

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE JUDGES**

**Before the Honorable D. Michael Chappell
Administrative Law Judge**

In the Matter of

**Axon Enterprise, Inc.
a corporation,**

and

**Safariland, LLC,
a corporation,**

Respondents.

Docket No. 9389

**NON-PARTY UTILITY ASSOCIATES, INC.’S MOTION
FOR *IN CAMERA* TREATMENT**

Non-Party Utility Associates, Inc. (“Utility”) hereby moves this Court pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice, 16 C.F.R. § 3.45(b) for *in camera* treatment of certain documents and deposition testimony produced by Utility.

Utility has been notified by the Federal Trade Commission (“FTC”) Complaint Counsel and counsel for Axon Enterprise, Inc. (“Axon”) that they intend to introduce at trial certain exhibits including those for which Utility seeks *in camera* treatment. *See* Emails from FTC and Axon’s counsel dated September 21, 2020. Exhibits A and B. Utility seeks *in camera* treatment for nine documents and approximately twenty-four pages of deposition transcript identified in the table below.

These documents and deposition transcript contain currently relevant business information that is extremely sensitive and confidential, including ongoing product development efforts and margin data, that Utility produced pursuant to third-party subpoenas served upon

Utility by FTC Complaint Counsel and Axon. Utility designated and marked the documents as “Confidential” and subject to the Protective Order in this case when it produced the documents. At Mr. Davis’ deposition, the parties and Utility stipulated that they would treat the transcript as “Confidential” and subject to the Protective Order. *See* PX 81013 at 338-339 (In Camera Exhibit C).

Utility would suffer significant harm to its business and ability to compete in the police body camera marketplace if the Commission permits this information to become publicly available. For the reasons set forth below, Utility requests that this Court afford Utility’s confidential information *in camera* treatment. In support hereof, Utility relies on the Declaration of Utility’s cofounder, former CEO, and current CIO, Ted Davis, attached as Exhibit D. Utility has advised both the FTC and Axon that it intends to move for *in camera* treatment of these materials at trial. Counsel for Axon indicated they would not object to Utility’s motion. FTC Complaint Counsel indicate they take no position on Utility’s motion.

I. CONFIDENTIAL DOCUMENTS AT ISSUE

The following is a table of the documents and the portions of the deposition transcript for which Utility requests *in camera* treatment. Copies of these documents and deposition testimony are provided in *In Camera* Exhibit C.

| Beginning Bates | Ending Bates | Description |
|--|---------------------|--|
| UTIL-FTC 006060 In camera treatment request for pages 6139-6144 | 006150 | Customer Specific Information |
| UTIL-FTC 011010 | | Customer Specific Information, Nonpublic Sales and Financial Information |
| UTIL-FTC 011043 | | Customer Specific Information, Nonpublic Sales and Financial Information |

| | | |
|---|-----------------|---|
| UTIL-FTC 035561 | | Business Planning, Competitive Analysis, and Nonpublic Sales and Financial Information |
| PX 50083-001 | 50083-004 | Nonpublic Contract Negotiations and Contracts, Customer Specific Pricing Proposal (2019) |
| PX 50092-001 | 50092-019 | Market and Competitive Analysis prepared by Hicks. (See Decl. Davis ¶ 6) |
| PX 50093 | | Nonpublic Sales and Financial Data |
| PX 50108 UTIL-FTC 034637 | UTIL-FTC 034676 | Market and Competitive Analysis prepared by Hicks (See Decl. Davis ¶ 6) |
| PX 50109 UTIL-FTC 034677 | UTIL-FTC 035343 | Business Plans and Strategies, Confidential Communications with Investment Banker (See Decl. Davis ¶ 6) |
| PX 81013 Deposition Transcript (Ted Davis) | | |
| P. 64 Line 17 through P. 76 Line 5 | | Intellectual Property and Products in Development |
| P. 98 Lines 11 through 18 | | Nonpublic Sales and Financial Information, Margin Data |
| P. 162 Line 10 through P. 163 Line 1 | | Business Plans and Strategy, Revenue Projections |
| P. 168 Line 4 through P 175 Line 19__ | | Business Plans and Strategy |
| P. 287 Line 2 through P. 288 Line 8 | | Customer Specific Information, Business Plans and Strategy |

II. LEGAL STANDARD

In camera treatment of material is appropriate where, as here, its “public disclosure will likely result in a clearly defined, serious injury to the . . . corporation requesting such treatment.” 16 C.F.R. section 3.45(b). The proponent for *in camera* treatment must show that the documents are secret and material to the business to demonstrate serious competitive injury. *In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

The Commission will consider the following factors to determine the secrecy and materiality of the documents and testimony at issues: (1) the extent to which the information is known outside of the business; (2) the extent to which it is known by employees and others involved in the business; (3) the extent of measures taken to guard the secrecy of information; (4) the value of the information to the business and its competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be acquired or duplicated by others. *In re Bristol-Myers Co.*, 90 F.T.C. 455, 456–457 (1977). Furthermore, a proponent’s non-party status weighs in favor of *in camera* treatment; a non-party deserves “special solicitude” in its request for *in camera* treatment. *See In re Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984) (“As a policy matter, extension of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests”).

