

IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT, IN
AND FOR LEON COUNTY, FLORIDA.

STATE OF FLORIDA

CASE NO. 2008CF3350

vs.

JAMES THOMAS,

Defendant(s).

STATE'S RESPONSE TO ACLU'S MOTION FOR PUBLIC ACCESS TO SEALED JUDICIAL RECORDS

COMES NOW the State of Florida by and through the undersigned Assistant State Attorney and files this its response to the ACLU's Motion for Public Access to Sealed Judicial Records and would state as follows:

After reviewing the motion with the Florida Department Of Law Enforcement, the F.B.I. and the Tallahassee Police Department, the State is requesting that the following portions of the hearing remain sealed pursuant to Section 110.071(2)(d), Florida Statutes and 6 U.S.C. Section 482(e) and 6 U.S.C. Section 482(f)(1);

p. 11, lines 13-16

p. 12, lines 11-12; 15-21

p. 13, lines 9-25

p. 14, lines 1-24

p. 15, lines 1-2; 9-16; 22-25

p. 16, lines 2-3; 9-24

p. 17, lines 1-11; 21-25

p. 19, lines 4-8

p. 20, lines 9-10; 14-22

p. 22, lines 3-4; 11-12

p. 23, lines 7-19

While Federal law may not be strictly applicable, the issues raised have implications beyond wanted criminals evading criminal arrest, the Federal laws used by Homeland Security assist in fighting terrorism.

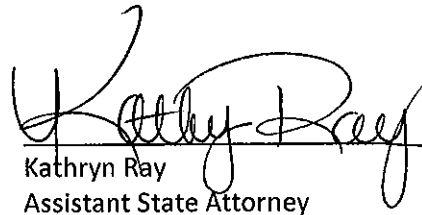
Further, the government enjoys a common law evidentiary privilege not to disclose case sensitive law enforcement investigative information during the course of civil or criminal litigation (see *In re U.S. Department of Homeland Security*, 459 F. 3d 565, 569-71 (5th Cir., 2006); *United State v. Van Horn*, 789 F. 2d 1492, 1507-08 (11th Cir.), cert. Denied, 479 U.S. 854 (1986), in addition to a law enforcement sensitive exemption under the Federal "Freedom of Information Act" (FOIA) (5 USC 552(b)(7)E). Disclosure of the material would disclose sensitive law enforcement investigative information that would enable criminals to evade law enforcement, destroy evidence, compromise office safety, and as such releasing the sealed portions would violate the exemption provided in state statutes.

In *United States v. Rigmaiden*, 844 F.Supp2d 982, the court held that evidence relating to the specific mobile tracking device used by the government to locate an aircard was privileged and evidence relating to the Pen/Trap Network Architecture used to locate the aircard was privileged.

The State, the Florida Department of Law Enforcement, the Tallahassee Police Department and the F.B.I. are requesting the Court hold a hearing prior to ruling on the motion.

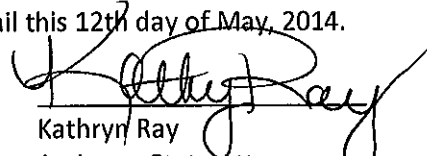
Respectfully submitted,

WILLIAM N. MEGGS
STATE ATTORNEY


Kathryn Ray
Assistant State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been provided to Benjamin James Stevenson, P.O. Box 12723, Pensacola, FL 32591-2723, Nathan Freed Wessler, American Civil Liberties Union Foundation, 125 Broad Street, 18th Floor, New York, NY 10004, Daren Shippy, P.O. Box 1019, Tallahassee, FL 32302 by U.S. Mail and email this 12th day of May, 2014.


Kathryn Ray
Assistant State Attorney