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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**IN RE RIVER PARK SQUARE  
PROJECT BOND LITIGATION**

NO. CV-01-0127-EFS

**ORDER GRANTING THE CITY'S  
MOTION FOR ORDER REMOVING  
CONFIDENTIALITY DESIGNATION OF  
TWO DEPOSITIONS**

A telephonic hearing was held in the above-captioned matter on May 1, 2007. Before the Court was the City of Spokane's ("City") Motion to Remove Confidentiality Designation on Two Depositions. (Ct. Rec. 2610.) River Park Square Developer Defendants (RPS) oppose the motion, contending the confidential labels on Steve Rector's deposition should not be removed because his deposition excerpt relates to tenant financial matters and Gavin Cooley's deposition testimony addresses communications associated with the mediation. (Ct. Rec. 2614.) After reviewing the submitted material and relevant authority in light of the case history, the Court is fully informed and grants the motion for the reasons given below.

**A. Background**

Near the beginning of this lawsuit in 2002, an Order Regarding Confidential Information and Documents (Ct. Rec. 288; hereinafter referred to as "the Confidentiality Order") was entered. This Order

1 allowed a document to be treated as "confidential" for a number of  
2 reasons, including if its release "can be shown, with some specificity,  
3 to cause a significant harm to the party's competitive and financial  
4 position." *Id.* ¶ 1(b).

5 In connection with the mediation in this matter, then-Magistrate  
6 Judge Lonny Suko entered mediation confidentiality orders. *See also* LR  
7 16.2(b)(4). Settlement agreements were reached during the mediation  
8 process. This Court allowed the parties to engage in certain limited  
9 discovery so that the Court could be fully informed in order to rule on  
10 the City's request for a reasonableness determination of a proposed  
11 settlement with RPS. The depositions of Steve Rector, the Chief  
12 Financial Officer of RPS, and Gavin Cooley, the City's Chief Financial  
13 Officer, were taken during this discovery period. Mr. Cooley's entire  
14 deposition was labeled "confidential," while only a portion of Mr.  
15 Rector's deposition was labeled "confidential."

16 On June 15, 2004, the Court found communication between the City and  
17 its expert advisors on the subject of issuing general obligation bonds  
18 to replace revenue bonds were not "for the purposes of mediation" and  
19 therefore were discoverable. (Ct. Rec. 1890.) This lawsuit was resolved  
20 through settlements.

21 Following, the City reached a settlement in a related lawsuit in  
22 which the plaintiffs were claiming the City violated Washington Public  
23 Records Act by failing to disclose the documents developed by Mr. Cooley  
24 to assist the City in determining whether it should settle with RPS. The  
25 City then filed the instant motion to remove the confidentiality  
26 designations on these two depositions.

1 **B. Analysis**

2 The Confidentiality Order allows a party to file a motion to request  
3 that a confidentiality designation be modified if the parties are unable  
4 to reach agreement. (Ct. Rec. 288 ¶¶ 9 & 14.) As the party seeking the  
5 continued treatment of these depositions as "confidential," RPS has the  
6 burden of showing that the confidential designation is appropriate; this  
7 burden is imposed both by the Confidentiality Order (Ct. Rec. 288 ¶ 9)  
8 and also case law, see *San Jose Mercury News, Inc. v. U.S. Dist. Ct - N.*  
9 *Dist. (San Jose)*, 187 F.3d 1096, 1103 (9th Cir. 1999), and *Public Citizen*  
10 *v. Liggett Group, Inc.*, 858 F.2d 775, 780 (1st Cir. 1988).

11 The Court concludes RPS failed to establish good cause to continue  
12 to designate Mr. Rector's deposition excerpts as confidential. Mr.  
13 Rector discusses financial matters; however, RPS failed to explain why  
14 1998 and 1999 financial matters need to be deemed confidential.

15 At his deposition, Mr. Cooley testified about his financial analysis  
16 regarding the reasonableness of the City's settlement. Settlement  
17 discussions are generally privileged; however, the Court previously  
18 determined that any analysis done by Mr. Cooley relied upon by the  
19 Spokane City Council was discoverable as it was not "for the purposes of  
20 mediation." (Ct. Rec. 1890.) Consistent with this ruling, Mr. Cooley's  
21 deposition testimony is not confidential.

22 Accordingly, **IT IS HEREBY ORDERED:**

23 1. the City of Spokane's Motion to Remove Confidentiality  
24 Designation on Two Depositions (Ct. Rec. 2610) is **GRANTED**. Gavin Cooley  
25 and Steve Rector's depositions are no longer confidential.

26 2. This file shall be **CLOSED**.

