IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America	)	
	)	Criminal No. 2:96-801
	)	
vs.	)	
	)	
	)	**ORDER**
Van D. Hipp, Jr.	)	
	)	

This action is before the court based on its January 2, 1997 Order for a Hearing to Determine Whether Records Should Be Sealed. The following documents were filed under seal in the above-captioned case: Internal Revenue Department Report of Investigation. Also at issue are several documents concerning statements made to government agents in 1990 by a confidential informant who later was listed to be a government witness at the trial of Mr. Hipp. The United States produced these documents to defense counsel pursuant to a strict protective order which mandated, among other things, that the documents be shared with no one other than Defendant and his counsel. (Protective Order, December 16, 1996). After a hearing on the matter and careful review, this court concludes that the Internal Revenue Department Report of Investigation will remain sealed, and the remaining documents will remain under the December 16, 1996 Protective Order.

The right of public access to judicial documents derives from two independent sources: the common law and the First Amendment. In re: Policy Managements Systems Corp., 67 F.3d 296, 1995 WL 541623 (4th Cir. 1995). As the Fourth Circuit has explained:

> The common law presumes a right to public access to inspect and copy all judicial records and documents. A court may seal judicial documents if competing interests outweigh the public's common law right of access. . . . Unlike the common law right, the First Amendment guarantee of access has a more limited scope that has been extended only to particular judicial records and documents. . . . The First Amendment guarantee of access, however, provides much greater protection than the common law right because 'it must be shown that the denial [of access] is necessitated by a compelling governmental interest, and is narrowly tailored to serve that interest.'

Id. (citations omitted).

However, before addressing whether the public has a common law or First Amendment right to the above-mentioned documents, this court must determine whether the documents are judicial documents to which these rights attach.

A mere filing of a document with a court does not trigger the First Amendment guarantee of access. See id. at **3. Generally, a court must determine if a document is filed as part of a dispositive motion or is a product of discovery. See id. (citing Rushford v. The New Yorker Magazine, Inc., 846 F.2d 249, 252 (4th Cir. 1988)). For example, a document filed in connection with a dispositive motion, such as a

summary judgment motion, would be a judicial document subject to public access. Id. However, a document which does not play a role in the adjudicative process, but essentially retains its status as discovery material, is not subject to the First Amendment guarantee of access. Id.

Equally, a document must play a relevant and useful role in the adjudication process in order for the common law right of public access to attach to it. Id. (citing United States v. Amodeo, 44 F.3d 141, 145 (2d Cir. 1995)). For example, a document becomes a judicial document subject to the common law right of public access when a court uses it in determining a litigant's substantive rights. Id.

The Internal Revenue Department Report of Investigation is not a judicial record or document subject to public access. Rather, it is the result of an internal Internal Revenue Service ("IRS") investigation. It was produced to this court for an in camera inspection as a result of Defendant's discovery request. (Protective Order, December 11, 1996). The report is a product of discovery which played no role in any adjudicative process in this case.

Similarly, the other documents are not judicial records or documents subject to public access. The only difference between these documents and the Internal Revenue Department Report of Investigation is that these documents were produced

to Defendant and his counsel, while the Internal Revenue Department Report was produced to this court only. These documents were produced as a result of a discovery request. They were not filed with this court, nor were they considered by this court in any adjudicative process in Defendant's case.

Accordingly, neither the Internal Revenue Report of Investigation nor the other documents are subject to the First Amendment guarantee of access or the common law right to public access.

It is therefore,

ORDERED, that Internal Revenue Report and Investigation remain **SEALED** and the other documents remain under this court's December 16, 1996 Protective Order.

AND IT IS SO ORDERED.

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DAVID C. NORTON
UNITED STATES DISTRICT JUDGE

January ____, 1997
Charleston, South Carolina