

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANTS' MOTION FOR A PROTECTIVE ORDER
REGARDING SENSITIVE IT SECURITY INFORMATION**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, Defendants respectfully request that this Court enter a protective order governing sensitive Information Technology ("IT") security information in the form attached to this motion.¹ In support of this motion, Defendants state as follows.

I. **A PROTECTIVE ORDER IS ESSENTIAL TO PROTECT SENSITIVE IT
SECURITY INFORMATION**

On April 11, 2005, Plaintiffs filed their consolidated motion for a temporary restraining order and preliminary injunction with regard to the Interior Department's IT systems. Plaintiffs' Consolidated Motion for Temporary Restraining Order and Preliminary Injunction (Dkt. No. 2926) (filed Apr. 11, 2005) ("Plaintiffs' Motion" or "Pl. Mot."). Plaintiffs' Motion relies upon two principal sources of material that include discussions of sensitive IT security information,

¹ Pursuant to Local Civil Rule 7.1(m), counsel for Defendants called Plaintiffs' counsel, Messrs. Gingold and Mr. Harper, on April 12, 2005, regarding this motion. Neither Mr. Gingold nor Mr. Harper answered Defendants' counsel's call, and Defendants' counsel left voicemails for both. As of the filing of this motion, neither Mr. Gingold nor Mr. Harper had returned Defendants' counsel's call.

namely Defendants' Notice to the Court Regarding Inspector General's "Notification of Potential Finding and Recommendation" With Respect to Information Technology Systems (Dkt. No. 2994) (filed Apr. 8, 2005) ("Defendants' Notice") and depositions recently conducted by Plaintiffs.

Rule 26(c) of the Federal Rules of Civil Procedure provides that upon motion, "and for good cause shown," the Court "may make any order . . . that the disclosure or discovery may be had only on specified terms and conditions . . . ; that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way." Fed. R. Civ. Proc. 26(c)(2), (7). Moreover, under Rule 30(d)(4) of the Federal Rules of Civil Procedure, the Court is authorized to "limit the scope and manner of the taking of the deposition as provided in Rule 26(c)." Fed. R. Civ. P. 30(d)(4).

The need to protect sensitive and confidential information regarding Defendants' IT systems from inappropriate use and public dissemination has already been recognized by this Court. Order ¶ 3 (Dkt. 752) (filed July 2, 2001) ("Plaintiffs' counsel shall not disclose to anyone, except the Court and Defendants' counsel, the content of any report generated by Predictive or any other information concerning computer security at BIA that they obtain from Predictive or Interior."); see also Order (Dkt. 1786) (filed Feb. 6, 2003) (filing Special Master's revised order governing IT security materials); Order (Dkt. No. 2448) (filed Jan. 22, 2004) (setting forth terms for filing redacted copies of Special Master's expert reports).

II. ENTRY OF A PROTECTIVE ORDER IS NECESSARY FOR THE COURT'S CONSIDERATION OF PLAINTIFFS' CONSOLIDATED MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

Plaintiffs' Motion apparently was precipitated by Defendants' Notice to the Court filed on April 8, 2005, in which Defendants advised the Court about an April 6, 2005 document prepared by the Office of the Inspector General. Defendants' Notice to the Court Regarding Inspector General's "Notification of Potential Finding and Recommendation" With Respect to Information Technology Systems (Dkt. No. 2994) (filed Apr. 8, 2005) ("Defendants' Notice"); see Pl. Mot. at 1-3.

Defendants' Notice expressly advised the Court:

Because of the need to protect the security of the Interior Department's IT systems, this notice is generic in nature and will not disclose details regarding the Inspector General's Notification of Potential Finding and Recommendation. Moreover, the Notification of Potential Finding and Recommendation expressly states, among other things, that it is "Sensitive-But-Unclassified Information" and that "Contents may be disclosed only to persons whose official duties require access thereto." Defendants will provide further information, as necessary, after an appropriate protective order has been entered.

Defendants' Notice at 2 n.1. Plaintiffs' Motion squarely puts before the Court issues that can only be addressed fully by the Court's access to the unredacted copies of the Inspector General's April 6, 2005 Notification of Potential Finding and Recommendation, supporting materials from the Inspector General, and related IT security information applicable to the systems of the Interior Department.

Conclusion

For the foregoing reasons and given the obvious need to protect the confidentiality of the Interior Department's IT systems and related security information, as recognized previously by this Court on numerous occasions, Defendants respectfully request that this Court enter a protective order governing sensitive IT security information in the form attached as Exhibit A to this motion.

