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| <b>QueensRail Corp. v Metropolitan Transp. Auth.</b>                                                                                                                                                                           |
| 2022 NY Slip Op 33023(U)                                                                                                                                                                                                       |
| September 9, 2022                                                                                                                                                                                                              |
| Supreme Court, New York County                                                                                                                                                                                                 |
| Docket Number: Index No. 157453/2021                                                                                                                                                                                           |
| Judge: William Franc Perry                                                                                                                                                                                                     |
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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. WILLIAM FRANC PERRY PART 23**

*Justice*

QueensRail Corporation

Petitioner,

- v -

Metropolitan Transportation Authority

Respondent.

INDEX NO. 157453/2021

MOTION DATE 10/14/2021

MOTION SEQ. NO. 001

**DECISION + ORDER ON  
MOTION**

The following e-filed documents, listed by NYSCEF document number (Motion 001) 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  
were read on this motion to/for ARTICLE 78 (BODY OR OFFICER).

In this Article 78 proceeding, Petitioner QueensRail Corporation, “a not-for-profit formed to advocate for reactivating the former Long Island Railroad [“LIRR”] Rockaway Beach Branch that has been idle since 1962,” seeks an order directing Respondent MTA to produce unredacted records and cost proposals of an MTA contractor, Systra Inc. (“Systra”), relating to an ongoing contract between Systra and LIRR. (NYSCEF Doc No. 1, Petition, at ¶¶ 1, 34-39.)

**Background**

Petitioner submitted a FOIL request to MTA on March 4, 2020, seeking:

Documents relating to the above-referenced task and project between Systra Engineering, Inc. (“SYSTRA”) and the LIRR, Contract No. 6168C-10-09 (all releases and modifications):

- 1) SYSTRA's proposal dated 5/31/17
- 2) SYSTRA's revised proposal dated 9/8/17
- 3) SYSTRA's complete work product produced under the terms of this contract as per the Technical Scope of Work (TSOW).

(NYSCEF Doc No. 2.)

On February 10, 2021, Respondent provided Systra's original proposal to Petitioner, with "large swaths" redacted, "rendering the cost information effectively non-existent." (Petition at ¶¶ 11-12; NYSCEF Doc No. 3, Original Cost Proposal.) In making the redactions, Respondent invoked Public Officers Law ("POL") § 87(2)(d), which permits redactions if the information sought constitutes "trade secrets or are submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which if disclosed would cause substantial injury to the competitive position of the subject enterprise."

Respondent denied disclosure of Systra's revised cost proposal in its entirety, and, in response to the request for Systra's complete work product, provided an internet link to Systra's "final work product," stating that drafts thereof constituted inter-agency or intra-agency materials, pursuant to POL § 87(2)(g). (NYSCEF Doc No. 2 at 1.)

On March 5, 2021, Petitioner appealed the redacted disclosure of the original cost proposal and the complete denials of the revised cost proposal and complete work product. (NYSCEF Doc No. 4.)

An appeals officer found the redactions to the original cost proposal to be proper; granted the appeal regarding the revised cost proposal and provided a redacted version thereof (NYSCEF Doc No. 6, Revised Cost Proposal); and determined the withholding of the complete work product to be proper. (NYSCEF Doc No. 5.) Petitioner commenced this proceeding on August 9, 2021.

### Discussion

It is well settled that all records of a public agency, including police records, are presumptively open for public inspection and copying, and that the burden rests at all times on the government agency to justify any denial of access to records requested under FOIL. (*See New York State Rifle and Pistol Assoc. v Kelly*, 55 AD3d 222, 224 [1st Dept 2008]; *New York Civil*

*Liberties Union v New York City Police Dept.*, 20 Misc 3d 1108[A] [Sup Ct, NY County 2008]; *see also, Gould v New York City Police Dept.*, 89 NY2d 267, 274 [1996] [FOIL was enacted “[t]o promote open government and public accountability”]; Public Officers Law § 84; *Matter of Abdur-Rashid v New York City Police Dept.*, 31 NY3d 217, 224 [2018].)

In furtherance of FOIL's legislative policy favoring disclosure, “[e]xemptions are to be narrowly construed to provide maximum access, and the agency seeking to prevent disclosure carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption by articulating a particularized and specific justification for denying access.” (*Matter of Capital Newspapers Div. of Hearst Corp. v Burns*, 67 NY2d 562, 566 [1986].)

Here, Respondent has met its burden in demonstrating that the requested information falls within the exception provided by POL § 87[2][d], as the disclosure thereof “would cause substantial injury to the competitive position of the subject enterprise [Systra].” (*James, Hoyer, Newcomer, Smiljanich and Yanchunis, P.A. v State, Office of Attorney Gen.*, 27 Misc 3d 1223[A], at \*9 [Sup Ct, NY County 2010] [withholding of information proper where disclosure of cost information to competitors could provide them with an unfair advantage]; *compare with Bahnken v New York City Fire Dept.*, 17 AD3d 228, 230 [1st Dept 2005] [finding that withholding of contracts between ambulance service companies and private hospitals was improper because there was no evidence that the private hospitals constituted commercial enterprises actively competing for ambulance services].) Respondent submits the affidavit of Kimberly Slaughter, the President of Systra, who avers that producing unredacted copies of the information sought, specifically information regarding costs, would cause substantial commercial injury to Systra in the highly competitive field of railway engineering. (NYSCEF Doc No. 12.)

Petitioner's request for attorneys' fees is denied in this court's discretion, as the court finds that Respondent had a reasonable basis for denying access to the records. (POL § 89[4][c][ii] [in FOIL proceedings, the court "shall assess" attorneys' fees and costs against agency if petitioner "has substantially prevailed and the court finds that the agency had no reasonable basis for denying access"].) Thus, it is hereby

ADJUDGED that the application is denied and the petition is dismissed, with costs and disbursements to respondent; and it is further

ADJUDGED that respondent recovers from petitioner costs and disbursements as taxed by the Clerk, and that respondent have execution therefor.

|                       |                                                                             |                                                                                      |                                    |
|-----------------------|-----------------------------------------------------------------------------|--------------------------------------------------------------------------------------|------------------------------------|
| <u>9/09/2022</u>      |                                                                             |  |                                    |
| DATE                  |                                                                             | WILLIAM FRANC PERRY, J.S.C.                                                          |                                    |
| CHECK ONE:            | <input checked="" type="checkbox"/> CASE DISPOSED                           | <input type="checkbox"/> NON-FINAL DISPOSITION                                       |                                    |
|                       | <input type="checkbox"/> GRANTED <input checked="" type="checkbox"/> DENIED | <input type="checkbox"/> GRANTED IN PART                                             | <input type="checkbox"/> OTHER     |
| APPLICATION:          | <input type="checkbox"/> SETTLE ORDER                                       | <input type="checkbox"/> SUBMIT ORDER                                                |                                    |
| CHECK IF APPROPRIATE: | <input type="checkbox"/> INCLUDES TRANSFER/REASSIGN                         | <input type="checkbox"/> FIDUCIARY APPOINTMENT                                       | <input type="checkbox"/> REFERENCE |