



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

PROTECTIVE ORDER AMENDMENT: May 7, 2026

CBCA 7915, 8303

VENERGY GROUP, LLC,

Appellant,

v.

DEPARTMENT OF VETERANS AFFAIRS,

Respondent.

John M. Manfredonia of Manfredonia Law Offices, LLC, Cresskill, NJ, counsel for Appellant.

Jennifer L. Hedge, Office of General Counsel, Department of Veterans Affairs, Pittsburgh, PA; and Jared M. Levin, Office of General Counsel, Department of Veterans Affairs, Brockton, MA, counsel for Respondent.

LESTER, Board Judge.

ORDER¹

Respondent, the Department of Veterans Affairs (VA), has requested permission to provide to the VA's Office of Inspector General (OIG) and other agencies materials that are

¹ This order is being published to assist in providing greater transparency to the public about the manner in which the Board has addressed issues in cases before it. Although single-judge orders like this one are binding in the appeals in which they are issued, they are, consistent with Board Rule 1(d)(2) (48 CFR 6101.1(d)(2) (2025)), not precedential in other appeals before the Board.

the subject of a protective order that the Board previously entered in these appeals. Because the existing protective order allows the VA to provide documents to other federal agencies for “official use,” the VA does not need the Board’s permission to provide the protected materials to those agencies or to the Inspector General (IG) for the purposes that it has identified. Even if it did not, we could not, in light of the authority provided the VA OIG by the Inspector General Act (IG Act), 5 U.S.C. § 406 (2024), preclude the VA from providing the VA OIG with materials in the VA’s possession. Nevertheless, to alleviate any concerns that counsel for the VA may have, we amend the existing protective order expressly to permit the VA OIG and other agencies to receive protected material for the purposes that the VA has identified.

Background

I. The Board’s Protective Order

The Board issued a protective order in these consolidated appeals on March 19, 2025, which allows a party to designate documents or information being produced to the opposing party or filed with the Board as “protected.” The protection applies to particular types of information, as follows:

The term “protected material” as used in this protective order shall mean documents, information, or other tangible items that (a) constitute or contain confidential research, confidential financial information and commercially sensitive information, proprietary commercial information, and/or trade secrets, the disclosure of which might, with reasonable probability, adversely affect a party’s or non-party’s competitive business position and/or affect a party’s or non-party’s legally protected rights and (b) are designated protected material by the procedures set forth in this order.

Corrected Protective Order ¶ 1. If a party receives protected material from the opposing side, it can use it only for purposes of this litigation and “specifically not for any other litigation, business, or other purposes unless approved in writing by the parties to this order.” *Id.* ¶ 9.

“Except to the extent that a party or individual has received independently from this action one or more of the exhibits marked . . . as protected,” the only persons initially allowed access to the protected material were (1) counsel for the appellant, his staff, and appellant’s employees; (2) “[e]mployees of the respondent agency, the Department of Veterans Affairs (VA), including counsel for the VA”; (3) “the Board, its employees, and designated court reporters”; and (4) if the Board’s final decision is appealed to the United States Court of Appeals for the Federal Circuit, employees of the United States Department of Justice.

Corrected Protective Order ¶ 10. Other individuals, such as expert witnesses and consultants, can obtain (and have obtained) access to protected material either by agreement of the parties or through execution of a non-disclosure agreement maintained by the receiving party's counsel, subject to the distribution and use limitations set forth in the protective order. *Id.* ¶¶ 11-12.

That being said, the protective order contains a caveat about the VA's ability to distribute protected information to individuals within the Federal Government but outside of the VA if distribution is for "those persons' official use":

Nothing in this protective order shall be construed to prohibit the disclosure by any federal agency party of materials covered by the protective order to other appropriate persons within the federal government, for those persons' official use.

Corrected Protective Order ¶ 13. The order also recognizes the limitations that the Freedom of Information Act (FOIA), 5 U.S.C. § 552, places on the Board's authority to create an absolute preclusion on disclosure of documents in the Government's possession:

This order is subject to the exception that appeal records maintained at the Board are accessible to the public under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (2018), and its implementing executive branch regulations. Any document in the Board's possession and subject to this order remains releasable to the public unless determined exempt from release under one of the FOIA exemptions. Should a FOIA request be made, the party generating a record being sought that is subject to this order will be afforded an opportunity to assert the applicability of an exemption. Nothing in this order, however, shall render inapplicable any statutory or regulatory limitations on such disclosure that may otherwise exist. *See, e.g.*, 18 U.S.C. § 1905; 31 U.S.C. § 716(e)(1).

Corrected Protective Order ¶ 13.

II. The VA's Motion to Release Protected Material to Other Agencies

On April 28, 2026, the VA filed a motion requesting "permission to provide documents identified as [protected] to [the VA OIG], the Department of Justice [(DOJ)], the Small Business Administration [(SBA)], and other federal agencies (as needed)" for investigatory and enforcement purposes identified and explained in the VA's motion. Respondent's Motion at 1. By order dated April 29, 2026, in response to the VA's request

for expedited consideration of its motion, the Board directed the appellant to indicate, no later than May 1, 2026, any basis for objecting to the VA's request.

In its May 1 response, the appellant represented that, "while the protective order permits limited disclosure within the federal government for 'official use,' that provision should not be construed as authorizing unrestricted dissemination within the federal government without appropriate safeguards" and that "[t]he protected documents at issue were produced in reliance on the protective order and within the strict confines of the disputed termination for default." Appellant's Response at 1. It indicated that "[t]he contemplated disclosure to entities such as the VA OIG, the DOJ, and SBA, particularly for investigative and enforcement purposes, extends beyond routine internal use and raises significant concerns regarding fairness and potential prejudice." *Id.* at 1-2. Appellant then asked that, "to the extent the Board permits any such disclosure, . . . it be subject to reasonable conditions, including" the following:

1. Identification of the specific documents to be disclosed;
2. Strict limitation of use to "official use only" within the receiving agency; and
3. Preservation of all confidentiality protections, including restrictions on further dissemination or public disclosure.

