SUPREME COURT OF THE STATE

OF WASHINGTON

ANTHONY EDWIN PAUL, an individual, and PUGET SOUND SEAFOOD DIST. LLC, a Washington limited liability company, Petitioners, v. THE HONORABLE BRIAN D. GAIN, Judge of the Superior Court, King County, Respondent.	NO. _____ **PETITION FOR WRIT OF MANDAMUS**

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Petitioners Anthony Edwin Paul and Puget Sound Seafood Dist. LLC ("Petitioners") allege as follows:

I. PRELIMINARY STATEMENT

1. Petitioners seek a writ of mandamus to compel Respondent King County Superior Court Judge Brian Gain to allow them access to search warrants ("Search Warrants"), supporting affidavits, returns, and related materials ("Search Warrants Files") foreclosed by a December 2, 2016, Order to Seal ("Order") (Appendix A) entered by Judge Gain. The Washington Department of Fish and Wildlife ("WDFW") obtained at least 23 search warrants targeting the Petitioners from Judge Gain on November 15, 2016. Two weeks later, WDFW obtained the Order sealing all court records associated with these search warrants.

2. The Search Warrants signed by Judge Gain contain a gag order prohibiting the recipient "from disclosing the existence of this Search Warrant to the subjects and/or affiliates of this investigation, or any other party." Petitioners seek a writ of mandamus to compel Judge Gain to strike this gag order.

3. The Order and gag order violate the Washington and United States Constitutions, numerous decisions of this Court addressing the sealing of court files, and GR 15 and 31. In combination, the Order and gag order removes from public scrutiny the judicial decision to issue

search warrants that could trample the rights of any individual – here the Petitioners – to be free from unreasonable searches and seizures.

4. Petitioners and the public have a great interest in disclosure of the Search Warrants Files. No civil or criminal case exists within which Petitioners can seek the relief requested here.[1] Without this Court's assistance, Petitioners cannot obtain disclosure of the Search Warrant Files. An original action for mandamus is the appropriate vehicle for Petitioners to vindicate their rights – and the public's right – of access in a case like this.[2] No other speedy and adequate remedy exists that would permit timely disclosure of the public records at issue.

II. PARTIES AND JURISDICTION

5. Plaintiff Anthony Edwin Paul ("Paul"), a member of the Tulalip Tribes, is a resident of Pierce County, Washington, and an owner of Puget Sound Seafood Dist. LLC ("PSSD"), which is a Washington limited liability company located in Pierce County. Collectively, they will be referred to as "Petitioners."

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[1] Obtaining a search warrant does not commence a criminal proceeding. *State v. Jefferson*, 79 Wn.2d 345, 347, 485 P.2d 77 (1971). No criminal proceeding in superior court has been filed against Petitioners.

[2] *See Seattle Times Co. v. Eberharter*, 105 Wn.2d 144, 145, 713 P.2d 710 (1986); *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584, 585, 637 P.2d 966 (1981); *Seattle Times Co. v. Serko*, 170 Wn.2d 581, 589-90, 243 P.3d 919 (2010). All of these cases were heard by this Court on a Petition for Writ of Mandamus. *Eberharter* and *Cowles Pub. Co.* involved access to search warrant affidavits. *Serko* involved access to sealed court files.

6. Petitioners are beneficially interested in this matter, pursuant to RCW 7.16.170, because they are the targets of the Search Warrants sealed by the Order. The Affidavit of Anthony Edwin Paul, filed herewith, establishes the foregoing.

7. Respondent is a judge of the Superior Court for King County.

8. Respondent is under a clear duty resulting from his office to follow the holdings of Washington appellate courts, Washington court rules, and other statutory and constitutional authority.

9. This Court has original jurisdiction over this petition under Const. art. V § 4, RCW 7.16.160, and RAP 16.2. *See State ex rel. Edelstein v. Foley*, 6 Wn.2d 444, 448, 107 P.2d 901 (1940) (superior court judge is "state officer" and thus subject to Art. 4, Sec. 4).

10. It is appropriate for this Court to exercise original jurisdiction over this matter. The Petitioners have specific, individualized interests in obtaining access to court records that allow a state agency to target and obtain the most sensitive and confidential records they possess, such as bank records or other personal financial records. They have a constitutional right prior to charging to review the probable cause affidavit supporting the Search Warrants. Petitioners' request here addresses this issue as one of first impression in Washington.

