

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

GUADALUPE L. GARCIA, JR., et al.,)
)
Plaintiffs,)
)
v.)
)
ANN M. VENEMAN, Secretary of the)
United States Department of Agriculture,)
)
Defendant.)

Civil Action No. 1:00CV02445
Judge Robertson

FILED

MAY - 8 2003

**NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT**

PROTECTIVE ORDER

WHEREAS the Court has directed that defendant disclose to plaintiffs and their counsel certain information and materials in response plaintiffs' interrogatories and requests for production of documents; and

WHEREAS defendant believes that certain of the documents covered by plaintiffs' discovery requests are likely to contain: (a) information covered by certain evidentiary privileges; (b) attorney work product information; and (c) information subject to the nondisclosure provisions of the Privacy Act, 5 U.S.C. § 552a; and

WHEREAS defendant desires to expedite the production of the documents plaintiffs have requested without compromising her ability to assert any appropriate privileges or other objections to disclosure;

NOW, THEREFORE, it is ORDERED as follows:

1. Pursuant to 5 U.S.C. § 552a(b)(11), defendant is authorized to release to plaintiffs's counsel information subject to the Privacy Act's nondisclosure provisions without obtaining the prior written consent

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of the individuals to whom the records pertain.

2. Defendant is authorized to permit plaintiffs' counsel – but not plaintiffs – to inspect in unredacted form the Farm Service Agency ("FSA") county office files for the 37 named plaintiffs described by defendant at the April 29, 2003 hearing in this matter, without obtaining the prior written consent of the individuals to whom the records pertain. See 5 U.S.C. § 552a(a)(4), (a)(5). Plaintiffs' counsel shall identify the portions of those files which they wish to have copied, and defendant is authorized to provide to plaintiffs' counsel copies of those portions of the 37 files.

3. If, pursuant to ¶ 2, above, plaintiffs' counsel requests a copy of a record that contains information defendant determines to be protected from disclosure by a discovery privilege or that consists of attorney work product, defendant is authorized to redact the privileged or work product information from the copy provided to plaintiffs' counsel, or to withhold the document in its entirety if the privileged material is not reasonably segregable from any non-privileged information the document includes. In the event plaintiffs' counsel objects ~~in writing~~ to any such withholding, defendant promptly shall, upon her ~~receipt of plaintiffs' counsel's written objection~~ ^{receipt of} ~~receipt of plaintiffs' counsel's written objection~~, either withdraw her objection or ~~move~~ ^{seek} for a protective order. ~~Plaintiffs' opposition to any such motion may not quote from, paraphrase, or rely in any way on, information as to which defendant has asserted privilege or made a work product claim.~~

4. Notwithstanding ¶ 7, infra, plaintiffs' counsel may not discuss with, or otherwise disclose to, plaintiffs or any other person any information contained in the files disclosed pursuant to ¶ 2, above, as to which defendant has asserted a privilege or made a work product claim until either defendant has withdrawn the claim or the Court has ordered that the information be disclosed to plaintiffs' counsel.

5. In the event the Court upholds any claim by defendant of privilege or work product designation pursuant to ¶ 3, above, plaintiffs' counsel shall make no disclosure of the information in this or any other

case, nor may plaintiffs counsel disclose, use, or rely upon that information for any purpose whatsoever. Plaintiffs' counsel also shall destroy all notes or other records of any kind they made that include or refer to any such privileged information.

6. This Order applies to government documents or information contained in records that are subject to the Privacy Act, 5 U.S.C. §§ 552a(a)(4), (5). Privacy Act documents or information disclosed pursuant to this Order shall be used by the parties and counsel for the parties only for purposes of litigating this case, including any subsequent appeal(s), and shall not be disclosed to the public or any other person or entity for any reason other than for purposes of litigating this case, including any subsequent appeal(s).

7. Except as otherwise ordered by this Court, the documents or information covered by this Order may be disclosed only to the following persons: (a) parties and counsel for the parties in this action; (b) partners, associates, secretaries, paralegal assistants, and employees of such counsel to the extent reasonably necessary to render professional services in this case; (c) persons retained by the parties or their counsel to assist in discovery, preparation for any hearing, or to serve as expert witnesses, provided that such disclosure is reasonably and in good faith calculated to aid in litigating this case; (d) persons with factual knowledge relating to this case who may be called as witnesses at any hearing, provided that such disclosure is reasonably and in good faith calculated to aid in litigating this case; and (e) any deponent in this case during his or her deposition. ~~Plaintiffs' counsel shall ensure that information regarding one plaintiff~~ *jk*

~~is not shared with other plaintiffs.~~ *jk*

8. All individuals to whom the documents or information subject to this Order are disclosed shall be informed of, and shall agree to, the terms of this Order and shall not otherwise disclose the documents or files subject to this Order to the public or to any person or entity, and shall acknowledge their agreement to comply with the provisions of this Order by signing a copy of the attached acknowledgment form.

