

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	CIVIL ACTION
)	
v.)	Case No. 6:11-cv-1098-JTM-KGG
)	
ANGEL DILLARD,)	
)	
Defendant.)	
_____)	

PLAINTIFF’S MOTION FOR PRIVACY ACT PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c), and the Privacy Act, 5 U.S.C.

§ 552a(b)(11), Plaintiff United States of America moves for a Protective Order. Plaintiff and Defendant have discussed the proposed protective order numerous times, and the United States has incorporated most of Defendant’s changes into the Proposed Protective Order. However, Defendant had not consented to this Motion by the filing deadline, and may file an opposition to the Motion.

In support of this motion, Plaintiff states as follows:

- (1) Defendant has served discovery upon the United States requesting, in pertinent part, production of the following:

REQUEST NO. 1: Please identify and produce a copy of every statement and/or document, from any person, that you (Definition #1, above) or the United States or any of its agents, attorneys, or employees, has taken or obtained regarding or relating to the subject incident, any witness thereto, and/or relating to Angel Dillard, Dr. Mila Means, Dr. Rob Dillard, and/or Andrea Hamel, in any respect. Including all such statements and notes relating to Robert Campbell and any similar interviewees.

REQUEST NO. 2: Please identify and produce copies of all written reports and/or documents, including interview notes, generated or obtained by you (Definition #1, above) or the plaintiff or any United States attorney or agent or employee of the United States, in any capacity

(including any United States Marshal), relating to the subject incident, any witness thereto, and/or relating to, in any manner, Angel Dillard, Rob Dillard, Mila Means, and/or Andrea Hamel. Include any reports or documents relating to Robert Campbell as well as any reports or documents relating to the case United States v. Etheridge, in which Angel and Rob Dillard served as witnesses for the United States.

REQUEST NO. 3: Please identify and produce copies of all investigatory reports and related documents generated by you – the plaintiff, United States, and/or any of its agents or employees – in any matter, concerning the subject incident, any witness thereto, and/or relating to, in any capacity, Angel Dillard, Rob Dillard, Mila Means, and/or Andrea Hamel, including but not limited to law enforcement investigatory reports as well as reports generated for the purposes of civil litigation or any other investigation.

REQUEST NO. 4: Please identify and produce all law enforcement records in the possession of you, the plaintiff, relating to, in any manner, the incident that is the subject matter of this case, and/or to Mila Means, Angel Dillard, Andrea Hamel, or Robert Campbell.”

(2) In response to the foregoing production requests by Defendant, the United States plans to provide Defendant with documents responsive to, or that Defendant might deem responsive to, the above discovery requests. However, certain documents in the possession, custody, or control of the Federal Bureau of Investigation contain confidential information, including, but not limited to, (a) information protected by the Privacy Act of 1974, 5 U.S.C. § 552a, which protects information maintained by a federal agency in a system of records where such information can be retrieved by a person’s name or other identifying information, and (b) information which otherwise may be deserving of protection from public disclosure by federal or local rules of procedure.

Confidential and Private Information

(3) Information in the FBI’s possession, custody, and control implicates the privacy of individuals involved in an investigation, witnesses, and other third-parties (“Protected Information”). Given the private and confidential nature of this information, disclosure of this Protected Information could cause significant harm to individuals

involved in an investigation, witnesses, and other third-parties.

The Need for a Protective Order

(4) The notoriety and publicity attached to the issue of abortion and abortion extremism render the above-stated law enforcement and privacy concerns particularly acute. Specifically, persons involved in an investigation, witnesses, and other third-parties could become the subjects of harassment or could otherwise be targeted if their association with the FBI's investigation of abortion extremism were disclosed.

(5) Plaintiff acknowledges Defendant's interest in obtaining non-privileged, discoverable information identified in the document requests listed in paragraph 1, above.

(6) Under Fed. R. Civ. P. 26(c), the Court "may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including . . . that the disclosure or discovery may be had only on specified terms and conditions."

(7) Pursuant to Federal Rule of Civil Procedure 26(c), and the Privacy Act, 5 U.S.C. § 552a(b)(11) the United States moves for the entry of a Court Order to allow the FBI to disclose and the parties to use documents and information that are responsive to the categories identified in paragraph 1.

(8) The proposed protective order, attached hereto, will allow the FBI to release documents for use by Defendant, while ensuring that confidential and private information will be protected from widespread disclosure, thus alleviating concerns about the ongoing safety, security, and vulnerability of individuals involved in an investigation, witnesses, and other third-parties.

(9) Accordingly, the parties respectfully request that the Court adopt the attached proposed Protective Order.

DATE: November 2, 2012

BARRY R. GRISSOM
United States Attorney
District of Kansas

By: Emily Metzger
Assistant United States Attorney
1200 Epic Center
301 N. Main St.
Wichita, KS 67202
Kansas Bar No. 10750
(316) 269-6481
(316) 269-6484 (fax)

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

JONATHAN SMITH
Chief
Special Litigation Section

JULIE K. ABBATE
Deputy Chief
Special Litigation Section

s/Aaron Fleisher
AARON FLEISHER
Trial Attorney
United States Department of Justice
Civil Rights Division
Special Litigation Section
950 Pennsylvania Ave., N.W.
Washington, DC 20530
(202) 514-6255
(202) 514-6903 (fax)
aaron.fleisher@usdoj.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

UNITED STATES OF AMERICA,	:	CIVIL ACTION
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
ANGEL DILLARD,	:	No. 6:11-cv-1098-JTM-KGG
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2012, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will provide notice of such filing to all registered parties.

s/Aaron Fleisher
AARON FLEISHER
Trial Attorney
Special Litigation Section
Civil Rights Division
UNITED STATES Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 514-6255
Facsimile: (202) 514-6903
aaron.fleisher@usdoj.gov