



this showing, the importance of the information in explaining the rationale of FTC decisions is “the principal countervailing consideration weighing in favor of disclosure.” *Id.*

The FTC recognizes the “substantial public interest in holding all aspects of adjudicative proceedings, including the evidence adduced therein, open to all interested persons.” *Hood*, 1961 FTC LEXIS 368, at \*5-6. A full and open record of the adjudicative proceedings promotes public understanding of decisions at the Commission. *In re Bristol-Myers Co.*, 1977 FTC LEXIS 25, at \*6 (Nov. 11, 1977). A full and open record also provides guidance to persons affected by the Commission’s actions and helps to deter potential violators of the laws that the Commission enforces. *Hood*, 1961 FTC LEXIS 368, at \*6-7. The burden of showing good cause for withholding documents from the public record rests with the party requesting that documents be given *in camera* treatment. *Id.* at \*10-11. Moreover, there is a presumption that *in camera* treatment will not be accorded to information that is more than three years old. *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at \*15 (June 26, 1996) (citing *General Foods*, 1980 FTC LEXIS 99, at \*4-5; *In re Crown Cork & Seal Co.*, 1967 FTC LEXIS 128, at \*2-3 (June 26, 1967)).

In order to sustain the burden for withholding documents from the public record, an affidavit or declaration is always required, demonstrating that a document is sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury. *In re North Texas Specialty Physicians*, 2004 FTC LEXIS 109, at \*3-4 (Apr. 23, 2004). To overcome the presumption that *in camera* treatment will not be granted for information that is more than three years old, applicants seeking *in camera* treatment for such documents must also demonstrate, by affidavit or declaration, that such material remains competitively sensitive. In addition, to properly evaluate requests for *in camera* treatment, applicants for *in camera* treatment must provide a copy of the documents for which they seek *in camera* treatment to the Administrative Law Judge for review. Where *in camera* treatment is sought for transcripts of investigational hearings or depositions, the requests shall be made only for those specific pages and line numbers of transcripts which contain information that meets the *in camera* standard. *In re Unocal*, 2004 FTC LEXIS 197, \*4-5 (Oct. 7, 2004).

Under Commission Rule 3.45(b)(3), indefinite *in camera* treatment is warranted only “in unusual circumstances,” including circumstances in which “the need for confidentiality of the material . . . is not likely to decrease over time . . . .” 16 C.F.R. § 3.45(b)(3). “Applicants seeking indefinite *in camera* treatment must further demonstrate ‘at the outset that the need for confidentiality of the material is not likely to decrease over time’ 54 Fed. Reg. 49,279 (1989) . . . [and] that the circumstances which presently give rise to this injury are likely to be forever present so as to warrant the issuance of an indefinite *in camera* order rather than one of more limited duration.” *In re E. I. DuPont de Nemours & Co.*, 1990 FTC LEXIS 134, at \*2-3 (Apr. 25, 1990). In *DuPont*, the Commission rejected the respondent’s request for indefinite *in camera* treatment. However, based on “the highly unusual level of detailed cost data contained in these specific trial exhibit pages, the existence of extrapolation techniques of known

precision in an environment of relative economic stability, and the limited amount of technological innovation occurring in the . . . industry, . . .” the Commission extended the duration of the *in camera* treatment for a period of ten years. *Id.* at \*5-6.

In determining the length of time for which *in camera* treatment is appropriate, the distinction between trade secrets and ordinary business records is important because ordinary business records are granted less protection than trade secrets. *Hood*, 1961 FTC LEXIS 368, at \*12. Examples of trade secrets meriting indefinite *in camera* treatment include secret formulas, processes, other secret technical information, or information that is privileged. *Hood*, 1961 FTC LEXIS 368, at \*12; *General Foods*, 1980 FTC LEXIS 99, at \*2; *In re Textron, Inc.*, 1991 FTC LEXIS 135, at \*1 (Apr. 26, 1991).