III. THE DOCUMENTS ARE SECRET AND MATERIAL AND DISCLOSURE WOULD RESULT IN SERIOUS INJURY TO UTILITY

Utility seeks *in camera* treatment for secret and competitively-sensitive business and strategic plans; intellectual property and details regarding products in development; nonpublic contract negotiations and contracts; internal customer-specific information; nonpublic pricing and margin data; market analyses; and nonpublic sales and financial information. These document categories are sufficiently secret and material, and the secrecy and materiality outweigh the minimal importance the information contained in these documents would have in explaining the Commission’s decision. *See General Foods Corp.*, 95 F.T.C. 352 (1980). As discussed further below, the Commission has previously recognized that each of these categories of documents deserves *in camera* treatment.

All *Bristol Myers* factors relevant to the materials for which Utility seeks *in camera* treatment are met in this case. First, none of the aforementioned information is known outside of Utility, aside from documents between Utility and contracting parties. (Decl. Davis ¶15)

Second, Utility only disclosed the information to employees on a need-to-know basis, or parties in the context of a bid proposal or contractual relationship with Utility. (Decl. Davis ¶ 15) Third, Utility always restricted access to these materials to appropriate Utility employees, parties included in the subject communication, and contracting parties to the documents. Since 2019 Utility has begun requiring its employees to sign non-disclosure and confidentiality agreements to protect and maintain the secrecy of these types of information. Currently and prior thereto, Utility's employees were exposed to such information only on a need to know basis and understood that such information was confidential and not to be disclosed except to persons on a need to know basis. (Decl. Davis ¶ 15) Fourth, the documents at issue contain highly secret and material information, such that disclosure would result in serious injury to Utility and would advantage Utility's competitors at Utility's expense. (Decl. Davis ¶¶ 4, 5, 7, 10, 11, 12, 13, 14) Finally, it would be nearly impossible for a non-party to properly acquire or duplicate the information contained in the documents at issue because Utility kept these documents confidential. (Decl. Davis ¶ 15) Utility would suffer a "likely loss of business advantage," and a "clearly defined, serious injury" if the Commission discloses this information. (Decl. Davis ¶¶ 3, 4) *See In re General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

Utility and Axon are direct competitors in the market for the manufacture and supply of car video systems, personal cameras, command and control products, and related equipment and software to law enforcement and others in the United States. Neither Axon or other rivals should receive access to their competitor's confidential costs, margins, non-public pricing, business strategy, competitive analyses, product development efforts, and intellectual property, information they could not otherwise receive from Utility legally, as a result of this FTC proceeding. Moreover, undermining and weakening Utility's competitive position also would be detrimental to consumers and the marketplace as a whole. It is therefore both appropriate and proper for the Commission to grant *in camera* treatment to the identified exhibits and deposition testimony.

A. BUSINESS PLANS AND STRATEGIES

Utility seeks *in camera* treatment for documents that contain business plans and strategies. The Commission has found that this type of information deserves *in camera* treatment. *See Union Oil Company of California*, 2004 WL 2458848, at *3 (F.T.C. Oct. 7, 2004) (granting motion for *in camera* treatment of “business planning” information). Utility would suffer harm if the Commission reveals Utility’s current and future business plans to competitors. (Decl. Davis ¶ 8) With access to Utility’s plans or strategies competitors easily could exploit any Utility weaknesses and counter any competitive tactics Utility might employ in seeking the award of a contract. Accordingly, Utility requests *in camera* treatment for a period of ten years. *See In re Tronox Ltd. A Corp., et al, Respondents*, 2018 WL 2336017, at *1 (F.T.C. May 15, 2018) (granting *in camera* treatment for a period of ten years for documents containing respondent’s “business plans”).

B. CONTRACT NEGOTIATIONS AND CUSTOMER CONTRACTS

Additionally, Utility identified certain documents containing contracts and negotiations with customers that deserve *in camera* treatment. The Commission previously granted similar documents *in camera* treatment. *See OSF Healthcare Sys., A Corp. & Rockford Health Sys., A Corp.*, 2012 WL 1355598, at *3 (granting motion for *in camera* treatment for “contracts with [customers] and negotiations with [customers]”). Utility enjoys many different customer relationships, which include varying types of contracts with those customers. Disclosure of such information would harm Utility’s customer relationships, undermine Utility’s future negotiating position, and harm Utility’s ability to be an effective competitor in the future. Accordingly, Utility requests that this information remain *in camera* for a period of ten years. *Evanston Nw. Healthcare Corp. & Enh Med. Grp., Inc.*, 2005 WL 1541539, at *2 (F.T.C. June 1, 2005) (granting *in camera* treatment, for a period of ten years, for “information related to contract negotiations and rates”).

