

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	No. 6:23CR-60039-001
)	
DEREK SCOTT FINKBEINER)	

UNITED STATES’ UNOPPOSED MOTION FOR A PROTECTIVE ORDER

The United States, with the consent of the Defendant, Derek Scott Finkbeiner, moves this Court, pursuant to Federal Rule of Criminal Procedure 16(d)(1), to enter the attached Protective Order governing discovery in this matter. The proposed Protective Order will allow the Government to quickly and efficiently fulfill its discovery obligations while protecting important privacy interests implicated by sensitive information that the Government intends to produce. Accordingly, and for the reasons set forth below, the United States respectfully asks the Court to enter the proposed Protective Order to which the defense consents.

I. Background

On November 15, 2023, a federal grand jury returned a three-count Indictment against the Defendant, who is the current elected Sheriff of Hot Spring County, Arkansas. Count One charges the Defendant with Obstruction of Justice for his alleged conduct in interfering with an ongoing federal investigation being conducted by the Federal Bureau of Investigation (FBI). Count Two charges the Defendant with Misprision of Distribution of a Controlled Substance for his alleged conduct in having direct knowledge of distribution of a controlled substance and subsequently making affirmative acts to conceal the crime. Count Three charges the Defendant with Misprision of Maintaining a Drug-Involved Premises for his alleged conduct in having direct

knowledge of a drug-involved premises and subsequently making affirmative acts to conceal the crime.

To comply with its discovery obligations, the United States has prepared a comprehensive initial discovery production relevant to the Defendant. The United States is asking the Court to enter the proposed Protective Order because many of the materials that the Government intends to produce contain personal and sensitive information about uncharged individuals and law enforcement activities. Specifically, the discovery includes, among other items, policy documents of the Hot Spring County Sheriff's Department; law enforcement personnel records, including those of the Defendant; allegations related to other uncharged incidents; officer incident reports; electronic evidence, including telephone data; and grand jury materials. In addition to containing law enforcement information, many of the discovery items contain personal identifying information, such as addresses and phone numbers. Further, the discovery includes statements by officers, supervisors, and other individuals, which contain discussion of sensitive subjects.

II. The proposed protective order is appropriate under Rule 16 and necessary to protect sensitive information and the privacy of the witnesses and uncharged individuals

The proposed Protective Order is appropriate under Rule 16(d)(1) of the Federal Rules of Criminal Procedure, which provides that the Court “may, for good cause, deny, restrict, or defer discovery or inspection” of discovery materials. FED. R. CRIM. P. 16(d)(1). The Court therefore has the discretion to regulate and restrict discovery and the disclosure of discovery materials through use of protective orders. *See, e.g., Alderman v. United States*, 394 U.S. 165, 185 (1969) (“[T]he trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against unwarranted disclosure of the materials which they may be entitled to inspect.”).

The proposed Protective Order will protect the legitimate privacy interests of the Hot Spring County Sheriff's Department and other law enforcement personnel, uncharged individuals, and the witnesses. *See Mehl v. Blanas*, 241 F.R.D. 653, 659-60 (E.D. Cal. 2007) (imposing a protective order for personal identifying information in part to protect persons from possibility of identity theft); *In the matter of Eyecare Physicians of Am.*, 100 F.3d 514, 518 (7th Cir. 1996) (noting that grand jury proceedings are kept secret in order to protect the rights of the innocent, further the pursuit of the guilty, and encourage the full cooperation of witnesses); *see also Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 33 (1984) ("Much of the information that surfaces during pretrial discovery may be unrelated, or only tangentially related, to the underlying cause of action. Therefore, restraints placed on discovered, but not yet admitted, information are not a restriction on a traditionally public source of information."). Indeed, the parties have reached agreement that the provisions in the proposed Protective Order are appropriate.

Accordingly, the Government respectfully requests that the proposed Protective Order be entered as to all discovery materials that will be produced in this matter. Such materials would be handled pursuant to the procedures outlined in the proposed Protective Order submitted along with this Motion and would only be disclosed or disseminated in accordance with the proposed Protective Order, unless and until that Order is modified by the Court.

III. Conclusion

The discovery in this matter contains personally identifying information and substantive content that is personal and sensitive in nature, including sensitive law enforcement material. To ensure the protection of this information, protect the privacy of the individuals referenced above, and avoid the disclosure of this information to other individuals, the United States respectfully

asks the Court to enter the proposed Protective Order.

The Government has contacted counsel for the Defendant and has been authorized to represent to the Court that the Defendant does not object to the entry of this proposed Protective Order.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Bryan A. Achorn, an Assistant United States Attorney for the Western District of Arkansas, hereby certify that on this 8th day of December, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following:

Alex Wynn
Bruce Eddy
Jessica Yarbrough
Federal Public Defender's Office
Attorneys for the Defendant

/s/ Bryan A. Achorn
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