11. In addition, the public has a great interest in access to court records involving search warrants as this Court recognized in *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584, 590, 637 P.2d 966 (1981) and *Seattle Times Co. v. Eberharter*, 105 Wn.2d 144, 713 P.2d 710 (1986). Since *Cowles* and *Eberharter* were decided, subsequent case law has expanded access to court records, and GR 15, "Destruction, Sealing and Redaction of Court Records," was adopted. These legal developments were disregarded in this Order.

12. The novel twist in this case is the "gag order" in the Search Warrant. Because recipients of the Search Warrants risk violating a court order if they disclose the Search Warrants, their silence is secured. The Order sealing in perpetuity the Search Warrants Files guarantees that no public scrutiny can ever occur. The "gag-order" and the Order, in combination, create a Star Chamber[3] within which law enforcement officers can operate without accountability, to the extreme detriment of their targets and the public, who may never know who invades their personal affairs, or why. This is particularly true here where Petitioners have already successfully sued the law enforcement agency to secure

[3]In modern usage, legal or administrative bodies with strict, arbitrary rulings and secretive proceedings are sometimes called, metaphorically or poetically, *star chambers*. https://en.wikipedia.org/wiki/Star_Chamber (last visited January 10, 2017)

return of personal property seized via an earlier search warrant arising from the same investigation.[4]

13. Absent intervention by this Court, the search warrant practices used against Petitioners cannot be scrutinized and corrected. This Court needs to ensure that lower tribunals follow the law when it comes to access to search warrants, an area not addressed by this Court for forty years.

14. Unless mandamus is granted Petitioners have no procedural vehicle to obtain access to the court records sealed by the Order.

III. FACTS AND PROCEDURAL BACKGROUND

A. WDFW's Previous Actions Against Paul and PSSD.

15. WDFW's current actions in obtaining the sealed Search Warrants repeat its actions taken in June 2016 as part of an administrative investigation into Petitioners under WDFW Case No. 15-007473. Declaration of David H. Smith in Support of Petition for Writ of Mandamus ("Smith Decl.") ¶¶ 2-10. WDFW Detective Wendy Willette ("Det. Willette") obtained a search warrant from another King County Superior Court Judge to search the business location of PSSD and Paul's personal residence on June 7, 2016. *Id.*, Exs. A, B.

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[4] *Paul et at v. Washington Department of Fish and Wildlife*, Thurston County Superior Court Case No. 16-2-03043-34.

16. WDFW used this search warrant to conduct an unlawful search of PSSD and Paul's personal residence on June 13, 2016. Smith Decl. ¶ 4. During this search, WDFW unlawfully took property belonging to PSSD and Paul. *Id.* ¶¶ 4, 5.

17. Paul challenged the legality of the search warrant and sought the return of the property that was taken unlawfully by filing a complaint for Writ of Replevin and for Return of Property in Thurston County Superior Court on July 29, 2016 (Case No. 16-2-03043-34). *Id.* ¶ 7, Ex. C.

18. In the Thurston County case, Paul also filed a Motion for Temporary Restraining Order on September 15, 2016, to restrain WDFW and its agents from continuing acts of retaliation against Paul for bringing the Thurston County litigation. These acts included the wrongful seizure and destruction, without warrant, of crab bait Paul used to engage in tribal fishing activities. *Id.* ¶¶ 9, 10, Ex. H.

19. Before the Show Cause hearing on Paul's Complaint was heard, WDFW returned all of the property that was the subject of the replevin litigation. *Id.* ¶ 11.

20. The return of the property mooted the replevin action, and the case was dismissed by Petitioners on September 30, 2016. *Id.*

B. WDFW Renews its Actions Against Petitioners, But in Secret.

21. Det. Willette was resolved to pursue Case No. 15-007473 and investigate Petitioners' tribal fishing activities even though, at all times, Petitioners have engaged in those activities in compliance with the law.

22. Having been thwarted in her investigation because WDFW returned to Paul the property/evidence obtained pursuant to the illegal June 2016 search warrant, Det. Willette decided to pursue a different strategy to gain evidence, which would involve secrecy. Det. Willette sought and obtained 23 Search Warrants on November 15, 2016, from Judge Gain. Smith Decl. ¶¶ 13, 18, Exs. M, O. The warrant obtained by Petitioners bears the same WDFW case number as the June 2016 warrant, so it is part of WDFW's ongoing investigation.

