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As discussed, please review for fact-checking.



**CAMMACK 001817**

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October 11, 2020

Ken Paxton  
Attorney General of Texas  
Office of the Attorney General

Brent Webster  
First Assistant Attorney General  
Office of the Attorney General

*Via email delivery*

## **Re: DEMAND FOR PRESERVATION OF DOCUMENTS AND LITIGATION HOLD**

Dear Attorney General Paxton:

Please be advised of the enclosed notice of demand for preservation of documents regarding recent events involving my client, Nate Paul, and actions and inactions by the Office of the Attorney General (“OAG”), as detailed below. As you are aware, my client was subjected to several governmental searches during the course of which several egregious violations of state and federal law occurred (the “Search”), and regarding which a complaint was filed under state law.

The mishandling of this complaint as outlined below has risen to an alarming level. My client was deprived of a proper review of his complaint, as the review became the collateral damage of apparent dysfunction in the OAG.

This dysfunction culminated in (i) my client’s confidential complaint<sup>1</sup> being leaked into the public domain in efforts to support the apparent mutiny within the OAG, (ii) the hasty “closing” of the review of the complaint, citing inapplicable statutes, and (iii) inaccurate statements being proffered by employees of the OAG regarding the complaint review and other matters, which may have been intended to damage my client.

To this day, no complete formal review has been conducted to fully investigate the serious matters set forth in my client’s complaint, of which your office is aware.

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<sup>1</sup> The disclosure to media of confidential government records concerning the Complaint Review is a violation of Texas Penal Code Sec. 37.10, which provides in relevant part: “A person commits an offense if he: . . . (4) possesses . . . a governmental record with the intent that it be used unlawfully.”

**CAMMACK 001818**

**Accordingly, demand is hereby made that the Office of the Attorney General not destroy, conceal or alter any paper or electronic files, other data generated by and/or stored on computer systems and storage media (e.g. hard disks, floppy disks, backup tapes) or any other electronic data, such as voicemails and text messages, that in any way relate to or concern the matters set forth in this notice. This includes, but it not limited to e-mail and other electronic communications; word processing documents; spreadsheets; databases; calendars; telephone logs; contact manager information; internet usage files; offline storage or information stored on removable media; information contained on laptops or other portable devices; and network access information.**

## **I. Mishandling of Complaint Review**

In May 2020, my client sought guidance on the protocol for reporting a complaint regarding the Search, and you informed my client that such a complaint must be filed with the Travis County District Attorney's Office ("Travis County DA"). The Travis County DA's office in turn was professional and provided us guidance regarding the process for filing a complaint, which my client then filed (the "Complaint").

On June 10, 2020, the Travis County DA determined that because the Complaint involves an employee of the Department of Public Safety ("DPS") it would be inappropriate to have it reviewed by the Public Integrity Unit of DPS, which would normally be the appropriate agency. In light of this, the Travis County DA referred the Complaint to the Office of the Attorney General, and the OAG accepted the referral ("Complaint Review").

After nearly seven weeks of inaction, the OAG set an initial meeting with my client and me to discuss the matters set forth in the Complaint. This meeting took place on July 21, 2020. Mr. Paul, and OAG Director of Law Enforcement David Maxwell, and I were present ("Initial Meeting").

My client and I discussed the substance of the Complaint with Mr. Maxwell and were met with open hostility. Mr. Maxwell said that, having spent 40+ years as an employee of DPS, he would never accept any evidence that claims law enforcement officials executed a search without proper authorization, no matter what evidence we showed him. He berated and insulted my client for bringing the Complaint in the first place and attempted to intimidate me and my client to deter us from pursuing the matter further.

It was clear in the meeting that Mr. Maxwell was determined not to review on the merits the allegations of government impropriety, which were supported by compelling evidence, and was not going to conduct a meaningful review of the Complaint. It is alarming that, while the Complaint was referred to the OAG rather than DPS specifically to avoid any appearance of bias, your office assigned the Complaint Review to Mr. Maxwell, a former DPS Texas Ranger. Consistent with OAG protocol, the Initial Meeting was recorded, and your office has in its possession the original copy of the recording. It is our understanding that you, First Assistant AG Jeff Mateer, and Deputy AG for Criminal Justice Mark Penley reviewed the recording and expressed your own concerns about Mr. Maxwell's inappropriate conduct.

