

BRYAN F. TAYLOR ISB# 6400
Canyon County Prosecuting Attorney

THEODORE W. LAGERWALL ISB# 7890
Deputy Prosecuting Attorney
Canyon County Courthouse
1115 Albany Street
Caldwell, Idaho 83605
Tel: (208) 454-7391
Fax: (208) 454-7474
Efile: CriminalEfile@canyoncounty.id.gov

**IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON**

THE STATE OF IDAHO

Plaintiff,

vs.

DAVID ALLEN DALRYMPLE,

Defendant.

CASE NO. CR14-20-07840

**STATE'S MOTION TO REOPEN
PREVIOUSLY FILED AND RULED UPON
MOTION IN LIMINE FOR
NONDISCLOSURE, or, IN THE
ALTERNATIVE, MOTION FOR
PROTECTIVE ORDER BARRING
DISCLOSURE**

THE STATE OF IDAHO, by and through its attorney of record, Theodore W. Lagerwall Jr., Virginia Bond, Karson Vitto, and Peter Donovan, Deputy Prosecuting Attorneys for Canyon County, hereby request to reopen the State's previously filed and litigated Motion in Limine for Nondisclosure, or, in the Alternative, Motion for Protective Order Barring Disclosure. In support of this request to reopen, the State pleads the following:

1. The Motion in Limine for Nondisclosure, or, in the Alternative, Motion for Protective Order Barring Disclosure was previously filed, along with a supporting memorandum of

law in support of the same, on July 14, 2023.

2. A hearing on the filed motion was heard on August 11, 2023. The Court made its findings, conclusions, and ultimate order on the record in open court during the hearing.
3. A transcript of the hearing was filed on August 18, 2023.
4. The Court entered an order codifying the Court's oral order on October 23, 2023. The Court ordered stated that "the State is not required to disclose any genealogical database not in its possession."
5. Since the entry of this order, the Idaho Supreme Court has held that "if a law enforcement agency is involved in the prosecution of a defendant, then that agency's records – which are material to that defendant's guilt or innocence – are effectively within the possession, custody, or control of the prosecutor. While the prosecutor is not required to comb the files of every . . . agency, the prosecutor's possession, custody, or control of the evidence may be presumed if the agency participates in the investigation of the defendant. Or . . . the investigating police agency holding relevant and material evidence acts as an "arm of the prosecution" for the purposes of criminal discovery statutes" State v. Pendleton, 537 P.3d 66 (Idaho 2023).
6. While the State still maintains its previously held positions, the State can gain possession of items via a request of the federal government, specifically the F.B.I., via a Touhy Request, which is a formal request following the dictates of the United States Supreme Court decision in United States ex rel. Touhy v. Ragen, 340 U.S. 462, 468 (1951).
7. The State believes good cause exists for the issuance of a protective order barring the defense from seeing and knowing the information of private individuals identified

during the I.G.G. process. The disclosure of this information risks harm to these individuals, and to the I.G.G. investigative technique as well.

8. Under I.C.R.16(l), the Court “[a]t any time . . . may, for good cause, deny, restrict, or defer discovery or inspection , or grant other appropriate relief.” The Court may permit a party to show good cause. This can be done by written statement which will be inspected ex parte. The Court, in its discretion may also allow oral statements in an ex parte fashion that are preserved by a court reporter. Any statement must be preserved in its entirety and sealed. *See* I.C.R. 16(l).
9. While the defense did not express a substantial need for the I.G.G. records in the preparation of the defendant’s case at the oral arguments on the motion, the State concedes that under the dictates of *Pendleton*, there is an obligation to bring these facts before the Court to determine if the Court will enter an order for the State, via proper procedures, to produce the records and for an in camera inspection.
10. The Court noted in its October 23, 2023 order that “[t]his order is made upon the factual and procedural posture of this case at this time. The defense is free to move the Court at any time to reconsider this order should facts develop which justify modification of this order”.
11. The Court’s order implies that the State can also request modification of the order. This is especially true due to the fact the State must comply with its discovery obligations and inform the Court of a change in the law that may impact a trial court’s rulings.

Based on the foregoing, the State respectfully requests that State’s previously filed and litigated Motion in Limine for Nondisclosure, or, in the Alternative, Motion for Protective Order Barring

Disclosure be reopened and reconsidered.

DATED this _____ day of February, 2024.

THEODORE W. LAGERWALL
Deputy Prosecuting Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on or about this _____ day of February, 2024, I caused a true and correct copy of the foregoing instrument to be served upon the attorney for the Defendant by the method indicated below and addressed to the following:

Canyon County Public Defender
111 N. 11th Ave, Suite 120
Caldwell, ID 83605
E-File Address: PDMail@canyoncounty.id.gov

- U.S. Mail, Postage Prepaid
- Placed in Court Basket
- E-Mail
- Via Canyon County File Transfer Site

THEODORE W. LAGERWALL
Deputy Prosecuting Attorney