

**NOT FOR PUBLICATION**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN THE MATTER OF:	)	
	)	
RIVER TERRACE ESTATES, INC.	)	CASE NO. 14-11829
	)	
	)	
Debtor	)	

**DECISION AND ORDER DENYING MOTION TO FILE UNDER SEAL**

On October 17, 2014.

The debtor has filed a motion asking that it be permitted to file notice of the opportunity to object to its motion to assume residency agreements under seal because of allegedly protected information that HIPAA prevents from being disclosed.

There is a presumption that documents filed with the court, as well as the other information presented to it in connection with a judicial determination, are to be publicly available. Nixon v. Warner, 435 U.S. 589, 602, 98 S.Ct. 1306, 1314, 55 L.Ed.2d 570 (1978); Jessup v. Luther, 277 F.3d 926, 928 (7th Cir.2002); Baxter Int'l, Inc. v. Abbott Laboratories, 297 F.3d 544, 545 (7th Cir.2002); Citizens First Nat'l Bank v. Cincinnati Ins. Co., 178 F.3d 943, 944–45 (7th Cir. 1999); Bodemer v. Swanel Beverage, Inc., 2011 WL 338822 \*1 (N.D. Ind. 2011); In re Razo, 446 B.R. 918, 920 (Bankr. N.D. Ind. 2011); Matter of Bamber, 2007 WL 781378 \*1 (Bankr. N.D. Ind. 2007). As a result, good cause is required to seal any portion of the court's record, Citizens First, 178 F.3d at 944–45; In re DFI Proceeds Inc., 441 B.R. 914, 917 (Bankr. N.D. Ind. 2011), and the movant bears the burden of proving that such cause exists. In re Bank One Securities Litigation, 222 F.R.D. 582, 588 (D. N.D. Ill. 2004). The request is addressed to the court's discretion. Nixon v. Warner, 435 U.S. 589, 599, 98 S.Ct. 1306, 1312, 55 L.Ed.2d 570 (1978); Matter of Continental Illinois Securities Litigation, 732

F.2d 1302, 1316 (7th Cir.1984).

Determining whether there is sufficient cause to seal anything can only be made on a case by case basis, after weighing the proffered reasons for secrecy against the competing interests of disclosure and public access. Nixon, 435 U.S. at 599, 98 S.Ct. at 1312-13; Jessup v. Luther, 277 F.3d 926, 928 (7th Cir. 2002). The need for the court to actually make that determination cannot be avoided. It should not simply and uncritically accept the assertions of confidentiality but is, instead, “duty-bound . . . to review any request to seal the record (or part of it).” Citizens First, 178 F.3d at 945. To facilitate this review, the materials submitted in connection with a motion to seal should “analyze in detail, document by document, the propriety of secrecy, providing reasons and legal citations. . . . Motions that simply assert a conclusion, without the required reasoning, . . . have no prospect of success.” Baxter Int’l, 297 F.3d at 548.

The debtor’s motion fails to meet this standard. To the extent the debtor wants to file its notice of the motion under seal, nowhere in the motion does it identify what information the notice will contain that has not already been disclosed in the underlying motion. That motion has not been filed under seal, and given the court’s requirements for a notice, see, N.D. Ind. L.B.B. B-2002-2(e), it is hard to see where such additional information would come from. Without knowing what that information might be, the court cannot determine whether cause exists to file under seal. See, Razo, 446 B.R. at 920-921. It may be that the debtor is only wanting to file the certificate of service of the notice under seal, but that is not what it has asked. But, if that is the case, the motion appears to be overly broad. According to the motion, there are only two residents impacted by the motion to assume, yet the debtor wants to file the entire notice or proof of its service – a notice which should go to all creditors and parties in interest – under seal. See, Citizens First, 178 F.3d at 945 (redaction

of portions of a document may be all that is required).

The basis for the motion is that the debtor believes there is information which HIPAA precludes from being disclosed. Just what that protected information may be in this case is a mystery. The debtor does not really say. Neither does the debtor direct the court to any specific provisions of HIPAA that prohibit disclosure. Instead, it generically refers to 45 C.F.R. § 160 and 45 C.F.R. § 164; combined those regulations contain over 100 subparts, spread over at least as many pages. If there is something in them that specifically addresses the matter before the court, the debtor should be able to identify and cite it more precisely.

In the course of researching the debtor's motion, the court did discover that otherwise protected information can be disclosed in judicial proceedings. See, 45 C.F.R. § 164.512(e)(1). See also, Bayne v. Provost, 359 F. Supp. 2d 234, 237 (N.D. N.Y. 2005). The debtor has an order directing it to serve all creditors and parties in interest with notice of the motion and file proof thereof. See, Order to Amend, dated Oct. 8, 2014. That would seem to conclude the issue.

Debtor's motion to file under seal is DENIED.

SO ORDERED.

/s/ Robert E. Grant  
Chief Judge, United States Bankruptcy Court