

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.)	
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**DEFENDANTS' MOTION AND SUPPORTING MEMORANDUM
FOR ORDER PERMITTING THE DISCLOSURE OF LAND SALE APPLICATIONS
TO CLASS COUNSEL AND AMENDING THE COURT'S NOVEMBER 27, 1996
PROTECTIVE ORDER TO INCORPORATE THE SAME**

In support of Defendants' Opposition to Plaintiffs' Motion for Temporary Restraining Order and for Preliminary Injunction, Defendants wish to provide relevant Land Sale Applications for the Court's consideration. Because the Land Sale Applications contain information that is subject to protection from disclosure pursuant to the Privacy Act, 5 U.S.C. § 552a, and because the individual applicants have not provided written consent for such information to be provided to plaintiffs' counsel, see 5 U.S.C. §552a(b), Defendants respectfully move the Court for an order permitting Defendants to also provide copies of these to plaintiffs' counsel pursuant to 5 U.S.C. § 552a(b)(11).¹

In denying Defendants' previous motion to file the Land Sale Applications with the Court for ex parte, in camera review, the Court stated that Defendants should instead seek to negotiate

¹ § 552a(b)(11) allows an agency to disclose Privacy Act material without prior written consent "pursuant to the order of a court of competent jurisdiction." Defendants are not aware of any previous orders of production in this case that would permit Defendants to produce the relevant Land Sale Applications.

an appropriate Privacy Act Protective order with Plaintiffs if an applicable one did not already exist. See Order dated August 31, 2004 (Denying Defendants' Motion For Leave to Submit Confidential and Privacy Act Materials Ex Parte for In Camera Review in Connection with Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction) (Dkt. # 2654). Accordingly, Defendants also move for an order amending the Court's November 27, 1996 Protective Order so that it is expanded to govern the handling and dissemination of any Land Sale Applications that the Court orders Defendants to produce.

Counsel for Defendants consulted Plaintiffs' counsel regarding this motion; Plaintiffs counsel stated that they will oppose this motion.

Conclusion

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

Dated: August 31, 2004

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on August 31, 2004 the foregoing *Defendants' Motion and Supporting Memorandum For Order Permitting the Disclosure of Land Sale Applications To Class Counsel and Amending the Court's November 27, 1996 Protective Order to Incorporate the Same* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

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_____)

Case No. 1:96CV01285
(Judge Lamberth)

ORDER

This matter comes before the Court on Defendants' Motion for Order Permitting The Disclosure of Land Sale Applications to Class Counsel and Amending the Court's November 27, 1996 Protective Order to Incorporate the Same. After considering the motion, any response thereto, and the record of the case, the Court finds that the Defendants' motion GRANTED; and it is

ORDERED, that Defendants shall provide copies of the Land Sale Applications to class counsel; and

IT IS FURTHER ORDERED that the Court's November 27, 1996 Protective Order is hereby amended so as to govern the disclosure of Land Sale Applications pursuant to this Order.

SO ORDERED this ___ day of _____, 2004.

ROYCE C. LAMBERTH
United States District Judge

cc:

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