

In The Iowa District Court For Lee County

In Re Search Warrant File Nos.	)	Case Nos.	SWSW000569
SWSW000569 and SWSW000570	)		SWSW000570
(Concerning Midwest Academy, LLC)		
and Midwest Academy Treatment, LLC))		
_____)		
	)	Application and Petition of Des Moines	
Des Moines Register and Tribune	)	Register and Tribune Company for	
Company,	)	Immediate Access to Sealed Search	
	)	Warrant Files and Other Court Records,	
Applicant/Plaintiff,	)	for Writ of Mandamus, and for Statutory	
	)	Relief	
v.)		
	)	(Expedited Oral Argument Requested)	
Michael P. Short, Lee County Attorney,)		
and Kim Londrie, Clerk of Court,)		
)		
Respondents/Defendants.)		

COMES NOW Des Moines Register and Tribune Company (the “*Register*”) and requests:

- A. Immediate access to all search warrant applications, application attachments, application endorsements, affidavits, returns of service, inventories, search warrants and other papers and information in search warrant file Nos. SWSW000569 and SWSW000570 and/or relating to Midwest Academy, LLC, and Midwest Treatment Academy, LLC (collectively, “*Midwest Academy*”) and/or property belonging to, in the possession of or seized from Midwest Academy; and
- B. Issuance of a writ of mandamus and/or mandatory injunction to the Lee County Clerk of Court and Lee County Attorney ordering the release of those documents; and
- C. Statutory relief under Iowa Code § 22.10(3).

In support of this Application and Petition, the *Register* states:

- 1. Applicant/Plaintiff the *Register* is an Iowa corporation engaged principally in the business of gathering and publishing news for dissemination in *The Des Moines Register* and the

Des Moines Sunday Register, newspapers of general circulation in Des Moines, Iowa, and the State of Iowa, and through the Internet on www.desmoinesregister.com.

2. The *Register* is engaged in collecting and disseminating news and information on matters of public concern in, among other places, Lee County, Iowa, and its environs. The rights of the people to receive such information through the news media, as well as the right of the news media to gather and report that information, are protected by the First Amendment to the Constitution of the United States and by Article I, section 7 of the Iowa Constitution.

3. The *Register's* standing to assert and be heard with respect to the federal and state constitutional rights of access to the court records that are the subject of this application are established by *Des Moines Register & Tribune Co. v. Osmundson*, 248 N.W.2d 493, 501 (Iowa 1976); *Iowa Freedom of Information Council v. Wifvat*, 328 N.W.2d 920, 924 (Iowa 1983); *Des Moines Register & Tribune Co. v. Iowa Dist. Court*, 426 N.W.2d 142, 148 (Iowa 1988); and *Globe Newspaper Co. v. District Court*, 457 U.S. 596, 609 n.25 (1982). *See also In re New York Times Co.*, 878 F.2d 67 (2d Cir. 1989); *In re Dow Jones & Co., Inc.*, 842 F.2d 603, 606-08 (2d Cir. 1988).

4. Michael P. Short is the Lee County Attorney and is the lawful custodian of public records under Iowa Code Chapter 22. Kim Londrie is the Clerk of Court in and for Lee County and is the lawful custodian of public records under Iowa Code Chapter 22. Each officer is subject to the requirements of Iowa Code Chapter 22.

5. On January 28, 2016, a multi-agency group of law enforcement officers—including The Iowa Department of Public Safety's Division of Criminal Investigation (DCI) Major Crime Unit, Special Enforcement Operations Bureau, Internet Crimes Against Children Task Force, Iowa DCI Crime Lab Crime Scene Team, State Fire Marshal Division, Iowa State Patrol Division of Intelligence and Fusion Center, the Federal Bureau of Investigation and the Lee County Sheriff's Office—executed search warrants at the Midwest

Academy campus, located at 2416 340th Street, in Keokuk and at a second location also affiliated with the Midwest Academy at 2818 Hwy. 218, in Montrose.

6. The Iowa Department of Public Safety notified the media via a press release issued that same day of its plans to execute the warrants. The press release is attached as **Exhibit A** and is also available at http://www.dps.state.ia.us/commis/pib/Releases/2016/01-28-2016_DCI_IowaDCIExecutingSearchWarrantsAtMidwestAcademy.html.

7. According to the press release, the search warrants “stem from an investigation of alleged sexual abuse involving a staff member of the Midwest Academy and a former student of the academy.”

