

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ELOUISE PEPION COBELL, et al.,)
on their own behalf and on behalf of)
all those similarly situated,)
)
Plaintiffs,)
)
v.)
)
GALE NORTON, Secretary of)
the Interior, et al.,)
)
Defendants.)
)

Civil Action No. 96-1285 (RCL)

ORDER

In accordance with the proceedings at the Status Conference held by the Court on April 20, 2005; and upon consideration of the defendants’ Motion [2929] for a Protective Order Regarding Sensitive IT Security Information, the applicable law, and the entire record herein, it is hereby

ORDERED that the Defendants’ Motion [2929] 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 because its public disclosure (i) poses a risk to the security of Defendants' IT systems and/or may expose individual Indian trust data housed on these systems to unauthorized access, loss or harm, or (ii) poses a risk of disclosing confidential trade secrets or proprietary information related to Defendants' IT systems, 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; or

- (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 contains Protected Material because its public disclosure (i) poses a risk to the security of Defendants' IT systems and/or may expose individual Indian trust data housed on these systems to unauthorized access, loss or harm, or (ii) poses a risk of disclosing confidential trade secrets or proprietary information related to Defendants' IT systems, 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 case of a hearing. Defendants shall file a redacted 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 (10) 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. The requirement to file this motion to unseal does not alter the fact that it is the defendants' burden to establish the basis for the sealing of any documents or testimony.
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 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.

Signed by Royce C. Lamberth, United States District Judge, April 22, 2005.