

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

ADMINISTRATIVE PROCEEDINGS RULINGS
Release No. 2569/April 22, 2015

ADMINISTRATIVE PROCEEDING
File No. 3-16383

In the Matter of

CHARLES L. HILL, JR.

ORDER GRANTING IN PART MOTION
FOR PROTECTIVE ORDER

On April 13, 2015, Respondent Charles L. Hill, Jr., moved for a protective order “with respect to [one of] his [separately-filed] motion[s] for summary disposition.” Motion at 1. Mr. Hill seeks a protective order regarding his “confidential financial information . . . related to [his] financial accounts and . . . business activities, including the dollar value of specific business transactions with third parties and the amount of money Respondent committed to other, unrelated business dealings.” *Id.* at 1-2. He also seeks to protect his “confidential business relationships, including the identity of business entities that have entered into contractual arrangements with” him. *Id.* at 2. Lastly, Mr. Hill says that he wishes to protect “personally identifiable information (such as social security numbers, addresses, telephone numbers[,] and telephone records) of [himself] and other third parties whose identities have not been disclosed in the OIP.” *Id.*

On April 14, 2015, the Division of Enforcement responded, opposing Mr. Hill’s motion as too vague to be granted. Opposition at 1. Mr. Hill filed a reply on April 17, 2015. In his reply, Mr. Hill identifies what he seeks to protect as follows:

(1) the identity of business entities that have entered into contractual arrangements with Respondent; (2) the physical location and dollar value of specific confidential commercial transactions; . . . (3) the amount of money Respondent planned to commit to two confidential commercial transactions for a specific business entity[;]. . . [(4)] personally identifiable information, including: [(a)] the names of third parties whose identities have not been disclosed in the OIP; . . . [(b)] the cell phone and landline numbers of Respondent and the cell phone numbers of these third parties[;] . . . [(5)] phone records contained in Exhibits B and C to the merits motion, which among other things, identify every phone number that a third party called, the telephone numbers of Respondent and other third parties, and the date, time, and duration of calls made.

Reply at 2 n.3. Based on my reading of Mr. Hill’s motion for summary disposition and exhibits attached thereto, it is apparent that the information he wishes to protect concerns: (1) the names of restaurant chains to whom he leases property; (2) the cities and streets on which the properties are located and the amount of money involved in the lease transactions; (3) the amount of money he “committed to purchase two separate sites for” one of the restaurant chains and the amount of cash he had on hand after those deals fell through; (4) (a) the names of witnesses who gave investigative testimony, their dates of birth, addresses, e-mail addresses, phone numbers, and social security numbers, and the names of certain witnesses’ family members, friends, and associates; (b) the telephone numbers for various witnesses; and (5) monthly phone records.

The basic principles are not contested. “[T]he courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 (1978). Judicial records are thus “strong[ly]” presumed to be accessible by the general public. *EEOC v. Nat’l Children’s Ctr., Inc.*, 98 F.3d 1406, 1409 (D.C. Cir. 1996); *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 13 (1st Cir. 1986). This presumption of access applies to matters raised in a dispositive motion. *Chi. Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1312-13 (11th Cir. 2001).¹ It has been said that “only the most compelling reasons can justify non-disclosure of judicial records.” *In re Gitto Global Corp.*, 422 F.3d 1, 6 (1st Cir. 2005) (quoting *FTC v. Standard Fin. Mgmt. Corp.*, 830 F.2d 404, 410 (1st Cir. 1987)). The party opposing disclosure bears the burden “to show that the interest in secrecy outweighs the presumption.” *Bank of Am. Nat’l Trust and Sav. Ass’n v. Hotel Rittenhouse Assocs.*, 800 F.2d 339, 344 (3d Cir. 1986). To meet this burden, the moving party must rely on more than mere conclusory assertions. *See Serrano v. Cintas Corp.*, 699 F.3d 884, 901 (6th Cir. 2012).²

