

**Matter of Pegram v Metropolitan Transp. Auth.**

2026 NY Slip Op 30959(U)

March 10, 2026

Supreme Court, New York County

Docket Number: Index No. 156757/2024

Judge: John J. Kelley

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This opinion is uncorrected and not selected for official publication.

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

**PRESENT: HON. JOHN J. KELLEY PART 56M**

*Justice*

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**INDEX NO. 156757/2024**

In the Matter of

**MOTION DATE 02/03/2026**

JOHN B. PEGRAM

**MOTION SEQ. NO. 001**

Petitioner/Plaintiff,

- v -

**DECISION, ORDER, and  
JUDGMENT**

METROPOLITAN TRANSPORTATION AUTHORITY,

Respondent/Defendant.

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The following e-filed documents, listed by NYSCEF document number (Motion 001) 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 63, 64, 65, 66, 67, 68, 69, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93

were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

This is a hybrid CPLR article 78 proceeding and action for declaratory relief, pursuant to which the petitioner/plaintiff (hereinafter the petitioner) seeks, among other things, judicial review of (a) a June 20, 2024 Metropolitan Transportation Authority (MTA) records access appeals officer's (RAAO's) determination of his administrative appeal from the MTA Freedom of Information Law Office's (FOIL Office's) alleged constructive denial his January 28, 2024 request (R002643-012824) for the production of agency records pursuant to the Freedom of Information Law (Public Officers Law § 84, et seq.; hereinafter FOIL) and (b) the RAAO's May 28, 2024 determination of his administrative appeal from the FOIL Office's alleged constructive denial of his May 3, 2024 request (R003872-050324) for the production of other agency records. The petitioner also seeks relief in connection with 14 other FOIL requests that he claims were not timely processed or responded to by the MTA. In his second cause of action, the petitioner seeks a judgment declaring that the MTA's practice of delaying responses to FOIL requests from between 45 to 60 days after receipt of a request is unreasonable and violates FOIL, and

that the New York State Committee on Open Government (COOG) regulations, codified at 21 NYCRR Part 1401, the COOG's "Explanation of Time Limits for Response," and the COOG's "Model Rules for Agencies" establish standards of reasonableness of times for responding to FOIL requests that must be followed by the MTA in the future.<sup>1</sup>

The amended petition is granted to the extent that the MTA shall produce: (a) all records in its possession that are responsive to the petitioner's request designated as R002643-012824, except, as further described and explained below, for certain entries on pages 92, 96, 98, 100, 102, 157, 159-167, 193, 293, and 384-385 of the 499-page proposal for "ADA Upgrades and Circulation Improvements at Broadway Junction Complex," and certain entries on pages 103, 104, 152, and 159 of the 163-page Final Executed Design Build Agreement and Exhibits, which may be redacted, and (b) all records in its possession that are responsive to the petitioner's request for records designated as R003872-050324, except for entries in the columns of the reconciliation charts and NYA Freight Revenue charts for January 2022 through April 2024 indicating revenue (column 12 on the reconciliation charts) and indicating revenue dates, waybill numbers, and waybill dates (columns 17, 18, and 19 on the NYA Freight Revenue charts), and the petition is otherwise denied. The court severs the declaratory judgment cause of action, and, in separate order, it has remitted that cause of action to the Trial Support Office for random reassignment to a Justice presiding over a general Individual Assignment System part.

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<sup>1</sup> In an interim order dated January 8, 2025, the court, among other things, directed the MTA to submit, for in camera review, records responsive to the petitioner's requests in connection with which it had invoked several statutory exemptions from disclosure. The court thus first adjourned the return date of the initial petition until March 21, 2025. The MTA has complied with that directive, and the court has reviewed those records. In an order dated June 5, 2025 (SEQ 002), the court granted the petitioner's motion pursuant to CPLR 3025(b) for leave to serve and file an amended petition adding allegations concerning the timing of the MTA's initial responses to the petitioner's FOIL requests. In the June 5, 2025 order, the court directed that the amended petition would be deemed served upon the MTA when the petitioner served a copy of the order with notice of entry upon the MTA, after which the MTA would, pursuant to statute, have 20 days within which to serve an answer to the amended petition (see CPLR 3025[d]). On July 31, 2025, the MTA served an answer to the amended petition, and the court adjourned the return date of the CPLR article 78 petition until February 3, 2026.

