SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

Civil Division

Central District, Stanley Mosk Courthouse, Department 82

20STCP00921 May 4, 2021
FORD MOTOR COMPANY, et al. vs CITY OF LOS ANGELES, et al 9:30 AM

Judge: Honorable Mary H. Strobel
Judicial Assistant: N DiGiambattista
Courtroom Assistant: R Monterroso

CSR: Cindy Cameron/CSR 10315
ERM: None
Deputy Sheriff: None

APPEARANCES:

For Plaintiff(s): JAMES K. HOLDER (Telephonic) and Spencer Hugret (x); Jean-Paul Jassy (Telephonic) and Elizabeth Baldridge (X)

For Respondent(s): Linda Ngoc Nguyen (X) (Telephonic)

NATURE OF PROCEEDINGS: HEARING ON PETITION FOR WRIT OF MANDATE;

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HEARING ON CROSS-PETITION FOR WRIT OF MANDATE

Matter comes on for hearing and is argued.

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Counsel for Ford's oral request to continue the hearing in order to present additional evidence is made and denied for the reasons set forth by the court on the record.

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The court adopts its tentative ruling as the order of the court and is set forth in this minute order.

In their petition, Petitioners Ford Motor Company and Ford Smart Mobility, LLC ("Petitioners" or "Ford") petition for a writ of ordinary mandate directing Respondent City of Los Angeles ("Respondent" or "City") not to disclose five contractual agreements requested by Real Parties in Interest Vox Media, LLC and Sean O'Kane ("Real Parties" or "Vox") pursuant to the California Public Records Act ("CPRA"). In a cross-petition, Real Parties petition for a writ of ordinary mandate directing City to produce all records responsive to Real Parties' CPRA request dated April 8, 2019, including, but not limited to, the five contractual agreements at issue in the petition.

Real Parties' Evidentiary Objections

(1) Sustained.
(2) Overruled.
(3) Overruled.
(4) Overruled.

(5) Overruled
(6) Sustained as to "The disclosure of this confidential information, without Ford's consent and over Ford's objection, could jeopardize future collaboration opportunities between Ford and the LAPD." Overruled as to remainder.
(7) Sustained as to "would have a chilling effect on future collaboration between Ford and LAPD, and would ultimately harm the marketplace due to a resulting lack of innovation." Overruled as to remainder.
(8) Sustained.
(9) Overruled.
(10) Overruled.
(11) Overruled.
(12) Overruled.
(13) Sustained as to "and would have a chilling effect on future collaboration between Ford and LAPD." Overruled as to remainder.
(14) Sustained.

Background

On April 8, 2019, City received a CPRA request ("Request") from Sean O'Kane, a reporter from "The Verge," seeking the following records for the period January 1, 2017, to April 8, 2019:

(1) all executed agreements with Ford Motor Company or its subsidiaries;
(2) any documents or correspondence (including emails with addresses ending "@ford.com") during the period encompassing this request regarding possible or planned agreements with Ford Motor Company or its subsidiaries; and
(3) any existing or proposed internal protocols, training documents, data-sharing agreements, data storage procedures and prohibited activities governing such agreements or joint activities. (Nguyen Decl. ¶ 2, Exh. A.)

City initially responded to the Request by stating that it implicated "unusual circumstances," necessitating extra time. Additional delays ensued in City's processing of the Request. (See Real Parties' Opening Brief ("RP OB" 2-3 and Compendium Exh. 1 to Exh. B.)

Executed Agreements

In February 2020, Deputy City Attorney Linda Nguyen contacted O'Kane to clarify the Request and identified five agreements that were responsive (the "Agreements"). (Nguyen Decl. ¶¶ 3-4.)

"The records consisted of four executed agreements and one draft agreement, which has since been finalized and executed." (Ibid.) Although Nguyen initially concluded that there were no applicable exemptions that would prevent disclosure of the agreements, there was a concern that City was bound by non-disclosure agreements with Ford that prevented the City from publicly disclosing the agreements. (Ibid.) Accordingly, City asked Ford to identify any propriety or confidential information in the Agreements. When Ford informed the City that it considered the Agreements to be confidential in their entirety, the City disagreed with Ford and indicated it would produce the Agreements unless Ford obtain an injunction. (Id. ¶¶ 3-6, Exh. C-E.)

On January 29, 2021, Ford disclosed to Real Parties redacted copies of four of the five Agreements. (Nguyen Decl., ¶ 9.) The fifth of Agreement remains undisclosed in its entirety. (Ibid.; see also Hugret Decl. ¶¶ 2-3, Exh. 1.)

Ford asserts that the Agreements include protectable trade secrets and should not be disclosed by City, as analyzed below.

