

IN RE: SPECIAL  
INVESTIGATION NO. CID 18-  
2673

IN THE  
CIRCUIT COURT FOR  
BALTIMORE CITY

---

**MOTION TO DISCLOSE INFORMATION  
CONTAINED IN DOCUMENTS PROVIDED BY THE  
ARCHDIOCESE OF BALTIMORE IN RESPONSE TO A  
GRAND JURY SUBPOENA**

The Office of the Attorney General, by its attorneys, Brian E. Frosh, Attorney General of Maryland, and Carrie J. Williams, Assistant Attorney General, moves, pursuant to Maryland Rule 4-642, for permission to disclose information contained in documents provided by the Archdiocese of Baltimore in response to a subpoena issued by a grand jury. In support of the motion, the Office of the Attorney General offers the following:

**INTRODUCTION**

For decades, survivors reported sexual abuse perpetrated by Catholic priests and for decades the Church covered up the abuse rather than holding the abusers accountable and protecting its congregations. The Archdiocese of Baltimore was no exception. In

fact, in August of 2018, the Pennsylvania Attorney General announced that an investigation revealed that the late Cardinal William Keeler, long-time Archbishop of Baltimore, was engaged in covering up sexual abuse.

In 2019, the Attorney General of Maryland launched a criminal investigation into sexual abuse perpetrated by priests assigned to the Archdiocese of Baltimore and the Archdiocese's response to that abuse. On January 10, 2019, at the request of the Office of the Attorney General, the grand jury issued a subpoena to the Archdiocese of Baltimore requesting all documents from the last 80 years relating to allegations of sexual abuse and the response by the Archdiocese to these allegations.

Over the next three-and-a-half years, the Archdiocese produced hundreds of thousands of pages of documents in response to the subpoena. The disclosure occurred on a rolling basis, with the latest production of documents occurring just four months ago, in July of this year. From the information contained in the documents, as well as interviews with former priests and church officials, civilian employees of the Archdiocese, and victims and

witnesses of sexual abuse, the Office of the Attorney General has compiled its findings in a 456-page report entitled, "Clergy Abuse in Maryland."<sup>1</sup> The Report identifies 115 priests that were prosecuted for sex abuse and/or identified publicly by the Archdiocese as having been "credibly accused" of sexual abuse.<sup>2</sup> The Report includes an additional 43 priests accused of sexual abuse but not identified publicly by the Archdiocese. The Report summarizes the sexual abuse and physical torture perpetrated by all 158 identified priests and the Archdiocese's response to that abuse.

As shown in the Report, both boys and girls were abused, with ages ranging from preschool through young adulthood. Although no parish was safe, some congregations and schools were assigned multiple abusive priests, and a few had more than one

---

<sup>1</sup> A copy of the Report is appended hereto as Attachment A. A motion to file Attachment A under seal has been filed alongside this Motion to Disclose.

<sup>2</sup> It is unclear how the Church determined whether accusations of abuse were "credible." The criteria for being "credibly accused" is irrelevant for purposes of this motion because the fact that the priests were publicly identified as accused removes the information from "grand jury material," as discussed below.

sexually abusive priest at the same time. One congregation was assigned eleven sexually abusive priests over 40 years. The sexual abuse was so pervasive that victims were sometimes reporting sexual abuse to priests who were perpetrators themselves.

The investigation also revealed that the Archdiocese failed to report many allegations of sexual abuse, conduct adequate investigations of alleged abuse, remove the abusers from the ministry, or restrict their access to children. Instead, it went to great lengths to keep the abuse secret. While the Archdiocese reported a large number of allegations to police, especially in later years, for decades it worked to ensure that the perpetrators would not face justice.

The consequences of the Archdiocese's actions are immeasurable. The investigation identified over 600 victims.<sup>3</sup> There are almost certainly hundreds more, as the Department of Justice's Annual Crime Victimization Report has demonstrated

---

<sup>3</sup> To protect their privacy, the Report does not include any victim names or identifying information.



that most incidents of sexual assault go unreported.<sup>4</sup> Many survivors of clergy abuse reported battling depression, post-traumatic stress disorder, or anxiety as adults. (Attachment A at 108, 169, 250, 252, 365, 440, 449). Others reported struggling with alcohol or substance abuse or having difficulty forming and maintaining intimate relationships. (Attachment A at 73, 255, 297, 365, 406, 440). Two victims reported having suicidal ideations or attempting suicide as a result of the abuse and two victims ultimately died by suicide. (Attachment A at 106, 155, 163, 164, 180).