23. Language in the warrant obtained by Petitioners admonished the recipient "from disclosing the existence of this Search Warrant to the subjects and/or affiliates of this investigation, or any other party." *Id.*, Ex. M. Despite this language, Petitioners were able to obtain a true and correct copy of one of the 23 Search Warrants that sought personal financial information about Paul and his family. *Id.*

24. Petitioners learned that the remaining 22 Search Warrants, their Returns, and the Affidavit Supporting issuance of all of the Search

Warrants had been sealed by the Order of Judge Gain on December 2, 2016. Smith Decl. ¶ 16, Ex. N.

25. In the King County Superior Court all search warrant records are filed under one docket number, No. 16-1-12052-7 KNT. *Id.* ¶ 17. Each warrant is tracked by an assigned number and sub-number, as are orders to seal. *Id.*

26. A search of King County Superior Court records disclosed the Order to Seal, assigned No. 4400A, which sealed all records associated with the Search Warrants that had been assigned No. 1938. *Id.* ¶ 18 Ex. N.

27. The only records Petitioners have been able to obtain are one Search Warrant and the Order. Petitioners do not know the identities of the other Search Warrant recipients or if the Affidavit filed in support of these Search Warrants contains probable cause to support them, because they have been sealed by the Order.

28. No notice of a hearing to seal was provided to Petitioners or their counsel, Mr. Smith. *Id.* ¶ 19.

29. The Order is set forth on a generic form. It seals the entire file in perpetuity. The "Findings" state:

> and the Court being aware of the ongoing nature of the investigation and finding that early disclosure of the contents would compromise the investigation.

Smith Decl., Ex. N.

IV. STATEMENT OF CLAIMS

A. The Order Violates Petitioners Right to Access under the State and Federal Constitutions.

30. Petitioners, as the apparent target of the Search Warrants, have a distinct constitutional right of access under the U.S. Constitution. CONST. AMEND. 4 and CONST. art. I, § 7. This Court has never directly ruled on this issue, but several federal courts have held that a search subject has a Fourth Amendment constitutional right to examine the search warrant affidavit. *In re Search of 8420 Ocean Gateway Easton, Md.*, 353 F.Supp.2d 577, 579 (D. Md. 2004); *In re Search Warrants Issued on Apr. 26, 2004*, 353 F.Supp.2d 584, 591 (D. Md. 2004); *In re Search of 14416 Coral Gables Way, North Potomac, Md.*, 946 F.Supp.2d 414, 419-20 (D. Md. 2011); *Matter of Up Plastics, Inc.*, 940 F. Supp. 229, 232 (D. Minn. 1996).[5]

31. The court in *Matter of Up Plastics, Inc.* explained:

> The Fourth Amendment requirement of probable cause is meaningless without some way for targets of the search to challenge the lawfulness of that search. Where the government asserts a need to seal the information from the eyes of the person whose property was searched, it must make a specific showing of compelling need and

[5] One court found a subject's "due process" rights are harmed by an order sealing a search warrant affidavit. *Matter of Wag-Aero, Inc.*, 796 F. Supp. 394 (E.D.Wis. 1992).

> must establish that there is no less restrictive alternative to sealing the records.

940 F. Supp. at 232-33.

32. This "compelling need" standard adopted in the Fourth Amendment context applies in other constitutional contexts as well. *Id.* Indeed, as discussed in Sec. IVB, this standard should be applied to justify the sealing of search warrants and supporting affidavits.

33. Without access to the probable cause affidavit in this case, Petitioners can only surmise whether a "compelling need" exists to justify sealing of the affidavit and the 23 Search Warrants. If Det. Willette's affidavit mirrors the one submitted in support of the June 2016 warrant, there is no compelling need for sealing because that warrant and its supporting affidavit are a matter of public record. Smith Decl. ¶ 3, Exs. A, B. Further, the Search Warrants have been served, so sealing in perpetuity has no justification. In sum, Petitioners' Fourth Amendment right to challenge the legality (again) of WDFW's investigation which continues to invade Petitioners' right to privacy far outweighs any legitimate law enforcement interest here in keeping the Search Warrants Files sealed.