C. INTELLECTUAL PROPERTY AND PRODUCTS IN DEVELOPMENT

Utility requests *in camera* treatment for documents containing intellectual property, proprietary information, and trade secrets created at great expense to produce Utility's products and services. Information that is "highly proprietary and sensitive" is sufficient grounds for extending *in camera* protection. *E.I. Dupont De Nemours & Co.*, 97 F.T.C. 116 (1981); *see also Union Oil Company of California*, 2004 WL 3142853, at *1 (F.T.C. Nov. 22, 2004) (granting indefinite *in camera* treatment for "trade secrets, such as secrets, formulas, processes, and other secret technical information"). Accordingly, Utility requests that this information remain *in camera* indefinitely. *See In re Tronox Ltd. A Corp., et al, Respondents*, 9337, 2018 WL 2336017, at *1 (F.T.C. May 15, 2018) (granting indefinite *in camera* treatment for documents containing "trade secrets").

D. CUSTOMER SPECIFIC INFORMATION

The Commission has held that customer specific information is entitled to *in camera* treatment. *See Polypore Int'l, Inc.*, 2009 WL 1499350, at *4 (F.T.C. May 13, 2009) (granting *in camera* treatment to "customer-specific documents".) Utility has developed relationships with many different customers and potential over the years. Competitors could use this information to target Utility's customers and undermine Utility's customer base. Accordingly, Utility requests that this highly sensitive information remain *in camera* for ten years. *See In re Tronox Ltd. A Corp., et al, Respondents*, 9377, 2018 WL 2336017, at *1 (F.T.C. May 15, 2018).

E. PRICING AND COST INFORMATION

The Commission has granted documents containing pricing strategy and cost information *in camera* treatment because disclosure will likely give unfair competitive advantages to competitors. *See McWane, Inc., A Cor., & Star Pipe Products Ltd, A Ltd. P'ship*, 2012 WL 3862131, at *3 (F.T.C. Aug. 17, 2012) (granting *in camera* treatment to documents containing "pricing and cost information"); *Polypore Int'l Inc.*, 2009 WL 1499350, at *4 (F.T.C. May 13,

2009) (granting *in camera* treatment to “costing data”); *E.I. Dupont De Nemours & Co.*, 97 F.T.C. 116 (1981) (granting *in camera* treatment to “certain lists of prices” because they would “assist its competitors if released”).

Utility seeks *in camera* treatment for documents containing price information of its products. The disclosure of Utility’s confidential pricing of its products would damage its relationship and negotiating power with customers, and assist competitors by providing them with vital information that Utility has thus far kept confidential. Accordingly, Utility requests that this information remain *in camera* for five years. *See In re Tronox Ltd., a Corp., et al, Respondents*, 9377, 2018 WL 2336017, at *1 (F.T.C. May 15, 2018) (granting *in camera* treatment for a period of five years for “aggregated price and volume information”).

F. MARKET ANALYSIS DOCUMENTS

Utility seeks *in camera* treatment for documents containing market and competitive analyses, similar to documents the Commission has previously granted *in camera* treatment. *See Polypore Int’l, Inc.*, 2009 WL 1499350, at *4 (F.T.C. May 13, 2009) (granting *in camera* treatment to “market analysis” information); *Evanston Nw. Healthcare Corp., & Enh. Med. Grp., Inc.*, 2005 WL 1541539, at *2 (F.T.C. June 1, 2005) (granting *in camera* treatment to information including “market analysis”). Utility’s market and competitive analyses are commercially valuable to its competitors and customers and are inherently material to its business. Utility’s market analyses are valuable to its competitive position in the market and provide an insight into Utility’s own insights as well as future plans to better compete in the market. The value of this information to Utility’s competitors is similar to that of Utility’s business plans and strategies. Accordingly, Utility requests that this information remain *in camera* for ten years. *See In re Tronox Ltd. A Corp., et al, Respondents*, 9377, 2018 WL 2336017, at *1 (F.T.C. May 15, 2018) (granting *in camera* treatment for a period of ten years for documents containing respondent’s “business plans”).

G. SALES AND FINANCIAL INFORMATION

Utility seeks *in camera* treatment for sales and financial information. The Commission has granted *in camera* treatment for similar information. See *ECM Biofilms, Inc., A Corp., Also d/b/a Envioplastics Int'l*, 2014 WL 3974607, at *1 (F.T.C. Aug. 4, 2014) (granting *in camera* treatment to “financial information”). Utility’s sales and financial information are commercially valuable to its competitors and customers and are inherently material to its business. Disclosure of this information would undermine Utility’s negotiating power with customers and would allow competitors to obtain valuable insight into Utility’s business. Accordingly, Utility requests that this information remain *in camera* for ten years. See *In re Matter of Impax Labs., Inc., A Corp., Respondent*, 2017 WL 4948988, at *1 (F.T.C. Oct. 23, 2017) (granting *in camera* treatment for documents containing “financial and sales projections” for ten years).

IV. CONCLUSION

For the foregoing reasons, and those contained in the Declaration of Ted Davis, Utility respectfully requests that this Court grant *in camera* protection to all documents identified in the above table and included in *In Camera* Exhibit C .

Dated: Washington, DC
September 25, 2020

Respectfully submitted

/s/ Patrick J. Pascarella
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Counsel for Third Party Utility Associates, Inc.