---

<sup>4</sup> See Alexandra Thompson and Susannah N. Tapp, *Criminal Victimization, 2021*, Bureau of Justice Statistics, Sept. 2022, available at: <https://bjs.ojp.gov/content/pub/pdf/cv21.pdf> (21.5% and 22.9% of sexual assaults were reported to the police in 2021 and 2020, respectively); Rachel E. Morgan, Ph.D. and Jennifer L. Truman, Ph.D., *Criminal Victimization, 2019*, Bureau of Justice Statistics, Sept. 2020, available at: Rachel E. Morgan, Ph.D. & Alexandra Thompson, *Criminal Victimization, 2020*, Bureau of Justice Statistics, Oct. 2021, available at: <https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/cv20.pdf> (33.9% and 24.9% of sexual assaults were reported to the police in 2019 and 2018, respectively).

**A. Examples of abuse by Church officials and the coverup by the Archdiocese**

The following are a handful of the hundreds of stories of sexual abuse and physical torture committed by clergy, seminarians, deacons, and other employees of the Archdiocese. While these reports do not rely on information obtained via the grand jury subpoena, they provide examples of the kind of information that the subpoena has uncovered and illustrate why publishing the information in the report is vital to the public interest.

*1. Priest confessed sexual abuse to Church and was ignored.*

When interviewed for this investigation, a former priest told the Office of the Attorney General that in the late 1980s he confessed his attraction to teenage boys to an official in the Church and was told not to “worry about it.” Several years later, in 1993, he confessed that, fourteen years earlier, he had sexually abused a 13-year-old boy. Again, nothing was done.

When another victim came forward in 2002, the priest was indicted on 12 counts of sexual abuse. He pleaded guilty to two

counts and spent nine months in prison. In 2017, another victim came forward and reported that the priest sexually abused him in 1988 when he was a 10-year-old altar boy. The abuse was so traumatic that the boy suffered facial paralysis. The priest was not laicized until 2004.

2. *Archdiocese uninterested in discovering additional victims, financially compensates abusive priest for years.*

A priest confessed in 1995 to sexually abusing two boys fourteen years earlier, in 1981. After the Archdiocese publicly announced the abuse, several additional victims contacted the Archdiocese to report abuse. One of the victims said the Archdiocese told him his information was not needed because several people had already come forward.

When interviewed by the Office of the Attorney General, the priest reported that he was sexually abused by a faculty member when he was in seminary. He reported it to church officials but did not know what, if anything, happened to the faculty member.

The priest's faculties were removed in 1995. Victims continued to come forward over the following decades, with six

total victims reporting that the priest sexually abused them. Although not an active priest, the Archdiocese paid the priest's master's degree tuition in 1996 and paid him his salary and living expenses through 1999.

3. *Archdiocese knew of priest's sexual abuse for over 30 years before alerting authorities.*

Beginning with a note written in 1959, documents indicate that the Archdiocese was aware that a priest was sexually abusing boys.<sup>5</sup> The priest began abusing children at a parish in Nashville, before moving to Maryland and being granted faculties at a Baltimore parish. Seven years later, the Archdiocese received reports of sexual abuse from the Baltimore parish and the priest's faculties were removed.

When a victim of the priest's sexual abuse confided in a nun working at the parish school, the nun reported the abuse. Archdiocese officials told her the priest would not be returning to the parish and said she should not tell anyone about the abuse.

---

<sup>5</sup> These documents were made public during civil litigation and the Pennsylvania grand jury report on sexually abusive priests.



Over the next 15 years, multiple victims reported being sexually abused by this priest. The Archdiocese said nothing until 1995, when it announced that the priest's faculties had been removed, although it did not say why. The Archdiocese did not alert authorities of the abuse until 1997, over 30 years after it first learned that the priest was sexually abusing children.

