

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SHANNON CORBETT,

Plaintiff,

v.

TEXAS TECH UNIVERSITY HEALTH
SCIENCES CENTER,

Defendant.

No. 5:21-CV-281-H

ORDER

Before the Court is the parties' Agreed Motion for Protective Order. Dkt. No. 9.

The Court grants the motion and enters the following Protective Order. Section 12, below, was modified by the Court in place of the parties' proposed section 12 to address filings that include materials designated by the parties as confidential. The Court has also modified headings and portions of other paragraphs for clarification.

1. Information and documents produced by the parties to this action, if reasonably believed by such producing party to be Confidential (as defined below), may be designated by such producing party as "Confidential." Except as otherwise provided in this Agreed and Stipulated Protective Order ("the Order" or "this Order"), such designation shall be made by clearly indicating on any document or information to be produced the phrase, "Confidential." Protected Information shall be treated as confidential by all parties, subject to the provisions of this Order. As used herein, the designation of information as Protected Information shall include all documents (including without limitation all copies, extracts, and summaries) containing, referring to, and reflecting such information. Nothing in this Order shall prevent any party from challenging the designation of documents or information

as Protected Information by presenting such dispute to the Court for *in camera* resolution.

2. Definition of Confidential Information.

2.1 Subject to the limitations set forth in this Order, a designation of “Confidential” includes but is not limited to documents and information, whether embodied in any physical or electronic medium, that contains information which is protected from disclosure under state or federal law or information containing a party’s (a) infrastructure, such that revealing to the public such information could create a health, safety, or security risk, (b) proprietary or confidential financial or business information, (c) trade secrets, (d) and sensitive or private personal information, including but not limited to social security numbers.

2.2 “Confidential” information includes, without limitation, documents, maps, blueprints, renderings, architectural drawings, exhibits, answers to discovery requests, deposition transcripts, pleadings, affidavits, declarations, briefs, motions, transcripts, or other writing containing such information, all of which may be designated as “Confidential” under this Order as appropriate. Information may also be designated “Confidential” if the producing party believes in good faith that the information falls within the right to privacy of protected health information guaranteed by the laws of the State of Texas, the United States, or any other applicable jurisdiction.

2.3 A party shall designate as Protected Information only such information that the party in good faith believes in fact is confidential. Information that is generally available to the public or is in the public domain, such as public filings, catalogues, advertising materials, and the like, shall not be designated as Protected Information

3. Designation of Protected Information. Protected Information shall be stamped or otherwise designated “Confidential” by marking each page of the documents so designated with a stamp. This procedure shall be followed with regard to documents, exhibits, briefs, memoranda, interrogatory responses, responses to requests for admissions, or other materials. In the event the producing party inadvertently fails to designate a document or testimony as Protected Information, that producing party may make such a designation subsequently by promptly notifying the other parties in writing. Until such notification, however, disclosure of any such document or testimony shall not constitute a violation of this Order.

3.1 Claw Back. If Protected Information is inadvertently produced, the party claiming it is Protected Information may notify any party that received the information of the claim and the basis for it. After being notified, a party that received the asserted privileged or protected information must promptly return or destroy the specified information and any copies of it; must not use or disclose the information until the claim of privilege or protection is resolved; must take reasonable steps to retrieve the information if the party disclosed it to others before being notified of the producing party’s claim of privilege or protection; and may promptly present the information to the Court under seal for a determination of the producing party’s claim of privilege or protection. If a receiving party moves the Court for a determination of the producing party’s claim of privilege or protection, then the producing party, in turn, must preserve the asserted privileged or protected information until the claim is resolved by the Court.

4. Portions of transcripts—whether of depositions, pre-hearing conferences, or hearings—may be designated as Protected Information by a statement on the record at the

deposition or hearing, or by written designation to all parties within 30 days after receipt of the transcript. No person shall be present during portions of the depositions or hearings that are designated "Confidential" unless such person is authorized under the terms of this Order to receive such Protected Information or unless the producing party consents to such person being present. To the extent possible, the court reporter shall segregate into separate transcripts information designated as Protected Information with blank, consecutively numbered pages being provided in a non-designated main transcript. The separate transcript containing Protected Information shall have page numbers that correspond to the blank pages in the main transcript.

