

[CAPTION]

**RESPONSE TO MOTION TO QUASH SUBPOENA AND PROPOSED  
REQUEST FOR THIRD PARTY PRODUCTION AND SUBPOENA DUCES  
TECUM**

The Defendant, by counsel, in response to the motion to quash filed against Defendant's proposed third party request for production, offers the following arguments in support of a proposed revised third party request for production and subpoena duces tecum attached hereto.

The Indiana Rules of Trial Procedure generally apply to criminal proceedings in the absence of a conflicting criminal rule. Indiana Rules of Criminal Procedure Rule 21; Rita v. State, 674 N.E.2d 968 (Ind. 1996). In a criminal case, the test to determine whether information is discoverable, or not, is as follows: "(1) there must be a sufficient designation of the items sought to be discovered (particularity); (2) the items requested must be material to the defense (relevance); and (3) if the particularity and materiality requirements are met, the trial court must grant the request unless there is a showing of "paramount interest" in non-disclosure." WTHR- TV v. Cline, 693 N.E.2d 1, 6 (Ind. 1998) (citing Kindred v. State, 540 N.E.2d 1161, 1174 (Ind. 1989)); Crawford v. State, 948 N.E.2d 1165 (Ind. 2011) (the WTHR-TV three-part test applies to all third party requests for non-privileged material).

In the attached proposed request for production of documents by non-party and attached subpoena duces tecum, the Defendant intends to make the following requests: [Insert requested items].

The documents requested meet the requirements of the above test. The request is of sufficient "particularity" in that it enables [insert third party] to identify what the defendant is seeking. "An item has been designated with reasonable particularity if the request enables the subpoenaed party to identify what is sought and enables the trial court to determine whether there has been sufficient compliance with the request." WTHR-TV, 693 N.E.2d at 6 (citing Sexton v. State, 257 Ind. 556, 558, 276 N.E.2d 836, 838 (1972)). Likewise, the request is "relevant" to this litigation. Here, [insert explanation of relevance].

Further, a court errs when it denies discovery because of no showing of materiality where the only method to meet the materiality requirement is to have the information made available. Jorgensen v. State, 574 N.E.2d 915, 917 (Ind. 1991).

Lastly there is no "paramount interest" in non-disclosure of these documents.

(Signature)

## **CASE LAW**

Williams v. State, 959 N.E.2d 360 (Ind.Ct.App. 2012) (Defendant is entitled to his own prescription records despite the fact that the information is considered "confidential" and the defendant/patient is not on the list of people to whom the Board can disclose information).

Williams v. State, 819 N.E.2d 381 (Ind.Ct.App. 2004) (trial court erred by denying Defendant's request for complaining witness's (CW) prescription drug records because Defendant made a sufficient showing of particularity and materiality in that records would provide insight on medication CW may have ingested the night of the alleged offense; the fact that in sexual assault cases, perception of events and credibility are crucial factors with potential to significantly influence fact-finder's determination overcomes any interest the CW and State has in maintaining confidentiality of records).

Crawford v. State, 948 N.E.2d 1165 (Ind. 2011) (trial court properly denied Defendant's request for "footage of any and all statements of officers, agents or affiliates of IMPD or any reenactment thereof" and "footage of anyone interviewed or questioned, or any reenactment thereof, in connection with the investigation of the death of Gernell Jackson"; both of these requests did not meet the particularity requirement).

In re Crisis Connection, Inc., 949 N.E.2d 789 (Ind. 2011) (Defendant in child molesting prosecution has no constitutional right to inspect the records of a nongovernmental counseling agency because such information is protected by statutory victim-advocate privilege).