

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ROCKLAND

In the matter of  
TINA TRASTER and  
TINA TRASTER PRODUCTIONS, LLC  
d/b/a/ ROCKLAND COUNTY BUSINESS  
JOURNAL,

Petitioners,

Index No.

- against -

ROCKLAND COUNTY SOLID WASTE  
MANAGEMENT AUTHORITY,

Respondent,

For a Judgment Pursuant to Article 78  
of the Civil Practice Law and Rules.

---

**MEMORANDUM OF LAW IN SUPPORT OF VERIFIED PETITION**

---

Respectfully submitted,

Michael Linhorst  
Heather E. Murray  
Cornell Law School First Amendment Clinic  
Myron Taylor Hall  
Ithaca, New York 14853  
Tel.: (607) 255-8518  
mml89@cornell.edu  
hem58@cornell.edu

*Counsel for Tina Traster  
and Tina Traster Productions, LLC*

## TABLE OF CONTENTS

PRELIMINARY STATEMENT .....	1
BACKGROUND .....	1
ARGUMENT .....	5
I. Respondent's Conclusory Statements Fail to Meet Its Obligation to Provide a Particularized and Specific Justification for Its Withholdings. ....	6
II. The Cited Exemptions Cannot Justify Respondent's Widespread, Overbroad Redactions in Part One of the Request. ....	8
<i>a. The Personal Privacy Exemption Applies to Few if Any Records. ....</i>	8
<i>b. The Trade Secret Exemption Does Not Permit Respondent's Widespread Redactions. ....</i>	10
<i>c. Respondent Failed to Meet Its Obligation to Apply Exemptions Narrowly. ....</i>	14
III. Respondent Must Release the Records Responsive to Part Two of the Request.....	14
IV. The Court Should Grant Petitioners Attorney's Fees and Litigation Costs.....	17
CONCLUSION.....	18

## TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ashland Mgmt. Inc. v. Janien</i> , 82 N.Y.2d 395 (1993).....	11
<i>Brown v. New York City Police Dep't</i> , 264 A.D.2d 558 (1st Dep't 1999).....	15
<i>Cap. Newspapers, Div. of Hearst Corp. v. Burns</i> , 67 N.Y.2d 562 (1986).....	5, 6, 7
<i>CAT*ASI, Inc. v. New York State Ins. Dep't</i> , 760 N.Y.S.2d 284 (Sup. Ct., N.Y. Cnty. 2002).....	10, 15
<i>Cobado v. Benziger</i> , 163 A.D.3d 1103 (3d Dep't 2018).....	17
<i>Contracting Plumbers Co-Op. Restoration Corp. v. Ameruso</i> , 430 N.Y.S.2d 196 (Sup. Ct., N.Y. Cnty. 1980).....	15
<i>Cross-Sound Ferry Servs. Inc. v. Dep't of Transp.</i> , 219 A.D.2d 346 (3d Dep't 1995).....	11, 13
<i>De Fabritis v. McMahon</i> , 301 A.D.2d 892 (3d Dep't 2003).....	15
<i>Dilworth v. Westchester Cnty. Dep't of Correction</i> , 93 A.D.3d 722 (2d Dep't 2012).....	6
<i>Dobranski v. Houper</i> , 154 A.D.2d 736 (3d Dep't 1989).....	9
<i>Gould v. N.Y. City Police Dep't</i> , 89 N.Y.2d 267 (1996).....	5, 14, 16
<i>Hanig v. Dep't of Motor Vehicles</i> , 79 N.Y.2d 106 (1992).....	8, 9
<i>Humane Soc. of U.S. v. Fanslau</i> , 54 A.D.3d 537 (3d Dep't 2008).....	10
<i>Lansner &amp; Kubitschek v. N.Y. State Off. of Children &amp; Family Servs.</i> , 64 Misc. 3d 438 (Sup. Ct., Albany Cnty. 2019).....	17
<i>Legal Aid Soc'y v. N.Y. State Dep't of Corr. and Cmty. Supervision</i> , 105 A.D.3d 1120 (3d Dep't 2013).....	17

