

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



In the Matter of

Axon Enterprise, Inc.,

a corporation,

and

Safariland, LLC,

a corporation.

ORIGINAL

Docket No. D9389

PUBLIC DOCUMENT

**RESPONDENT'S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS RESPONSIVE TO
RESPONDENT'S SECOND SET OF REQUESTS FOR PRODUCTION**

Respondent Axon Enterprise, Inc. moves pursuant to Rule 3.38(a) for an order compelling Complaint Counsel to produce documents relating to the division of antitrust enforcement responsibility between the Department of Justice and the FTC. These documents are relevant to Axon's affirmative defenses, available from no other source, and not protected by any privilege. Good cause supports this Motion, and it should be granted. A proposed order is attached as Exhibit A.

BACKGROUND

The Department of Justice and the FTC divide responsibility for enforcement of the antitrust laws in particular cases through a process known as "clearance." Axon contends in this case that it has been denied equal protection of the laws because the clearance process forces some parties, like Axon here, to defend antitrust actions in an administrative proceeding without the procedures and rights available in federal court. *See* Eighteenth Affirmative Defense. On March 3, Axon served Complaint Counsel with its second set of requests for production, all of which relate to the clearance process and Axon's affirmative defense. Complaint Counsel objected to Axon's

requests on three grounds, arguing that they (1) fall outside the scope of discovery under Rule 3.31(c)(2), (2) are irrelevant, or (3) seek documents that are privileged. But the documents Axon seeks are within the scope of discovery under Rule 3.31(c)(2). They are relevant to Axon's defenses in this matter and are not privileged. This Motion should be granted.

ARGUMENT

The Administrative Law Judge "shall order" responses to discovery requests "unless the Administrative Law Judge determines that the objection is justified." 16 C.F.R. § 3.38(a). Complaint Counsel's objections are not justified. Good cause supports the production of documents relating to the clearance process under Rule 3.31(c)(2), and these documents are both relevant and non-privileged.

1. Good cause supports the production of documents relating to the clearance process.

Rule 3.31(c)(2) allows discovery of documents—in addition to materials collected during an investigation—from "Bureaus or Offices that investigated the matter upon a showing of 'good cause.'" *In the Matter of 1-800 Contacts, Inc.*, No. 9372, 2016 WL 7634657, at *3 (F.T.C. Dec. 20, 2016). Good cause supports a request for production when (1) the material is relevant, (2) the request is "reasonable in scope and stated with reasonable particularity," and (3) as to non-public documents, the request seeks information "not obtainable through other means." *Id.* "It should not be difficult for respondent to satisfy a good cause standard" as to documents that are "not duplicative, privileged or work product." *Id.* at *3 n.4 (quoting 74 Fed. Reg. 1804, 1812 (Interim final rules with request for comment) (Jan. 13, 2009)).

The documents sought in Axon's second set of requests for production are relevant to its defenses in this case. Axon's requests seek "to defend against the allegations of the Complaint" and "relate directly to those contentions" raised in Axon's defenses to the Complaint. *In the Matter*

of Intel Corp., No. 9341, 2010 WL 2544424, at *1, 3-4 (F.T.C. June 9, 2010). Axon contends that it has been denied equal protection of the laws because the uncodified clearance process directs some parties to an administrative proceeding and some parties to federal court, without a rational basis for this differential treatment of similarly situated parties. *See* Eighteenth Affirmative Defense. Its second set of requests for production seek evidence to prove up this defense. They ask for documents reflecting differences between those tribunals (Request 23); relating to the manner in which the Department of Justice and FTC make the clearance decision (Requests 24 & 25); and reflecting communications between government agencies about the clearance process (Request 26). *See* Ex. B, Complaint Counsel's Objections and Responses to Respondent's Second Set of Requests for Production.