STATEMENT REGARDING MEET AND CONFER

The undersigned certifies that counsel for non-party Utility Associates, Inc. (“Utility”) notified counsel for the Federal Trade Commission (“FTC”) and Axon Enterprise, Inc. (“Axon”) via emails on September 23, 2020, that it would be filing a motion seeking *in camera* treatment of certain confidential documents. Counsel for Axon indicated they would not object to Utility’s motion. Counsel for FTC stated they take no position on Utility’s motion.

Dated: Washington, DC
September 25, 2020

Respectfully submitted

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Counsel for Third Party Utility Associates, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on September 25, 2020, I filed the foregoing document electronically using the FTC's E-Filing System, which will send notification of such filing to:

April Tabor
Acting Secretary
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-113
Washington, DC 20580
electronicfilings@ftc.gov

The Honorable D. Michael Chappell
Chief Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Ave., NW, Rm. H-110
Washington, DC 20580
oalj@ftc.gov

I further certify that I delivered via electronic mail a copy of the foregoing document to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
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Counsel for Respondent Axon Enterprises, Inc.

Dated: September 25, 2020

/s/ Patrick J. Pascarella
Patrick J. Pascarella

EXHIBIT A

From: Ansaldo, Alexander <jansaldo@ftc.gov>
Sent: Friday, September 11, 2020 1:06 PM
To: Fahmy, Tina; Pascarella, Pat
Cc: Verwilt, Hana; Musser, Susan; Glover, Christian
Subject: In Re Axon Docket No. 9389 In Camera Notice—Utility
Attachments: Attachment A_Utility.pdf; 2020.01.30 Scheduling Order.pdf; 2020.07.10 Second Revised Scheduling Order.pdf

CAUTION: External Email

Tina and Pat:

Pursuant to the January 30 and July 10 Scheduling Orders in In the Matter of Axon Enterprise, Inc., Docket No. 9389 (attached for your reference), we are providing notice that Complaint Counsel intends to offer the documents listed on Attachment A into evidence in the administrative trial set to begin October 13, 2020. All exhibits admitted into evidence become part of the public record unless Administrative Law Judge D. Michael Chappell grants *in camera* status.

For documents or testimony that include sensitive or confidential information that you do not want on the public record, you must file a motion by **September 23, 2020** seeking *in camera* status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45 and 4.10(g). Judge Chappell may order that materials, whether admitted or not as evidence, be placed *in camera* only after finding that their public disclosure will likely result in a clearly-defined, serious injury to the person, partnership, or corporation requesting *in camera* treatment. Motions for *in camera* treatment of evidence to be introduced at trial must meet the strict standards set forth in 16 C.F.R. § 3.45 and explained in *In re Dura Lube Corp.*, 1999 FTC LEXIS 255 (Dec. 23, 1999); *In re Hoechst Marion Roussel, Inc.*, 2000 FTC LEXIS 157 (Nov. 22, 2000); and *In re Basic Research, Inc.*, 2006 FTC LEXIS 14 (Jan. 25, 2006).

Pursuant to Additional Provision 13 of the Scheduling Order, motions for *in camera* treatment also must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the material, *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 66 (April 23, 2004), and one copy of the documents for which *in camera* treatment is sought must be provided to the Administrative Law Judge.

You can find examples of previously filed motions for *in camera* treatment and Judge Chappell's corresponding orders in the July and August 2018 portions of the following docket: <https://www.ftc.gov/enforcement/cases-proceedings/171-0231/otto-bock-healthcarefreedom-innovations>

