

provides clearer guidance to affected parties.³ Accordingly, the *in camera* standard requires that there be a “clearly defined, serious injury” to the submitter sufficient to outweigh the public interest in disclosure.⁴

In this instance, the Commission intends to place on the public record the information bracketed and shown in boldface in the attached *Commission Order*. Although this information was provisionally redacted on the basis of the request for confidential treatment in Respondent’s *Motion*, the Commission has not determined to place the complete version of Respondent’s *Motion* on the public record. The Commission does intend, however, to place the *Commission Order* on the public record in its entirety, so that members of the public can have access to the full basis for the Commission decision. The Commission is not aware of any reason why public disclosure of this information will cause the Respondent or any other private party the substantial competitive harm that would be sufficient to meet the high *in camera* standard. Much of the information consists of opinions, rather than confidential commercial or financial information. Moreover, much of the information consists of simple recitations of general facts about an earlier Commission investigation. Furthermore, the information is so piecemeal in character, and the quantity to be disclosed is so minuscule, that it is highly unlikely to be of any use to a competitor. In addition, the information is far too old to warrant confidential treatment now. In particular, two of the three attachments to Respondent’s *Motion* are letters dating from 1991; the third is a letter dating from 1993; and with one minor exception, none of the information to be disclosed dates from a period any more recent than 1993. As a consequence, almost all the information to be disclosed in the *Commission Order* is so old that it is difficult to believe that any of it could be of any current use to a competitor.

For these reasons, the Commission believes that any conceivable potential harm resulting from the disclosure of the bracketed information in the *Commission Order* is clearly outweighed by the value of making public to the greatest extent possible the factual evidence underlying the *Commission Order*. Such disclosures are directly relevant and material to an understanding of the factual basis for the *Commission Order*.⁵ Moreover, in light of the above factors, it is highly unlikely that the bracketed information would provide sufficient knowledge to competitors so that its release would impose any clearly defined, serious injury on the Respondent that would outweigh the public interest in such disclosure.⁶ Accordingly, this information will be placed on

³ *Id.* See also *In the Matter of RSR Corp.*, 88 F.T.C. 206 (1976); *id.*, 88 F.T.C. 734, 735 (1976).

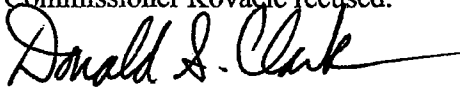
⁴ See *In the Matter of H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961); *In the Matter of General Foods Corp.*, 95 F.T.C. 352, 355 (1980).

⁵ 15 U.S.C. § 57b-2(d)(2); *In the Matter of Orkin Exterminating Co.*, 108 F.T.C. at 147.

⁶ See *In the Matter of Orkin Exterminating Co.*, 108 F.T.C. at 147; *In the Matter of General Foods Corp.*, 95 F.T.C. at 355.

the public record of this proceeding no sooner than February 9, 2010. Counsel for the Respondent and Counsel Supporting the Complaint should file any objection with respect to any proposed disclosure, whether for themselves or on behalf of any affected third party, after consultation therewith, with the Commission no later than 5 p.m. on February 8, 2010.

By direction of the Commission, Commissioner Kovacic recused.



Donald S. Clark
Secretary

SEAL

ISSUED: January 26, 2010

[ATTACHMENT REDACTED]