

**UNITED STATES OF AMERICA
BEFORE THE CONSUMER FINANCIAL PROTECTION BUREAU**

IN THE MATTER OF ENOVA
INTERNATIONAL, INC.

SUPPLEMENTAL REQUEST FOR CONFIDENTIAL TREATMENT

Pursuant to the September 20, 2021 Decision and Order (“Order”) issued by the Consumer Financial Protection Bureau (“CFPB”), *see In re Enova International, Inc.*, 2021-MISC-Enova International, Inc.-0001 (Sept. 20, 2021), at 4-7, Enova International, Inc. (“Enova”) provides this supplemental request for confidential treatment of certain additional portions of the Petition to Modify the Civil Investigative Demand Served on Enova International, Inc. (“Petition”) and supporting Declaration of Gaurav Devasthali (“Petition Declaration”), filed on June 14, 2021. As explained below, there is good cause to keep confidential the portions of the Petition and Petition Declaration containing private commercial information under Exemption 4 of the Freedom of Information Act (“FOIA”). 5 U.S.C. § 552(b)(4).

**I. ENOVA’S PRIVATE INFORMATION COVERED BY FOIA
EXEMPTION 4**

In its Order, the CFPB gave Enova the opportunity to submit a supplemental request for confidential treatment of certain portions of the Petition and Petition Declaration, under FOIA Exemption 4. The Order directed Enova to (1) identify with particularity those portions of the Petition and Petition Declaration that are protected by FOIA Exemption 4 and (2) substantiate the claim that those portions fall within Exemption 4. Enova hereby identifies page six of the Petition, lines 13-14, 17-19, 20, page seven of the Petition, lines 1, 4-9, and Paragraphs 8-15 of the Petition

Declaration as information that is protected by FOIA Exemption 4 (the “Private Information”), in addition to those portions of the Petition and Petition Declaration that the Bureau has already identified for redaction. Enova further provides substantiation that those portions are covered by Exemption 4 in Section III below.

1. Proprietary Processes Concerning the Technology and Functionality of NetCredit and CashNetUSA Platforms

The Petition and Petition Declaration contain information regarding Enova’s proprietary processes concerning the technology, system architecture and functionality of the NetCredit and CashNetUSA platforms. As the Petition and Petition Declaration explain, [REDACTED]

[REDACTED]

[REDACTED]. Petition at 6; Petition Declaration ¶ 10. In particular, [REDACTED]

[REDACTED]

[REDACTED]. Petition Declaration ¶ 10. The Petition Declaration also details the functionality of these platforms. The Petition Declaration explains that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* ¶ 11. The Petition Declaration further explains that [REDACTED]

[REDACTED]

[REDACTED]. *Id.* ¶ 12; Petition at 6-7. The Petition and Petition Declaration also explain that [REDACTED]

[REDACTED]

[REDACTED]. Petition at 7; Petition Declaration

¶ 14. Finally, the Petition and Petition Declaration explain that [REDACTED]

[REDACTED]

[REDACTED] Petition at 7; Petition Declaration ¶ 15.

Enova does not publicly disseminate such information about the proprietary technology and functionality of the NetCredit and CashNetUSA platforms. Declaration of Cynthia Hayward in Support of Enova’s Supplemental Request for Confidential Treatment (“Hayward Decl.”) ¶ 4. And, while each of the various elements of Enova’s system architecture described above may not be competitively sensitive in isolation, the multi-faceted description of Enova’s processes and system structure is proprietary and competitively sensitive information. Public dissemination of this information would damage Enova’s competitiveness in the market. *Id.* ¶ 7.

2. Customized Servicing Protocols used by NetCredit and CashNetUSA

The Petition and Petition Declaration also contain information regarding the customized servicing protocols used by NetCredit and CashNetUSA. The Petition and Petition Declaration explain that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Petition at 6; Petition Declaration ¶ 8. The Petition and Petition Declaration further explain that [REDACTED]

[REDACTED].

Petition at 6; Petition Declaration ¶ 9.

Enova takes active steps to protect, and does not publicly disseminate, such information about the customized servicing protocols used by NetCredit and CashNetUSA as public dissemination of this information would damage Enova’s competitiveness in the market. Hayward Decl. ¶¶ 5, 7, 9.