Respectfully submitted,

ROBERT D. McCALLUM, JR.
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PETER D. KEISLER
Assistant Attorney General

STUART E. SCHIFFER
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J. CHRISTOPHER KOHN
Director

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April 12, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on April 12, 2005 the foregoing *Defendants' Motion for a Protective Order Regarding Sensitive IT Security Information* was served by Electronic Case Filing, and on the following who is not registered for Electronic Case Filing, by facsimile:

Earl Old Person (*Pro se*)
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Fax (406) 338-7530

/s/ Kevin P. Kingston
Kevin P. Kingston

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Plaintiffs,)	
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GALE NORTON, Secretary of the Interior, <u>et al.</u> ,)	
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Defendants.)	
_____)	

PROTECTIVE ORDER CONCERNING IT SECURITY INFORMATION

This matter comes before the Court on *Defendants' Motion for A Protective Order Regarding Sensitive IT Security Information* Dkt _____. Upon consideration of the Motion, and the record in this case, it is hereby

ORDERED that Defendants' Motion is GRANTED; and it is

FURTHER ORDERED that good cause exists to preserve the confidentiality of Information Technology ("IT") security information, the public disclosure of which poses a risk to the security of Defendants' IT systems and may expose individual Indian trust data housed on these systems to unauthorized access, loss or harm. Good cause also exists to preserve the confidentiality of trade secrets and proprietary information related to Defendants' IT systems; and it is

FURTHER ORDERED, that any testimony, documents and other tangible things to be given or otherwise produced to an opposing party or filed with or presented at any hearing before this Court that contain, in whole or in any part, IT security information or any confidential trade secrets or proprietary information related to Defendants' IT systems shall be deemed "Protected

Material" and shall be accorded the following treatment to prevent its disclosure to anyone besides the actual named parties, their counsel, designated IT experts and certain support staff for the sole purpose of litigating issues in the above-captioned case.

1. If any information contained in any testimony, document or other tangible thing is determined by Defendants to contain Protected Material, Defendants shall designate each transcript, document or thing as containing Protected Material by one of the following methods: (a) designating the matter as Protected Material under this Order either at the time it is elicited on the record either in deposition or in open court, or by a notice to Plaintiffs (or, in case of a hearing, by notice to the Court and to Plaintiffs) citing the line and page numbers of the Protected Material after reviewing the transcript; (b) marking pleadings, transcripts, documents and other evidence containing Protected Material, to be filed with the Court, by filing one unredacted copy under seal pursuant to the leave which is granted by this Order along with a public redacted version of each item filed under seal pursuant to this order; and (c) designating the matter as Protected Material for purposes of a document production, by legend placed upon all documents or other tangible things produced to Plaintiffs.
2. For any deposition or hearing where Defendants declare on the record that testimony elicited or evidence used at the deposition or hearing contain Protected Material, all testimony and exhibits from said deposition or hearing shall be placed under seal and may not be publicly disseminated or disclosed to anyone other than as set forth expressly below. During a hearing when Protected Material

is discussed in open court, the hearing shall be closed and persons not authorized to have access to Protected Material shall be excluded from the proceeding while such Protected Material is discussed or considered.

3. Within ten (10) business days after a transcript becomes available, Defendants shall designate the testimony, by page and line number, and the specific matter within the exhibits that shall remain under seal as Protected Material. Defendants shall serve a copy of these designations on Plaintiffs, and any participating non-parties or their counsel, and to the Court in the case of a hearing. Defendants shall file an unredacted public version of all exhibits filed in open court that are to remain under seal. Except for materials designated pursuant to this paragraph, testimony and exhibits from the deposition that are designated as Protected Material by Defendants shall not remain under seal upon expiration of the ten business day period.
4. If Plaintiffs believe that any Protected Material should not be designated as such or should otherwise not remain under seal, they may file a motion with the Court, under seal, requesting that the seal be lifted with regard to any identified testimony or exhibits and set forth the reasons that the matter is either not Protected Material or that it should be unsealed regardless of its status.
5. All individuals gaining access to Protected Material shall use the information solely for purposes of this litigation and for no other purpose. Protected Material may be disclosed by counsel for Plaintiffs to attorneys and employees of Plaintiffs' counsel, as well as any IT experts retained by Plaintiffs, provided the disclosure of

the information is necessary for the representation of Plaintiffs in this matter.

Individuals shall be provided such access only after being provided a copy of this Order and executing a statement confirming the recipient's awareness of the terms of this Order and his or her agreement to comply with its terms. Plaintiffs' counsel shall retain the original signed statements of all recipients. Each person to whom Protected Material is disclosed shall make no disclosure of such Protected Material, other than to persons to whom disclosure is permitted and only for the purposes of this litigation. Except upon further order from this Court, Protected Material shall not be disclosed to any other individual or entity and shall not be publicly disclosed in any form, including oral, written, or electronic disclosures.

6. Within six months of the conclusion of this case, Plaintiffs, their counsel, experts and employees shall destroy all copies of transcripts and other documents that contain Protected Material, regardless of the form in which such material may be stored or recorded, and shall certify the completion of such destruction in writing to Defendants' counsel.

SO ORDERED.

Date: _____

ROYCE C. LAMBERTH
United States District Judge

cc:

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