Sincerely,

Alex Ansaldo

=====
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jansaldo@ftc.gov

Attachment A

Confidential Notice

| Ex. Number | Date | BegBates | EndBates | Description |
|------------|------------|------------------|------------------|--|
| PX50082 | 00/00/0000 | UTIL-FTC00000001 | UTIL-FTC00000002 | Spreadsheet: Utility Submitted RFPs; Document: Explanations of Headings in UTIL-FTC00000001 |
| PX50083 | 6/20/2019 | UTIL-FTC00032078 | UTIL-FTC00032081 | Email from Ted Davis to Kent Brown, Amanda Havice, and Jeff Johnson re: Utility's BAFO for BUZ1819 Acquisition and Maintenance of and In-Car Audiovisual, Body Worn Camera BAFO w/Attach: Dallas_BUZ1819_revised pricing sheet UTILITY_BAFO FINAL.pdf |
| PX50084 | 3/24/2017 | UTIL-FTC00033256 | UTIL-FTC00033265 | Email from Jeff Johnson to Maggie Targove re: Follow Up by Utility, Inc - Responses to Questions by the City of New Haven CT: RFP#2017-12-1143, Body Worn Cameras w/Attach: Utility Responses to New Haven Questions 3-24-2017- TMD.pdf |
| PX50086 | 5/3/2016 | UTIL-FTC00033901 | UTIL-FTC00033957 | Email from Robert McKeeman to Brian Wayt, James Molinari and Ted Davis re: Bodyworn camera .pdf files from Utility w/Attach: BodyWorn_Digital_Brochure.pdf; Pricing&Plans-032816.pdf; BodyWorn Solution Overview April 2016.pdf; Untitled attachment 01355.htm; Bodyworn 5 Year Total Cost of Ownership.pdf; Bodyworn Total Cost of Ownership Analysis April 2016.pdf; Untitled attachment 01361.htm |
| PX50087 | 5/3/2016 | UTIL-FTC00033998 | UTIL-FTC00034053 | Email from Robert McKeeman to Bill Gore, James Molinari, and Ted Davis re: Bodyworn camera .pdf files from Utility w/Attach: BodyWorn Solution Overview April 2016.pdf; Pricing&Plans-032816.pdf; BodyWorn_Digital_Brochure.pdf; Bodyworn 5 Year Total Cost of Ownership.pdf; Bodyworn Total Cost of Ownership Analysis April 2016.pdf; Untitled attachment 01394.htm |
| PX50088 | 12/21/2015 | UTIL-FTC00034127 | UTIL-FTC00034129 | Email from David Bui to Ted Davis and Kofo Domingo re: RFP 96301 Body Worn Cameras Project, Proposal Status w/Attach: Utility Associates, Inc. - Determination of Non-Responsiveness.pdf |
| PX50089 | 11/19/2015 | UTIL-FTC00034131 | UTIL-FTC00034133 | Email from Ted Davis to Mark Wood, Anthony Baldoni, Ted Davis, et al. re: Cost Estimate... |
| PX50090 | 12/17/2015 | UTIL-FTC00034215 | UTIL-FTC00034223 | Email from Mark Wood to Ted Davis re: w/Attach: Body Camera Bid Evaluation and Recommendation 2.pdf |
| PX50092 | 7/11/2019 | UTIL-FTC00034638 | UTIL-FTC00034656 | Document: HEP Internal Research - Detailed Analysis of Axon's Various Problematic Business Practices and Court Cases |
| PX50093 | 12/7/2016 | UTIL-FTC00035551 | UTIL-FTC00035551 | Document: 2017 Bookings / Revenue Reconciliation |

Attachment A

Confidential Notice

| Ex. Number | Date | BegBates | EndBates | Description |
|------------|------------|------------------|------------------|---|
| PX50094 | 10/23/2015 | UTIL-FTC00005670 | UTIL-FTC00005673 | Letter from Eric Swedberg to All Interested Vendors re: RFB-16DPS-542 Request for Bid for a 3-Year Term Contract for Body Cameras & System for the Indianapolis Metropolitan Police Department - Addendum Number: 1 |
| PX50096 | 8/13/2015 | UTIL-FTC00034142 | UTIL-FTC00034181 | Email from Jeff Johnson to Mimi Woods, KL Bryant, and Ted Davis re: Questions from Utility, Inc: FC-8342, Body Camera and Video Management System w/Attach: Attachment 1_CJ Davis Email April 21 2015.pdf; Attachment 2_Resolution 15-R-3878.pdf; Attachment 3_TASER Sole Source Documents.pdf; Attachment 4_Atlanta CIO Saini recommendation.pdf; Attachment 5_APD Field Test Scores.pdf; Atlanta PD Body Camera RFP questions.pdf |
| PX50097 | 4/27/2016 | UTIL-FTC00005628 | UTIL-FTC00005628 | Letter from Eric Swedberg to Vendor re: Notice of Bid Cancellation RFB-16DPS-542 3-Year Term Contract for Body Cameras St System for the Indianapolis Metropolitan Police Department |
| PX50098 | 2/15/2019 | UTIL-FTC00005984 | UTIL-FTC00005986 | Letter from Teresa Donsbach to All Interested Buyers re: RFI-12MPD-19-01 |
| PX50099 | 2/18/2019 | UTIL-FTC00006053 | UTIL-FTC00006059 | Document: 00k Specs Indianapolis Metropolitan Police Department_SF_2.18.18 |
| PX50100 | 2/18/2019 | UTIL-FTC00006060 | UTIL-FTC00006150 | Document: Request for Information RFI-12MPD-19-1 Body Worn Cameras for the Indianapolis Metropolitan Police Department - Utility |
| PX50108 | 8/1/2019 | UTIL-FTC00034637 | UTIL-FTC00034676 | Email from Joe Garcia to Ted Davis re: Axon Research |
| PX50109 | 3/8/2018 | UTIL-FTC00034677 | UTIL-FTC00035343 | Email from Joe Garcia to Charlie Gruner, Ted Davis, Amanda Havice, et al. re: Project Ultron Teaser and CIM Outline |
| PX50129 | 8/24/2015 | UTIL-FTC00000145 | UTIL-FTC00000146 | Letter from Adam Smith to Anthony Baldoni re: FC-8342, Body Camera and Video Management System |
| PX50135 | 2/9/2016 | UTIL-FTC00012377 | UTIL-FTC00012378 | Letter from David Bui to All Proposers re: Notice of Intent to Award - RFP (Request for Proposal) 96301 Body Worn Cameras Project |
| PX50136 | 5/20/2016 | UTIL-FTC00013777 | UTIL-FTC00013798 | Memo from Julia Cooper to Honorable Mayor and City Council re: Report on Request for Proposal for a Body Worn Camera and Evidence Management System |
| PX50137 | 9/14/2015 | UTIL-FTC00031379 | UTIL-FTC00031391 | Email from Janice Hughes to Jeff Johnson re: Debrief Info Request: Pilot Program for Body Worn Cameras, City of Arlington, TX w/Attach: Doc #3 15-0121 Memo to Team.pdf |
| PX50146 | 3/3/2017 | UTIL-FTC00012058 | UTIL-FTC00012061 | Document: County of San Diego Addendum No. 6 Body Worn Camera System - (RFP 7888) |

Attachment A

Confidential Notice

| Ex. Number | Date | BegBates | EndBates | Description |
|------------|-----------|------------------|------------------|--|
| PX50147 | 3/23/2019 | UTIL-FTC00024063 | UTIL-FTC00024095 | Document: Request for Quotation 1023661-4 Body Worn and In-Car Camera Systems to Metro Govt Of Nashville and Davidson County |
| PX50148 | 1/22/2016 | UTIL-FTC00012336 | UTIL-FTC00012336 | City and County of San Francisco, California: RFP 96301, Request for Proposal for Body Worn Cameras Project Short-Listing Notification |
| PX81013 | 8/5/2020 | PX81013-001 | PX81013-138 | Document: Davis, Ted Final Deposition Transcript |

EXHIBIT B

From: Baumann, Jordan M. <jbaumann@jonesday.com>
Sent: Saturday, September 12, 2020 12:40 AM
To: Pascarella, Pat
Cc: Belott, Debra R.; Bryan, Kelsey S.; Healey, Aaron M.; Liddell, Ryan T.; McEvoy, Julie E.
Subject: In re Axon Enterprise Inc., Dkt. No. 9389 - Notice of Intent to Offer Documents
Attachments: Utility Attachment A.pdf

****CAUTION: External Email****

You have received 1 files.
Use the secure links below to download.

Counsel,

I am writing to provide formal notice, pursuant to Rule 3.45(b) of the Commission's Rules of Practice, 16 C.F.R. § 3.45(b), that Axon intends to offer into evidence in the administrative trial in the above-captioned matter the documents and testimony referenced in the attached document (Attachment A). Please use the below link to access the documents referenced in Attachment A. The administrative trial is scheduled to begin on October 13, 2020.

All exhibits and testimony admitted into evidence become part of the public record unless in camera status is granted by Administrative Law Judge D. Michael Chappell. For documents or testimony which include sensitive or confidential information that you do not want on the public record, you must file a motion seeking in camera status or other confidentiality protections pursuant to 16 C.F.R. §§ 3.45, 4.10(g). Motions for in camera treatment must meet the strict standard set forth in 16 C.F.R. § 3.45, which provides that "[t]he Administrative Law Judge shall order that such material, whether admitted or rejected, be placed in camera only after finding that its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation requesting in camera treatment or after finding that the material constitutes sensitive personal information." 16 C.F.R. § 3.45. The strict standard is further explained in *In re Otto Bock Healthcare N. Am.*, 2018 WL 3491602 at *1 (July 2, 2018) and *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017). Motions for in camera treatment must be supported by a declaration or affidavit by a person qualified to explain the confidential nature of the documents. *In re 1-800 Contacts, Inc.*, 2017 FTC LEXIS 55 (April 4, 2017); *In re North Texas Specialty Physicians* 2004 FTC LEXIS 109, *3-4 (April 23, 2004). You must also provide one copy of the documents for which in camera treatment is sought to the Administrative Law Judge.

Under the current Scheduling Order dated July 10, 2020, the deadline for filing motions seeking in camera treatment of proposed trial exhibits is September 30, 2020.

Feel free to contact me if you have any questions.

Best,
Jordan

Jordan Baumann
Associate
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Office +1.614.281.3800

Download Files

Available until: **17 September 2020**

Download File: [21. Utility.zip](#)

96.14 MBytes, [Fingerprint](#): 5d9deed3b0d83a365cd2b59fcc860cec

You have received attachment link(s) within this email sent via Jones Day's Secure File Transfer (powered by Accellion). To retrieve the attachment(s), please click on the link(s).

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Utility

Attachment A

| Beginning Bates No. | End Bates No. |
|----------------------------|----------------------|
| UTIL-FTC00000001 | UTIL-FTC00000001 |
| UTIL-FTC00001828 | UTIL-FTC00001832 |
| UTIL-FTC00002683 | UTIL-FTC00002696 |
| UTIL-FTC00003075 | UTIL-FTC00003080 |
| UTIL-FTC00004745 | UTIL-FTC00004749 |
| UTIL-FTC00006060 | UTIL-FTC00006150 |
| UTIL-FTC00008299 | UTIL-FTC00008326 |
| UTIL-FTC00011010 | UTIL-FTC00011010 |
| UTIL-FTC00011043 | UTIL-FTC00011043 |
| UTIL-FTC00012605 | UTIL-FTC00012609 |
| UTIL-FTC00017349 | UTIL-FTC00017350 |
| UTIL-FTC00019566 | UTIL-FTC00019580 |
| UTIL-FTC00035561 | UTILFTC00035561 |
| PX81013-001 | PX81013-138 |

EXHIBIT C
Confidential Document
(REDACTED IN ITS ENTIRETY)

EXHIBIT D

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE JUDGES**

**Before the Honorable D. Michael Chappell
Administrative Law Judge**

In the Matter of

**Axon Enterprise, Inc.
a corporation,**

and

**Safariland, LLC,
a corporation,**

Respondents.