3. Payment Processing Operations of NetCredit and CashNetUSA

The Petition Declaration contains information about NetCredit's and CashNetUSA's payment processing operations, including the third-party vendors NetCredit and CashNetUSA used to process debit card payments. Petition Declaration ¶ 13. In particular, the Petition Declaration identifies specific vendors or processes used by both CashNetUSA and NetCredit, the timeframe during which the companies had agreements with the identified vendors, and the services provided by those vendors. *Id.* These details and terms of the parties' agreements are contained in Enova's contracts with these vendors and not publicly disseminated, as public dissemination of this information would damage Enova's competitiveness in the market while also hurting Enova's ability to maintain relationships with third-party vendors. Hayward Decl. ¶¶ 6, 7.

II. LEGAL STANDARD

FOIA Exemption 4 applies to information that is "(1) commercial or financial, (2) obtained from a person, and (3) privileged or confidential." *Jordan v. United States Dep't of Labor*, 308 F. Supp. 3d 24, 42 (D.D.C. 2018) (internal quotations and citations omitted). As to the first prong, information is considered "commercial" if "the provider of the information has a commercial interest" in it. *Baker & Hostetler LLP v. U.S. Dep't of Com.*, 473 F.3d 312, 319 (D.C. Cir. 2006). The second "obtained from a person" prong is met as long as the information was generated by an outside party rather than the government. *Bloomberg, L.P. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 601 F.3d 143, 148 (2d Cir. 2010). Finally, as to the third prong, information is considered confidential if the "commercial or financial information is both customarily and actually treated as private by its owner." *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2366 (2019). "[I]n assessing customary disclosure, the [court will consider how the particular party customarily treats the information, not how the industry as a whole treats the information." *Humane Soc'y of*

the United States v. United States Dep't of Agric., 2021 U.S. Dist. LEXIS 119539, at *19 (D.D.C. June 28, 2021) (internal quotations and citation omitted).

III. ARGUMENT

There is good cause to keep the Private Information confidential because it constitutes Enova's confidential commercial information that Enova treats as private, and is thus protected from disclosure under FOIA Exemption 4.

In filing its Petition and Petition Declaration, Enova believed that under Exemption 4, references to its proprietary business information and other confidential commercial information not disclosed to the public would be kept confidential. *See* Request for Confidential Treatment at 2.¹ Specifically, the Private Information includes information about: (1) Enova's proprietary processes concerning the technology, design and functionality of the NetCredit and CashNetUSA platforms; (2) the customized servicing protocols used by NetCredit and CashNetUSA; and (3) NetCredit's and CashNetUSA's payment processing operations, including relationships with third-party vendors.

The Private Information falls within the ambit of Exemption 4 because it is: (1) commercial or financial; (2) obtained from a person; and (3) privileged or confidential. Each requirement is discussed in turn below.

¹ Although *Food Marketing* raised the possibility that Exemption 4 requires that the government provided assurances that the information would remain secret (139 S. Ct. at 2363), subsequent court decisions and decisions issued by the Bureau on requests for confidential treatment have found good cause regardless of whether any assurances of confidentiality were made. *See, e.g., Renewable Fuels Ass'n v. United States Env't Prot. Agency*, 2021 U.S. Dist. LEXIS 21137, at *25 (D.D.C. Feb. 4, 2021) (“[N]o court has yet held that ‘privately held information lose[s] its confidential character for purposes of Exemption 4 if it's communicated to the government without’ privacy assurances.”) (citing *Food Marketing*, 139 S. Ct. at 2363) (emphasis in original).

Commercial or Financial. The Private Information plainly satisfies the requirement that information be “commercial.” Enova clearly “has a commercial interest” in the Private Information. *Baker*, 473 F.3d at 319. Enova’s proprietary business methods and technology, its customized servicing protocols, and its payment processing operations, including its relationships with third-party payment services providers, are important to Enova’s business strategy, and Enova uses this information to obtain a competitive advantage over other companies. Enova has a commercial interest in keeping information regarding its business methods, servicing protocols, and payment processing operations confidential in order to protect against disclosure to its competitors.

