

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CLAYBORN MORTON : CIVIL ACTION  
 :  
 v. :  
 :  
 F.H. PASCHEN, INC., et al. : NO. 96-7179

**MEMORANDUM AND ORDER**

HUTTON, J.

January 14, 1998

Presently before the Court is the Motion by Defendant Artis T. Ore, Inc. for Protective Order to Prevent the Public Disclosure of Confidential and Proprietary Employee Records (Docket No. 19). For the reasons stated below, the defendant's motion is **DENIED**.

**I. BACKGROUND**

In this matter, defendant Artis C. Ore, Inc. (the "defendant") argues that certain information requested by the plaintiff from the defendant should be protected by a confidentiality order. More specifically, the defendant contends that this Court should grant the defendant's motion to prevent the public dissemination of personnel and payroll records. The defendant asserts that the personnel records should be subject to a confidentiality order because of the privacy interests involved. Similarly, the defendant argues that the dissemination of the defendant's payroll records has the potential to harm the

defendant if the defendant's competitors learn of the information.

## II. DISCUSSION

Federal Rule of Civil Procedure 26(c)(7) allows a court, "upon good cause shown," to order that "a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way." Miles v. Boeing Co., 154 F.R.D. 112, 114 (E.D. Pa. 1994) (quoting Fed. R. Civ. P. 26(c)(7)). Nevertheless, such orders of confidentiality cannot be granted arbitrarily. Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785-86 (3d Cir. 1994).

"Disturbingly, some courts routinely sign orders which contain confidentiality clauses without considering the propriety of such orders, or the countervailing public interests which are sacrificed by the orders." Id. Therefore, this Court will carefully scrutinize the request for the confidentiality order.

A party wishing to obtain a confidentiality order over discovery materials must demonstrate that "good cause" exists for the order of protection. Pansy, 23 F.3d at 786; Miles, 154 F.R.D. at 114.

"Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. The injury must be shown with specificity." Publiker Indus., Inc. v. Cohen, 733 F.2d 1059, 1071 (3d Cir. 1984)). "Broad allegations of harm, unsubstantiated

by specific examples or articulated reasoning," do not support a good cause showing. Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986), cert. denied, 484 U.S. 976 (1987). The burden of justifying the confidentiality of each and every document sought to be covered by a protective order remains on the party seeking the order. Id. at 1122.

Pansy, 23 F.3d at 786-87 (footnote omitted).

In determining whether good cause exists, the federal courts have adopted a balancing approach, under which the following factors may be considered:

- 1) whether disclosure will violate any privacy interests;
- 2) whether the information is being sought for a legitimate purpose or for an improper purpose;
- 3) whether disclosure of the information will cause a party embarrassment;
- 4) whether confidentiality is being sought over information important to public health and safety;
- 5) whether the sharing of information among litigants will promote fairness and efficiency;
- 6) whether a party benefitting from the order of confidentiality is a public entity or official; and
- 7) whether the case involves issues important to the public.

Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995).

"Whether this disclosure will be limited depends on a judicial balancing of the harm to the party seeking protection (or third persons) and the importance of disclosure to the public." Pansy, 23 F.3d at 787 (citing Arthur R. Miller, Confidentiality,

Protective Orders, and Public Access to the Courts, 105 Harv. L. Rev. 427, 435 (1991)).

**A. Payroll Records**

This Court finds that the defendant has not articulated reasons that constitute good cause to justify a confidentiality order with respect to the defendant's payroll records. The information sought to be discovered by the plaintiff relates to the defendant's salary information. The defendant argues that a confidentiality order is necessary to prevent the information from public disclosure, thereby "destroy[ing] any competitive advantage that [the defendant] has worked hard to establish." Def.'s Mem. at 7. This general allegation of potential harm is insufficient to grant the confidentiality order. More specificity is needed. The interest of the public to have access to information concerning judicial proceedings is a strong one. Pansy, 23 F.3d at 789. This Court will not eviscerate this interest by granting a confidentiality order based on such general allegations of harm as submitted by the defendant.

Moreover, the Third Circuit has cautioned against orders of confidentiality "by recognizing the enduring beliefs underlying freedom of information laws: that an informed public is desirable, that access to information prevents governmental abuse and helps secure freedom, and that, ultimately, government must answer to its citizens." Id. at 792. As such, this Court

must exercise the appropriate restraint in considering the defendant's request by requiring more than the general allegations of harm offered by the defendant.

**B. Personnel Records**

The defendant also argues that its personnel records are confidential and should be subject to a protective order. The defendant states that its "employees . . . are private individuals with a privacy interest in their records who could be embarrassed by the release of this information." Def.'s Mem. at 6. The defendant does not attempt to prevent the plaintiff's access of the personnel records; instead, the defendant "merely seeks to minimize any harm that may result to itself or [its] employees if information from the employee records is made public during the course of this litigation." Id. The plaintiff agrees with the defendant's assertions that a confidentiality agreement is warranted.

Although the employment information contained in the defendant's personnel files may be discoverable, "personnel files are confidential and discovery should be limited." Miles, 154 F.R.D. at 115 (citing Orbovich v. Macalester College, 119 F.R.D. 411, 415 (D. Minn. 1988)). Moreover,

There exists a strong public policy against the disclosure of personnel files. In re the One Bancorp Securities Litigation, 134 F.R.D. 4 (D. Me. 1991). Employees "justifiably expect [their personnel files] to be kept

confidential." New York Stock Exch. v. Sloan, 22 Fed. R. Serv. 2d 500, 503 (S.D.N.Y. 1976). "The disclosure of personnel files and evaluations would discourage the candid evaluations of employees and thereby hamper the ability of companies to maintain their standard and improve their performance." Id.

Closterman v. Liberty Mut. Ins. Co., No.CIV.A.93-4458, 1995 WL 472105, at \* 1 (E.D. Pa. Aug. 9, 1995). Accordingly, this Court finds that privacy considerations weigh in favor of a confidentiality agreement.

However, this Court notes that the parties have the option of agreeing privately to keep information concerning the defendant's personnel records confidential, and may enforce such an agreement in a separate contract action. Id. at 788; see, e.g., Marine Midland Realty Credit Corp. v. LLMD of Michigan, Inc., 821 F. Supp. 370, 371-74 (E.D. Pa. 1993). In fact, the language of the parties' memorandums indicates that the parties are amenable to such an agreement.<sup>1</sup> This Court finds that a private agreement is sufficient to protect any privacy interests involved. The defendant has failed to show the need for further protection that an Order of this Court may provide.

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1. The plaintiff states that he "would agree to the confidentiality of information contained in the personnel files of co-employees of plaintiff." Pl.'s Mem. at 2.

### III. CONCLUSION

Consequently, the defendant has not shown "good cause" to justify a protective order. Accordingly, this Court denies the defendant's Motion.

An appropriate Order follows.

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O R D E R

AND NOW, this 14th day of January, 1998, upon consideration of the Motion by Defendant Artis T. Ore, Inc. for Protective Order to Prevent the Public Disclosure of Confidential and Proprietary Employee Records (Docket No. 19), IT IS HEREBY ORDERED that the Defendant's Motion is **DENIED**.

BY THE COURT:

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HERBERT J. HUTTON, J.