B. The Order Violates the Public's Right to Access Court Records.

34. Search warrants, their returns, and supporting probable cause affidavits are court records placed in court files. *See* CrR 2.3(c);

GR 15(b)(i); 31(c)(4). Access to Washington court records is provided by the Washington Constitution, common law and court rule. In this case, all of these sources provide the public, which includes Petitioners, with access to the Search Warrants Files that Petitioners seek.

35. This Court addressed access to search warrant affidavits first in *Cowles Pub. Co. v. Murphy*, 96 Wn.2d 584, 637 P.2d 966 (1981). This case dealt with the issue of whether search warrant records should be filed as official court records. At that time, treatment of search warrants in each county was handled on an *ad hoc* basis, with no uniform procedure. Some judges simply maintained the search warrant materials in their offices, and they were not filed with superior courts. Without ruling on the question of the constitutional right of access, the Court in *Cowles* ruled that there is a common law presumption of open records and that this is best served "by ordering that these records should be available to the public." *Id.* at 590. Therefore, search warrant records must be filed unless a judge determines otherwise:

> The magistrate or judge must weigh the competing interests involved with making the documents a matter of public record, and determine whether a substantial threat exists to the interests of effective law enforcement, or individual privacy and safety. In addition, the judge must determine whether these interests might be served by deletion of the harmful material.

Id.

36. The second case, *Seattle-Times Co. v. Eberharter*, 105 Wn.2d 144, 713 P.2d 710 (1986), held that no constitutional right of access exists for search warrant records, in an unfiled criminal case, but the common law standard of *Cowles* governed such access. Under that standard, a judge sealing a search warrant affidavit must conduct a weighing analysis of the interests involved. He must "file a transcript of the *in camera* proceeding, the sealing order, and written findings of fact and conclusions of law immediately after the decision to seal is made," or proof that the *Cowles* standard was applied. *Id.* at 148.

37. *Eberharter* involved unusual facts. The *Seattle-Times* sought access to a pre-charging search warrant affidavit for the investigation of the "Green River Killer." This affidavit identified sensitive informants who were prostitutes needing protection in order to ensure their cooperation with police, which was why the sealing was sought. Under the unique circumstances of the case, both the lower and appellate courts found the sealing to be justified.

38. *Eberharter's* rejection of a constitutional right of access to search warrant records was premised on a lack of historical precedent for access to search warrant affidavits and the belief that public scrutiny of

judicial conduct would be delayed only, but not denied, by refusing pre-indictment access.

39. Both bases for decision in *Eberharter* are not applicable in this case. First, in a series of cases decided after *Eberharter*, this Court ruled that court filings that become part of the judicial process are governed by the open courts provisions of the Washington Constitution, CONST. ART. 1, § 10.[6] In *Dreiling v. Jain*, 151 Wn.2d 900, 93 P.3d 861 (2004), the Court ruled that this constitutional provision requires a trial court to conduct the five-part analysis of *Seattle-Times Co. v. Ishikawa*, 97 Wn.2d 30, 36-39, 640 P.2d 716 (1982),[7] before sealing records filed with the court in connection with dispositive motions.[8] In *Rufer v. Abbott Laboratories*, 154 Wn.2d 530, 549, 114 P.3d 1182 (2005), the Court extended the rule announced in *Dreiling* to all records filed with the court in connection with a motion (non-dispositive and dispositive):

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[6] "Justice in all cases shall be administered openly, and without unnecessary delay."
[7] *Accord State v. Bone-Club*, 128 Wn.2d 254, 258, 906 P.2d 325 (1995).
[8] These are referred to as the "Ishikawa Factors." The *Ishikawa* Factors involve the weighing of five criteria:

1. The proponent of closure or sealing must make some showing [of a compelling interest], and where that need is based on a right other than an accused's right to a fair trial, the proponent must show a "serious and imminent threat" to that right.
2. Anyone present when the closure motion is made must be given an opportunity to object to the closure.
3. The proposed method for curtailing open access must be the least restrictive means available for protecting the threatened interests.
4. The court must weigh the competing interests of the proponent of closure and the public.
5. The order must be no broader in its application or duration than necessary to serve its purpose. *Ishikawa*, 97 Wn.2d at 36-39.