In line with the foregoing, the Commission has adopted Rule of Practice 322. *See* 17 C.F.R. § 201.322. The Rule permits a party to move for a protective order and directs the moving party to include in his motion “a general summary or extract of the documents” or testimony that contain confidential information. 17 C.F.R. § 201.322(a). The Rule provides that “[d]ocuments and testimony introduced” in an administrative proceeding “are presumed to be public.” 17 C.F.R. § 201.322(b). As such, an administrative law judge may issue a protective order “only upon a finding that the harm resulting from disclosure would outweigh the benefits of disclosure.” *Id.* This Rule reflects the Commission’s view regarding the importance of conducting open administrative proceedings, which, “with attendant public scrutiny, have the effect of protecting against the abuse of power by governmental entities.” *Joseph John VanCook*, Exchange Act Release No. 58756, 2008 SEC LEXIS 3037, at *1-2 (Oct. 8, 2008) (quoting *Dominic A. Alvarez*, Exchange Act Release No. 53231, 2006 SEC LEXIS 308, at *1-2 (Feb. 6, 2006)); *see* Disciplinary Proceedings Involving Professionals Appearing or Practicing

¹ *See Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135-36 (9th Cir. 2003); *Rushford v. New Yorker Magazine, Inc.*, 846 F.2d 249, 252 (4th Cir. 1988); *In re Cont’l Ill. Sec. Litig.*, 732 F.2d 1302, 1308-10 (7th Cir. 1984); *Joy v. North*, 692 F.2d 880, 893 (2d Cir. 1982).

² *See also Anderson*, 805 F.2d at 7-8; *United States v. Garrett*, 571 F.2d 1323, 1326 n.3 (5th Cir. 1978).

Before the Commission, 53 Fed. Reg. 26427, 26428-29 & n.7 (July 13, 1988) (codified at 17 C.F.R. pt. 201).

With the foregoing in mind, I GRANT IN PART Mr. Hill's motion.

1. With respect to the names of restaurant chains to which Mr. Hill leases property, Mr. Hill's motion is denied. Although Mr. Hill bears the burden to show that the harm from disclosure of the chains' names outweighs the benefit, he merely says that the chains "will suffer reputational harm by virtue of being linked to this proceeding" and that the "goodwill" he has developed with the chains "will be impaired." Motion at 3; Reply at 5. Of course, merely saying something "does not make it so." *GTE Serv. Corp. v. FCC*, 205 F.3d 416, 426 (D.C. Cir. 2000).

The mere assertion of reputational harm is insufficient to overcome the presumption of access. *See Joy*, 692 F.2d at 893-94. A party seeking a protective order based on a fear of embarrassment or harm to a business's reputation cannot simply rely on "[b]road allegations of harm," and must instead be specific. *Cipollone v. Liggett Grp., Inc.*, 785 F.2d 1108, 1121 (3d Cir. 1986); *see Joy*, 692 F.2d at 894.³ Absent such specificity or supporting evidence, Mr. Hill's motion is denied.⁴ *See Nestle Foods Corp. v. Aetna Cas. & Sur. Co.*, 129 F.R.D. 483, 485-86 & n.5 (D. N.J. 1990).

2. Mr. Hill wishes to protect the physical location and dollar value of certain "confidential commercial transactions." Reply at 2 n.3. Review of his summary disposition motion and its exhibits reveals that Mr. Hill wishes to shield from disclosure the names of the cities and streets on which the properties he leases are located, as well as the amount of money involved in the lease transactions. As far as I can determine, Mr. Hill's argument with respect to this aspect of his request is the same as that with respect to the names of the restaurant chains.⁵ *See* Motion at 3. That being the case, this aspect of his motion is denied for the reasons stated above.

³ Although the Federal Rules of Civil Procedure do not apply in this proceeding, decisions applying those rules may, in relevant circumstances, provide useful guidance. *See S. W. Hatfield, CPA*, Exchange Act Release No. 73763, 2014 SEC LEXIS 4691, at *10 n.11 (Dec. 5, 2014); *Jay Alan Ochanpaugh*, Exchange Act Release No. 54363, 2006 SEC LEXIS 1926, at *20 n.24 (Aug. 25, 2006).