In contrast to trade secrets, ordinary business records include information such as customer names, pricing to customers, business costs and profits, as well as business plans, marketing plans, or sales documents. *See Hood*, 1961 FTC LEXIS 368, at \*13; *In re McWane, Inc.*, 2012 FTC LEXIS 143 (Aug. 17, 2012); *In re Int’l Ass’n of Conference Interpreters*, 1996 FTC LEXIS 298, at \*13-14. When *in camera* treatment is granted for ordinary business records, it is typically provided for two to five years. *E.g., McWane*, 2012 FTC LEXIS 143; *In re ProMedica Health Sys.*, 2011 FTC LEXIS 101 (May 25, 2011).

## **B. Sensitive personal information**

Under Rule 3.45(b) of the Rules of Practice, after finding that material constitutes “sensitive personal information,” the Administrative Law Judge shall order that such material be given *in camera* treatment. 16 C.F.R. § 3.45(b). “Sensitive personal information” is defined as including, but not limited to, “an individual’s Social Security number, taxpayer identification number, financial account number, credit card or debit card number, driver’s license number, state-issued identification number, passport number, date of birth (other than year), and any sensitive health information identifiable by individual, such as an individual’s medical records.” 16 C.F.R. § 3.45(b). In addition to these listed categories of information, in some circumstances, individuals’ names and addresses, and witness telephone numbers have been found to be “sensitive personal information” and accorded *in camera* treatment. *In re LabMD, Inc.*, 2014 FTC LEXIS 127 (May 6, 2014); *In re McWane, Inc.*, 2012 FTC LEXIS 156 (Sept. 17, 2012). *See also In re Basic Research, LLC*, 2006 FTC LEXIS 14, at \*5-6 (Jan. 25, 2006) (permitting the redaction of information concerning particular consumers’ names or other personal data when it was not relevant). “[S]ensitive personal information . . . shall be accorded permanent *in camera* treatment unless disclosure or an expiration date is required or provided by law.” 16 C.F.R. § 3.45(b)(3).

## **III.**

The non-parties listed below filed separate motions for *in camera* treatment. Each motion included the documents for which *in camera* treatment is sought and was properly supported by a declaration of an individual within the company who had reviewed the

documents at issue. These declarations supported the applicants' claims that the documents are sufficiently secret and sufficiently material to their businesses that disclosure would result in serious competitive injury. That showing was then balanced against the importance of the information in explaining the rationale of FTC decisions. *See Kaiser Aluminum*, 1984 FTC LEXIS 60, at \*2 (“A public understanding of this proceeding does not depend on access to these data submitted by these third party firms.”). Moreover, in evaluating the specific motions of each of the non-parties under the standards set forth above, requests for *in camera* treatment by non-parties warrant “special solicitude.” *Crown Cork*, 1967 FTC LEXIS 128, at \*2; *ProMedica*, 2011 FTC LEXIS 101, at \*3-4. *See also Kaiser Aluminum*, 1984 FTC LEXIS 60, at \*2-3 (“As a policy matter, extensions of confidential or *in camera* treatment in appropriate cases involving third party bystanders encourages cooperation with future adjudicative discovery requests.”).

### **Amrock Inc. (“Amrock”)**

Amrock seeks *in camera* treatment for a period of five years for three documents that it asserts constitute competitively sensitive confidential business documents. Amrock supports its motion with a declaration from its senior corporate counsel. The declaration explains that the documents contain information concerning fees, methodology for setting fees, and a detailed geographic scope of operations and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the documents from disclosure and maintain their confidentiality.

Amrock has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the documents identified as CX3337/RX0736, RX0735 and RX0737.

### **Clarity Appraisal Management Company (“Clarity”)**

Clarity seeks *in camera* treatment for a period of five years for two documents that it asserts constitute competitively sensitive confidential business documents. Clarity supports its motion with a declaration from its owner. The declaration explains that the documents contain information concerning fees and its methodology for setting fees and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the documents from disclosure and maintain their confidentiality.