4. *Archdiocese appoints abusive priest chaplain in Catholic high school and fails to report subsequent sexual abuse.*

In the mid-1960s, after multiple reports that a priest sexually abused teenage boys, the Connecticut diocese sent the priest out of state. When a victim in the reassigned state reported that he had been sexually abused by the priest, a diocese official wrote to the Archdiocese asking that the priest be granted faculties in Baltimore. The request was granted in 1969, and the abusive priest began assisting at various parishes. A year later, the Archbishop appointed the abusive priest chaplain of a Baltimore-area Catholic high school.

Four years later, four boys reported to a teacher that the priest had sexually abused them at school. The teacher told the

principal and the priest never returned to the school again. The Archdiocese told no one about the abuse and did not attempt to learn if there were additional victims. The priest was reassigned as a chaplain in a convent.

Many more victims came forward over the following decades. The priest disappeared in the early 1990s and was not found until 2002. It was later learned that, during those years, people connected with the Archdiocese visited the priest in the Caribbean and that a District of Columbia apostolic society financially supported him for years.

**B. Healing is impossible without accountability and accountability is impossible without transparency.**

The above examples illustrate a fraction of the pain and suffering caused by the Archdiocese's history of ignoring victims and aiding perpetrators. The full report outlines years of abuse and the complicit silence by the Archdiocese. It details not only the rampant sexual abuse within the Archdiocese but also the Archdiocese's deliberate failure to protect the children in its charge. The report documents the Archdiocese's minimizing of

sexual abuse, its transfer of priests accused of sexually abusing children, its acceptance of abusive priests from other dioceses, and its efforts to keep all this information from its parishioners and the public. *See, e.g.* Attachment A at 25-54, 63-72, 83-87, 95-98, 104, 108-11, 114, 120-22, 126-35, 142-47, 157, 160-67, 173-79, 183-87, 190-91, 194-98, 201-02, 205-10, 212-18, 239-43, 258-63, 266-76, 290-302, 309-21, 335-38, 361-64, 367-70, 374-82, 389-407, 426-28, 436-37.

The Attorney General's investigation uncovered pervasive sexual abuse amongst the priesthood and repeated failures by the Archdiocese to protect the children of Baltimore. Time and again, the Archdiocese chose the abuser over the abused, the powerful over the weak, and the adult over the child. Hundreds of Marylanders have suffered mentally and physically for decades because of the Archdiocese's decisions.

Now is the time for reckoning. Publicly airing the transgressions of the Church is critical to holding people and institutions accountable and improving the way sexual abuse allegations are handled going forward. Most importantly, it is vital

to protecting children and the entire community. Because healing is not possible without accountability and accountability is not possible without transparency, the State moves this Court for permission to disclose certain information obtained via grand jury subpoena so that the Attorney General's 456-page report on Clergy Abuse in Maryland may be made public.

### **ARGUMENT**

Although secrecy is inherent in the functioning of the grand jury, there are times that "disclosure of grand jury materials will promote justice." *In re Criminal Investigation No. 51, 843 in Circuit Court for Prince George's County*, 119 Md. App. 112, 117 (1998). For this reason, both the federal rules and Maryland Rules allow parties to seek permission to disclose grand jury materials. *See* Fed R. Crim. P. 6(e); Md. Rule 4-642.

The federal rule and the Maryland rule are "cut from the same cloth[.]" in that they both acknowledge the importance of the secrecy of grand jury proceedings while at the same time recognizing "that the veil of secrecy with which the jury is cloaked must be lifted at times in the interest of justice." *In re Criminal*

*Investigation No. 437 in Circuit Court for Baltimore City*, 316 Md. 66, 81 (1989). Both rules require a court order for disclosure absent a statute authorizing disclosure without one. *Id.* The Maryland Rule, however, does not contain the federal rule's requirement that disclosure be "preliminarily or in connection with a judicial proceeding." *Id.* (quoting Fed. R. Crim. P. 6(e)(3)(E)(i)). It also does not include an enumerated list of exceptions to the rule of grand jury secrecy. *Compare* Md. Rule 4-642(d) *with* Fed. R. Crim. P. 6(e)(3)(E).

