

No. _____

In the Supreme Court of Texas

IN RE TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION,

Relators.

Original Proceeding from Cause No. DC-16-15296,
134th District Court, Dallas County, Texas

PETITION FOR WRIT OF MANDAMUS

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STATEMENT OF THE CASE

Nature of the Case: The underlying products-liability suit was tried in August 2018. Toyota is appealing the judgment. MR367-70.

During discovery, Plaintiffs were permitted to depose four witnesses about various Toyota entities' information technology systems—in particular, each entity's database architecture, access policies, database contents, and usage. Plaintiffs' counsel also read lengthy excerpts of privileged documents into the deposition transcripts. Toyota designated these transcripts confidential pursuant to the parties' agreed protective order, and identified the specific pages and lines that contained confidential information.

After trial, the court partially granted Toyota's request, but refused to protect large swaths of the deposition testimony containing highly sensitive, confidential information from public disclosure. App. C. None of the information at issue was introduced at trial or otherwise made public.

Trial Court: Hon. Dale B. Tillery, 134th Judicial District Court, Dallas.

Course of Proceedings: The trial court stayed its order pending mandamus review. Toyota sought relief from the Fifth Court of Appeals in January 2019, explaining that (1) Toyota took all necessary steps to maintain the confidentiality of the testimony and the information disclosed in that testimony, and that (2) it is well established that confidential information must be protected from disclosure. MR1318-39; *see In re Ford Motor Co.*, 211 S.W.3d 295 (Tex. 2006).

Six months later, the Fifth Court denied relief in a six-paragraph memorandum opinion authored by Justice Brown and joined by Justices Schenck and Reichek. *In re Toyota Motor Sales, U.S.A., Inc.*, 2019 WL 3244490 (Tex. App.—Dallas July 19, 2019) (App. D).

STATEMENT OF JURISDICTION

This Court has jurisdiction under Texas Government Code § 22.002(a). This petition previously was presented to the Fifth Court of Appeals at Dallas, which denied relief. *See* Tex. R. App. P. 52.3(e).

ISSUE PRESENTED

Did the trial court clearly abuse its discretion (and leave Toyota with no adequate remedy at law) by failing to enforce the plain terms of an agreed protective order—and permitting public disclosure of Toyota’s highly sensitive, confidential information—in contravention of this Court’s well-established precedent?

INTRODUCTION

Data security is more critical than ever. And for the last several years, criminal attacks by hackers continue to be the leading cause of data breaches. As the FBI Director recently explained:

Every company is a target. Every single bit of information, every system, and every network is a target. Every link in the chain is a potential vulnerability. . . .

Once someone has access to your data, your ideas, and your innovation, it's practically impossible to pull it back. Even worse, you may never even know you've got a problem.¹

For precisely these reasons, Toyota—like many companies throughout the State and across the Nation—takes great care to ensure its data security and to protect information about its databases from public disclosure.

Unless this Court intervenes, highly confidential, commercial information about Toyota's databases will be exposed to the world with no protections whatsoever. This Court's well-established precedent clearly prohibits the dissemination of Toyota's confidential information, and only mandamus can prevent it from occurring.

¹ Christopher Wray, *The FBI and Corporate Directors: Working Together to Keep Companies Safe from Cyber Crime* (Oct. 1, 2018), <https://www.fbi.gov/news/speeches/the-fbi-and-corporate-directors-working-together-to-keep-companies-safe-from-cyber-crime>.

During discovery in the underlying products-liability suit, Plaintiffs sought testimony regarding the architecture, contents, usage, and access policies of numerous databases that Toyota maintains. Relying on an agreed protective order to protect its confidential information from public disclosure, Toyota produced corporate representatives to testify about this highly sensitive, closely guarded confidential information. The same deposition transcripts also contain Toyota's attorney-client privileged communications, which Plaintiffs' lawyers read into the transcripts over Toyota's vigorous objections.

This privileged and confidential information played no role at trial. Now that trial proceedings have concluded and the case is on appeal, Plaintiffs can have no conceivable interest in *publicly disseminating* such information, particularly given that the protective order permits discovery sharing with counsel in similar cases.

Toyota has consistently maintained that keeping this information confidential is critically important. Public disclosure of the depositions would reveal proprietary and commercially sensitive information not only about *what* data Toyota collects, tracks, and maintains, but also about *how* Toyota uses that data—from vehicle performance to

regulatory compliance to customer service—and *where* that data is stored. And public disclosure would make Toyota’s data systems vulnerable to attack—putting at risk not only competitively sensitive information, but also the personally identifiable information of Toyota’s customers.

The trial court’s refusal to enforce the plain language of the agreed protective order—which protects “information that constitutes a trade secret or reveals confidential research, development, or commercial information,” MR22—to prevent these serious risks is “an error for which there is no adequate appellate remedy.” *In re Ford Motor Co.*, 211 S.W.3d 295, 299, 302 (Tex. 2006).

In *Ford*, this Court granted mandamus to enforce a virtually identical protective order for the same reasons. The Court explained:

Agreed protective orders and confidentiality agreements matter; they matter because the parties vest confidence in them; and such confidence vanishes if these important protections are casually disregarded. Indeed, the phrase “protective order” becomes a misnomer if parties are unable to trust them—or trust the courts that enforce them—thus fueling litigation that is far more contentious and far more expensive.

Id. at 301 (internal citation omitted). Mandamus is just as necessary now to ensure not only that Toyota can keep its confidential information

confidential, but also that litigants across Texas can trust that protective orders will protect confidential information and that courts will enforce them.

STATEMENT OF FACTS

I. Toyota closely safeguards its valuable databases, which contain highly sensitive and confidential commercial information.

Toyota has expended considerable time and resources developing its proprietary databases, which it designed specifically to meet its various business needs. MR1061; MR1084; *see* MR73 (Karibian Dep. 122-24). Details about the databases—their structure and contents, how and by whom they are used, and the business purposes they serve—are both extremely valuable and highly sensitive. MR43; MR65; MR114-15.

Especially concerning to Toyota is the potential for hackers to use information about the databases' architecture, contents, and access policies to gain illicit access to the databases. MR43; MR65-66; MR1060. A data breach could expose Toyota's highly confidential information about its products, customers, and processes—and would cause Toyota and its customers significant, irreparable harm. MR43; MR65-66; MR115; MR1060.