5. Any party shall retain the right to redact from Protected Information any identifying information protected by statute, law, or rule (e.g., FERPA) and any such information that the party reasonably believes (a) should be redacted to protect irrelevant Protected Information, including but not limited to the identity of specific payers and the identity of a person or entity who is not a party to this action and who otherwise reasonably could be determined to be without any information potentially relevant to this action, and (b) the redaction of which will not impair the other parties' legitimate use of the information in this action. After attempting to reach a resolution with counsel for the opposing party, any party who believes that the redactions impair their legitimate use of the information in this action may make a motion to the Court for a determination of whether the redactions should remain.

6. All information produced by any party to an opposing party prior to the entry of this Order shall be subject to the terms and conditions of this Order if designated as Protected Information within 30 days of the entry of this Order.

7. Disclosure of Protected Information Designated as "Confidential."

Protected Information designated as "Confidential" may be disclosed only to the following persons:

- (a) counsel(s) for the respective parties to this litigation, including any staff members assisting in the preparation for trial or appeal of the action;
- (b) named parties, including any officers, directors, employees, or certified agents or representatives thereof assisting in the preparation for trial or appeal of this action, provided such officers, directors, or employees execute a Confidentiality Agreement pursuant to paragraph 8 below;
- (c) experts, consultants, or advisors (and their administrative or clerical staff) employed or retained by counsel(s) for the respective parties to perform investigative work, research, analysis, or other services related to this action provided such experts, consultants, or advisors execute a Confidentiality Agreement pursuant to paragraph 8 below;
- (d) persons or entities that provide litigation support services (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing, storing, retrieving data in any form or medium; etc.) and their employees and subcontractors, provided that such persons or entities execute a Confidentiality Agreement pursuant to paragraph 8 below, and all documents designated as "Confidential" are retrieved by the party furnishing those documents upon completion of the services;
- (e) the Court, including any staff members assisting in the services of the Court, who require access to the Protected Information;
- (f) court reporters and their staff;
- (g) mediators chosen by or for the parties in this action provided such persons execute a Confidentiality Agreement pursuant to paragraph 8 below;
- (h) deponents, during the course of their depositions, if the attorney making such disclosure obtains an executed Confidentiality Agreement from that deponent pursuant to paragraph 8 below, but only to the extent such deponents are shown Protected Information to which they have not authored, sent, or received in the regular course of their business duties;
- (i) the author, addressees, and recipients of the document or any person who had access to such information by virtue of his/her employment;
- (j) any member of the Texas Legislature who requests the information for

legislative purposes pursuant to the Public Information Act, subject to the provisions found in Chapter 552 of the Texas Government Code, including Sections 552.002, 552.005, and 552.008; and

- (k) (k) any other person upon the written agreement of the party who designated the information as "Confidential," or pursuant to order of the Court.

8. Each person receiving disclosure of Protected Information, other than counsel for the respective parties in this action (and staff for said counsel), the Court, and court reporters, shall be shown a copy of this Order and shall sign a Confidentiality Agreement in the form attached hereto as "Exhibit A." Each such person agrees to be subject to the restrictions imposed by this Order and to submit his or her person to the jurisdiction of any Court of competent jurisdiction for the limited purpose of securing compliance with the terms of this Order. This Order is enforceable by contempt proceedings, which may include monetary penalties. Counsel for the party making such disclosure shall retain the original executed Confidentiality Agreements.

9. The parties, and all persons who receive Protected Information as identified in this Order:

- (a) are prohibited from using or disclosing any Protected Information for any purpose other than the prosecution, defense, or appeal of the claims asserted in this action; and
- (b) not later than 120 days after the conclusion of this litigation and any appeal related to it, must (i) return the Protected Information (including all copies, extracts or summaries thereof) to the party that produced the Protected Information or (ii) certify in writing that it has destroyed all such Protected Information (including all copies or summaries thereof).