Plaintiffs' counsel will retain copies of the acknowledgment forms until such time as this litigation, including all appeals, is concluded. Should plaintiffs or their counsel wish to disclose documents or information subject to this Order to any persons other than those indicated in this paragraph and ¶ 7, above, plaintiffs' counsel must obtain the defendant's consent. If the defendant does not consent to disclosure, then plaintiffs or their counsel may, on motion, seek modification of this Order from the Court.

9. Each party retains the right to move to modify the terms of this Order at any time, and each party retains the right to oppose any motion to modify the terms of the Order

~~10. The documents or information subject to this Order may be presented to the Court only under seal. Should the plaintiffs seek to use documents or information subject to this Order in open Court or at trial, orally or through documents, including as trial exhibits, or seek to file such documents or information as part of a public filing (e.g., a pleading, motion, exhibit or expert report), they must first seek an order from the Court ruling that the documents or information may be publicly disclosed~~ → JK
→ JK
→ JK
→ JK

11. The documents or information covered by this Order, and all copies thereof, produced to plaintiffs' counsel must be returned by the plaintiffs or other receiving party to the defendant upon the conclusion of this case, including any subsequent appeals, or destroyed. Within thirty days of the conclusion of this case and any subsequent appeals, plaintiffs or plaintiffs' counsel or any other person receiving documents or information covered by this Order must certify in writing that all protected documents, and all copies thereof, have been returned to defendant, or destroyed. Within forty-five days of the termination of this case, including any subsequent appeals, plaintiffs or plaintiffs' counsel or other person receiving protected documents or information must also certify in writing that any documents they or their attorneys or agents have created which contain Privacy Act protected information derived solely from the protected documents have been destroyed or redacted; provided, however, that no party is required to destroy or

redact any document that has been filed with this Court or with a court of appeals of competent jurisdiction in connection with this case.

12. Neither the United States Department of Justice, the United States Department of Agriculture, nor any of its officers, employees, or attorneys, shall bear any responsibility or liability for any unauthorized disclosure of any documents obtained by plaintiffs' counsel under this Order, or of any information contained in such documents.

13. This Order does not constitute any ruling on the question of whether any particular document or category of information is properly discoverable and does not constitute any ruling on any potential objection to the discoverability, relevance, or admissibility of any record, other than objections based on the Privacy Act.

IT IS SO ORDERED this 7th day of May, 2003



JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

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ACKNOWLEDGMENT OF PRIVACY ACT PROTECTIVE ORDER

I, _____, hereby acknowledge that I have read and understand the Privacy Act Protective Order entered in this action. I hereby agree to be bound by the terms of the Order. Specifically:

1. I agree that I will use records and information protected by the Order only for purposes of this litigation, including any appeals, and not for any other purpose of any kind, including that I will not disclose any such records or information to the public.

2. I agree that I will return all records subject to this order produced by the defendant to counsel for the defendant at the termination of this litigation or, when I am no longer a party to or assigned or retained to work on this case, to the plaintiffs' counsel who at the termination of this litigation will return such records to the defendant. I also agree to destroy or redact, or to return to plaintiffs' counsel for destruction or redaction, any records created that contain information subject to this Order, within thirty days after the termination of this litigation.

3. I (or plaintiffs' counsel on my behalf) will certify to the defendant that any documents

created that contain information subject to this Order have been destroyed *or redacted* within forty-five days after the termination of this litigation.

4. I agree that I will disclose records and information protected by the Order solely to the Court (under seal), the parties to this action and their attorneys of record, persons regularly in the employ of such attorneys, and any experts or consultants hired for this case by the parties or their attorneys and who (except the Court, defendant's employees and defendant's counsel) have signed an acknowledgment like this one and have a need for such information to perform duties specifically related to the conduct of this litigation.

5. Should I wish to disclose the records which are subject to the Order to any additional persons except those indicated in the Order and herein, I will first seek the defendant's consent. If the defendant does not consent to the disclosure, then I may, on motion, seek modification of the Order from the Court.

6. I agree that any documents or information subject to the Order may not be disclosed in open Court, including as or through trial exhibits or through a public filing (*e.g.*, a pleading, motion, exhibit or expert report) without first obtaining consent of the Court. I further agree that those portions of any filings that contain Privacy Act information subject to this Order shall be filed under seal and may not be filed publicly without leave of the Court.

7. I hereby confirm that my duties under this Acknowledgment shall survive the termination of this case and are binding upon me for all time.

8. I hereby consent to the personal jurisdiction of the United States District Court for the District of Columbia in the above-captioned case for the purpose of enforcing the aforementioned Order.

[signature]

[print name]

DATED: _____