

State of North Carolina County of Cumberland	In the General Court of Justice <input type="checkbox"/> District <input type="checkbox"/> Superior Court Division ► File No:
State of North Carolina	Order to Release Records for <i>In Camera</i> Inspection Pursuant to Accompanying Subpoena
vs.	
Defendant	

Pursuant to N.C. Gen. Stat. § 132-1 *et seq.* and under its inherent authority, the Court enters this Order, directing the release of records for *in camera* inspection as identified in the accompanying subpoena, premised on the following findings and conclusions:

Findings

1. Under North Carolina law, except an order compelling production and for matters of discovery in a criminal case under N.C. Gen. Stat. § 15A-902, records, notes, or the like derived from a criminal investigation are not subject to disclosure by request, demand, or directive. *Cf., Times-News Pub. Co., Inc. v. State*, 124 N.C. App. 175, 177, 476 S.E.2d 450, 452 (1996) (Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records subject to disclosure). Accordingly, neither a request nor a subpoena can transmute such records which are and have been confidential and protected into those subject to public disclosure. *See McCormick v. Hanson Aggregates Southeast, Inc.*, 164 N.C.App. 459, 596 S.E.2d 431, *stay allowed* 358 N.C. 544, 598 S.E.2d 563, *temporary stay allowed* 359 N.C. 69, 603 S.E.2d 131, *writ denied, review denied, appeal dismissed* 359 N.C. 69, 603 S.E.2d 131 (2004)(Criminal investigation exception to Public Records Act was not limited to documents relating to ongoing violations, but included documents relating to closed and future investigations, and thus city attorney's office was not required to produce records of criminal investigations).

2. As the Court of Appeals has held, “[d]iscovery is not a proper purpose for a subpoena *duces tecum*; anything in the nature of a mere “fishing expedition” will not be allowed. A party is not entitled to have brought in a mass of books and papers in order that he may search them through to gather evidence. To hold otherwise would not only cause the subpoenaed person often to be unfairly burdened, but would also obligate him to produce a number of items not material to the inquiry, which is clearly not authorized by law.” *State v. Newell*, 82 N.C. App. 707, 709, 348 S.E.2d 158, 160 (1986).

A subpoena *duces tecum* compels the production of “records, books, papers, documents, or tangible things,” ..., patently material to the inquiry, in the context of “a discovery deposition, hearing, trial, or other proceeding in which testimony is to be received,” 2 G. Gray Wilson, *North Carolina Civil Procedure* § 45-3, at 98 (2d ed.1995); *Vaughan v. Broadfoot*, 267 N.C. 691, 699, 149 S.E.2d 37, 43 (1966)... The object of the subpoena *duces tecum* is to secure the production of evidence for presentation to the court, not to secure items for inspection. 81 Am.Jur.2d *Witnesses* § 19 (1992); see N.C.G.S. § 1A-1, Rule 34 (1999) (procedure mandated for discovery of documents). Thus, this [type of] subpoena is not properly used for discovery purposes. *Vaughan*, 267 N.C. at 699, 149 S.E.2d at 43.

Kilgo v. Wal-Mart Stores, Inc., 138 N.C. App. 644, 648-49, 531 S.E.2d 883, 887 (2000)(some citations omitted).

3. N.C. Gen. Stat. § 132-1.4 permits, however, an order compelling the production of such records and information of such a nature may be ordered released by a court of competent jurisdiction upon a balancing of interests and a determination that the interests of the public in disclosure, outweighs the interests of the law enforcement agency and the alleged victim in withholding the information.
4. The Court must have access to such records to determine whether the requisite threshold has been met and to determine *in limine* whether there exists sufficient relevance, materiality, and probative value outweighing other evidentiary and policy considerations to permit the disclosure and use of such records.
5. Accordingly, copies of the records should be produced first to the Court for an *in camera* inspection and the Court's determination of the threshold issues, provided that the names of juveniles, as well as social security numbers, telephone numbers and other personal identifying information and the reporting person's identity and any voice recording by which a reporting person's voice could be identified shall first be redacted before delivery of the documents to the Court for such *in camera* inspection.
6. In the event that the Court considers the recorded information to be relevant and to meet the preliminary admissibility requisites, the attorney for the party applying for the release of the records would be the appropriate attorney to be obligated to provide the law enforcement agency's counsel with adequate notice and an opportunity to be heard prior to the use of such information, data, documentation or other such records.
7. Any such records or information contained in such records shall remain confidential and shall be used only as the Court permits and only in the matter before the Court, unless the Court, after a hearing, shall otherwise order.

Based on the foregoing findings of fact, the Court, as required, makes and states separately the following

Conclusions of Law

1. This matter is properly before the Court, and this Court has jurisdiction to consider the matter and to enter this order.
2. Under North Carolina law, except for matters of discovery in a criminal case under N.C. Gen. Stat. § 15A-902, records, notes, or the like derived from a criminal investigation are not subject to disclosure by request, demand, or directive. Accordingly, records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records subject to disclosure.
3. N.C. Gen. Stat. § 132-1.4 provides, however, that records of such a nature may be ordered released by a court of competent jurisdiction upon an examination and a balancing of the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information.
4. The Court must have access to such records to determine whether the requisite threshold has been met and to determine *in limine* whether there exists sufficient relevance, materiality, and probative value outweighing other evidentiary and policy considerations to permit the disclosure and use of such records.
5. Accordingly, copies of the records should be produced first to the Court for an *in camera* inspection and the Court's determination of the threshold issues, provided that the names of juveniles, as well as social security numbers, telephone numbers and the reporting person's identity shall first be redacted before delivery of the documents to the Court for such *in camera* inspection.

6. Counsel applying for the release of the records should be obligated to provide the State and the law enforcement agency's counsel with adequate notice and an opportunity to be heard prior to the use of such information, data, documentation or other such records in the event that the Court after *in camera* inspection determines that the records should be released to the applicant for release of the records.
7. Any such records or information contained in such records shall remain confidential and shall be used only as the Court permits and only in the matter before the Court, unless the Court, after a hearing shall otherwise order.

Premised upon the ultimate facts found and its conclusions of law, the Court, pursuant to N.C. Gen. Stat. § 132-1 *et seq.* and under its inherent authority, directs the release of records for *in camera* inspection and enters this

Order

1. The presiding Judge shall have access to such records to determine whether the requisite threshold has been met and to determine *in limine* whether there exists sufficient relevance, materiality, and probative value outweighing other evidentiary and policy considerations to permit the disclosure and use of such records, provided that Records of investigations of alleged child abuse shall be governed by Article 29 of Chapter 7B of the General Statutes.
2. Accordingly, copies of the records shall be produced first to the Court for an *in camera* inspection and the Court's determination of the threshold issues, provided that the names of juveniles, as well as social security numbers, telephone numbers and the reporting person's identity shall first be redacted before delivery of the documents to the Court for such *in camera* inspection.
3. Counsel applying for the release of the records shall be obligated to provide the State and the law enforcement agency's counsel with adequate notice and an opportunity to be heard prior to the use of such information, data, documentation or other such records in the event that the Court after *in camera* inspection determines that release of the records to counsel for the parties is warranted.
4. Except as the Court may otherwise order any party or other person permitted access to such records shall not reveal, convey, copy, or reproduce any data, documents, or other information contained in or obtained from such records to any other person or agency not otherwise having been authorized to view or possess such matter.
5. Any such records or information contained in such records shall remain confidential and shall be used only as the Court permits and only in the matter before the Court, unless the Court, after a hearing, shall otherwise order.

Date:

Signature of Judge: