

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of MnDOT Detroit Lakes  
Regional Headquarters, Construction  
Project Number 00TZ1791B

**PROTECTIVE ORDER**

During a June 21, 2007 telephone discovery conference, Respondent Comstock Construction ("Comstock") sought the production of documents that included the names of persons who provided information to the Department of Transportation's investigators, as part of an investigation of wages and labor classifications for the above-referenced project. Firmly resolved to protect against reprisal upon any government informant, or the chilling effect against future disclosures by laborers on other projects, the Department opposes disclosure of the investigatory materials to Comstock.

The undersigned conducted an *in camera* review of the documents.

Based upon the submissions of the parties at the June 21, 2007 telephone discovery conference, post-Conference submissions, the arguments of counsel and a review of the investigative materials, the Administrative Law Judge makes the following:

**ORDER**

IT IS HEREBY ORDERED THAT:

1. The Department produce to Comstock's counsel un-redacted copies of:
  - a. Wage Complaint Regarding Comstock Construction, Inc. – Dated October 31, 2001 (two-sided document);
  - b. Investigators Check on Compliance with Labor Provisions – Dated April 18, 2001 (two-sided document); and,

- c. Investigators Check on Compliance with Labor Provisions – Undated, but denominated “Detroit Lakes” and listing 4 employees (two-sided document).

2. The disclosure of the names or other identifying information of any employee referenced in the items disclosed pursuant to paragraph 1, shall only be made to counsel for the parties and other qualified persons. Other qualified persons includes:

- a. The presiding Administrative Law Judge, the Administrative Law Judge’s staff, court reporters and other employees of the Office of Administrative Hearings who may be involved in further proceedings in this matter;
- b. legal assistants and clerical staff to counsel;
- c. court reporters and their associated staff;
- d. persons who held a separate authorization to access this data, prior to entry of this Order; and,
- e. other persons as designated by the Administrative Law Judge in subsequent Orders.

3. Qualified persons who are not government officials, may only use identifying information of the employees referenced in the items disclosed pursuant to paragraph 1, for hearing preparation or other purposes relating to the resolution of OAH Docket No. 8-3001-17706-2.

4. Any recipient of the non-public information pursuant to this Order agrees, by accepting receipt thereof, to be subject to the jurisdiction of the Administrative Law Judge in connection with any use or disclosure of non-public information.

5. No further reproduction of the documents disclosed pursuant to paragraph 1 may be made, except that, as required in this litigation, copies, excerpts, or summaries may be disclosed to persons authorized to receive such information pursuant to this Order.

6. If protected information is discussed or used during the conduct of a deposition, counsel shall take adequate steps so as to prevent the disclosure of protected information to unqualified persons. Additionally, counsel shall direct that any portions of deposition transcripts which include protected information shall be separately designated and secured against unauthorized disclosure.

7. Upon the conclusion of this litigation, counsel for Comstock shall:
  - a) Return all documents containing the information that is the subject of this Protective Order to Department's counsel.
  - b) Submit a complete and accurate list of the names, employers and employment position (if applicable) of each person to whom non-public information was disclosed by Comstock's counsel.

8. This Order does not alter the classification of any data under the Minnesota Government Data Practices Act or Minn. Stat. § 182.659, subd. 8.

Dated: July 13, 2007.

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

### MEMORANDUM

Comstock's request for the discovery of investigative notes and materials places its demand at the intersection of two important sources of law. On the one hand, Minn. Stat. § 181.932, subd. 2, provides that "[t]he identity of any employee making a report to a governmental body or law enforcement official" regarding workplace violations of law is "private data on individuals as defined in section 13.02." By statute and policy, the Department has legitimate interests in guarding against inappropriate disclosures of such investigative information.

Yet, it is also true that the information sought by Comstock is clearly discoverable under Minn. Rule 1400.6700. As part of a larger array of due process guarantees, this Office's discovery standards are generous:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to a claim or defense of any party ... Relevant information sought need not be admissible at the trial if discovery appears reasonably calculated to lead to the discovery of admissible evidence.<sup>1</sup>

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<sup>1</sup> Minn. R. Civ. P. 26.02 (a) (2006); Minn. R. 1400.6700 (2) (2005) ("Any means of discovery available pursuant to the Rules of Civil Procedure for the District Court of Minnesota is allowed").

Counsel for Comstock will benefit from reviewing the un-redacted versions of documents, so as to assure themselves that there are no inconsistencies in the statements of testifying witnesses or other documents to be entered into the record.

In an effort to balance and harmonize these competing interests, an *in camera* review of the documents was conducted. Central to this review was whether and how the privacy and policy interests identified in Minn. Stat. §§ 13.03, subd. 6 and 181.932, subd. 2, might be reconciled with Comstock's interests in aiding the discovery of relevant information.<sup>2</sup>

At the conclusion of the review, it is clear to the Administrative Law Judge that the Department's legitimate interests in guarding against inappropriate disclosures of investigative information can be met and satisfied by a protective order limiting disclosure to, and use by, only certain qualified persons.

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<sup>2</sup> Compare generally, *Commissioner v. Maguire Iron, Inc.*, OAH Docket No. 12-1901-16863-2 (2006) (<http://www.oah.state.mn.us/aljBase/190116863.or.protect.htm>); *Commissioner v. CBI Na-Con, Inc.*, OAH Docket No. 8-1901-12038-2 (2006) (<http://www.oah.state.mn.us/aljBase/190112038.po.htm>).