Although both rules require a court order for disclosure, neither rule suggests the appropriate standard for when a court order authorizing disclosure should be issued. In *In re Criminal Investigation No. 437*, the Court of Appeals examined the history of the two rules and the Supreme Court's cases on grand jury disclosure in order to decide the appropriate test for disclosure in Maryland. 316 Md. at 79-85. The Court adopted the Supreme Court's test for disclosure, commonly referred to as the *Douglas*



*Oil* standard,<sup>6</sup> and modified it to reflect the absence of a requirement that disclosure be related to a judicial proceeding. *Id.*

There must be a “particularized need for disclosure,” the Court held, and to demonstrate a particularized need for disclosure, the moving party must show that: 1) the material is needed to avoid a possible injustice; 2) the need for disclosure is greater than the need for continued secrecy; and 3) the request for disclosure is structured to cover only necessary material be disclosed. *Id.* at 85.

The standard is a balancing test and can involve any relevant consideration for or against disclosure. *Id.* at 100-01. The considerations identified by the Court of Appeals include: 1) the need to protect unindicted individuals from disclosure; 2) the grand jury investigation has concluded; 3) the materials sought may be available through other avenues; 4) disclosure will save time and expense; and 5) no indictments were returned as a result of the grand jury’s investigation. *Id.* This list is not exhaustive, and the “bottom line” is that disclosure is appropriate where the need

---

<sup>6</sup> *Douglas Oil v. Petrol Stops Northwest*, 441 U.S. 211 (1979).

for it outweighs the need for secrecy. *Id.* at 101. As explained below, the State has met its burden of showing a particularized need for disclosure of the information based on these traditional factors.

Two federal circuit courts have identified additional considerations relevant to the balancing between disclosure and secrecy.<sup>7</sup> See *In re Petition for Order Directing Release of Records*, 27 F.4th 84, 90-91 (1st Cir. 2022) (listing the courts to have considered the issue and discussing the split of authority among those courts). The “special circumstances” cases weigh factors like the historical significance of the documents, the age of the documents, and the identity of the party seeking disclosure. Because Rule 4-642 does not include an enumerated list of exceptions, the State urges this Court to consider the special

---

<sup>7</sup> Because the federal rule contains an enumerated list of exceptions to grand jury secrecy, there is a threshold question in the federal cases regarding whether the list of exceptions is exhaustive. The Maryland Rule contains no such list and this Court is free to consider any circumstance relevant to the issue of disclosure. *In re Criminal Investigation No. 437*, 316 Md. at 101.

circumstances in this case and find that they further support the justification for disclosure.

Of course, not every piece of information contained in a document subpoenaed by the grand jury is subject to the secrecy requirement. “[W]hen information is sufficiently widely known,” it loses its character as grand jury material. *In re Motion of Dow Jones & Co.*, 142 F.3d 496, 505 (D.C. Cir. 1998). Moreover, documents sought via independent subpoena “for their own sake rather than to learn what took place before the grand jury” may also be exempt from the secrecy requirement. *See U.S. v. Dynavac, Inc.*, 6 F.3d 1407, 1411-12 (9th Cir. 1993). Some of the information contained in the Attorney General’s report, while it was included in the documents subpoenaed by the grand jury, is public knowledge and, as such, has lost its status as grand jury material. The State is not obligated to show a particularized need to disclose that information because Rule 4-642 does not apply.

The State has divided the information sought to be disclosed into four general categories: 1) information related to priests or other church officials that were prosecuted for sexual misconduct;

2) information related to priests or other church officials that were publicly identified by the Archdiocese as having been “credibly accused” of sexual misconduct; 3) information related to priests or other church officials who were not publicly identified by the Archdiocese as having been “credibly accused” and are no longer living; and 4) information related to priests or other church officials who were not publicly identified by the Archdiocese as having been credibly accused and are still living. As detailed below, some of the information is publicly known and, thus, not “grand jury material” for purposes of the disclosure requirement. For the grand jury material, the State has met its burden to show that it has a particularized need for disclosure and, additionally, it has demonstrated special circumstances that warrant disclosure.

