate report of the existence of a Grand Jury by Kevin Deitz of WDIV, Channel 4.
6. Through this pleading, Defendant will again state that there are no documents in Defendant's possession matching the second item requested through Plaintiff's FOIA request.

#### **The Third Item Sought through Plaintiff's FOIA Request**

7. The third item sought through Plaintiff's FOIA request was "Any and all PowerPoint presentations prepared or reviewed by your office regarding the involvement of Christopher Busch." This request was denied by Defendant.
8. As discussed in the preceding paragraphs, Defendant does possess a OCCK investigation related PowerPoint presentation that I, and I alone, prepared. This PowerPoint presentation was not started or otherwise prepared, in any way, by the Michigan State Police, as suggested by Plaintiff in his pleadings. (See affidavit attachment D). This PowerPoint is my privileged work-product, and reflects my analysis, as an attorney, of the ongoing OCCK investigation. Privileged material is exempt from disclosure under FOIA. 15.243(1)(h). The

PowerPoint presentation analyzing the ongoing OCK investigation contains my mental impressions, strategies, theories; opinions; thought processes and legal analysis, which constitutes privileged work-product. This is precisely the type of work-product that merits maximum protection under the work-product doctrine. Even Plaintiff has acknowledged that "If the OCP did prepare a separate PowerPoint Presentation, the attorney work product rule may apply." (Plaintiff's Brief in Support of Answer to Motion to Quash, p 8). As noted in an affidavit was filed in circuit court case No 2010-109674-CZ, "A PowerPoint was created by the Oakland County Prosecutor's Office but is not in the possession of the Michigan State Police." [Emphasis added] (Copy of the affidavit is attached as Attachment D). Further, the disclosure of this PowerPoint would interfere with ongoing aspects of the OCK investigation, as the presentation discusses, in detail, the ongoing aspects of the OCK investigation.

9. "It is generally understood that litigation need not have actually been commenced, or threatened, before it may be stated that materials were prepared in anticipation of litigation. It is generally sufficient if the prospect of litigation is identifiable, either because of the facts of the situation or the fact that the claims have already arisen." The PowerPoint document quite demonstrably contains the thought processes and legal analysis of counsel. This is precisely the type of work-product that merits maximum protection under the work-product doctrine. *Hickman v Taylor*, 329 US 494; 67 S Ct 385; 91 L Ed 451 (1947).

#### **The Fourth Item Sought through Plaintiff's FOIA Request**

10. The fourth item sought through Plaintiff's FOIA request was "All documents reviewed by your office regarding Christopher Busch in preparation for the presentation made on February 26, 2010." This request was denied by Defendant.
11. As noted in earlier paragraphs, the documents reviewed and used in the preparation of the

PowerPoint were brought to the Oakland County Prosecutor's Office by members of the Task Force and then returned to their original locations. None of these documents were retained by Defendant, and during the time that these documents were being accessed by Defendant to prepare Defendant's PowerPoint presentation, a representative of the law enforcement agency who possessed the evidence remained on hand, to both supervise the evidence and to answer questions that I had while preparing this presentation.

12. The one file in our possession that was used in the preparation of the preparation of the PowerPoint was the previously mentioned Oakland County Prosecution file for Mr. Busch. As noted, this file was scheduled to be destroyed, but was retained because it was deemed particularly relevant to the deliberative thought processes of the attorneys within Defendant's office working on the OCCK investigation. As also already noted, this file was ultimately released by Defendant to Plaintiff in June of this year, after all of the available leads into Mr. Busch's possible involvement in this investigation were exhausted. However at the time of Plaintiff's FOIA denial, Defendant actively following up on leads related to this file, and the release of this file at that time would not only have disclosed the factual work product of Defendant, but it would have also interfered with the ongoing investigation.
13. There was also a polygraph test that I reviewed in the preparation of the PowerPoint presentation; however, this item was properly exempted from mandatory FOIA disclosure through MCL 338.1728, which provides:

Any person who is or has been an employee of a licensed examiner shall not divulge to anyone other than his employer or former employer, or as the employer shall direct, except as he may be required by law, any information acquired by him during his employment in respect to any of the work to which he shall have been assigned by the employer. Any employee violating the provisions of this section and any employee who makes a false report to his employer in respect to any work is guilty of a misdemeanor.

(2) Any principal, manager or employee of a licensed examiner who furnishes false information to clients, or who sells, divulges or otherwise