Docket No. 9389

**DECLARATION OF TED DAVIS IN SUPPORT OF UTILITY’S MOTION
FOR *IN CAMERA* TREATMENT**

I, Ted Davis make the following declaration under 28 U.S.C. §1746:

1. I am a cofounder of Utility Associates, LLC (“Utility”) and served as CEO through February, 2020. Currently I am the Chief Innovation Officer.
2. I submit this declaration in support of Utility’s Motion for *In Camera* Treatment (the “Motion”).
3. I reviewed each document and portion of my deposition transcript for which Utility seeks *in camera* treatment and determined that they contain confidential information, the public disclosure of which would cause a clearly defined, serious injury to Utility.
4. I am personally familiar with the content of the documents and information contained in the identified segments of my deposition for which Utility seeks *in camera* treatment, the competitive significance to Utility, and the level of confidentiality associated with the subject matter therein. Based on my review of the documents and deposition segments identified in the Motion, my knowledge of Utility’s business, and my familiarity with the confidentiality

protection that Utility affords this type of information, I submit that the disclosure of these materials or information to the public and rivals of Utility would cause serious competitive injury to Utility. Additionally, each document and deposition segment identified in the Motion has, upon production in this case, been designated “Confidential Material” pursuant to the applicable Protective Order, or stipulated as Confidential in the case my deposition.

5. Utility is a private company that manufactures and supplies in car video systems, personal cameras, command and control products, routers, related equipment and software to law enforcement and other markets in the United States. The documents identified in the Motion relate to and contain information regarding Utility’s business, including strategic plans, intellectual property and certain details regarding products in development, nonpublic contract negotiations and contracts, internal customer-specific information, nonpublic pricing, margin data, market and competitive analyses, and nonpublic sales and financial information. The confidentiality of these materials is critical to Utility’s business, marketing, sales, competitiveness, and profitability. Competitors and third parties with access to this information could unfairly use this information to Utility’s detriment.

6. For purposes of clarification, Hicks Equity Partners, LLC, who appear on some of the documents for which Utility seeks *in camera* treatment, is the primary investor in Utility and also holds a position on Utility’s Board.

7. Utility places significant value upon maintaining the secrecy and confidentiality of the categories identified in the Motion. The public disclosure of any of this sensitive information would be highly detrimental to Utility. Each document and deposition segment is summarized in the following table along with the identification of category of information the document or deposition transcript contains.

- a. Business plans and strategies
- b. Intellectual property and products in development
- c. Nonpublic contract negotiations and contracts
- d. Customer-specific information

- e. Nonpublic pricing, cost, and margin data
- f. Market and competitive analyses
- g. Nonpublic sales and financial information

| Beginning Bates | Ending Bates | Description |
|---|---------------------|--|
| UTIL-FTC 006060 Pages 6139-6144 | 006150 | Customer Specific Information |
| UTIL-FTC 011010 | | Customer Specific Information, Nonpublic Sales and Financial Information |
| UTIL-FTC 011043 | | Customer Specific Information, Nonpublic Sales and Financial Information |
| UTIL-FTC 035561 | | Business Planning, Competitive Analysis, and Nonpublic Sales and Financial Information |
| PX 50083-001 | 50083-004 | Nonpublic Contract Negotiations and Contracts, Customer Specific Pricing Proposal (2019) |
| PX 50092-001 | 50092-019 | Market and Competitive Analysis (prepared by Hicks) |
| PX 50093 | | Nonpublic Sales and Financial Data |
| PX 50108 UTIL-FTC 034637 | UTIL-FTC 034676 | Market and Competitive Analysis (prepared by Hicks) |
| PX 50109 UTIL-FTC 034677 | UTIL-FTC 035343 | Business Plans and Strategies, Confidential Communications with Investment Banker |
| PX 81013 Deposition Transcript (Ted Davis) | | |
| P. 64 Line 17 through P. 76 Line 5 | | Intellectual Property and Products in Development |
| P. 98 Lines 11 through 18 | | Nonpublic Sales and Financial Information, Margin Data |
| P. 162 Line 10 through P. 163 Line 1 | | Business Plans and Strategy, Revenue Projections |
| P. 168 Line 4 through P 175 Line 19 | | Business Plans and Strategy |
| P. 287 Line 2 through P. 288 Line 8 | | Customer Specific Information, Business Plans and Strategy |