If the information were publicly disclosed, it could be used to attack the data contained in Toyota's databases or otherwise allow competitors to make use of Toyota's confidential data and information—threatening the loss of Toyota's hard-earned competitive edge. MR43; MR115. The database information captures how Toyota develops and produces its products, monitors quality control and warranty claims, and manages other processes, such as its vendor and customer relations. MR43; MR65; MR73 (Karibian Dep. 128-31); MR1064-68; MR1085-86. Competitors could exploit this information to freeride on Toyota's significant investments in designing and developing its databases, which would cause Toyota significant competitive harm. MR43; MR65; MR73 (Karibian Dep. 128-31); MR1064-68; MR1085-86.

This concern is not theoretical, but real. Data breaches have become an unfortunately common occurrence across industries. MR43; MR65-66; MR1060; *see also* Wray, *The FBI and Corporate Directors* (“We’re seeing these diverse threats in every company, at every level.”). As a result, Toyota takes great care to safeguard its data and protect information about its databases from public disclosure. Toyota also uses secure storage procedures and encryption technologies, and only certain

employees who work with the databases have access to the servers' locations. MR43; MR65-66; MR1083.

Further, Toyota prohibits its employees from disclosing information about the databases outside Toyota. MR42; MR64-65; MR1065. If an employee discloses this information without authorization, the employee may be subject to disciplinary action (including termination) and legal action. MR42. And Toyota's subsidiaries, suppliers, and dealerships may access only select information about Toyota's databases, and supplier employees are contractually prohibited from disclosing information about the databases. MR42-43; MR65.

Toyota takes all these precautions because protecting the confidentiality of the information *in* Toyota's databases and the information *about* those databases—the structure, contents, use, and access policies—is critical to Toyota's ability to maintain the security and confidentiality of Toyota's databases and to preserve its competitive advantage.

II. The trial court enters an agreed protective order to safeguard Toyota’s confidential information during discovery.

To protect Toyota’s confidential information and “facilitate the prompt production of discovery materials” in the underlying products-liability suit, the trial court entered an agreed protective order that mirrors the court’s standard protective order. App. B (MR20; MR22-25).

Just like the order in *Ford*, the order here protects “Confidential Information,” defined as “information” that (1) “constitutes a trade secret,” *or* (2) “reveals confidential research, development, or commercial information.” *Compare* MR22, *with* 211 S.W.3d at 299 (covering “documents ‘which contain trade secrets and *other confidential research, development and commercial information*’”).

The order here sets out procedures for a party to designate information as confidential, for the other party to challenge that designation, and for the court to resolve any disagreements. MR22-23. The order also limits the permitted use or disclosure of confidential information. MR22-23. Absent “the express written consent of the party” claiming confidentiality or “written order of the Court,” confidential information may be used only: (1) by counsel in this case solely for the

litigation of this case; or (2) by counsel in other actions arising out of the same or similar set of facts, transactions, or occurrences (and used solely for litigating those actions). MR23.

III. Plaintiffs' counsel elicits extensive deposition testimony about Toyota's databases and also reads portions of Toyota's privileged documents into the transcripts.

A. The deposition testimony contains extensive confidential information about Toyota's databases and internal business processes.

Relying on the protective order, Toyota presented four witnesses, representing two parties and two non-parties,² to testify about the inner workings of Toyota's information systems and procedures, including:

- (1) The identity, contents, structure, purpose, and location of Toyota's databases;
- (2) How information can be accessed from the databases;
- (3) How (and by whom) the databases are used in the ordinary course of business;
- (4) How information is added to or deleted from the databases; and
- (5) How the databases and their contents are maintained.

MR33-37; MR52-56; MR105-09; MR128-32.

² Motoki Shibata testified for Toyota Motor; Lance Lewis for Toyota Sales; Adam Karibian for non-party Toyota Motor Engineering & Manufacturing North America, Inc.; and Kevin Ro for non-party Toyota Motor North America, Inc., which Plaintiffs voluntarily dismissed over a year before Mr. Ro's deposition.

Toyota's witnesses identified and described in detail not only the structure, physical location, and information contained in Toyota's databases, but also how and by whom they are used, and the business purposes and processes they serve.³ The witnesses testified about:

- “where [Toyota] maintains documents related to vehicle design, safety[,] and performance,”
- “the types of databases [Toyota] uses, what they are called, the kind of documents within the databases,”
- “how the information is handled and maintained,”
- “how the databases are accessed and by whom,”
- “how the databases can be searched,” and
- “where those databases are geographically located.”

MR42; MR64; MR115.

B. The deposition testimony contains information about privileged documents.

In addition to the database testimony, both Shibata's and Ro's depositions contain details about Toyota's privileged attorney-client communications. In particular, Plaintiffs' lawyers read excerpts from an internal email and memorandum drafted by Dimitrios Biller, a former

³ Toyota is filing a motion for leave to submit the four deposition transcripts and two privileged documents *in camera*.

in-house lawyer for Toyota. MR1164-65. The Biller communications were about discovery in prior, unrelated litigation against Toyota—and each document was clearly labeled “PRIVILEGED” and “CONFIDENTIAL.” MR1164-65.

Toyota did not voluntarily disclose the Biller communications. Instead, Biller engaged in “unprecedented ethical violations”—including “intentionally and repeatedly disclos[ing] confidential information and documents in violation of ethical, statutory, and contractual prohibitions, as well as court and arbitration injunctions.” *Biller v. Toyota Motor Corp.*, 668 F.3d 655, 667-68 (9th Cir. 2012) (alteration in original) (describing “Biller’s use of [Toyota’s] Confidential Information on Biller’s fledgling [consultancy] website and in Biller’s presentation of professional seminars, pursuits whose purpose was Biller’s own professional enhancement and personal gain from his consulting firm”).

Even though Toyota asserted privilege-based objections and instructed its witnesses not to answer (and they followed those instructions), Plaintiffs’ counsel nevertheless insisted on reading quotes from these privileged documents into the deposition transcript. MR18 (Shibata Dep. 112-16, 118-21, 143-45); *see also* MR95 (Ro Dep. 13, 17, 19).

IV. Toyota seeks to protect its confidential information.

Toyota timely designated as confidential the four deposition transcripts, and Plaintiffs' lawyers objected—without offering any substantive explanation as to why. MR39; MR60; MR111-12; MR134-35. Toyota timely moved the trial court for a ruling on each of its designations, as required by the protective order. MR26-32; MR44-50; MR96-104; MR119-27.

After a June 2018 pre-trial hearing on Toyota's motions, the trial court asked Toyota to submit page-line designations showing the information it sought to protect as confidential. MR246. Toyota did so, MR1154-57, and permitted Plaintiffs' counsel to depose the declarants who supported Toyota's motions. MR41-43, MR63-66; MR264-66; *see* MR1056-70; MR1081-88.