<i>Livson v. Town of Greenburgh</i> , 141 A.D.3d 658 (2d Dep't 2016).....	6, 7
<i>Madeiros v. N.Y. State Educ. Dep't</i> , 30 N.Y.3d 67 (2017).....	17
<i>Markowitz v. Serio</i> , 11 N.Y.3d 43 (2008).....	11, 14
<i>New York 1 News v. Off. of President of Borough of Staten Island</i> , 231 A.D.2d 524 (2d Dep't 1996).....	14, 16
<i>Pro. Standards Rev. Council of Am. Inc. v. New York State Dep't of Health</i> , 597 N.Y.S.2d 829 (3d Dep't 1993) .....	8, 10
<i>Reiburn v. N.Y. City Dep't of Parks &amp; Recreation</i> , 171 A.D.3d 670 (1st Dep't 2019).....	17
<i>Ruberti, Girvin &amp; Ferlazzo P.C. v. New York State Div. of State Police</i> , 218 A.D.2d 494 (3d Dep't 1996).....	9

#### **Statutes**

N.Y. Pub. Off. Law § 84 .....	1, 5
N.Y. Pub. Off. Law § 87 .....	<i>passim</i>
N.Y. Pub. Off. Law § 89 .....	5, 9, 15, 17

#### **Other Authorities**

44A N.Y. Jur. 2d Disclosure § 209 .....	11
Restatement of Torts § 757 .....	11

## PRELIMINARY STATEMENT

This is a dispute about a journalist seeking access to records that shed light on an important public issue: a public authority's decision to award a controversial contract to a company that was not the lowest bidder and does not have experience building the relevant facilities. Petitioners Tina Traster and Tina Traster Productions, LLC, the publisher of *Rockland County Business Journal* ("RCBJ" and collectively, "Petitioners"), bring this Article 78 proceeding to challenge the decision by the Rockland County Solid Waste Management Authority ("Respondent") to improperly withhold a wide range of records in violation of the Freedom of Information Law ("FOIL"), New York Public Officers Law § 84 *et seq.*

Ms. Traster is seeking records under FOIL that would reveal how Respondent selected a company for an \$18 million construction project. This request is exactly what FOIL was created for: helping citizens, especially journalists, keep tabs on what their government is up to and oversee their government's decision-making. Yet Respondent has imposed a huge volume of redactions on the material and refused to produce an entire category of other records. The FOIL exemptions that Respondent cites do not permit this massive withholding. Respondent must disclose the records Ms. Traster seeks.

This Court should order Respondent to promptly produce all responsive records, with only the minimal redactions that are properly justified under FOIL, and grant Petitioners their attorney's fees and costs.

## BACKGROUND

Ms. Traster is the publisher of *Rockland County Business Journal*, Rockland County's premier source for news about local businesses, economic issues, and government. Petition ("Pet.") ¶¶ 5 & 6. A longtime resident of Rockland County, Ms. Traster focuses her journalism

on issues important to her community, including keeping a close eye on the decisions of local government. *Id.* ¶ 5.

As part of that reporting, Ms. Traster has followed the public controversy surrounding a local animal shelter. In 2022, Respondent assumed oversight from Rockland County of the County's animal shelter, which had been operated by a non-profit organization for decades. *Id.* ¶ 12. Prior to Respondent's involvement, the County government had initiated a plan to build a new animal shelter next-door to the existing one, as the existing shelter was in need of repair or replacement. *Id.* But when Respondent took over, it changed the plan. It chose to build a new shelter at a new location, 427 Beach Road in West Haverstraw, to be run by a different organization. *Id.* ¶ 13. This new, \$18 million shelter is expected to cost substantially more than the prior plan would have. *Id.* ¶ 14.

Respondent sought proposals from companies to construct the new shelter, and it received several bids. In December 2024, it awarded the contract to O'Connor Company, which was not the lowest bidder and does not have experience building animal shelters. *Id.* ¶ 15. It remains unclear why Respondent chose this company.

As part of her reporting on this controversy, and to learn more about Respondent's decision-making, Ms. Traster submitted a FOIL request to Respondent on December 12, 2024. *Id.* ¶¶ 10, 11 & Ex. 1. The request sought two sets of records: (1) "all of the bid documents and submissions submitted for the construction of the animal shelter at 427 Beach Road in West Haverstraw," and (2) "notes of the committee assessing the bids and any determination made to accept or reject a submitted bid." Ex. 1.

