

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

DAVID H. CLARK,

Plaintiff,

v.

Case No. 05-2539-CM-GLR

STEPHAN L. JOHNSON,  
ADMINISTRATOR,  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY,

Defendant.

**AGREED PROTECTIVE ORDER**

This matter comes before the Court upon the oral motion of the parties for a protective order, pursuant to Fed. R. Civ. P. 26 (c). The Plaintiff appears by his attorney, Sandra L. Schermerhorn. The Defendant appears by its attorneys, Eric F. Melgren, United States Attorney for the District of Kansas, and Jackie A. Rapstine, Assistant United States Attorney for the District of Kansas.

Plaintiff alleges that defendant discriminated against him on the basis of age, race, and retaliation. Having been advised the parties will be seeking discovery of and will be utilizing documents and information that may be encompassed by the Privacy Act of 1974, 5 U.S.C. § 552a, including records such as the personnel files of other similarly situated employees, the Court, for good cause shown, enters the following protective order pursuant to Fed. R. Civ. P. 26 (c):

1. Pursuant to 5 U.S.C. §552a(b)(11), discovery may be had, and disclosure of documents or information in furtherance of discovery may be made, notwithstanding that the Privacy Act may otherwise bar disclosure of such documents and information.

2. Information within the purview of the Privacy Act may be disclosed and used as is necessary to prepare for and litigate this action.

3. The distribution, disclosure and use of information otherwise protected under the Privacy Act will be limited to counsel and persons employed by their counsel or associated with them who are involved in the preparation and trial of this case, prospective witnesses or a “need to know” basis, and, any other person mutually authorized by all counsel to examine such materials.

4. The documents and information encompassed by the Privacy Act and subject to this Order shall be distinctly marked "confidential".

5. Either party may designate a document, documents, or other information, including answers to interrogatories, responses to other discovery requests and deposition testimony as confidential; however, a party shall not designate any such documents, information or material as confidential unless said party, in good faith, believes the document, material or information, or some portion thereof, is encompassed by the Privacy Act.

6. This Order shall apply to and govern all documents and information designated by the parties in this action as confidential pursuant to the Privacy Act, whether such items were produced at the administrative level of these proceedings or are informally produced or produced in response to a formal discovery request in this case.

7. With respect to deposition testimony, the designation of confidentiality, if any, shall be made at or before the conclusion of the deposition, on the record, and, in that case, the confidentiality notice described in paragraph 1 hereof shall be inserted by the court reporter on the first page of the original and all copies of the transcript of the deposition, upon request of the party seeking the designation. In the event the designation of confidentiality is not made during or at the conclusion of a deposition, the designation may be made at any time within ten days following the receipt of the deposition transcript by counsel, and all counsel shall treat as confidential any such deposition during that ten day period.

8. This order shall not be deemed a ruling on any other objection that any party may have to discovery or to the admissibility of evidence.

9. When no longer required for use in connection with this case, the parties shall return all copies of the documents disclosed by authority of this order to the producing party.

IT IS SO ORDERED, this 2nd day of June, 2006.

s/ Gerald L. Rushfelt  
GERALD L. RUSHFELT  
United States Magistrate Judge

APPROVED BY:

ERIC F. MELGREN  
United States Attorney

S/Jackie A. Rapstine  
JACKIE A. RAPSTINE  
Assistant United States Attorney  
Ks. S.Ct. No. 11625  
Federal Building, Suite 290  
444 SE Quincy Street  
Topeka, Kansas 66683  
Telephone: (785) 295-2850  
Facsimile: (785) 295-2853  
E-mail: [jackie.rapstine@usdoj.gov](mailto:jackie.rapstine@usdoj.gov)  
Attorneys for the Defendants

APPROVED BY:

S/Sandra L. Schermerhorn  
SANDRA L. SCHERMERHORN, #21207  
215 W. Pershing Road, Suite 550  
Kansas City, Missouri 64108  
Telephone: (816) 421-5553  
Facsimile: (816) 421-6377  
Attorney for the Plaintiff

In The United States District Court For The District Of Kansas  
*David H. Clark v. Stephan L. Johnson, Administrator, U.S. Environmental Protection Agency,*  
Case No. 05-2539-CM  
Agreed Protective Order, Page 3.