A subsequent meeting was then scheduled with Mr. Maxwell and Mr. Penley. At this meeting, we were regrettably met with the same hostile attitude. Mr. Maxwell in particular became more aggressive. At one point, Mr. Maxwell yelled at my client and asked, “who [does] he thinks he is...?” We informed you of Mr. Maxwell’s troubling conduct.

A third meeting was then scheduled. At that meeting, you joined Mr. Maxwell and Mr. Penley, along with two OAG forensic experts. This meeting commenced with Mark Penley presenting a conclusory summary, which suggested to us that he had not taken a deep dive. Nor had the OAG forensic experts. My client was then provided a laptop by your office and demonstrated in real-time the mistakes in the forensic assessment. He presented it to you, Mr. Maxwell, and Mr. Penley, and the OAG forensics experts. The OAG forensics experts then agreed that their own review was flawed, and that Mr. Paul’s assessment was correct.

This appeared to be an embarrassment to your office. It was agreed that further investigation was necessary, at which time you left the meeting. Immediately thereafter, Mr. Maxwell again became aggressively hostile to my client, yelling in his face and threatening him for pursuing his Complaint. My client told Mr. Maxwell that he would not give in to his intimidation and that his behavior was inappropriate. My client and I left the meeting.

We then informed you that we were concerned with how the Complaint Review was being conducted by your office, their limited study of the evidence already presented and unwillingness to take further obvious steps, and tactics that appeared to be intended to urge my client to drop the Complaint.

Accordingly, as it became clear the OAG staff was not going able to fairly fulfill its duties to review and investigate the Complaint, you decided to appoint an outside counsel to conduct the Complaint Review and considered several candidates.

In September 2020, we met a few times with Mr. Brandon Cammack to discuss the Complaint and the underlying factually-intensive information, and he requested certain further information necessary to conduct his review. I then began receiving phone calls from Mr. Penley asking that we provide him documents for the Complaint Review (which we had already provided), even though he was no longer formally assigned to the matter.

Recent media reports of communications from employees within the OAG suggest that Mr. Penley “closed the investigation for lacking merit” on August 20, 2020, which is blatantly false. I have voicemails from Mr. Penley attempting to obtain documentation and attorney-client privileged information from me and my client regarding the Complaint as recently as September 14, 2020.

## **II. Events Beginning September 30, 2020**

Mr. Cammack’s review of the Complaint was thwarted by Mr. Penley on September 30, 2020, setting off a chaotic public media spectacle of allegations, mudslinging, and an apparent power struggle within the OAG over the last week.

During the course of this spectacle, employees of the OAG made numerous inappropriate and false statements to the press, including allegations that my client's Complaint lacks merit. The Complaint is meritorious and deserving of further review, as the OAG had to acknowledge in the third meeting referenced above. The circumstances of the Search are among the most egregious examples of inappropriate behavior by government officials that I have witnessed in my professional experience.

As you are aware, just two of the many examples of the evidence supporting the Complaint filed by my Client include:

- Compelling evidence of tampering with government records by certain individuals involved in the searches that took place in August 2019.
- Sworn testimony of an unaffiliated witnesses present during Search that contradict government records filed with the Court.

The chaos within the OAG and public pressure created by the media spectacle resulted in media reports late Friday indicating the "investigation is now closed." We were never contacted by the OAG regarding this apparently pressured decision, and as such question whether this was in fact a legitimate communication from your office.

We then found a hasty press release at 4:30 p.m. on Friday, October 9, 2020 ("Oct. 9 Press Release") alleging that the OAG closed its investigation into my client's Complaint, issued by someone who to our knowledge is not aware of the status of the Complaint Review. The Oct. 9 Press Release indicates that the investigation was closed on the basis of a specific statutory provision.

However, the statute referenced in the Oct. 9 Press Release does not apply where the OAG is conducting a *complaint review*. It applies only when the OAG is "assisting" the Travis County DA with an actual *prosecution* once an investigation has been completed by outside counsel and a report has been submitted resulting in a decision actually to prosecute.

