

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

ELOUISE PEPION COBELL, <u>et al.</u> ,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 1:96CV01285
	)	(Judge Lamberth)
GALE NORTON, Secretary of the Interior, <u>et al.</u> ,	)	
	)	
Defendants.	)	
_____	)	

**DEFENDANTS' MOTION FOR LEAVE TO SUBMIT CONFIDENTIAL AND  
PRIVACY ACT MATERIALS *EX PARTE* FOR *IN CAMERA* REVIEW IN  
CONNECTION WITH DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR  
TEMPORARY RESTRAINING ORDER AND FOR PRELIMINARY INJUNCTION**

Defendants hereby move for leave to submit certain documents containing confidential information protected by the Privacy Act to the Court on an *ex parte* basis for *in camera* review by the Court in connection with Plaintiffs' motion seeking to block the sale of certain land owned by individual Indians and communications between the Department of the Interior ("Interior") and the individual Indian sellers. As part of their motion, Plaintiffs contend that the land sales at issue should be restrained absent the direct supervision of the Court, because of an existing order prohibiting certain types of communications between Interior and members of the Cobell class. The Court has set this matter for a hearing on Plaintiffs' motion for 4:00 pm on Tuesday, August 31, 2004. By this Motion, Defendants seek the prompt permission of the Court to submit *ex parte* for the purpose of *in camera* review a copy of files concerning the parcels of land listed for sale in "Invitation No. 69," the sole basis for Plaintiffs' motion.

In support of their Motion, Defendants offer the following:<sup>1</sup>

1. Plaintiffs filed their motion on Wednesday evening, August 25, 2004, seeking immediate temporary relief and a preliminary injunction. Defendants promptly inquired into the allegations set forth in Plaintiffs' moving papers, including the record pertaining to the proposed sales referenced by Plaintiffs – 26 land parcels situated in or near Anadarko, Oklahoma. The records, which include the requests by individual Indians that the sales take place, were faxed to the Department of Justice in Washington, D.C. this afternoon.
2. These documents contain sensitive, personal and confidential information such as name, age, marital status, heritage, land interests, income sources and amounts, allottee information, and other personal details. This information is private and personal to the individuals referenced in the documents, some of whom may not be members of the class of plaintiffs in this case, and the information is protected from disclosure by the government pursuant to the Privacy Act.
3. Nevertheless, it is essential that the Court consider the information contained in these documents in ruling upon Plaintiffs' motion. The documents demonstrate that the bid invitations in Invitation No. 69 are the result of voluntary, considered and deliberate decisions to sell made by the individual Indian land owners that Plaintiffs purport to represent. The documents also demonstrate that such transactions are part of the routine

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<sup>1</sup> Counsel for Defendants attempted to contact Plaintiffs' counsel, as required by Fed. R. Civ. P. 26(c) and Local Rule 7(m), on August 30, 2004 in an attempt to confer and determine whether Plaintiffs would consent to the instant motion. Defendants were unable to reach Plaintiffs' counsel but did leave a detailed recorded message describing the motion and requesting that Plaintiffs' counsel call back if Plaintiffs would consent to the requested relief.

and ordinary course of business of Interior. The documents further stand as evidence of the nature of the communications that must occur between Interior and the individual Indians who wish to sell the parcels of land identified in Invitation No. 69. Upon its review of the documents, the Court will be in a position to determine under what conditions and to what extent Plaintiffs may have access to the information contained in the documents.

4. Defendants are prepared to submit a copy of the referenced documents promptly with the Court in advance of the hearing on Tuesday.
5. In consideration of all these circumstances -- the proximity of the hearing on Plaintiffs' motion, the personal and confidential information contained in the documents, and the extraordinary relevance of the documents to the Court's full consideration of the merits of Plaintiffs' motion -- Defendants request that the Court grant them leave to lodge *ex parte* with the Court a copy of the referenced documents for *in camera* review.

Conclusion

For the foregoing reasons, Defendants' motion for leave should be promptly granted.

Dated: August 30, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 30, 2004 the foregoing *Defendants' Motion for Leave to Submit Confidential and Privacy Act Materials Ex Parte for In Camera Review in Connection with Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order and for Preliminary Injunction* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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/s/ Kevin P. Kingston  
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	)	
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	)	

**ORDER**

This matter comes before the Court on *Defendants' Motion for Leave to Submit Confidential and Privacy Act Materials Ex Parte for in Camera Review in Connection with Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order and for Preliminary Injunction* (Dkt. # \_\_\_\_ ). After considering the motion, and the record of the case, the Court finds that the Defendants' motion is well taken, and should be, and hereby is, GRANTED; and it is

FURTHER ORDERED, that Defendants shall promptly submit one copy of the confidential documents relating to Plaintiffs' motion for a temporary restraining order and a preliminary injunction to the Court *ex parte* for *in camera* review upon receipt of this Order.

SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
Hon. Royce C. Lamberth  
UNITED STATES DISTRICT JUDGE

Date: \_\_\_\_\_

CCs:

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