Request for Emails

In December 2020, the City worked with O'Kane to narrow the request for emails. (Nguyen Decl. ¶ 7.) Even with the new parameters provided by O'Kane, the City identified at least 1700 pages of emails with over 170 attachments that were possibly responsive to the request (the "Emails"). (Id. ¶ 8.) Since January 2021, the City has been reviewing the Emails for responsiveness to the Request and possible exemptions. (Ibid.) Because of the volume of the Emails, the City was not able to disclose them before the opening briefs are due in this Current Action. (Ibid.)

Request for Internal Protocols, Etc.

Other than the Emails and the five responsive Agreements, the City has not identified records that are responsive to the Request. (Nguyen Decl. ¶ 8.)

Procedural History

On March 4, 2020, Petitioners filed a verified complaint for declaratory and injunctive relief and petition for writ of mandate. The first page stated, "Application for Injunctive Relief to be Filed Forthwith." Petitioners did not subsequently file an application for a preliminary injunction against City's disclosure of the Requested Records.

On April 10, 2020, City filed an answer.

On July 23, 2020, Real Parties filed an answer.

On July 24, 2020, Real Parties filed their cross-petition for writ of mandate.

On August 18, 2020, Petitioners filed an answer to the cross-petition.

On August 24, 2020, City filed an answer to the cross-petition.

The court has received (1) City's opening brief in opposition to the petition, non-opposition to the cross-petition, and supporting evidence; (2) Petitioners' opening brief and supporting evidence; (3) Real Parties' opening brief and supporting evidence; (4) Real Parties' evidentiary objections; (5) Real Parties' reply; and (6) Petitioners' reply. City has not filed a reply.

Writ of Mandate

"A public agency may not initiate an action for declaratory relief to determine its own obligation to disclose documents to a member of the public." (See Marken, supra 1264.) However, an interested third party may bring a "reverse-CPRA lawsuit" to review an agency's decision to release confidential documents exempt from disclosure under the CPRA. (See Marken, supra at 1266-1271.) "Mandamus should be available to prevent a public agency from acting in an unlawful manner by releasing information the disclosure of which is prohibited by law." (Id. at 1266.)

There are two essential requirements to the issuance of an ordinary writ of mandate: (1) a clear, present and ministerial duty on the part of the respondent, and (2) a clear, present, and beneficial right on the part of the petitioner to the performance of that duty. (California Ass'n for Health Services at Home v. Department of Health Services (2007) 148 Cal.App.4th 696, 704.) "An action in ordinary mandamus is proper where … the claim is that an agency has failed to act as required by law." (Id. at 705.)

"Because mandamus cannot be used 'to control an exercise of discretion' …, a party bringing a reverse-CPRA action must show disclosure is 'otherwise prohibited by law,' that is, that the government agency lacks discretion to disclose…. Parties have brought reverse-CPRA actions, for example, based on the state constitutional right to privacy … and the requirement under Penal

Code section 832.7, subdivision (a) that peace officer personnel records remain confidential." (Amgen, Inc. v. Health Care Services (2020) 47 Cal.App.5th 716, 733.)

The petitioner "bears the burden of proof in a mandate proceeding brought under Code of Civil Procedure section 1085." (California Correctional Peace Officers Assn. v. State Personnel Bd. (1995) 10 Cal.4th 1133, 1154.) "On questions of law arising in mandate proceedings, [the court] exercise[s] independent judgment." (Christensen v. Lightbourne (2017) 15 Cal.App.5th 1239, 1251.)

Analysis

CPRA Exemption for Trade Secret Information

Section 6254 states that the CPRA does not "require" disclosure of certain categories of documents. Relevant here, the CPRA does not require City to disclose "[r]ecords, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege." (Gov. Code § 6254(k).)

Evidence Code section 1060 provides that: "If he or his agent or employee claims the privilege, the owner of a trade secret has a privilege to refuse to disclose the secret, and to prevent another from disclosing it, if the allowance of the privilege will not tend to conceal fraud or otherwise work injustice."

Under the Uniform Trade Secrets Act, "Trade secret" is "information… that: [¶] (1) Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and [¶] (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy." (Civ. Code § 3426.1(d).) "To paraphrase this dense Act, a trade secret is something (1) having commercial value from not being generally known and (2) that is the subject of reasonable secrecy measures." (Coast Hematology-Oncology Associates Medical Group, Inc. v. Long Beach Memorial Medical Center (2020) 58 Cal.App.5th 748, 754 ["Coast Hematology"].)

"An exact definition of a trade secret is not possible. Some factors to be considered in determining whether given information is one's trade secret are: (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." (Futurecraft Corp. v. Clary Corp. (1962) 205 Cal.App.2d 279, 289.)

The party claiming the trade secret privilege under Evidence Code section 1060 bears the burden of proving its entitlement to that privilege. (Bridgestone/Firestone, Inc. v. Superior Court (1992) 7 Cal.App.4th 1384, 1393.)

