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Criminal Division

Date: January 28, 2014

To: John J. Choi
Ramsey County Attorney

From: Richard Dusterhoft
Criminal Division Director

Re: Potential Failure to Report Related to
State v. Curtis Wehmeyer
Court Files 62-CR-23-7664 and 62-CR-12-8120

As a result of the prosecution of the above-cases, questions were raised regarding how soon the abuse of the juvenile victim was reported to police by the Archdiocese of Saint Paul and Minneapolis after the archdiocese learned of the abuse. According to the Reporting of Maltreatment of Minors Act, Minnesota Statute section 626.556, a person mandated to report, "who knows or has reason to believe" that a child is sexually abused or has been sexually abused within the preceding 3 years, and fails to report is guilty of a gross misdemeanor. A member of the clergy, who received information while engaged in ministerial duties, is mandated to report unless the information about the abuse is a privileged communication under Minnesota Statute section 595.02, subd. 1 (c) (information received during confession or communicated by a person seeking religious or spiritual advice, aid or comfort), and shall "immediately" report (*as soon as possible, but not longer than 24 hours*).

On October 16, 2013, as you requested, I asked the Saint Paul Police Department to investigate the timeline of the report by the Archdiocese to police. Following that investigation, the police investigator reported that on May 31, 2012, the parent of Children A, B and C reported that Child C, had been touching Children A and B inappropriately. On June 5, 2012, the parent spoke with her priest, *in confession*, and revealed the possible abuse by Child C. The priest advised the parent to report the suspected abuse to police. On the same day, a family member of the parent, who is a retired law enforcement officer, spoke with Child C. During that conversation, Child C disclosed abuse perpetrated on the child by Curtis Wehmeyer.

Subsequently the parent, again *in confession*, spoke to the parent's priest but (according to the parent) used "confession" to protect that priest. At that time, the parent gave the priest permission to contact the Archdiocese with this information. Subsequently, the parent contacted Greta Sawyer, a church victim advocate, and made an appointment for Child C to be interviewed by Sawyer.

The parent believed that she contacted Sawyer on June 18, 2012 and that the meeting between Child C and Sawyer occurred on June 19, 2012. Sawyer believed she was contacted by the parent on June 19, 2012 and the meeting took place on June 20, 2012. Sawyer's report of that meeting is dated June 20, 2012 and indicates that her meeting with Child C occurred that same day. During that interview with Sawyer, Child C directly disclosed abuse by Wehmeyer.

An email, dated June 20, 2012 at 5:58pm, between Deacon John Vomastek and a police commander assigned to the Family and Sexual Violence Unit, referenced earlier discussions between the two about the allegation by Child C against Wehmeyer. The email indicated that Wehmeyer would be relieved of duties the following day. On June 21, 2012, Wehmeyer was told by Deacon Vomastek to leave church property and is also the date of the official written report by the Saint Paul Police.

The above time line, gathered by the police investigator, supports a conclusion that members of the Archdiocese did not fail to comply with the legal mandates of the Reporting of Maltreatment of Minors Act. It is uncertain exactly when the priest received the information about the abuse by Wehmeyer, but it is clear that he received that information during confession, which would render it privileged. The priest did receive permission from the parent to inform the Archdiocese about what he had learned, second-hand, from the parent. It does not appear that the priest violated any mandatory reporting obligations.

The parent contacted Sawyer to arrange a meeting between Sawyer and Child C on either June 18 or 19, 2012. That meeting took place either on June 19 or June 20, 2012, and Sawyer received first-hand information, directly from Child C, about the abuse, at that time. There is no evidence to conclude that Sawyer had information that would rise to the level of the "knowing or having reason to believe" standard required to trigger the reporting requirement prior to that meeting. That information was provided by Deacon Vomastek to the police commander on June 20, 2012 via email. That email referenced earlier discussions between the two about the matter. Although the official report was typed on June 21, 2012, it is clear that the Archdiocese reported the abuse within 24 hours of receiving the abuse information directly from Child C.

From the above information, an experienced Assistant County Attorney in this office concluded that we cannot prove beyond a reasonable doubt that a member of the Archdiocese violated the Reporting of Maltreatment of Minors Act. Assistant Director Jill Gerber and I have also reviewed the police reports and the information provided by the police investigator and we agree with that conclusion.