The case went to trial, the jury returned its verdict, and the confidentiality dispute remained unresolved. After two additional hearings, the trial court rejected most of Toyota's designations, thereby permitting public disclosure of information about the structure, contents, use, access policies, and locations of Toyota databases (and other confidential information about Toyota's internal business processes)

along with privileged information. App. C (MR1159-62).⁴ The trial court stayed its ruling pending all appeals, and Toyota sought mandamus relief in the Fifth Court. MR1307-43.

Six months later, the Fifth Court denied relief in a six-paragraph opinion, which concluded—without elaboration—that Toyota’s designations were not “confidential as defined by the pretrial protective order.” 2019 WL 3244490, at *2 (App. D). The Fifth Court referred to a court’s “broad discretion in the granting of protective orders,” *id.* at *1, despite the fact that the trial court had already entered an agreed protective order—Toyota was simply seeking to enforce the plain language of that order. *See Ford*, 211 S.W.3d at 299-301.

MANDAMUS STANDARD

“[M]andamus is proper when the trial court has abused its discretion by committing a clear error of law for which appeal is an inadequate remedy”—including where, as here, the “trial court erred in declaring that the disputed documents fell outside the agreed protective order, an error for which there is no adequate appellate remedy.” *Ford*,

⁴ For ease of reference, Toyota includes in the appendix (App. A) a chart listing the confidentiality designations that were rejected by the trial court, but that Toyota continues to seek to protect as confidential under the protective order.

211 S.W.3d at 297-98 & n.1, 302 (mandamus is the “only procedural option” when the “underlying dispute is over, having already gone to trial and final judgment”).

“[A] trial court has no ‘discretion’ in determining what the law is or applying the law to the facts”—such as when it construes an unambiguous court order. *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135-36 (Tex. 2004). And “appeal is inadequate when a trial court erroneously orders the production of confidential information or privileged documents.” *Ford*, 211 S.W.3d at 298.

ARGUMENT

I. The trial court clearly abused its discretion by failing to enforce the plain terms of the agreed protective order, contrary to controlling precedent.

Under the protective order’s plain terms, the testimony Toyota designated as confidential is entitled to protection. Toyota presented uncontroverted evidence that the deposition excerpts include valuable and competitively sensitive information that it protects by keeping it private. That alone is sufficient to grant Toyota’s confidentiality request under this Court’s decision in *Ford*.

Moreover, several of Toyota’s designations contain privileged information. This is a separate, independent reason why confidentiality is warranted. Instead, the trial court ruled that Plaintiffs could reveal this information to anyone, for any reason. That error—and the harm it inflicts not only on Toyota, but also on other litigants who must rely on similar protective orders to protect their own confidential information—warrants mandamus relief. *See Ford*, 211 S.W.3d at 301-02 (“Agreed protective orders and confidentiality agreements matter; they matter because the parties vest confidence in them; and such confidence vanishes if these important protections are casually disregarded.”).

A. *Ford* confirms that Toyota’s designations qualify as “Confidential Information” and deserve protection.

In *Ford*, this Court construed protective-order language virtually identical to that here. There, the order defined confidential information to include “trade secrets and other confidential research, development and commercial information.” *Id.* at 299 (emphasis omitted). Here too, “‘Confidential Information’ means information that constitutes trade secrets *or* reveals confidential research, development, or commercial information.” MR22 (emphasis added).

The trial court here made the same mistake this Court corrected in *Ford*: “Despite the[] clear terms [of the protective order],” the trial court adopted a “narrow interpretation that reads everything after ‘trade secret’ as mere surplusage.” *Compare* 211 S.W.3d at 299, *with* MR1139 (“You’ve got to come in and persuade me that names of files and who has access to the file is somehow trade secret and merits protection.”).⁵

The problem is that “[t]his strained interpretation ignores the protective order’s unequivocal language.” *Ford*, 211 S.W.3d at 299; *Hemyari v. Stephens*, 355 S.W.3d 623, 626 (Tex. 2011) (courts enforce “unambiguous orders literally”). “Although a trial court often considers protective orders in the context of trade secrets, the *express terms* of the parties’ agreed protective order *make clear* that trade secrets are *not* the only materials worthy of protection.” *Ford*, 211 S.W.3d at 299-300 (emphases added; internal citation omitted).

⁵ See MR1118 (“you don’t have a case that says you can keep as trade secret what you named a file where you put relevant information”); MR1124 (“I’ve not seen authority that the [database] structure is per se trade secret and proprietary”); MR1138 (“I don’t know why the person who is responsible and who is authorized to access the information should be some big trade secret that’s protected”); MR1287 (“And you disagree, I guess, that [Toyota’s] demonstrated that this information is trade secret”); MR1289 (“That doesn’t satisfy [Toyota’s] burden to bring it within trade secret”); *see also* MR1289 (Plaintiffs’ counsel) (“You can’t just show we organize documents, therefore we’re done. You’ve got to go in and show trade secret.”).

“To be sure,” this Court explained, “the order protects trade secrets”—“but just as surely it also protects documents that, while not rising to the level of a trade secret, still contain confidential information.” *Id.* at 299. Under the plain language of the protective order in this case, just like the one in *Ford*, information qualifies for protection if it is confidential research, development, or commercial information. *See id.* at 300. The information here easily satisfies that standard.

Moreover, the information discussed in many of Toyota’s confidential designations does, in fact, qualify as trade secrets. *See In re Bass*, 113 S.W.3d 735, 739 (Tex. 2003). But because here, as in *Ford*, “the agreed protective order covers [Toyota] documents ‘which contain trade secrets [or] *other confidential research, development and commercial information,*’” this Court “need not reach . . . [whether] the disputed documents . . . qualify as trade secrets.” 211 S.W.3d at 299 (“the order protects trade secrets, but just as surely it also protects documents that, while not rising to the level of a trade secret, still contain confidential information”).

Information is “confidential” when it is “meant to be kept secret” and a business takes reasonable “actions to maintain the confidentiality.”

Id. at 300-01 (quoting *Black's Law Dictionary* 318 (8th ed. 1999)).⁶ And “a sufficient commercial interest” exists when it is something “a business desires to keep confidential” and “prevent[] competitors from seeing” because, for example, it reveals internal “processes” developed through “capital investments.” *Id.*

In *Ford*, the information “warrant[ed] confidential treatment under the plain terms of the stipulated protective order” because it involved “types of proprietary information a business desires to keep confidential” and had, in fact, been maintained as confidential. *Id.* So too here. As explained, Toyota’s designations contain information not only about the structure, physical location, and information contained in Toyota’s databases, but also about how and by whom they are used and the business purposes and processes they serve. MR42; MR64; MR73; MR115; MR1084.

