

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



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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 19, 2020, Federal Trade Commission (“FTC”) Complaint Counsel filed an Unopposed Motion for the Issuance of Subpoenas *Duces Tecum* to certain law enforcement agencies, pursuant to FTC Rule 3.36 (“Motion”). Complaint Counsel submitted numerous exhibits to support the issuance of the requested subpoenas, including the specific subpoenas to be issued and the documents to be requested (*see* Motion Exhibits B-D). In summary, Complaint Counsel seeks an order allowing subpoenas for substantially the same categories of documents from the same police departments and agencies that were allowed pursuant to the Order Granting Respondent Axon’s Unopposed Motion for Issuance of Subpoenas *Duces Tecum* under Rule 3.36, issued on February 14, 2020. Complaint Counsel states that it did not oppose Axon’s Motion for those subpoenas, and that Complaint Counsel seeks to subpoena the same documents from the same agencies, to ensure that it receives necessary information and “so that it can be part of the negotiations about compliance with the subpoenas, including custodian negotiations.” Motion at 2 n.1. Complaint Counsel asserts that the subpoenas meet the requirements of Rule 3.36 and that the Motion is unopposed. For these reasons, Complaint Counsel argues, the Motion should be granted.

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).<sup>1</sup> Furthermore, the document requests appear reasonable in scope and to otherwise comply with the requirements of Rule 3.37.<sup>2</sup> 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, Complaint Counsel's proposed subpoenas meet the requirements of Rule 3.36. Moreover, the Motion is unopposed. Accordingly, the Motion is GRANTED, and it is hereby ORDERED that Complaint Counsel may issue the subpoenas as described in Exhibits B-D to the Motion.

ORDERED:

*Dm Chappell*

\_\_\_\_\_  
D. Michael Chappell  
Chief Administrative Law Judge

Date: February 19, 2020

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<sup>1</sup> 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).

<sup>2</sup> 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 19, 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  
Chief Administrative Law Judge  
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**I hereby certify that on February 19, 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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