

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

CHELSEA ELIZABETH MANNING,)
)
 Plaintiff,)
 v.) Civil Action No. 1:14-cv-1609 (CKK)
)
 ASHTON CARTER, *et al.*,)
)
 Defendants.)
 _____)

CONSENT MOTION FOR ENTRY OF LAW ENFORCEMENT PROTECTIVE ORDER

Defendants in the above-captioned action respectfully request, with Plaintiff's consent, that the Court enter the attached Protective Order for Law Enforcement Sensitive Information. The attached Protective Order is designed to cover all potentially relevant information protected by the Department of Defense's and/or Department of Army's law-enforcement privilege. The entry of this Protective Order is necessary given that Defendants' decision-making at issue in this case has been influenced, at least in part, by security risks, *see* Am. Compl. (ECF No. 41) ¶¶ 123-25, and Defendants' evaluation of those risks may implicate sensitive law-enforcement information. The attached Protective Order for Law Enforcement Sensitive Information would permit disclosure of such information to Plaintiff, Plaintiff's counsel, the Court, and witnesses. Defendants respectfully request, therefore, the entry of the attached Protective Order for Law Enforcement Sensitive Information.

Pursuant to Local Civil Rule 7(m), counsel for the parties conferred regarding this motion, and Plaintiff's counsel indicated that Plaintiff consents to the relief requested herein.

Dated: November 6, 2015

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

CHANNING D. PHILLIPS
United States Attorney

ANTHONY J. COPPOLINO
Deputy Branch Director

/s/ Daniel Schwei
Daniel Schwei (N.Y. Bar)
Robin Thurston (Illinois Bar)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
Tel.: (202) 305-8693
(202) 616-8188
Fax: (202) 616-8470
Email: daniel.s.schwei@usdoj.gov
robin.f.thurston@usdoj.gov

Mailing Address:
Post Office Box 883
Washington, D.C. 20044

Courier Address:
20 Massachusetts Avenue N.W.
Washington, D.C. 20001

Counsel for Defendants

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

CHELSEA ELIZABETH MANNING,)	
)	
Plaintiff,)	
v.)	Civil Action No. 1:14-cv-1609 (CKK)
)	
ASHTON CARTER, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

PROTECTIVE ORDER FOR LAW ENFORCEMENT SENSITIVE INFORMATION

Upon Defendants’ consent motion in the above-captioned matter,

IT IS HEREBY ORDERED that the following Protective Order for Law Enforcement Sensitive Information be entered in the above captioned matter (this “Litigation”).

1. This Protective Order shall govern any document, testimony, or other material used in this litigation that contains Law Enforcement Privileged Information as defined herein.

2. Law Enforcement Sensitive Information (“LES Information”) shall be defined as any information determined by the Government to be subject to the law enforcement privilege under applicable law.

3. Any documents or materials for which Defendants wish to invoke the protections of this Protective Order shall be stamped “**SUBJECT TO LES PROTECTIVE ORDER**” or “**LAW ENFORCEMENT SENSITIVE.**” For any materials whose medium makes such stamping impracticable, such as computer data, the accompanying letter shall be stamped “**SUBJECT TO LES PROTECTIVE ORDER**” or “**LAW ENFORCEMENT SENSITIVE.**” Any materials that contain information derived from LES Information, such as court filings or other pleadings, shall also be stamped “**SUBJECT TO LES PROTECTIVE ORDER**” or

“LAW ENFORCEMENT SENSITIVE.” Except as provided in ¶¶ 5-6, below, Plaintiff’s counsel may not use or disclose the information or records so marked.

4. The protections conferred by this Order cover not only documents or materials marked **“SUBJECT TO LES PROTECTIVE ORDER”** or **“LAW ENFORCEMENT SENSITIVE”** but also (1) all copies or excerpts of LES Information; and (2) any testimony, conversations, or presentations by the parties or their counsel that discuss LES Information. To the extent a person listed in ¶¶ 6(a), (c)-(d), *infra*, creates any such documents or materials, such person must mark that Document as **“SUBJECT TO LES PROTECTIVE ORDER”** or **“LAW ENFORCEMENT SENSITIVE.”**

5. LES Information disclosed pursuant to this Protective Order shall be used only by those persons listed in ¶ 6 of this Protective Order, and only for the purpose of this litigation and shall not be disclosed, in any manner whatsoever, to anyone for any other purpose.