> We hold that any records that were filed with the court in anticipation of a court decision (dispositive or not) should be sealed or continue to be sealed only when the court determines–pursuant to *Ishikawa*–that there is a compelling interest which overrides the public's right to the open administration of justice.

In *Bennett v. Smith Bundy Berman Britton, PS*, 176 Wn.2d 303, 291 P.3d 886 (2013), the Court clarified that only filed documents that are part of a court's decision-making process are subject to the strict, constitutional standard that requires application of the *Ishikawa Factors*. In *Bennett*, an intervenor sought to unseal a court pleading submitted in anticipation of a ruling by a court that was never made because the case settled. In that circumstance the court held that application of the *Ishikawa Factors* were not necessary.

40. *Dreiling*, *Rufer*, and *Bennett* were decided upon state constitutional grounds, and they "diverge from federal open courts jurisprudence." *Rufer*, 154 Wn.2d at 549. As such, no First Amendment[9] right of access has been declared by Washington courts. However, the Supreme Court emphasized:

> As we pointed out in *Dreiling*, "Our founders did not countenance secret justice. '[O]perations of the courts and the judicial conduct of judges are matters of utmost public concern.'" *Dreiling*, 151 Wash.2d at

[9] U.S. CONST. AMEND. 1.

> 908, 93 P.3d 861 (alteration in original) (quoting *Landmark Commc'ns, Inc. v. Virginia*, 435 U.S. 829, 839, 98 S.Ct. 1535, 56 L.Ed.2d 1 (1978)). The public, including the press, is entitled to be informed as to the conduct of the judiciary and judges. Scrutiny by the public is a check on the conduct of judges and of the power of the courts.

Bennett, 176 Wn.2d at 309-10.

41. *Dreiling*, *Rufer*, and *Bennett* significantly changed the standard that courts must apply in sealing court records, and *Eberharter* no longer controls when dealing with the sealing of court records involving search warrants. Search warrant records are filed by, and with, the superior court. The probable cause affidavit *must* be reviewed by the judge in order to decide whether to issue a search warrant, and therefore it is "part of the court's decision making process." *Dreiling*, 151 Wn.2d at 909-10. Thus, in this case the constitutional analysis required by *Dreiling*, *Rufer*, and *Bennett* should have been followed, but it was not.

42. There is no principled reason to apply a different standard to search warrants than to other court records.[10] A judge's conduct in

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[10] In *Eberharter* the court rationalized that judicial scrutiny would only be delayed, not denied, because the search warrant process would be examined *later* if a criminal case is filed or in a civil suit by the subject of the search who might think the search was unlawful. This speculation is refuted by the facts here because *no one would know about the search warrants issued against Petitioners if a criminal case is not filed because of the permanent nature of the Order and the gag-orders*. Further, the Court said in *Eberharter* that delay would protect "the privacy of the persons being searched ... and foster[s]effective law enforcement." 105 Wn. 2d at 153. The irony in the scenario here is

issuing a search warrant should be subject to public scrutiny to ensure that sufficient probable cause supports issuance of an intrusive search warrant. "[W]e must enforce that the magistrate judge serves as more than a 'rubber stamp for the police.'" *State v. Lyons*, 174 Wn.2d 354, 360, 275 P.3d 314 (2012) (quoting *Aguilar v. Texas*, 378 U.S. 108, 111, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1969)). Public access to the determination of probable cause ensures that society will be satisfied that justice is being administered fairly and to protect an individual's right to be free from unlawful searches and seizures.

43. Thus, *Dreiling*, *Rufer*, and *Bennett* should be extended to search warrant records, even where charges have not yet been filed.

C. Petitioners have a Common Law Right of Access.

44. Even if this Court declines to require an *Ishikawa Factor* analysis prior to sealing search warrant records, such sealing is still subject to the common law standard under *Eberharter* and *Cowlet*.[11] *Eberharter* declared that "presumptively, these documents [search warrants] must be filed as public documents" and sealed only if "a substantial threat exists to the interests of effective law enforcement, or individual privacy and

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that the Petitioners' privacy would be violated without their knowledge, and effective law enforcement would not be furthered by sanctioning a search warrant with a gag-order and a perpetual sealing order that is not necessary for effective law enforcement. *Eberharter* was clearly a fact-driven opinion that should not control in this case.

