

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
IFTIKHAR SAIYED,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 10-0022 (PLF)
)	
COUNCIL ON AMERICAN-ISLAMIC)	
RELATIONS ACTION NETWORK, INC.,)	
)	
Defendant.)	
_____)	
RENE ARTURO LOPEZ, <u>et al.</u> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 10-0023 (PLF)
)	
COUNCIL ON AMERICAN-ISLAMIC)	
RELATIONS ACTION NETWORK, INC.,)	
)	
Defendant.)	
_____)	

MEMORANDUM OPINION AND ORDER

This matter is before the Court on a motion to unseal filed by the plaintiffs, who request that the defendant be ordered to file a redacted copy of its motion for summary judgment and associated exhibits on the public record. Upon consideration of the parties’ filings, the relevant legal authorities, and the entire record in this case, the Court will grant the plaintiffs’ motion to unseal.¹

¹ The filings submitted in connection with this matter include the following: defendant’s notice of filing under seal (“Notice”); defendant’s motion for summary judgment and exhibits thereto; plaintiffs’ motion to unseal (“Mot.”); defendant’s opposition to plaintiffs’ motion to unseal (“Opp.”); and plaintiffs’ reply (“Reply”).

The defendant filed a motion for summary judgment and over four hundred pages of exhibits entirely under seal. In its notice of intent to file under seal, the defendant states that “[m]ost of the testimony and exhibits cited to in the Motion” are subject to the protective order that is in effect in this action. Notice at 1. That protective order, by its terms, is intended to safeguard only “private medical, mental health, and non-public, confidential financial information” produced during discovery. Protective Order for Personal and Private Medical/Mental Health Information or Confidential Financial Information, at 1 (Mar. 16, 2011) (“Protective Order”). Documents containing “personal and private information or confidential business or financial information of any person, firm, partnership, corporation, or association” accordingly may be designated by the parties as “Covered Documents,” and information derived from such documents may be designated as “Covered Information.” *Id.* ¶¶ 1, 3. The protective order further provides: “Those *portions* of any filings with the Court that include Covered Documents or Covered Information shall be made under seal.” *Id.* ¶ 16 (emphasis added). It is the rare document that will be protected in its entirety when referred to in, or appended as an exhibit to, a motion, opposition, or reply.

The plaintiffs maintain that while some information in the defendant’s motion for summary judgment and exhibits may be subject to the protective order, it was improper to file the entire motion and its voluminous exhibits under seal. The plaintiffs seek an order requiring the defendant to file the motion and exhibits publicly, redacting only information that is legitimately subject to the protective order, as well as permission to file their opposition to the summary judgment motion on the public record, with appropriate redactions. The defendant’s opposition to the motion to unseal fails to explain why its entire filing is private, personal, or confidential

within the terms of the protective order, presumably because no such argument could plausibly be made.

This country has a “strong tradition of access to judicial proceedings.” United States v. Hubbard, 650 F.2d 293, 317 n.89 (D.C. Cir. 1980). As a general rule, the courts are not intended to be, nor should they be, secretive places for the resolution of secret disputes. See, e.g., Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978) (“It is clear that the courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.”). Given the policy in favor of public access, and the ease with which confidential information may be redacted from documents before they are filed publicly, the Court concludes that this case can and should be open to the public to the greatest extent possible.

The defendant argues that redacting its summary judgment motion would be “impractical” and would render parts of the motion “virtually unreadable.” Opp. at 6. But it is evident that much of the motion contains little, if any, “private medical, mental health, [or] non-public, confidential financial information” within the scope of the protective order, and it clearly is unnecessary for the entire motion to be sealed simply because it contains or refers to some Covered Information. As for the defendant’s exhibits, they comprise hundreds of pages of depositions, interrogatories, and a variety of public and other records, many of which already have been redacted. The Court is confident that a more rigorous examination of the summary judgment motion and its exhibits undertaken in good faith will lead to the conclusion that substantial portions of both can — and should — be filed on the public record. The fact that the defendant marked some or all of the documents provided in discovery, now filed as exhibits, as

“produced subject to the PCFI Protective Order” is irrelevant once the defendant has made the choice to include them as exhibits to its motion.

If the defendant wishes to pursue its motion for summary judgment, it must file a public version of its motion and exhibits on the Court’s electronic document filing system, redacting only those few portions of the motion and the (already partially redacted) exhibits that fall within the scope of the protective order, while filing under seal (only if absolutely necessary) only those exhibits that cannot fruitfully be redacted. The defendant is also free to withdraw any exhibits that it wishes to protect from public disclosure. Thereafter, if the plaintiffs dispute the defendant’s designation of any particular documents or information as protected, the plaintiffs may move the Court for a determination that the material in question is not properly subject to the protective order. See Protective Order ¶ 12. The Court then will refer the matter to a special master whose fees will be paid by the parties, with any determination by the special master that any party has acted unreasonably serving as a basis for deciding the percentage of the special master’s fees to be paid by each party. Furthermore, if any party acts to obstruct this process, the special master may recommend sanctions.

The plaintiffs also request permission to file a copy of their opposition to the summary judgment motion on the public record, “redacting what is necessary and filing under seal only those portions of the record that are properly the subject of the PCFI Protective Order (*i.e.*, documents containing personal and private identification information and specific confidential medical records).” Mot. at 2. While it is apparent that much of the plaintiffs’ opposition can and should be filed publicly, under the terms of the protective order the plaintiffs’ request is premature. Only after the defendant re-files its summary judgment motion — having

made a more rigorous, good faith effort to distinguish between protected and non-protected information — and after any possible disputes have been resolved about the protected status of information contained in the defendant’s motion and exhibits — either because the plaintiffs have no objection to the defendant’s re-filed motion or because they bring their disagreement to the special master for resolution — will the plaintiffs be able to file a redacted, public version of their opposition memorandum. As this process proceeds, counsel for both sides also should consider withdrawing from their voluminous exhibit binders portions of depositions which are not necessary for the Court to consider in determining whether there are genuine issues of material fact in dispute.

Accordingly, for the foregoing reasons, it is hereby

ORDERED that the plaintiffs’ motion for an order requiring the defendant to file a redacted copy of its motion for summary judgment on the public record [Civil Action No. 10-0022, Dkt. 63; Civil Action No. 10-0023, Dkt. 67] is GRANTED; and it is

FURTHER ORDERED that on or before December 21, 2012, the defendant shall file on the public record a properly redacted copy of its motion for summary judgment and accompanying exhibits.

SO ORDERED.

DATE: December 4, 2012

/s/

PAUL L. FRIEDMAN
United States District Judge