Obtained From a Person. All of the Private Information was “obtained from a person” because it was supplied by Enova and not “generated within the Government.” *Bloomberg*, 601 F.3d at 148 (internal quotations and citations omitted).

Confidential. The Private Information is “customarily kept private” by Enova “or at least closely held” by Enova. *Food Marketing*, 139 S. Ct. at 2366. In its ordinary course of business, it is Enova’s custom and practice to keep private its information regarding business methods, servicing protocols, and payment processing operations. Hayward Decl. ¶¶ 4-6. Enova uses multiple procedures to guard against public disclosure of this information, and internally classifies this information as sensitive, and subjects the information to internal and external disclosure and access restrictions. Hayward Decl. ¶¶ 8-9.

Numerous decisions have held that information similar to the Private Information that Enova seeks to protect here qualifies for confidential treatment under Exemption 4. For example, in *In re Wireless E911 Location Accuracy Requirements*, the FCC recently found that a report “containing [a company’s] proprietary and commercially sensitive information,” including

information about the company's products and the technology used by the company, were covered by Exemption 4 where they were "not made publicly available and protected against disclosure to competitors in the normal course of business." 35 FCC Rcd 6486, 6486-87 (F.C.C. June 25, 2020). Likewise, in *Am. Small Bus. League v. United States Dep't of Def.*, the court held that documents which contained details about companies' business initiatives, goals, and the names of their suppliers and partners qualified for protection under Exemption 4 where the companies "used various methods to protect the information" from public disclosure. 411 F. Supp. 3d 824, 831 (N.D. Cal. 2019).²

Similarly, Enova here seeks to protect from disclosure its proprietary and sensitive commercial information regarding its proprietary business methods and technology, its customized servicing protocols, and its payment processing operations, including its relationships with third-party payment services providers, which information is kept private in the ordinary course of Enova's business.

In addition, the Bureau may withhold the Private Information under Exemption 4 because such "disclosure is prohibited by law." 5 U.S.C. § 552(a)(8)(A)(i). The Trade Secrets Act prohibits disclosure of information protected by Exemption 4. *Canadian Com. Corp. v. Dep't of Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008) ("[U]nless another statute or a regulation authorizes

² See also *Besson v. United States Dep't of Com.*, 2021 U.S. Dist. LEXIS 84194, at *3 (D.D.C. May 3, 2021) (information that "would reveal commercially-sensitive information about [the company's] business plans and activities" satisfied the requirements of Exemption 4 where that information was "not publicly-available" and "maintained as private"); *Abou-Hussein v. Mabus*, 2010 U.S. Dist. LEXIS 115032, at *36-37 (D.S.C. June 17, 2010) (the firm names of a contractor's subcontractors were properly withheld under Exemption 4 because release of those names would "allow competitors to benefit from the contractors' work and associated costs in finding and reaching agreement with subcontractors").

disclosure of the information, the Trade Secrets Act requires each agency to withhold any information it may withhold under Exemption 4 of the FOIA.”³

IV. CONCLUSION

Enova respectfully requests that the CFPB exempt page six of the Petition, lines 13-14, 17-19, 20, page seven of the Petition, lines 1, 4-9, and Paragraphs 8-15 of the Petition Declaration, in addition to those portions of the Petition and Petition Declaration that the Bureau has already identified for redaction, and any documents that reference this information, from disclosure. Redacted copies of the Petition and Petition Declaration are enclosed.

Dated: September 30, 2021

Respectfully submitted,

/s/ Sabrina Rose-Smith
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³ “Information that is prohibited from disclosure,” including information covered under the Trade Secrets Act, “is not subject to [a] foreseeable harm standard.” *Rosenberg v. U.S. Dep’t of Defense*, 342 F. Supp. 3d 62, 73 n.1 (D.D.C. 2018) (internal quotations and citation omitted).

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of September 2021, pursuant to 12 C.F.R. 1080.6(e), I caused the foregoing Supplemental Request for Confidential Treatment to be served via email upon the Executive Secretary of the Bureau and the Assistant Director for the Office of Enforcement.

Dated: September 30, 2021

/s/ Sabrina Rose-Smith
Sabrina Rose-Smith