

IN THE IOWA DISTRICT COURT FOR LEE COUNTY

DES MOINES REGISTER AND	:	
TRIBUNE COMPANY,	:	CRIMINAL NO. SWSW000569
	:	SWSW000570
Plaintiff,	:	
	:	
vs.	:	RESISTANCE TO PLAINTIFF'S
	:	REQUEST FOR IMMEDIATE
MICHAEL P. SHORT, LEE COUNTY	:	ACCESS TO SEALED SEARCH
ATTORNEY, and KIM LONDRIE,	:	WARRANT FILES AND OTHER
CLERK OF COURT	:	COURT RECORDS
	:	
Defendants.	:	

COMES NOW, the State of Iowa, and in support of its Resistance to Defendant's Request for Immediate Access to Search Warrant Files, states the following:

1. The State and Federal governments are currently conducting an extensive, multi-faceted, multi-agency, complex investigation of Midwest Academy and other individuals connected to Midwest Academy.

2. Although the Supreme Court has recognized a First Amendment and common law right of public access to court proceedings and records, *see, e.g., Press-Enterprise Co. v. Superior Court*, 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986); *Nixon v. Warner Communications*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978), the right of public access is not absolute. The Supreme Court has recognized the supervisory power of every court over its own records and files. *Nixon, supra*, at 597-98, 98 S.Ct. at 1311-12. "Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes." *Id.*

3. For a party to seek closure or sealing of a search warrant and its accompanying documents, it must show that such a restriction of the first amendment right of public access is necessitated by a compelling government interest. *In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 574 (8th Cir. 1988) (citing *Press-Enterprise Co. v. Superior Court*, 464 U.S. 501, 510, 104 S.Ct. 819, 824, 78 L.Ed.2d 629 (1984) (*Press-Enterprise I*), citing *Globe Newspaper Co. v. Superior Court*, 457 U.S. at 607, 102 S.Ct. at 2620.

4. Restricting public access to the search warrants and related documents in this case is necessitated by a compelling government interest in the on-going investigation. The documents describe in detail the nature, scope and direction of the government's investigation and several individuals' specific allegations and facts provided thus far. There is a substantial probability that the government's on-going investigation would be severely compromised if the sealed documents were released. See, e.g., *Gunn, supra* at 574.

5. The government also has a compelling government interest in seeking out the truth. Some individuals named in the documents are juveniles who attended Midwest Academy and their parents. Although the Court could simply redact such information, the release of specific information credited to former students or parents which is then publicized in the media could seriously impair further witnesses from wishing to freely speak or to come forward with new information. Releasing specific details of the investigation may also prompt individuals to destroy evidence or tailor their testimony based on what they have seen in the media or read from the warrant documents. Continuing to seal the documents until the conclusion of the investigation or until criminal

charges are filed serves the important public interest of knowing that the facts were produced by an uncompromised investigation. *See, e.g., Gunn, supra* at 575 (concurrency).

(a) This investigation is in its initial stages. The affidavits describe in considerable detail the nature, scope and direction of the government's investigation and the individuals and specific areas of present concern. Disclosure of information would permit a potential target of the investigation to tailor a defense to the information or lack of information available and to conceal information not yet discovered.

(b) One or more of the individuals whose interviews are reported in the affidavit are emotionally compromised and fragile. The State's ability to get additional information from these individuals would be compromised by the public disclosure of the details of their statements to law enforcement.

(c) There is a perception by employees and professional staff of Midwest Academy that the Academy may reopen, but if an employee is viewed as having cooperated with law enforcement, that individual will not be rehired.

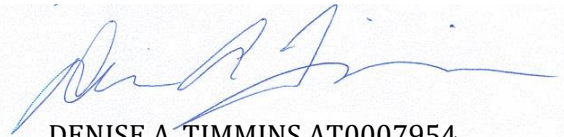
6. Furthermore, the State has received information that individuals connected to Midwest Academy has been contacting parents of former students and other individuals in an attempt to elicit information. Providing more detailed information in regards to the investigation will only exacerbate this situation.

7. This Court has previously released the Applications to Seal the warrants and the Orders to Seal. Such documents provided ample information to apprise the public of the general nature of the investigation and to the ongoing of the government. At this point, an appropriate balance has been struck by the Court between meeting the public's right to access the court documents and protecting the integrity of the ongoing investigation.

Therefore, release of the search warrants and accompanying documents is unnecessary and would seriously infringe on the government's compelling interest in conducting an uncompromised investigation.

WHEREFORE, the State respectfully requests this Court to deny defendant's Application for Immediate Access to Sealed Search Warrant Files and Other Court Records.

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