These requests are reasonable in scope and stated with reasonable particularity. Complaint Counsel has not argued that the requests are vague or unduly burdensome in substance and objects only that the requests seek documents "beyond the scope of reasonable discovery under Rule 3.31(c)(2)." *See id.* Complaint Counsel's only objection specific to these requests concerns the time scope of Requests 23, 25, and 26. The time scope set out in these requests is reasonable. Request 23 seeks documents from 2010 to the present discussing or comparing similarities or differences between the FTC's Part 3 rules and procedures and the rules and procedures applicable in federal court. This time frame is reasonable because the Part 3 rules were significantly amended in 2009 and discussions about the operation of the new rules, including the similarities or differences between those rules and the rules applicable in federal court, may have taken place following the amendments. Complaint Counsel's objections interpret Request 25 to seek documents created as early as 1995, but this interpretation misreads Axon's request. Request 25 instead seeks documents—"statistics, summaries, or reports"—that illustrate the FTC's win rate

in Part 3 enforcement actions since 1995, whatever the date of those documents' creation. Axon recognizes that summaries of past enforcement actions could have been created at various points in time. Axon would of course be willing to consider any burden imposed on Complaint Counsel by collecting, reviewing, and producing documents from a particular period of time, but Complaint Counsel made clear during the parties' meet-and-confer that no date limitation would resolve the objection. The same is true with respect to Request 26.

Indeed, the time scope of the requests is beside the point. Complaint Counsel appears to consider *any* time scope for Axon's requests to be unreasonable. During the parties' meet-and-confer conversation, counsel for Axon inquired whether any time limitations on the scope of these requests would resolve Complaint Counsel's objection. Complaint Counsel confirmed that the parties remained at an impasse notwithstanding Axon's efforts to negotiate on time scope. *See Ex. C, 3/17/2020 E-Mail from J. Milici to A. Healey* (confirming the parties' conversation). Complaint Counsel's contention that *any* time scope for Axon's requests would be unreasonable makes it impossible to assess any alleged overbreadth—and indeed, there is none.

Finally, Axon has good cause to seek this discovery because documents responsive to its requests are non-public and not otherwise available. Only the FTC possesses documents about its own clearance process, which sits at the core of one of Axon's constitutional defenses. Indeed, without document discovery relating to the clearance process, Axon will have no way to develop a vital argument to its case. Good cause exists to grant the Motion.

2. Complaint Counsel's other objections are not justified.

Good cause aside, Complaint Counsel further objects that Axon's requests seek documents that are either irrelevant or privileged. The relevance of these documents are part of the good-cause analysis, as Axon has explained, and Axon's requests do not seek privileged documents or

information. They do not seek attorney work product or other information regarding the FTC's assessment of the Viewu acquisition or investigated transactions in other cases. Instead, the requests only seek information about *how* the FTC and the Department of Justice decide which of them will conduct an antitrust investigation in the first place and in which forum, and under what set of rules and standards an enforcement action will proceed. This decision-making process—a process critical to Axon's defense of this case—is not privileged.

And in any event, Complaint Counsel's "conclusory, blanket assertion of privilege is not a sufficient basis for denying a request for discovery."¹ *In the Matter of 1-800-Contacts*, 2016 WL 7634657, at *8. Complaint Counsel represented during the parties' meet-and-confer that its good cause and privilege objections relieve it from the obligation to collect, review, and produce or log any documents in response to Axon's requests. *See* Ex. C, 3/17/2020 E-Mail from J. Milici to A. Healey (confirming the parties' conversation). But to the extent responsive and non-privileged documents exist in the custody and control of the investigating offices, Rule 3.31(c)(2) expressly calls for their production upon a showing of good cause. Indeed, because good cause exists for the production of non-privileged documents responsive to Axon's requests—that is, because the documents are within the scope of discovery—Complaint Counsel must collect, review, and log such documents, and must formally assert and substantiate its privilege claims. *See In the Matter of Laboratory Corp. of Am.*, 2011 WL 822928, at **3, 5 (F.T.C. Feb. 24, 2011) (recognizing that