⁴ Mr. Hill is correct that Rule 322(a) permits him to base his motion on "a general summary" of the evidence that is the subject of his request. Reply at 2. The fact, however, that he may list the evidence in general terms does not similarly mean that his analysis or justification may also be stated in a general, non-specific fashion. As the Commission has explained, a party seeking a protective order must "clearly identify which information [the party] seeks to protect and . . . expl[ain] . . . why the harm resulting from disclosure would outweigh the benefits of disclosure." *Dominic A. Alvarez*, 2006 SEC LEXIS 308, at *3 (emphasis added).

⁵ To the extent this aspect of Mr. Hill's argument is distinct because he alleges harm to his "competitive standing," Reply at 5 (quoting *United States v. Hubbard*, 650 F.2d 293, 314-15 (D.C. Cir. 1980)), his argument is availing because he presents nothing to support his argument.

To the extent that Mr. Hill suggests this aspect of his motion should be granted because his business relationships are “confidential,” he cannot prevail. Again, Mr. Hill has the burden to overcome the presumption that the evidence in this case should be disclosed. Yet he has supplied no evidence to show that his relationships are confidential or subject to a nondisclosure agreement. This aspect of his motion is thus denied. *See Nestle Foods Corp.*, 129 F.R.D. at 485-86 & n.5.

3. Mr. Hill wishes to protect the amount of money he “committed to purchase two separate sites for” one of the restaurant chains and the amount of cash he had on hand after the deals fell through. Summ. Disposition Mot. at 7; Motion at 2. As to this aspect of his motion for a protective order, he says only that “[i]t cannot be reasonably disputed that the disclosure of confidential information related to Respondent’s financial accounts would be harmful to Respondent.” Motion at 2. This conclusory assertion falls well short of what is necessary to overcome the presumption that evidence presented in this proceeding will be publicly accessible. *See Joy*, 692 F.2d at 894; *see also Serrano*, 699 F.3d at 901.

4. Mr. Hill asks for a protective order with respect to (a) the names of witnesses who gave investigative testimony, their dates of birth, addresses, e-mail addresses, phone numbers, and social security numbers, and the names of certain witnesses’ family members, friends, and associates; and (b) the telephone numbers for various witnesses.

The dates of birth, addresses, e-mail addresses, and social security numbers of Mr. Hill and any other person are subject to being protected. The same is true for any person’s banking or brokerage account number. This information shall be redacted.

As Mr. Hill’s motion pertains to the names of people on whose testimony he relies in his motion, the motion is denied. Mr. Hill says the names of people not disclosed in the OIP should be shielded because these people will “suffer reputational harm” by virtue of having been associated with this case. Motion at 3. Generalized assertions of reputational harm without more are not sufficient to warrant issuing a protective order. Furthermore, the names of these individuals will be relevant if I grant the motion for summary disposition or if the matter proceeds to a hearing on the merits. Either way, the strong presumption favoring disclosure cannot be overcome by a vague assertion of “reputational harm.”

5. Mr. Hill also wishes to protect the monthly phone records attached to one of his motions for summary disposition as Exhibits B and C. With respect to telephone numbers derived from Exhibits A, B, and C to Mr. Hill’s motion for summary disposition, Mr. Hill may redact all un-highlighted telephone numbers in Exhibits B and C that are not relevant to this matter. I encourage the parties to stipulate as to the identity of the owners of the telephone numbers in Exhibit A and the relevant, highlighted telephone numbers in Exhibits B and C. If the parties are able to reach such an agreement, Mr. Hill may also redact those numbers from the exhibits and the summary disposition motion and replace them with a notation that the number belongs to its named owner. If the parties are unable to reach an agreement, the telephone numbers in Exhibit A and the relevant, highlighted numbers in Exhibits B and C may not be redacted.

Within fourteen days, Mr. Hill shall file a replacement redacted motion for summary disposition and exhibits, in accord with the foregoing Order.

James E. Grimes
Administrative Law Judge