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MEMORANDUM

I. FACTS

The Mohave County Grand Jury indicted Warren Jeffs in CR 2007-0743 on May 10, 2007 and in CR 2007-0953 on June 21, 2007. Due to his prosecution in Utah, he was not arraigned on the Arizona charges until February 27, 2008. After the arraignment, counsel for the State and defense counsel met at the Mohave County Attorney's Office to discuss procedural matters, including a schedule for disclosure. As of the date of this pleading, the State has complied with that disclosure schedule and all defense disclosure requests.

For the second time,<sup>1</sup> the defendant chooses not to use the normal method for requesting, receiving, or even compelling disclosure and forces the State to oppose the defendant's attempt to avoid the Arizona Rules of Criminal Procedure. On May 1, 2008, the defense submitted a public records request to the Office of the Attorney General. The defense seeks "all records, tapes, writings, memos, or any tangible objects relating to a complaint or investigation thereof on or about April 4, 2008, concerning claims of abuse occurring in the polygamist community of Colorado City/Hilldale." The State objects to the defendant's request because it circumvents the criminal discovery rules.

II. ARGUMENT

While it is true that "a public records request may be made in the absence of or in advance of any litigation or anticipated claim"<sup>2</sup> the Arizona Court of Appeals has held that a criminal defendant cannot invoke methods of obtaining information and evidence that circumvent the rules of criminal procedure.<sup>3</sup> In so holding, the Court explained:

<sup>1</sup> As the Court is aware, the State and the Defendant recently litigated the defendant's request for a subpoena duces tecum to obtain the victim's medical records in CR 2007-0953

<sup>2</sup> *Bolm v. Custodian of Records of Tucson Police Dept*, 193 Ariz 35, 39, 969 P 2d 200, 204 (Ct. App. 1998).

<sup>3</sup> See *Carpenter v. Superior Court*, 176 Ariz 486, 862 P 2d 246 (Ct App 1993) Jeffs/CR-2007-0743

1 If a defendant has reason to believe that the prosecutor has  
2 not disclosed information within the possession or control of  
3 such an agency, his proper recourse is to seek relief  
4 pursuant to Rule 15.7 rather than to circumvent the Rules of  
5 Criminal Procedure. We therefore conclude that if  
6 petitioners= requested information falls within the required  
7 disclosure provisions, the Rules of Criminal Procedure direct  
8 the proper means to obtain that information.<sup>4</sup>

9 In the present case, the defendant submitted a public records request directly to  
10 the Office of the Attorney General. Although he has not sought to obtain the information  
11 pursuant to a subpoena duces tecum issued from the Clerk of the Superior Court, he  
12 has still attempted to obtain discovery by circumventing the criminal discovery process.  
13 In fact, the public records request is even more of a circumvention of the rules due to  
14 the fact that the defendant seeks to obtain the information without first notifying this  
15 Court or the prosecution.

16 In addition to requiring the defendant to obtain disclosure through the  
17 prosecution, the Court of Appeals ruled that a criminal defendant cannot avoid Rule 15  
18 after the criminal discovery process has started:

19 The defendant triggers the criminal discovery process  
20 encompassed in Rule 15, however, when he attempts to use  
21 the court=s subpoena power to order production of materials  
22 or information. Once the defendant elects to utilize the  
23 court's authority to obtain records, he must do so according  
24 to the rules adopted by the Arizona Supreme Court <sup>5</sup>

25 The defendant is under indictment for criminal charges. Also, he moved for a  
26 subpoena duces tecum on April 25, 2008 to obtain medical records from the victim one  
of these cases, further triggering the criminal discovery process. He cannot now avoid  
the methods of discovery authorized by Rule 15 of the Arizona Rules of Criminal  
Procedure and seek to use a public records request as an investigatory tool.

<sup>4</sup> *Id.* at 490

<sup>5</sup> *Id.* at 491

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**III. CONCLUSION**

The Office of the Attorney General, pursuant to its legal authority, denies the defendant's public records request. Accordingly, the State objects to the defendant's request moves this Court for an order directing the defendant to direct all further request for disclosure to the assigned prosecutors in this.

RESPECTFULLY SUBMITTED THIS 20<sup>th</sup> DAY OF MAY, 2008.

**MATTHEW J. SMITH  
MOHAVE COUNTY ATTORNEY**

By *Matthew J. Smith for*  
SPECIAL DEPUTY COUNTY ATTORNEY  
TIMOTHY P. LINNINS

A copy of the foregoing  
sent this same day to:

HONORABLE STEVEN F. CONN  
SUPERIOR COURT JUDGE

MICHAEL L. PICCARRETA  
ATTORNEY FOR DEFENDANT

RICHARD WRIGHT  
ATTORNEY FOR DEFENDANT

By *Ber Brooks*