¹ This blanket privilege assertion is not Complaint Counsel's first overbroad withholding claim in this matter. Complaint Counsel's Preliminary Witness List and Initial Disclosures were initially labeled "Confidential" in their entirety. The ALJ's February 14, 2020 Order explained that, pursuant to the standard protective order entered in adjudicative proceedings such as this one, parties may redact as "Confidential" only "'specific information' that is subject to confidentiality protections pursuant to a protective order" and "supported by record citations . . . to confirm that confidential treatment is warranted for such material." *See* 2/14/2020 Order at 1 n. 2. The ALJ ordered Complaint Counsel to "review its designations and comply with these directives going forward." *Id.*

“[a]ssertion of the deliberative process privileges requires . . . a formal claim of privilege by the head of the department having control over the request” as well as “a detailed specification of the information for which privilege is claimed,” and ordering Complaint Counsel to “provide further evidence and briefing in support of its asserted privileges”).

CONCLUSION

For the reasons stated above, Axon respectfully requests that its Motion to Compel be granted.

Dated: July 8, 2020

Respectfully submitted,

s/ Julie E. McEvoy

Pamela B. Petersen
AXON ENTERPRISE, INC.
17800 N 85th St.
Scottsdale, AZ 85255-9603
Phone: (623) 326-6016
Facsimile: (480) 905-2027
Email: ppetersen@axon.com

*Counsel for Respondent
Axon Enterprise, Inc.*

Julie E. McEvoy
Michael H. Knight
Louis K. Fisher
Jeremy P. Morrison
Debra R. Belott
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
Phone: (202) 879-3939
Facsimile: (202) 626-1700
Email: jmcevoy@jonesday.com
Email: mhknight@jonesday.com
Email: lkfisher@jonesday.com
Email: jmorrison@jonesday.com
Email: dbelott@jonesday.com

Aaron M. Healey
JONES DAY
250 Vesey Street
New York, NY 10281-1047
Phone: (212) 326-3939
Facsimile: (212) 755-7306
Email: ahealey@jonesday.com

*Counsel for Respondent
Axon Enterprise, Inc.*

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

In the Matter of

Axon Enterprise, Inc.,

a corporation,

and

Safariland, LLC,

a corporation.

Docket No. D9389

PUBLIC DOCUMENT

RESPONDENT'S MEET AND CONFER STATEMENT

Pursuant to the Scheduling Order issued on January 30, 2020, Respondent submits this certification that it has conferred with Complaint Counsel in a good faith effort to resolve by agreement the issues raised in this motion, and has been unable to reach such an agreement. On March 17, 2020, Complaint Counsel (Jennifer Milici and Nicole Lindquist) and counsel for Respondent Axon (Pamela Petersen and Aaron Healey) conferred by phone. Complaint Counsel opposes this motion.

CERTIFICATE OF SERVICE

I hereby certify that on July 8, 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

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

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

Jennifer Milici
J. Alexander Ansaldo
Peggy Bayer Femenella
Mika Ikeda
Nicole Lindquist
Lincoln Mayer
Merrick Pastore
Z. Lily Rudy
Dominic Vote
Steven Wilensky
FEDERAL TRADE COMMISSION
600 Pennsylvania Avenue, NW
Washington, DC 20580
Phone: (202) 326-2638
Facsimile: (202) 326-2071
Email: jmilici@ftc.gov
Email: jansaldo@ftc.gov
Email: pbayer@ftc.gov
Email: mikeda@ftc.gov
Email: nlindquist@ftc.gov
Email: lmayer@ftc.gov
Email: mpastore@ftc.gov
Email: zrudy@ftc.gov
Email: dvote@ftc.gov
Email: swilensky@ftc.gov

Counsel for the Federal Trade Commission

Dated: July 8, 2020

s/ Julie E. McEvoy

Julie E. McEvoy

CERTIFICATE FOR ELECTRONIC FILING

I certify that the electronic copy sent to the Secretary of the Commission is a true and correct copy of the paper original and that I possess a paper original of the signed documents that is available for review by the parties and the adjudicator.

