

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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	:	Index No.: 451625/2020
PEOPLE OF THE STATE OF NEW	:	
YORK,	:	Hon. Joel M. Cohen
	:	
<i>Plaintiff,</i>	:	Motion Sequence No. 021
	:	
v.	:	
	:	
THE NATIONAL RIFLE ASSOCIATION	:	
OF AMERICA, INC., ET AL.,	:	
	:	
<i>Defendants.</i>	:	
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**THIRD-PARTY CHRISTOPHER W. COX'S MEMORANDUM OF LAW
IN SUPPORT OF HIS MOTION TO SEAL**

Third-party Christopher W. Cox submits this memorandum of law in support of his motion to permanently seal, and to permit redaction of all text in any document filed publicly in this action quoting or describing, a highly confidential, non-public document that was produced as part of the New York Attorney General's investigation into the National Rifle Association.

FACTS

Mr. Cox has filed a letter motion requesting that the National Rifle Association and New York Attorney General reimburse him for the costs of complying with a subpoena duces tecum. That letter motion quotes provisions of a confidential employment agreement between Mr. Cox and the NRA. Attached as exhibits to that motion are the employment agreement itself (Ex. 1) and two emails between Mr. Cox's counsel and the NRA's counsel that quotes confidential provisions of the agreement (Exs. 2 and 4). Affidavit of Christopher W. Cox, filed herewith, ("Cox Aff.") ¶ 6. The letter motion, employment agreement and email referencing the employment agreement are confidential.

The employment agreement contains an extensive confidentiality provision that prohibits the disclosure of the terms of the agreement. *Id.* ¶ 3. The confidentiality provision survives termination of the agreement. *Id.* The agreement contains the NRA's sensitive non-public financial information, including the salary and benefits that it paid Mr. Cox as an executive. *Id.* ¶ 4. The NRA could suffer competitive harm if the agreement and its terms—which contain proprietary business information—were to be filed publicly. *Id.* ¶ 8. Moreover, the agreement contains information related to Mr. Cox's salary and benefits during his tenure as an employee of the NRA. *Id.* Mr. Cox is a non-party to this litigation and has significant privacy interests in maintaining the confidentiality of his personal financial information. *Id.* The NRA has also indicated that it believes the agreement is confidential.

ARGUMENT

Court records may be sealed “upon a written finding of good cause” and the “consider[ation of] the interests of the public as well as the parties.” 22 N.Y.C.R.R. §216.1(a). In weighing the public interest, courts consider “the general right of the public to have open court proceedings.” *In re E. 51st St. Crane Collapse Litig.*, 31 Misc. 3d 406, 413 (Sup. Ct. N.Y. Cnty. 2011) (internal quotations omitted). A party’s interest in sealing court records overcomes the public interest when “disclosure could harm the private corporation’s competitive standing.” *Mancheski v. Gabelli Grp. Cap. Partners*, 39 A.D.3d 499, 502-03 (2d Dep’t 2007); *see Crain Commc’ns, Inc. v. Hughes*, 135 A.D.2d 351, 351 (1st Dep’t 1987), *aff’d*, 74 N.Y.2d 626 (1989) (granting motion to seal documents when “records are a source of business information which might harm a litigant’s competitive standing.”); *Matter of Cohen v. S.A.C. Capital Advisors LLC*, 11 Misc. 3d 1054(A), at *9 (Sup. Ct. N.Y. Cnty. 2006) (granting motion to seal record when document contained “sensitive proprietary and business information,” and where disclosure did not “implicate any matters of public interest”).

For this reason, courts routinely seal documents that contain a party’s confidential and proprietary information. For example, courts have sealed documents where “necessary or appropriate to the protection of confidential trade information.” *Crain Commc’ns*, 135 A.D.2d at 352; *see Bernstein v. On-Line Software Int’l, Inc.*, 232 A.D.2d 336, 337 (1st Dep’t 1996) (affirming an arbitration panel’s “attorneys eyes only” confidentiality order “to protect the confidentiality of trade secrets obtained in the course of discovery”). Courts have likewise sealed documents reflecting “current or future business strategies” and “proprietary financial information.” *Mancheski*, 39 A.D.3d at 502-03. Courts have also noted that “[t]here [is] a compelling interest in sealing . . . third-party financial information since disclosure could impinge on the privacy rights

of third parties who clearly are not litigants.” *Manufacturers & Traders Tr. Co. v. Client Server Direct, Inc.*, 156 A.D.3d 1364, 1366 (4th Dep’t 2017) (quoting *Mancheski*, 39 A.D.3d at 502).

Here, disclosure of the Confidential Documents, which reflect confidential and proprietary business information, would harm the NRA’s competitive standing, thereby overcoming the public interest in the document’s publicization. *See Crain Commc’ns*, 135 A.D.2d at 351-52; *In re E. 51st St. Crane Collapse Litig.*, 31 Misc. 3d at 413. Among other things, the Confidential Documents reflect the NRA’s confidential proprietary information related to the salaries of its executives. Cox Aff. ¶ 4. This information “is akin to a trade secret, which, if disclosed, would give a competitor an unearned advantage.” *Mancheski*, 39 A.D.3d at 503; *see also Crain Commc’ns*, 135 A.D.2d at 352 (finding prejudice to movant from the disclosure of trade secret information). The NRA has indicated that it believes that the employment agreement is confidential. The motion also references the arbitration proceedings, which are confidential under the International Institute for Conflict Prevention & Resolution’s rules. *See* CPR Rule 18, available at [https://www.cpradr.org/resource-center/rules/arbitration/non-administered/2018-cpr-non-administered-arbitration-rules/res/id=Attachments/index=0/2017Non-AdminArbRules%20\(web%20version\).pdf](https://www.cpradr.org/resource-center/rules/arbitration/non-administered/2018-cpr-non-administered-arbitration-rules/res/id=Attachments/index=0/2017Non-AdminArbRules%20(web%20version).pdf)

Additionally, Mr. Cox is “clearly not [a] litigant[]” in this matter, and so there is a “compelling interest” in sealing his personal financial information. *Manufacturers & Traders Tr. Co.*, 156 A.D.3d at 1366. The employment agreement contains detailed information about the salary and various other benefits that Mr. Cox received from the NRA. Disclosing such confidential financial information would impinge on Mr. Cox’s privacy rights. Mr. Cox also requests that the Court allow him to file these documents under seal to avoid any potential litigation

from the NRA. The Court should permit Mr. Cox to file the letter motion and confidential exhibits under seal.

CONCLUSION

For the foregoing reasons, Mr. Cox respectfully requests that this Court enter an order permanently sealing the Confidential Document and permitting redaction of all text in any document filed publicly in this action quoting or describing the Confidential Document.

Dated: New York, New York
December 6, 2021

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** Pro hac vice application forthcoming*

Attorneys for Christopher W. Cox

CERTIFICATE OF COMPLIANCE

1. The following statement is made in accordance with N.Y.C.R.R. § 202.70, Rule 17.
2. The foregoing Memorandum was prepared in the processing system Microsoft Word, with Times New Roman typeface, 12-point font.
3. Relying on the word count of the word-processing system, the total number of words in this document, exclusive of the caption, table of contents, table of authorities, and signature block is 931 words.

Dated: New York, New York
December 6, 2021

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