
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 13-01164-JLS (JPRx)

Date: September 25, 2015

Title: United States ex rel v. Newport Sensors, Inc. et al.

Present: **Honorable JOSEPHINE L. STATON, UNITED STATES DISTRICT JUDGE**

Terry Guerrero
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER DENYING GOVERNMENT’S
REQUEST TO MAINTAIN DOCUMENTS UNDER SEAL**

Before the Court is a Proposed Order Re Election by the United States of America to Decline Intervention, and Re Unsealing of the Complaint. On July 31, 2015, the Court issued an Order Denying Motion to Seal (Doc. 26) and permitted the Government to submit, within ten days, “a properly supported request to maintain under seal the majority of filings in this action.” The present Proposed Order was filed in response to the Court’s July 31, 2015 Order. The Court has reviewed the Government’s recent filing and Memorandum of Points and Authorities in Support thereof and DENIES the Government’s request to maintain the documents under seal.

I. Background

On August 2, 2013, Juan Hong, A Law Corp., the relator in this case, filed a *qui tam* action against the defendants pursuant to the False Claims Act. (Compl., Doc. 1.) This Court issued an Order Extending Seal and Government’s Election Period on November 4, 2013, and subsequent extension requests on May 6, 2014, October 10, 2014 and March 30, 2015. (Doc. 9; Doc. 12; Doc. 16; Doc. 20.) On October 10, 2014, the Court ordered the partial lifting of the seal on the case, allowing the Government “in its discretion, [to] disclose to Defendants Newport Sensors, Inc. and Maria Q. Feng, and their respective counsel the existence of this action . . . and provide them with the Complaint filed in this action, redacted or not, at the [Government’s] discretion, and a copy of the Court’s Order Partially Lifting Seal.” (Doc. 18.)

The Government has declined to intervene in this *qui tam* action (Mem. at 1) and now “ask[s] the Court to keep the [G]overnment’s seal extension requests permanently

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under seal” (*Id.*)

II. Legal Standard

There is “a strong presumption in favor of access to court records.” *Foltz v. State Farm Mut. Auto Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003) (citing *Hagestad v. Tragesser*, 49 F.3d 1430, 1434 (9th Cir. 1995)). To overcome the strong presumption in favor of access, a party applying to seal a judicial record bears the burden to “articulate[] compelling reasons supported by specific factual findings” for the requested sealing. *Foltz*, 331 F.3d at 1135. These reasons must outweigh the general history of access and the public policies favoring disclosure, such as the “public interest in understanding the judicial process.” *Hagestad*, 49 F.3d at 1434 (quoting *EEOC v. Erection Co.*, 900 F.2d 168, 170 (9th Cir. 1990)).

Under the False Claims Act, a relator may file a complaint *in camera*, which then remains under seal for at least 60 days. 31 U.S.C. § 3730(b)(2). For good cause, the Government may move the court to extend the time during which the complaint remains under seal and any such motions and submissions in support thereof are similarly submitted *in camera*. *Id.* “Congress did not intend that the government should be allowed to prolong the period in which the file is sealed indefinitely.” *United States ex rel. Costa v. Baker & Taylor, Inc.*, 955 F. Supp. 1188, 1190 (N.D. Cal. 1997). While the FCA “clearly contemplates the lifting of the seal on the relator’s complaint . . . [it] provides no explicit authority for the court to permit or deny disclosure of material filed *in camera* other than the complaint.” *United States ex. Rel. Erickson v. Univ. of Wash. Physicians*, 339 F. Supp. 2d 1124, 1126 (W.D. Wash. 2004); *United States v. Kitsap Physicians Serv.*, 314 F.3d 995, 998 n.2 (9th Cir. 2002) (“When [the Government elects not to intervene], the relator must unseal the complaint and serve the putative defendants. The case then proceeds as any other civil action in federal court.”).

