

UNITED STATES OF AMERICA

TRADE COMMISSION

... to compel and a response

GRANTED.

requests. As part of this search, Complaint Counsel has collected non-privileged, responsive documents from: (1) each individual who previously worked, in any capacity, on the pre-complaint investigation; and (2) other agency personnel who had no direct involvement in that investigation, but who may have had responsive information, including individuals in the Bureau of Competition's Office of Policy and Evaluation and its International Antitrust Division, the FTC's Office of Public Affairs, and the FTC's Office of Congressional Relations.

Complaint Counsel first states that it will not search the Offices of the Commissioners or the FTC's General Counsel. Complaint Counsel asserts that such a search would likely only



631 F.2d 741,745 (D.C. Cir. 1979). However, discovery may be limited if the discovery sought

[REDACTED]

investigations because the production of documents from closed investigations would not interfere with the Commission's investigatory powers, and that they have demonstrated substantial need for documents from open investigations. Complaint Counsel responds that the production of documents from any other investigations - regardless of whether open or closed - would interfere with its investigatory powers. *See Kroger Co.*, 1977 FTC LEXIS 55, *5 (October 27, 1977) ("In the absence of special circumstances, the likelihood of such discovery unduly disrupting current investigations in other Commission proceedings clearly outweighs any benefit to respondent"). The relevant inquiry, however, is not limited to what effect production

V.

Non-parties Aventis, Andrx and Bayer assert that the documents which they produced to the FTC in response to subpoenas issued in investigations or litigations outside of this one should not be produced because Respondents have failed to demonstrate need and because the non-parties will be substantially prejudiced by the disclosure of their highly confidential materials. Although the material these non-parties seek to shield from discovery is confidential this alone

financial information protected by section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and § 4.10(a) (2) of this part, may be disclosed in Commission administrative or court

documents that have been provided to the FTC by non-parties, Complaint Counsel shall identify,

Complaint Counsel intends to produce in accordance with this

[REDACTED]