

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by Velma Korbelt,  
Commissioner of Human Rights v. City  
of Saint Paul

**PROTECTIVE ORDER**

The above-entitled matter came on for consideration before Administrative Law Judge Eric L. Lipman upon the motion of Respondent to compel discovery of the Minnesota Department of Human Rights' investigative file in this matter. Complainant filed a memorandum in opposition to Respondent's motion.

The Administrative Law Judge reviewed the Department's investigative file *in camera* and issued an order releasing portions of the investigative file to Respondent subject to the following Protective Order. So as to balance "the benefit to the party seeking access to the data" against the potential for "harm to the confidentiality interests of the entity maintaining the data," the undersigned has withheld from disclosure certain internal agency memoranda and communications. *Compare*, Minn. Stat. § 13.03 (6) (2006). These documents (denominated as pages MDHR 2, and MDHR 205 through 221) include the assessments of Department staff with respect to the meaning of facts documented elsewhere in the investigative file and communications among agency personnel regarding the Department's preparation for prosecution of the instant claims. As to these items, the interests of the Department in shielding the mental impressions, assessments and methods of investigative personnel from disclosure to potential targets of discrimination claims, outweighs the Respondent's interests in accessing every document that "relates to" the underlying claims. Accordingly,

**IT IS HEREBY ORDERED THAT:**

1. "Document" as used herein shall have all of the meanings set forth in Rule 34 of the Minnesota Rules of Civil Procedure. This Order shall apply to documents and other data which are non-public or confidential pursuant to the Minnesota Data Practices Act (Minn. Stat. § 13.01 *et seq.*) which will be provided to Respondent's counsel in reliance on this Order, and to all documents and other data which the undersigned may order in the future to be provided to Respondent's counsel pursuant to Minn. Stat. § 13.03 (2006). Hereinafter, such information shall be referred to as "confidential information."

2. Prior to use or disclosure as provided in this Order, confidential information provided pursuant to this Order shall be marked as “Confidential” by a stamp or other means.

3. Confidential information shall be used only for purposes of this litigation and shall not be disclosed to any person or in any manner other than the persons and manner set forth in this Order. With respect to confidential information, any person indicated on the face of a document and/or item to be its originator, author, or recipient of a copy thereof may be shown the same as long as they are informed that the document or information remains non-public or confidential.

4. Counsel of record may make or cause to be made copies of documents marked “confidential” that are produced to them during this action for use within their respective offices, including use by staff. Until further Order of the Court, such documents and copies, the information contained therein, and information obtained during the course of deposition discovery or written discovery wherein responses are made upon confidential information or documents marked “confidential,” may only be divulged as follows:

a. By counsel of record for the parties, to their employees whose assistance is necessary to conduct this litigation, and to independent and/or consulting experts who were requested by counsel of record to furnish services in connection with the litigation of this action, provided said persons are first provided a copy of this Protective Order and certify in writing that they have read the Protective Order, understand it, and agree to be bound by it. The certificate shall be made in the form of the Affidavit of Confidentiality provided in **Exhibit A**, attached hereto. Confidential information may also be divulged to: witnesses (as provided in paragraph 4.b.); stenographic reporters engaged for depositions or other proceedings necessary to conduct this action; a neutral engaged to conduct mediation or another form of alternative dispute resolution; such persons as counsel shall mutually consent to in writing or on the record prior to the proposed disclosure, where such person signs the Affidavit of Confidentiality prior to disclosure; and to the Administrative Law Judge and the Office of Administrative Hearings, all of whom shall be bound by this Protective Order.

b. Confidential information and documents marked “confidential” may be used in connection with the testimony of any person at deposition or trial, provided, however, that counsel for the party providing the documents and information designated confidential may assert the protection of this Order at any deposition, and, if such protection is asserted, the deponent must be advised of the terms of this Order and agree on the record to abide by such terms. If the deponent refuses to abide by the terms of this Order and the party providing the document and information designated confidential refuses to withdraw its

assertion of confidentiality, the party seeking to use the confidential information shall have the right to suspend the deposition and bring a motion before the Administrative Law Judge seeking a ruling on the issue. The parties agree that the confidential information in question shall not be used during the deposition pending a ruling from the Administrative Law Judge.

5. All extracts and summaries of confidential information and documents designated as confidential shall be treated as protected in accordance with the provisions of this Order.

6. This Order does not preclude any party from asserting discovery objections allowed under the Minnesota Rules of Civil Procedure. This Order is entirely without prejudice to the right of any party to apply to the Administrative Law Judge for any further Protective Order relating to any confidential information or confidential documents, to apply to the Administrative Law Judge for an order compelling production of documents, for modification of this Order, or for an order permitting the disclosure of any documents or information beyond the terms of this Order.

7. Within ninety (90) days of the conclusion of the action, or upon the settlement of all issues in this lawsuit, all confidential documents produced under the provisions of this Order, including all copies, extracts, and summaries thereof, shall be destroyed or returned to the supplying party, except that counsel for the parties may retain one file copy of documents subject to this Order. The provisions of this Order insofar as they restrict the communication or use of confidential information or documents designated confidential, shall continue to be binding after the conclusion of this action.

8. The terms of this Protective Order shall survive and remain in effect after the termination or settlement of this litigation.

Dated: January 23, 2008

s/Eric L. Lipman  
\_\_\_\_\_  
ERIC L. LIPMAN  
Administrative Law Judge

**EXHIBIT A**  
**AFFIDAVIT OF CONFIDENTIALITY**

In the case of:     *State of Minnesota by Velma Korbek, Commissioner,  
Department of Human Rights v. City of St. Paul, Minnesota*  
Case No. 8-1700-18063-2

The undersigned has read and understands the attached Order pertaining to **Confidential Documents and Information** in the above-referenced action and agrees:

1.     That the Affiant shall fully abide by the terms thereof; and
2.     That the Affiant shall destroy or return to the counsel of record identified below all **Confidential Documents and Information** in accordance with Paragraph 7 of the attached Order within ninety (90) days of notice of the final conclusion of this litigation.

\_\_\_\_\_   
Counsel of Record

\_\_\_\_\_   
Address

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_   
Name of Affiant

\_\_\_\_\_   
Signature of Affiant

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Notary Public