As set forth in his petition, pursuant to request number R002642-012824, the petitioner sought disclosure of the following agency records:

“A copy of each of the following documents for Contract No. A37130 with ECCO III Enterprises, Inc., for Design-Build Services for A[mericans With] D[isabilities] A[ct] Improvements at the Broadway Junction Station;

“The contract, including any attachments, appendices;

“The Request for Proposal (RFP) that led to that contract, including any attachments, appendices and documents incorporated by reference;

“Documents provided to bidders in connection with the solicitation leading to that contract; and

“The final bid by ECCO III Enterprises, Inc., including any attachments, appendices and documents incorporated by reference.”

In connection with this request, the MTA has provided the court, for in camera review, with a 499-page document, entitled “ADA Upgrades and Circulation Improvements at Broadway Junction Complex,” which constituted a proposal for the contract by ECCO III Enterprises, Inc. (ECCO), as well as a 163-page document constituting the final executed agreement for the project, inclusive of exhibits to that contract.

The proposal identified the contractors and vendors who were to be involved in the project, their principals, and also included the MTA Code of Ethics, contract prices, the type of goods and services to be provided by contractors and vendors, several questionnaires provided to the contractors and vendors by the MTA that had been completed by those contractors and vendors, agreements concerning the absence of conflicts of interest that were executed by the contractors and vendors, various certifications provided by the prime contractor and subcontractors, a workload disclosure form, procurement schedules, curricula vitae of principals of the prime contractor, certificates of incorporation, corporate organizational documents, corporate filings, certificates of authorization to perform certain construction services, and licenses of the prime contractor, a guarantee and surety letter, stipend contracts, evidence of insurance, a technical proposal identifying key personnel on the project, organization charts of

the prime contractor, a management plan for the completion of the project, the design of the project, various anticipated views of the station after the upgrades have been completed, environmental compliance reporting, and anticipated milestones during the demolition and construction phases of the project. The contract, as relevant here, included a two-page engineering diagram showing details and plans for a subway station control room and locations, and details of non-public areas necessary to operate the stations.

In his petition, the petitioner alleged that, pursuant to request number R003872-050324, he had requested disclosure of the following agency records:

“Monthly and annual reports of freight handled by the New York & Atlantic Railroad from January 1, 2022 to date, by commodity type, sufficient to show:

“1. Carloads (loaded) each direction from and to the CSX Fremont Secondary at Fresh Pond,

“2. Carloads (loaded) each direction from and to eastern Long Island at Fresh Pond,

“3. Carloads (loaded) each direction from and to New York New Jersey Rail at B Bay Ridge, and

“4. Carloads (loaded) each direction between the CSX Fremont Secondary at Fresh Pond and New York New Jersey Rail at Bay Ridge.”

In this respect, he alleged that the New York & Atlantic Railroad (NYA), a subsidiary of Anacostia Rail Holdings Company (Anacostia), handles freight on portions the Long Island Rail Road (LIRR), an MTA subsidiary, and operates many freight cars on LIRR tracks. In connection with this request, the MTA provided the court, for in camera inspection, with unredacted freight traffic reconciliation charts and unredacted NYA Freight Revenue charts for January through April 2022, June through August 2022, December 2022, January through April 2023, June through August 2023, December 2023, January through February 2024, and April 2024. Each reconciliation chart includes 12 columns, while each NYA Freight Revenue chart consists of 19 columns.