“In general, other courts faced with this issue have considered lifting the seal on the entire record to be appropriate *unless* the Government shows that such disclosure would: (1) reveal confidential investigative methods or techniques; (2) jeopardize an ongoing investigation; or (3) harm non-parties.” *U.S. ex rel. Lee v. Horizon W., Inc.*, No. C 00-2921 SBA, 2006 WL 305966, at *2 (N.D. Cal. Feb. 8, 2006) (collecting cases). *See also Erickson*, 339 F. Supp. 2d at 1126 (“This court is in agreement with courts that have reasoned that in permitting *in camera* submissions, the statute necessarily invests the court with authority to either maintain the filings under seal, or to make them available to the parties.”). “It is appropriate to unseal a document . . . that reveals only routine

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investigative procedures which anyone with rudimentary knowledge of investigative processes would assume would be utilized in the regular course of business . . . [and] contains no information about specific techniques such as what items might be looked for in an audit, what types of employees of an entity should be contacted and how, what laboratory tests might be utilized, or the like.” *U.S., ex rel. Rostholder v. Omnicare, Inc.*, 799 F. Supp. 2d 547, 549 (D. Md. 2011) (internal citation and quotations omitted); *see also Erickson*, 339 F. Supp. 2d at 1126 (unsealing documents that “merely describe routine investigative procedures”).

III. Discussion

This is the second time the Court has considered this issue. On July 31, 2015, the Court issued an Order Denying Motion to Seal. (Doc. 26.) The Court denied the Government’s Motion without prejudice explaining that “[t]he Government has failed to show good cause to limit the unsealing to only certain specified documents[.]” and ordered that “the Government may submit, within ten (10) days . . . , a properly supported request to maintain under seal the majority of filings in this action.” (Doc. 26 at 1.)

In the present submissions and in response to that Order, the Government states that there is “a very strong interest in maintaining [its prior seal extension requests] under seal.” (Mem. at 3.) It argues that “[t]he requests tell the [G]overnment’s investigatory techniques, decision-making processes, research, and reasoning that apply in hundreds of similar cases[.]” and that unsealing them would allow Defendants insight into the Government’s strategic and tactical approach. (Mem. at 3-4.)

Aside from these conclusory arguments, the Government fails to identify any specific investigatory techniques or substantive details contained within the documents at issue that could jeopardize the prosecution of future cases. In reviewing the documents at issue, the Court finds only general descriptions of routine investigative procedures. For instance, various *in camera* declarations reveal merely that the Government’s investigation had been delayed due to the government “shutdown” (Doc. 8), or that the Government had examined documents and identified additional files and witnesses to review. (Doc. 15.) At a similar level of generality, various memoranda indicate the Government examined documents, interviewed potential witnesses, and recommended further investigation. (Doc. 13.) At most, these documents reveal that the Government interviewed the Department of Defense contracting officer and assisted the Department of Army in serving the second Inspector General subpoena (Doc. 15) or indicate the Government assembled an investigative team with agents from three named government

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agencies, interviewed witnesses, reviewed documents and issued a subpoena (Doc. 11 ¶ 3). Rather than revealing confidential investigatory techniques, such details describe only routine processes used in the normal course of governmental investigations.

IV. Conclusion

The Government has twice failed to show good cause to limit the unsealing to only certain specified documents. The Court’s review of the record reveals only descriptions of routine investigative methods. Therefore, the request is DENIED.

The Clerk is directed to unseal the case, and to unseal all documents in the record. This directive includes all documents previously designated as “in camera.”

Additionally, the Clerk is directed to mark the Government’s Proposed Order with “Denied by Order of the Court” and file it on the docket. Likewise, the Clerk is directed to file the Government’s previously lodged Memorandum of Points and Authorities in Support of [Proposed] Order Re Election to Decline Intervention and Re Unsealing of the Complaint, which the Court quotes in this Order.

IT IS SO ORDERED.

Initials of Preparer: tg