Does the Trade Secret Privilege Bar Government Disclosure in Response to a CPRA Request?

Real Parties briefly suggest that the trade secrete privilege under section 1060, even if established, does not bar disclosure of requested public records under the CPRA and is not a proper basis for a reverse-CPRA action. (RP OB 8.) There is potential support for this assertion. The exemptions in section 6254 "are permissive, not mandatory: They allow nondisclosure but do not prohibit disclosure." (Marken v. Santa Monica-Malibu Unified School Dist. (2012) 202 Cal.App.4th 1250, 1262.) Recently, in dicta, the Court of Appeal stated: "It is not clear to us that the trade secret evidentiary privilege is a broad prohibition on disclosure akin to the constitutional right to privacy or the statutory protection for peace officer personnel records…. We are not aware of any authority holding that the trade secret evidentiary privilege bars the government from disclosing information outside of the context of a 'proceeding,' nor has Amgen directed us to any such authority…. In light of the above, it is not a foregone conclusion that the trade secret privilege under Evidence Code section 1060 is a proper basis for a reverse-CPRA mandamus action." (Amgen, Inc. v. Health Care Services (2020) 47 Cal.App.5th 716, 733.)

However, this discussion from Amgen, supra is dicta and thus not controlling. Other than citing Amgen, Real Parties do not develop an argument that the trade secret privilege under section 1060 cannot, as a matter of law, support a reverse-CPRA mandamus action. In any event, as in Amgen, the court need not resolve this legal question because Ford does not show that disclosure of the withheld information is prohibited by law.

Has Ford Sufficiently Identified its Trade Secrets?

Real Parties contend that "[i]n discovery, Ford refused to identify its trade secrets 'with reasonable particularity' as required under Code of Civil Procedure § 2019.210." (RP OB 8-9.)

CCP section 2019.210 provides: "In any action alleging the misappropriation of a trade secret

under the Uniform Trade Secrets Act (Title 5 (commencing with Section 3426) of Part 1 of Division 4 of the Civil Code), before commencing discovery relating to the trade secret, the party alleging the misappropriation shall identify the trade secret with reasonable particularity subject to any orders that may be appropriate under Section 3426.5 of the Civil Code."

In a trade secret action, "the party alleging the misappropriation must 'identify' the trade secret with 'reasonable particularity.'" (Coast Hematology, supra, 58 Cal.App.5th at 756, citing CCP § 2019.210.) "The penalty for failing to make this disclosure is loss of trade secret protection." (Ibid.)

In discovery, Ford asserted that section 2019.210 only applies to a trade secret misappropriation case. (Baldridge Decl. Exh. J, K.) Ford does not appear to make such argument in its opening brief or reply. Section 2019.210 "extends to any cause of action which relates to the trade secret." (Advanced Modular Sputtering, Inc. v. Super. Ct. (2005) 132 Cal. App. 4th 826, 830.) Clearly, Ford's writ petition "relates" to its asserted trade secrets. Furthermore, if Ford did not identify the trade secrets with reasonable particularity, Real Parties "and the court literally may not know what the plaintiff is talking about." (Coast Hematology, supra, 58 Cal.App.5th at 758.) Thus, even if section 2019.210 does not technically apply to a reverse-CPRA action seeking trade secret protection, petitioner must still identify the trade secrets at issue sufficiently for the court to analyze the exception asserted.

In discovery, Ford identified the subject trade secrets as follows: "The trade secret information at issue in this case consists of certain terms in five contractual documents describing the scope and terms of Ford's relationship with the LAPD for the development and testing of certain vehicles. The terms of the agreements are trade secret and confidential business information because they contain valuable confidential information regarding Ford's objectives, methodologies, and approaches to the development of its vehicles. More specifically, the terms constitute Ford's trade secret information because they constitute business negotiations information containing information referencing or revealing, among others, (1) Ford's automobile design processes and related philosophies, (2) Ford's internal analyses and strategies relating to its products (including proof of concepts and associated licenses), vehicle performance (or components or systems on such vehicles), and product evaluation. The unproduced portions of the Ford documents at issue are valuable by virtue of being unknown to others in that the documents include information regarding the process by which Ford negotiates for R&D activities, the particular types of information it seeks to obtain therein, and confidential pricing information which Ford has developed through substantial research and development efforts and which, if made public, would unfairly advantage its competitors. Ford's trade secret business information, including the

precise scope and terms of certain aspects of its relationship with the LAPD as it relates to the design and development of its vehicle, is of great value to Ford and such information would give a competitor who improperly acquired such information an unfair competitive advantage…." (Baldridge Decl. Exh. K at 3.)

