

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

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In the Matter of)
)
Axon Enterprises, Inc.)
a corporation,) Docket No. 9389
)
and)
)
Safariland, LLC,)
a corporation.)
_____)

MOTION OF NON-PARTY CENTRALSQUARE TECHNOLOGIES, LLC
FOR *IN CAMERA* TREATMENT OF CERTAIN COMPETITIVELY
SENSITIVE BUSINESS DOCUMENTS

To the Honorable Michael Chappell
Administrative Law Judge

Pursuant to Rule 3.45 of the Federal Trade Commission’s (“FTC”) Rules of Practice, 16 C.F.R §3.45(b), non-party CentralSquare Technologies, LLC (“CentralSquare” or the “Company”) respectfully moves for an Order directing *in camera* treatment of certain confidential business documents which were produced under subpoenas issued by the FTC and respondent Axon Enterprises, Inc. (“Axon”). At the time of production, these documents were designated as “Confidential” pursuant to the Protective Order entered in this proceeding. The FTC has now notified CentralSquare that it intends to introduce some of these confidential documents in evidence as exhibits at the trial of this matter. *See* September 11, 2020 email from the FTC enclosed herewith as Exhibit A. CentralSquare submits that certain documents contained in the proposed exhibits include highly sensitive and proprietary business information and, under the applicable legal standard, warrant *in camera* treatment.

A. CentralSquare's Competitive Market.

As summarized in the Declaration of David Zolet, CentralSquare's Chief Operating Officer, the Company develops, implements, and supports municipal software solutions to local government. *See* Declaration of David Zolet, enclosed herewith as Exhibit B ("Zolet Declaration"). CentralSquare's public sector software platforms provide solutions for public safety (911, dispatch, records, mobile, and jail) and public administration (finance, Human Resources/payroll, utilities, citizen engagement, community development, property tax, municipal services, and asset management). The municipal software market in which CentralSquare operates is extraordinarily competitive and, indeed, respondent Axon Enterprises, Inc. ("Axon") is a competitor of CentralSquare in the public safety market (digital evidence management software).

B. The Confidential Materials.

CentralSquare seeks *in camera* treatment for the following documents contained in the FTC's Proposed Exhibits, a copy of which is enclosed herewith as Exhibit C:¹

Ex. Number	Date	Beg. Bates	End Bates	Description
PX50138	02/04/2019	CST-88	CST-192	Presentation: 2019 CentralSquare Plan, Pass II – Bottoms Up Build

Exhibit PX50138 contains highly sensitive confidential financial information ("Confidential Materials") that, if disclosed publicly, would result in a significant competitive injury to CentralSquare. *In camera* treatment of this information is warranted. A legal analysis follows.

C. In Camera Treatment is Justified.

In camera treatment of proposed documentary evidence is appropriate when "public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or

¹ Notably, CentralSquare is not seeking *in camera* treatment of FTC Exhibit PX50117 which does not meet the legal standard for such treatment.

corporation requesting *in camera* treatment[.]” 16 C.F.R. §3.45(b). This standard is met by a showing that the documents sought to be offered are secret and material to the applicant’s business. *In re General Foods Corp*, 95 F.T.C. 352, 355 (1980). The evaluation criteria for secrecy and materiality was succinctly set forth in *In re Bristol-Myers Co.*, 90 F.T.C. 455 (1977):

(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Id. at 456-457 (citing Restatement of Torts § 757, Comment b at 6 (1939)). CentralSquare satisfies this test as each of the foregoing factors weigh in favor of *in camera* treatment.

As detailed in the Zolet Declaration, CentralSquare has closely guarded the Confidential Materials by strictly limiting its dissemination to executives and board members. [Zolet Decl. ¶¶3, 6, 8] The Confidential Materials were prepared exclusively for review by the Executive Leadership Team (“ELT”) and the Board of Managers (“Board”), and the Company has taken all reasonable steps to protect the confidentiality of the information. [Zolet Decl. ¶¶3, 6, 8] Hence, the Confidential Materials (1) are not known outside the business; (2) are known only to those persons in positions of the highest trust; and (3) the Company has taken (and continues to take) every reasonable step to protect their confidentiality. The first three parts of the *Bristol-Myers* test are satisfied.

