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**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

STATE OF IDAHO,

Plaintiff,

V.

BRYAN C. KOHBERGER,

Defendant.

CASE NUMBER CR01-24-31665

**DEFENDANT'S MOTION TO UNSEAL
THE IGG SUPPRESSION BRIEFING
AND HEARING**

COMES NOW, Bryan C. Kohberger, by and through his attorneys of record, and hereby moves this honorable Court for an Order to unseal the Investigative Genetic Genealogy (also referred to "genetic information" or "IGG") Suppression briefing¹ and related hearing.

¹ The related briefs are: (1) Memorandum in Support for Motion to Suppress Re: Genetic Information with attached exhibits, filed under seal on 11/18/2024; (2) SEALED Objection to Defendant's Motion to Suppress Re: Genetic Information with attached exhibits, filed under seal on 12/6/2024; and (3) Reply to State's Objection to Defendant's Motion to Suppress and Memorandum in Support Re: Genetic Information with attached exhibits filed under seal on 12/20/2024.

PROCEDURAL HISTORY

Mr. Kohberger filed his first motion to compel IGG discovery on June 22, 2023². The hearing on that matter was public and involved the testimony of several expert witnesses. The court ordered the production of records *in camera* and under seal. Mr. Kohberger filed a second motion to compel IGG discovery on April 15, 2024³. Over the objection of Mr. Kohberger, the court required that portion of the May 30, 2024, hearing on the second motion to compel IGG discovery be closed. The court again ordered the production of records under seal. The court's concerns were the privacy rights of the names of individuals identified in Mr. Kohberger's family tree. At the first and second motion to compel IGG discovery, Mr. Kohberger argued that he would be filing a motion to suppress the IGG. He asked the court to allow the pleadings and hearing be public. On May 20, 2024 the court indicated it would take the matter up after the suppression pleadings were filed. In the interim, venue changed, and this case is now before a new judge. The Motion to Suppress Re: Genetic Information was filed on November 14, 2024, and is now fully briefed. Pursuant to court direction, the parties stipulated to file all IGG suppression pleadings under seal. No names of the extended family tree are discussed in the briefing. The matter is set for hearing on January 23 and 24, 2025. Mr. Kohberger requests that the briefing be unsealed and the hearing take place in an open court.

ARGUMENT

Due to national and international attention to this case, and in the interest of protecting Mr. Kohberger's right to a fair trial, many pleadings in this case have been sealed appropriately pursuant to Idaho Administrative Rule 32. Mr. Kohberger has a right to a public trial and sealing a suppression hearing is a clear violation of this right to a public trial. *See Weaver v. Massachusetts*, 582 U.S. 286, 296 (2017); *Waller v. Georgia*, 467 U.S. 39 (1984) (sealing of Motion to Suppress to protect privacy of witnesses was error requiring remand for new, public

² Defendant's Third Motion to Compel Discovery, filed 6/22/2023.

³ Defendant's Fifth Motion to Compel Discovery, filed 4/15/2024.

hearing), *State v. Ingraham*, 172 Idaho 30 (2013); U.S. Const. amend. 6; Idaho Const. Art. I Sec. 13. *See also*, *Cowles Pub. Co. v. Magistrate Court of the First Judicial Dist.*, 118 Idaho 753 (1990).

In addition to Mr. Kohberger’s right to a public trial, the public has a First Amendment right to know what goes on in its courts. *State v. Clapp*, 168 Idaho 67, 70, 479 P.3d 460, 463 (Ct. App. 2020). Idaho Code § 74-104(1)(b) recognizes that records contained in court files of judicial proceedings may be exempt from disclosure under rules promulgated by the Idaho Supreme Court. The Idaho Supreme Court adopted I.C.A.R. 32 to define when public access to judicial records may be denied. *State v. Doe*, 153 Idaho 685, 687, 290 P.3d 1277, 1279 (2012). When the court is considering whether to seal the record, Rule 32(i) directs the court to consider “the traditional legal concepts in the law of the right to a fair trial, invasion of privacy, defamation, and invasion of proprietary business records as well as common sense respect for shielding highly intimate material about persons.” I.C.A.R. 32(i)(3). Under Rule 32(i)(1), records may be sealed or redacted if the court determines and makes a finding of fact as to whether the interest in privacy or public disclosure predominates. The court’s decision to seal judicial records is discretionary. *Doe*, 153 Idaho at 687, 290 P.3d at 1279.

Here, the way in which the IGG material was accessed and used is a matter warranting public disclosure and should not be shielded from public’s right to know. This matter is of utmost importance to Mr. Kohberger’s right to a public hearing, holding the hearing in open court will not prejudice the parties, and this should be held in open court. The issues raised are legal issues and cases with similar issues are being decided in other states. The issues raised in Mr. Kohberger’s suppression motion are those that were discussed in the public hearing on the first motion to compel.⁴ Additionally, the way in which IGG occurred in this case has been made public in other

⁴ Aspects of the IGG investigation in this case have already been leaked. Heather Tal Murphy, *How Police Actually Cracked the Idaho Killings Case*, Slate (Jan. 10, 2023) (available at <https://slate.com/technology/2023/01/bryan-kohberger-university-idaho-murders-forensic-genealogy.html>).

cases. *See, State v. Hartman*, 534 P.3d 423, 438-39 (Wash.Ct.App.2023); Avi Selk, *The Ingenious and 'Dystopian' Technique Police Used to Hunt the 'Golden Sate Killer' Suspect*, WASHINGTON POST (Apr. 28, 2018) (available at <https://www.washingtonpost.com/news/true-crime/wp/2018/04/27/golden-state-killer-dna-website-gedmatch-was-used-to-identify-joseph-deangelo-as-suspect-police-say/>).

CONCLUSION

Mr. Kohberger has a right to a public trial and the public has a right to know how genetic information was used in this case. Neither the State nor Mr. Kohberger will be prejudiced by unsealing the briefing and holding the IGG hearing in an open court. The pleadings and hearing should be unsealed.

DATED this 13 day of January, 2025.



BY:

ELISA G. MASSOTH
ELISA G. MASSOTH, PLLC ATTORNEY

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing was personally served as indicated below on the 13 day of January, 2025, addressed to:

Latah County Prosecuting Attorney – via Email: paservice@latahcountyid.gov
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