Real Parties do not show that this description of the purported trade secrets is insufficient under CCP section 2019.210. (See RP OB 8-10; see also Whyte v. Schlage Lock Co. (2002) 101 Cal.App.4th 1443, 1452-54 [discussing categories of trade secrets that are sufficiently described].) In general terms, Ford has sufficiently described categories of information from the Agreement that it contends are trade secrets. Real Parties could conduct discovery based on such descriptions or move to compel further responses to special interrogatories if Real Parties believed Ford's responses were deficient. Whether Ford has made a sufficient evidentiary showing that the redactions and withheld fifth Agreement are protectable trade secrets is a separate issue which the court analyzes infra.

Information Deriving Economic Value from Not being Generally Known to the Public

To invoke a trade secret privilege, Ford must show that the redactions and withheld Agreement are "information … that derives independent economic value" from not being generally known; and the information is subject of reasonable efforts to maintain its secrecy. (Civ. Code § 3426.1(d).)

Ford contends that "[t]he manner in which Ford develops design concepts for its vehicles"; "the data and metrics it analyzes and choose in this process"; and its "confidential pricing information" are not readily known to Ford's competitors and derive economic value from not being known to the public. (Ford OB 15-16.) Ford contends that such trade secret information is found within the four redacted Agreements and the withheld fifth Agreement.

The five documents at issue are the following:

(1) "Confidentiality Agmt.pdf": A 3-page confidentiality agreement between Ford and the LAPD Police Advisory Board, dated October 26, 2016.

(2) "PAB NDA.pdf": A 3-page confidentiality agreement between Ford and the LAPD Police Advisory Board, dated May 7, 2019.

(3) "2020 Utility Hybrid NDA.pdf": An 8-page Long Term Vehicle Loan and Evaluation

Agreement between Ford and LAPD, dated January 10, 2019.

(4) "Fleet Data Ts and Cs.pdf": A 4-page agreement dated January 20, 2019 between Ford Smart Mobility and LAPD.

(5) "Fleet Services Agmt.docx": Ford represents that this unproduced agreement is a 13-page unexecuted draft agreement.

Ford has produced redacted versions of the first four Agreements, but has not produced the fifth Agreement. (Ford OB 8; Hugret Decl. ¶ 3.)

The four redacted Agreements include redactions to contract provisions or terms that include, but are not limited to: "Confidential Information," "Governing Law," "Tag Number," "Year/Make/Model," "VIN," "Taxes, Fees, and Other Permits," Insurance," "Maintenance and Repairs," "Indemnity," "Vehicle Information," "Person or Organization to be Indemnified," "Activity Requiring Indemnification," "Consent," "Term," "Activation," "Warranties," "Information Security," "No Precedence," "Attachment A," and various signatures blocks and signatory names. (Hugret Decl. Exh. 1.)

Ford does not submit a privilege log or detailed declarations describing why each specific redaction is necessary to protect Ford's alleged trade secrets. Rather, Ford submits two generalized declarations from executives familiar with the five Agreements. 1

Tony Gratson is National Government Sales Manager with Ford, with responsibility relating to three of the five Agreements: (1) "Confidentiality Agmt.pdf"", (2) "PAB NDA.pdf", and (3) "2020 Utility Hybrid NDA.pdf." Gratson declares: "The three Ford documents described above contain certain information that is valuable by virtue of being unknown to others. The redacted/unproduced portions of these documents contain information revealing, inter alia, Ford's automobile designs, design processes, or related philosophies; and Ford's internal analyses and strategies relating to its products (including proof of concepts and associated licenses), vehicle performance (or components or systems on such vehicles), and product evaluation criteria." (Gratson Decl. ¶ 8.) "Ford's ability to develop innovative products depends upon its ability to communicate confidentially with regard to design and innovation concepts so that such information will not become available to its competitors. Accordingly, when Ford agreed to engage in projects with LAPD, it did so with the understanding that pursuant to these agreements, the exchange of Ford's information, and the contractual agreements between Ford and the LAPD, would be confidential." (Id. ¶ 5.) "If the secrecy of Ford's hard-earned

documents and information concerning the process by which Ford negotiates for R&D activities, the particular types of information it seeks to obtain therein, and confidential pricing information which Ford has developed through substantial research and development efforts was made public, it would unfairly advantage its competitors." (Id. ¶ 11.)

Lee Gross is Product Owner, Ford Telematics (2017) and Global Product Owner, Ford Telematics (2018-Present), with responsibility relating to the fourth and fifth Agreements at issue: (4) "Fleet Data Ts and Cs.pdf" and (5) "Fleet Services Agmt.docx." Gross declares: "Disclosure of Ford's designs, design processes, and related philosophies, which are referenced and/or inherent in the unproduced portions of the documents, would cause substantial harm to Ford's competitive position. Ford developed this information through investments of considerable money, time, expertise, and effort. Independent development or reproduction of the information would likewise require great expense, time, expertise, and effort." (Gross Decl. ¶ 4.) "Specifically, the disclosure of design or product evaluation information and strategies, including their scope, and the products chosen for the evaluations, could enable competitors to replicate Ford's designs or design philosophies, evaluate the performance of a variety of possible design and materials options, and avoid much of the trial-and-error typically required for independent design efforts. The information could also give competitors insights into Ford's overall approach to design and product evaluation issues." (Id. ¶ 5.)

