

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CHRISTINE VON DER HAAR,)	
)	
Plaintiff,)	
)	
v.)	CAUSE NO. 1:14-cv-247-JMS-DML
)	
SHERLANA LEIBA, <i>et al.</i> ,)	
)	
Defendants.)	

AGREED PROTECTIVE ORDER

This is a civil rights action in which Plaintiff seeks discovery of information which is encompassed by the Privacy Act of 1974, 5 U.S.C. § 552a or otherwise contains personal, private, or confidential information, including personally identifying information, about a third party. In order to permit the parties to discover and use throughout this proceeding all information relevant to the subject matter of this case without making this information public and thus undermining the legislative purpose of the Privacy Act, and for good cause shown, the Court issues this Agreed Order pursuant to 5 U.S.C. § 552a(b)(11) and Rule 26(c) of the Federal Rules of Civil Procedure.

The documents and information that Plaintiff seeks, and which are subject to this Order, include all such documents to which Defendants objected to producing on Privacy Act grounds in response to the foregoing discovery request. This Order shall also govern the production and use of all other documents and information in this action subject to the Privacy Act or otherwise contains personal, private, or confidential information, including personally identifying information, about a third party.

This Order permits the Defendants to review and disclose these items to any party and their counsel in the course of this action under the conditions set forth herein.

Such records shall be disclosed by Defendants only to parties acting through their attorneys. Attorneys to whom disclosures are made shall not disclose any of the documents or information produced subject to this Order to any person unless the disclosure is reasonably and in good faith calculated to aid in the preparation and/or prosecution of this specific legal action. Attorneys to whom disclosure is made shall ensure that any person to whom disclosure may be made pursuant to this Order shall, prior to such disclosure, have read, understood, and acknowledged in writing his/her agreement to be bound by this Order.

Attorneys to whom disclosure is made shall be permitted to obtain a reasonable number of copies of the documents or information produced subject to this Order. No further copies shall be made without further Order of the Court except as may be required as attachments to pleadings filed with the Court, or as otherwise needed as an exhibit in this action.

The sole purposes for which the disclosure of the documents and information is being made is to prepare for, prosecute, and defend this litigation. Moreover, this Order recognizes that either party, as well as any interested member of the public, may challenge the sealing of particular documents, however, the Defendants do not waive any objections to such a challenge as may be available under the Privacy Act or any other appropriate federal statute.

By producing documents subject to this Order, Defendants do not waive any objections to any future use of these documents that may be made by any party, either at trial or in any other proceeding.

Any information provided subject to the terms of this Order that is non-public, sensitive, or confidential ("Confidential Information") shall be marked or designated "Confidential" and

shall be given confidential treatment, as discussed further below. Confidential Information shall not be used for any commercial purpose and shall not be exhibited, disseminated, copied or in any way communicated to anyone, including to the Plaintiff, for any purpose whatsoever, other than for litigation purposes and except as otherwise provided in this Order.

To the extent Confidential Information is included in exhibits or attachments to any deposition or filing with the Court, the party using the documents with Confidential Information shall file the documents under seal. Any party filing a document provisionally under seal must contemporaneously file a motion to maintain the document under seal, unless the filing party cites, in the requisite cover sheet, a statute, rule, or pre-existing court order that authorizes the document to be filed under seal. If the filing party is also the party that designated the document as confidential during discovery, then it shall support its motion to maintain seal with a separate brief containing a developed legal and factual showing that the document qualifies for sealing according to the independent standards for sealing court filings that have been established by statute, rule, and caselaw. If the filing party is not the designating party, then the brief in support of the motion shall be filed by designating party. The filing party's motion to maintain the seal must cite the specific terms of the operative protective order that (1) require the filing party to provisionally file the document under seal and (2) provide that the brief supporting the motion will be filed by the designating party. Within seven days of the filing of the motion to maintain the seal, the designating party must file a supporting brief containing a developed legal and factual showing that the document qualifies for sealing according to the independent standards established by statute, rule, and/or caselaw for sealing documents in court. If the designating party does not have a legal and factual basis for maintaining the document under seal, then,

within seven days of the filing of the motion to maintain the provisional seal, the designating party shall file a motion to unseal the document, explaining that, as the designating party, it does not have a basis for sealing the document. If the designating party's brief asks that only specifically identified content of the document be sealed, then the brief shall attach a redacted version of the document for the public file.

Upon conclusion of this action (including any appeals), all copies of documents released under this Order, excepting exhibits entered into evidence, shall be returned within 30 days, to counsel for Defendants.

Nothing in this Order constitutes any decision by the Court concerning discovery disputes or the admission into evidence of any specific document or liability for payment of any costs for production or reproduction of documents nor does the Order constitute a waiver by Defendants of any right to object to discovery or admission into evidence of any document or record subject to this Order.

This Order is without prejudice to the right of the parties to this Order to seek relief from the Court, upon good cause shown, from any of the restrictions provided herein. Any party may object to the designation of particular material, documents, or information as "Confidential" by giving written notice to the party that produced or designated the material as "Confidential." Such written notice shall identify the material to which the objection is directed and the basis of the objection. If the objecting and designating parties are unable to resolve their differences within fourteen (14) business days from the time the notice of objection is received, either party may file an appropriate request with and for the Court to rule whether the disputed material is "Confidential." The disputed material shall retain its "Confidential" designation until the Court

has ruled on such a request. The failure of any party to challenge the designation of any document, testimony or information as “Confidential” at the time of its disclosure shall not be deemed a waiver of the party’s right to challenge the propriety of such designation at any time thereafter.

Respectfully Submitted,

JOSH MINKLER
Acting United States Attorney

By: /s/Jonathan A. Bont
Jonathan A. Bont
Shelese Woods
Assistant United States Attorneys
Attorneys for Defendants

/s/ Kelly R. Eskew (by consent)
Kenneth J. Falk
Gavin Minor Rose
Kelly R. Eskew
Attorneys for Plaintiff

APPROVED.

Date: September 22, 2014

Debra McVicker Lynch
Debra McVicker Lynch
United States Magistrate Judge
Southern District of Indiana

Distribution:

All Electronically Registered Counsel