

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LORI SHAVLIK, *et al.*,

Plaintiffs,

v.

CITY OF SNOHOMISH, *et al.*,

Defendants.

CASE NO. C17-0144-JCC

STIPULATED PROTECTIVE
ORDER

The Court enters the following protective order, consistent with the parties' stipulation (Dkt. No. 69):

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things produced or
3 otherwise exchanged: Personnel files for law enforcement and/or Fire Protection District No. 4
4 personnel in the current or former employ of Defendant(s).

5 3. SCOPE

6 The protections conferred by this agreement cover not only confidential material (as defined
7 above), but also (1) any information copied or extracted from confidential material; (2) all
8 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
9 conversations, or presentations by parties or their counsel that might reveal confidential material.
10 However, the protections conferred by this agreement do not cover information that is in the
11 public domain or becomes part of the public domain through trial or otherwise.

12 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

13 4.1 *Basic Principles.* A receiving party may use confidential material that is disclosed or
14 produced by another party or by a non-party in connection with this case only for prosecuting,
15 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
16 the categories of persons and under the conditions described in this agreement. Confidential
17 material must be stored and maintained by a receiving party at a location and in a secure manner
18 that ensures that access is limited to the persons authorized under this agreement.

19 4.2 *Disclosure of “CONFIDENTIAL” Information or Items.* Unless otherwise ordered by the
20 Court or permitted in writing by the designating party, a receiving party may disclose any
21 confidential material only to: (a) the receiving party’s counsel of record in this action, as well as
22 employees of counsel to whom it is reasonably necessary to disclose the information for this
23 litigation; (b) experts and consultants to whom disclosure is reasonably necessary for this
24 litigation and who have signed an “Acknowledgment and Agreement to Be Bound”; (c) the
25 Court, court personnel, and court reporters and their staff; (d) copy or imaging services retained
26 by counsel to assist in the duplication of confidential material, provided that counsel for the party

1 retaining the copy or imaging service instructs the service not to disclose any confidential
2 material to third parties and to immediately return all originals and copies of any confidential
3 material; (e) during their depositions, witnesses in the action to whom disclosure is reasonably
4 necessary and who have signed an “Acknowledgment and Agreement to Be Bound”, unless
5 otherwise agreed by the designating party or ordered by the Court. Pages of transcribed
6 deposition testimony or exhibits to depositions that reveal confidential material must be
7 separately bound by the court reporter and may not be disclosed to anyone except as permitted
8 under this agreement; (f) the author or recipient of a document containing the information or a
9 custodian or other person who otherwise possessed or knew the information.

10 *4.3 Filing Confidential Material.* Before filing confidential material or discussing or referencing
11 such material in court filings, the filing party shall confer with the designating party to determine
12 whether the designating party will remove the confidential designation, whether the document
13 can be redacted, or whether a motion to seal or stipulation and proposed order is warranted.

14 Local Civil Rule 5(g) sets forth the procedures that must be followed and the standards that will
15 be applied when a party seeks permission from the Court to file material under seal.

16 5. DESIGNATING PROTECTED MATERIAL

17 *5.1 Exercise of Restraint and Care in Designating Material for Protection.* Each party or non-
18 party that designates information or items for protection under this agreement must take care to
19 limit any such designation to specific material that qualifies under the appropriate standards. The
20 designating party must designate for protection only those parts of material, documents, items, or
21 oral or written communications that qualify, so that other portions of the material, documents,
22 items, or communications for which protection is not warranted are not swept unjustifiably
23 within the ambit of this agreement. Mass, indiscriminate, or routinized designations are
24 prohibited. Designations that are shown to be clearly unjustified or that have been made for an
25 improper purpose (e.g., to unnecessarily encumber or delay the case development process or to
26 impose unnecessary expenses and burdens on other parties) expose the designating party to

1 sanctions. If it comes to a designating party's attention that information or items that it
2 designated for protection do not qualify for protection, the designating party must promptly
3 notify all other parties that it is withdrawing the mistaken designation.

4 *5.2 Manner and Timing of Designations.* Except as otherwise provided in this agreement (*see,*
5 *e.g.,* second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, disclosure
6 or discovery material that qualifies for protection under this agreement must be clearly so
7 designated before or when the material is disclosed or produced.

8 (a) Information in documentary form: (e.g., paper or electronic documents and deposition
9 exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
10 the designating party must affix the word "CONFIDENTIAL" to each page that contains
11 confidential material. If only a portion or portions of the material on a page qualifies for
12 protection, the producing party also must clearly identify the protected portion(s) (*e.g.,* by
13 making appropriate markings in the margins).

