

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

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RUTHELLE FRANK, *ET AL.*,

Plaintiffs,

v.

Case No. 11-CV-1128

GOVERNOR SCOTT WALKER, *ET AL.*,

Defendants.

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**CONFIDENTIALITY STIPULATION AND PROTECTIVE ORDER**

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WHEREAS, the Department of Transportation possesses information from Wisconsin operator's licenses and identification cards treated as confidential under Wis. Stat. §§ 85.103, 343.235, and 343.50(8), 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 those statutes;

WHEREAS, DOT has been served with discovery in this matter;

WHEREAS, the parties to this matter have agreed to not oppose the entry of an Order by the Court permitting the production of information pursuant to the terms of this Stipulation and Qualified Protective Order; and

WHEREAS, the parties have stipulated to the entry of this Stipulation and Qualified Protective Order, by their respective counsel, to prevent unnecessary dissemination or disclosure of confidential information during the course of discovery or otherwise.

STIPULATION

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

DEFINITIONS

1. The following definitions shall apply to this Stipulation and Qualified Protective Order:
  - a. The term "Confidential Information" means information or documents that contain information provided by DOT that relates to applicants or operator's license or identification card holders treated as confidential under Wis. Stat. §§

85.103, 343.235, and 343.50(8), including but not limited to names, street addresses, zip codes, and all information pertaining to identification card holders and applicants.

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 to the extent that Confidential Information is disclosed at a deposition or hearing which they are transcribing.

3. Use of the Confidential Information:

All information designated “Confidential” shall be used by its recipient solely for the purposes of this litigation and not for any business, competitive or other purpose.

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

4. Maintenance of the Confidential Information.

All Confidential Information that is filed with this Court, and any pleadings, motions or other papers filed with this Court disclosing any Confidential Information, shall be filed and kept under seal until further order of the Court. Where possible, only confidential portions of filings with the Court shall be filed 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 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 and monitoring pursuant to court order or settlement agreement), the Receiving Party must either return to DOT or destroy all Confidential Information received from DOT within 30 days of the demand.

AGREED QUALIFIED PROTECTIVE ORDER

1. It is hereby stipulated and agreed by and between DOT, the parties, and their respective counsel that the following terms and conditions will apply to Confidential Information produced by DOT in the above-captioned action.
2. All Confidential Information disclosed by DOT pursuant to this Stipulation and Qualified Protective Order shall be used for the sole purpose of preparing for or conducting this litigation, including, but not limited to, investigation, consultation, discovery, depositions, trial preparation, trial, appeal, resolution, mediation, or uses incidental to the proceeding in the case and shall not be disclosed or revealed to anyone other than counsel of record and to individuals employed by or assisting counsel in preparation for, or at the trial of, this action.
3. Any party receiving or obtaining Confidential Information pursuant to this Stipulation and Qualified Protective Order, including counsel for any receiving party, must maintain all Confidential Information in a secure area to prevent disclosure to persons not authorized under this Stipulation and 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.
4. All documents containing Confidential Information that are filed with this Court, and any pleadings, motions or other papers filed with this Court disclosing any Confidential Information, shall be filed and kept under seal until further order of the Court. To the extent all Confidential Information and any other individually identifiable information has been redacted from a document, it is not necessary to file the document under seal.
5. At the conclusion of this action, counsel for each receiving party shall return to DOT all copies (whether paper or electronic) of all documents containing Confidential Information produced subject to this Stipulation and Qualified Protective Order and all documents incorporating such Confidential Information. Alternatively, counsel for each receiving party may provide DOT with an affidavit or other assurances satisfactory to DOT, in DOT's sole discretion, that all copies (whether paper or electronic) of all documents containing Confidential Information produced subject to this Stipulation and Qualified Protective Order and all documents incorporating such Confidential Information have been

permanently and irretrievably destroyed. "Conclusion" includes the conclusion of any appeals and the termination of any monitoring ordered by the Court or agreed to by the parties as part of a settlement. To the extent all Confidential Information has been redacted from a document, this paragraph does not apply to the redacted document.

#### NO WAIVER OF PRIVILEGES

6. The production by DOT 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 DOT under any applicable law.

#### MISCELLANEOUS

7. Nothing in this Stipulation and Qualified Protective Order shall prevent DOT or any party to the litigation from seeking additional relief from this Court. This Stipulation and Qualified Protective Order may be amended by the written agreement of counsel for DOT and 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 Qualified Protective Order, the receiving party responsible for the disclosure must immediately inform DOT of all pertinent facts relating to such disclosure and shall make reasonable efforts to prevent disclosure by each unauthorized person who received such information and shall arrange for the retrieval of the same from the unauthorized person.
9. This Stipulation and 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.

Dated this 9th day of April, 2012

J.B. VAN HOLLEN  
Attorney General

s/Clayton P. Kawski  
Clayton P. Kawski  
Assistant Attorney General  
WI Bar No. 1066228

*Attorney for Defendants*

Dated this 9th day of April, 2012

ACLU OF WISCONSIN FOUNDATION

s/Laurence J. Dupuis  
Laurence J. Dupuis  
WI Bar No. 1029261

*One of the Attorneys for Plaintiffs*

ORDER

IT IS HEREBY ORDERED, that the above Confidentiality Stipulation of the parties shall stand as the Order of this Court:

So Ordered this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

BY THE COURT:

\_\_\_\_\_  
LYNN ADELMAN  
U.S. District Court Judge