“All agency records are presumptively available for public inspection and copying, unless they fall within 1 of 10 categories of exemptions, which permit agencies to withhold certain records” (*Matter of Hanig v State of New York Dept. of Motor Vehs.*, 79 NY2d 106, 109 [1992] [citations omitted]). “Those exemptions are to be narrowly construed, with the burden resting on the agency to demonstrate that the requested material indeed qualifies for exemption (Public Officers Law § 89[4][b])” (*id.*; see *Matter of Gould v New York City Police Dept.*, 89 NY2d 267, 275 [1996]; *Matter of Newsday v Empire State Dev. Corp.*, 98 NY2d 359, 362 [2002]; *Matter of Fink v Lefkowitz*, 47 NY2d 567, 571 [1979]). “[T]o invoke one of the exemptions of section § 87 (2), the agency must articulate particularized and specific justification for not disclosing requested documents” (*Matter of Gould v New York City Police Dept.*, 89 NY2d at 275). Moreover, “an agency responding to a demand under [FOIL] may not withhold a record solely because some of the information in that record may be exempt from disclosure. Where it can do so without unreasonable difficulty, the agency must redact the record to take out the exempt information” (*Matter of Schenectady County Socy. for the Prevention of Cruelty to Animals v Mills*, 18 NY3d 42, 45 [2011]).

“While the Legislature established a general policy of disclosure by enacting the Freedom of Information Law, it nevertheless recognized a legitimate need on the part of government to keep some matters confidential” (*Matter of Fink v Lefkowitz*, 47 NY2d at 571). When denying a FOIL request, a state or municipal agency must “state, in writing, the reason for the denial of access” (*Matter of West Harlem Bus. Group v Empire State Dev. Corp.*, 13 NY3d 882, 884 [2009]). If the requesting party administratively appeals the denial, the agency's appeals officer must also provide written reasoning for upholding the denial (*see id.*).

“[O]n the issue of whether a particular document is exempt from disclosure under the Freedom of Information Law, the oft-stated standard of review in CPLR article 78 proceedings, i.e., that the agency's determination will not be set aside unless arbitrary or capricious or without rational basis, is not applicable”

(*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 109 AD2d 92, 94 [3rd Dept 1985], *affd* 67 NY2d 562 [1986]; see *Matter of Prall v New York City Dept. of Corrections*, 129 AD3d 734, 735 [2d Dept 2015]; *Matter of New York Comm. for Occupational Safety & Health v Bloomberg*, 72 AD3d 153, 158 [1st Dept 2010]). Rather, upon judicial review of an agency's determination to deny a FOIL request, the court must assess whether "the requested material falls squarely within a FOIL exemption" and whether the agency, upon denying such access, "articulat[ed] a particularized and specific justification for denying access" (*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d at 566). In other words, the court may only review an agency's FOIL determination to ascertain whether the determination to invoke a particular statutory exemption was affected by an error of law (see *Matter of Abdur-Rashid v New York City Police Dept.*, 31 NY3d 217, 246 & n 2 [2018], *affg* 140 AD3d 419, 420-421 [1st Dept 2016]; *Matter of Asian Am. Legal Defense & Educ. Fund v New York City Police Dept.*, 125 AD3d 531, 531 [1st Dept 2015]; CPLR 7803[3]).

Public Officers Law § 87(2)(b) provides that an "agency may deny access to records or portions thereof that . . . if disclosed would constitute an unwarranted invasion of personal privacy under the provisions of subdivision two of section eighty-nine of this article." In general, that provision of law requires a balancing test, and warrants a finding of an "unwarranted invasion" where "privacy interests" outweigh the "public interest in disclosure of the information" (*Matter of Harbatkin v New York City Dept. of Records & Info. Servs.*, 19 NY3d 373, 380 [2012]; see *Matter of New York Times Co. v City of N.Y. Fire Dept.*, 4 NY3d 477, 485-487 [2005]; *Matter of Thomas v New York City Dept. of Educ.*, 103 AD3d 495, 496-497 [1st Dept 2013]). In interpreting the federal Freedom of Information Act, on which FOIL is based, the United States Supreme Court explained that, where an agency asserts an exemption based on personal privacy, the "usual rule that the citizen need not offer a reason for requesting the information must be inapplicable" (*National Archives & Records Admin. v Favish*, 541 US 157, 172 [2004]). In order to "give practical meaning" to the exemption, which "requires the courts to balance the

