

FILED

STATE OF NORTH CAROLINA                      IN THE GENERAL COURT OF JUSTICE  
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WAKE COUNTY                      18 CVS 014001  
WAKE CO., C.S.C.

COMMON CAUSE, *et al.*,                      )  
   *Plaintiffs,*                      )  
                        )  
   v.                      )                      ORDER  
                        )  
Representative DAVID R. LEWIS,                      )  
in his official capacity as Senior                      )  
Chairman of the House Select                      )  
Committee on Redistricting, *et al.*,                      )  
   *Defendants.*                      )

THIS MATTER comes before the Court upon the remaining relief requested by Geographic Strategies LLC (“Geographic Strategies”) in its June 15, 2019, motion for leave to request an order of protection under Rule 45 of the North Carolina Rules of Civil Procedure or, in the alternative, to intervene for a limited purpose under Rule 24 of the North Carolina Rules of Civil Procedure. Geographic Strategies’ motion ultimately sought to designate certain files as “Highly Confidential” in accordance with the Consent Protective Order entered into by the parties to this action on April 5, 2019.

On July 12, 2019, the Court, in its discretion, granted in part and denied in part Geographic Strategies’ motion, finding that Geographic Strategies was, pursuant to N.C.G.S. § 1A-1, Rule 45(c)(7), a person “affected by” a subpoena issued by plaintiffs to Stephanie Hofeller for the production of certain computer files; that it had made an initial, colorable claim of ownership of work product or other privileged documents contained within the produced files (the “Hofeller files”); and, that it may seek an order of protection after reviewing the files. The Court also temporarily designated the files as Confidential in accordance with the parties’ Consent Protective Order as an interim measure to allow Geographic Strategies a reasonable time to inspect the Hofeller files.

Following Geographic Strategies' review of the Hofeller files and subsequent designations, the Court entered an Order on November 4, 2019, wherein the Court lifted the temporary confidentiality designation for a large portion of the files, designated as Confidential the 950 files to which plaintiffs did not object, and ordered Geographic Strategies to provide further substantiation of its claims supporting the entry of a protective order.

After considering the parties' respective briefs submitted pursuant to the Court's November 4, 2019, Order, the additionally-submitted affidavit of Dalton Oldham, plaintiffs' submitted objections to Geographic Strategies' "Log 3," and having reviewed the record proper, the Court, in its discretion, will deny in part Geographic Strategies' outstanding requests for an order of protection for the reasons that follow.

First, despite the Court, in its November 4, 2019, Order granting Geographic Strategies an additional opportunity to make a sufficient showing that specific files in the Hofeller files were indeed Geographic Strategies' files and could indeed be properly protected by an order of the court, Geographic Strategies has failed to do so.

In its November 4, 2019, Order, the Court, in an attempt to carefully consider the positions of the parties involved and the purported nature of the files, simply sought further corroboration of Geographic Strategies' blanket claims of ownership and protectability. The Court's Order, however, was not an invitation for Geographic Strategies to submit an argumentative brief replete with perceived errors and grievances in opposition to this Court's ruling. If Geographic Strategies felt the Court's Order needed revision, then it could have filed a motion to revise the Order pursuant to Rule 54(b) of the North Carolina Rules of Civil Procedure. *See Doe v. City of Charlotte*, No. COA19-497, 2020 N.C. App. LEXIS 611, at \*9-14 (Ct. App. Aug. 18, 2020). But it has filed no such motion.

Likewise, instead of simply complying with the Court's November 4, 2019, Order to provide the Court access to the files still at issue, Geographic Strategies failed to do so within the reasonable time frame allotted by the Court's Order. Notably, it appears to the Court that Geographic Strategies decided to place the burden of compliance with the Court's Order on the Court itself and its resources—rather than taking the necessary steps to ensure access to the files was provided by it or its hired vendor within the specified time. It is the parties, however, that are bound to comply with orders of the Court.

Had there been any timely assistance given, or the provision of sufficient details to substantiate Geographic Strategies' claims of ownership of protectable files, then the Court might have reached a different decision. Instead, the Court concludes that Geographic Strategies has failed to meet its burden for entry of a protective order.

Second, even if Geographic Strategies had made a sufficient showing, the files to which Geographic Strategies has laid its claim of protection have become part of the public domain as a result of the actions of persons not a party to this action. Accordingly, the Court concludes that Geographic Strategies' request to designate the remaining Hofeller files as Highly Confidential under the parties Consent Protective Order is largely moot.


Geographic Strategies has therefore failed to show good cause for the entry of a protective order, except as to all but a select few files to which Plaintiffs have consented to the entry of a protective order. As a result, the Court will, in its discretion, deny most of the relief requested by Geographic Strategies.



WHEREFORE, the Court, for the reasons stated herein and in the exercise of its discretion, hereby ORDERS as follows:

1. Geographic Strategies' requested relief is DENIED in part and GRANTED in part as follows:
  - a. As to the 135,724 files specified in the Court's November 4, 2019, Order as lacking substantiation, Geographic Strategies' requested relief is denied, and the Court's July 12, 2019, temporary confidentiality designation is hereby lifted as to these files.
  - b. As to the 832 files identified in Geographic Strategies' Log 3, Geographic Strategies' requested relief is denied and the Court's July 12, 2019, temporary confidentiality designation is hereby lifted as to these files, except as to the 36 files to which plaintiffs do not object. Regarding these 36 files, Geographic Strategies' requested relief is granted, and the Court's temporary designation of these files as Confidential under the parties' Consent Protective Order is hereby made permanent.
  - c. As to the 34,666 files related to Florida, Ohio, and Texas on Geographic Strategies' original Logs 1 and 2, Geographic Strategies' requested relief is denied, and the Court's July 12, 2019, temporary confidentiality designation is hereby lifted.
2. This Order is not intended to preclude or impair any other court of competent jurisdiction from exercising its discretion and compelling inspection, production, or dissemination of any of the Hofeller files in connection with any other matter.
3. Neither is this Order intended to contradict any existing order or ruling issued by any other court of competent jurisdiction with respect to the confidentiality, use, or ownership of any of the Hofeller files.

So ORDERED, this the 16 day of September, 2020.

  
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Vinston M. Rozier, Superior Court Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing document was served upon the persons indicated below by emailing a copy thereof to the address below, in accordance with the March 13, 2019 Case Management Order:

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This the 25<sup>th</sup> day of September 2020.



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