8. The investigation of alleged abuse at Midwest Academy has been the subject of ongoing media coverage. Copies of relevant news articles on the case from the *Register* and other media outlets are assembled and filed as **Exhibit B** to this Application.

9. Based upon available information, the *Register* believes and alleges that one or more search warrant returns relating to the two warrants executed on January 28 were filed with the Lee County Clerk of Court.

10. Based upon available information, the *Register* believes and alleges that:

- (a) Standardized forms are utilized by the Lee County Attorney’s Office, the Clerk of Court and this Court with respect to issuance of search warrants upon a probable cause finding,
- (b) The standardized forms include a sealing page that if signed by the presiding judge compels the Clerk of Court to keep secret all search warrant records in the case, including the return of the warrant and its inventory of seized items, and
- (c) The sealing page includes a box that the presiding judge may check if the Clerk of Court also is to deny the press and the public access to the very order sealing the search warrant records.

11. On Tuesday, February 9, 2016, the *Register*, through its news reporter Lee Rood (“*Rood*”), contacted the Lee County Clerk of Court’s Office and requested access to documents related to the search warrants executed on Midwest Academy. Clerk of Court Kim Londrie

informed Rood that the search warrant returns had not yet been filed, and that they were therefore not available for public viewing. Londrie stated that if the search warrant materials became available for public viewing, Rood could access them through the Iowa Court Online Search system. However, Londrie refused to provide Rood with the case numbers associated with the search warrants.

12. That same day, Rood contacted County Attorney Michael Short to inquire about the status of the search warrant documents. Short confirmed the warrant returns had not yet been filed, and stated that he was filing a motion to seal the search warrant materials, including a twenty page affidavit filed with the search warrant application.

13. Rood again contacted County Attorney Short on or about Wednesday, February 10, 2016 and asked him to provide the case numbers associated with the search warrants executed at Midwest Academy's facilities. City Attorney Short provided Rood with the following case numbers: SWSW000569 and SWSW000570.

14. Both Rood and counsel for the *Register* have searched for case numbers SWSW000569 and SWSW000570 on the Iowa Court Online Search website located at <https://www.iowacourts.state.ia.us>. The Iowa Court Online Search tool does not return any results for those case numbers.

15. In addition, counsel for the *Register* contacted Clerk of Court Kim Londrie on Monday, February 15, 2016 and requested access to documents filed in connection with case numbers SWSW000569 and SWSW000570. Londrie again stated that the documents were not available for public viewing without further explanation.

16. The possibility that children were sexually, physically, or emotionally abused at Midwest Academy—a self-described “therapeutic boarding school” over which the state appears to have little to no oversight—has resulted in broad public interest in this case. However, limited information on the details of the case or the proceedings before this Court, including its issuance of one or more search warrants, is public because of the secrecy order apparently in place.

Instead, *no court records whatsoever are available to the public*, including any motion to seal filed by City Attorney Short or any order of the Court restricting access to the search warrant documents.

17. The search warrant records and information held under seal are public records under Iowa Code Chapter 22. *See Osmundson*, 248 N.W.2d at 502.

18. Rood and the *Register* were denied access, inspection, and copying rights by the Clerk of Court's Office, which gave no reason for restricting such access other than that the Midwest Academy search warrants and related documents were not available for public viewing.

19. Further, the Clerk of the Court continues to deny the *Register* and Rood substantial access rights by the continuation of one or more orders of the Court that they neither were served with nor have seen.

20. No notice and opportunity to be heard was given to the *Register* or to Rood in advance of entry of any order sealing these records.

21. The *Register* and the public are granted rights of access under the First Amendment to court proceedings and court records, including search warrants and related documents. *See In re Search Warrants for Secretarial Area-Gunn*, 855 F.2d 569, 573 (8th Cir. 1988) ("We are persuaded that the first amendment right of public access does extend to the documents filed in support of search warrant applications."); *Osmundson*, 248 N.W.2d at 502. Only upon evidence of a compelling need requiring closure and the absence of less restrictive alternatives to secrecy can public access to those documents be denied. *See In re Search Warrants*, 855 F.2d at 574. No such showing has been made in this case.

22. The independent, but comparable right of access under Iowa Constitution Article I, section 7 also extends to these documents. *See Osmundson*, 248 N.W.2d at 499; *Wifvat*, 328 N.W.2d at 924.