**A. Information related to priests or other church officials that were prosecuted for sexual misconduct and/or were identified by the Archdiocese as having been “credibly accused” of sexual abuse.**

The Attorney General’s report identifies 115 priests and other church officials who have been prosecuted for sexual abuse or misconduct or who have been publicly identified by the

Archdiocese as having been “credibly accused” of sexual abuse or misconduct. Given the public nature of a criminal prosecution, and the news coverage that attends prosecutions, the information related to prosecuted church officials has lost its status as grand jury material. As for those priests identified as having been credibly accused, that information was likewise widely disseminated, including by the Archdiocese itself, and can also no longer be classified as grand jury material. Alternatively, the State can show a particularized need for disclosure of this information in the Attorney General’s report.

*1. The information is not grand jury material.*

Even if information was obtained by the grand jury, it is not considered “grand jury material” for purposes of Rule 6(e) if it is so “sufficiently wide-known” that there is “no secrecy left to protect.” *In re Grand Jury Subpoena, Judith Miller*, 493 F.3d 152, 154 (D.C. Cir. 2007). If the information is not “grand jury material,” it is not subject to Rule 4-642.

In *In re the Charlotte Observer*, 921 F.2d 47, 50 (4th Cir. 1990), the Fourth Circuit reversed the district court’s injunction



preventing the press from identifying an attorney who was the target of a grand jury investigation after the identity of the attorney was announced in open court in the presence of reporters. “[T]he cat is out of the bag,” the court held, noting that a courtroom is a “particularly public forum,” and the information lost its “secret characteristic” after it was disclosed in open court. *Id.*

Similarly, the D.C. Circuit held that while the identity of a grand jury witness is ordinarily subject to secrecy, where the witness “virtually proclaimed from the rooftops” that he was subpoenaed to appear before the grand jury, that information is widely known and loses its character as grand jury material. *In re Motions of Dow Jones & Co.*, 142 F.3d at 505 (D.C. Cir. 1998). Particularly compelling to the court was that the public’s knowledge of the witness’s identity did not come from press reports relying on unnamed sources, but from the witness’s decision to reveal his identity. *Id.*

Where church officials were prosecuted for sexual abuse, the information related to those allegations lost its secret character the moment the case was charged. The allegations have been aired

in a courtroom, “a particularly public forum,” and the information no longer retains any secrecy to protect. This information is not subject to Rule 4-642,

In most instances, priests who were prosecuted for sex abuse were also included in the Archdiocese’s list of credibly accused priests. Regardless of whether an individual was criminally prosecuted, information related to a person identified by the Archdiocese as credibly accused has lost its status as grand jury material because it has been widely disseminated to the public.

The Archdiocese publishes on its website a list of priests and religious brothers who it determines have been “credibly accused” of child sex abuse.<sup>8</sup> The list includes the name of the alleged perpetrator and details about the allegation. In some instances, actions the Archdiocese took in response to the abuse are also included.

---

<sup>8</sup> *List of Priests and Brothers Accused of Child Sexual Abuse*, Archdiocese of Baltimore, available at: <https://www.archbalt.org/child-and-youth-protection/priests-and-brothers-accused-of-abuse/>.

The 2019 addition of 23 names to that list received significant press attention. Articles appeared in the Baltimore Sun and the Washington Post as well as reports on the local television news.<sup>9</sup> The articles included details about where readers could find the complete list of accused priests.

Whether through a public court proceeding or because the Archdiocese “shouted [the information] from the rooftops,” the information about these priests has been widely disseminated. As such, it is sufficiently public that it is no longer subject to grand jury secrecy.

---

<sup>9</sup> See, e.g. Jonathan M. Pitts, *Archdiocese of Baltimore discloses the names of 23 deceased clergy accused of child sexual abuse*, BALT. SUN, April 24, 2019, available at: <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-accused-priests-list-20190423-story.html>; Weil J. Zauzmer, *Baltimore archdiocese names more priests accused of abuse, all of them deceased*, WASH. POST, April 24, 2019, available at: <https://www.washingtonpost.com/religion/2019/04/24/baltimore-archdiocese-names-more-priests-accused-abuse-all-whom-are-deceased/>; *23 Deceased Priests Added to Archdiocese of Baltimore’s Online List of Clergy Accused of Child Sexual Abuse*, CBSNews Baltimore (April 24, 2019), available at: <https://www.cbsnews.com/baltimore/news/23-deceased-priests-added-to-archdiocese-of-baltimores-online-list-of-clergy-accused-of-child-sexual-abuse/>.

