

IN THE IOWA DISTRICT COURT FOR LEE COUNTY (SOUTH)

**IN RE: SEARCH WARRANT FILE
NOS. SWSW 000569, 000570 & 000571**

**SWSW 000569, SWSW 000570 &
SWSW 000571
ORDER RE: REQUEST TO
IMMEDIATELY UNSEAL SEARCH
WARRANT DOCUMENTS**

The Iowa Division of Criminal Investigation issued a press release on January 28, 2016, announcing that it had obtained two search warrants that it would be executing on that day at locations in Lee County, Iowa, in connection with an investigation of alleged sexual abuse involving a staff member of a former student at the Midwest Academy. As a result, substantial media coverage has occurred concerning this investigation involving the Midwest Academy and its director/owner, Benjamin Trane. Because of the press release, the media had been previously notified that at least two search warrants had been obtained. As a part of the information disclosed, media outlets learned two of the case numbers under which the Lee County Clerk of Court had placed the applications for the search warrants and the search warrants. On February 16, 2016, the *Des Moines Register and Tribune* filed an action in two of the cases involving search warrants executed involving the Midwest Academy and Benjamin Trane.

The action filed by the *Des Moines Register and Tribune* was captioned as if it was a lawsuit against Michael P. Short, Lee County Attorney, and Kim Londrie, Clerk of the Lee County Court. It was titled Application and Petition of *Des Moines Register and Tribune Company* for Immediate Access to Sealed Search Warrant Files and Other

Records, for Writ of Mandamus and for Statutory Relief. The prayer for relief in the Petition requested the immediate opening of the warrant files and also for mandamus and injunctive relief. In addition, the Petition included a claim for relief pursuant to Iowa Code Chapter 22. This action was filed without the payment of a filing fee. The court does not consider it to be an independent lawsuit seeking injunctive or mandamus relief, nor does the court consider it to be an original action seeking relief pursuant to Iowa Code Chapter 22. The court does consider it to be an application to unseal the search warrant records.

The court scheduled the Application for hearing on February 26, 2016. The *Des Moines Register and Tribune Company* will be referred to as “Applicant” herein.

Subsequent to the Applicant filing its application, a motion was filed by Benjamin G. Trane and Midwest Academy, LLC, also asking that the search warrant applications and the search warrants be unsealed and that the Clerk of Court be directed to provide a copy of those documents to counsel for Mr. Trane and Midwest Academy, LLC. As the issues relating to the unsealing of the search warrants at this stage of the proceeding are substantially the same for the Applicant and Mr. Trane and Midwest Academy, LLC, the court can address both requests simultaneously.

The Applicant’s application proceeded to hearing on February 26, 2016. The Applicant was represented by its attorney, Leita Walker; the State was represented by Assistant Attorney General Denise Timmons and Lee County Attorney Michael Short. The court heard the arguments and statements of counsel. The parties agreed that the court could conduct an in camera examination of the applications for the search warrants and the search warrants prior to entering its ruling.

The un rebutted record before the court is that law enforcement obtained search warrants in the above-captioned three cases. Warrants were issued in SWSW 000569 on January 27, 2016; SWSW 000570 on February 1, 2016; and in SWSW 000571 on February 10, 2016. No returns have been made to the court on any of the three warrants. The State made application on February 9, 2016, to seal the search warrant applications, the search warrants and any return made on the warrants. On February 10, 2016, the court entered an order sealing those records. This order also directed the order be sealed, as well as the application to seal. On February 18, 2016, in response to the Applicant's application, the court entered a limited order unsealing the application to seal and the order sealing the records. As a result, the search warrant applications and the search warrants remain sealed and confidential. The clerk has maintained this as confidential based upon the provisions of Iowa Code Section 808.13 which provides: "All information filed with the court for the purpose of securing a warrant for a search including but not limited to an application and affidavits, shall be a confidential record until such time as a peace officer has executed the warrant and has made return thereon. During the period of time the information is confidential, it shall be sealed by the court, and the information contained therein shall not be disseminated to any person other than a peace officer, magistrate, or other court employee, in the course of official duties."

The Applicant urges the court to find that there is a presumption that the applications for the search warrants and the search warrants are public records at this time and should be made public. The Applicant further argues that this shifts the burden to the State to present evidence of its compelling governmental interest to

maintain these documents as confidential. At this stage of the proceedings, the Applicant's assertion that the applications for the search warrants and the search warrants are public records is in error. They are specifically confidential pursuant to the provisions of Iowa Code Section 808.13. As a result, those documents are not public records pursuant to Iowa Code Chapter 22. Unless or until a return of the search warrant is made by law enforcement to the court, the application for the search warrant and the search warrant shall remain confidential.

During the course of the hearing, the provisions of Iowa Code Section 808.13 were discussed. Counsel for the Applicant requested that if the court determined such provisions made the documents at issue confidential, the court should establish a deadline for the return of service to be completed by law enforcement. The court declines to do so. There is no provision in Iowa law that establishes a deadline for law enforcement to do so. Earlier versions of the Iowa Code did establish a deadline for returns of search warrants to be made. The legislature has specifically removed those. Iowa Code Section 751.12 (1977); Iowa Code Section 808.5 (1979).

During the course of argument, the State requested that the court consider an order sealing the contents of the search warrant application, the search warrant, and any return when it is made. At that juncture the documents would be presumed to be a public record pursuant to Iowa Code Chapter 22 and Iowa Code Section 808.13. The court has reviewed the documents at issue. In this particular case the State does not need to conceal the fact that they are conducting an investigation to protect an informant, nor does the State need to conceal the fact that they are conducting an investigation or the information they have gleaned in their investigation to protect the

integrity of possible further evidence. The State by the time a return is made on the search warrant will have obtained the evidence. In some cases the State must maintain the confidentiality of search warrant applications so that an offender is not “tipped off” that the offender is being investigated. That is not the case here, nor is this a case where the State needs to monitor ongoing criminal conduct or an investigation where a disclosure of the search warrant would prevent them from doing so. As a result, the court can find no compelling public interest which would mitigate against the public’s access to these then public records of a court proceeding. The court therefore declines to enter an order sealing the search warrant applications, search warrants and returns on said search warrants, **once the returns are made.**

Having so determined, the court in its in camera examination of the search warrant applications has concluded that substantial information which is now considered “protected information” is in the documents. Iowa Court Rule 16 prohibits parties from placing such “protected information” in public records. The Court Rules require that redaction of such information be made prior to the filing of such documents. That presents a challenge in this case. Should any criminal charges ever be filed, the individual charged with a crime has the right to see the exact document that the district associate judge reviewed in determining whether probable cause existed for the issuance of the search warrants. At the same time, the public does not have the right to all of the information that would be considered “protected information.” As a result, the court concludes that when the State makes its return on the search warrant in these matters, it should also prepare a redacted version of its application for the search warrants, removing all protected information as envisioned in Iowa Court Rule 16. It is

this document that will be placed on the public docketing system. The clerk is directed to maintain and keep the original paper copy of the search warrant application to be used should there be a criminal prosecution. This paper copy shall be maintained as confidential and only available to counsel for the State or the subject of the search warrants, without a prior court order.

Dated this 1st day of March, 2016.

Clerk to send copies to: Michael Short/Denise Timmins/Michael Giudicessi/Leita Walker/George Jones



State of Iowa Courts

Type: OTHER ORDER

Case Number **Case Title**
SWSW000570 ST V TRANE, BENJAMIN

So Ordered

A handwritten signature in cursive script, appearing to read 'MA Brown', written in dark ink.

Mary Ann Brown, Chief District Judge,
Eighth Judicial District of Iowa