23. The United States Supreme Court has repeatedly held that the First Amendment affords the public the right to observe proceedings in state and federal courts in the United

States. *See Press Enter. Co. v. Superior Court*, 478 U.S. 1 (1986) (“*Press Enterprise II*”) and cases cited therein.

24. The right of public access under the First Amendment applies not only to proceedings held in open court but also to court records which one or more parties may desire to have sealed. *See, e.g., Press Enter. Co. v. Superior Court*, 464 U.S. 501, 510–11 (1984) (“*Press Enterprise I*”) (transcripts of jury voir dire); *Associated Press v. U.S. District Court*, 705 F.2d 1143, 1145 (9th Cir. 1983) (various pretrial documents).

25. Pursuant to Iowa Code § 808.13, the search warrant in question, any supporting affidavits, the return, and accompanying documents are required to become part of the official record of the Court. *See generally United States v. McVeigh*, 918 F. Supp. 1452, 1458 (D. Colo. 1996) (upon filing of search warrant return and inventory with clerk of the court they “are public records at that time”).

26. Accordingly, these documents are presumptively open to the public and may be sealed only upon a showing by a party that there is a compelling governmental interest in continuing to deny the public access to these judicial records.

27. As the Eighth Circuit Court of Appeals has held:

[T]he First Amendment right of access does extend to the documents filed in support of search warrant applications. First, although the process of issuing search warrants has traditionally not been conducted in an open fashion, search warrant applications and receipts are routinely filed with the clerk of court without seal. Under the common law, judicial records and documents have been historically considered to be open to inspection by the public. Second, public access to documents filed in support of search warrants is important to the public’s understanding of the function and operation of the judicial process and the criminal justice system and may operate as a curb on prosecutorial and judicial misconduct.

In re Search Warrants, 855 F.2d at 573 (internal citations omitted); *see also In re New York Times Co.*, 828 F.2d 110 (2nd Cir. 1987); *In re Search Warrants Issued on June 11, 1988*, 710 F. Supp. 701 (D. Minn. 1988); *In re Search Warrant for Second Floor Bedroom*, 489 F. Supp. 207

(D.R.I. 1980); *Vermont v. Schaefer*, 599 A.2d 337 (Vt. 1991); *Cowles Publishing Co. v. Murphy*, 96 Wash. 2d 284, 637 P.2d 966 (1981).

28. Any party wishing to maintain the secrecy of the court file in this case must come forward with substantial evidence to overcome the federal and state press and speech clause rights and the common law access right of the *Register*. Under controlling precedent, any person seeking continued secrecy must establish by competent evidence that:

- (a) There is a substantial probability that disclosure of the search warrant materials will prejudice a government interest of the highest order,
- (b) There are no less restrictive measures short of denying access that would protect those interests, and
- (c) The denial of public access to the court file actually will eliminate the risk of adverse consequences to these interests.

See McVeigh, 918 F. Supp. at 1464.

29. Given the publicity that has attended the investigation of Midwest Academy, any conclusory assertions in response to the *Register's* request for access to the search warrant documents are insufficient under the strict scrutiny that this Court must apply. *See Press Enterprise II*, 478 U.S. at 15 (1996) (“The First Amendment right of access cannot be overcome by the conclusory assertion that publicity might deprive the defendant of [the right to a fair trial.]”); *United States v. Edwards*, 672 F.2d 1289, 1294 (7th Cir. 1982) (“[A] court may deny access, but only on the basis of articulable facts known to the court, not on the basis of hypothesis or conjecture.”); *see also* ABA Standards for Fair Trial and Free Press § 8-3.2 (the court should predicate any order sealing court records on more than mere conjecture and allegations of prejudicial publicity); *Freedom Newspapers, Inc. v. Tollefson*, 961 P.2d 1150, 1157 (Colo. App. 1998) (holding in the context of a Colorado Open Records Act case that “conclusory and speculative” assertions are not sufficient to justify withholding a requested public record).

30. In addition to these federal authorities, other state courts also have recognized the importance of access to the kind of records at issue here, and the insufficiency of conclusory assertions of harm to overcome the presumption of access to such records. For example, in *Commonwealth v. Fenstermaker*, 530 A.2d 414 (Pa. 1987), the Pennsylvania Supreme Court held that “[i]n view of the presumption of openness attached to [arrest warrants and their underlying affidavits], it is inconsistent to permit the sealing of such affidavits upon the *mere* request of a District Attorney or defense counsel.” *Id.* at 420 (emphasis in original).