Dated: July 8, 2020

s/ Julie E. McEvoy

Julie E. McEvoy

EXHIBIT A

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

In the Matter of

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

and

**Safariland, LLC
a corporation.**

Docket No. D9389

**[PROPOSED] ORDER GRANTING RESPONDENT’S MOTION TO COMPEL
PRODUCTION OF DOCUMENTS RESPONSIVE TO
RESPONDENT’S SECOND SET OF REQUESTS FOR PRODUCTION**

Respondent Axon Enterprise, Inc. has filed a Motion to Compel Production of Documents Responsive to Respondent’s Second Set of Requests for Production. Having considered the Motion, it is hereby ORDERED that the Motion is GRANTED. It is hereby ORDERED:

1. Axon has demonstrated good cause for the production of “additional discovery of materials in the possession, custody, or control” of the FTC Bureau of Competition under 16 C.F.R. § 3.31(c)(2).
2. Complaint Counsel’s objections to Axon’s Second Set of Requests for Production are overruled to the extent they are based on relevance and time scope.
3. Complaint Counsel is hereby ORDERED to produce any documents responsive to Axon’s Second Set of Requests for Production as to which Complaint Counsel does not assert any privilege.

4. Consistent with prior practice before the Chief Administrative Law Judge, *see, e.g., In the Matter of Laboratory Corp. of Am.*, 2011 WL 822928, at **3, 5 (F.T.C. Feb. 24, 2011), Complaint Counsel is hereby ORDERED to provide evidence and briefing in support of its asserted privileges. This shall include one or more declarations that will demonstrate, in accordance with applicable legal standards, that each and every document sought to be withheld has in fact been reviewed and is in fact protected from disclosure. Complaint Counsel shall make this filing within 7 business days after the date of this Order.

5. Respondents are hereby ORDERED to file a response to Complaint Counsel's supplemental filing and in further support of their Motion to Compel. Respondents shall make such filing within 7 business days of the date on which Complaint Counsel's submission is due.

SO ORDERED.

D. Michael Chappell
Chief Administrative Law Judge

Date:

EXHIBIT B

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

In the Matter of

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

and

**Safariland, LLC,
a corporation.**

DOCKET NO. 9389

PUBLIC

**COMPLAINT COUNSEL’S RESPONSES AND OBJECTIONS TO
RESPONDENT AXON’S SECOND SET OF
REQUESTS FOR PRODUCTION OF DOCUMENTS (NOS. 23-26)**

Pursuant to Sections 3.31 and 3.37(b) of the Federal Trade Commission’s Rules of Practice, Complaint Counsel hereby responds to Respondent Axon’s Second Set of Requests for Production of Documents to Complaint Counsel, dated March 3, 2020.

GENERAL OBJECTIONS

The following General Objections apply to each request for documents in Respondent’s requests and are hereby incorporated by reference into our response to each request.

1. Complaint Counsel objects to Respondent’s requests to the extent the requests are directed to the Federal Trade Commission rather than to Complaint Counsel.
2. Complaint Counsel objects to Respondent’s requests to the extent they seek to impose duties and obligations upon Complaint Counsel beyond the Commission’s Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the

scope of permissible discovery under Rule 3.31(c)(1)-(2), or any applicable orders of the Chief Administrative Law Judge Chappell.

3. Complaint Counsel objects to Respondent's requests to the extent the requests seek information protected from disclosure by any applicable privilege, doctrine, order, or rule, including the attorney-client privilege, the government deliberative process privilege, informant privilege, law enforcement investigatory privilege, the work product doctrine, Sections 19(c) or 19(g) of the Scheduling Order, Rule 3.31A(e), 3.31(c)(2) or 3.31(c)(4), or any other applicable privilege from disclosure. Complaint Counsel does not, by providing a response to any request, waive or partially waive any applicable privilege or attorney-work product claim.
4. Complaint Counsel objects to Respondent's requests to the extent they are overly broad, vague, ambiguous, unduly burdensome, oppressive, and are not reasonably expected to yield information relevant to the allegations of the Complaint, to the proposed relief, or to the defenses of Respondent.
5. Complaint Counsel objects to Respondent's requests as unduly burdensome and oppressive to the extent they ask Complaint Counsel to produce documents that are already in Respondent's possession or control, or are in the public record.
6. Complaint Counsel's answers to Respondent's requests are given without prejudice to Complaint Counsel's right to produce documents relating to any subsequently discovered facts or to identify or to produce documents that Complaint Counsel obtains in this litigation.