Gross further declares: "The information similarly could be used to infer facts about Ford's design philosophy, as well as the specific design features and attributes of Ford's products as they have evolved over time. Such valuable information could enable competitors to compete far more effectively against Ford and to evaluate their own materials and design options for similar components, features or attributes without incurring the costs associated with independent design evaluations." (Gross Decl. ¶ 6.) "In addition, the confidential information provides a window into Ford's design validation and evaluation processes, which would be extremely valuable to competitors in benchmarking their own design processes and evaluating operational capacities of Ford, which, in turn, could inform decisions about resource allocation and the development of design capacities necessary to compete more effectively against Ford." (Id. ¶ 7.) "The confidential information in the documents at issue reflects information about how Ford conducts internal analyses, and engages in product evaluation…. Every vehicle manufacturer must perform internal analyses and address product performance or quality issues. A disclosure revealing how and the manner in which Ford addresses these matters would enable competitors to develop analytic techniques and product evaluation processes at far less cost and in far less time than independent development efforts would involve." (Id. ¶¶ 8-9.) The Agreements also "contain confidential pricing information which Ford has developed through substantial research

and development efforts." (Id. ¶ 12.)

Real Parties contend that "Ford fails to articulate how the matter at issue contains 'information, including a formula, pattern, compilation, program, device, method, technique, or process' deserving of protection." (RP OB 8.) The court agrees in part. Ford does not articulate, even generally, how some of the redacted information constitutes a protectable "formula, pattern, compilation, program, device, method, technique, process" or similar information. For instance, Ford concedes that the names of City's employees are not trade secrets. (Ford Reply fn. 2.) In addition, Ford's declarants do not sufficiently explain how contract terms such as "Governing Law," "Taxes, Fees, and Other Permits," and "Insurance" could constitute trade secret information. However, Ford's declarants do provide some generalized statements suggesting that the redactions and the Fifth Agreement include product designs and design processes; product evaluation information and strategies; and pricing information. (Gratson Decl. ¶ 8; Gross Decl. ¶¶ 4-9.) If the other requirements of section 3426.1(d) were met, such information could potentially constitute a trade secret.

Real Parties contend that "Ford … must demonstrate how each purported record containing trade secrets was designated as such, and, further, how each portion of each document that it seeks to withhold amounts to a trade secret." (RP OB 9.) City makes a similar argument. (City OB 4-6.) The court agrees that Ford's evidentiary showing is insufficient, in the context of a CPRA action, to establish that the withheld information derives independent economic value from not being generally known to the public or Ford's competitors. As noted above, the CPRA establishes "a presumptive right of access to any record created or maintained by a public agency that relates in any way to the business of the public agency." (City of San Jose v. Sup. Ct. (2017) 2 Cal.5th 608, 616.) CPRA exemptions must be narrowly construed. (Sacramento County Employees' Retirement System v. Superior Court (2013) 195 Cal.App.4th 440, 453.) It follows that the party seeking to withhold public records cannot justify nondisclosure based on very generalized declarations stating that all of the withheld information constitutes a trade secret.

Here, Gross and Gratson conclusorily assert that the redactions and withheld Agreement evidence Ford's product designs and design processes; product evaluation information and strategies; and pricing information. (Gratson Decl. ¶ 8; Gross Decl. ¶¶ 4-9.) They further assert, also in conclusory language, that such information is not generally known to the public or Ford's competitors and Ford receives an economic value from the secrecy of this information. (Gratson Decl. ¶¶ 5, 11; Gross Decl. ¶¶ 4-12.) In the abstract, confidential design, product, and pricing information could plausibly constitute protectable trade secrets. However, details matter where a public agency seeks to withhold public records under the CPRA, and where statutory exemptions

must be narrowly construed. Ford's declarants make no effort to connect their conclusions to specific redacted information. Nor do the declarants provide factual context related to each Agreement that might provide a foundation for their assertions. As noted by City, which has viewed the unredacted Agreements, it is entirely unclear how contract terms such as "Governing Law," "Taxes, Fees, and Other Permits," and "Insurance" could constitute trade secret information. (See City OB 6.) The declarants do not explain. Other provisions, such as paragraphs 10 and 11 of the Long Term Vehicle Loan and Evaluation Agreement, are entirely redacted. Declarants provide no context or justification for those redactions. While the trade secret potential may be less tenuous for contract terms such as "Maintenance and Repairs," and "Vehicle Information," more detail is still required for Ford to prove that this withheld information – i.e., contract terms with a public entity – constitutes a trade secret.