Next, the value to CentralSquare’s competitors of the sensitive financial information contained in the Confidential Materials cannot be understated. They contain information concerning the Company’s financial condition, forecasts, revenue, sales bookings, expenses, profit margins, research & development, pricing strategies, staffing, employee compensation, investment strategies, product roadmaps, competitive market analyses, techniques for marketing its products,

geographical analyses, and other secret details. [Zolet Decl. ¶5] What rational competitor *wouldn't* want to get its hands on this information? It is self-evident that CentralSquare's competitors, armed with the Company's sensitive and secret internal financial and strategic-planning information would exploit every piece of that data for their own competitive advantage—and to CentralSquare's disadvantage. Even something as limited as pricing information could have a crushing impact if it fell into the hands of the competition.

Of particular relevance here, CentralSquare and its competitors regularly issue public records requests to obtain copies of the competition's bids (submitted to win contracts) to gain even a small advantage on pricing. [Zolet Decl. ¶7] Again, the competition is fierce. A review of the Confidential Materials makes it plain that they contain the type of detail that any prudent company would want to keep secret. A clearly defined injury that would warrant *in camera* treatment “may be inferred from the nature of the documents themselves.” *In re Kaiser Aluminum & Chemical Corp.*, 103 F.T.C. 500 (May 25, 1984). 1984 WL 565325, at *1. Such is the case here. The fourth factor (the value of the information to competitors) weighs in favor of *in camera* treatment.

Furthermore, the sensitive financial information contained in the Confidential Materials is exceptionally detailed and required substantial effort to collect and organize so that it could be presented to the ELT and Board in a format that would facilitate high-level strategic decision-making. [Zolet Decl. ¶3] It is more than just a summary and, by its very content, reveals the extraordinary effort that went into its compilation. *See Kaiser Aluminum*, 1984 WL 565325, at *1. Part five of the test is thereby satisfied.

Lastly, due to the secret and sensitive nature of the Confidential Materials, it would be effectively impossible for it to be *properly* obtained by others (“properly” being the gist of the

final prong of the *Bristol-Myers* test). The information in the Confidential Materials has never been and will never be made public. To be sure, the only way anyone outside of CentralSquare's ELT and Board could obtain the information is through *improper* means—or if the Confidential Materials were made public. CentralSquare is not a public company and the information is not available outside a *very* limited control group. [Zolet Decl. ¶9] The final factor is satisfied and supports *in camera* treatment of the Confidential Materials. Therefore, CentralSquare has demonstrated that all the *Bristol-Myers* factors weigh in favor of *in camera* treatment of the Confidential Materials.

D. CentralSquare's Status as a Non-party.

In addition to satisfying the *Bristol-Myers* test, there is additional authority that compels *in camera* treatment. CentralSquare is not a party to this proceeding and, as such, its request for *in camera* treatment of the Confidential Materials warrants “special solicitude.” *In re Pom Wonderful, Inc.*, 2011 WL 2160777 (Docket No. 9344, May 9, 2011), at *1. Further, “[a]s a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.” *In re Kaiser Aluminum & Chem. Corp.*, 103 FTC 500 (1984).

CentralSquare was served with subpoenas by the FTC and Axon to produce records—many of which were proprietary—and complied without seeking an order quashing or limiting the scope of the records requests expressly *because* the Protective Order in this case gave the Company assurances the information would not find its way into the public realm. [Zolet Decl. ¶4] In addition, CentralSquare marked every page of the documents produced as “Confidential” pursuant to the Protective Order. In short, the Company has done everything in its power to cooperate in the process *and* keep its proprietary information from the public eye (read, competitors' eyes).

CentralSquare is already concerned that Axon (its competitor) has in its possession the type of proprietary financial information in the Confidential Materials, although relies on Axon's adherence to the limits of the Protective Order. Should *in camera* treatment not be afforded here, Axon would need to employ scant effort to convert the Confidential Materials to its competitive advantage.

E. Duration of *In Camera* Treatment.

Naturally, CentralSquare would like to keep the Confidential Materials indefinitely secreted from the outside world. That said, the Company recognizes that the Commission is disinclined to grant indefinite *in camera* protection to business records that do not qualify as trade secrets. *See In re Dura Lube Corp.*, 1999 FTC LEXIS 255, at *7-8 (Dec. 23, 1999). To that end, CentralSquare respectfully requests that the Confidential Materials be granted *in camera* treatment for a period of five (5) years.

Respectfully Submitted,
CentralSquare Technologies, LLC,
Non-party,
By its attorneys,

/s/ Michael F. Drywa, Jr.
Michael F. Drywa, Jr.
1000 Business Center Drive
Lake Mary, Florida 32746
407-304-3256
michael.drywa@centralsquare.com

CERTIFICATE OF ELECTRONIC FILING

I hereby certify that on September 23, 2020, I filed the foregoing document and all attachments electronically using the FTC's e-filing system, which will send notification of such filing to:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580
Secretary@ftc.gov

Aaron M. Healey
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001-2113
Counsel for Axon Enterprises

Jennifer Milici, or designee
Federal Trade Commission
400 7th Street, SW
Washington DC 20024
Counsel Supporting the Complaint

I also certify that on September 23, 2020, a copy of the foregoing document and all attachment was delivered via electronic mail to:

The Honorable D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-110
Washington, DC 20580
oyalj@ftc.gov

/s/ Michael F. Drywa, Jr.
Michael F. Drywa, Jr.

EXHIBIT A

(September 11, 2020 Email)

From: [Ansaldo, Alexander](#)
To: [Michael Drywa](#)
Cc: [Verwilt, Hana](#); [Glover, Christian](#)
Subject: In Re Axon Docket No. 9389 In Camera Notice—CentralSquare
Date: Friday, September 11, 2020 12:31:15 PM
Attachments: [2020.01.30 Scheduling Order.pdf](#)
[2020.07.10 Second Revised Scheduling Order.pdf](#)
[2020.09.10 IC Attach A. Central Square.pdf](#)

Dear Mr. Drywa:

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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J. Alexander Ansaldo
 Attorney, Division of Anticompetitive Practices
 Bureau of Competition
 Federal Trade Commission
 400 7th Street, SW
 Washington, DC. 20024

Office: 202-326-3695
Mobile: 703-343-5645
jansaldo@ftc.gov

EXHIBIT B

(Declaration of David Zolet)

competitor of CentralSquare in the public safety market (digital evidence management software).

- I have reviewed and am familiar with the documents referenced in Table A below that the Federal Trade Commission (“FTC”) has designated as exhibits it intends to offer in evidence at the trial of this matter (the “Proposed Exhibits”).

Table A

Ex. Number	Date	Beg. Bates	End Bates	Description
PX50117	01/08/2020	CST-836	CST-836	Email from Sean McCarthy to Jack Dillon re: Axon w/Attach: image001.png
PX50138	02/04/2019	CST-88	CST-192	Presentation: 2019 CentralSquare Plan, Pass II – Bottoms Up Build

Of the two Proposed Exhibits referenced in Table A, Exhibit PX50138 contains highly sensitive and confidential financial information that, if disclosed publicly, would result in a significant competitive injury to CentralSquare. The information contained in Exhibit PX50138 required substantial effort to collect and organize for the benefit of high-level strategic decision-making and CentralSquare has guarded this information closely by strictly limiting its dissemination to only those company executives and Board members who hold the highest positions of trust.

- CentralSquare produced the documents contained in the Proposed Exhibits (along with others) pursuant to subpoenas issued by the FTC and Axon and within the parameters of the Chief Administrative Law Judge’s January 6, 2020 Protective Order Governing Confidential Material (the “Protective Order”) by designating the documents as “Confidential” pursuant to Paragraph 6 of the Protective Order. CentralSquare was reluctant to produce such sensitive documents in the first instance—in part because Axon is a direct competitor of CentralSquare—but the Protective Order provided the necessary assurances that the sensitive information would not be publicly disclosed.