7. The failure of Complaint Counsel to object to any document request on a particular ground may not be construed as a waiver of its rights.
8. Complaint Counsel reserves all of its evidentiary or other objections to the admissibility of any document in this action, and does not, by any response to any request, waive any objection, stated or unstated.
9. The assertion of the same, similar, or additional objections or the provision of partial answers in response to an individual request does not waive any of Complaint Counsel's General or Specific Objections as to that request or any other requests.
10. Pursuant to Rule 3.31(g), the inadvertent production of any privileged information shall not constitute a waiver of the applicable privilege.
11. Complaint Counsel objects to the requests to the extent they seek documents prepared by experts.
12. Complaint Counsel objects to each Request to the extent it purports to attribute any special or unusual meaning to any technical term or phrase. Complaint Counsel will respond to each Request using the ordinary meaning of such term or phrase.
13. A partial response by Complaint Counsel to any Request that has been objected to in whole or in part is not a waiver of the objection. By asserting various objections, Complaint Counsel does not waive other objections that may become applicable.

SPECIFIC OBJECTIONS TO RESPONDENT'S DEFINITIONS

14. Complaint Counsel objects to Respondent's Definition 1 of "FTC," "you," and "your" to the extent the requests are directed to the Federal Trade Commission rather than to Complaint Counsel.

15. Complaint Counsel objects to Respondent's Definition 15 to the extent Complaint Counsel does not have knowledge of the corporate structures, predecessors-in-interest, affiliates, agents, or representatives identified by Respondent.

SPECIFIC OBJECTIONS TO RESPONDENT'S INSTRUCTIONS

16. Complaint Counsel objects to Respondent's Instruction 2 to the extent it requires Complaint Counsel to produce files in a format other than the format maintained in the ordinary course or the format received from third parties.

17. Complaint Counsel objects to Respondent's Instructions 3 and 7 to the extent they require Complaint Counsel to make changes to document productions it receives from third parties.

18. Complaint Counsel objects to Respondent's Instruction 4 to the extent it imposes a burden that is inconsistent with Commission's Rules of Practice for Adjudicative Proceedings.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to the General Objections and the Specific Objections above and below, and without waiving these objections, Complaint Counsel answers as follows:

REQUEST NO. 23:

All documents from 2010 to the present containing any discussion or analysis comparing, contrasting, or considering the similarities or differences between: (1) the FTC's Part 3 rules and procedures, including, without limitation, the Rules of Practice for Adjudicative Proceedings (16

C.F.R. § 3.1 *et seq.*); and (2) the rules and procedures applicable in federal district court, including, without limitation, the Federal Rules of Evidence and the Federal Rules of Civil Procedure.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this request to the extent it seeks documents that are protected by any privilege against disclosure, including the privileges listed in General Objection 3. Complaint Counsel further objects to this request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects on relevance grounds; the request is not relevant to the allegations in the complaint or answer. Complaint Counsel further objects to overbreadth as to the length time, as request asks for documents since 2010.

REQUEST NO. 24:

All documents regarding or relating in any way to the clearance process or other decision-making as to whether the FTC or DOJ would exercise authority over the Axon/Viewu merger and the Motorola/WatchGuard merger.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this request to the extent it seeks documents that are protected by any privilege against disclosure, including the privileges listed in General Objection 3. Complaint Counsel further objects to this request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the scope of permissible discovery under Rule

3.31(c)(2). Complaint Counsel further objects on relevance grounds; the request is not relevant to the allegations in the complaint or answer.

