

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

MICHELE HERZER GLICKSTEIN : CIVIL ACTION
 :
 v. :
 :
 NESHAMINY SCHOOL DISTRICT, et al. : NO. 96-6236

MEMORANDUM AND ORDER

HUTTON, J.

February 25, 1998

Presently before the Court is the parties' proposed Confidentiality Agreement. For the foregoing reasons, the Court declines to grant the relief sought.

I. BACKGROUND

In this action Plaintiff, Michele Herzer Glickstein, charges her former employer, the Neshaminy School District, and a number of her former colleagues at the Neshaminy High School with sexual harassment and discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2000e17 (1994), and the Pennsylvania Human Relations Act, 43 Pa. Cons. Stat. Ann. § 951 (1996). Upon the Defendants' Motion, the Court sustained these theories of liability but dismissed claims of Intentional Infliction of Emotional Distress and Sex Discrimination in violation of Title IX of the Education Amendments Act of 1972, 20 U.S.C. § 1681 et seq. (1994). See Glickstein v. Neshaminy School Dist., 1997 WL 660636 (E.D.Pa. October 15, 1997). In its October 15, 1997 Memorandum and Order, the Court reviewed Glickstein's

factual allegations in detail, and they need not be repeated here.

Now before the Court is the parties' stipulated Confidentiality Agreement. The Agreement defines "confidential information" to "include, but not be limited to, medical, psychiatric and psychological therapy records, and personal financial records including state, federal and local tax returns and employment records." (Agreement ¶ 1). It then proceeds to delineate how such information may be exchanged and used in the course of the instant litigation. Paragraph two provides that the parties may disclose confidential information to one another as needed, but that employees and agents of each side must be presented with a copy of the Agreement and instructed as to the confidentiality of the material in question. Paragraph three provides that the covered information may be used to prepare or examine witnesses, but that those witnesses should be similarly apprised of the information's confidentiality. Paragraph four, the essence of the Agreement, provides that "[n]o person to whom confidential information of Plaintiff or Defendants is disclosed pursuant to this litigation shall make use of such confidential information, other than for purposes of this litigation." Finally, paragraphs five through nine govern how the covered information is to be kept and returned, and how disputes under the Agreement are to be resolved.

The parties do not support their request with a memorandum of law.

II. DISCUSSION

In recent years, litigants have increasingly asked federal courts to grant protective orders restricting the disclosure of information the parties deem embarrassing or sensitive. See Pansy v. Borough of Stroudsburg, 23 F.3d 772, 785 (3d Cir. 1994). Seizing upon case law that has established the courts' broad powers to grant such protection in appropriate cases, see, e.g., Seattle Times Co. v. Rhinehart, 467 U.S. 20, 35 (1984), they have asked courts to protect--both in and out of court--materials previously understood as unprivileged, public information. See, e.g., Morton v. F.H. Paschen, Inc., 1998 WL 13270 (E.D.Pa. January 14, 1998) (denying defendant protective order for payroll and personnel records). But the general rule in the federal system is still freedom of information. See Leucadia, Inc. v. Applied Extrusion Technologies, Inc., 998 F.2d 157, 161-62 (3d Cir. 1993). And a protective order is still an exceptional form of relief, to be granted only where the most serious prejudice is threatened, even--and perhaps especially--where the parties seek it jointly. See Nault's Automobile Sales, Inc. v. American Honda Motor Co., Inc., 148 F.R.D. 25, 43-44 (D.N.H. 1993).

Federal Rule of Civil Procedure 26(c) establishes the standard for evaluating a request for a protective order. Under Rule 26(c), a court, "upon good cause shown ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or

expense." In this circuit, the good cause requirement is no mere formality. Rather:

"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." Publicker 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.

Morton, 1998 WL 13270, *2 (quoting Pansy, 23 F.3d at 786-87 (footnote omitted)). The specificity requirement not only acts as a strict limit upon what may be protected, but further provides the Court with the information necessary to tailor the least restrictive possible order, should the circumstances justify one.

In determining whether good cause exists, the Court considers a number of factors identified in the Third Circuit's Pansy decision, and enumerated in Glenmede Trust Co. v. Thompson, 56 F.3d 476, 483 (3d Cir. 1995). They are:

- 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.

Id. Therefore, under the Pansy and Glenmede framework, a party desiring a protective order must demonstrate specifically, through an application of these factors, that disclosure would work a clearly defined and serious injury upon him. See Pansy, 23, F.3d at 786; Morton, 1998 WL 13270, *3. It bears repeating that the fact that such an order is sought jointly by the parties in a non-adversarial manner does not excuse the Court from its duty of scrutinizing the merits of a proposed protective order. See Nault's, 148 F.R.D. at 43-44.

Returning to the present case, the parties have offered the Court no substantiation for the requested order. Their definition of confidential information covers a broad range of medical and financial materials that are presumptively public, unless otherwise privileged. See Leucadia, 998 F.2d at 161-62. The parties clearly reached this agreement for the purpose of containing potentially embarrassing facts. But where embarrassment is the chief concern, the embarrassment must be "particularly serious" to suffice. See Pansy, 23 F.3d at 787 (quoting Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir. 1986), cert. denied, 484 U.S. 976 (1987)). Otherwise anxious parties could cloak the legal process with secrecy in

even the most mundane cases.

In any case, all indications are that this is a routine Title VII litigation, undeserving of extraordinary protective measures. If the parties still wish to obtain a protective order, they may re-apply, supplying the Court with the requisite information.

An appropriate Order follows.

