

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 03M

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PEOPLE OF THE STATE OF NEW YORK, BY LETITIA  
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW  
YORK,

Plaintiff,

- v -

THE NATIONAL RIFLE ASSOCIATION OF AMERICA,  
INC., WAYNE LAPIERRE, WILSON PHILLIPS, JOHN  
FRAZER, JOSHUA POWELL,

Defendants.

INDEX NO. 451625/2020

MOTION DATE 12/22/2021

MOTION SEQ. NO. 021

**DECISION + ORDER ON  
MOTION**

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HON. JOEL M. COHEN:

The following e-filed documents, listed by NYSCEF document number (Motion 021) 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 509, 523, 524, 525, 526, 527

were read on this motion to/for

SEAL

Third-Party Christopher W. Cox (“Cox”) moves to seal his letter motion for costs incurred in responding to a subpoena and certain exhibits thereto including his employment agreement (“Employment Agreement”) with Defendant the National Rifle Association (“NRA”) and emails referencing the Employment Agreement (NYSCEF 485-491). Plaintiff The People of the State of New York by the New York Office of the Attorney General (“OAG”) opposes. No other party has filed papers in support of or in opposition to Cox’s motion to seal. For the reasons set forth below, Mr. Cox’s motion is DENIED.

**BACKGROUND**

The OAG issued a third-party subpoena to Cox, a former NRA executive, dated August 17, 2021 (“Subpoena”) (NYSCEF 516) requiring that documents be produced by September 6, 2021. On September 5, 2021, counsel for the NRA wrote to counsel for Cox requesting that,

pursuant to an agreement made in an arbitration between Cox and the NRA (“Arbitration”), that Cox provide any responsive documents to the Subpoena to the NRA for review prior to producing them and mark any produced documents “confidential” (NYSCEF 518). On September 17, 2021, Cox, through counsel, responded to the NRA and, among other things, questioned why the NRA had not moved to quash or modify the Subpoena and asserted that he could respond to the Subpoena under Rule 18 of the 2018 CPR Non-Administered Arbitration Rules which provides that documents can be produced where “*otherwise required by law. . .*” (NYSCEF 519).<sup>1</sup> No agreement was reached and, on October 14, 2021, the OAG filed a request pursuant to Commercial Division Rule 14 for a pre-motion conference vis-à-vis its Subpoena to Cox (NYSCEF 402) and a conference was scheduled for December 10, 2021.

Prior to the December 10, 2021 conference, on December 6, 2021, counsel for Cox filed the instant motion to seal his letter motion (Mot. Seq. 021) (NYSCEF 482). Cox argues that sealing is warranted because his employment agreement “contains sensitive non-public financial information of the NRA, including the benefits that it provided me as an executive during my tenure at the NRA” as well as Cox’s “own sensitive financial information, including various benefits the NRA provided me during my employment” and that his letter motion as well as

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<sup>1</sup> The entire rule provides as follows:

Rule 18: Confidentiality

Unless the parties agree otherwise, the parties, the arbitrators and CPR shall treat the proceedings, any related discovery and the decisions of the Tribunal, as confidential, except in connection with judicial proceedings ancillary to the arbitration, such as a judicial challenge to, or enforcement of, an award, and unless otherwise required by law or to protect a legal right of a party. To the extent possible, any specific issues of confidentiality should be raised with and resolved by the Tribunal.

emails between counsel include details of the Employment Agreement (NYSCEF 484 [Cox Affidavit ¶¶4-5], NYSCEF 493 [sealing spreadsheet]).

During the December 10, 2021, conference attended by counsel for the OAG, the NRA and Cox, the Court authorized the OAG to make a motion to compel compliance with the Subpoena (NYSCEF 511 [Tr. at 27]). The OAG made its motion to compel compliance with the Subpoena on December 15, 2021 (Mot. Seq. No. 023) (NYSCEF 514).

On December 20, 2021, the OAG filed opposition to Cox's motion to seal (NYSCEF 523). The OAG argues that Cox's NRA salary and benefit information is already public information because the NRA is required to include that information in its annual IRS Form 990. (NYSCEF 525 [2019 NRA Form 990]). The OAG also argues that the NRA's highest-paid employee, Defendant Wayne LaPierre's, employment and post-employment agreements are a matter of public record, having been filed in *In re National Rifle Association of America*, No. 21-30085-hdh11 (Bankr. N.D. Tex.) (the "Bankruptcy") (NYSCEF 526-527). The OAG also submits that documents from the Arbitration were produced in the Bankruptcy (NYSCF 540 [Tr. at 7]). Finally, the OAG argues that Rule 18 of the 2018 CPR Non-Administered Arbitration Rules does not require confidentiality in this proceeding (NYSCEF 523 at 4). No other party filed papers in support of or in opposition to Cox's motion to seal.