REQUEST NO. 25:

All documents and communications regarding or relating in any way to the clearance or other decision-making process of allocating matters between the FTC and the DOJ following the Antitrust Division's withdrawal from the 2002 Clearance Agreement, including, without limitation:

- a) Internal memos, informal agreements, guidance, analyses of each agency's expertise, proposals, or other documents providing any justification or basis for which agency will assume responsibility for a particular merger category or industry;
- b) Analysis, comment, or objections to the Report and Recommendations of the Antitrust Modernization Commission (April 2007) regarding the merger clearance process; and
- c) Statistics, summaries, or reports regarding the FTC's win rate or success in Part 3 enforcement actions from 1995 to the present, and any documents reporting, analyzing, or comparing such statistics to the outcome of merger challenges by the FTC or DOJ in federal district court during the same period.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this request to the extent it seeks documents that are protected by any privilege against disclosure, including the privileges listed in General Objection 3. Complaint Counsel further objects to this request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects on relevance grounds; the request is not relevant

to the allegations in the complaint or answer. Complaint Counsel further objects to overbreadth as to length of time, as the request asks for documents since 1995.

REQUEST NO. 26:

All communications you have had with any other Federal agency or department relating to Respondents.

RESPONSE:

In addition to the General Objections, Complaint Counsel specifically objects to this request to the extent it seeks documents that are protected by any privilege against disclosure, including the privileges listed in General Objection 3. Complaint Counsel further objects to this request to the extent it seeks to impose duties and obligations upon Complaint Counsel beyond the Commission's Rules of Practice for Adjudicative Proceedings, including seeking the production of documents that are beyond the scope of permissible discovery under Rule 3.31(c)(2). Complaint Counsel further objects on relevance grounds; the request is not relevant to the allegations in the complaint or answer. Complaint Counsel further objects to overbreadth, as there is no timeframe stated in Respondent's request.

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2020, I caused the foregoing document to be served via email on:

Julia E. McEvoy
Michael Knight
Jeremy P. Morrison
Debra R. Belott
Jones Day
51 Louisiana Avenue, N.W.
Washington, D.C. 20001-2113
jmcevoy@jonesday.com
mhknight@jonesday.com
jmorrison@jonesday.com
dbelott@jonesday.com

Aaron M. Healey
Jones Day
250 Vesey St.
New York, New York 10281-1047
ahealey@jonesday.com

Lee Van Voorhis
Jenner & Block LLP
1099 New York Ave NW # 900
Washington, DC 20001
LVanVoorhis@jenner.com
Counsel for Respondent
Axon Enterprise, Inc.

Joseph Ostoyich
Christine Ryu-Naya
Caroline Jones
Baker Botts LLP
1299 Pennsylvania Ave. NW # 200
Washington, D.C. 20004
joseph.ostoyich@bakerbotts.com
christine.ryu-naya@bakerbotts.com
caroline.jones@bakerbotts.com
Counsel for Respondent
Safariland, LLC

s/ Nicole Lindquist
Nicole Lindquist

Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, D.C. 20580
(202) 326-3672
nlindquist@ftc.gov

Complaint Counsel

EXHIBIT C

From: Healey, Aaron M.
Sent: Tuesday, March 17, 2020 5:11 PM
To: Milici, Jennifer; Lindquist, Nicole; McEvoy, Julie E.; Knight, Michael H.; Morrison, Jeremy P.; Belott, Debra R.; LVanVoorhis@jenner.com; joseph.ostoyich@bakerbotts.com; christine.ryu-naya@bakerbotts.com; caroline.jones@bakerbotts.com; Lacy Owen, Megan; Fisher, Louis K.; Pam Petersen
Cc: 1032-FTC-Service-Axon-D9389-DL
Subject: RE: Docket No. 9389 In the Matter of Axon Enterprise, Inc. and Safariland, LLC; CC Resp. and Objections to Respondent's Second RFP

Jennifer:

Thank you for the time this afternoon. I write to confirm our discussion during the meet and confer. We understand that, in response to Axon's second set of requests for production, Complaint Counsel intends to stand on its objections as to both privilege and under 3.31(c)(2) and will not be producing any responsive documents, save a single document responsive to Request #26 that was previously produced with the investigative file. Further, we understand that, at this time, there are no modifications to the scope of these requests that will alter Complaint Counsel's position. Therefore, Axon believes the parties are at impasse. If I have misunderstood anything from our call or if you believe further discussions would be productive, please let me know.