Clarity has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the documents identified as RX0522 and RX0523.

### **ClearCapital.com, Inc. (“Clear Capital”)**

Clear Capital seeks indefinite *in camera* treatment for 19 documents and 2 deposition transcripts that it asserts constitute competitively sensitive confidential business documents on the basis that Clear Capital identified them as “confidential” when produced to the FTC. In the alternative, Clear Capital seeks indefinite *in camera* treatment for a subset of 17 documents and portions of 2 deposition transcripts (“Subset of Confidential Materials”) on the basis that these documents meet the standards for *in camera* treatment. Because applicants seeking *in camera* treatment for materials offered into evidence must meet the standards set forth above, Clear Capital’s alternative request is evaluated.

Clear Capital supports its motion with a declaration from its chief administrative officer and general counsel. The declaration explains that the documents contain information reflecting the data and methods used for determining customary and reasonable appraisal fees; information pertaining to the development or application of Clear Capital’s methodology; internal company communications concerning Clear Capital’s methodology, and commercial information concerning contracts with vendors; and confidential responses to state regulators concerning Clear Capital’s methodology for determining customary and reasonable appraisal fees, and that such information is competitively sensitive. The declaration also describes in detail the significant steps Clear Capital takes to protect the documents from disclosure and maintain their confidentiality.

With respect to the Subset of Confidential Materials, Clear Capital has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. However, these documents consist of ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. Clear Capital has not demonstrated that the need for confidentiality of the material is not likely to decrease over time. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the documents identified as CX3275, CX3276/RX0532, CX3277, CX3278/RX0538, CX3280, CX3281, RX0527, RX0528, RX0529, RX0530, RX0531, RX0533, RX0535, RX0540, RX0541<sup>1</sup> and for the excerpts of deposition transcripts in CX9022 and CX9023 identified in exhibit D to its motion.

### **Dart Appraisal (“Dart”)**

Dart seeks *in camera* treatment for a period of five years for four documents that it asserts constitute competitively sensitive confidential business documents. Dart supports its motion with a declaration from its president. The declaration explains that the documents contain information regarding Dart’s fees, methodology for setting the fees, and detailed geographic scope of operations and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the documents from disclosure and maintain their confidentiality.

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<sup>1</sup> *In camera* treatment is not granted for the documents identified as RX0534 and RX0539, consisting of two emails from 2013 and 2017, because they do not contain competitively sensitive information.

Dart has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the documents identified as CX3272, RX0571, RX0572 and RX0573.

### **Frisco Lender Services, LLC (“Frisco”)**

Frisco seeks *in camera* treatment for a period of five years for six documents that it asserts constitute competitively sensitive confidential business documents. Frisco supports its motion with a declaration from its senior vice president and chief appraiser. The declaration explains that the documents contain information regarding Frisco’s fees, including detailed fee levels by services, lender names, volumes, and geographic scope of operations and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the documents from disclosure and maintain their confidentiality.

Frisco has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the documents identified as RX0579, RX0580, RX0581, RX0582, RX0583 and RX0584.

### **Real Estate Valuation Partners, LLC (“REVP”)**

REVP seeks permanent *in camera* treatment for five documents that it asserts constitute competitively sensitive confidential business documents. REVP supports its motion with a declaration from its chief executive officer. The declaration explains that the documents contain information relating to REVP’s scorecard system for appraisers, the fees paid to appraisers, and confidential correspondence and information regarding recommended pricing, margin, and fee information and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the documents from disclosure and maintain their confidentiality.

REVP has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. However, these documents consist of ordinary business records, and not trade secrets, and are not entitled to indefinite *in camera* treatment. REVP has not demonstrated that the need for confidentiality of the material is not likely to decrease over time. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the documents identified as RX0683, RX0693, RX0695, RX0696 and RX0697.<sup>2</sup>

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<sup>2</sup> REVP’s motion sought *in camera* treatment for REVP000626. A letter from Respondent attached to the motion indicates that RX0697 is comprised of REVP000626-REVP000627. Thus, REVP’s request for *in camera* treatment for REVP000626 is interpreted as a request for *in camera* treatment for RX0697.

