

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

**IN RE: BLACKWATER ALIEN TORT
CLAIMS ACT LITIGATION**

**Case No. 1:09-cv-615
Case No. 1:09-cv-616
Case No. 1:09-cv-617
Case No. 1:09-cv-618
Case No. 1:09-cv-645
(consolidated for pretrial purposes) (TSE/IDD)**

**DEFENDANTS' UNOPPOSED MOTION TO SEAL
THE APPENDIX TO THE CONSOLIDATED MEMORANDUM OF LAW
IN SUPPORT OF THEIR MOTIONS TO DISMISS**

Defendants hereby move, pursuant to Rule 5(D) of the Local Civil Rules of this Court, for an order permanently sealing the appendix to the consolidated memorandum of law in support of their motions to dismiss (the "Appendix").

Defendants' Consolidated Memorandum of Law is being filed in its entirety on ECF, with the exception of the Appendix. On ECF, in place of the Appendix, Defendants are filing a notice indicating that the Appendix is being filed provisionally under seal. The sealed Appendix is being filed with the Court clerk's office.

Defendants' counsel have conferred with counsel for the Plaintiffs about this motion and have been authorized to represent to the Court that Plaintiffs consent to the relief sought herein.

The reasons that this motion to seal should be granted are set forth in the accompanying Memorandum of Law, filed concurrently herewith. A proposed order is also enclosed.

Dated: July 24, 2009

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS' UNOPPOSED
MOTION TO SEAL THE APPENDIX TO THE CONSOLIDATED
MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTIONS TO DISMISS**

Defendants respectfully submit this memorandum of law in support of their motion to seal the appendix to the consolidated memorandum of law in support of their motions to dismiss (the "Appendix"). Defendants hereby state as follows:

1. The principal defendant in this case, U.S. Training Center ("USTC"), for 6 years provided security services to protect government officials traveling through the most dangerous parts of Iraq pursuant to a contract with and under the close direction of the State Department. Teams of independent contractors ("ICs") working with USTC under the State Department contract escorted U.S. government personnel to and from meetings throughout Iraq. This action involves claims for damages resulting from deaths and injuries alleged to have occurred as a result of the actions of ICs working under the State Department contract.

2. Under Fourth Circuit case law, "an order to seal documents is valid when the district court (1) provides public notice and gives the public an opportunity to object to the sealing; (2) considers less drastic alternatives; and (3) provides specific findings in support of its decision to seal and its rejection of alternatives to sealing." *GTSI Corp. v. Wildflower Int'l, Inc.*, No. 1:09cv123 (JCC), 2009 WL 1248114, at *8 (E.D. Va. Apr. 30, 2009) (Cacheris, J.) (citing *Ashcraft v. Conoco, Inc.*, 218 F.3d 282, 288 (4th Cir. 2000)). Under the

Local Rules of this Court, a memorandum in support of a motion to seal must provide: “(1) A non-confidential description of what is to be sealed; (2) A statement as to why sealing is necessary, and why another procedure will not suffice; (3) References to governing case law; and (4) Unless permanent sealing is sought, a statement as to the period of time the party seeks to have the matter maintained under seal and as to how the matter is to be handled upon unsealing.” Local Civ. Rule 5(B). All of these requirements are satisfied in this case, as discussed more fully below.

3. **Public notice of the motion to seal:** Pursuant to Local Rule 5(D), this motion to seal is being filed publicly on the Court’s electronic filing system, and the Appendix is being filed provisionally under seal with the Clerk’s office. The public filing of the motion to seal provides the required “public notice and . . . opportunity to object to the sealing.” *GTSI Corp.*, 2009 WL 1248114, at *9.

4. **Description of documents to be sealed:** This motion seeks to seal the appendix to the consolidated memorandum of law in support of Defendants’ motions to dismiss. The Appendix contains four documents that were part of the contract between USTC and the State Department: the Worldwide Personal Protective Services II Base Contract (the “WPPS II Contract”), the Worldwide Personal Protective Services II Task Order Request, the Tactical Standard Operating Procedure (the “TacSOP”), and the Worldwide Personal Protective Services I Contract (the “WPPS I Contract”). The information contained in the Appendix is confidential and not available to the public.

5. **Why sealing is necessary:** Sealing is necessary because the documents in the Appendix contain detailed specifications regarding the work that USTC was to perform for the State Department, including very detailed State Department procedures and methods for protecting government officials in Iraq and for training those who protect the officials. As

the WPPS I and II Contracts indicate, USTC was providing protective services in areas that are “extremely dangerous places in which to live and work” and for which the State Department “is unable to provide protective services on a long-term basis from its pool of Special Agents.” (App. 4, 282). The documents in the Appendix describe activities to be conducted by USTC in connection with each stage of a protective security operation, including pre-mission preparation and how to respond to various possible enemy attacks. These documents, if revealed publicly, could give valuable information to those who wish to plan more effective attacks against diplomatic personnel stationed in Iraq. Indeed, as far as Defendants are aware, many if not all of these procedures and methods remain in effect and their disclosure could provide a roadmap for efforts to harm United States government officials.

The documents themselves indicate that they were not meant to be disclosed to the public. The WPPS II Contract specifies that “[a]ll documents and records . . . generated during the performance of work under this contract shall be for the sole use of and become the exclusive property of the U.S. Government,” and that there shall be no publication or dissemination of “any aspect of work performed under this contract,” even after “expiration of termination of th[e] contract.” (App. 131). In addition, the TacSOP indicates the following on the page after its cover: “This publication is the result of lessons learned and contains techniques, tactics and procedures (TTPs) utilized by the Department of State’s (DoS) High Threat Protection (HTP) mission in Iraq. Therefore, the TacSOP is sensitive but unclassified (SBU) and should not be disseminated via unsecured internet nor distributed without prior written permission.” (App. 168).

Courts have consistently indicated that the public’s right of access to judicial records may be outweighed by compelling governmental interests (*see, e.g., Globe Newspaper Co. v.*

Superior Court, 457 U.S. 596, 606-07 (1982)), and foreign policy interests, including protection of government officials, are the most compelling. *See Haig v. Agee*, 453 U.S. 280, 307 (1981). Thus, documents containing sensitive information regarding the conduct of security missions in Iraq, such as the Appendix defendants seek to seal here, should be protected from public disclosure. *See, e.g., United States v. Yousef*, 327 F.3d 56, 168 (2d Cir. 2003) (finding no error in trial court’s sealing of documents relating to government’s procedures in investigating and responding to terrorist threats); *United States v. Lindh*, 198 F. Supp. 2d 739, 742 (E.D. Va. 2002) (Ellis, J.) (granting protective order with respect to “sensitive material ‘vital to national security’”) (citations omitted).

6. **Less drastic alternatives are not available:**

a. Defendants here seek only the sealing of the Appendix, which contains confidential information concerning the protection of diplomats operating in areas marked by severe terrorist threats, and not the motion to dismiss or memorandum of law in support of the motion to dismiss. Sealing only the Appendix is the least restrictive option available, given the sensitive nature of the information involved. Because the sensitive information is contained throughout the Appendix, it is not practical to do a line-by-line or section-by-section “confidentiality inquiry.” *See GTSI Corp.*, 2009 WL 1248114, at *9 (“While it is possible that each of the component parts may not contain trade secrets or be strictly confidential, the exhibit, taken as a whole, contains sensitive pricing information that the Court is satisfied should not be publicly disclosed. At this preliminary juncture, the Court finds it inappropriate to sub-divide the exhibit in order to undertake a separate confidentiality inquiry for each.”).

b. This proposed remedy is far less restrictive than what has been permitted in other cases. For instance, the Fourth Circuit has previously permitted parties to

conduct litigation entirely under seal. *See, e.g., Under Seal v. Under Seal*, 27 F.3d 564, 1994 WL 283977, at *1 (4th Cir. 1994) (unpublished) (“The litigation between the two private parties was conducted under seal, both in the district court and in this Court.”). In addition, courts sometimes permit an entire motion to be filed under seal. Defendants here do not seek either of these remedies: rather, defendants here seek only to seal exhibits that must be kept confidential because they implicate foreign policy concerns.

7. **Proposed period for sealing:** Defendants request that the documents be sealed permanently.

WHEREFORE, defendants request that the Court grant this motion and permanently seal the Appendix. A proposed order is enclosed.

Dated: July 24, 2009

Respectfully submitted,

/s/
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