Over the following months, Respondent engaged in a series of attempts at avoiding disclosure of the records. It told Ms. Traster that it would "be forwarding the documents [to her]

once the contract is signed by O'Connor Company.” Pet. ¶ 18. Although the O'Connor Company announced on January 7, 2025, that it had been awarded the contract, Respondent did not produce the requested documents in January. *Id.* ¶ 19. Instead, it told Ms. Traster that it expected to respond “no later than February 28, [2025].” *Id.* ¶ 20. But when that date came, it further extended its own deadline, claiming it expected to respond by March 21, 2025. *Id.*

Ms. Traster filed her first administrative appeal on March 11, 2025, objecting to Respondent's constructive denial of her request. *Id.* ¶ 21 & Ex. 2. Respondent never formally responded to that appeal. However, it soon sent her a letter stating that the documents she requested “are available,” but that it would charge a \$450 “fee for processing such documents.” *Id.* ¶ 22 & Ex. 3. It provided no justification for its exorbitant fee, let alone one that complied with FOIL's strict limits on permissible fees. Ms. Traster therefore filed a second administration appeal on March 26, 2025. *Id.* ¶ 23 & Ex. 4.

Following the appeal, Respondent reduced its fee by nearly 90 percent, to \$52.42, which Ms. Traster paid. *Id.* ¶ 24 & Ex. 5. It subsequently produced records partially responsive to Ms. Traster's request.

Respondent's production consists of nine documents, each one a separate proposal submitted by a company seeking to build the animal shelter. *Id.* ¶ 26. These documents are responsive to the first part of Ms. Traster's request, which sought “bid documents and submissions submitted for the construction of the animal shelter” (“Part One” of the request). *See* Ex. 1. The documents contain numerous redactions. In many cases, entire pages are redacted. Pet. ¶ 29 & Ex. 6 (excerpts of production, showing some of the redactions). In other cases, the redactions pertain to such material as (among other examples) a company's “qualifications and experience,”

or the name of an ongoing construction project, or “projects completed within the past five years.”

Ex. 6 at 104-08, 111, 126-46.

The records produced in response to Part One include no justification for their redactions — there is no way to tell which FOIL exemption Respondent is claiming for each redaction. Instead, Respondent’s only explanation for these redactions was in an email sent to Ms. Traster two days before she received the production. *Id.* ¶ 30 & Ex. 7. It stated: “The nature of the redactions that have been [] made pertain to personal information of the various proposers, their financials and their references. These determinations were made pursuant to Section 87 (2) of the Freedom of Information Law which allows a denial of access to information which, if disclosed, would constitute an unwarranted invasion of personal privacy and would cause substantial injury to the competitive position of the subject proposers’ enterprises.” Ex. 7.

In addition to the redacted material that it withheld in response to Part One of the request, Respondent failed entirely to produce records responsive to Part Two, which sought “notes of the committee assessing the bids and any determination made to accept or reject a submitted bid.” *See* Ex. 1 at 4.

Ms. Traster therefore filed a third administrative appeal, objecting to Respondent’s widespread, unexplained, and unjustified redactions to the Part One material and its failure to respond to Part Two. Pet. ¶ 32 & Ex. 8. Respondent denied the appeal on May 20, 2025. *Id.* ¶ 33 & Ex. 9. It claimed that its redactions to Part One were proper, and it stated, for the first time, that it was withholding records responsive to Part Two. Ex. 9. It claimed that the records were “exempt from disclosure as pre-decisional materials that are part of the deliberative process.” *Id.*

After thus exhausting their administrative remedies, Petitioners filed this Article 78 Petition. They seek an order requiring Respondent to produce all records responsive to both parts



of Ms. Traster's request, with redactions limited to only material that is properly withheld under FOIL's narrow exemptions, and to award Petitioners their attorney's fees and costs.

