

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

EQUAL EMPLOYMENT	)	
OPPORTUNITIES COMMISSION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CAUSE NO. 3:05-CV-469 AS
	)	
FISERV, INC., and FISERV	)	
SOLUTIONS, INC.,	)	
	)	
Defendants.	)	

**ORDER**

On April 28, 2006, Defendants filed a motion for a protective order in this case, seeking to protect confidential employee records that contain social security numbers, home addresses, and work related evaluations. Plaintiff objected to Defendants' motion. As a result, this Court analyzed the merits of Defendants' motion and found that Defendants had demonstrated good cause for the issuance of a protective order covering confidential materials. However, upon reviewing the proposed protective order, this Court found that the order did not comply with the requirements set forth in Citizens First National Bank of Princeton v. Cincinnati Insurance Co., 178 F.3d 943, 944 (7th Cir.1999) and Pierson v. Indianapolis Power & Light Co., 205 F.R.D. 646, 647 (S.D. Ind. 2002). As a result, on May 11, 2006, this Court denied without prejudice Defendants' motion for a protective order, but gave Defendants leave to re-file their proposed protective order in accordance with Seventh Circuit precedent.

On May 19, 2006, Defendants filed a second motion for a protective order. After reviewing their revised order, this Court is satisfied that it conforms with Seventh Circuit precedent. Because this Court has already determined that good cause exists for a protective

order, this Court now **GRANTS** Defendants’ motion [Doc. No. 42] and enters the following protective order.

Pursuant to Federal Rule of Civil Procedure 26(c) and regarding the matter between Equal Employment Opportunity Commission (the “EEOC “) and Fiserv, Inc. and Fiserv Solutions Inc. d/b/a Mortgageserv (the “Defendants”), the Court hereby finds:

Discovery Has Requested Material Considered Confidential. The Plaintiff has served upon the Defendants certain discovery requests. The Defendants deem the information and documents sought by the Plaintiff’s discovery requests to be confidential; specifically, information and documents regarding employees and former employees of Fiserv Solutions, Inc. other than Jeffrey Stahl, including, but not limited to, Social Security numbers, addresses and information (evaluations, counselings, warnings or any other performance related documents) from the personnel files of those employees or former employees of Fiserv Solutions, Inc. that are considered confidential (“the “Confidential Information”).

The Court finding good cause for entry of the protective order, IT IS HEREBY ORDERED:

1. Confidential Information. “Confidential Information” shall be as defined above.
2. Copies of Confidential Information, Documents that Contain Information and Materials Derived from Confidential Information.

All copies, duplicates, extracts, summaries or descriptions of Confidential Information, and all documents containing information or materials derived from Confidential Information, including all documents produced pursuant to Plaintiff’s Document Requests, shall be treated as confidential and shall be subject to the terms of this Protective Order regarding Confidential Information. The parties shall be allowed to designate as Confidential Information documents previously produced

during discovery. If a party inadvertently fails to designate Confidential Information as such, the designation may be corrected or made belatedly, so long as it is done promptly after learning of the oversight. If either party corrects an improper designation or belatedly designates information or material as Confidential Information, counsel for the other party shall take reasonably necessary steps to ensure the appropriate treatment of such information or material according to the confidentiality designation, including securing return of the information or materials from individuals to whom disclosure was made, but would not be permitted, under the correct designation.

3. Prohibition of Use of Confidential Information and Documents Produced by the Defendants and Information and Materials Derived from Said Documents.

Documents produced by the Defendants that are marked “Confidential” in the above-captioned action, and all information and materials derived from said documents marked

“Confidential”, shall not be disclosed or used by the Plaintiff, counsel for the Plaintiff and the persons or entities listed in paragraph five (5) of this Protective Order (except for those persons and entities listed in sub-paragraphs (g) & (h) of paragraph five (5) of this Protective Order), for any purposes whatsoever other than preparing for, and conducting, the litigation in the above-captioned action, including appeals.

4. Redaction of Social Security Numbers from Documents Produced by the Defendants.

The Defendants may redact Social Security Numbers from any document prior to producing it to the Plaintiff’s counsel in the above-captioned action. In the event that the Defendants produce documents for inspection by the Plaintiff’s counsel, the Defendants have the option of producing the documents for inspection without redacting the Social Security Numbers, and redacting the Social

Security Numbers after the Plaintiff's counsel designates which documents she wants copied and prior to producing copies of said documents to her.

5. Permissible Disclosure of Confidential Information and Documents Produced by the Defendants and Information and Materials Derived from Said Documents.

The Plaintiff, the Plaintiff's counsel, and the persons and entities listed in this paragraph five (5) of this Protective Order (except those persons and entities listed in sub-paragraphs (g) & (h) of this paragraph five (5) of this Protective Order), shall not disclose or permit the disclosure of any document produced by the Defendants marked Confidential, and all information and materials derived from said documents, to any person or entity except for the following:

- a. The Plaintiff.
- b. The Plaintiff's counsel.
- c. Consultants, investigators or experts employed by the Plaintiff's counsel to assist in the preparation and trial of the above-captioned action, including appeals.
- d. Secretaries, administrative assistants, paralegals, legal assistants and clerical personnel who are actively engaged in assisting the persons or entities listed in sub-paragraphs (a) - (c) of this paragraph five (5) of this Protective Order with the preparation and trial of the above-captioned action, including appeals.
- e. Court reporters and persons operating video recording equipment at depositions.