This information, like that in *Ford*, reveals how Toyota conducts business and develops vehicles. MR1064-68; MR1085-86; *see* MR73; MR95. The databases themselves contain, among other things,

⁶ *See also Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2362-63 (2019) (recognizing that “confidential” means “private” or “secret” and concluding that information was confidential because “only small groups of employees” had access).

personally identifiable information about Toyota’s customers. MR43; MR65. And the designs of the databases, which have been optimized to ensure maximum efficiency, required Toyota to “expend[] substantial resources”—that is, make significant capital investments. MR115.

There is no dispute that Toyota spent “considerable time and effort . . . in creating these databases and the software that helps run them.” MR1061. The databases are central to Toyota’s operations, and information about them would be valuable to competitors. MR43; MR65. That information reveals how Toyota develops and produces vehicles, what metrics it tracks, and how it otherwise conducts its business—insights that competitors could draw from and exploit for themselves. MR73; MR1064-68; MR1085-86. Because Toyota’s databases and processes have been designed specifically for Toyota and are not publicly available, public disclosure would blunt the competitive edge that Toyota has spent years and significant capital developing. *See* MR43; MR65; MR1061-62; MR1084.

Protecting information *about* Toyota’s databases is critical to protecting the information *in* the databases, because the more information potential hackers have *about* the databases, the easier it is

for them to gain access to the information *in* them. *See Sheridan v. U.S. OPM*, 278 F. Supp. 3d 11, 16-17 (D.D.C. 2017) (disclosing database’s “structure[] and operation would render [it] vulnerable to hacking”).

As the following chart highlights, the “confidential” and “commercial” nature of the information here is materially the same as in *Ford*:

| Factor | <i>Ford</i> | This case |
|---|---|--|
| <i>Commercial / valuable</i> | “Tremendous capital investments” showed “sufficient commercial interest.” | “[C]onsiderable time and effort” was expended to develop the “valuable” information. MR43; MR1061. |
| <i>Confidential</i> | Volvo did “not publish or otherwise voluntarily disclose” the information and even “restricted access” among its own personnel. | Toyota “protects this information from being disclosed” and “limits access” even among its own employees. MR42-43; MR64-66. |
| <i>No public disclosure by defendant</i> | No assertion defendant did “anything to disclose these materials, or acquiesced in their disclosure by a third party” other than turning over information “subject to a stipulated protective order that limited disclosure.” | Toyota goes to great lengths to maintain confidentiality; no assertion Toyota publicly disclosed the information, other than in reliance on protective order. MR22-25; MR42-43; MR64-66. |

As in *Ford*, Toyota has taken substantial steps to maintain the privacy of information valuable to both Toyota and its customers. And as in *Ford*, the information here should be protected. By concluding

otherwise, the trial court abused its discretion by misconstruing the protective order and misapplying the law. *See Ford*, 211 S.W.3d at 301; *Icon Benefit Adm'rs II, L.P. v. Mullin*, 405 S.W.3d 257, 265 (Tex. App.—Dallas 2013, no pet.) (“Because the plain language of the protective order at issue prohibits public disclosure . . . it was a clear abuse of discretion for the trial court to hold otherwise and deny [the] motion to enforce.”). Moreover, neither the Plaintiffs nor the trial court articulated any valid reason to expose Toyota’s confidential information to the world. It was not relevant to the trial proceedings or any of the court’s rulings below. It is unclear why Plaintiffs continue to press for public dissemination of information about Toyota’s databases, particularly given the discovery-sharing provisions in the protective order. *See MR22-23*.⁷

⁷ In addition to adopting an overly narrow interpretation of the protective order, *see* footnote 5 and accompanying text, the trial court also appeared to believe the deposition transcripts were “presumed to be open to the public” because they were “presumed to be a court record.” MR1137. That is incorrect. *See* Tex. R. Civ. P. 76a(2)(a)(1) (“documents filed with a court in camera, solely for the purpose of obtaining a ruling on the discoverability of such documents” are not “court records”); *see also Biederman v. Brown*, 563 S.W.3d 291, 303 (Tex. App.—Houston [1st Dist.] 2018, no pet.).

B. The trial court failed to protect privileged legal material prepared by a former Toyota in-house lawyer.

The trial court also erred by refusing to protect attorney-client privileged material. Over Toyota's vigorous objections, Plaintiffs' lawyers read into the deposition transcripts direct quotes from two internal Toyota memoranda prepared by Dimitrios Biller, a former in-house lawyer for Toyota. *See* MR18 (Shibata Dep. 112-16, 118-21, 143-45); *see also* MR95 (Ro Dep. 13, 17, 19); MR1164-65. These documents are clearly marked "PRIVILEGED" and "CONFIDENTIAL." MR1164-65.

Toyota did not provide the Biller documents to Plaintiffs' counsel or otherwise make those documents publicly available. Instead, Plaintiffs' counsel had access to them through Biller's "unprecedented ethical violations"—including disclosing Toyota's attorney-client privileged documents for his own personal gain. *Biller*, 668 F.3d at 668.

Like the documents in *Ford*, information about the Biller documents was briefly made available on the Internet by the federal government. *Compare Ford*, 211 S.W.3d at 297 ("NHTSA promptly removed the documents from its website"), *with Biller*, 668 F.3d at 670 (explaining that a letter discussing the Biller documents "was first made

public on the Internet by Congress, [but Toyota] protested and requested that the letter be taken down, a request that Congress granted”), and *Souffrant v. Toyota Motor Sales, U.S.A., Inc.*, 2017 WL 5494988, at *5 (S.D. Fla. Nov. 16, 2016) (sealing Biller documents, notwithstanding prior online availability).

Here, as in *Ford*, there is no contention Toyota did “anything to disclose these materials, or acquiesced in their disclosure by a third party.” 211 S.W.3d at 301. Indeed, as *Ford* made clear, “[n]o matter how many people eventually saw the materials, *disclosures by a third-party*, whether mistaken or malevolent, *do not waive the privileged nature of the information.*” *Id.* at 301 (emphases added).

That explains why numerous courts have protected the confidentiality of the Biller documents and information. *E.g.*, *Souffrant*, 2017 WL 5494988, at *5; *Hindi v. Toyota Motor Corp.*, 2011 WL 865488, at *6 (E.D. Tex. Mar. 10, 2011); Order, *Thompson v. Toyota Motor Sales, U.S.A., Inc.*, No. 5:16-cv-645 (W.D. Tex. Sept. 27, 2018), ECF No. 49.

As this Court has explained, the “attorney-client privilege exists—and has been a cornerstone of our legal system for nearly 500 years—because the interests protected and secured by the promise of

confidentiality are not merely significant; they are quintessentially imperative.” *Paxton v. City of Dallas*, 509 S.W.3d 247, 261 (Tex. 2017). That is why attorney-client privileged information is generally shielded from both public disclosure and discovery by the opposing party during litigation. *See* Tex. R. Evid. 503(b); *Huie v. DeShazo*, 922 S.W.2d 920, 922 (Tex. 1996).

