

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

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

**DEFENDANTS' SUBMISSION OF REVISED PROPOSED PROTECTIVE ORDER**

Pursuant to the Court's request during the hearing on April 20, 2005, Defendants respectfully submit the attached revised proposed protective order. The attached document revises the Government's previous proposed protective order, filed with Defendants' Motion for a Protective Order Regarding Sensitive IT Security Information (Dkt. No. 2929) (filed Apr. 12, 2005), as follows:

- (1) The following standard has been inserted in paragraphs (1) and (2): "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".
- (2) The language in subparts (a), (b), and (c) of paragraph 1 has been indented and single-spaced to make it easier to distinguish from the language inserted in paragraph (1).

- (3) The word “and” appearing at the end of subpart (b) of paragraph 1 has been changed to “or” because the introductory text that precedes it – “Defendants shall designate each transcript, document or thing as containing Protected Material by one of the following methods:” – indicates that (a), (b), and (c) are intended to be alternative methods.
- (4) The word “contain” appearing in the second line of paragraph 2 has been changed to “contains”.
- (5) Paragraph 3 has been conformed to the correction noted at today’s hearing, i.e., “an unredacted” has been changed to “a redacted”.

Respectfully submitted,

ROBERT D. McCALLUM, JR.  
Associate Attorney General  
PETER D. KEISLER  
Assistant Attorney General  
STUART E. SCHIFFER  
Deputy Assistant Attorney General

/s/ John Warshawsky

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J. CHRISTOPHER KOHN  
Director  
JOHN T. STEMPLEWICZ  
Senior Trial Attorney  
JOHN WARSHAWSKY (D.C. Bar No. 417170)  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
P.O. Box 875  
Ben Franklin Station  
Washington, D.C. 20044-0875  
Telephone: (202) 307-0010

April 20, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on April 20, 2005 the foregoing *Defendants' Submission of Revised Proposed Protective Order* 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*)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417  
Fax (406) 338-7530

/s/ Kevin P. Kingston  
Kevin P. Kingston

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| Plaintiffs, )   |                      |
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| v. )  | Case No. 1:96CV01285 |
| )   | (Judge Lamberth)     |
| GALE NORTON, Secretary of the Interior, <u>et al.</u> , ) |                      |
| )   |                      |
| 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. 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 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 the 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 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: \_\_\_\_\_

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ROYCE C. LAMBERTH  
United States District Judge



cc:

J. Christopher Kohn  
John T. Stemplewicz  
Commercial Litigation Branch  
Civil Division  
P.O. Box 875  
Ben Franklin Station  
Washington, D.C. 20044-0875  
Fax (202) 514-9163

Dennis M Gingold, Esq.  
Mark Kester Brown, Esq.  
607 - 14th Street, NW, Box 6  
Washington, DC 20005  
Fax (202) 318-2372

Keith Harper, Esq.  
Richard A. Guest, Esq.  
Native American Rights Fund  
1712 N Street, NW  
Washington, D.C. 20036-2976  
Fax (202) 822-0068

Elliott Levitas, Esq.  
1100 Peachtree Street, Suite 2800  
Atlanta, GA 30309-4530

Earl Old Person (*Pro se*)  
Blackfeet Tribe  
P.O. Box 850  
Browning, MT 59417  
(406) 338-7530