[11] The common law right of access to judicial records is well recognized in this country. *Nixon v. Warner Comm., Inc.*, 435 U.S. 589, 98 S.Ct. 1306, 55 L.Ed. 2d 570 (1978).

safety." 105 Wn.2d at 147 (*quoting Cowles*, 96 Wn.2d at 590). As discussed in Sec. IVB, the Order does not meet this standard, which is evident from its sparse, conclusory language, made without a filed transcript of *in camera* proceedings or adequate written findings of fact and conclusions of law.

D. The Order Violates GR 31 and GR 15.

45. GR 31(a) states, "It is the policy of the courts to facilitate access to court records as provided by article I, section 10, of the Washington State Constitution." This rule applies to all court records, including search warrant files. GR 31(b). "The public shall have access to all court records, except as restricted by federal law, state law, court rule, court order, or case law." GR 31(d)(1) (emphasis supplied). The Order, which is unlawful on its face, restricts access here.

46. GR 15 enforces the access rights of GR 31 by establishing strict standards for the sealing of court records. GR 15(c)(1) requires "notice" of a "hearing" before court records can be sealed. Because search warrants are issued in legal limbo and are not connected with a specific civil or criminal case, this notice requirement may not apply. However, that is no reason for alleviating the burden the superior court must satisfy under GR 15(c)(2). This rule requires the court to make and enter "written findings that the specific sealing or redaction is justified by

identified compelling privacy or safety concerns that outweigh the public interest in access to the court record." This is a reiteration of the constitutional standard stated in *Rufer* that requires a showing that "there is a compelling interest which overrides the public's right to the open administration of justice." 154 Wn. 2d at 549.

47. The Order here contains no such written findings. It identifies no compelling interest in secrecy and demonstrates no weighing of the public interest against sealing. The Order does not specify the documents to be sealed, does not contemplate redaction, and sets no time limits.[12]

48. On its face, the Order is legally insufficient for violating GR 15 and is not supported by any analysis of *Ishikawa Factors*. The Order represents the type of sealing order that may be all too common in connection with search warrants obtained by law enforcement officers. Mandamus should be granted to order Judge Gain to withdraw this illegal Order and to unseal the Search Warrants Files.

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[12] In contrast to the Order, when seeking to seal search warrant records, the King County Prosecutor's Office presents Findings and Conclusions on Motion to Seal Documents pursuant to GR 15 and have an expiration date for the sealing. Smith Decl., Ex. P.

E. The Search Warrants Themselves Violate the First Amendment.

49. Petitioners have obtained only one of 23 search warrants that target them (Smith Decl., Ex. M), but there is no reason to believe that WDFW left out the "gag order" language in the other 22 search warrants.

50. The "gag order" language in the Search Warrant, signed by Judge Gain, blatantly violates the First Amendment, because it is a judicial order that forbids future communication about the Search Warrant by the recipient.[13] "Prior restraints are presumed unconstitutional." *State v. Bassett*, 128 Wn.2d 612, 615, 911 P.2d 385 (1996). *Bassett* demonstrates the typical case involving a "gag order." There, the trial court attorneys participating in an aggravated first degree murder trial were ordered to not discuss the case outside of the courtroom. The rationale for the order was to prevent pretrial publicity that might threaten the defendant's right to a fair trial. Because the trial court had several alternatives to protect this right and because the gag order was not narrowly tailored, the gag order was stricken.

51. The same analysis holds true here even though this case does not involve a trial but speech associated with pre-case activity–a

[13] The First Amendment protects the speech of persons who possess information that they wish to communicate. *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 756, 96 S. Ct. 1817, 48 L. Ed. 2d 346 (1976).

search warrant. No Washington cases address the legality of a gag order in a search warrant. However, neither CrR 2.3(c) nor RCW 10.79.035 authorizes a gag order in a search warrant, and Judge Gain had no authority to impose a gag order in the Search Warrant.

52. The gag order's only apparent purpose is to prevent anyone from learning of the existence of the Search Warrant, even after it was served and the return was obtained. Not only does the gag order violate each recipient's First Amendment rights, it enables a judicial proceeding to be cloaked in secrecy, because the public will have no means to ascertain whether the Search Warrants were properly issued, served and returned, as the recipients cannot talk and the court file is sealed. Such proceedings foster mistrust and, potentially, misuse of power, which is why court proceedings and records are to remain open. *Dreiling*, 151 Wn.2d at 908-09.