31. Perhaps the clearest articulation of the reason why broad, generalized and conclusory assertions cannot overcome the presumption of public access to judicial records can be found in *In re Search Warrant for Second Floor Bedroom*, 489 F. Supp. 207 (D.R.I. 1980). In that case, the government sought to seal affidavits supporting a search warrant that had been executed and returned to the court during an *ongoing* grand jury investigation. *Id.* at 209. Chief Judge Raymond Pettine found that the generalized concerns the government had proffered were insufficient to justify sealing the search warrant materials, for the following reason:

The government’s only argument of grand jury harm is that “[i]t is possible that if the affidavit becomes public record, future Grand Jury witnesses will be in a position to tailor their testimony once having had an opportunity to review that Affidavit which provides extensive background and facts relative to the ongoing Grand Jury Investigation and thereby frustrate and obstruct that Investigation.” . . . The government has not offered to show any specific reasons for fearing such tailored testimony in this case, nor does the Court’s perusal of the affidavit reveal any.

. . . *The government’s fears here are purely speculative.* To allow it to prevail upon such a weak showing of injury would reduce this Court to a mere rubber stamp for the government. *It would be an abdication of judicial responsibility to order sealing whenever the government makes unsupported claims of harm.*

. . . It is important, therefore, that the government demonstrate a real possibility of harm before the Court takes the unusual step of sealing a . . . warrant affidavit The mere possibility of harm alleged is not sufficient to outweigh [the public’s right of access].

Id. at 212 (emphasis added).

32. It is a standard of First Amendment jurisprudence that a court should not seal judicial documents that do nothing more than provide greater detail where the gist of the information is already in the public domain. *See Associated Press v. Bell*, 510 N.E.2d 313, 317 (N.Y. 1987); *In re New York Times*, 828 F.2d at 116.

33. In this case, the government cannot establish that there is a substantial probability of prejudice to its investigation if the search warrant materials were to be unsealed. Significant information about this case is already in the public domain, *see* Exhibit B, and in fact the government itself issued a press release about the warrants, *see* Exhibit A. Moreover, numerous students and faculty from Midwest Academy have publicly discussed the allegations in this case. *See id.* In light of the volume of information already known to the public, whatever further disclosure might occur as a result of unsealing can cause virtually no harm to the investigation.

34. Nor should the fact that the allegations giving rise to issuance of the search warrants involved accusations of sexual abuse of a minor cannot defeat the presumption of public access. *See, e.g., Commonwealth v. George W. Prescott Publ'g Co.*, 463 Mass. 258 (Mass. 2012) (affirming order to unseal search warrant and supporting affidavit in case involving rape of a minor). The minor victim's privacy (and that of any other minors named in the warrant or supporting documents) can be protected by simply redacting his/her name from the documents. *See id.* at 271.

35. Additionally, documents filed with the Court and in the possession of the Court, the Clerk of Court and the County Attorney's Office, are public records under Iowa Code Chapter 22 and are subject to statutory inspection and copying rights. *See Osmundson*, 248 N.W.2d at 502.

36. None of the statutory exemptions to disclosure under Iowa Code § 22.7 apply to search warrants, related court records or the order sealing the search warrant records, in part because these public records are not police officers' investigative reports under the narrow definition of that term contained in Iowa Code § 22.7(5).

37. Provisions of the Iowa Code and the Iowa Rules of Criminal Procedure mandate the use of particular forms for search warrant documents, *see* Iowa R. Crim. P. 2.36, mandate that the forms be filed with the Clerk of Court, *see* Iowa Code § 808.11, and mandate that the forms be made public at the point the warrant has been executed and a return on it has been made. *See* Iowa Code § 808.13. Thus, these documents are not communications from outside government under Iowa Code § 22.7(18) and are required by *both* Iowa Code Chapter 22 and Iowa Code § 808.13 to be made public.

38. No other statutory grounds for secrecy under Iowa Code Chapter 22 are present and the State of Iowa, the Clerk of Court and the Lee County Attorney's Office cannot and have not carried their statutory burdens to permit secrecy.

39. The common law provides yet another guarantee of public access to the Court records in question. *See e.g. Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 597 (1978); *Application of Newsday, Inc.*, 895 F.2d 74, 78–79 (2nd Cir. 1990).

40. An order of the Court, entered without due process of law, continues to affect the constitutional, common law and statutory rights of the *Register* adversely and irreparably.

41. The continuing denial of access to the court records by the Clerk of Court and the Lee County Attorney is in violation of the *Register's* civil rights as guaranteed by the speech, press and due process clauses of the First Amendment, the Fourteenth Amendment and Article I, Section 7 of the Iowa Constitution.