In reply, Ford contends that the briefs of City and Real Parties "are unhelpful to the Court's analysis because neither the City nor Vox have a sufficient understanding of the trade secret issues as to Ford." (Ford Reply 2.) While Real Parties have not reviewed the unredacted Agreements 2, the court is not persuaded that City's statements about the Agreements deserve no weight. City personnel, including Deputy City Attorney Nguyen, have viewed the unredacted agreements. (See Nguyen Decl. ¶¶ 1-6.) Nguyen informed Ford that "City did not agree that there were any applicable exemptions that prevented the disclosure of the five responsive agreements." (Id. ¶ 6.) In City's writ brief, which is signed by Nguyen, City represents: "The City considers the Responsive Agreements to be public records with no applicable exemptions from public disclosure." (City OB 4.) City contends that "the Redacted Agreements do not contain any designs, specifications, algorithms, software code or other forms of intellectual property usually considered confidential." (City OB 5-6.) "The City cannot conceive of how an agreement between Ford and the City can be so confidential that even the basic terms of the agreement (e.g., what is the City buying or allowing; what are the costs and risks; and the duration of the agreement) should be withheld from public disclosure." (City OB 5.) Similar statements were made in City's answer and discovery responses. (See RP Compendium Exh. C-D, F-H.)

City presumably has less information about Ford concerning the economic value derived from the redacted information not being known to the public. Nonetheless, City has viewed the redacted information, is a party to the contracts with Ford, and believes that the Agreements do not contain trade secrets. In that context, City's statements deserve some weight in the court's analysis, especially where Ford submits only conclusory evidence about the contents of its alleged trade secrets.

Ford could have submitted more detailed information about the alleged trade secrets without forfeiting the alleged confidentiality of such information. For instance, Ford could have submitted a privilege log or chart that provided the evidentiary basis for each specific redaction. "The purpose of a 'privilege log' is to provide a specific factual description of documents in aid of substantiating a claim of privilege in connection with a request for document production." (Hernandez v. Sup.Ct. (2003) 112 Cal.App.4th 285, 292.) "The purpose of providing a specific factual description of documents is to permit a judicial evaluation of the claim of privilege." (Ibid.) Ford also could have submitted declarations under seal, subject to applicable sealing rules, if it felt it could not provide more specific information in public declarations. (See CRC Rule 2.550.) The CPRA request was made in April 2019 and this action has been pending since March 2020. Ford declined to provide specific factual information that may have supported its privilege claim when it had ample time to do so.

Based on the foregoing, Ford has not met its burden of proof to show that any specific redaction or the entire contents of the fifth Agreement constitute "information … that derives independent economic value" from not being generally known to the public or to Ford's competitors. (Civ. Code § 3426.1(d).)

Reasonable Steps to Protect Information from Disclosure

"[R]easonable efforts to maintain secrecy have been held to include advising employees of the existence of a trade secret, limiting access to a trade secret on 'need to know basis,' and controlling plant access." (Whyte v. Schlage Lock Co. (2002) 101 Cal.App.4th 1443, 1454.) "Requiring employees to sign confidentiality agreements is a reasonable step to ensure secrecy." (Ibid.)

Gratson declares: "During the course and scope of Ford's relationship with LAPD, Ford did not disclose any of the redacted/unproduced portions of the documents at issue to any third parties outside of Ford's business, and Ford demanded that LAPD maintain the secrecy of any Ford documents exchanged with LAPD pursuant to non-disclosure agreements and with the understanding that the exchange of Ford's information, and the contractual agreements between the Ford and the LAPD, would be confidential." (Gratson Decl. ¶ 9.) "Ford has made reasonable efforts to maintain secrecy of the confidential information by restricting its dissemination to those who need it in the performance of their employment-related duties, and Ford advises any employees that are given access to trade secret material of the protected status of the information at issue." (Id. ¶ 10.)

Gross declares: "Within the Company, Ford has also made reasonable efforts to maintain secrecy of the confidential information by restricting its dissemination to those who need it in the performance of their employment-related duties." (Gross Decl. ¶ 11 and ¶ 13.)

In conjunction with these conclusory statements, the four redacted Agreements provide some evidence that City entered non-disclosure or confidentiality agreements with Ford. (See Hugret Decl. Exh. 1.) However, Ford has redacted even this information, which would have shown the scope of information that City agreed to hold confidential. In discovery, City also asserted that it does not agree with Ford that it made oral or written assurances of confidentiality. (RP Comp. Exh. G at 6-8.) Other than the conclusory statements in the Gratson and Gross declarations, and the existence of redacted confidentiality agreements, Ford provides no evidence of any measures agreed to by City to ensure that the alleged trade secrets were not disclosed publicly.

