

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

**IN RE THE APPLICATION OF
REPORTERS COMMITTEE FOR
FREEDOM OF THE PRESS FOR
ACCESS TO CERTAIN SEALED COURT
RECORDS**

No. _____

Related to Case No.
18-cr-0067 (WMW)

**APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS FOR ACCESS TO CERTAIN SEALED COURT RECORDS**

1. The Reporters Committee for Freedom of the Press (the “Reporters Committee” or “Applicant”) respectfully moves this Court for an Order unsealing certain court records related to the United States government’s completed criminal investigation and prosecution of Terry J. Albury (“Albury”) (hereinafter, the “Albury Matter”). The Reporters Committee seeks to unseal any and all applications and supporting documents, including affidavits, seeking any of the following; any court orders granting or denying any of the following; and any other court records related to the following, such as returns, motions to seal, miscellaneous or magistrate dockets and docket entries:

- (a) any search warrant, regardless of whether the warrant was issued or executed, and including warrants under the Stored Communications Act (“SCA”), *see* 18 U.S.C. §§ 2703, related to the Albury Matter (collectively, the “Search Warrant Materials”);
- (b) authorization for the use of any pen register or trap and trace device pursuant to 18 U.S.C. §§ 3121–3127, regardless of whether such authorization was granted or a pen

register or trap and trace device was used, related to the Albury Matter (collectively, the “PR/TT Materials”); and

(c) any order pursuant to 18 U.S.C. § 2703(d) of the SCA, regardless of whether or not the order was issued or executed, related to the Albury Matter (collectively, the “Section 2703(d) Materials”).

2. Upon information and belief, the materials subject to this Application were filed under separate, miscellaneous or magistrate case numbers. The Reporters Committee does not know and cannot ascertain based on publicly available information the case numbers of the matters that fall within the scope of this Application.

INTEREST OF THE APPLICANT

3. The Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom of information interests of the news media and the public. The Reporters Committee has participated as a party and as *amicus curiae* in First Amendment and freedom of information litigation since 1970. The Reporters Committee frequently represents the interests of the press and the public in court cases involving access to judicial proceedings and court records.

4. The Reporters Committee, like all members of the public and the press, has a strong interest in observing and understanding the consideration and disposition of matters by federal district courts. That interest is heightened when the federal government is a party.

5. The public and the press also have a powerful interest in obtaining access to court documents concerning judicial authorization for the use of law enforcement tools that allow the government to collect or otherwise obtain electronic communications and/or electronic communications records. Where the government obtains a search warrant allowing it to collect

such information, and especially where—as in the case of orders pursuant to 18 U.S.C. § 2703(d) of the SCA and orders authorizing the use of pen registers and/or trap and trace devices—no warrant is required for the government to obtain such information, judicial oversight and, in turn, public oversight of the judicial process, is necessary to guard against government overreach.

6. In addition, the public and the press have a particularly strong interest in access to court records related to the government’s investigation and prosecution of Albury, a former Special Agent of the Federal Bureau of Investigation (“FBI”)’s Minneapolis Field Office, who, in April 2018, pled guilty to a two-count Information charging him under the Espionage Act for transmitting classified information to a member of the news media. Albury was sentenced on October 18, 2018.

BACKGROUND FACTS

7. From in or about August 2012 through in or about August 2017, Albury was employed as a Special Agent of the FBI’s Minneapolis Field Office and was also assigned as an airport liaison working on counterterrorism and other matters with Customs and Border Protection (“CBP”) at the Minneapolis/St. Paul International Airport, during which time he held a Top Secret/Sensitive Compartmented Information security clearance and had access to national defense and classified information. *See* Plea Agreement and Sentencing Stipulation ¶ 2a, *United States v. Albury*, No. 18-cr-67 (WMW) (“*Albury*”) (D. Minn. Apr. 17, 2018), ECF No. 16 (the “Plea Agreement”).

8. In April 2018, Albury pled guilty in this Court to one count of unauthorized disclosure of national defense information, and one count of unauthorized retention of national defense information, both in violation of 18 U.S.C. § 793(e). *See id.* ¶ 1; Information, *Albury* (D. Minn. Mar. 27, 2018), ECF No. 1. The Court accepted Albury’s guilty plea and, on October 18,

2018, sentenced him to 48 months' imprisonment for each of the aforementioned charges, to be served concurrently, and ordered him to pay a \$200 assessment. *See* Sentencing Sheet, *Albury* (D. Minn. Oct. 18, 2018), ECF No. 42.