Id. at 2.

Discussion

With regard to the VA's request to provide protected documents to the VA OIG, paragraph 10 of the existing protective order allows VA employees access to protected material. Even if that did not cover the VA OIG, paragraph 13 of the protective order, on its face, permits access by both the VA OIG and other federal agencies for the purposes that the VA has identified. As previously noted, paragraph 13 of the corrected protective order provides that "[n]othing in this protective order shall be construed to prohibit the disclosure by any federal agency party of materials covered by the protective order to other appropriate persons within the federal government, for those persons' official use." One of the Board's predecessors, the General Services Board of Contract Appeals, previously interpreted language similar to that used in the protective order here as broadly authorizing the agency holding protected documents to provide them to a congressional committee in response to that committee's request. *See Network Solutions, Inc. v. Department of the Air Force*, GSBCA 11498-P, et al., 92-3 BCA ¶ 25,084, at 125,050-51. We see no reason to depart from a broad interpretation of "official use" now. One of the main purposes of agency IGs is "preventing fraud and abuse in the programs of their departments." *University of Medicine*

& *Dentistry of New Jersey v. Corrigan*, 347 F.3d 57, 65 (3d Cir. 2003). Certainly, the IG’s review of protected material in response to the VA’s request here would constitute an appropriate official use of that material in accordance with the Board’s protective order. Similarly, to the extent that DOJ or the SBA is asked to assist the IG in an official capacity in supporting the IG, or if DOJ conducts its own investigation, the existing protective order permits access to protected material for that purpose.

In fact, at least as far as the VA OIG is concerned, we lack any authority to preclude the VA from providing it protected materials from these appeals. The IG Act expressly contemplates that an agency will share information in its possession with its IG so that the IG can fulfill its audit and investigative functions, authorizing the IG

(1) to have timely access to all records, reports, audits, reviews, documents, papers, recommendations, or other materials available to the applicable [agency] which relate to programs and operations with respect to which that Inspector General has responsibilities under this [Act];

....

3) to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by this [Act] from any Federal, State, or local governmental agency or unit thereof; [and]

....

6) to have direct and prompt access to the head of the [agency] involved when necessary for any purpose pertaining to the performance of functions and responsibilities under this [Act].

5 U.S.C. § 406(a)(1)(A), (3), (6). That is, “[t]o facilitate [the IG’s] function, the Act gives to each [IG] access to the agency’s documents and agency personnel.” *United States Nuclear Regulatory Commission v. Federal Labor Relations Authority*, 25 F.3d 229, 234 (4th Cir. 1994); see *United States v. Kilpatrick*, No. 1:18-CR-201-LMM-JKL-1, 2018 WL 7016350, at *2 (N.D. Ga. Nov. 1, 2018) (in a magistrate’s recommended decision, finding that the VA OIG “was statutorily authorized to access [a veteran’s] VA medical records” in the VA’s possession, despite the veteran’s claims of privacy), *report adopted*, 2018 WL 6503504 (N.D. Ga. Dec. 10, 2018); *Koch v. White*, 35 F. Supp. 3d 37, 40 (D.D.C. 2014) (The IG Act “grants broad authority to the OIG to access ‘all records, reports, audits, reviews, documents, papers, recommendations, or other material available’ to the relevant agency.”). We have no authority to restrict that access.

The appellant asks us to require the VA to identify to it the specific documents to be disclosed. The existing protective order, which provides the VA with authority to provide the documents to the VA OIG and other agencies for the purposes identified, contains no such requirement, and we will not add one now or otherwise involve the Board in the VA OIG's investigation. The appellant should assume that the VA OIG has access to all materials from these appeals.

The appellant asks us to impose a “[s]trict limitation of use to ‘official use only’ within the receiving agency.” Appellant’s Response at 2. The protective order that the Board entered on March 19, 2025, remains in place in these appeals, and we direct that any agencies receiving protected materials honor that protective order’s spirit and purpose to the extent that it is not inconsistent with and does not infringe upon the powers granted the VA OIG under the IG Act. Pursuant to paragraph 4 of the protective order, all protected material should already be marked with a legend reading “Protected Material To Be Disclosed Only In Accordance With Board Order In CBCA 7915 & 8303.” Beyond that existing protective order legend, we will not direct the use of specific monikers on documents provided to agencies. As indicated in paragraph 13 of the protective order, all protected material remains subject to the protections and requirements of FOIA.

Decision

Although we view the existing protective order as authorizing the VA to provide protected materials to the agencies that it has identified for the purposes that it has identified, we understand counsel for the VA’s concern about and desire to avoid a possible violation of the protective order’s terms. To alleviate those concerns, we amend paragraph 13 of the protective order to add the following provision to define its use of the words “official use,” as follows: “In allowing disclosure to individuals in the VA Office of Inspector General (OIG) or in other federal agencies for those persons’ ‘official use,’ the term ‘official use’ includes investigatory and enforcement purposes consistent with the VA OIG’s or outside agency’s mission.” Respondent’s request to release protected material to the VA OIG and, if necessary, other agencies for the purposes identified in respondent’s motion is **GRANTED**.

Harold D. Lester, Jr.
HAROLD D. LESTER, JR.
Board Judge