competing interests in privacy and disclosure,” courts must examine whether the requestor has established a “sufficient reason for the disclosure” outweighing the privacy interests (*id.*). The Court of Appeals, in both *Harbatkin* and *New York Times*, has effectively adopted the *Favish* test, since it expressly applied such a balancing test to FOIL in the context of claimed exemptions based on privacy. Notably, “what constitutes an unwarranted invasion of personal privacy is measured by what would be offensive and objectionable to a reasonable person of ordinary sensibilities” (*Matter of Hepps v New York State Dept. of Health*, 183 AD3d 283, 287-288 [3rd Dept 2020], quoting *Matter of Ruberti, Girvin & Ferlazzo v New York State Div. of State Police*, 218 AD2d 494, 498 [3d Dept 1996] [internal quotation marks, brackets, and citation omitted]; see *Matter of Massaro v New York State Thruway Auth.*, 111 AD3d 1001, 1003 [3d Dept 2013]; see generally *Matter of Castorina v New York City Human Resources Admin./Dept. of Social Servs.*, 2019 NY Slip Op 32351[U], 2019 NY Misc LEXIS 4325 [Sup Ct, N.Y. County, Jul. 31, 2019] [rejecting FOIL request by two members of the New York State Assembly for the underlying personal information required on City residents’ applications for issuance of IDNYC identification cards]).

The court agrees with the MTA that the information that it seeks to redact from pages 92, 96, 98, 100, 102, 157, 159-167, 193, and 293 of the 499-page proposal for ADA Upgrades and Circulation Improvements at Broadway Junction Complex, and certain identified entries on pages 103, 104, 152, and 159 of the 163-page Final Executed Design Build Agreement and Exhibits, if disclosed, would constitute an unwarranted invasion of personal privacy, since that information consists of confidential taxpayer and employer identification numbers of non-MTA entities and individuals, as well as home addresses and telephone numbers of affiants and persons who are not employed by the MTA (see *Matter of Russell v Town of Mount Pleasant*, N.Y., \_\_\_\_ NY3d \_\_\_\_, 2026 NY Slip Op 00966. \*4-5 [Feb. 19, 2026] [citing *New York Times Co. v Federal Communications Commn.* (457 F Supp 3d 266, 273 [SD NY 2020]), a decision interpreting the federal Freedom of Information Act, and agreeing that release of agency records

that contain social security numbers and residence addresses of individuals constitutes an unwarranted invasion of those person's privacy under FOIL]; *Matter of Hepps v New York State Dept. of Health*, 183 AD3d at 283 [denying petition to review NYS Department of Health's determination to deny genealogical society's request for access to prior 50 years of marriage records because, among other things, social security numbers would be revealed]; *Matter of Exoneration Initiative v New York City Police Dept.*, 114 AD3d 436, 438 [1st Dept 2014] [upholding police department's redaction of telephone numbers and residence addresses of witnesses to a crime on the ground, inter alia, that release thereof would constitute unwarranted invasion of witnesses' privacy]; cf. *Matter of New York State United Teachers v Brighter Choice Charter Sch.*, 15 NY3d 560, 566 [2010] [disclosure of names of charter school teachers, even without their addresses, constituted unwarranted interference with those teachers' privacy, since petitioner could, with only a little research, link the names to addresses for fund-raising purposes, and FOIL exempts from disclosure the release of lists of names and addresses if such lists would be used for that purpose]).

The court further agrees with the MTA that FOIL requires it to redact the detailed two-page engineering diagram depicting the particulars of a subway station control room and locations and details of non-public areas necessary to operate the subway stations serving the Broadway Junction stop, as set forth at pages 384 and 385 of the proposal for ADA Upgrades and Circulation Improvements at Broadway Junction Complex. The MTA correctly argues for the applicability of Public Officers Law § 87(2)(f), which exempts from disclosure those documents which, "if disclosed could endanger the life or safety of any person," since it established that potential wrongdoers or terrorists could employ such detailed information to interfere with the operation of, or even significantly damage or cause injury to the station, passengers, transit employees, adjoining infrastructure such as track, pumps, and electrical equipment, and rolling stock such as passenger subway cars and maintenance cars (see *Matter of NYP Holdings, Inc. v Metropolitan Transp. Auth.*, 2025 NY Slip Op 31423[U], \*4-5, 2025 NY