The trial court’s failure to protect Toyota’s privileged information was a clear abuse of discretion. *See In re Living Ctrs. of Tex., Inc.*, 175 S.W.3d 253, 256 (Tex. 2005). Mandamus is needed to protect not only Toyota’s privileged information, but also the public’s confidence that their attorney-client privileged information will remain confidential.

II. Toyota has no adequate appellate remedy.

This Court has “repeatedly held [that] appeal is inadequate when a trial court erroneously orders the [disclosure] of confidential information or privileged documents.” *Ford*, 211 S.W.3d at 298 (citing cases). Here, as in *Ford*, the “trial court erred in declaring that the disputed [deposition designations] fell outside the agreed protective order, an error for which there is no adequate appellate remedy.” *Id.* at 302.

As the *Ford* Court explained, “mandamus is the *only procedural option*” here, because the “underlying dispute is over.” *Id.* at 298 n.1 (emphasis added). Accordingly, “the instant controversy—whether [Plaintiffs] (or their counsel) can pass around the [Toyota] materials—can only be resolved by mandamus.” *Id.*

PRAYER

Toyota respectfully requests that the Court issue a writ of mandamus directing the trial court to protect Toyota’s confidential information under the protective order. Toyota also requests all further relief to which it is entitled.

Dated: September 20, 2019

Respectfully submitted,

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COUNSEL FOR RELATORS

RULE 52.3(j) CERTIFICATE OF COMPLIANCE

I have reviewed this petition and concluded that every factual statement is supported by competent evidence included in the appendix or record. *See* Tex. R. App. P. 52.3(j).

/s/ Allyson N. Ho
Allyson N. Ho

RULE 9.4(i) CERTIFICATE OF COMPLIANCE

In compliance with Texas Rule of Appellate Procedure 9.4(i)(2), I certify that this brief contains 4,351 words, excluding the portions of the brief exempted by Rule 9.4(i)(1).

/s/ Allyson N. Ho
Allyson N. Ho

CERTIFICATE OF SERVICE

I certify that, on September 20, 2019, a true and correct copy of the foregoing petition for writ of mandamus was served via electronic service on all counsel of record.

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No. _____

In the Supreme Court of Texas

IN RE TOYOTA MOTOR SALES, U.S.A., INC. and
TOYOTA MOTOR CORPORATION,

Relators.

Original Proceeding from Cause No. DC-16-15296,
134th District Court, Dallas County, Texas

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

APPENDIX INDEX

| Tab | Mandamus Record Cite (if applicable) | Document |
|------------|---|---|
| A | | Chart listing designations Toyota continues to seek to protect as confidential under the protective order |
| B | MR22-25 | Protective Order |
| C | MR1159-62 | Trial Court Order |
| D | | Court of Appeals Opinion |

TAB A

| Deposition Page and Line Numbers District Court Refused to Designate Confidential | Category of Confidential Information Discussed |
|--|---|
| Lance Lewis, March 22, 2018 Corporate Representative Deposition (Exhibit A) | |
| 26:17-27:3; 27:11-27:12; 29:19-30:8; 30:9-30:22; 43:7-43:17; 50:2-50:18; 58:1-58:4; 61:1-61:10; 70:24-71:21 | Database Architecture |
| 25:15-26:9; 34:2-34:4; 34:5-34:14; 43:18-45:3; 59:2-59:12; 61:25-62:7; 66:20-67:8 | Database Usage |
| 22:23-23:6; 23:20-23:25; 24:11-24:23; 26:10-26:16; 27:4-27:10; 30:23-32:2; 32:17-33:4; 57:20-57:25; 61:11-61:24; 71:22-72:4 | Database Contents |
| 27:13-28:18; 33:5-33:9; 33:17-33:20; 34:15-34:18; 46:19-47:2; 49:5-49:17; 51:24-52:3; 54:17-54:21; 55:1-55:2; 57:15-57:19; 58:17-59:1; 62:8-62:22; 64:10-64:14 | Database Access Policies |
| 23:14-23:19; 48:18-48:25; 58:5-58:16 | Other Confidential Commercial Information |
| Motoki Shibata, March 23, 2018 Deposition (Exhibit B) | |
| 38:15-40:12; 40:22; 41:1-41:21; 66:3-66:25; 67:5-67:13; 70:10-70:15; 71:5-71:10; 75:11-76:1; 76:22-76:25; 77:13-78:4; 78:7-81:5; 83:12-87:13; 87:22-89:4; 91:5-92:16; 95:3-95:13; 97:17-99:1; 101:10-102:2; 105:17-106:4; 109:1-109:10; 132:14-134:12; 149:12-149:20 | Database Architecture |
| 37:21-38:5; 43:4-43:7; 44:14-45:2; 68:21-69:11; 72:5-72:17; 100:18-100:23; 130:14-130:23; 138:8-139:24 | Database Usage |
| 38:6-38:14; 43:25-44:10; 65:1-66:2; 69:12-69:24; 70:5-70:9; 76:2-76:21; 77:1-77:12; 89:5-91:4; 99:2-100:4; 100:24-101:9 | Database Contents |
| 67:1-67:4; 67:14-68:20; 69:25-70:4; 70:16-71:4; 73:17-74:3; 74:23-75:10; 100:5-100:17; 106:5-106:13; 106:16-107:20 | Database Access Policies |
| 112:18-113:4; 116:1-116:7; 118:21-121:20; 143:15-145:5 | Attorney-Client Privilege |
| 81:6-82:9 | Other Confidential Commercial Information |