42. The continuing denial of access to the court records by the Clerk of Court and the Lee County Attorney is in violation of the *Register's* common law rights of access to the courts and to court records.

43. The continuing denial of access to the search warrant documents by the Clerk of Court and the Lee County Attorney is in violation of their statutory obligations under Iowa Code Chapter 808.

44. The continuing enforcement of the secrecy order(s) in this case constitutes an impermissible effort to override the clear, express mandate of the Iowa General Assembly set forth in Iowa Code Chapter 808, which prescribes how and when search warrants may be issued and which requires that searches and seizures by the State can no longer be kept secret once the return of warrant is filed.

45. The continuing denial by the Clerk of Court and the Lee County Attorney of the *Register's* inspection and copying rights to public records in their possession constitutes a violation of Iowa Code Chapter 22 and gives rise to the full statutory remedies of Iowa Code § 22.10.

46. Before an order refusing to unseal these documents that otherwise would be available to the *Register* and the public can be entered, a reasonable opportunity to be heard must be allowed. *See Globe Newspaper Co.*, 457 U.S. at 609 n.25; *see generally Osmundson*, 248 N.W.2d at 501; *Iowa Dist. Court*, 426 N.W.2d at 147.

47. The *Register* requests the right to be heard orally on this Application.

48. Because fundamental rights of the *Register* are being irreparably harmed by the continuing denial of the access, inspection and copying rights, an immediate hearing and expedited resolution of this matter is required. *See Lambert v. Polk County*, 723 F. Supp. 128 (S.D. Iowa 1989) (wherein Judge Vietor noted “[t]he loss of First Amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury.”).

49. Moreover, the right of public access to judicial records, including those at issue here, is a right of *contemporaneous* access. *See, e.g., Grovesfresh Distribs., Inc. v. Everfresh Juice Co.*, 24 F.3d 893, 897 (7th Cir. 1994) (access to court documents “should be immediate and contemporaneous”); *Washington Post v. Robinson*, 935 F.2d 282, 287 (D.C. Cir. 1991); *In re Continental Illinois Sec. Litig.*, 732 F.2d 1302, 1310 (7th Cir. 1984). Thus, the Court should not postpone or delay release of the search warrant affidavit materials or the court file until a later time.

50. Accordingly, expedited review and ruling on this motion is necessary to secure and protect the substantial rights of the public and the press that are impinged by keeping the court records and public information in issue secret.

WHEREFORE, because no sufficient basis for sealing these court documents and preventing inspection and copying of public records has been shown, and for the reasons identified above, the *Register* requests that this Court immediately enter an order that:

- A. Unseals the search warrant(s) and related documents identified, including but not limited to the court order sealing such records.
- B. Directs by mandamus or mandatory injunction that the Clerk of Court place the previously sealed court records in the court file and that they be made available for access by the *Register* and the public.
- C. In the alternative affords relief pursuant to Iowa Code § 22.10(3) by:
 - (i) Declaring that the Lee County Attorney and the Clerk of Court have violated Iowa Code Chapter 22;
 - (ii) Issuing an injunction punishable by contempt ordering the Clerk of Court and the Lee County Attorney to comply with Iowa Code Chapter 22 by making these public records available for inspection and copying by the *Register* and further ordering them to refrain from any future violations of Iowa Code Chapter 22 for one year;
 - (iii) Assessing the Lee County Attorney and the Clerk of Court damages as set by statute;
 - (iv) Ordering the Clerk of Court and the Lee County Attorney to pay all costs and reasonable attorney's fees of the *Register*; and
 - (v) Awarding the *Register* all other relief mandated or permitted by Iowa Code Chapter 22.
- D. Grants the *Register* such other relief as is just and equitable.

Dated: February 16, 2016.

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**Attorneys for Des Moines
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Certificate of Service

The undersigned hereby certifies that a true copy of **Application and Petition of Des Moines Register and Tribune Company for Immediate Access to Sealed Search Warrant Files and Other Court Records, for Writ of Mandamus, and for Statutory Relief (Expedited Oral Argument Requested)** was served upon one of the attorneys of record for each party to the above-entitled cause through the Court's electronic filing system to each such attorney at his/her last known e-mail address and by regular mail to each such attorney at his/her last known mailing address as shown below on the 16th day of February, 2016.

/s/ Trisha Richey

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