6. Access to LES Information disclosed pursuant to this Protective Order shall be restricted to:

- a. the parties, the attorneys for the parties, the attorneys’ support staff, persons employed or contracted for by the attorneys for the purposes of this litigation;
- b. the Court and its personnel, including court reporters;
- c. witnesses and potential witnesses, and their attorneys, but only to the extent that the applicable party believes such materials are important for eliciting discoverable testimony and/or other evidence; and

d. consultants and expert witnesses consulted, retained, or hired by any party to this litigation, but only to the extent that the applicable party believes such materials may be relevant to the consultant's or expert's conclusions.

7. Plaintiff and all persons to whom Plaintiff's counsel makes disclosures pursuant to ¶ 6(c) and ¶ 6(d) shall be required to execute a copy of the Acknowledgment Form attached hereto as Exhibit A prior to receiving any such disclosure of LES Information. All Executed Acknowledgment Forms shall be retained by Plaintiff's counsel for the pendency of the litigation, including any appeal, and shall be provided to Defendants or their counsel upon request and good cause shown.

8. If LES Information is disclosed other than as authorized by this Protective Order, the person or entity responsible for the unauthorized disclosure, and any other person or entity who is subject to this Protective Order and learns of the unauthorized disclosure, shall immediately (a) bring such disclosure to the attention of Defendants; and (b) make every effort to obtain the return of the LES Information and to prevent any further disclosure. Any breach of this Order may also result in the termination of access to LES Information.

9. Plaintiff and each person to whom Plaintiff's counsel discloses LES Information pursuant to ¶ 6(c) and ¶ 6(d) of this Protective Order shall return to Plaintiff's counsel all such materials (including all copies thereof), and any documents including information derived therefrom, within 30 days after: (a) the termination of this litigation (including any appeal); or (b) the date upon which he/she ceases to be assigned or retained to work on this case, whichever occurs first. In the alternative, such persons may permanently destroy such materials and certify to Plaintiff's counsel that the materials were permanently destroyed.

10. Plaintiff's counsel shall destroy all LES Information within 30 days after the termination of this litigation, including any appeals. Plaintiff's counsel shall certify to the Defendants that all LES Information within their control have been destroyed not later than 45 days after the termination of this litigation, including any appeals.

11. Any Court filings that contain LES Information pursuant to this Protective Order shall be made under seal. The party responsible for such filing shall, within seven days, also file a redacted version that is publicly available.

12. Those portions of any depositions where the contents of LES Information are discussed shall be designated as under seal, and the parties shall treat those portions of deposition transcripts as LES Information subject to this Protective Order.

13. Upon the scheduling of any hearing or trial in this matter, the manner of using any LES Information at such hearing or trial shall, after consultation between counsel, be determined by the Court prior to any such hearing or trial.

14. A party's failure to designate any materials as LES Information shall not constitute a waiver of any party's timely assertion that the materials are covered by this Protective Order.

15. The parties retain the right to timely challenge the designation of a particular document as containing LES Information. If a party to this litigation who has received material designated as LES Information in accordance with this Order disagrees with the designation, in full or in part, the party shall notify the producing party in writing, and the parties will confer as to the status of the material at issue. If the recipient and the producing party are unable to agree upon the status of the material at issue, any party may raise the issue with the Court for resolution. The burden of proof with respect to the propriety or correctness of the designation

will rest on the designating party. No party, by treating designated material as LES Information in accordance with this Order, shall be deemed to have conceded that the material actually is properly designated as LES Information.

16. Nothing in this Protective Order obligates the parties to produce any information whatsoever, or waives the applicability of privileges with respect to any information. This Protective Order does not constitute a ruling on the question of whether the materials protected by this Protective Order, or derived therefrom, are properly discoverable or admissible, and this Protective Order does not constitute a ruling on any potential objection to the discoverability or admissibility of such information.

17. Nothing in this Protective Order imposes any obligations or limitations on Defendants beyond that otherwise provided by law.

18. The parties retain the right to seek a modification of any provision of this Protective Order.

IT SO ORDERED, this _____ day of November, 2015.