8. **Business & Strategic Plans:** Utility has produced documents categorized as “Business and Strategic Plans,” which include plans, information, and strategies including product development. The disclosure of these documents would reveal certain of Utility’s current and future business plans and strategies to competitors and harm Utility. Competitors would take advantages of any weaknesses Utility identified and enact their own defensive plans to counter or undermine Utility. I believe this information should remain confidential.
9. **Intellectual Property and Details Regarding Products in Development:** Utility has produced documents that include or reference trade secrets and/or confidential technical information, including information regarding the technical specifications for certain current and future products. I believe this information should remain confidential.
10. **Contract Negotiations and Customer Contracts:** Utility has produced documents that include contract negotiations and contracts with customers. The public disclosure of the information contained in these documents could harm Utility’s customer relationships and undermine its ability to negotiate in the future, thereby seriously damaging Utility’s competitive position in the market. Competitors could seize on this information and further disrupt Utility’s relationships with its customers. I believe this information should remain confidential.
11. **Internal Customer-Specific Information:** Utility has also produced documents containing customer-specific information. Here again, Competitors could seize on this information and further disrupt Utility’s relationships with its customers. I believe this information should remain confidential.
12. **Nonpublic Pricing and Margin Data:** Utility has produced documents containing generic pricing, cost, and margin data. This information is also sensitive and would seriously harm Utility if publicly disclosed. The disclosure could damage Utility’s relationships with its customers, undermine its negotiating power, and assist competitors by providing them with vital information that Utility has thus far kept confidential. I believe this information should remain confidential.

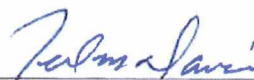
13. **Market and Competitive Analyses:** Utility has produced market and competitive analysis documents which are commercially valuable to Utility's competitor's and customers and are inherently material to its business. Utility's market analyses are valuable to its competitive position in the market and provide an insight into its future plans. For instance, Utility's market analyses would provide a competitor with insight into an area of the market identified by Utility as critical or as a weakness, which a competitor can take advantage. The sensitivity of these documents is similar to that of Utility's business plans, as they both provide insight into future plans and disclosure would allow a competitor to stymie Utility's future growth. I believe this information should remain confidential.

14. **Nonpublic Sales and Financial Information:** Utility produced documents containing sales and financial information. Utility's sales and financial data are commercially valuable to Utility's competitors and customers, and are inherently material to its business. Disclosure of this information could undermine Utility's negotiating power with customers and would allow competitor's to obtain valuable insight into Utility's business. The public release of these materials would harm Utility because the data can reveal certain of Utility's current and future plans to improve its business and compete in the market. Utility's competitors could use these documents to plan their own competitive activities and/or unfairly undermine Utility's plans for growth. I believe this information should remain confidential.

15. Prior to this proceeding, the information contained in the documents identified in Exhibit C has been exposed only to appropriate Utility employees, parties included in the subject communication, and contracting parties to the documents. Since 2019 Utility has begun requiring its employees to sign non-disclosure and confidentiality agreements to protect and maintain the secrecy of the information. Currently and prior thereto, Utility's employees were exposed to such information only on a need to know basis and understood that such information was confidential and not to be disclosed except to persons on a need to know basis. Utility employees without a business need to know do not have access to the documents containing *in camera* material.

I declare under penalty of perjury, that the above statements are true and correct.

Executed on: September 25, 2020



Ted Davis
Utility Associates, Inc.
Chief Innovation Officer

**UNITED STATES OF AMERICA
 BEFORE THE FEDERAL TRADE COMMISSION
 OFFICE OF ADMINISTRATIVE JUDGES**

**Before the Honorable D. Michael Chappell
 Administrative Law Judge**

In the Matter of

**Axon Enterprise, Inc.
 a corporation,**

and

**Safariland, LLC,
 a corporation,**

Respondents.

Docket No. 9389

**[PROPOSED] ORDER RE UTILITY ASSOCIATES, INC.’S
 MOTION FOR *IN CAMERA* TREATMENT**

Upon consideration of Non-Party Utility Associates, Inc.’s (“Utility”) Motion for *In Camera* Treatment, it is HEREBY ORDERED that the following documents, listed below, are to be provided *in camera* treatment from the date of this Order, and it is further ORDERED that these documents may only be viewed by those permitted to view them under the Protective Order in this matter for a period of ____ years from the date of this ORDER.

| Beginning Bates | Ending Bates |
|------------------------------------|---------------------|
| UTIL-FTC 006060 Pages 6139-6144 | 006150 |
| UTIL-FTC 011010 | |
| UTIL-FTC 011043 | |
| UTIL-FTC 035561 | |
| PX 50083-001 | 50083-004 |
| PX 50092-001 | 50092-019 |
| PX 50093 | |
| PX 50108 UTIL-FTC 034637 | UTIL-FTC 034676 |

| | |
|---|-----------------|
| PX 50109 UTIL-FTC 034677 | UTIL-FTC 035343 |
| PX 81013 Deposition Transcript (Ted Davis) | |
| P. 64 Line 17 through P. 76 Line 5 | |
| P. 98 Lines 11 through 18 | |
| P. 162 Line 10 through P. 163 Line 1 | |
| P. 168 Line 4 through P 175 Line 19 | |
| P. 287 Line 2 through P. 288 Line 8 | |

IT IS SO ORDERED.

DATED:

By: _____

IT IS SO ORDERED