Misc LEXIS 2655, \*6-8 [Sup Ct, N.Y. County, Apr. 22, 2025] [denying newspaper's CPLR article 78 petition seeking review of MTA's determination to withhold records of the LIRR and Metro North crew books for the years 2019 and 2023 for the purpose of comparing how the MTA assigns fare collectors to those two railroads, concluding that release of such information could assist potential wrongdoers in staging terror attacks on MTA railroads and mass transit lines]; *see also Matter of Grabell v New York City Police Dept.*, 139 AD3d 477, 478-479 [1st Dept 2016] [disclosing information about locations in which NYPD had previously deployed certain types of vans, as well as the times and frequency of their deployment, "would allow terrorists to infer the inverse, namely, locations and times when NYPD does not use them, and would permit a terrorist to conform his or her conduct accordingly"]; *Matter of Rankin v Metropolitan Transp. Auth.*, 2010 NY Slip Op 32161[U], \*7, 2010 NY Misc LEXIS 3829 \*13-14 [Sup Ct, N.Y. County, Aug. 10, 2010] [New York City Transit Authority's subway station blueprints are exempt from disclosure under the public safety exemption; MTA established that the subway system is "highly vulnerable to terrorist attack," and "the extent of such vulnerability has been accentuated by a number of failed plots in New York City in recent years"]. Hence, pages 384 and 385 of the proposal need not be produced.

With respect to the petitioner's request identified as R003872-050324, the MTA argues that, although it is willing to produce reconciliation charts with unredacted entries in columns designated as "Station ID (col. 1)," "Station Name (col. 2)," "SPLC (col. 3)," "Junction (col. 4)," and number of "Carloads" for the particular month covered by the chart (col. 11), FOIL requires it to redact the columns setting forth information in those columns denominated as "Junction Milepost (col. 5)," "Station Milepost (col. 6)," "2-digit Station Milepost (col. 7)," "Joint Use Mileage Start Point (col. 8)," "Joint Use Mileage End Point (col. 9)," "Joint Use Mileage (col. 10)," and revenue, which was calculated by applying a multiplier to the product of the mileage and number of carloads for each trip (col. 12). It further contends that FOIL requires it to redact entries at the bottom of the reconciliation charts setting forth information concerning the number

of “Non-Trackage Fee Carloads,” “Revenue Carloads,” “Non-Revenue Carloads,” and “Original RMI Report Carloads.” The MTA additionally argues that, although it is willing to produce NYA Freight Revenue charts for the months identified above that show unredacted columns for “Month of Revenue Date (col. 1)” “Traffic Type (col. 2),” “STCC (col. 3)” and “Commodity Name (col. 4),” FOIL requires it to redact entries in the columns describing or quantifying the “Origin Station (col. 5),” “Origin State (col. 6),” “Destination Station (col. 7),” “Destination State (col. 9),” “Initial (col. 9),” “Number” (col. 10),” “Number of Cars (col. 11),” “Trip Begin Date (col. 12),” “Const Place Date (col. 13),” “Place Date (col. 14),” “Release Date (col. 15),” “Trip End Date (col. 16),” “Revenue Date (col. 17),” “Waybill Number (col. 18),” and “Waybill Date (col. 19).”

The court rejects Anacostia’s argument, which was adopted by the MTA, that Public Officers Law § 87(2)(d) exempted, from disclosure, the greater portion of the information requested by the petitioner pursuant to request R003872-050324 because they constitute either trade secrets or would injure Anacostia’s competitive position. Agency records are exempt from disclosure if they contain trade secrets (see Public Officers Law § 87[2][d]). Although the term “trade secrets” is not defined by FOIL or elsewhere in New York statutory law, § 757 of the Restatement (First) of Torts (hereinafter § 757) provides guidance in determining whether information is classified as a trade secret (see *Ashland Mgt. v Janien*, 82 NY2d 395, 407 [1993]; *Matter of Rayner v New York State Dept. of Corr. & Community Supervision*, 81 Misc 3d 281, 286-287 [Sup Ct, Albany County 2023]). Under § 757, a trade secret is any formula, pattern, device or compilation of information which is used in one’s business, and which gives the business an opportunity to obtain an advantage over competitors who do not know or use it. Section 757 provides a non-exhaustive list of factors to consider in classifying information as a trade secret, including,