Colleen Kollar-Kotelly
United States District Judge

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

CHELSEA ELIZABETH MANNING,)	
)	
Plaintiff,)	
v.)	Civil Action No. 1:14-cv-1609 (CKK)
)	
ASHTON CARTER, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**ACKNOWLEDGMENT OF PROTECTIVE ORDER FOR
LAW ENFORCEMENT SENSITIVE INFORMATION**

I, _____, hereby acknowledge that I have read and understand the provisions of the Protective Order for Law Enforcement Sensitive Information (the “Order”) entered in this action on November ____, 2015. I hereby agree to be bound by all terms of the Order. Specifically,

1. I agree that I will use the materials protected by the Order, and any information contained therein, only for the purposes of this litigation, and not for any other purpose;
2. I agree that any materials provided to me, or created by me, that contain information subject to the Order, and all copies thereof, will be returned to Plaintiff’s counsel or destroyed, within 30 days after the termination of this litigation, including any appeals;
3. I agree that I will not discuss or disclose materials protected by this Order, other than as authorized by the Order; and

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

(Signature)

(Printed Name)

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

CHELSEA ELIZABETH MANNING,)	
)	
Plaintiff,)	
v.)	Civil Action No. 1:14-cv-1609 (CKK)
)	
ASHTON CARTER, <i>et al.</i> ,)	
)	
Defendants.)	
<hr style="width: 40%; margin-left: 0;"/>		

**CONSENT MOTION FOR ENTRY OF
INSPECTOR GENERAL PROTECTIVE ORDER**

Defendants in the above-captioned action respectfully request, with Plaintiff’s consent, that the Court enter the attached Protective Order for Inspector General Records. The attached Protective Order is designed to cover all potentially relevant information that might be located in the records of the Department of Army’s Inspector General’s records, but which is subject to confidentiality restrictions. *See generally* 10 U.S.C. § 1034; Army Regulation 20-1, *Inspector General Activities and Procedures*, ¶ 1-12 (“Confidentiality”), available at http://www.apd.army.mil/pdf/r20_1.pdf. The entry of this Protective Order is necessary given that Plaintiff has made allegations regarding a request submitted to the Army’s Office of Inspector General, *see* Am. Compl. (ECF No. 41) ¶¶ 68-70, which may require disclosure of documents contained within the Army Inspector General’s records. The attached Protective Order for Inspector General Records would permit disclosure of such information to Plaintiff, Plaintiff’s counsel, the Court, and witnesses. Defendants respectfully request, therefore, the entry of the attached Protective Order for Inspector General Records.

Pursuant to Local Civil Rule 7(m), counsel for the parties conferred regarding this motion, and Plaintiff’s counsel indicated that Plaintiff consents to the relief requested herein.

Dated: November 6, 2015

Respectfully submitted,

BENJAMIN C. MIZER
Principal Deputy Assistant Attorney General

CHANNING D. PHILLIPS
United States Attorney

ANTHONY J. COPPOLINO
Deputy Branch Director

/s/ Daniel Schwei

Daniel Schwei (N.Y. Bar)
Robin Thurston (Illinois Bar)
Trial Attorneys
United States Department of Justice
Civil Division, Federal Programs Branch
Tel.: (202) 305-8693
(202) 616-8188
Fax: (202) 616-8470
Email: daniel.s.schwei@usdoj.gov
robin.f.thurston@usdoj.gov

Mailing Address:

Post Office Box 883
Washington, D.C. 20044

Courier Address:

20 Massachusetts Avenue N.W.
Washington, D.C. 20001

Counsel for Defendants

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

CHELSEA ELIZABETH MANNING,)	
)	
Plaintiff,)	
v.)	Civil Action No. 1:14-cv-1609 (CKK)
)	
ASHTON CARTER, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

PROTECTIVE ORDER FOR INSPECTOR GENERAL RECORDS

Upon Defendants’ consent motion in the above-captioned matter,

IT IS HEREBY ORDERED that the following Protective Order for Inspector General Records be entered in the above captioned matter (this “Litigation”).

1. This Protective Order shall govern the disclosure and use of any records, documents and/or information currently maintained within the Department of the Army Inspector General’s Office.

2. “IG Protected Material” for purposes of this Protective Order shall be defined as any records, documents, and/or information initially prepared by Department of the Army Inspector General personnel relating to an inspection, inquiry, investigation, or other official function of that office and currently maintained within the official custody and control of the Department of the Army Inspector General’s Office.

3. Any documents or materials for which Defendants wish to invoke the protections of this Protective Order shall be stamped “**SUBJECT TO IG PROTECTIVE ORDER**” or “**IG PROTECTED.**” For any materials whose medium makes such stamping impracticable, such as computer data, the accompanying letter shall be stamped “**SUBJECT TO IG PROTECTIVE ORDER**” or “**IG PROTECTED.**” Any materials that contain information derived from IG

Protected Materials, such as court filings or other pleadings, shall also be stamped “**SUBJECT TO IG PROTECTIVE ORDER**” or “**IG PROTECTED.**” Except as provided in ¶¶ 5-6, below, Plaintiff’s counsel may not use or disclose the information or records so marked.

