

## **EXHIBIT C**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO

VETERANS FOR COMMON SENSE and )  
VETERANS UNITED FOR TRUTH, )

No. C 07-3758-SC

Plaintiffs, )

v. )

**[PROPOSED] PRIVACY ACT  
PROTECTIVE ORDER**

Hon. GORDON MANSFIELD, Acting )  
Secretary of Veterans Affairs, *et al.*, )

Defendants. )

Upon consideration of the Joint Motion for a Privacy Act Protective Order, and pursuant to 5 U.S.C. § 552a(b)(11), IT IS HEREBY ORDERED that the Federal Defendants are authorized to release to Plaintiffs, their counsel, and to the Court in this case, government records containing Privacy Act protected information, without obtaining prior written consent of the individuals to whom the records pertain. Such disclosure is subject to the following conditions:

1. For purposes of this Order, the term “record” shall have the same meaning as set forth in the Privacy Act, 5 U.S.C. § 552a(a)(4). This Order applies to government documents or information contained in records that are subject to the Privacy Act only and does not create greater or lesser rights or obligations than those contained in the Privacy Act. Government document summaries, statistical compilations, or other summary records that do not contain information by which to identify specific individuals (whether by name, social security number, symbol or other form of personal identification), and which are not subject to the Privacy Act, are not covered by this Order.

2. Government records that identify specific individuals shall be marked “PRODUCED SUBJECT TO PROTECTIVE ORDER” or “SUBJECT TO PROTECTIVE ORDER” or contain a similar marking, and may be used only for purposes of this litigation. For any government records, such as computer data, whose medium makes such stamping impracticable, the diskette case and/or accompanying cover letter shall be marked “PRODUCED

1 SUBJECT TO PROTECTIVE ORDER” or “SUBJECT TO PROTECTIVE ORDER” or contain  
2 a similar marking. Answers to interrogatories, if any, that contain protected information derived  
3 from records subject to the Privacy Act also shall be marked “PRODUCED SUBJECT TO  
4 PROTECTIVE ORDER” or “SUBJECT TO PROTECTIVE ORDER” or contain a similar  
5 marking, and may be used only for purposes of this litigation. Except as provided herein, no  
6 person having access to the records designated as subject to this Order or the information therein  
7 shall make public disclosure of those records or that information without further Order of the  
8 Court.

9 3. Any government documents or information produced by the Defendants that are  
10 designated as subject to this Order shall be used by the Plaintiffs or their representative(s) only  
11 for purposes of litigating this case, including any subsequent appeals, and shall not be disclosed  
12 by the Plaintiffs or their representative(s) to the public or any other person or entity for any  
13 reason other than for purposes of litigating this case, including any subsequent appeals.

14 4. Except as otherwise ordered by this Court, any government documents or  
15 information subject to the Protective Order may be disclosed only to the following persons: (a)  
16 parties and counsel for the parties in this action; (b) partners, associates, secretaries, paralegal  
17 assistants, and employees of such counsel to the extent reasonably necessary to render  
18 professional services in this case; (c) persons retained by the parties or their counsel to assist in  
19 discovery, preparation for any hearing, or to serve as expert witnesses, provided that such  
20 disclosure is reasonably and in good faith calculated to aid in litigating this case; (d) persons with  
21 factual knowledge relating to this case who may be called as witnesses at any hearing, provided  
22 that such disclosure is reasonably and in good faith calculated to aid in litigating this case; and  
23 (e) any deponent in these cases during his or her deposition.

24 5. All individuals to whom documents or information subject to this order are  
25 disclosed shall be informed of and shall agree with the terms of this Order and shall not  
26 otherwise disclose the documents or information subject to this Order to the public or to any  
27 person or entity, and shall acknowledge their agreement to comply with the provisions of this  
28 Order by signing a copy of the attached acknowledgment form. Plaintiffs’ counsel will retain

1 copies of the acknowledgment forms until such time as this litigation, including all appeals, is  
2 concluded. Should Plaintiffs or their counsel wish to disclose records or information subject to  
3 this Order to any persons other than those indicated in this paragraph and paragraph 4, above,  
4 Plaintiffs' counsel must obtain the Federal Defendants' consent. If the Federal Defendants do  
5 not consent to disclosure, then Plaintiffs or their counsel may, on motion, seek modification of  
6 this Order from the Court.

7         6.       The Plaintiffs or other third party to this Order may challenge the government's  
8 Privacy Act designation of a document or information by moving the Court to have the document  
9 or information made public. In addition, each party reserves the right to move to modify the  
10 terms of this Protective Order at any time, and each party reserves the right to oppose any motion  
11 to modify the terms of the Protective Order.

12         7.       Unless the Court has previously ruled that a document or information is not subject  
13 to the Privacy Act, government documents or information subject to this Protective Order may be  
14 presented to the Court only under seal. Should Plaintiffs seek to use Privacy Act protected  
15 documents or information in open Court or at trial, orally or through documents, including as trial  
16 exhibits, or seek to file such information as part of a public filing (e.g., a pleading, motion, exhibit  
17 or expert report), they must first seek an Order from the Court ruling that the information is  
18 relevant and may be publicly disclosed.

