

UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



ORIGINAL

In the Matter of)

Axon Enterprise, Inc.)
a corporation.)

and)

Safariland, LLC,)
a partnership,)

Respondents.)

Docket No. 9389

**ORDER GRANTING UNOPPOSED MOTION FOR ISSUANCE OF
SUBPOENAS *DUCES TECUM* UNDER RULE 3.36**

On February 13, 2020, Respondent Axon Enterprise, Inc. (Axon) filed an Amended and Unopposed Motion for the Issuance of Subpoenas *Duces Tecum* to certain law enforcement agencies, pursuant to Federal Trade Commission (FTC) Rule 3.36 (Motion).² Axon submitted numerous exhibits to support the issuance of the requested subpoenas, including the form of the subpoenas and the proposed subpoena recipients. In summary, Axon seeks documents from

¹ The Motion was heavily redacted. Axon states that Complaint Counsel has labeled “Confidential,” in their entirety, Complaint Counsel’s Preliminary Witness List and Complaint Counsel’s Initial Disclosures. On this basis, Axon designated as confidential such general statements as its assertion that in an attempt to accommodate Complaint Counsel’s stated concern about the number of recipients, Axon is now seeking subpoenas to fewer than half of the agencies identified on Complaint Counsel’s disclosures.

The standard Protective Order provides that “[a] designation of confidentiality shall constitute a representation in good faith and after careful determination that the material is not reasonably believed to be already in the public domain and that counsel believes the material so designated constitutes confidential material as defined in Paragraph 1 of [the] Order.” 16 C.F.R. § 3.31 Appendix A, ¶ 5. The Protective Order does not give parties or non-parties the unfettered ability or option to designate every document produced as “confidential.” Commission Rule 3.45(e) provides that when a party includes “specific information” that is subject to confidentiality protections pursuant to a protective order, references to confidential material must be supported by record citations to relevant evidentiary materials and associated confidentiality rulings to confirm that confidential treatment is warranted for such material. 16 C.F.R. § 3.45(e). Parties are permitted to make references to, or general statements derived from, the content of information that has been designated as confidential, so long as such statements do not actually reveal contents of the underlying confidential information. Complaint Counsel is directed to review its designations and comply with these directives going forward.

² Axon’s Motion amended its earlier-filed motion under Rule 3.36, principally to convey that, after further discussions, Axon’s request was no longer opposed by FTC Complaint Counsel.


certain police departments and agencies that have purchased or considered purchasing body-worn cameras and/or digital evidence management systems.

Rule 3.36 requires a party seeking to subpoena documents in discovery from a United States governmental agency to obtain authorization from the Administrative Law Judge, pursuant to a motion demonstrating that: the material sought is within the permissible scope of discovery under Rule 3.31(c)(1); the subpoena is reasonable in scope; the material sought cannot reasonably be obtained by other means; and the subpoena otherwise complies with the requirements for requests for production of documents under Rule 3.37. 16 C.F.R. § 3.36(a), (b).

Based on the exhibits and the representations in the Motion, the requirements of Rule 3.36 have been met. The requested subpoenas seek documents from certain police departments and agencies that have purchased or considered purchasing body-worn cameras and/or digital evidence management systems, which are products at issue in this merger proceeding. The requested information relates to the departments' and/or agencies' consideration, evaluation, and/or purchases of body-worn cameras and digital evidence management systems, including requests for proposals, bid responses, contracts, evaluations, and costs of switching, among other matters. Such information is likely to lead to the discovery of relevant evidence, and is therefore within the permissible scope of discovery under Rule 3.31(c)(1).³ Furthermore, the document requests appear reasonable in scope and to otherwise comply with the requirements of Rule 3.37.⁴ Finally, most of the document requests relate to requests for proposals (RFPs) that were issued by the departments and agencies, including bids they received in response to those RFPs and their evaluations of the bids. To the extent this information is uniquely in the hands of the departments and agencies that are the subjects of the subpoenas, the information is not reasonably obtainable by other means.

As shown above, Axon's proposed subpoenas meet the requirements of Rule 3.36. Moreover, Complaint Counsel does not oppose the Motion. Accordingly, Axon's Motion is GRANTED, and it is hereby ORDERED that Axon may issue subpoenas in the form submitted as Exhibit 1 to Axon's proposed order to the agencies and departments listed on Exhibit 2 to Axon's proposed order.

ORDERED:



D. Michael Chappell
Chief Administrative Law Judge

Date: February 14, 2020

³ Under Rule 3.31(c)(1), parties may obtain discovery to the extent that it may be reasonably expected to yield information relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. 16 C.F.R. § 3.31(c)(1).

⁴ Rule 3.37 requires that each request for documents shall specify with reasonable particularity the documents to be produced and a reasonable time, place, and manner of making the production. 16 C.F.R. § 3.37.

Notice of Electronic Service

I hereby certify that on February 14, 2020, I filed an electronic copy of the foregoing Order Granting Unopposed Motion for Issuance of Subpoenas Duces Tecum Under Rule 3.36., with:

D. Michael Chappell
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Donald Clark
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I hereby certify that on February 14, 2020, I served via E-Service an electronic copy of the foregoing Order Granting Unopposed Motion for Issuance of Subpoenas Duces Tecum Under Rule 3.36., upon:

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