

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

ONE WISCONSIN INSTITUTE, INC., *et al.*,

Plaintiffs,

v.

Case No. 15-CV-324

GERALD C. NICHOL, *et al.*,

Defendants.

**CONFIDENTIALITY STIPULATION
AND AGREED QUALIFIED PROTECTIVE ORDER FOR
PRODUCTION OF INFORMATION FROM THE
STATEWIDE VOTER REGISTRATION SYSTEM**

WHEREAS, Defendants Gerald C. Nichol, Elsa Lamelas, Thomas Barland, Harold V. Froehlich, Timothy Vocke, John Franke, Kevin J. Kennedy, and Michael Haas (hereinafter, "GAB") possess information contained in Wisconsin's Statewide Voter Registration System ("the SVRS") that is treated as confidential under Wis. Stat. § 6.36(1)(b)1.a. and Wis. Stat. 6.47, and the statutes are silent as to the circumstances under which that data may be disclosed to parties in litigation other than the circumstances described in the statute;

WHEREAS, Plaintiffs in the above-captioned action served GAB with discovery requests seeking information from the SVRS that is treated as confidential under Wis. Stat. § 6.36(1)(b)1.a. and Wis. Stat. 6.47;

WHEREAS, Plaintiffs in the above-captioned action served GAB with discovery requests seeking information from the SVRS that is treated as confidential under copyrights, patents, licenses, or other intellectual property protections;

WHEREAS, the parties in this action have agreed to request the entry of an Order by the Court permitting the production of information pursuant to the terms of this Stipulation and Agreed Qualified Protective Order; and

WHEREAS, the parties have stipulated to the entry of this Stipulation and Agreed Qualified Protective Order, by their respective counsel, to prevent

unnecessary dissemination or disclosure of confidential information during the course of discovery or otherwise.

STIPULATION AND AGREED QUALIFIED PROTECTIVE ORDER

THEREFORE, THE PARTIES STIPULATE that the following may be entered as the parties' Agreed Qualified Protective Order:

1. The following definitions shall apply to this Stipulation and Agreed Qualified Protective Order:

a. The term "Confidential Information" means information (including the portion of a document that contains information) provided by GAB that relates to voter records contained in the SVRS that is treated as confidential under Wis. Stat. § 6.36(1)(b)1.a. and Wis. Stat. 6.47, including but not limited to dates of birth, social security numbers, and Wisconsin Department of Transportation ("WisDOT") driver license numbers, and Wisconsin state ID numbers of registered voters.

"Confidential Information" also means information (or the portion of a document) that contains SVRS Deliverables, AESM Software, AESM Source Code, and AESM Software Documentation, as well as any documents or other tangible things that Accenture conveyed to the Wisconsin State Elections Board that are marked as "Confidential" or "Proprietary." At or prior to the time of production of Confidential Information that is designated as such pursuant to this paragraph, counsel for GAB, in writing, shall notify counsel for Plaintiffs that such Confidential Information is being produced and identify the information or document containing such Confidential Information.

b. The term "Receiving Party" shall mean the party to whom Confidential Information is produced.

2. Information designated "Confidential" may be disclosed only to the following:

a. Counsel for a party and persons employed in the offices of such counsel;

b. Independent consultants or experts and their staff not employed by or affiliated with a party who are retained either as consultants or expert witnesses for the purpose of this litigation, as long as they agree to be bound by the terms of the Court's order as if they were parties;

c. Employees of any party who may provide actual assistance in the conduct of the litigation in which the information is disclosed, but only to the extent necessary to allow them to provide that assistance;

d. Any defendant in this case;

e. The Court, Court personnel, and professional court reporters and videographers to the extent that Confidential Information is disclosed at a deposition or hearing which they are transcribing or recording.

3. Use of the Confidential Information:

All information designated “Confidential” shall be used by its recipient solely for the purposes of this litigation, including but not limited to investigation, consultation, discovery, depositions, trial preparation, trial, appeal, resolution, mediation, and uses incidental to the proceedings in the case, and not for any business, competitive, or other purpose unrelated to this litigation.

If Confidential Information is contained in deposition or trial testimony, the portion of the transcript containing such material may be designated as containing Confidential Information and, if properly designated, shall be treated in accordance with this Stipulation and Agreed Qualified Protective Order.

4. Maintenance of the Confidential Information:

All Confidential Information that is filed with this Court, including any Confidential Information contained in any pleadings, motions, or other papers filed with this Court, shall be filed and kept under seal until further order of the Court. To the extent all Confidential Information has been redacted from a document, it is not necessary to file the document under seal.

Receiving parties, including counsel for any receiving party, shall keep all Confidential Information received from others in a secure area to prevent disclosure of Confidential Information to persons not authorized under this Stipulation and Agreed Qualified Protective Order. To the extent that Confidential Information is kept or received in electronic form, any computer system on which the Confidential Information is stored must be secure.

5. Return or Destruction of Confidential Information Upon Conclusion of Litigation.

Upon final termination of this action (including all appeals), the Receiving Party must either return to GAB or destroy all Confidential Information received from GAB within 60 days of the demand.

6. The production by GAB of any privileged or arguably privileged materials or information shall not be deemed to be:

a. a general waiver of the attorney-client privilege, the work product doctrine, or any other applicable privilege or protection;

b. a specific waiver of any such privilege with respect to the material being produced or any subject matter thereof; or

c. a waiver of any other rights of GAB under any applicable law.

7. Nothing in this Stipulation and Agreed Qualified Protective Order shall prevent any party from seeking additional relief from this Court. This Stipulation and Agreed Qualified Protective Order may be amended by the written agreement of counsel for the parties in the form of a stipulation that shall be filed with the Court for approval and amended Order.

8. If the receiving party learns that Confidential Information produced to it is disclosed to or comes into the possession of any person other than in the manner authorized by this Stipulation and Agreed Qualified Protective Order, the receiving party responsible for the disclosure shall inform GAB of the disclosure, make reasonable efforts to prevent disclosure by each unauthorized person who received such information, and arrange for the retrieval of the same from the unauthorized person.

9. This Stipulation and Agreed Qualified Protective Order shall remain in full force and effect until modified, superseded or terminated by order of this Court, which may be entered pursuant to the agreement of the parties to this action. This Stipulation and Qualified Protective Order shall continue in effect after termination of this action and continue to be binding upon all persons to whom Confidential Information is disclosed.

STIPULATED AND AGREED.

Dated this 22nd day of September, 2015

Dated this 22nd day of September, 2015

/s/ Clayton P. Kowski
CLAYTON P. KAWSKI
Assistant Attorney General
Wisconsin Department of Justice

Attorney for Defendants

/s/ Joshua L. Kaul
JOSHUA L. KAUL
Perkins Coie LLP

Attorney for Plaintiffs

ORDER

IT IS HEREBY ORDERED that the above Confidentiality Stipulation and Agreed Qualified Protective Order for Production of Information from the Statewide Voter Registration System shall stand as the Order of this Court.

Dated this ___ day of _____, 2015.

BY THE COURT:

HON. JAMES D. PETERSON
U.S. District Judge