4. The protections conferred by this Order cover not only documents or materials marked “**SUBJECT TO IG PROTECTIVE ORDER**” or “**IG PROTECTED**” but also (1) all copies or excerpts of IG Protected Materials; and (2) any testimony, conversations, or presentations by the parties or their counsel that discuss IG Protected Materials. To the extent a person listed in ¶¶ 6(a), (c)-(d), *infra*, creates any such documents or materials, such person must mark that Document as “**SUBJECT TO IG PROTECTIVE ORDER**” or “**IG PROTECTED.**”

5. IG Protected Materials disclosed pursuant to this Protective Order shall be used only by those persons listed in ¶ 6 of this Protective Order, and only for the purpose of this litigation and shall not be disclosed, in any manner whatsoever, to anyone for any other purpose.

6. Access to IG Protected Materials disclosed pursuant to this Protective Order shall be restricted to:

- a. the parties, the attorneys for the parties, the attorneys’ support staff, persons employed or contracted for by the attorneys for the purposes of this litigation;
- b. the Court and its personnel, including court reporters;
- c. witnesses and potential witnesses, and their attorneys, but only to the extent that the applicable party believes such materials are important for eliciting discoverable testimony and/or other evidence; and

- d. consultants and expert witnesses consulted, retained, or hired by any party to this litigation, but only to the extent that the applicable party believes such materials may be relevant to the consultant's or expert's conclusions.

7. For IG Protected Materials disclosed pursuant to this Protective Order, Plaintiff and each person to whom Plaintiff's counsel discloses such materials pursuant to ¶ 6(c) and ¶ 6(d) of this Protective Order shall return to Plaintiff's counsel all such materials (including all copies thereof), and any documents including information derived therefrom, within 30 days after: (a) the termination of this litigation (including any appeal); or (b) the date upon which he/she ceases to be assigned or retained to work on this case, whichever occurs first. In the alternative, such persons may permanently destroy such materials and certify to Plaintiff's counsel that the materials were permanently destroyed.

8. Plaintiff's counsel shall destroy all IG Protected Materials disclosed pursuant to this Protective Order within 30 days after the termination of this litigation, including any appeals. Plaintiff's counsel shall certify to the Defendants that all IG Protected Materials within their control have been destroyed not later than 45 days after the termination of this litigation, including any appeals.

9. Any Court filings that contain IG Protected Materials disclosed pursuant to this Protective Order shall be made under seal. The party responsible for such filing shall, within seven days, also file a redacted version that is publicly available.

10. Those portions of any depositions where the contents of IG Protected Materials are discussed shall be designated as under seal, and the parties shall treat those portions of deposition transcripts as IG Protected Materials subject to this Protective Order.

11. Upon the scheduling of any hearing or trial in this matter, the manner of using any IG Protected Materials at such hearing or trial shall, after consultation between counsel, be determined by the Court prior to any such hearing or trial.

12. A party's failure to designate any materials as IG Protected Materials shall not constitute a waiver of any party's timely assertion that the materials are covered by this Protective Order.

13. The parties retain the right to timely challenge the designation of a particular document as containing IG Protected Materials. If a party to this litigation who has received material designated as IG Protected Materials in accordance with this Order disagrees with the designation, in full or in part, the party shall notify the producing party in writing, and the parties will confer as to the status of the material at issue. If the recipient and the producing party are unable to agree upon the status of the material at issue, any party may raise the issue with the Court for resolution. The burden of proof with respect to the propriety or correctness of the designation will rest on the designating party. No party, by treating designated material as IG Protected Materials in accordance with this Order, shall be deemed to have conceded that the material actually is properly designated as IG Protected Materials.

14. Nothing in this Protective Order obligates the parties to produce any information whatsoever, or waives the applicability of privileges with respect to any information. This Protective Order does not constitute a ruling on the question of whether the materials protected by this Protective Order, or derived therefrom, are properly discoverable or admissible, and this Protective Order does not constitute a ruling on any potential objection to the discoverability or admissibility of such information.

15. Nothing in this Protective Order imposes any obligations or limitations on Defendants beyond that otherwise provided by law.

16. Defendants shall be primarily responsible for designating IG Protected Material, though Plaintiff may also designate documents as subject to the Protective Order if those documents were provided to Plaintiff by the United States government.

17. The parties retain the right to seek a modification of any provision of this Protective Order.

IT SO ORDERED, this _____ day of November, 2015.

Colleen Kollar-Kotelly
United States District Judge