2. *If the information is grand jury material, the State has demonstrated a particularized need for disclosure.*

To the extent that any information related to church officials prosecuted for sexual abuse or identified as credibly accused remains grand jury material, the State has a particularized need for disclosure.

- i. The material is needed to avoid a possible injustice

*“Sunlight is said to be the best of disinfectants.”* — Justice Louis Brandeis

The Archdiocese of Baltimore includes 153 parishes and missions located in the Baltimore metropolitan area.<sup>10</sup> Its 40 elementary schools, 18 high schools, and one early learning center educate almost 24,000 children. Four hundred and sixty-two hospital beds are provided by the two Baltimore-area hospitals supported by the Church. The priests and other church officials in the Archdiocese touch the daily lives of many Marylanders.

Compiling and disseminating the history of sexual abuse within the Church and the Archdiocese’s response to abuse

---

<sup>10</sup> See <https://www.archbalt.org/parishes/>.

allegations is important to hold the Church accountable, validate survivors, and improve the response to sexual abuse allegations going forward. Keeping this information secret hampers those goals. Perpetuating the secrecy that historically surrounded sacerdotal sex abuse would create an injustice both for survivors of abuse and children currently in the Church.

- ii. The need for disclosure is greater than the need for continued secrecy.

The Court of Appeals, quoting the Supreme Court, has identified “several distinct interests” served by grand jury secrecy. *In re Criminal Investigation No. 437*, 316 Md. at 76 (quoting *Douglas Oil*, 441 U.S. at 218-19). “First, if preindictment proceedings were made public,” prospective witnesses would be hesitant to come forward. *Id.* Grand jury witnesses would also be “less likely to testify fully and frankly,” for fear of retribution and risk of inducement. *Id.* at 77. The subjects of the grand jury investigation would be more likely to flee in fear of an imminent indictment or might try to intimidate or influence grand jurors to avoid indictment. *Id.* Finally, secrecy assures that “persons who



are accused but exonerated” will not be “held up to public ridicule.” *Id.* The Supreme Court has also said that, when the movant is a government agency, the court “may weigh the public interest” served by disclosure when determining whether the need for disclosure is greater than the need for continued secrecy. *Illinois v. Abbott & Associates, Inc.*, 460 U.S. 557, 567 n.15 (1983).

Courts have opined that most of the above reasons for grand jury secrecy “are no longer applicable” after the “grand jury’s investigation has terminated[.]” *In re Grand Jury Proceedings GJ-76-4 & GJ-75-3*, 800 F.2d 1293, 1300 (4th Cir. 1986). “[A]fter the grand jury’s functions are ended, disclosure is wholly proper where the ends of justice require it.” *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 234 (1940).

Where the grand jury has disbanded, and any resulting criminal proceedings completed, the only interest favoring secrecy is “the possible effect upon the functioning of future grand juries[.]” *Douglas Oil*, 441 U.S. at 222. Even this consideration is “seriously eroded” if the materials have already been disclosed through some

other means. *In re Grand Jury Proceedings GJ-76-4 & GJ-75-3*, 800 F.2d. at 1301.

None of the reasons for grand jury secrecy remain for information related to priests successfully prosecuted for and/or identified by the Archdiocese as being credibly accused of sexual abuse. There is no active grand jury investigation. No witnesses were ever called before the grand jury in this case and there is no risk of preindictment flight by the target of the investigation. There is also no risk of a person exonerated by the grand jury being subject to public ridicule and the information has been disclosed through other means; the Archdiocese itself published the accusations.

On the other hand, there is a significant public interest served by disclosure. As noted above, transparency about sexual abuse in the Church, and the Church's response to abuse allegations, is critical after decades of obfuscation. Transparency not only holds perpetrators and their accomplices accountable, it also provides validation and support for survivors and increases

public safety going forward. The value of disclosure far outweighs the diminished need for continued secrecy.

- iii. The request for disclosure is structured to cover only material for which disclosure is necessary.

The Archdiocese produced hundreds of thousands of pages of documents in response to the grand jury subpoena. The report compiled by the Office of the Attorney General includes information from less than half of those documents. Moreover, to ensure that only information relevant to transparency and public safety is disclosed and to protect the Archdiocese's privacy interest in the remaining documents, the Office of the Attorney General compiled a summary of the relevant information rather than seek disclosure of the documents themselves. The report contains only material relevant to the sexual abuse of priests and the Archdiocese's response.<sup>11</sup> The Office of the Attorney General has tailored its request to seek disclosure of necessary material only.