53. Therefore, in addition to ordering the Search Warrants Files be unsealed by Judge Gain, Petitioners request mandamus to direct Judge Gain to strike the illegal gag orders in the Search Warrants he issued.

V. RELIEF REQUESTED

54. Petitioners have no procedural means at this point to obtain copies of the search warrants that target them and the warrants' supporting affidavits. They cannot obtain them from the sealed court file or from

recipients bound to silence. Without access granted by issuance of a writ of mandamus, Petitioners cannot find out the extent to which their private, confidential, and proprietary records have been taken. They cannot challenge this second wave of unlawful searches and seizures by WDFW. Therefore, this petition should be granted and a Writ of Mandamus should issue.

DATED this 18th day of January, 2017.

GARVEY SCHUBERT BARER

By: Judith A. Endejan

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206-464-3939

DECLARATION OF SERVICE

I hereby certify that on this date I had served the foregoing **Petition for Writ of Mandamus** on the following interested parties in the manner indicated:

Service of Process by Hand:

Honorable Dean Lum
Chief Criminal Judge

Honorable Beth M. Andrus
Chief Civil Judge

King County Superior Court
516 Third Avenue
Seattle, WA 98101

Service of Process by Hand:

Dan Satterberg
King County Prosecuting Attorney's Office
King County Executive Office
516 Third Ave.
Seattle, WA 98104

Service of Process by Hand:

Bob Ferguson
Washington State Office of the Attorney General
800 Fifth Avenue, Ste. 2000
Seattle, WA 98104

Dated: January 18, 2017

Judith A. Endejan

GSB:8371920.1

APPENDIX A

4400 A

FILED
KING COUNTY, WASHINGTON

DEC 02 2016

KNT
SUPERIOR COURT CLERK

CRSEAL

IN THE SUPERIOR COURT OF WASHINGTON STATE FOR KING COUNTY

STATE OF WASHINGTON
Plaintiff/Petitioner
v.
Puget Sound Seafood DIST, LLC
ANTHONY EDWIN PAUL Defendant/Respondent

Cause No. 16-1-12052-7 KNT
16-S-1938

ORDER TO SEAL
(ORSF) /(ORSD)

(Clerk's Action Required)

I. FINDINGS:

The Court having reviewed the applicant's motion and declaration to seal specific documents or this file, and pursuant to applicable case law and court rules, finds compelling circumstances to grant the order as follows:

AND THE COURT BEING AWARE OF THE ON GOING NATURE OF THE INVESTIGATION AND FINDING THAT EARLY DISCLOSURE OF THE CONTENTS WOULD COMPROMISE THE INVESTIGATION,

II. NOW THEREFORE IT IS HEREBY ORDERED THAT:

2.1 ☐ The Clerk of the Court shall seal the following document(s) in this cause:

Sub number	Filed date	Document title

AND

2.2 ☐ The moving party, or _____, shall file a redacted copy of the document(s) to be sealed along with a copy of this order, prior to sealing by the Clerk.

OR

2.3 ☑ The Clerk of the Court shall seal the entire file.

2.4 Access to the sealed document(s) or file is limited to the following persons (not their designees), who are authorized to review the file or documents without further court order:

☐ Petitioner/Plaintiff ☐ Respondent/Defendant

☐ Pet / Plaintiff Attorney of record ☐ Respondent / Def Attorney of record

☑ By Court order only

Other persons specifically named here:

_____

_____

_____

2.5 Access to the sealed record is available only in the Clerk's Office.

2.6 In the event of an application for the opening of the sealed document or file, a hearing shall be noted and notice shall be given or attempted to the following persons in addition to the parties, or their counsel if represented:

_____

_____

DATED this 2nd day of DEC, 2016.

_____

JUDGE/~~COURT COMMISSIONER~~ BRIAN GAIN

Presented by:

_____

Printed Name: _____

Attorney For: _____

Bar No.: _____

Address: _____

_____

Phone: _____

Approved for Entry:

_____

Printed Name: _____

Attorney For: _____

Bar No.: _____

Address: _____

_____

Phone: _____