Gratson and Gross both assert that Ford "restrict[s] … dissemination [of the alleged trade secrets] to those who need it in the performance of their employment-related duties, and Ford advises any employees that are given access to trade secret material of the protected status of the information at issue." However, these conclusory statements have no evidentiary value since Ford provides no detail about the specific trade secret information at issue. Ford is a large company with numerous employees and business relationships. Ford does not claim that it requires employees to execute confidentiality agreements related to the withheld information or Agreement. Given the conclusory description of the withheld information, Gratson's and Gross's statements about efforts to maintain secrecy are also insufficient to support a trade secret claim.

Real Parties contend that Ford, including its prior CEO, have publicly discussed some or all of the information withheld from the five Agreements. (RP OB 11, citing Comp. Exh. K at 5-7; Exh. P-R; and November 7, 2018, Freakonomics Podcast Episode, available at https://freakonomics.com/podcast/ford.) The cited evidence shows that Ford has publicly disclosed general information about its cooperation with LAPD on research and development activities related to police vehicles, including hybrid police vehicles. This evidence is not dispositive, but generally suggests Ford may not have reasonable measures in place to maintain the secrecy of some or all of the withheld information.

Based on the foregoing, Ford has not met its burden of proof to show that any specific redacted information or the entire contents of the fifth Agreement are subject of reasonable efforts to maintain secrecy. (Civ. Code § 3426.1(d).)

Would Applying Trade Secret Privilege "Work Injustice"?

Evidence Code section 1060 does not allow the owner of a trade secret to claim the trade secret privilege if it would "work injustice." The Court of Appeal has interpreted this language to require an analysis of whether the interests of justice are served by nondisclosure. (See Uribe v. Howie (1971) 19 Cal.App.3d 194, 207, 210-211.) As indicated by Ford, "[t]he Uribe court construed the 'work injustice' language as essentially embodying a balancing test analogous to that set forth in the 'catch-all' exemption of Section 6255(a)." (Ford OB 18.)

Ford contends that public disclosure of the withheld information "would unfairly advantage Ford's competitors," and thereby harm Ford's private competitive interests. (Ford OB 19; see Gross Decl. ¶ 12, Gratson Decl. ¶ 11.) The inquiry under section 6255 is whether the public interest in nondisclosure outweighs the public interest in disclosure. Presumably, a similar analysis should apply to the "work injustice" prong of Evidence Code section 1060. Thus, Ford's assertion of private harm appears to merit little or no weight. (See Connell v. Super. Ct. (1997) 56 Cal. App. 4th 601, 616-617 [section 6255 focuses on public, not private interests].) Furthermore, when a private business contracts with the government, its privacy interests diminish. (See San Gabriel Tribune v. Sup.Ct. (1983) 143 Cal.App.3d 762, 781 ["voluntary entry into the public sphere diminishes one's privacy interests"].) Like the other statements in Gratson's and Gross's declarations, the assertions of private harm are also conclusory and not connected to any specific withheld information.

Ford also contends that public disclosure of the withheld information would result in public harm, specifically it "would have a chilling effect on future collaboration between Ford and LAPD, and would ultimately harm the marketplace due to a resulting lack of innovation." (Gross Decl. ¶¶ 11-12; Gratson Decl. ¶ 11.) These statements are speculative and not supported by any evidentiary foundation. City has indicated that it does not oppose disclosure of the withheld information. While City's long delay in disclosure suggests deference to the business relationship with Ford, there is no persuasive evidence that City believes disclosure would chill future collaboration between Ford and LAPD. If Ford's statements mean it would not collaborate with LAPD in the future if information in its agreements is disclosed, Ford has not supported its claims regarding impact on the marketplace and innovation.

Ford contends, citing case law, that "the courts may rely on a combination of expert opinion, common sense and human experience to form their conclusions about likely consequences of a disclosure." (Ford OB 19.) Ford has submitted no expert opinions. Since Ford provides no details about the withheld information, the court has no basis to conclude from common sense or human experience that disclosure would chill collaboration between Ford and LAPD or harm the

marketplace due to a lack of innovation.

While Ford fails to show a public interest in non-disclosure of the withheld information, Real Parties show a strong public interest in disclosure. (RP OB 8-9.) Ford has entered into multiple contracts with LAPD, a public entity. Public funds are spent on LAPD's performance of its obligations under these contracts. The public has a clear interest in understanding how LAPD works with Ford and where/how public funds are being spent. Weighing the interests involved, the court concludes that nondisclosure of the withheld information in the five Agreements would "work injustice" and be against the interests of justice.

Based on the foregoing, Ford does not show that City is prohibited by law, pursuant to Evidence Code section 1060, from disclosing the withheld information from the five Agreements. Accordingly, Ford does not show that City has a ministerial duty to withhold such information from disclosure in its response to Real Parties' CPRA request.

