FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D2026-1153

HERITAGE PROPERTY &
CASUALTY INSURANCE COMPANY,

Petitioner,

v.

JEFFREY A. RAPKIN, VIRGINIA M.
RAPKIN, FLORIDA DEPARTMENT
OF FINANCIAL SERVICES,
FLORIDA PENINSULA INSURANCE
COMPANY, EDISON INSURANCE
COMPANY, BENJAMIN MANDELL,
and JORDAN LEE,

Respondents.

No. 1D2026-1171

FLORIDA PENINSULA INSURANCE
COMPANY and EDISON
INSURANCE COMPANY,

Petitioners,

v.

FLORIDA DEPARTMENT OF
FINANCIAL SERVICES, HERITAGE
PROPERTY & CASUALTY
INSURANCE COMPANY, JEFFREY

A. RAPKIN, VIRGINIA M. RAPKIN,
BENJAMIN MANDELL, and
JORDAN LEE,

Respondents.

Petitions for Writ of Certiorari—Original Jurisdiction.

November 4, 2026

PER CURIAM.

Heritage Property & Casualty Insurance Company, Florida Peninsula Insurance Company, and Edison Insurance Company seek certiorari review of an Order for Pre-Hearing Process that compels them to disclose sealed records to two public-records requestors before the trial court determines whether the records are exempt. Because that ruling causes irreparable harm and departs from the essential requirements of law, we grant the petitions and quash the order.

This consolidated certiorari matter arises from public-records requests tied to a Florida Department of Financial Services investigation into insurers' claim-handling practices. Three suits followed: the insurers sought declaratory and injunctive relief to prevent disclosure of records concerning claimed trade secrets, Florida Peninsula and Edison in one action and Heritage in another, while Jeffrey and Virginia Rapkin petitioned for a writ of mandamus to compel disclosure. The court consolidated all three and abated the Rapkins' mandamus suit pending resolution of the insurers' claims that the records are exempt. Benjamin Mandell and Jordan Lee, the requestor-intervenors, filed public-records requests of their own and were granted intervention in the lower proceeding.

Under a joint litigation plan the court adopted, the Department was to submit redacted and unredacted records to the

court under seal, after which the court would conduct an in camera review and hold an evidentiary hearing on trade-secret status. The Department submitted the records under seal, but the court then conducted a mere "initial review," which did no more than identify which of the 878 sealed pages carried a claimed exemption.

On March 26, 2026, the court entered the Order for Pre-Hearing Process, which states that the court "will not conduct the hearing in camera." Instead, it directs that the sealed records be provided to the requestor-intervenors, who may "participate fully" in the evidentiary hearing and engage in discovery, subject to a confidentiality order. The day after the order was entered, Lee, who is also engaged in separate litigation against Heritage, served discovery requests on Florida Peninsula and Edison, and later noticed the deposition of Heritage's corporate representative. The insurers moved for reconsideration, a protective order, and a temporary stay; on April 16, 2026, the court only granted a temporary stay. These petitions followed.

To obtain certiorari relief from a nonfinal order, a petitioner must establish "(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal." *Lacaretta Rest. v. Zepeda*, 115 So. 3d 1091, 1092 (Fla. 1st DCA 2013). The latter two elements constitute irreparable harm, a jurisdictional condition precedent evaluated first. *Id.*

Certain information may reasonably cause material injury of an irreparable nature, such as "cat out of the bag" material that could be used by an unscrupulous litigant to injure another person or party outside the litigation. *Martin-Johnson, Inc. v. Savage*, 509 So. 2d 1097, 1100 (Fla. 1987), *superseded by statute on other grounds*, § 768.72, Fla. Stat. The petitioners have made that showing: the sealed records are claimed to hold such material. And, although irreparable harm generally cannot be speculative, an exception applies to the premature dissemination of such information because "once the documents are disseminated, a privacy or trade secret interest has been invaded which cannot be remedied on direct appeal." *Wal-Mart Stores E., L.P. v. Endicott*, 81 So. 3d 486, 490–91 (Fla. 1st DCA 2011); *see also Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995). The Order for Pre-

Hearing Process threatens this harm by requiring the sealed records to be produced to the requestor-intervenors.

The confidentiality order the trial court contemplated does not avoid that result. A protective order permitting trade-secret or confidential material to be shared is not always sufficient to prevent harm. *See Endicott*, 81 So. 3d at 491; *Am. Express Travel Related Servs., Inc. v. Cruz*, 761 So. 2d 1206, 1209 (Fla. 4th DCA 2000). "[O]nce the information becomes public, its confidentiality is lost forever." *Shands Teaching Hosp. & Clinics, Inc. v. Beylotte*, 357 So. 3d 307, 309 (Fla. 1st DCA 2023). The risk here is not hypothetical. Lee served discovery the day after the order permitting his participation, confirming that the requestor-intervenors are positioned to obtain and use the claimed-exempt materials outside the context of the litigation. Ordering production before a trade-secret determination forecloses the exemption question and inflicts injury that cannot be remedied on appeal. *See Coventry First, LLC v. State, Off. of Ins. Regul.*, 30 So. 3d 552, 558–61 (Fla. 1st DCA 2010) (recognizing a vested property right in "the continuing confidentiality and exemption of [a provider's] trade secrets and other work papers already submitted to the OIR," and that disclosure of such records causes "legal and financial detriment").