14 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
15 participating non-parties must identify on the record, during the deposition or other
16 pretrial proceeding, all protected testimony, without prejudice to their right to so
17 designate other testimony after reviewing the transcript. Any party or non-party may,
18 within fifteen days after receiving the transcript of the deposition or other pretrial
19 proceeding, designate portions of the transcript, or exhibits thereto, as confidential. If a
20 party or non-party desires to protect confidential information at trial, the issue should be
21 addressed during a pre-trial conference.

22 (c) Other tangible items: the producing party must affix in a prominent place on the exterior
23 of the container or containers in which the information or item is stored the word
24 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
25 protection, the producing party, to the extent practicable, shall identify the protected
26 portion(s).

1 5.3 *Inadvertent Failures to Designate*. If timely corrected, an inadvertent failure to designate
2 qualified information or items does not, standing alone, waive the designating party's right to
3 secure protection under this agreement for such material. Upon timely correction of a
4 designation, the receiving party must make reasonable efforts to ensure that the material is
5 treated in accordance with the provisions of this agreement.

6 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

7 6.1 *Timing of Challenges*. Any party or non-party may challenge a designation of confidentiality
8 at any time. Unless a prompt challenge to a designating party's confidentiality designation is
9 necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a
10 significant disruption or delay of the litigation, a party does not waive its right to challenge a
11 confidentiality designation by electing not to mount a challenge promptly after the original
12 designation is disclosed.

13 6.2 *Meet and Confer*. The parties must make every attempt to resolve any dispute regarding
14 confidential designations without Court involvement. Any motion regarding confidential
15 designations or for a protective order must include a certification, in the motion or in a
16 declaration or affidavit, that the movant has engaged in a good faith meet and confer conference
17 with other affected parties in an effort to resolve the dispute without Court action. The
18 certification must list the date, manner, and participants to the conference. A good faith effort to
19 confer requires a face-to-face meeting or a telephone conference.

20 6.3 *Judicial Intervention*. If the parties cannot resolve a challenge without Court intervention, the
21 designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7
22 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any
23 such motion shall be on the designating party. Frivolous challenges, and those made for an
24 improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties)
25 may expose the challenging party to sanctions. All parties shall continue to maintain the material
26 in question as confidential until the Court rules on the challenge.

1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
5 party must:

6 (a) promptly notify the designating party in writing and include a copy of the subpoena or
7 court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
9 litigation that some or all of the material covered by the subpoena or order is subject to
10 this agreement. Such notification shall include a copy of this agreement; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
12 designating party whose confidential material may be affected.

13 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

14 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
15 material to any person or in any circumstance not authorized under this agreement, the receiving
16 party must immediately (a) notify in writing the designating party of the unauthorized
17 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
18 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
19 this agreement, and (d) request that such person or persons execute an “Acknowledgment and
20 Agreement to Be Bound.”

21 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
22 MATERIAL

23 When a producing party gives notice to receiving parties that certain inadvertently produced
24 material is subject to a claim of privilege or other protection, the obligations of the receiving
25 parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not
26 intended to modify whatever procedure may be established in an e-discovery order or agreement

1 that provides for production without prior privilege review. The parties agree to the entry of a
2 non-waiver order under Federal Rule of Evidence 502(d) as set forth herein.

3 10. NON-TERMINATION AND RETURN OF DOCUMENTS

4 Within 60 days after the termination of this action, including all appeals, each receiving party
5 must return all confidential material to the producing party, including all copies, extracts and
6 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.
7 Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents
8 filed with the Court, trial, deposition, and hearing transcripts, correspondence, deposition and
9 trial exhibits, expert reports, attorney work product, and consultant and expert work product,
10 even if such materials contain confidential material. The confidentiality obligations imposed by
11 this agreement shall remain in effect until a designating party agrees otherwise in writing or a
12 court orders otherwise.

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14 Pursuant to the parties' stipulation (Dkt. No. 69), it is so ORDERED. It is further
15 ORDERED that pursuant to Federal Rule of Evidence 502(d), the production of any documents
16 in this proceeding shall not, for the purposes of this proceeding or any other proceeding in any
17 other court, constitute a waiver by the producing party of any privilege applicable to those
18 documents, including the attorney-client privilege, attorney work-product protection, or any
19 other privilege or protection recognized by law.

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21 DATED this 30th day of January 2018.

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25 John C. Coughenour
26 UNITED STATES DISTRICT JUDGE