#### I. **OAG – Charitable Trusts Division**

Given the wide range of misinformation in the media disseminated evidently by your former staff, I am also compelled to address false media reporting regarding the OAG Charitable Trusts Division's intervention in a separate matter involving the Roy F and Joann Cole Mitte Foundation, which is in the midst of litigation with one of my client's companies.

According to the OAG website, the "OAG represents the public interest in charity and acts to protect that interest," and this includes, "Investigating and initiating legal action against charitable organizations and their managerial officials to ensure that charitable donations are lawfully solicited and that assets held by the charitable organization are properly managed, invested, and expended," as well as "Reviewing legal proceedings involving charitable trusts pursuant to Chapter 123 of the Texas Property Code which requires notice to the AG of such proceedings, recognizes the AG's standing to intervene, and prescribes strict consequences for failure to comply."

As you know, the Mitte Foundation failed to timely provide notice to OAG, as required by statute to do. Accordingly, it was my client who notified the OAG, following the statutorily prescribed requirements.

Specifically, my client brought to the OAG's attention the fact that the Mitte Foundation had spent over a million dollars of charitable donations for payments to their attorney and others in pursuit of a litigation strategy for which there was a path to resolution without the misuse of charitable funds, even after the court determined, based on uncontroverted expert testimony, that their interest was worth approximately \$3.8 million. My client reported legitimate public concerns about the management and stewardship of the charitable trust funds.

My client brought these issues to the attention of Joshua Godbey in the Charitable Trusts Division, as well as to Jeff Mateer, Ryan Bangert, and Darren McCarty, who each said they would look into the compensation arrangements with Mitte's counsel and the governance and decision making with respect to the unusual expenditure of charitable funds. Despite several requests, to our knowledge the OAG never obtained this information from the Mitte Foundation, or its bylaws, governance or other documents necessary to understand how the funds were being spent, to whom they were paid, and under what arrangements.

In the course of the litigation, my client was instructed by Jeff Mateer to direct all questions regarding this matter through counsel to Darren McCarty. On September 27, 2020, I sent the attached email to Jeff Mateer and Darren McCarty, indicating further concern due to my client's discovery of a previously undisclosed conflict between an employee of the OAG, Layla Milligan, whose husband, Gregory Milligan, stands to gain a significant financial benefit (approximately \$5,000,000.00, which is almost 50 times the market rate) from the Mitte litigation, and what steps the Charitable Trusts Division has taken to ensure that conflict did not impact the OAG's involvement in the matter. I never received a response. On September 30, Joshua Godbey then nonsuited the OAG's intervention in the Mitte matter entirely. Promptly thereafter, on October 2, Jeff Mateer resigned. Then ensued the public media spectacle between Jeff Mateer, Ryan Bangert, Darren McCarty, Mark Penley and other aides in the OAG.

A troubling part of the Mitte litigation was an undisclosed June 16, 2020 phone call, that we learned about only weeks ago. The call was arranged by Gregory Milligan, the purported "neutral" receiver in the Mitte matter and Ray Chester, counsel for the Mitte Foundation. The attendees included the subjects of the Complaint from the FBI and DOJ, Gregory Milligan, Ray Chester, and Ryan Bangert and Joshua Godbey of the OAG.

We were informed that Joshua Godbey told OAG management that he was "threatened by the FBI" on this call which is why he chose not to act on the Mitte Foundation matter. Ryan Bangert and Joshua Godbey stated that the FBI and DOJ officials were probing OAG employees about their decision to intervene, and discouraged them from giving proper review to the issues my client raised about the Mitte Foundation. This inappropriate call took place after the OAG had accepted the Complaint referral and strongly suggests improper interference.

The contention that the OAG intervention somehow benefitted my client is preposterous. The OAG intervention was non-productive and only served to create confusion, frustrate any resolution, and add to false media reporting about these events.

**II. Response Needed**

We are now forced to bring these issues into the public light.

The actions of employees of the OAG have severely harmed and disadvantaged a Texas citizen and his family of their constitutional rights and their right to privacy.

It is important for the OAG to address all of the matters set forth in this notice, and to set the record straight.

Regards,

Michael Wynne