- f. Those persons and entities specifically engaged for the limited purpose of copying documents produced by the Defendants in the above-captioned action.
- g. Persons or entities who possessed documents produced by the Defendants, or knowledge of the information and materials contained in them, prior to their production in the above-captioned action.
- h. The Court.

6. Service of this Protective Order on Non-Parties to Whom the Defendants' Documents, and Information and Materials Obtained from Said Documents, Are Disclosed.

The Plaintiff, the Plaintiff's counsel and any person or entity listed in paragraph (5) of this Protective Order that provides documents produced by the Defendants, or information or materials derived from said documents, to a person or entity listed in paragraph five (5) of this Protective Order (except for those persons or entities listed in sub-paragraphs (g) & (h) of paragraph five (5) of this Protective Order), shall provide a copy of this Protective Order to the person or entity before providing said documents marked Confidential, or information or materials derived from said documents, to said person or entity, and shall obtain agreement to be bound by the terms thereof not to disclose or otherwise use any of the documents or information produced other than in connection with the above-captioned action as provided for in this Protective Order.

7. Maintenance of Confidential Information.

The parties, counsel for the parties and the persons and entities listed in paragraph five (5) of this Protective Order (except those persons and entities listed in sub-paragraphs (g) and (h) of the

paragraph five (5) of this Protective Order) shall employ reasonable measures to control, consistent with this Protective Order, the duplication of, access to, and distribution of copies of Confidential Information.

8. Use of the Defendants' Documents, and Information and Materials Derived from the Defendants' Documents at Deposition.

Nothing in this Protective Order prevents the Plaintiff's counsel from using a document produced by the Defendants and marked Confidential as an exhibit at a deposition or from questioning a party or witness about the contents of said documents, and information and materials derived from said documents, during a deposition in the above-captioned action provided that the Plaintiff's counsel provides the deponent (except for those persons or entities listed in subparagraphs (g) & (h) of paragraph five (5) of this Protective Order), prior to questioning the deponent about the documents and/or information and materials derived from said documents, with a copy of this Protective Order, and obtains the agreement of the deponent to be bound by the terms thereof not to disclose or otherwise use any of the documents or information produced other than in connection with the above-captioned action as provided for in this Protective Order.

9. Filing of Confidential Information with the Court.

Except by agreement of the parties or order of the Court, if any party submits part of any said document to the Court that is marked "Confidential," those documents shall be filed and maintained under seal by the Court. Except by agreement of the parties, no party shall file with the Court any motion, brief or other paper containing or otherwise exhibiting these documents or any portion thereof unless the confidential documents are sealed in envelopes or other appropriate sealed containers on which shall be endorsed the caption in this action, an indication of the nature of the

contents of such sealed container, the words “CONFIDENTIAL – SUBJECT TO PROTECTIVE ORDER” and a statement in substantially the following form:

“This envelope contains documents which are filed in this case by [name of party]. It is not to be opened nor the contents thereof to be displayed or revealed except by order of the Court or by stipulation of the parties.”

10. Use of the Defendants’ Documents, and Information and Materials Derived from the Defendants’ Documents, at a Hearing or Trial.

Subject to the rules of evidence, the Federal Rules of Civil Procedure, and/or the Local Rules for the Northern District of Indiana, documents produced by the Defendants marked Confidential, and information or materials derived from said documents, may be marked as exhibits and offered and/or entered into evidence, at trial or at any Court hearing in the above-captioned action.

11. Non-Termination and the Disposition of Documents Produced by the Defendants at the Conclusion of the Above-Captioned Action.

The provisions of this Protective Order shall not terminate at the conclusion of the above-captioned action. Within one hundred and twenty (120) days of the conclusion of the above-captioned matter, including all appeals and/or the time for all appeals, and upon Defendants’ demand, counsel for the Plaintiff shall: (a) return all documents produced by the Defendants marked Confidential to counsel for the Defendants; and (b) ensure that copies of documents produced by the Defendants marked Confidential and all extracts, summaries or descriptions of said documents, and all documents containing information or materials derived from said documents, are destroyed, and shall certify in writing to counsel for the Defendants that said destruction has occurred. The requirements of this paragraph eleven (11) of this Protective Order do not apply to the Defendants’

documents that were filed with the Court or used as exhibits at a deposition, hearing or trial in the above-captioned action.

12. The Defendants May Seek Further Protective Orders.

Nothing in this Protective Order prevents the Defendants from seeking a protective order from the Court for any document that the Defendants contend should be entitled to greater protection than that provided by this Protective Order or for other protective orders.

13. Release From This Protective Order.

By this Protective Order, the discovering party or an interested member of the public does not waive its right to make application to the Court, with at least seven days notice to the producing party and other parties to the litigation, that any Confidential Information produced by a responding party does not contain sensitive and confidential information, or that in the circumstances the information should be released from the provisions of this Protective Order. If disputes arise concerning the propriety of designating particular documents as Confidential Information, whether certain documents or information should be released from the provisions of this Protective Order, or concerning any other matter relating to the application of this Protective Order, counsel shall attempt to resolve these disputes by agreement before asking the court to resolve these disputes.

Pending resolution of a dispute over whether information or material shall be considered confidential, all parties and other persons bound by this Protective Order shall continue to treat the information or material as confidential until the issue is resolved by the Court.

**SO ORDERED.**

Dated this 26th Day of May, 2006.



s/Christopher A. Nuechterlein  
Christopher A. Nuechterlein  
United States Magistrate Judge