

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CAROL C. SCHREFFLER, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 03-781 JJF
 :
 CHARLES H. MITCHELL, JUDY L. :
 EMORY, TERESA G. CAREY, :
 GREGORY W. WILLIAMS, RANDALL :
 O'NEAL and JOHN E. OLIVER, :
 and the BOARD OF EDUCATION OF :
 THE SUSSEX COUNTY VOCATIONAL- :
 TECHNICAL SCHOOL DISTRICT, :
 :
 Defendants. :

Thomas S. Neuberger, Esquire and Stephen J. Neuberger, Esquire of
THE NEUBERGER FIRM, P.A., Wilmington, Delaware.
Attorneys for Plaintiff.

William L. Doerler, Esquire and Frank E. Noyes, II, Esquire of
WHITE AND WILLIAMS LLP, Wilmington, Delaware.
Attorneys for Defendants.

MEMORANDUM OPINION

October 5, 2004

Wilmington, Delaware

Farnan, District Judge.

Pending before the Court is a Motion For A Confidentiality Order (D.I. 43) filed by Defendants. The Defendants have submitted this discovery dispute under Paragraph 4(e) of the Rule 16 Scheduling Order. The dispute concerns how documents and related information obtained in discovery and designated "Confidential" pursuant to a Protective Order should be treated when attached to dispositive motions or other submissions.

I. PARTIES' CONTENTIONS

Defendants contend that when properly designated confidential materials are attached as exhibits to dispositive motions or other submissions, such items remain confidential until the Court conducts a particularized review. Defendants contend that when conducting such a particularized review, the Court should apply the "good cause" standard of Rule 26 and determine the appropriateness of permitting a party to maintain the confidential designation.

The Plaintiff contends that any time confidential documents are attached to dispositive motions or other submissions, they automatically are public and no longer entitled to be treated as confidential.

II. LEGAL STANDARD

I have previously provided my understanding of the case

law applicable to a situation where a party to a protective order seeks to avoid its initial agreement as to confidentiality and moves to unseal documents and information for use in a non-discovery pretrial motion, (e.g., a case dispositive motion). In re The Columbia Gas System, Inc., 1995 WL 917032 (D.Del.) Once a party to a protective order challenges the continuation of the confidential designation, the party seeking to maintain confidentiality has the burden of making a particularized showing to the court that good cause exists for the need for non-disclosure. Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 166 (1993)

III. DECISION

Federal Rule of Civil Procedure 26 (c) (7) permits courts to enter orders restricting disclosure of certain types of information.

In this case, the parties have agreed and stipulated to the information that should be treated as "confidential" under Rule 26 (c) (7). The parties disagree on how the agreed upon confidential information may lose the "confidential" designation. Defendants argue that a court must conduct a particularized review to determine whether "good cause" continues to exist to support the non-disclosure of the information to persons not designated in the protective order by the parties or the court.

The Plaintiff argues that confidential information can

be disclosed at the discretion of counsel in the context of the filing of case dispositive motions or other submissions to the court.

IV. CONCLUSION

I conclude that once documents or other materials are designated "Confidential" pursuant to Rule 26 (c) (7) whether by court decision or stipulation of the parties, the confidential designation can only be lifted by order of the court or agreement and stipulation by the parties.

For the reasons discussed, the Court will grant Defendants' Motion For A Confidentiality Order (D.I. 43).

An appropriate Order will be entered.

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 Defendants. :

O R D E R

At Wilmington, this 5th day of October 2004, for the reasons set forth in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that Defendants' Motion For A Confidentiality Order (D.I. 43) is GRANTED. Said Order shall contain Defendants' proposed paragraph 13.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT COURT