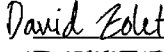
5. I certify that Exhibit PX50138 contains information that is proprietary, confidential, highly sensitive, and material to CentralSquare's municipal software business, including information related to CentralSquare's financials, forecasts, revenue, sales bookings, expenses, profit margins, research & development, pricing strategies, staffing, employee compensation, investment strategies, product roadmaps, competitive market analyses, techniques for marketing its products, geographical analyses, and other trade secrets. This information is critical to CentralSquare's competitive success in the municipal software market.
6. Furthermore, Exhibit PX50138 is a reproduction of a presentation of financial and strategic planning that was reviewed among CentralSquare's Executive Leadership Team and Board of Managers in early 2019. Although the financial information summarized 2018 results and presented the 2019 Plan, this information remains highly sensitive insofar as it provides the type of critical data that competitors can use to assess current and future financial performance and strategic planning. Should this information be disclosed publicly, customers or other third parties—having learned about CentralSquare's financials and strategic planning strategies—could (and likely *would*) use this information to their advantage when negotiating with CentralSquare, or otherwise use the information to CentralSquare's detriment. In short, the competitive sensitivity of the information in Exhibit PX50138 (including CentralSquare's trade secrets) is unlikely to diminish over time and would be *extremely* valuable to competitors should it fall into their hands.
7. For example, it is common for CentralSquare and its competitors to issue public records requests seeking copies of bids submitted in response to a customer's Request for Proposal so that they can gain a strategic advantage in preparing their own bids. Thus, in a market

where the competition is fierce, public disclosure of information regarding CentralSquare's financials and strategic plans would be devastating to CentralSquare's competitive position.

8. CentralSquare has taken and continues to take substantial measures to guard the proprietary and confidential information contained in Exhibit PX50138. This information is known only to CentralSquare's Managing Board and Executive Leadership Team. Because CentralSquare is not a public company, the information in Exhibit PX50138 would be exceptionally difficult for CentralSquare's competitors or other third parties to obtain.

I declare under 28 U.S.C §1746 and the pains and penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed on this 22 day of September, 2020.

DocuSigned by:


David Zolet
Chief Executive Officer
CentralSquare Technologies, LLC

EXHIBIT C

(FTC Exhibit PX50138)

[Redacted in its Entirety]

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2020, I served an electronic copy of the foregoing

Motion for *In Camera* Treatment upon:

Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Room H-113
Washington, DC 20580
Secretary@ftc.gov

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

Counsel for FTC (Complainant):

Jennifer Milici, jmilici@ftc.gov
J. Alexander Ansaldo, jansaldo@ftc.gov
Peggy Bayer Femenella, pbayer@ftc.gov
Mika Ikeda, mikeda@ftc.gov
Nicole Lindquist, mlindquist@ftc.gov
Lincoln Mayer, lmayer@ftc.gov
Merrick Pastore, mpastore@ftc.gov
Z. Lily Rudy, zrud@ftc.gov
Dominic Vote, dvote@ftc.gov
Steven Wilensky, swilensky@ftc.gov

Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580

Counsel for Respondent Axon Enterprises, Inc.:

Megan Lacy Owen, mlacyowen@joesday.com
Jones Day
51 Louisiana Avenue NW
Washington, DC 20001

Laura Gradel, lgradel@joesday.com
Jones Day
100 High Street – 21st Floor
Boston, MA 02110

Stephen D. Morrison III, smorrison@jonesday.com
Jones Day
90 South Seventh Street – Suite 4950
Minneapolis, MN 55402

Jordan M. Baumann, jbaumann@jonesday.com
Jones Day
325 John H. McConnell Blvd. – Suite 600
Columbus, OH 43215-2673

Kelsey S. Bryan, kbryan@jonesday.com
Jones Day
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071

Counsel for Respondent Safariland, LLC:

Emily Hutson, Emily.hutson@bakerbotts.com
Baker Botts LLP
700 K Street NW
Washington, DC 20001

/s/ Michael F. Drywa, Jr.
Michael F. Drywa, Jr.
Attorney for Non-party
CentralSquare Technologies, LLC