---

<sup>11</sup> For example, although the documents produced by the Archdiocese included treatment and medical records for a number of priests, the Office of the Attorney General has limited any reference in the Report to evaluation or treatment records to those relating to pedophilia and sexual abuse. Directing treatment and

**B. Information related to priests or other church officials, both living and deceased, who have not been publicly accused of sexual abuse.**

The Attorney General's report discusses 43 priests and other church officials accused of sexual abuse or misconduct, but not prosecuted nor publicly identified by the Archdiocese. The State has a particularized need for disclosure of this information as well.

*1. The material is needed to avoid a possible injustice.*

Compilation and disclosure of the Archdiocese's response to *all* allegations of sexual abuse is critical for transparency, accountability, and public safety. Allowing disclosure of only those accusations and investigations that the Archdiocese highlights on its website fails to tell the whole story. Only by looking at the entire history of sexual abuse allegations and responses will

---

evaluation was an integral part of the Archdiocese's response to allegations of sexual abuse. In those situations, evaluations and treatment records were relied upon when determining whether an abusive priest could return to active ministry. The information contained in those records is, therefore, critical to understanding the Archdiocese's policies when responding to sexually abusive priests. The Report does not reference any information relating to treatment for alcohol or substance abuse or any other medical information.



injustice be avoided. Otherwise, the Church will not be fully held to account, survivors will not be adequately validated and supported, and the community will not be able to fully learn from past mistakes and increase public safety going forward.

2. *The need for disclosure is greater than the need for continued secrecy.*

“As the considerations justifying secrecy become less relevant, the burden of showing the need for disclosure is lessened.” *In re Request for Access to Grand Jury Materials Grand Jury No. 81-1, Miami*, 833 F.2d 1438, 1442 (11th Cir. 1987) (citing *Douglas Oil*, 441 U.S. at 223). The factors weighing against the need for continued secrecy here are largely the same as for the information about priests that have been publicly accused. There is no active grand jury investigation, no witnesses to protect, and no flight about which to be concerned. The only additional secrecy interest here is the need to protect unindicted individuals from disclosure.

Of the 43 priests that have not been publicly identified or prosecuted, 30 have died. For those priests that have died, this



additional secrecy interest is less compelling. There is no risk of public ridicule, loss of employment, or other personal or economic damages resulting from disclosure. *Cf. In re Petition of Nat. Sec. Archive*, 104 F.Supp.3d 625 (S.D.N.Y. 2016) (court refused to disclose grand jury documents relating to the indictment of Julius and Ethel Rosenberg until several of the key witnesses died).

In order to protect the privacy interests of the 13 living church officials who have been accused of sexual abuse, but have not been listed as “credibly accused by the Archdiocese and who have not been prosecuted, the Office of the Attorney General has redacted all identifying information related to these individuals from the report. By doing so, the Office has satisfied the only outstanding argument in support of non-disclosure.

3. *The request for disclosure is structured to cover only material for which disclosure is necessary.*

As noted above, the Archdiocese produced hundreds of thousands of pages of documents. The Attorney General’s report includes a fraction of the information provided in response to the grand jury subpoena and the Attorney General is seeking to

disclose only the report, not the documents themselves. Additionally, the names of church officials who are still living and have not been publicly accused or prosecuted have been redacted from the Attorney General's report.

**C. The “special circumstances” found by some courts also weigh in favor of disclosure.**

Two federal circuit courts have held that the enumerated reasons for disclosure in Rule 6(e)(3)(E) are not exhaustive and the courts have inherent authority to order disclosure. These courts have considered additional “special circumstances” when determining whether disclosure is warranted. Maryland Rule 4-642 does not have a list of secrecy exceptions. As such, the State urges this Court to consider the “special circumstances” identified by the federal courts. These circumstances bolster the State's argument for disclosure.