Stay safe and well.

Regards,
Aaron

Aaron M. Healey (bio)
Partner
[JONES DAY® - One Firm WorldwideSM](#)
250 Vesey Street
New York, NY 10281-1047
Office +1.212.326.3811

From: Milici, Jennifer <jmilici@ftc.gov>
Sent: Monday, March 16, 2020 5:12 PM
To: Healey, Aaron M. <ahealey@jonesday.com>; Lindquist, Nicole <nlindquist@ftc.gov>; McEvoy, Julie E. <jmcevoy@jonesday.com>; Knight, Michael H. <mhknight@JonesDay.com>; Morrison, Jeremy P. <jmorrison@jonesday.com>; Belott, Debra R. <dbelott@JonesDay.com>; LVanVoorhis@jenner.com; joseph.ostoyich@bakerbotts.com; christine.ryu-naya@bakerbotts.com; caroline.jones@bakerbotts.com; Lacy Owen, Megan <mlacyowen@jonesday.com>; Fisher, Louis K. <lkfisher@JonesDay.com>; Pam Petersen <ppetersen@axon.com>
Cc: 1032-FTC-Service-Axon-D9389-DL <1032-FTC-Service-Axon-D9389-DL@ftc.gov>
Subject: RE: Docket No. 9389 In the Matter of Axon Enterprise, Inc. and Safariland, LLC; CC Resp. and Objections to Respondent's Second RFP

Counsel:

How about 4 pm?

thanks

From: Healey, Aaron M. <ahealey@jonesday.com>

Sent: Monday, March 16, 2020 3:24 PM

To: Lindquist, Nicole <nlindquist@ftc.gov>; McEvoy, Julie E. <jmcevoy@jonesday.com>; Knight, Michael H. <mhknight@JonesDay.com>; Morrison, Jeremy P. <jmorrison@jonesday.com>; Belott, Debra R. <dbelott@JonesDay.com>; LVanVoorhis@jenner.com; joseph.ostoyich@bakerbotts.com; christine.ryu-naya@bakerbotts.com; caroline.jones@bakerbotts.com; Lacy Owen, Megan <mlacyowen@jonesday.com>; Fisher, Louis K. <lkfisher@JonesDay.com>; Pam Petersen <ppetersen@axon.com>

Cc: 1032-FTC-Service-Axon-D9389-DL <1032-FTC-Service-Axon-D9389-DL@ftc.gov>

Subject: RE: Docket No. 9389 In the Matter of Axon Enterprise, Inc. and Safariland, LLC; CC Resp. and Objections to Respondent's Second RFP

Counsel:

Please let us know your availability tomorrow to meet and confer regarding Complaint Counsel's responses and objections to Axon's second set of requests for production.

Regards,

Aaron

Aaron M. Healey (bio)

Partner

JONES DAY® - One Firm WorldwideSM

250 Vesey Street

New York, NY 10281-1047

Office +1.212.326.3811

From: Lindquist, Nicole <nlindquist@ftc.gov>

Sent: Thursday, March 12, 2020 4:51 PM

To: McEvoy, Julie E. <jmcevoy@jonesday.com>; Knight, Michael H. <mhknight@JonesDay.com>; Morrison, Jeremy P. <jmorrison@jonesday.com>; Belott, Debra R. <dbelott@JonesDay.com>; Healey, Aaron M. <ahealey@jonesday.com>; LVanVoorhis@jenner.com; joseph.ostoyich@bakerbotts.com; christine.ryu-naya@bakerbotts.com; caroline.jones@bakerbotts.com

Cc: 1032-FTC-Service-Axon-D9389-DL <1032-FTC-Service-Axon-D9389-DL@ftc.gov>

Subject: Docket No. 9389 In the Matter of Axon Enterprise, Inc. and Safariland, LLC; CC Resp. and Objections to Respondent's Second RFP

Counsel,

Please find Complaint Counsel's responses and objections to Respondent's second set of requests for production of documents.

