

UNITED STATE DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JOHN KELSEY and TIMOTHY WRIGHT, both
individually and on behalf of a class of others similarly situated,

Plaintiffs,

ELECTRONICALLY FILED

-against-

Civil Case No.: **04-CV-0299**
LEK/DRH

THE COUNTY OF SCHOHARIE, JOHN S. BATES, JR.,
both individually and in his official capacity as Sheriff of the
County of Schoharie, and JIM HAZZARD, both individually
and in his capacity as Administrator of the Schoharie County Jail,

Defendants.

PROTECTIVE ORDER ON STIPULATION

WHEREAS, the Plaintiffs, John Kelsey and Timothy Wright, through their counsel, have made discovery demands which seek to inspect a portion of the Schoharie County Jail facility; and

WHEREAS, the portion of the Schoharie County Jail facility which Plaintiffs seek to inspect is part of a secured facility and Defendants and the public have a legitimate interest in maintaining the security of said facility and preventing the public disclosure of the physical layout and details of said facility ; and

WHEREAS, the Plaintiffs, through their counsel, have also made discovery demands seeking copies of computer-based data files regarding certain non-party inmates admitted to the Schoharie County Jail since March 19, 2001, which files (hereinafter "inmate intake files") contain certain confidential information regarding non-parties (e.g., social security numbers); and

WHEREAS, during a Court mandated conference on July 27, 2004, United States Magistrate Judge David R. Homer directed Defendant Schoharie County to disclose copies of certain inmate intake files to Plaintiffs' counsel for the limited purposes of this litigation; and

WHEREAS, the parties desire to facilitate discovery in this matter while maintaining the confidentiality of such information;

IT IS HEREBY STIPULATED by and between the parties, subject to the approval of the Court, that:

CONFIDENTIAL INFORMATION

1. This Protective Order on Stipulation ("Protective Order") shall govern the use and dissemination of the following categories of documents and information which are created, disclosed, or otherwise used in this action (hereinafter "Confidential records"):

- a. any and all photographs, drawings, videos, or other tapes of the holding area where inmates are processed (inclusive of holding cells, shower facility, lavatory facility, interview area, and area where inmates are fingerprinted and photographed) created during, or as a result of, any inspection by Plaintiffs, Plaintiffs' counsel, or Plaintiffs' agents (excluding confidential notes, diagrams, or documents created after the inspection that are covered by an attorney-client or attorney work product privilege); and

b. any and all inmate intake files which contain information about non-parties.

2. To the extent that Confidential records which fall within the scope of paragraph "1" above, or copies thereof, are created as a result of an inspection of any portion of the Schoharie Jail facility, are otherwise produced for inspection in this action, otherwise become the subject of discovery in this action, or are otherwise submitted to the Court in this action, each page and/or copy of such materials shall be marked as "CONFIDENTIAL" by the individual producing such records or information or her/his/their/its counsel. Moreover, Plaintiffs' counsel shall promptly provide Defendants' counsel with a copy of any and all photographs, drawings, videos, or other tapes or other records that fall within the scope of subparagraph "1(a)" above.

PROTECTION OF CONFIDENTIAL INFORMATION

3. All Confidential records and information which fall within the scope of paragraph "1" above and copies thereof, absent an order of the Court to the contrary, shall only be disclosed to parties to this litigation, counsel, expert witnesses, or consultants employed by the parties. In addition, Plaintiffs' counsel may disclose to individuals who have consented to become parties to this litigation (hereinafter "potential plaintiffs"), portions of the inmate intake files that refer to such individuals. Disclosure to expert witnesses, consultants, employees of the parties, or potential plaintiffs shall only be made after the recipient has read and signed the attached "Undertaking." Counsel for all parties shall keep such Undertakings on file, to be produced upon Order of the Court.

4. Confidential records and information shall be used only by persons permitted access pursuant to paragraph "3" above and shall be used only for a purpose directly related to the prosecution or defense of this action, including the settlement thereof, and shall not be used for any other purpose whatsoever nor shall it be disclosed to persons other than those specified herein.

5. Except as set forth herein, confidential records or confidential information shall not be disclosed by any person or otherwise disseminated, unless such materials shall become public in a manner not in violation of this Protective Order.

6. All documents or tangible things tendered under a designation of confidentiality and/or privilege and all deposition testimony or responses to discovery given under a designation of confidentiality and/or privilege, if filed before the Court, shall be filed pursuant to General Order 22 ¶ 12.2, with the Clerk of the Court in a sealed opaque envelope marked with the caption of the case, a schedule listing the contents, a 3.5” disk containing the documents in .pdf format, and the following notation:

**“SEALED PURSUANT TO PROTECTIVE ORDER;
CONTAINS CONFIDENTIAL INFORMATION;
TO BE OPENED ONLY BY OR AS DIRECTED BY THE COURT.”**

The Clerk of the Court is directed to maintain under seal all documents and tangible things so filed in this litigation.

7. Should the need arise for any of the parties to disclose confidential information during any hearing or trial before the Court, including disclosures through argument or the presentation of testimonial, documentary, or physical evidence, such party may do so only after taking such steps as the Court shall deem necessary to preserve the confidentiality of such information.

8. This Protective Order shall not preclude any person from moving this Court for an order that Confidential information is not, in fact, within the scope of protection afforded by Rule 26(c)(7) of the Federal Rules of Civil Procedure or for an order modifying this Protective Order. During the pendency of such motion, and until determination on the merits has been made by the

Court, the document or information asserted to be confidential information shall continue to be treated as such under the terms of this Protective Order.

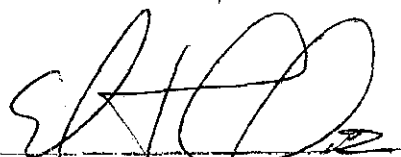
9. Nothing contained in this Protective Order shall constitute an admission by any party that any document or information designated as confidential is relevant or admissible.

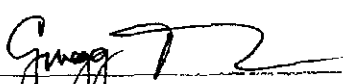
10. Upon final termination of this litigation, including any appeals, each counsel, expert, consultant, and other person subject to the terms of this Protective Order shall be under an obligation to assemble and to promptly return to the originating source, all documents and things including or embodying Confidential information, including without limitation all copies, excerpts, summaries, notes, digests, abstracts and indices thereof, and all documents and things which have been prepared relating thereto, except that legal counsel for each party may retain one set of pleadings and other papers filed with the Court, including transcripts of hearings and trial, hearing and trial exhibits, and deposition transcripts and deposition exhibits.

11. This Protective Order shall survive the termination of this action.

DATED: October 14, 2004

DATED: October 4, 2004

By: 

By: 

Palmer Robert Keach III, Esq.
Bar Roll No.: 104942

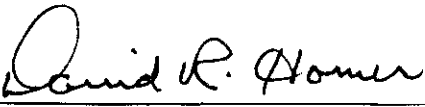
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SO ORDERED:

Dated: 9/1/05

A handwritten signature in black ink that reads "David R. Homer". The signature is written in a cursive style with a large initial "D".

David R. Homer
United States Magistrate Judge