

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION**

IN RE GRAND JURY SUBPOENA

)
) Case No. 1:13MC00025
)
) **OPINION**
)
) By: James P. Jones
) United States District Judge
)

The recipient of a grand jury subpoena duces tecum, referred to herein as Company A, has moved for a protective order, which the government opposes. For the reasons set forth, the motion will be denied.

A grand jury empanelled in this district has issued a subpoena duces tecum to Company A, requiring it to produce certain records from a prior lawsuit in another United States district court in which Company A was a party, which has been since settled. The parties in the case are subject to a Protective Order entered by that court. The Protective Order allowed the parties to designate disclosures in the case as “Protected Information,” limiting their use to the purposes of that case and prohibits other disclosure “absent further order of the Court or written consent of the Disclosing Party.”

Company A represents that the documents subpoenaed by the grand jury contain Protected Information within the meaning of the Protective Order and

indeed contain highly confidential and proprietary information, the disclosure of which would likely result in irreparable damage to it.

Company A recognizes that it is obligated by law to produce the subpoenaed documents to the grand jury, even in spite of the Protective Order. *See In re Grand Jury Subpoena*, 836 F.2d 1468, 1478 (4th Cir. 1988) (holding that existence of a protective order entered in a civil case is not sufficient grounds to quash a subpoena duces tecum issued by a grand jury). Nevertheless, Company A seeks “additional measures to ensure that the Protected Information contained in the [subpoenaed documents] will be protected from public disclosure.” (Br. in Supp. of Mot. 4.)

While acknowledging the secrecy of grand jury proceedings, *see* Fed. R. Crim. P. 6(e)(2)(B); *In re Bragg*, No. 1:11CR00026-002, 2012 WL 566958, at *3 (W.D. Va. Feb. 21, 2012) (noting that “unauthorized distribution of grand jury testimony strikes at the core of grand jury secrecy, a fundamental principle of the federal criminal justice system”), Company A is concerned because it believes that an adversary in the former suit will take the position that the disclosure of the subpoenaed documents to the grand jury now relieves him of any obligation under the Protective Order or the final settlement agreement to keep the documents confidential. Company A represents that it has already been the victim of this person’s use and disclosure of its confidential documents. Accordingly, it requests

that one or more of the following additional protections be imposed by order of this court: (1) That the documents not be disclosed outside of government attorneys or personnel without prior notice to Company A and further order of this court; (2) That this court make an express finding that Company A's response to the grand jury subpoena does not constitute a waiver of its confidentiality obligations under the Protective Order or any such obligations associated with the final settlement agreement in the other case; (3) That in the event the government discloses any of the documents to any party or person involved in the other case, it provide them a copy of this court's order; and (4) That the government return the documents to Company A at the conclusion of the grand jury proceedings or any resulting criminal prosecutions.

While I am not unsympathetic to Company A's situation, I find that it has not shown cause for the entry of its suggested protective order. Its production of documents to the grand jury is not voluntary. The grand jury subpoena trumps the Protective Order and any other confidentiality requirement related to the other case. Any unauthorized disclosure in violation of those requirements may be enjoined or punished by that court. The obligations of grand jury secrecy will be

enforced by this court and I have no indication but that the government will take those obligations seriously, as it has in the past.¹

Under these circumstances, to condition Company A's obligation to produce the subpoenaed documents with protections beyond what the law already provides would be unnecessary and, as the government suggests, a precedent which may in future cases interfere with the grand jury's investigatory functions.

For these reasons, the motion is denied and by separate order I will direct that the subpoena be obeyed.

DATED: March 26, 2013

/s/ James P. Jones
United States District Judge

¹ For example, in this district the government obtains court approval before disclosing any grand jury matters post-indictment to any defendant, which approval requires the defendant to agree to confidentiality. In addition, it routinely returns subpoenaed documents upon request at the conclusion of the grand jury investigation or any resulting prosecution.