In any event, at this stage the petitioners need not establish that the records are, in fact, trade secrets. A prima facie showing of irreparable harm is enough to invoke certiorari review. *Commonwealth Land Title Ins. Co. v. Higgins*, 975 So. 2d 1169, 1176 (Fla. 1st DCA 2008). That threshold is met, and certiorari jurisdiction is proper.

Having established jurisdiction, we turn to whether the trial court departed from the essential requirements of law. Relief is reserved for a violation of a clearly established principle of law, *Saints 120, LLC v. Moore*, 292 So. 3d 1209, 1212 (Fla. 1st DCA 2020), which can derive from a variety of sources, including "recent controlling case law, rules of court, statutes, and constitutional law." *Allstate Ins. Co. v. Kaklamanos*, 843 So. 2d 885, 890 (Fla. 2003). This court has previously found "a departure from the essential requirements of law where, despite the assertion of a trade secret privilege, the trial court ordered production of

documents without first conducting an examination of the documents." *Messer v. E.G. Pump Controls, Inc.*, 667 So. 2d 321, 322 (Fla. 1st DCA 1995); *see also Becker Metals Corp. v. W. Fla. Scrap Metals*, 407 So. 2d 380, 382 (Fla. 1st DCA 1981) ("Without examination of the items claimed to be a trade secret, how can a determination be reached?"). That determination usually requires an in camera review, though the court may instead hold an evidentiary hearing. *Lewis Tree Serv., Inc. v. Asplundh Tree Expert, LLC*, 311 So. 3d 206, 210–11 (Fla. 2d DCA 2020); *Sea Coast Fire, Inc. v. Triangle Fire, Inc.*, 170 So. 3d 804, 808 (Fla. 3d DCA 2014).

Moreover, where a timely action is filed, section 624.4213(2), Florida Statutes, bars release of records containing claimed trade secrets until a circuit court rules on their trade-secret status. The trial court did not follow that sequence. It made no exemption determination, yet ordered the sealed records produced to the requestor-intervenors and permitted their full participation and discovery. Respondents' contention that the court had already conducted an in camera review misreads the record. The "initial review" made no trade-secret determination, and the order itself states that the court "will not conduct the hearing in camera." Resolving the exemption at a hearing rather than through in camera review would have been permissible; ordering production and full participation of the requestor-intervenors before deciding exempt status is not. In other words, ordering production before the trade-secret determination violates the statutory safeguards and defeats the declaratory actions' purpose, giving the requestors access regardless of how the exemption is decided. Even if the records were found to be trade secrets, production would still require particularized findings of reasonable necessity that the trial court never made. *KPMG LLP v. State, Dep't of Ins.*, 833 So. 2d 285, 286 (Fla. 1st DCA 2002); *Laser Spine Inst., LLC v. Greer*, 144 So. 3d 633, 633–34 (Fla. 1st DCA 2014).

The trade-secret exemption is not the only protection at stake. To the extent the records contain sensitive personal information of non-party insureds, that information is independently protected, both by statute and by constitutional right. *See Thomas v. Smith*, 882 So. 2d 1037, 1043–47 (Fla. 2d DCA 2004) (recognizing, under art. I, § 23, Fla. Const., a legitimate expectation of privacy in social

security numbers); *see also State, Dep't of Fin. Servs. v. Danahy & Murray, P.A.*, 246 So. 3d 466, 468–71 (Fla. 1st DCA 2018) (upholding, under art. I, § 24(c), Fla. Const., a statutory public-records exemption protecting insureds' personal financial and health information).

Furthermore, the trial court's finding that the requestor-intervenors "are in no sense competitors of the Insurers" does not save the order. The burden of proving trade-secret status rests on the party asserting it, and ordering production before that status is adjudicated deprives the petitioners of the opportunity to carry that burden. *Managed Care of N. Am., Inc. v. Fla. Healthy Kids Corp.*, 268 So. 3d 856, 860–61 (Fla. 1st DCA 2019). Whether the requestor-intervenors are competitors thus does not answer the dispositive question. What matters is whether the records are in fact exempt, a determination that must be made before they are ordered to be released.

Therefore, we grant the consolidated petitions and quash the Order for Pre-Hearing Process. On remand, the trial court shall determine the exemption and trade-secret status of the disputed records before ordering any production or access. That determination must be made through a confidentiality-preserving in camera inspection or evidentiary hearing that does not disclose the records to those seeking them. We take no position on whether the records are trade secrets or otherwise exempt.

Petitions GRANTED; order on review QUASHED.

LEWIS, WINOKUR, and NEFF, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

M. Hope Keating and John K. Londot, Greenberg Traurig, P.A., Tallahassee; and Kathy J. Maus, William B. Collum, and Scott E.

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