| Deposition Page and Line Numbers District Court Refused to Designate Confidential | Category of Confidential Information Discussed |
|---|---|
| Adam Karibian, April 25, 2018 Deposition (Exhibit C) | |
| 27:15-28:5; 31:12-31:13; 32:20-33:8; 35:19-35:21; 36:2-37:2; 39:14-40:4; 40:22-41:2; 41:9-42:3; 44:25-45:12; 46:25-47:19; 50:1-50:5; 52:23-53:4; 53:22-54:6; 55:6-55:9; 63:20-63:22; 68:18-70:6; 71:11-71:20; 72:10-72:13; 72:18-72:21; 73:21-74:20; 75:4-76:25; 79:18-79:23; 82:3-82:12; 88:25-89:5; 101:5-102:7; 112:8-113:11; 121:3-121:25 | Database Architecture |
| 29:7-29:10; 33:19-34:6; 34:24-35:6; 37:8-37:17; 42:11-44:9; 46:15-46:24; 48:11-48:25; 65:2-65:7; 100:25-101:2; 107:13-108:7 | Database Usage |
| 30:1-30:3; 31:1-31:2; 72:14-72:17; 74:21-75:3; 79:24-80:5; 87:8-87:10 | Database Contents |
| 31:3-31:11; 33:9-33:18; 37:3-37:7; 42:4-42:10; 53:5-53:6; 61:20-62:25; 63:23-63:24; 70:7-70:24; 78:1-78:9; 78:22-79:10; 80:6-81:9; 84:8-85:5; 85:24-86:3; 86:21-86:23; 95:16-96:6; 98:21-99:3 | Database Access Policies |
| 120:10-121:2 | Attorney-Client Privilege |
| 32:5-32:8; 63:14-63:15; 102:16-103:22; 105:3-105:16; 109:15-110:9 | Other Confidential Commercial Information |
| Kevin Ro, May 9, 2019 Deposition (Exhibit D) | |
| 34:16-36:7; 36:18-37:3; 40:7-42:4; 72:7-72:20; 74:1-74:25; 77:4-78:3; 78:17-78:22; 87:1-87:11; 90:8-91:5; 94:10-94:15; 97:5-98:2; 99:5-100:1; 101:8-101:11 | Database Architecture |
| 36:8-36:17; 78:11-78:16 | Database Usage |
| 37:4-40:6; 78:4-78:10; 93:21-94:9; 95:9-95:15 | Database Contents |
| 25:4-25:8; 100:2-101:7 | Database Access Policies |
| 13:9-13:22; 17:1-17:4; 19:8-19:9; 19:14-19:15; 19:17-19:19 | Attorney-Client Privilege |
| 42:5-43:5; 52:20-53:23; 58:19-61:17; 63:12-67:2; 75:8-76:13; 80:25-81:12; 81:19-84:8; 85:22-85:24; 96:20-97:4 | Other Confidential Commercial Information |

TAB B

CAUSE NO. DC-16-15296-G

BENJAMIN THOMAS REAVIS, et al.

Plaintiffs,

VS.

**TOYOTA MOTOR SALES, U.S.A.,
INC., et al.,**

Defendants.

IN THE DISTRICT COURT

134TH JUDICIAL DISTRICT

DALLAS COUNTY, TEXAS

PROTECTIVE ORDER

In order to preserve the rights of litigants in these proceedings to claim confidentiality of certain documents to be produced in this litigation by the parties, the Court orders as follows:

1. Terms.

- a. "Confidential Information" means information that constitutes a trade secret or reveals confidential research, development, or commercial information. Confidential Information does not include information that has been disclosed in the public domain.
- b. "Protected Documents" means materials, documents or discovery responses containing Confidential Information disclosed or produced by any party in this litigation.
- c. "Confidential Material" means any document(s) claimed pursuant to Section 2(a) or (b) of this Order and any Confidential Information claimed to be contained therein, to the extent allowed by this Order.

2. Designation.

- a. A document (or portion of a document) that a party determines in good faith to be a Protected Document may be claimed as confidential by (1) stamping the word "CONFIDENTIAL" on the document, or (2) using any other reasonable method agreed to by the parties. Such stamping shall not obscure any writings on the documents.
- b. A party may, on the record of a deposition or by written notice to opposing counsel no later than seventy-two (72) hours after receipt of the deposition transcript, claim any portion(s) of the deposition as "CONFIDENTIAL" based on a good faith determination that any portions so claimed constitute a Protected Document. To the extent possible, any portions so claimed shall be transcribed separately and marked by the court reporter as

“CONFIDENTIAL”.

- c. By claiming a document Confidential Material pursuant to Section 2(a) or 2(b), a party represents that it has made a bona fide, good faith determination that the document does, in fact, contain Confidential Information.

3. Challenge to Claim.

- a. Any party may challenge a claim made under Section 2(a) or 2(b) by written notice of its objection to counsel for the claiming party or non-party. Challenge to a claim made under Section 2(b) may be made either upon the record of the deposition or as provided in the preceding sentence.
- b. In the event a claim is challenged, the party requesting confidential treatment will move for an appropriate ruling from the Court. The material shall be treated as Confidential Material until the expiration of twenty (20) days if no motion is made by the party requesting confidential treatment (at which time the material shall no longer be treated as Confidential Material), or, if a motion is made, until the Court rules.
- c. A party shall not be obligated to challenge the propriety of the designation of documents as Confidential Materials at the time of designation, and failure to do so shall not preclude a subsequent challenge to the designation.

4. Use of Confidential Material Limited.

Confidential Material shall be treated as confidential and used (1) by counsel in this case solely for the litigation of this case or (2) by counsel in other actions arising out of the same or similar set of facts, transactions, or occurrences that are asserted in the petition filed in this case solely for the litigation of such actions. Except as set forth in Section 6, Confidential Material shall not be revealed without the express written consent of the party claiming same as Confidential Material or upon written order of the Court.

5. Not Applicable to Trial.

This Order shall not apply to the disclosure of Protected Documents or the information contained therein at the time of trial, through the receipt of Protected Documents into evidence or through the testimony of witnesses. The closure of trial proceedings and sealing of the record of a trial involve considerations not presently before the Court. These issues may be taken up as a separate matter upon the motion of any party in compliance with Rule 76a TRCP.

6. Permitted Disclosures.

Confidential Material may be shown, disseminated, or disclosed only to the following persons:

- a. All attorneys of record for the parties in this case, including members of their respective law firms, and their employees assisting in the preparation of this case for trial;
- b. Experts and consultants retained by the parties for the preparation or trial of this case;
- c. Translators privately retained by the parties for the preparation or trial of this case;
- d. The Court, its staff, court reporters, deposition videographers, mediators, court appointed translators, witnesses, and the jury in this case;
- e. Any attorney representing a party in other present or future cases in any court in the United States against the party asserting confidentiality alleging claims arising out of the same or similar set of facts, transactions, or occurrences that are asserted in the petition filed in this case.

7. Agreement by Recipients.

Before being given access to Confidential Material, each person described in paragraph 6(b), (c) or (e), shall be advised of the terms of this Order, shall be given a copy of this Order, and shall sign a copy of Exhibit "A".

8. Retention of Jurisdiction by Court.

This Court shall retain jurisdiction to make amendments, modifications, and additions to this Order as the Court may, from time to time, deem appropriate, as well as to resolve any disputes.

9. Production Not a Waiver.

The Production of Confidential Material pursuant to this Order is not intended to constitute a waiver of any privilege or right to claim the trade secret or confidential status of the documents, materials, or information produced.

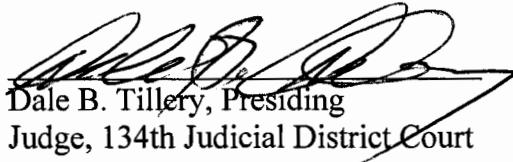
10. Public Health and Safety.

Nothing in this Order is intended to prevent any party from raising with the Court any concern that the non-disclosure of certain Confidential Material may have a possible adverse effect upon the general public health or safety, or the administration or operation of government or public office.

This Order does not seal Court Records in this case and is only intended to facilitate the prompt production of discovery materials. Any motion to seal Court Records must strictly adhere to Rule 76a, TRCP. No determination is being made by the

Court at this time that these documents are confidential or entitled to protection. Such issues are reserved and will be ruled upon pursuant to this Order and any applicable notice and hearing provisions. This Order merely provides a framework for the parties to claim such materials as confidential to preserve their right to seek protection for these documents as confidential proprietary information, and to preserve such issues for ruling until each party may prepare their appropriate arguments on these issues.

SIGNED this the 28 day of March, 2018.


Dale B. Tillery, Presiding
Judge, 134th Judicial District Court

TAB C

CAUSE NO. DC-16-15296

**BENJAMIN TOMAS REAVIS and
KRISTI CAROL REAVIS,
Individually and as Next Friends of
E.R. and O.R., Minor Children**

PLAINTIFFS,

v.

**TOYOTA MOTOR NORTH
AMERICA, INC; TOYOTA MOTOR
SALES, U.S.A., INC; TOYTOA
MOTOR CORPORATION;
MICHAEL STEVEN MUMMAW, and
MARK HOWELL**

DEFENDANTS.

IN THE DISTRICT COURT

DALLAS COUNTY, TEXAS

134TH JUDICIAL DISTRICT

ORDER ON TOYOTA'S MOTIONS FOR PROTECTIVE ORDERS

On January 3, 2019, came on to be heard Toyota's Motions for Protective Orders. After considering the motion, the pleadings, the responses, and other evidence on file, the Court finds that Toyota's Motions for Protective Orders, heard on January 3, 2019, relating to the specifically identified excerpts of the deposition testimony of Lance Lewis, Adam Karibian, Kevin Ro, and Motoki Shibata, attached hereto as Exhibit A, and hereby incorporated by reference the same as if fully set forth herein, are **SUSTAINED AND GRANTED IN PART AND OTHERWISE DENIED AS FOLLOWS:**

Toyota's asserted objections and motion to protect deposition testimony of:

1. Lance Lewis —

appearing at:

- a. Page 22 / Line 2 through Page 22 / Line 11
- b. Page 23 / Line 7 through Page 23 / Line 13
- c. Page 24 / Line 1 through Page 24 / Line 10
- d. Page 24 / Line 24 through Page 25 / Line 14
- e. Page 32 / Line 3 through Page 32 / Line 16
- f. Page 33 / Line 10 through Page 33 / Line 16
- g. Page 33 / Line 21 through Page 34 / Line 1

- h. Page 34 / Line 19 through Page 38 / Line 8
- i. Page 45 / Line 4 through Page 46 / Line 18
- j. Page 47 / Line 3 through Page 48 / Line 17
- k. Page 49 / Line 1 through Page 49 / Line 5
- l. Page 49 / Line 18 through Page 50 / Line 1
- m. Page 50 / Line 19 through Page 51 / Line 23
- n. Page 58 / Line 1 through Page Page 59 / Line 1
- o. Page 62 / Line 23 through Page 63 / Line 10
- p. Page 64 / Line 15 through Page 65 / Line 5
- q. Page 66 / Line 1 through Page 66 / Line 19
- r. Page 67 / Line 8 through Page 67 / Line 23

are SUSTAINED AND MOTION FOR PROTECTION GRANTED. Toyota's additional objections and Motion for Protection relating to the identified excerpts of the deposition of Lance Lewis are OTHERWISE OVERULLED AND DENIED.

2. Adam Karibian —

appearing at:

- a. Page 13 / Line 19 through Page 15 / Line 3
- b. Page 28 / Line 6 through Page 29 / Line 6
- c. Page 29 / Line 11 through Page 29 / Line 22
- d. Page 30 / Line 4 through Page 30 / Line 25
- e. Page 31 / Line 14 through Page 32 / Line 4
- f. Page 32 / Line 9 through Page 32 / Line 19
- g. Page 34 / Line 7 through Page 34 / Line 23
- h. Page 35 / Line 7 through Page 35 / Line 18
- i. Page 35 / Line 22 through Page 36 / Line 1
- j. Page 38 / Line 1 through Page 39 / Line 13
- k. Page 40 / Line 5 through Page 40 / Line 21
- l. Page 41 / Line 3 through Page 41 / Line 8
- m. Page 43 / Line 1 through Page 43 / Line 16
- n. Page 44 / Line 10 through Page 44 / Line 24
- o. Page 46 / Line 3 through Page 46 / Line 14
- p. Page 47 / Line 18 through Page 48 / Line 10
- q. Page 49 / Line 1 through Page 49 / Line 25
- r. Page 50 / Line 6 through Page 52 / Line 13

- s. Page 53 / Line 7 through Page 53 / Line 21
- t. Page 54 / Line 7 through Page 55 / Line 5
- u. Page 55 / Line 16 through Page 61 / Line 19
- v. Page 63 / Line 1 through Page 63 / Line 13
- w. Page 63 / Line 16 through Page 63 / Line 19
- x. Page 64 / Line 1 through Page 65 / Line 1
- y. Page 65 / Line 8 through Page 67 / Line 15
- z. Page 68 / Line 21 through Page 69 / Line 13
- aa. Page 70 / Line 25 through Page 71 / Line 10
- bb. Page 71 / Line 21 through Page 72 / Line 9
- cc. Page 72 / Line 22 through Page 73 / Line 20
- dd. Page 77 / Line 1 through Page 77 / Line 25
- ee. Page 78 / Line 10 through Page 78 / Line 21
- ff. Page 81 / Line 10 through Page 82 / Line 2
- gg. Page 83 / Line 5 through Page 84 / Line 7
- hh. Page 85 / Line 6 through Page 85 / Line 23
- ii. Page 86 / Line 4 through Page 86 / Line 20
- jj. Page 86 / Line 24 through Page 87 / Line 7
- kk. Page 87 / Line 11 through Page 88 / Line 24
- ll. Page 89 / Line 6 through Page 92 / Line 25
- mm. Page 95 / Line 1 through Page 95 / Line 15
- nn. Page 96 / Line 7 through Page 98 / Line 20
- oo. Page 99 / Line 4 through Page 100 / Line 2
- pp. Page 102 / Line 15 through Page 102 / Line 15
- qq. Page 107 / Line 1 through Page 107 / Line 12
- rr. Page 108 / Line 8 through Page 109 / Line 14
- ss. Page 110 / Line 10 through Page 111 / Line 3
- tt. Page 117 / Line 18 through Page 119 / Line 20
- uu. Page 120 / Line 10 through Page 121 / Line 25
- vv. Page 124 / Line 4 through Page 124 / Line 12
- ww. Page 124 / Line 18 through Page 125 / Line 2

are SUSTAINED AND MOTION FOR PROTECTION GRANTED. Toyota's additional objections and motion for protection relating to the identified excerpts of the deposition of Adam Karibian are OTHERWISE OVERULLED AND DENIED.