**Solidifi US Inc. (“Solidifi”)**

Solidifi seeks *in camera* treatment for a period of five years for nine documents that it asserts constitute competitively sensitive confidential business documents. Solidifi supports its motion with a declaration from its chief compliance officer. The declaration explains that the documents contain information regarding Solidifi’s fees, methodology for setting the fees, and detailed geographic scope of operations and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the documents from disclosure and maintain their confidentiality.

Solidifi has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the documents identified as CX3274, RX0712, RX0713, RX0714, RX0715, RX0716, RX0717, RX0718 and RX0719.

**Trident Services, LLC (“Trident”)**

Trident seeks *in camera* treatment for a period of five years for one document that it asserts constitutes a competitively sensitive confidential business document. Trident supports its motion with a declaration from its chief executive officer. The declaration explains that the document contains information regarding Trident’s fees, lender names, and detailed geographic scope of operations and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the document from disclosure and maintain its confidentiality.

Trident has met its burden of demonstrating that this document is sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. Accordingly, *in camera* treatment for a period of five years, to expire on April 1, 2026, is GRANTED for the document identified as RX0739.

**Xome Valuation Services LLC (“Xome”)**

Xome seeks *in camera* treatment for a period of five years for twelve documents that it asserts constitute competitively sensitive confidential business documents. Xome supports its motion with a declaration from its vice president and associate general counsel. The declaration explains that the documents contain information regarding fees, methodology for setting the fees, client names, and detailed geographic scope of operations and that such information is competitively sensitive. The declaration also describes in detail the significant steps it takes to protect the documents from disclosure and maintain their confidentiality.

Xome has met its burden of demonstrating that these documents are sufficiently secret and sufficiently material to its business that disclosure would result in serious competitive injury. Accordingly, *in camera* treatment for a period of five years, to expire

on April 1, 2026, is GRANTED for the documents identified as CX3327/RX0520, CX3336/RX0773, CX3340/RX0774, RX0516, RX0517, RX0518, RX0519, RX0521, RX0734, RX0745, RX0746 and RX0747.

#### IV.

All of the documents for which *in camera* treatment has been granted shall also be treated as confidential under the Protective Order and may only be disclosed to those entities covered by the Protective Order.<sup>3</sup> Each non-party whose documents or information has been granted *in camera* treatment by this Order shall inform its testifying current or former employees that *in camera* treatment has been provided for the material described in this Order. The parties are permitted to elicit testimony that includes references to, or general statements derived from, the content of information that has been granted *in camera* treatment. 16 C.F.R. § 3.45. However, any testimony revealing the confidential information from documents that have been granted *in camera* treatment shall only be provided in an *in camera* session. Counsel shall segregate their questions of witnesses in such a manner that all questions on *in camera* materials will, to the extent practicable, be grouped together and elicited in one *in camera* session during the examination of a witness.

ORDERED:



D. Michael Chappell  
Chief Administrative Law Judge

Date: March 29, 2021

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<sup>3</sup> Confidential material shall be disclosed only to: (a) the Administrative Law Judge presiding over this proceeding, personnel assisting the Administrative Law Judge, the Commission and its employees, and personnel retained by the Commission as experts or consultants for this proceeding; (b) judges and other court personnel of any court having jurisdiction over any appellate proceedings involving this matter; (c) outside counsel of record for any respondent, their associated attorneys and other employees of their law firm(s), provided they are not employees of a respondent; (d) anyone retained to assist outside counsel in the preparation or hearing of this proceeding including consultants, provided they are not affiliated in any way with a respondent and have signed an agreement to abide by the terms of the protective order; and (e) any witness or deponent who may have authored or received the information in question. Protective Order ¶ 7.