9. The "Factual Basis" to which Albury stipulated in the Plea Agreement states that during his employment at the FBI Albury had taken national defense and classified information for a period of approximately 18 months and transmitted it to an unnamed "reporter for a national media organization." Plea Agreement ¶¶ 2h–2i; Information ¶ 1. The Plea Agreement refers to that individual as "Reporter A." Plea Agreement ¶¶ 2g, 2i, 2k.

10. The Plea Agreement specifies that some of the methods Albury used to avoid detection included "cutting-and-pasting information from documents into other programs, and printing those materials so as to not leave a record of having printed a particular document," and "accessing documents on his classified FBI computer system and taking photographs of documents on his computer system." *Id.* ¶ 2h.

11. Documents filed with the Court prior to his sentencing state that a federal search warrant was executed at Albury's residence on August 29, 2017, and that agents recovered classified documents on a thumb drive, which was wrapped up in an envelope with Reporter A's telephone number affixed to it. Government's Sentencing Mem. at 1, 3, *Albury* (D. Minn. Oct. 4, 2018), ECF No. 35; Plea Agreement ¶ 2g.

12. The government may have also obtained a search warrant or warrants under the SCA, order(s) issued pursuant to Section 2703(d) of the SCA, and/or judicial authorization to use pen registers and/or trap and trace devices, in order to obtain electronic communications records in connection with the Albury Matter.

13. On March 29, 2018, Minnesota Public Radio News reported that it had obtained a previously sealed affidavit filed in support of a search warrant related to the Albury Matter. Mukhtar M. Ibrahim, *Federal Documents Outline Steps FBI Took to Investigate One of Its Own*, Minn. Pub. Radio News, Mar. 29, 2018, <https://www.mprnews.org/story/2018/03/29/document-search-warrant-application-for-minneapolis-fbi-agent-records>. However, the search warrant materials referenced in the Minnesota Public Radio News article remain inaccessible to the public via the court's electronic docket. *See United States v. Search Warrant*, 17-mj-670 (DTS) (D. Minn.), ECF Nos. 1-3.

14. The Reporters Committee is not aware of any other search warrants, orders authorizing the use of pen registers and/or trap and trace devices, or Section 2703(d) orders, or any applications or other materials related thereto, connected to the Albury Matter that have been unsealed.

15. As explained more fully in the accompanying Memorandum of Points and Authorities, the press and the public have a right of access to these judicial records and documents under both the First Amendment and common law. No compelling government interest justifies the continued sealing of such records concerning the Albury Matter, particularly now that the government's investigation and prosecution of Albury has concluded.

REQUEST FOR RELIEF

16. The Reporters Committee seeks an order unsealing the Search Warrant Materials. Upon information and belief, each search warrant application filed by the government related to the Albury Matter was assigned a unique case number, but no listing of these case numbers is publicly available. Accordingly, in addition to seeking unsealing of the Search Warrant Materials, including the relevant court dockets, and to facilitate the Court's resolution of this

Application, the Reporters Committee also requests that the United States Attorney's Office be directed to provide a list of the case numbers associated with the Search Warrant Materials.

17. The Reporters Committee also seeks an order unsealing the PR/TT Materials. Upon information and belief, each application for an order authorizing the use of a pen register or trap and trace device filed by the government related to the Albury Matter was assigned a unique case number, but no listing of these case numbers is publicly available. Accordingly, in addition to seeking unsealing of the PR/TT Materials, including the relevant court dockets, and to facilitate the Court's resolution of this Application, the Reporters Committee also requests that the United States Attorney's Office be directed to provide a list of the case numbers associated with the PR/TT Materials.

18. The Reporters Committee also seeks an order unsealing the Section 2703(d) Materials. Upon information and belief, each application for an order pursuant to 18 U.S.C. § 2703(d) filed by the government related to the Albury Matter was assigned a unique case number, but no listing of these case numbers is publicly available. Accordingly, in addition to seeking unsealing of the Section 2703(d) Materials, including the relevant court dockets, and to facilitate the Court's resolution of this Application, the Reporters Committee also requests that the United States Attorney's Office be directed to provide a list of the case numbers associated with the Section 2703(d) Materials.

19. The Reporters Committee seeks any further relief that the Court deems just and proper.

Dated: October 31, 2018

Respectfully submitted,

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