10. Any party designating a person as one who shall receive and review Protected Information shall use reasonable care and precaution to ensure that each such person observes the terms of this Order, including, but not limited to, showing each such person a

copy of this Order and instructing each such person regarding compliance with the terms of this Order.

11. Nothing in this order shall prevent disclosure beyond the terms of this order if each party designating the information as Protected Information consents to such disclosure or if the Court, after notice to all affected parties and nonparties, orders such disclosure. Nor shall anything in the order prevent any counsel of record from utilizing Protected Information in the examination or cross-examination of any expert witness; nor prevent any person who is indicated on the document as being an author, source, or recipient of the Protected Information from using the information as they otherwise would; nor prevent any person who has access to Protected Information by virtue of his/her employment, and not this litigation, from using the information as they otherwise would.

12. Filing Documents with the Court.

12.1 The Court generally discourages requests for filing motions and exhibits under seal. The parties may agree between themselves to designate documents “Confidential” during discovery. The typical standard there involves the parties assessing whether they want that material in the public domain. But filing that material with the Court under seal is a different matter. Court proceedings are, by and large, public matters—and rightfully so given the First Amendment and that tax dollars fund the courts.¹

¹ See *Bin Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417–21 (5th Cir. 2021); *United States v. Holy Land Found. for Relief & Dev.*, 624 F.3d 685, 690 (5th Cir. 2010) (“Public confidence [in our judicial system] cannot long be maintained where important judicial decisions are made behind closed doors and then announced in conclusive terms to the public, with the record supporting the court’s decision sealed from public view.”) (quoting *In re High Sulfur Content Gasoline Prods. Liab. Litig.*, 517 F.3d 220, 230 (5th Cir. 2008)); *SEC v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993) (“Public access [to judicial records] serves to promote trustworthiness of the judicial process, to curb judicial abuses, and to provide the public with a more complete understanding of the judicial system, including a better perception of its fairness.”) (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 682 (3d Cir. 1998));

12.2 Here, the parties' agreement takes the form of this Protective Order. Federal Rule of Civil Procedure 26(c) permits the Court to issue a protective order "for good cause." To assist the parties in showing good cause here, the Court adds the following requirements that complement the sealing practices of the Fifth Circuit. A party seeking to file a specific document under seal must move for leave to do so and: (1) brief the legal authorities indicating the risks of disclosure outweigh the public's right to know, and (2) explain that no other viable alternative to sealing exists. Further, all facts recited in any such motion must be verified by the oath or declaration of a person or persons with personal knowledge.

12.3 If any party wishes to submit Confidential Information to the Court, the parties shall request to file the materials under seal, as appropriate and consistent with Fifth Circuit precedent. *See Bin Hoa Le v. Exeter Fin. Corp.*, 990 F.3d 410, 417–21 (5th Cir. 2021). The submission must be filed pursuant to Local Rule 79.3 or in a sealed envelope bearing the caption of this Action and a notice in the following form:

**CONFIDENTIAL INFORMATION or
CONFIDENTIAL ATTORNEYS' EYES ONLY INFORMATION**

[caption]

This envelope, which is being filed under seal,
contains documents that are subject to a Protective
Order governing the use of confidential discovery material.

No Prejudice.

12.4 Producing or receiving confidential information, or otherwise complying with the terms of this Protective Order, will not: (a) operate as an admission by any party that any particular Confidential Information contains or reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the rights of a

see also Brown & Williamson Tobacco Corp. v. F.T.C., 710 F.2d 1165, 1177 (6th Cir. 1983) (explaining that the First Amendment and the common law limit the court's discretion to seal records).

party to object to the production of information or material that the party does not consider to be within the scope of discovery; (c) prejudice the rights of a party to seek a determination by the presiding judge that particular materials be produced; (d) prejudice the rights of a party to apply to the presiding judge for further protective orders; or (e) prevent the parties from agreeing in writing to alter or waive the provisions or protections provided for in this Protective Order with respect to any particular information or material.

