

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

ALI TALEBINEJAD,)	
Complainant,)	
)	8 U.S.C. § 1324b Proceeding
v.)	OCAHO Case No. 2023B00002
)	
MASSACHUSETTS INSTITUTE OF)	
TECHNOLOGY,)	
Respondent.)	
)	

Appearances: John McGivney, Esq. and David B. Stanhill, Esq., for Complainant
Antonio Moriello, Esq., Leon Rodriguez, Esq., and Edward North, Esq., for
Respondent

ORDER ON CONSENT MOTION FOR ENTRY OF STIPULATED PROTECTIVE ORDER

This case arises under the antidiscrimination provisions of the Immigration and Nationality Act (INA), as amended, 8 U.S.C. § 1324b. On October 13, 2022, Complainant Ali Talebinejad filed a complaint with the Office of the Chief Administrative Hearing Officer (OCAHO) asserting claims of discrimination and retaliation arising under 8 U.S.C. § 1324b against Respondent Massachusetts Institute of Technology (MIT). After an extension of time to do so, Respondent filed an answer on December 28, 2022.

On July 10, 2023, Respondent filed a Consent Motion for Entry of Stipulated Protective Order requesting that the Court enter an attached Joint Stipulation and Order Governing the Treatment of Confidential Material. Respondent asserts that “[d]iscovery in this action will require the production of documents and information that are sensitive and confidential in nature, including confidential or personal information of current [] employees of Respondent.” Consent Mot. 1. Respondent argues that a protective order is “essential for the parties to produce documents containing confidential and sensitive content and complete discovery in this case.” Id.

The Joint Stipulation and Order Governing the Treatment of Confidential Material provides for the designation of certain documents, material, and information as “confidential” or “protected,” and limits the disclosure of these materials to certain individuals such as judicial officers and counsel. Joint Stip. 1–3. The Joint Stipulation provides that “confidential” and “protected” documents include education records under the Family Educational Rights and

Privacy Act; certain medical and financial information about Respondent's employees; confidential and/or commercial information about Respondent; documents and materials protected under applicable rules and statutes, including the Health Insurance Portability and Accountability Act of 1996; and documents or materials containing certain financial or medical information. Id. at 1–2.

“A protective order helps ‘avoid the dissemination of potentially injurious information which might, even unintentionally, jeopardize a litigant’s legitimate interests in non-disclosure’ and ‘encourage[es] the cooperation of litigants in providing sensitive information by ensuring some protection to those interests.’” United States v. Facebook, Inc., 14 OCAHO no. 1386d, 2 (2021) (quoting McCaffrey v. LSI Logic Corp., 6 OCAHO no. 883, 663, 665 (1996)).¹ “Upon motion and a showing of good cause, 28 C.F.R. § 68.18(c) authorizes protective orders.” Id.

“The moving party must ‘show some plainly adequate reason for the issuance of a protective order, and courts have required a particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.’” Id. (citations omitted); *see also* Irizarry-Santiago v. Essilor Indus., 293 F.R.D. 100, 103–04 (D.P.R. 2013) (“In order to justify a protective order limiting a party’s right to disseminate discovery documents, a party must make a showing of good cause, which ‘must be based on a particular factual demonstration of potential harm, not on conclusory statements.’”) (citing Anderson v. Cryovac, Inc., 805 F.2d 1, 7 (1st Cir. 1986)).² “The procedure of determining good cause seeks to accommodate competing interests and requires balancing the harm to the party seeking protection with the importance of open proceedings.” Facebook, Inc., 14 OCAHO no. 1386d, at 2 (citations omitted).

Here, while the Consent Motion itself provides minimal explanation for the request, the Joint Stipulation clarifies that the information sought to be protected constitutes sensitive educational, medical, and financial records, including the records of non-parties and records protected under other statutes. Joint Stip. 1–3. Respondent asserts that this information must be protected in order for the parties to complete discovery in this matter. Consent Mot. 1.

¹ Citations to OCAHO precedents reprinted in bound Volumes 1 through 8 reflect the volume number and the case number of the particular decision, followed by the specific page in that volume where the decision begins; the pinpoint citations which follow are thus to the pages, seriatim, of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume 8, where the decision has not yet been reprinted in a bound volume, are to pages within the original issuances; the beginning page number of an unbound case will always be 1, and is accordingly omitted from the citation. Published decisions may be accessed in the Westlaw database “FIMOCAHO,” or in the LexisNexis database “OCAHO,” or on the website at <http://www.justice.gov/eoir/OcahoMain/ocahosibpage.htm#PubDecOrders>.

² “The OCAHO rule regarding the issuance of protective orders is similar to, and based upon, Rule 26(c) of the Federal Rules of Civil Procedure, and it is therefore appropriate to look for guidance to cases decided by the federal district courts pursuant to that rule.” United States v. Agripac, Inc., 8 OCAHO no. 1017, 268, 270 (1998) (citing United States v. Clark, 5 OCAHO 771, at 389 (1995)).

The Court finds that the potential harm caused by disclosure of sensitive educational, financial, and medical information, as well as the need to facilitate the exchange of such information in discovery, constitutes good cause for the proposed protective order. *See Facebook, Inc.*, 14 OCAHO no. 1386d, at 2–3 (finding the respondent’s argument that public disclosure of sensitive business policies and personally identifiable information of employees and third-parties would harm both the respondent and its employees constituted good cause for a protective order); *Agripac, Inc.*, 8 OCAHO no. 1017, at 272 (“Protective orders may be designed to protect any one of a variety of interests, such as trade secrets or other proprietary information, personal privacy, national security, internal financial information, state secrets, or other classified or sensitive matter . . .”). Moreover, both parties have consented to the proposed protective order.

For the foregoing reasons, Respondent’s Consent Motion for Stipulated Protective Order is GRANTED.

SO ORDERED.

Dated and entered on August 3, 2023.

Honorable John A. Henderson
Administrative Law Judge