3. Kevin Roe –

All of Toyota's objections and Toyota's Motion for Protection relating to the specific deposition excerpts of Kevin Roe, identified by Toyota in Exhibit A, are OVERRULED AND DENIED.

4. Motoki Shibata —

appearing at:

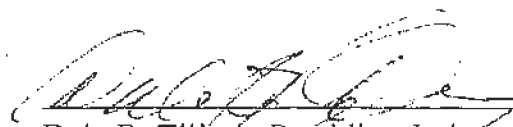
- a. Page 45 / Line 13 through Page 45 / Line 22
- b. Page 61 / Line 25 through Page 62 / Line 19
- c. Page 71 / Line 11 through Page 72 / Line 4
- d. Page 72 / Line 18 through Page 73 / Line 16
- e. Page 74 / Line 4 through Page 74 / Line 22
- f. Page 96 / Line 10 through Page 97 / Line 2
- g. Page 107 / Line 21 through Page 108 / Line 20

are SUSTAINED AND MOTION FOR PROTECTION GRANTED. Toyota's additional objections and Motion for Protection relating to the identified excerpts of the deposition of Motoki Shibata are OTHERWISE OVERRULED AND DENIED.

IT IS FURTHER ORDERED that the deposition excerpts identified by the Court's specific ruling sustaining Toyota's objections and the Court's granting of Toyota's Motion for Protection shall not be revealed or disclosed except as specifically authorized by written order of a court with proper jurisdiction.

All other and further relief requested related to Toyota's objections and Motion for Protection, as such excerpts are identified in Exhibit A, not expressly granted herein is DENIED.

SIGNED on 7th day of February, 2019.


Dale B. Tillery, Presiding Judge
134th Judicial District Court

TAB D

DENY; and Opinion Filed July 19, 2019.



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00030-CV

**IN RE TOYOTA MOTOR SALES, U.S.A., INC.
AND TOYOTA MOTOR CORPORATION, Relators**

**Original Proceeding from the 134th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-16-15296**

MEMORANDUM OPINION

Before Justices Brown, Schenck, and Reichek
Opinion by Justice Brown

The underlying case is a products liability and personal injury case. Following a 2018 jury trial, the trial court rendered a judgment against relators Toyota Motor Sales, U.S.A., Inc. and Toyota Motor Corporation (collectively “Toyota”). This original proceeding relates to the trial court’s January 7, 2019 order denying in part Toyota’s motion to enforce a pretrial protective order. We deny the petition.

Background

Pursuant to a pretrial protective order, Toyota designated information contained in several databases as “Confidential Information.” Toyota also designated four depositions (“the database depositions”) as confidential because the deponents purportedly testified regarding information in the databases designated “confidential” and about the databases themselves. The plaintiffs objected to the designation of the database depositions as “confidential,” and Toyota moved the

trial court to resolve the confidentiality dispute. The trial court held three hearings on the motions for protection but did not rule on the motions before trial or before entering judgment. On January 7, 2019, the trial court issued an order granting in part, but denying in part, Toyota's motions for protection. In this original proceeding, relators complain of the trial court's January 7, 2019 order denying Toyota's motion for protective order as to certain deposition testimony. Toyota seeks a writ of mandamus directing the trial court to enter an order finding that the four depositions are confidential under the terms of the protective order and restricting any further use and dissemination of the depositions or the information revealed in them.

Availability of Mandamus Relief

A trial court's post-judgment order on a motion to enforce a pretrial protective order is properly reviewed through a mandamus proceeding. *In re Ford Motor Co.*, 211 S.W.3d 295, 298 n. 1 (Tex. 2006) (per curiam) (orig. proceeding); *Icon Benefit Adm'rs. II, L.P. v. Mullin*, 405 S.W.3d 257, 261–62 (Tex. App.—Dallas 2013, orig. proceeding). Mandamus relief is proper when the trial court has abused its discretion by committing a clear error of law for which appeal is an inadequate remedy. *In re Ford Motor Co.*, 211 S.W.3d at 297–98. A trial court abuses its discretion if (1) with respect to factual issues or matters committed to the trial court's discretion, the trial court could reasonably have reached only one decision, or (2) with respect to controlling legal principles, the trial court reaches a decision so arbitrary and unreasonable as to amount to a clear and prejudicial error of law, or clearly fails to correctly analyze or apply the law. *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992). A trial court has no discretion in determining what the law is or applying the law to the facts. *Id.* at 840.

We afford the trial court broad discretion in the granting of protective orders. *In re Eurecat US, Inc.*, 425 S.W.3d 577, 582 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding). To justify a protective order, the party resisting discovery must present facts showing a particular,

specific, and demonstrable injury. *Garcia v. Peebles*, 734 S.W.2d 343, 345 (Tex. 1987) (orig. proceeding). Conclusory allegations are not adequate. *Id.* Further, the party seeking a protective order must provide detailed information to support its claim of privilege or confidentiality. *See In re Bridgestone/Firestone, Inc.*, 106 S.W.3d 730, 732–33 (Tex. 2003) (“a party who claims the trade secret privilege cannot do so generally but must provide detailed information in support of the claim”).

Analysis

The court overruled Toyota’s objections to many of the page/line designations of the database depositions for which Toyota sought protection and denied Toyota’s request for a protective order as to those designations. After reviewing the designated excerpts in camera, we conclude Toyota failed to establish that the information contained in those designations is confidential as defined by the pretrial protective order. As such, the trial court did not abuse its discretion by denying Toyota’s motion to enforce the protective order as to that testimony.

Based on the record before us, we conclude relators have not shown they are entitled to the relief requested. Accordingly, we deny relators’ petition for writ of mandamus. *See* TEX. R. APP. P. 52.8(a) (the court must deny the petition if the court determines relator is not entitled to the relief sought).

/Ada Brown/
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JUSTICE

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