13. Copies of any motion, pleading, memorandum, or other document containing Protected Information shall be stamped on the cover page with the appropriate legend.

14. The failure of any party to object to designation of information as Protected Information does not prevent the party from later objecting to such designation and requesting that the party be permitted to disclose the information without regard to the terms of this Order.

15. At any time after receipt of Protected Information from another party, the receiving party may move the Court for an Order removing the designation and any restrictions attendant to that designation. At the hearing on any such motion, the designating party shall have the burden of demonstrating that the Protected Information addressed by the motion is entitled to that designation and its attendant protections.

16. Nothing herein shall be construed to be an admission of relevance or to affect, in any way, the admissibility of any documents, testimony, or other evidence in this action. This Order is without prejudice to the right of any party to bring before the Court at any time the question of whether any particular information is or is not discoverable or admissible in this case, and such right is expressly reserved.

17. This Order shall survive any settlement, judgment, or other disposition or conclusion of this action and all appeals therefrom, and any Court of competent jurisdiction may enforce the terms of this Order after the final termination of this action, whether by final award or settlement. Notwithstanding, the foregoing provision, a party may seek the written permission of the producing party or order of the Court with respect to dissolution or modification of this, or any other, protective order.

18. This Order shall not bar any attorney in the course of rendering advice to such attorney's client with respect to this litigation from conveying to any party client the attorney's evaluation in a general way of Protected Information produced or exchanged under the terms of this order; provided, however, that in rendering such advice and otherwise communicating with the client, the attorney shall not disclose the specific contents of any Protected Information produced by another party if such disclosure would be contrary to the terms of this Order.

19. Nothing in this Order shall prevent a party who has designated information as Protected Information from agreeing to release any of the information designated by it as Protected Information from the requirements of this Order.

20. Nothing in this Order limits any designating party's use of its own information, nor shall it prevent the designating party from disclosing its own Protected Information or documents to any person. Such disclosure shall not affect any designations made pursuant to the terms of this Order, so long as the disclosure is made in a manner that is reasonably calculated to maintain the confidentiality of the information.

21. Nothing in this Order bars the parties from agreeing to amend this Order, nor prevent any party from moving to amend this Order during or after the conclusion of this

action. This Order shall not prejudice the rights of a party to apply to the Court for any additional protections as that party may consider appropriate.

22. Neither the attorney-client privilege nor work product protection is waived by disclosure connected with this litigation except insofar as such privilege is waived in the manner deemed by relevant jurisprudence to constitute waiver.

23. The parties have the right to seek any appropriate remedies and/or sanctions from the Court for any violations of this Order.

24. The parties may, by stipulation, provide for exceptions to this Order and any party may seek an order of this Court modifying this Order.

So ordered on October 17, 2022.



JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE



IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

SHANNON CORBETT,
Plaintiff,

v.

TEXAS TECH UNIVERSITY,
Defendant.

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CIVIL ACTION NO. 5:21-CV-00281

CONFIDENTIALITY AGREEMENT
REGARDING ACCESS TO PROTECTED INFORMATION

I, _____, hereby acknowledge and agree that:

1. I have read the foregoing Agreed and Stipulated Protective Order dated _____, 2022, which I am informed has been entered in the action currently pending before the United States District Court for the Northern District of Texas, Lubbock Division, captioned *Shannon Corbett v. Texas Tech University*; Civil Action No. 5:21-CV-00281;
2. I understand the terms of the Agreed and Stipulated Protective Order;
3. I agree, upon threat of penalty of contempt and other civil remedies, to be bound by such terms; and
4. I shall irrevocably submit my person to any court of competent jurisdiction for the limited purpose of securing compliance with the terms and conditions of the Agreed and Stipulated Protective Order.

Dated: _____

SIGNATURE

PRINTED NAME

ADDRESS