

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,
v.

CASE NO: 6:18-cr-20-Orl-41TBS

CHRISTOPHER RAY FAELLA

Defendant.

ORDER

This case comes before the Court without a hearing on the United States of America's Motion to Seal (Doc. 84). The government represents that Defendant Christopher Ray Faella has no objection to the motion (Id., at 2).

"The filing of documents under seal is disfavored by the Court." Graphic Packaging Int'l, Inc. v. C.W. Zumbiel Co., No. 3:10-cv-891-J-JBT, 2010 WL 6790538, at *1 (M.D. Fla. Oct. 28, 2010). While parties "have protectable privacy interests in confidential information disclosed through discovery," once the information becomes a judicial record or public document, the public has a common-law right to inspect and copy the information. In re Alexander Grant & Co. Litig., 820 F.2d 352, 355 (11th Cir. 1987). "Once a matter is brought before a court for resolution, it is no longer solely the parties' case, but also the public's case." Brown v. Advantage Eng'g, Inc., 960 F.2d 1013, (11th Cir. 1992); Patent Asset Licensing, LLC v. Wideopenwest Fin., LLC, No. 3:15-cv-743-J-32MCR, 2016 WL 2991058, at *1 (M.D. Fla. May 24, 2016). "[I]t is the rights of the public, an absent third party, which are preserved by prohibiting closure of public records, unless unusual circumstances exist." Wilson v. Am. Motors Corp., 759 F.2d 1568, 1570 (11th Cir. 1985).

“Material filed in connection with any substantive pretrial motion, unrelated to discovery, is subject to the common law right of access.” Romero v. Drummond Co., Inc., 480 F.3d 1234, 1245 (11th Cir. 2007). “A substantive pretrial motion is ‘[a] motion that is presented to the court to invoke its powers or affect its decisions, whether or not characterized as dispositive, [and it] is subject to the public right of access.’” Id. at 1246 (quotation marks and citation omitted).

“The judge is the primary representative of the public interest in the judicial process and is duty-bound therefore to review any request to seal the record (or part of it). He may not rubber stamp a stipulation to seal the record.” Estate of Martin Luther King, Jr., Inc. v. CBS, Inc., 184 F. Supp. 2d 1353, 1363 (N.D. Ga. Feb. 15, 2002) (quoting Citizens First Nat’l Bank of Princeton v. Cincinnati Ins. Co., 178 F.3d 943, 945 (7th Cir. 1999)). “The right to inspect and copy is not absolute, however, and a judge’s exercise of discretion in deciding whether to release judicial records should be informed by a sensitive appreciation of the circumstances that led to the production of the particular document in question.” Chemence Med. Prods., Inc. v. Medline Indus., No. 1:13-CV-500-TWT, 2015 WL 149984, at *1 (N.D. Ga. Jan. 12, 2015).

The public’s right of access may be overcome by a showing of “good cause” sufficient for the granting of a protective order pursuant to FED. R. CIV. P. 26(c) (“The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense ...”). “‘Good cause’ is a well established legal phrase. Although difficult to define in absolute terms, it generally signifies a sound basis or legitimate need to take judicial action.” In re Alexander Grant, 820 F.2d at 356.

The Eleventh Circuit has “superimposed a somewhat more demanding balancing or interests approach to the” good cause requirement. Farnsworth v. Procter & Gamble Co., 758 F.2d 1545, 1547 (11th Cir. 1985). This means that before making its decision, the court has a duty to balance the public’s right of access against the party’s interest in confidentiality. “In balancing the public interest in accessing court documents against a party’s interest in keeping the information confidential, courts consider, among other facts, whether allowing access would impair court functions or harm legitimate privacy interests, the degree of and likelihood of injury if made public, the reliability of the information, whether there will be an opportunity to respond to the information, whether the information concerns public officials or public concerns, and the availability of a less onerous alternative to sealing the documents.” Romero, 480 F.3d at 1246 (citation omitted).

Defendant pled guilty to five counts of the receipt of child pornography and one count of possession of child pornography (Docs. 28-29). He was sentenced to *inter alia*, 168 months in the Bureau of Prisons (Docs. 28-29, 77). The Court has set a restitution hearing for April 25, 2019 (Doc. 76). Now, the government is asking the Court to seal the exhibits to its memorandum regarding restitution on the grounds that they contain confidential and sensitive medical, vocational, and mental health information about the victims who are requesting restitution (Doc. 84 at 1). The government argues that the disclosure of this information will cause further harm and humiliation to the victims (Id.).

The government’s motion fails to identify or describe the exhibits proposed for sealing; it does not explain why each exhibit is necessary; the government has not explained why a means other than sealing is unavailable or unsatisfactory to preserve the victim’s interests; the government has not proposed the duration of the seal; and it has

not provided a memorandum of legal authority supporting the seal. Without this basic information, the Court cannot discharge its responsibility. Therefore, the United States' motion is **DENIED without prejudice**.

DONE and **ORDERED** in Orlando, Florida on April 23, 2019.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Christopher Ray Faella