“Special circumstances” cases typically involve documents with historical significance. For example, the Second Circuit considered whether to disclose to a historian grand jury materials relating to allegations that a former Assistant Secretary of the

Treasury was a communist spy. *In re Petition of Craig*, 131 F.3d 99, 101 (2d. Cir. 1997). Recognizing that disclosure did not qualify under the enumerated Rule 6(e)(3)(E) exceptions, the court held that the district court possessed the inherent authority to order disclosure. *Id.* at 103.

The court noted that “special circumstances” cases—that is, cases that fall outside the list of Rule 6(e)(3)(E) exceptions—are “fact-sensitive,” and “there is no talismanic formula” for disclosure. *Id.* at 106. It did, however, offer a “non-exhaustive” list of relevant factors. Many of the factors are similar to those already discussed, however the court identified four additional factors to consider: (1) the identity of the party seeking disclosure; (2) how long ago the grand jury proceedings took place; (3) the current status of the principals of the grand jury proceedings and that of their families; and (4) whether witnesses to the grand jury proceedings who might be affected by disclosure are still alive. *Id.*

The Seventh Circuit applied the *Craig* factors to a historian’s petition for materials relating to the grand jury investigation into whether the Chicago Tribune violated the Espionage Act when it

reported that the Navy had advance knowledge of Japan's planned attack on Midway Island. *Carlson v. United States*, 837 F.3d 753 (7th Cir. 2016). The court held that the district court acted within its discretion in finding that the *Craig* factors warranted the documents' release. *Id.* at 767. *See also In re Petition of Nat. Sec. Archive*, 104 F.Supp.3d 625 (S.D.N.Y. 2016) (When ruling to permit disclosure of grand jury materials related to the indictments of Julius and Ethel Rosenberg for treason, the Southern District of New York considered the "special circumstances" surrounding the case, including the historical value of the documents and the fact that many of the grand jury witnesses have passed away.).

The *Craig* factors bolster the State's request for disclosure. While the grand jury subpoena was issued in 2019, a significant portion of the information the State seeks to disclose involves sexual abuse that took place decades ago. Many of the alleged perpetrators, victims, and church officials involved in the sex abuse investigations are no longer alive. And the information in the report has historical value. Only by thoroughly investigating



and reporting the historical mishandling of sexual abuse can we increase public safety and accountability going forward.

**D. Request for Expedited Consideration**

The Report details decades of clergy sexual abuse and Archdiocese cover-up. Those victims that are still alive have been waiting years for the full scope of the abuse and the Archdiocese's complicity to be exposed. For the past three-and-a-half years, the Office of the Attorney General has been receiving documents in response to the 2019 subpoena, with the last production occurring only four months ago. The public and the victims have waited long enough. The Attorney General respectfully requests that the Court set this matter in for a hearing as soon as possible.

The secrecy must end. It is time to shine a bright light on the entirety of the sexual abuse in the Archdiocese of Baltimore and the Archdiocese's response to that abuse. Disclosure is necessary to protect the children of Maryland going forward and to acknowledge and honor the hundreds of victims who suffered at the hands of the perpetrators and the Archdiocese. This Court should grant the Attorney General's motion to disclose grand jury



material and allow the public release of the Attorney General's "Clergy Abuse in Maryland" report.


### CONCLUSION

For all of the above reasons, the State asks that this Court grant the motion to disclose all grand jury material contained in the Attorney General's "Clergy Abuse in Maryland" report.

Dated: November 17, 2022

Respectfully submitted,

BRIAN E. FROSH  
Attorney General of Maryland



---

CARRIE J. WILLIAMS  
Assistant Attorney General  
Attorney No. 0312170241

Office of the Attorney General  
Criminal Appeals Division  
200 Saint Paul Place  
Baltimore, MD 21202  
(410) 576-6422  
cwilliams@oag.state.md.us

### CERTIFICATE OF SERVICE

I certify that on this day, November 17, 2022, I delivered a copy of the foregoing “Motion to Disclose Information Contained in Documents Provided by the Archdiocese of Baltimore in Response to a Grand Jury Subpoena” via electronic mail to David Kinkopf, Esq., Gallagher Evelius & Jones, LLP, 218 North Charles Street, Suite 400, Baltimore, Maryland 21201 at dkindopf@gejlaw.com.



CARRIE J. WILLIAMS  
Assistant Attorney General  
Attorney No. 0312170241