19         8.       The protected documents and discovery responses, and all copies thereof, produced  
20 in connection with this case must be destroyed or returned by Plaintiffs or other receiving party to  
21 the Federal Defendants upon the conclusion of this case, including any subsequent appeals.  
22 Within thirty days of the conclusion of this case and any subsequent appeals, Plaintiffs or  
23 Plaintiffs' counsel or other person receiving protected documents and discovery responses must  
24 certify in writing that all protected documents and discovery responses, and all copies thereof,  
25 have been destroyed or returned to the Federal Defendants. Within forty-five days of the  
26 termination of this case, including any subsequent appeals, Plaintiffs or Plaintiffs' counsel or  
27 other person receiving protected documents and discovery responses must also certify in writing  
28 that any documents they or their attorneys or agents have created which contain Privacy Act

1 protected information derived solely from the protected documents and discovery responses have  
2 been destroyed or redacted; provided, however, that no party is required to destroy or redact any  
3 document that has been filed with this Court or with a Court of Appeals of competent jurisdiction  
4 in connection with this case.

5 9. Neither the United States of America, United States Department of Justice, the  
6 Department of Veterans Affairs, the U.S. Court of Appeals for Veterans Claims, nor any of their  
7 officers, employees, or attorneys, shall bear any responsibility or liability for any unauthorized  
8 disclosure of any documents obtained by Plaintiffs' counsel under this Order, or of any  
9 information contained in such documents.

10 10. This Order does not constitute any ruling on the question of whether any particular  
11 document or category of information is properly discoverable and does not constitute any ruling  
12 on any potential objection to the discoverability, relevance, or admissibility of any record, other  
13 than objections based on the Privacy Act.

14 11. This Order does not apply to any information or documents other than information  
15 or documents that are subject to the Privacy Act, and the terms and conditions set forth herein  
16 shall not apply to the disclosure of any classified national security information or any information  
17 subject to a claim of privilege or other basis of exclusion, and this Order shall not be precedent for  
18 adopting any procedure with respect to the disclosure of any such other information.

19 IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2007

20  
21  
22 Hon. Samuel Conti  
Senior United States District Judge

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO

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**ACKNOWLEDGMENT OF PRIVACY  
ACT PROTECTIVE ORDER**

I, \_\_\_\_\_, hereby acknowledge that I have read and understand the Privacy Act Protective Order entered in this action. I hereby agree to be bound by the terms of the Order. Specifically:

1. I agree that I will use records and information protected by the Order only for purposes of this litigation, including any appeals, and not for any other purpose of any kind, including that I will not disclose any such records or information to the public.

2. I agree that I will return all records subject to this order produced by the Federal Defendants to counsel for the Federal Defendants at the termination of this litigation or, when I am no longer a party to or assigned or retained to work on this case, to the Plaintiffs' counsel who at the termination of this litigation will destroy such records or return them to the Federal Defendants. I also agree to destroy or redact, or to return to Plaintiffs' counsel for destruction or redaction, any records created that contain information subject to this Order, within thirty days after the termination of this litigation.

3. I (or Plaintiffs' counsel on my behalf) will certify to the Federal Defendants that any documents created that contain information subject to this Order have been destroyed or redacted within forty-five days after the termination of this litigation.

1 4. I agree that I will disclose records and information protected by the Order solely to  
2 to the Court (under seal), the parties to this action and their attorneys of record, persons regularly  
3 in the employ of such attorneys, and any experts or consultants hired for this case by the parties or  
4 their attorneys and who (except the Court, Federal Defendants' employees and Federal  
5 Defendants' counsel) have signed an acknowledgment like this one and have a need for such  
6 information to perform duties specifically related to the conduct of this litigation.

7 5. Should I wish to disclose the records which are subject to the Order to any  
8 additional persons except those indicated in the Order and herein, I will first seek the Defendants'  
9 consent. If the Defendants do not consent to the disclosure, then I may, on motion, seek  
10 modification of the Order from the Court.

11 6. I agree that any documents or information subject to the Order may not be  
12 disclosed in open Court, including as or through trial exhibits or through a public filing (e.g., a  
13 pleading, motion, exhibit or expert report) without first obtaining consent of the Court. I further  
14 agree that those portions of any filings that contain Privacy Act information subject to this Order  
15 shall be filed under seal and may not be filed publicly without leave of the Court.

16 7. I hereby confirm that my duties under this Acknowledgment shall survive the  
17 termination of this case and are binding upon me for all time.

18 8. I hereby consent to the personal jurisdiction of the United States District Court for  
19 the Norther District of California in the above-captioned case for the purpose of enforcing the  
20 aforementioned Order.

21  
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23 \_\_\_\_\_  
[signature]

24  
25  
26 \_\_\_\_\_  
[print name]

27 DATED: \_\_\_\_\_

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