To the extent City has discretion to decide whether or not to disclose the withheld information, for the same reasons discussed above Ford also does not show that such discretion would be abused by disclosure. (Marken v. Santa Monica-Malibu Unified School Dist. (2012) 202 Cal.App.4th 1250, 1262 [The exemptions in section 6254 "are permissive, not mandatory"]; County of Los Angeles v. City of Los Angeles (2013) 214 Cal.App.4th 643, 654 ["Normally, mandate will not lie to control a public agency's discretion …. However, it will lie to correct abuses of discretion. In determining whether a public agency has abused its discretion, …[a] court must ask whether the public agency's action was arbitrary, capricious, or entirely lacking in evidentiary support."].)

Catch-all Exemption under Section 6255

Section 6255 "allows a government agency to withhold records if it can demonstrate that, on the facts of a particular case, the public interest served by withholding the records clearly outweighs the public interest served by disclosure." (City of San Jose v. Sup. Ct. (1999) 74 Cal.App.4th 1008, 1017.) "The burden of proof is on the proponent of nondisclosure, who must demonstrate a 'clear overbalance' on the side of confidentiality." (Id. at 1018.)

This balancing is similar to that discussed above under Evidence Code section 1060, and arguably imposes an even higher burden (i.e. "clear overbalance") to justify non-disclosure. For the same reasons discussed above, Ford does not show that the public interest served by withholding the records clearly outweighs the public interest served by disclosure.

Other CPRA Exemptions Cited in the Petition or Writ Briefs

Ford's petition and writ brief cite other statutes in support of Ford's claim of exemption, but Ford has not argued in its writ briefs (including the reply) that non-disclosure is justified under the cited statutes. (See Ford OB 21, citing Gov. Code §§ 6254(l), 6254.7(d), 6254.15; see Petition ¶ 19, citing Penal Code § 499c, 5 USC § 552, 18 USC § 1905.) Ford waives argument related to such statutes. (Nelson v. Avondale HOA (2009) 172 Cal.App.4th 857, 862-863 [argument waived if not raised or adequately briefed]; Pfeifer v. Countrywide Home Loans, Inc. (2012) 211 Cal.App.4th 1250, 1282 [same].)

Other Requested Records

In addition to the five Agreements discussed above, Real Parties' CPRA request also sought:

(1) any documents or correspondence (including emails with addresses ending "@ford.com") during the period encompassing this request regarding possible or planned agreements with Ford Motor Company or its subsidiaries; and
(2) any existing or proposed internal protocols, training documents, data-sharing agreements, data storage procedures and prohibited activities governing such agreements or joint activities. (Nguyen Decl. ¶ 2, Exh. A.)

The City identified at least 1700 pages of emails with over 170 attachments that were possibly responsive to the request (the "Emails"). (Nguyen Decl. ¶ 8.) Since January 2021, the City has been reviewing the Emails for responsiveness to the Request and possible exemptions. Because of the volume of the Emails, the City was not able to disclose them before the opening briefs are due in this Current Action. (Ibid.) Other than the Emails and the five responsive Agreements, the City has not identified records that are responsive to the Request. (Id. ¶ 8.)

In the cross-petition, Real Parties seek a writ compelling City to disclose the "Requested Records," including "data-sharing agreements" and "communications related to the executed agreements." (Cross-Pet. ¶ 7 and Prayer.) Real Parties do not address these other documents in their briefing, other than requesting an order for immediate disclosure of all "Responsive Records" While City explains that it has not had time to review all e-mails, it does not make a legal argument why disclosure at this time should not be ordered.

The parties should address these other documents at the hearing. The court is inclined to order

immediate disclosure but to the extent City claims that the emails contain exempt information, order City to provide Real Parties a privilege log in support of any exemptions. (See Haynie v. Sup. Ct. (2001) 26 Cal.4th 1061, 1072-1072.)

Conclusion

Ford's petition is DENIED.

Vox's cross-petition is GRANTED. To the extent City claims that responsive emails contain exempt information (see Nguyen Decl. ¶ 8), City must provide Real Parties a privilege log in support of any exemptions. (See Haynie v. Sup. Ct. (2001) 26 Cal.4th 1061, 1072-1072.)

FOOTNOTES:

1- Ford also submits a declaration of attorney Brittany Schultz. Contrary to Ford's assertion in reply, Schultz provides no helpful factual information in support of Ford's trade secret claim. (Ford Reply 2.) Schultz simply authenticates legal correspondence with City.
2- Ford represents that it offered to allow Real Parties to confidentiality view the Agreements subject to nondisclosure protections. (Ford Reply 4.) No evidence is cited. Also, the purpose of this action is public disclosure of the Agreements. Thus, it is not surprising Real Parties might reject such offer.

Counsel is the produce the unredacted documents and/or a privilege log within two weeks.
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A status conference is scheduled for June 17, 2021, at 1:30 p.m. in Department 82. The status conference will be taken off calendar if no further action is needed.
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Counsel for Vox Media is to give notice.