“(1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or

difficulty with which the information could be properly acquired or duplicated by others”

(Restatement [First] of Torts § 757 [1939]). If an individual company discloses its trade secret to others who are under no obligation to protect the confidentiality of the information, or otherwise publicly discloses the secret, his property right is extinguished (*see Ruckelshaus v Monsanto Co.*, 467 US 986, 1002 [1984]). Nonetheless, even records that do not qualify for trade secret protection are exempt if submitted to the agency by a commercial enterprise, and disclosure would cause substantial injury to the competitive position of the subject enterprise (Public Officers Law § 87[2][d]). There is no explicit definition of “substantial competitive injury” in FOIL. However, FOIL’s federal counterpart, the Freedom of Information Act (FOIA), provides that “substantial competitive harm exists for purposes of FOIA’s exemption for commercial information turns on the commercial value of the requested information to competitors and the cost of acquiring it through other means” (*Encore Coll. Bookstores v Auxiliary Serv. Corp.*, 87 NY2d 410, 420 [1995]). The court notes that, where the material or information is available from other sources at little or no cost, its disclosure is unlikely to cause competitive damage to the commercial enterprise that submitted it to a public agency (*see id.*).

The court concludes that, except for the entries in the columns of the reconciliation charts and NYA Freight Revenue charts for January 2022 through April 2024 that set forth information concerning revenue (column 12 on the reconciliation charts) and the revenue date, waybill number, and waybill date (columns 17, 18, and 19 on the NYA Freight Revenue charts), none of the other columns either constitutes a trade secret or would permit the public to gain access to trade secrets. The other columns that the MTA seeks to redact provide information only as to station locations, the identity of a very limited number of LIRR freight tracks employed by NYA, mileage travelled by NYA’s freight trains on each trip, and the dates of departure, transit, and arrival of freight trains. They do not reveal NYA’s methods of management, its customers, its pricing, its costs, or anything else that a competitor might find useful in placing

NYA at a competitive disadvantage. The court discerns no information set forth in those other chart columns that would constitute a trade secret or cause injury to NYA's competitive position.

With respect to the requests for relief sought pursuant to CPLR article 78 in connection with the 14 other FOIL requests that the petitioner had made to the MTA, as identified in the amended petition, the court concludes that they have either been rendered academic, are not the proper subject of a CPLR article 78 proceeding, or are without merit.

Pursuant to FOIL's fee-shifting provision, a court

“shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by such person in any case under the provisions of this section in which such person has substantially prevailed and the court finds that the agency had no reasonable basis for denying access”

(Public Officers Law § 89[4][c][ii]). Prior to 2006, the law required that, for attorneys' fees to be awarded, the documents involved must be of clearly significant interest to the general public. Pursuant to L. 2006, ch. 492, the Legislature amended FOIL to remove that statutory requirement. An award of an attorney's fee and costs pursuant to FOIL is particularly appropriate to promote the purpose of and policy behind FOIL. Specifically, in enacting FOIL, “the legislature declared that ‘government is the public's business’ and expressly found that ‘a free society is maintained when government is responsive and responsible to the public, and when the public is aware of governmental actions’ (*Matter of South Shore Press, Inc. v Havemeyer*, 136 AD3d 929, 931 [2d Dept 2016]; see *New York Times Co. v City of N.Y. Off. of Mayor*, 194 AD3d 157, 166 [1st Dept 2021] [“The legislature's [2017] amendment to the fees provision, which made a fees award mandatory rather than ‘precatory,’ was intended to give more teeth to the public's right of access under FOIL.”]). As explained by the Court of Appeals, “[o]nly after a court finds that the statutory prerequisites have been satisfied may it exercise its discretion to award or decline attorneys' fees” (*Beechwood Restorative Care Ctr. v. Signor*, 5 NY3d 435, 441 [2005]). Where, as here, “it was the initiation of this proceeding which brought about the release of the documents” (*Matter of Powhida v City of Albany*, 147 AD2d 236, 239

[3d Dept 1989]), the petitioner is deemed to have “substantially prevailed” (see *Matter of Madeiros v New York State Educ. Dept.*, 30 NY3d 67, 79 [2018]).

