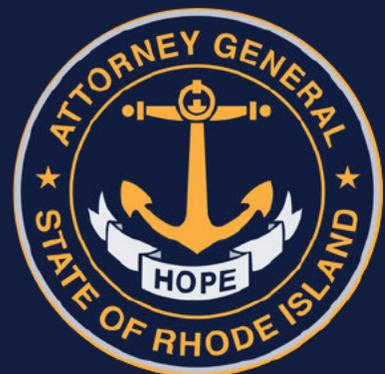


Appendix D

Memorandum of Understanding

July 22, 2019



MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (“MOU”) is entered into the 2nd day of July, 2019 by and between The Honorable Peter F. Neronha, in his official capacity as Attorney General for the State of Rhode Island and His Excellency, the Most Reverend, Thomas J. Tobin, Bishop of Providence (collectively, the “Parties”).

RECITALS

WHEREAS, the Attorney General is committed to conducting a full and thorough review of past allegations of clergy child sexual abuse within the Diocese of Providence; and

WHEREAS, the Bishop’s policy regarding cooperation with law enforcement is furthered by a voluntary records review; and

WHEREAS, this MOU expands on and supplements the Letter of Understanding (LOU) by and between the Parties dated August 30, 2016 attached hereto as Exhibit A by providing access to historical records; and

WHEREAS, the Attorney General seeks a review of Diocesan files and records to (1) identify any prosecutable cases; (2) ensure there are no credibly accused clergy in active ministry; and (3) provide input into improvements of the Diocese’s current policies and procedures for preventing and responding to allegations of child sexual abuse and the Diocese’s cooperation with law enforcement, and the Diocese seeks to cooperate in that review;

NOW, THEREFORE, the Parties agree as follows:

AGREEMENT

I. Definitions

A. “Files” shall mean any and all materials, documents, files, records, forms, notes, memos, summaries, correspondence, statements, and data, as identified in Section II.D, whether in paper, digital or electronic form, related in whole or in part to allegations of Sexual Misconduct Perpetrated Against a Child by Diocesan Personnel during the Review Period including, but not limited to, the clergy files, personnel or employment files, files maintained and held pursuant to Canons 486 (General Archives), 487 (General Archives), 489 (Secret Archives), and 491 (Historical Archives) of the Code of Canon Law, and investigative files maintained by the Diocesan Office of Compliance (“OEC”).

B. “Review Period” shall mean the period of time from January 1, 1950 to the present.

C. “Sexual Misconduct Perpetrated Against a Child by Diocesan Personnel” shall mean: any allegation or complaint, whether determined to be founded or unfounded, credible or not credible, whether previously disclosed to law enforcement or not, involving conduct against a person under the age of 18 at the time of the alleged incident, (1) which, if proven, would now constitute a criminal violation defined by Rhode Island law as: (i) First or Second Degree Child Molestation, First, Second or Third Degree Sexual Assault, and Indecent Solicitation of a Child under R.I. Gen. Laws Chapter 37 of Title 11; (ii) Felony Assault, Simple Assault, or Assault with the Intent to Commit Sexual Assault under R.I. Gen. Laws Chapter 5 of Title 11; (iii) Exploitation

for Commercial or Immoral Purposes, Child Pornography Offenses, Disseminating Indecent Material to Minors, Cruelty to or Neglect of a Child, or Child Abuse under R.I. Gen. Laws Chapter 9 of Title 11; or (iv) Procurement of Sexual Conduct for a Fee (R.I. Gen. Laws § 11-34.1-3); (2) which meets the definitions set forth in R.I. Gen. Laws § 40-11-2(1)(i), (ii), (iii), (vii), (viii), (ix) or (x); or (3) which alleges excessive, unwanted or inappropriate touching.

D. "Credible Allegation" as referenced in Section IV below, shall mean an allegation of Sexual Misconduct Perpetrated Against a Child where there is reasonable basis to believe that the alleged conduct more likely than not occurred, as determined by the Attorney General.

II. Access to Files

A. It is agreed that the Diocese will provide the Files to the Attorney General and the Rhode Island State Police for review on a rolling basis as set forth herein.

B. Files may be provided by the Diocese to the Attorney General and the Rhode Island State Police by any combination of the following means:

- i. making the hard copy Files available in the Diocesan office locations or at another location agreed upon by the Parties; or
- ii. providing electronic scanned images of the Files to the Attorney General at the cost and expense of the Attorney General, unless those Files are already available in electronic form in which case the Diocese will provide digital copies of those Files to the Attorney General at no cost.

C. The Diocese will begin providing Files within five (5) business days of the entry of the protective order described at Section V.G.

D. The Parties anticipate that the Files will be made available in the following order:

1. Previously collected and digitized Files related to allegations of Sexual Misconduct Perpetrated Against a Child for the time period from 1971-2007 collected by prior Diocesan Counsel for production in the prior litigations, P.C. Nos. 03-1302 and 03-0559. These records were compiled by prior Diocesan Counsel pursuant to a court order requiring production of such records for the time period from 1971 to the date of the order, and include certain records that predate 1971 as well as certain records into 2008.
2. Diocesan Personnel Files, including disciplinary or confidential Files, Files related to canonical process, and Files kept in "secret archives" for anyone requested by the Attorney General, beginning with all such Files for the 50 credibly and publicly accused clergy, living or deceased, released by the Diocese on July 1, 2019;
3. All Files maintained in the OEC related to any allegation of Sexual Misconduct Perpetrated Against a Child. The OEC records predating 2007 should be included in the materials referenced in paragraph 1 of this section, but all such files will be made available pursuant to this MOU.

4. All pleadings, depositions, interrogatories, and documents produced in discovery in prior litigations related to any allegation of Sexual Misconduct Perpetrated Against a Child.

5. The collected client files of the prior Diocesan counsel, William T. Murphy, Esq., transferred to Partridge Snow & Hahn LLP in 2007.

E. The Diocese represents that the records listed in Paragraphs 1, 3, and 4 have been collected and compiled over time by various Diocesan personnel and attorneys for the purpose of tracking and capturing records and information related to Sexual Misconduct Perpetrated Against a Child within the Diocese for litigation and supervisory purposes.

F. At any time, the Attorney General may make further written or verbal requests of counsel for the Diocese to satisfy the Attorney General that all responsive Files have been made available for review or to request the production of records beyond those Files outlined in paragraphs II.D. 1-5. The Diocese expects to accommodate all such reasonable requests but reserves all objections to such requests. In the event of any disagreement, the Parties agree to use their best efforts to resolve such disagreements in a mutually productive and cooperative manner.

G. The Parties, or their representatives, will meet from time to time to discuss the progress and priorities of the voluntary access to documents provided under this MOU, including upon completion of the initial immediate efforts outlined in paragraphs II.D. 1-5, above, and to identify the timing and focus of providing the Attorney General with any further requested Files or documents. It is expected that production of the Files outlined in paragraphs II.D. 1-5 will conclude within no later than three months of the date of execution of this MOU.

H. Any allegations of Sexual Misconduct Perpetrated Against a Child received by the Diocese following the effective date of this MOU will continue to be promptly and fully reported to the Detective Commander of the Rhode Island State Police, and, if appropriate, the municipal police chief in the venue in which the allegation occurred, and the Chief of the Criminal Division of the Attorney General.

III. Review and Retention of Files

A. The Attorney General and the Rhode Island State Police will review the Files produced by the Diocese and identify through review, all Credible Allegations of Sexual Misconduct Perpetrated Against a Child committed during the Review Period, and the Diocese's response to such allegations.

B. The Attorney General and/or the Rhode Island State Police will retain only those Files that are necessary (1) for the investigation and prosecution of any criminal offense, (2) in support of any civil claims brought by the Attorney General against any person or entity as a result of this review, or (3) for the preparation and issuance of a report made in connection with this MOU.

C. All Files not retained by the Attorney General and/or the Rhode Island State Police will be returned to the Diocese and retained by the Diocese in accordance with applicable Rhode Island and federal laws concerning the preservation of records.

D. The Attorney General will also review the Diocese's current policies and procedures adopted for the protection of children and provide any recommended changes and improvements to current practices to the Diocese.

IV. Subsequent Use of Information provided to the Attorney General

A. The Attorney General may use information provided by the Diocese in connection with any criminal investigation or civil litigation brought by the Office of the Attorney General, as well as to issue a publicly released report or statement in which the Attorney General can describe the review of the Files conducted pursuant to this MOU and any findings, conclusions or subsequent legal actions taken as a result of the review. In the event that a public report is issued, the contents of such a report, and any determinations as to the confidentiality, or propriety of disclosure of information contained therein, are solely within the discretion and responsibility of the Attorney General.

B. The Attorney General will afford the Diocese an opportunity to review a draft report at least ten (10) business days prior to its release, will consider requests for further time for such review, and will consider any comments to the report by the Diocese. The Diocese will be free to issue its own public statement following the release of any public report by the Attorney General.

V. Confidential and Privileged Information

A. The Parties acknowledge that the Files to be produced hereunder contain sensitive, confidential and privileged information. The Diocese is producing these files as the Attorney General has requested them for law enforcement purposes. The Diocese is not responsible for any privacy or confidentiality issues that may arise from the provision of such Files to the Attorney General or State Police, or for any subsequent use or publication of that information by the Attorney General or State Police.

B. In the event that the Diocese determines that the Files contain materials that it considers to be privileged (the "Privileged Materials"), the Diocese may withhold or remove and segregate such Privileged Materials prior to providing the Files to the Attorney General for review. When the Diocese withholds or removes Privileged Materials, the relevant File and/or document shall be identified in writing (e.g., by location and box number, Bates number or otherwise) and a privilege log provided for each File and/or document indicating that (1) Privileged Materials have been removed, (2) describing the nature of the removed material(s), and (3) identifying the specific evidentiary privilege asserted by the Diocese with respect to the documents removed or withheld. The Diocese anticipates using categorical privilege claims in the creation of any such privilege logs (including for example correspondence solely between Diocesan attorneys and Diocesan personnel, without listing each individual piece of correspondence by date, recipients, etc.). The Attorney General reserves all rights to contest any categorical privilege claim.

C. If the Attorney General determines in his discretion that further information is necessary to evaluate a particular File or the Diocese's assertion of privilege, he may request more specific information and the Parties will confer in good faith to resolve such issues. If no resolution is reached, the Parties reserve all rights to assert and oppose any claim of privilege.

D. The Parties recognize that the Files may contain personally identifiable information in which individuals maintain a privacy interest, including material listed in R.I.G.L. § 11-49.3-3, 4 and 8 ("Confidential Materials"), and that it would be cost and time prohibitive to redact Confidential Material from the Files. The Attorney General agrees to take reasonable steps to maintain the confidentiality of Confidential Materials and avoid secondary disclosure of such information unless otherwise authorized by law.

E. Upon discovering that any document provided for review appears to be subject to the attorney-client privilege or work product protection, the Attorney General shall immediately notify the Diocese and return the document without reviewing it. Any inadvertent production of documents that could or should have been withheld under the attorney client privilege or the attorney work product doctrine shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claims of attorney client privilege or work product protection. The Attorney General shall destroy all copies of such attorney-client privileged and work product materials not returned to the Diocese (including extra copies, summaries of or notes relating to them), and exclude them from any use under this MOU.

F. The Parties agree to confer in good-faith to resolve any and all privilege or privacy disputes and the removal or claw back of Privileged Materials.

G. Production of, or providing access to, Files under the terms this MOU shall not act as a waiver of any privilege or discovery protection under state or federal law by the Diocese as it concerns either the Attorney General, or any other third party. In furtherance thereof and in the interest of providing the Attorney General with access to Files in an efficient, cost-effective manner, the Parties agree to jointly petition the Rhode Island Superior Court to approve protections against privilege waiver as to the Attorney General or any other third party as set forth in proposed Rhode Island Rule of Evidence 502(d). A draft Miscellaneous Petition and Form of Proposed Order are attached hereto as Exhibits B and C.

H. Files retained by the Attorney General and/or the Rhode Island State Police pursuant to this MOU, as well as any logs, notes, memoranda, or police reports produced in connection with this MOU and the LOU dated August 30, 2016 shall constitute criminal law enforcement records for the investigation and detection of a crime within the meaning of R.I.G.L. § 38-2-2 (4)(D).

I. This MOU shall be considered and treated as a public document.

VI. General Terms

A. This MOU is the result of a compromise and cooperative effort between the Attorney General and the Bishop, and nothing in this MOU is intended as an admission of fact, liability, or fault, and shall not be construed as such by the Parties or a court of law.

B. This MOU constitutes the complete and final agreement between the Parties pertaining to the subject matter of this MOU. This MOU may be modified only by a written amendment signed by the Parties.

C. This MOU shall be construed and interpreted under the laws of the State of Rhode Island.

D. Any party may terminate this MOU at any time by providing sixty (60) days written notice to the other party. Written notice shall include e-mail notification to the Parties' counsel. The Parties shall make reasonable effort to meet and confer prior to the exercise of any written notice of termination.

E. Nothing in this MOU shall prevent, constrain, or limit the Office of Attorney General from exercising its constitutional, statutory and common law powers to obtain information from the Diocese using compulsory legal process (including, but not limited to grand jury subpoenas and civil investigative demands) in the event the Attorney General deems the voluntary disclosure provided pursuant to this MOU insufficient, or in relation to any pending criminal investigation

or prosecution of another party. In the event the Attorney General chooses to pursue compulsory legal process, nothing in this agreement shall be construed as a waiver of any rights, objections, or defenses the Diocese may have with respect to such process or the requests made by the Attorney General.



The Honorable Peter F. Neronha
Attorney General



The Most Reverend Thomas J. Tobin, D.D.
Bishop of Providence