Best regards,

Nicole

Nicole Lindquist

Mergers II Division | Bureau of Competition

Federal Trade Commission

400 7th Street SW, Washington, DC 20024

Tel: 202.326.3672 | NLindquist@FTC.gov

This e-mail (including any attachments) may contain information that is private, confidential, or protected by attorney-client or other privilege. If you received this e-mail in error, please delete it from your system without copying it and notify sender by reply e-mail, so that our records can be corrected.

Notice of Electronic Service

I hereby certify that on July 08, 2020, I filed an electronic copy of the foregoing Respondent's Motion to Compel Production of Documents Responsive to Respondent's Second Set of Requests for Production, with:

D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., NW
Suite 110
Washington, DC, 20580

Donald Clark
600 Pennsylvania Ave., NW
Suite 172
Washington, DC, 20580

I hereby certify that on July 08, 2020, I served via E-Service an electronic copy of the foregoing Respondent's Motion to Compel Production of Documents Responsive to Respondent's Second Set of Requests for Production, upon:

Julie E. McEvoy
Jones Day
jmcevoy@jonesday.com
Respondent

Michael H. Knight
Jones Day
mhknight@jonesday.com
Respondent

Louis K. Fisher
Jones Day
lkfisher@jonesday.com
Respondent

Debra R. Belott
Jones Day
dbelott@jonesday.com
Respondent

Jeremy P. Morrison
Jones Day
jmorrison@jonesday.com
Respondent

Aaron M. Healey
Jones Day
ahealey@jonesday.com
Respondent

Jennifer Milici
Attorney
Federal Trade Commission
jmilici@ftc.gov
Complaint

J. Alexander Ansaldo
Attorney
Federal Trade Commission

jansaldo@ftc.gov
Complaint

Peggy Bayer Femenella
Attorney
Federal Trade Commission
pbayer@ftc.gov
Complaint

Mika Ikeda
Attorney
Federal Trade Commission
mikeda@ftc.gov
Complaint

Nicole Lindquist
Attorney
Federal Trade Commission
nlindquist@ftc.gov
Complaint

Lincoln Mayer
Attorney
Federal Trade Commission
lmayer@ftc.gov
Complaint

Merrick Pastore
Attorney
Federal Trade Commission
mpastore@ftc.gov
Complaint

Z. Lily Rudy
Attorney
Federal Trade Commission
zrudy@ftc.gov
Complaint

Dominic Vote
Attorney
Federal Trade Commission
dvote@ftc.gov
Complaint

Steven Wilensky
Attorney
Federal Trade Commission
swilensky@ftc.gov
Complaint

Pamela B. Petersen
Director of Litigation
Axon Enterprise, Inc.
ppetersen@axon.com
Respondent

Joseph Ostoyich
Partner

Baker Botts LLP
joseph.ostoyich@bakerbotts.com
Respondent

Christine Ryu-Naya
Baker Botts LLP
christine.ryu-naya@bakerbotts.com
Respondent

Caroline Jones
Associate
Baker Botts LLP
caroline.jones@bakerbotts.com
Respondent

Llewellyn Davis
Attorney
U.S. Federal Trade Commission
ldavis@ftc.gov
Complaint

William Hine
Hine & Ogulluk LLP
wjhine@hineogulluk.com
Respondent

Sevan Ogulluk
Hine & Ogulluk LLP
sogulluk@hineogulluk.com
Respondent

Brian Hine
Hine & Ogulluk LLP
bwhine@hineogulluk.com
Respondent

Blake Risenmay
Attorney
U.S. Federal Trade Commission
brisenmay@ftc.gov
Complaint

Emily Hutson
Associate
Baker Botts LLP
emily.hutson@bakerbotts.com
Respondent

Aaron Healey
Attorney