The court notes that FOIL’s 2006 fee-shifting provision was itself enacted in order to “create a clear deterrent to unreasonable delays and denials of access [and thereby] encourage every unit of government to make a good faith effort to comply with the requirements of FOIL” (*Matter of New York Civ. Liberties Union v City of Saratoga Springs*, 87 AD3d 336, 338 [3d Dept 2011], quoting Senate Introducer’s Mem in Support, Bill Jacket, L. 2006, ch. 492, at 5). Where a contract or statute provides for the award of attorneys’ fees to a prevailing party, an attorney, such as John B. Pegram, who represents himself, may recover fees for “the professional time, knowledge and experience . . . which he would otherwise have to pay an attorney for rendering” (*Board of Mgrs. of Foundry at Wash. Park Condominium v Foundry Dev. Co., Inc.*, 142 AD3d 1124, 1126 [2d Dept 2016], quoting *Parker 72nd Assoc. v Isaacs*, 109 Misc 2d 57, 59 [Civ Ct, N.Y. County 1980], quoting, in turn, *Kopper v Willis*, 9 Daly 460, 469 [NYC Ct Common Pleas, Gen Tm 1881]; cf. *Gray v Richardson*, 251 AD2d 268, 268 [1st Dept 1998] [pro se attorney may recover attorney’s fees since applicable Delaware statute permitted such an award]). Since the court is granting the petition to a large extent, it concludes that the petitioner has substantially prevailed in this proceeding, and is entitled to an award of costs and attorneys’ fees.

Accordingly, it is,

ORDERED that, on the court’s own motion, the second cause of action in the amended petition and complaint, setting forth a cause of action for declaratory relief, is severed from the cause of action seeking relief pursuant to CPLR article 78; and it is further,

ORDERED and ADJUDGED that the amended petition is granted to the extent that, on or before April 17, 2026, the respondent, Metropolitan Transportation Authority, shall produce all records in its possession that are responsive to:

- (a) the petitioner’s request for records designated as R002643-012824, except for entries on pages 92, 96, 98, 100, 102, 157, 159-167, 193, 293, and 384-385 of the 499-page proposal for “ADA Upgrades and Circulation Improvements at Broadway

Junction Complex” and entries on pages 103, 104, 152, and 159 of the 163-page Final Executed Design Build Agreement and Exhibits, which set forth individuals’ or entities’ tax identification numbers, social security numbers, or employer identification numbers, which set forth individuals’ residence addresses and telephone numbers, or which consist of or depict an engineering diagram showing details and plans for a subway station control room at the Broadway Junction subway stop, and locations and details of non-public areas necessary to operate the stations at that stop, all of which may be redacted from the records that are provided, and

(b) the petitioner’s request for records designated as R003872-050324, except for entries in the columns of the reconciliation charts and NYA Freight Revenue charts for January 2022 through April 2024 indicating revenue (column 12 on the reconciliation charts), and the revenue dates, waybill numbers, and waybill dates (columns 17, 18, and 19 on the NYA Freight Revenue charts), all of which may be redacted from the records that are provided,

and the amended petition is otherwise denied and the CPLR article 78 proceeding is otherwise dismissed; and it is further,

ORDERED that, on or before April 30, 2026, the petitioner shall submit to the court an affirmation of attorney’s services and any supporting documentation in support of his request for an award of attorney’s fees and disbursements.

This constitutes the Decision, Order, and Judgment of the court.

3/10/2026  
DATE



JOHN J. KELLEY, J.S.C.

CHECK ONE:

CASE DISPOSED

GRANTED

SETTLE ORDER

INCLUDES TRANSFER/REASSIGN

DENIED

NON-FINAL DISPOSITION

GRANTED IN PART

SUBMIT ORDER

FIDUCIARY APPOINTMENT

OTHER

REFERENCE

APPLICATION:

CHECK IF APPROPRIATE: