

Case Manual

IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA,

CASE NO.: 08-5656CF10A

Plaintiff,

v.

JUDGE: JOHN J. MURPHY III

KINO BARTHOLOMEW,

Defendant.

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**ORDER DENYING DEFENDANT'S MOTION TO COMPEL DISCOVERY
AND/OR IN THE ALTERNATIVE, FOR A SUBPOENA DUCES DECUM**

THIS CAUSE comes before the Court upon Defendant's Motion to Compel Discovery and/or In the Alternative, Subpoena Duces Tecum. The Court, having considered Defendant's motion, Crimestoppers' Response in Opposition, argument of counsel, and applicable law, and otherwise being duly advised in the premises, finds as follows:

Defendant is charged with Murder in the First Degree, a capital offense, for which the State has filed a Notice of Intent to Seek the Death Penalty. The Defendant is seeking to obtain any and all records of Winston Henry and Derrick Stephens from Crimestoppers Council of Broward County, Inc. (hereinafter "Crimestoppers"). Winston Henry and Derrick Stephens' names and addresses were disclosed to the defense by the State pursuant to their discovery obligations. Both Mr. Henry and Mr. Stephens acknowledged in recorded statements they contacted Crimestoppers regarding the Defendant. The Defendant believes that both Mr. Henry and Mr. Stephens received compensation from Crimestoppers for the alleged tips in connection with this case.

Defendant argues that Crimestoppers is a public agency and, as such, is required to disclose all public records pursuant to Chapter 119, Florida Public Records Act. Crimestoppers is a not-for-profit private corporation registered and organized under the Law of Florida. Crimestoppers' private and independent status is unaltered by its receipt of grant money from the Office of the Attorney

General. The text of the Grant Agreement provides that “the Provider [Crimestoppers] and any of its employees or agents, or assigns are independent contractors and are not employees or agents of the Agency. Nothing in the Grant Agreement imposes a public records obligation upon Crimestoppers to disclose confidential, anonymous tipster information. This Court finds that Crimestoppers is not a public agency nor is it acting on behalf of a public agency and, therefore, is not subject to the public record disclosure requirements of Chapter 119.

Even if Crimestoppers were a government agency, the requested records are specifically exempt from Public Disclosure under Chapter 119. Pursuant to § 119.071(2)(c) of the Public Records Act, Crimestoppers’ confidential informants or “tipsters” are criminal intelligence/investigative information within the meaning of the exemption. Any tip sheets, writings, summaries reports, and/or recordings, are collected or compiled by Crimestoppers “in an effort to anticipate, prevent, or monitor possible criminal activity.” Fla. Stat. § 119.011(3). Additionally, the statute specifically includes in its definition of “criminal investigative information,” which is exempt from Chapter 119, “reports of investigators or informants.” *Id.* Crimestoppers’ records are also exempt under Fla. Stat. 119.071(2)(f). This exemption provides that “[a]ny information revealing the identity of a confidential informant or a confidential source is exempt from s. 119.071(1) and s. 24(a), Art. I of the State Constitution.” Defendant requests information related to the identity of specific informants and persons from whom the informants have received information. Accordingly, if Crimestoppers was a public agency, the disclosure of an informant’s records would be exempt under Chapter 119.

Furthermore, Crimestoppers does not have the requested information in its custody. Crimestoppers has no way of confirming who provided information through its tip line. The calls to Crimestoppers are not recorded. Crimestoppers is never provided with any tipster’s name, identity, or even any type of identifying information such as a tipster’s gender. In order to collect any reward relating to a tip, a tipster is initially given a number with instructions to call back at a later date. If, at

such time, the tip qualifies for a reward the tipster is given an additional number with instructions to provide that number to a bank in order to collect the reward. Any person given the initial number or subsequent number could easily forward it to someone else to collect the reward. Accordingly, any attempt to obtain Crimestoppers records in order to trace the identity of the tipster from the receipt of any reward money could potentially expose a confidential informant who wished to remain anonymous.

Additionally, even if there were no specific legal bars to the Defendant's request, allowing defendants to compel Crimestoppers to disclose confidential records would be detrimental and would fundamentally undermine Crimestoppers' purpose. The assurance of confidentiality and anonymity is how Crimestoppers is able to operate its tip collection function, which is invaluable to the community and its goal of crime prevention and safety.

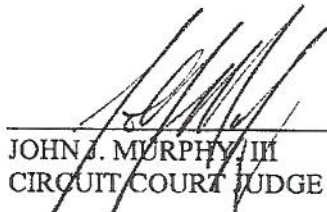
Accordingly, it is hereby

ORDERED AND ADJUDGED that:

1. Defendant's Motion to Compel Discovery and/or In the Alternative, Subpoena Duces Tecum is **DENIED**.

2. Defendant's Motion to Compel the State to provide the tip information pursuant to their discovery obligations in **DENIED**.

DONE AND ORDERED on this 7 day of Aug, 2009, in Chambers, Fort Lauderdale, Broward County, Florida.



JOHN J. MURPHY III
CIRCUIT COURT JUDGE

Copies furnished:
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