On December 22, 2021, Cox submitted papers in response to the OAG's motion to compel stating that he had no objection to producing documents; that any delay in production was due to the NRA's belated objections; and that he requested his "reasonable expenses" be paid by the OAG (NYSCEF 529). Also on December 22, 2021, the NRA submitted papers in opposition to the OAG's motion to compel and argued that Cox's motion to file documents under seal be granted "on the basis of the IICPR's confidentiality rule" among other arguments

(NYSCEF 530). Notably, counsel for the NRA references provisions of the Employment Agreement in its submissions to the Court. (NYSCEF 538 [Letter from Svetlana Eisenberg dated January 4, 2022]).

On January 5, 2022, the Court issued an oral decision on the OAG's motion to compel following oral argument (NYSCEF 540) and a written Decision and Order was filed on January 6, 2022 (NYSCEF 539). The Court held that the documents generated in the Arbitration were discoverable because they were produced in connection with the Bankruptcy and, additionally, that Rule 18 of the 2018 CPR Non-Administered Arbitration Rules did not prohibit production. (NYSCEF 540 [Tr. at 36-39]). The Court afforded the NRA a "pre-review" period (*id.* at 41-42), directed the OAG to pay Cox's "reasonable production expenses" (*id.* at 42-43) and determined that any "contractual or indemnification" dispute between Cox and the NRA should be determined in "a different forum" (*id.* at 44).

### DISCUSSION

Pursuant to § 216.1(a) of the Uniform Rules for Trial Courts, this Court may seal a filing "upon a written finding of good cause, which shall specify the grounds thereof. In determining whether good cause has been shown, the court shall consider the interests of the public as well as of the parties" (22 NYCRR § 216.1[a]).

The Appellate Division has emphasized that "there is a broad presumption that the public is entitled to access to judicial proceedings and court records" (*Mosallem v Berenson*, 76 AD3d 345, 348 [1st Dept 2010]). "Since the right [of public access to court proceedings] is of constitutional dimension, any order denying access must be *narrowly tailored to serve compelling objectives*, such as a need for secrecy that outweighs the public's right to access" (*Danco Labs., Ltd. v Chemical Works of Gedeon Richter, Ltd.*, 274 AD2d 1, 6 [1st Dept

2000] [emphasis added]; *see also, e.g. Gryphon Dom. VI, LLC v APP Intern. Fin. Co., B.V.*, 28 AD3d 322, 324 [1st Dept 2006]). “Furthermore, because confidentiality is the exception and not the rule, ‘the party seeking to seal court records has the burden to demonstrate compelling circumstances to justify restricting public access’” (*Maxim, Inc. v Feifer*, 145 AD3d 516, 517 [1st Dept 2016] [citations omitted]).

Cox’s generalized assertions of confidential or propriety information are not sufficient to establish a compelling justification to seal the documents at issue in this case – especially where Cox claims he does not object to production and the NRA declined to move to quash or otherwise impose conditions vis-à-vis the Subpoena and instead made reference to the Employment Agreement in this proceeding and produced relevant Arbitration documents in the Bankruptcy – (*see Darabont v AMC Network Entertainment LLC*, 2020 WL 3799132 [Sup Ct, NY County 2020]). Cox cannot reasonably claim that his compensation from the NRA is confidential when it is in fact a matter of public record. (*Norddeutsche Landesbank Girozentrale v Tilton*, 165 AD3d 447, 448 [1st Dept 2018]).

Second, the fact that the parties have entered into Agreements with a confidentiality provisions, is not, by itself, a reason to grant the motion (*see Aktiv Assets LLC v Centerbridge Partners, L.P.*, 2020 WL 2520019 [Sup Ct, NY County 2020] [finding that parties argument that “the Agreements are subject to a confidentiality provision [was] unavailing,” as they did not demonstrate “that public access to the documents at issue will likely result in harm to a compelling interest or that no alternative to sealing can adequately protect the threatened interest”] [internal citations omitted]). Even when parties stipulate to sealing, the Court must make an independent determination that sealing is appropriate.

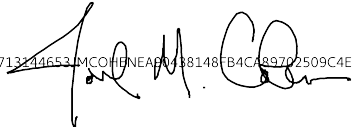
Finally, for the reasons set forth on January 5, 2022, with respect to the OAG's motion to compel, Rule 18 of the 2018 CPR Non-Administered Arbitration Rules does not impose a confidentiality restriction on this Court (*see Angiolillo v Christie's, Inc.*, 64 Misc 3d 500, 524 [Sup Ct NY County 2019] ["mere designation of information as confidential does not guarantee that such information will be kept sealed. Good cause must still be shown"], *affd, appeal dismissed*, 185 AD3d 442 [1st Dept 2020]).

\* \* \* \*

Accordingly, it is

**ORDERED** that Cox's motion to seal the documents filed as NYSCEF 485-491 is **DENIED**, and the provisional sealing of those documents pending resolution of this motion is vacated.

This constitutes the decision and order of the Court.

<p><u>7/13/2022</u> DATE</p>	<div style="text-align: right; margin-bottom: 10px;">   <small>20220713214653JMC0HNEAP0388148FB4C89702509C4E855B63</small> </div> <p style="text-align: center;">JOEL M. COHEN, J.S.C.</p>				
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