### ARGUMENT

Respondent's refusal to produce any records responsive to Part Two of the request and its extensive redactions to the records responsive to Part One cannot be justified under the Freedom of Information Law. FOIL "imposes a broad duty on government to make its records available to the public" in order "[t]o promote open government and public accountability." *Gould v. N.Y. City Police Dep't*, 89 N.Y.2d 267, 274 (1996) (citing N.Y. Pub. Off. Law § 84). The statute's purpose is to "extend public accountability wherever and whenever feasible" because "government is the public's business." N.Y. Pub. Off. Law § 84.

To achieve the legislature's aim of open access and public accountability, FOIL establishes that all public agency records are "presumptively open to public inspection and copying unless otherwise specifically exempted." *Cap. Newspapers, Div. of Hearst Corp. v. Burns*, 67 N.Y.2d 562, 566 (1986); N.Y. Pub. Off. Law § 87(2). It provides limited exemptions to this broad rule of access, allowing the government to withhold records from the public only in specific circumstances. These "[e]xemptions are to be narrowly construed" to ensure the public retains "maximum access" to government records. *Cap. Newspapers*, 67 N.Y.2d at 566. When the government claims that one of FOIL's exemptions applies to prevent the public from accessing a record, it "carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption." *Id.*

The statute also provides for attorney's fees in certain circumstances when a requester prevails in court — another way that the law seeks to discourage secrecy and help citizens learn about their government. N.Y. Pub. Off. Law § 89(4)(c).

Here, Respondent fails to carry its burden of establishing that the records it seeks to withhold “fall[] squarely within a FOIL exemption,” and its withholding frustrates FOIL’s purpose of promoting “open government and public accountability.” *Cap. Newspapers*, 67 N.Y.2d at 565-66. It has attempted to explain its withholdings with merely conclusory statements, which do not meet its obligations under FOIL. “Conclusory assertions that certain records fall within a statutory exemption are not sufficient; evidentiary support is needed.” *Livson v. Town of Greenburgh*, 141 A.D.3d 658, 660 (2d Dep’t 2016) (quoting *Dilworth v. Westchester Cnty. Dep’t of Correction*, 93 A.D.3d 722, 724 (2d Dep’t 2012)). In fact, it is clear that the exemptions Respondent cited cannot justify its extensive withholdings. The Court should order Respondent to release the requested records to Petitioners, and it should grant Petitioners’ request for attorney’s fees and costs.

**I. Respondent’s Conclusory Statements Fail to Meet Its Obligation to Provide a Particularized and Specific Justification for Its Withholdings.**

Respondent has failed to provide any particularized justification for its withholdings, merely offering generic statements that broadly cite FOIL exemptions. In its email to Ms. Traster, it stated only that its redactions to Part One pertained to material whose disclosure would constitute “an unwarranted invasion of personal privacy and would cause substantial injury to the competitive position of the subject proposers’ enterprises.” Ex. 7. Although it did not cite them, Respondent appears to be referencing FOIL’s exemptions 2(b) and (d). *See* N.Y. Pub. Off. Law § 87(2)(b) & (d). And it said that it was withholding the Part Two records entirely because they were allegedly “exempt from disclosure as pre-decisional materials that are part of the deliberative process,” referencing FOIL exemption 2(g). Ex. 9; *see* N.Y. Pub. Off. Law § 87(2)(g).

These general statements, with nothing more than conclusory wording that tracks the language of the statute, are far from the “particularized and specific justification” for each redaction or other withholding that the law requires of Respondent. *Cap. Newspapers*, 67 N.Y.2d

at 566; *see also Livson*, 141 A.D.3d at 660. This requirement, that an agency cannot withhold material if it offers a merely conclusory statement, is a critical part of FOIL. Since all public agency records are “presumptively open to public inspection and copying unless otherwise specifically exempted” under FOIL, the law sets a high bar for an agency to withhold records. *Cap. Newspapers*, 67 N.Y.2d at 566; N.Y. Pub. Off. Law § 87(2). That bar would be significantly lower if an agency were not required, from the start, to justify its withholdings. Demanding specific justifications forces an agency to think carefully about what it seeks to withhold and to engage thoughtfully with the law’s exemptions, rather than issuing excessive redactions and leaving it to the requester to challenge them. Therefore, when the government claims that one of FOIL’s exemptions applies, it “carries the burden of demonstrating that the requested material falls squarely within a FOIL exemption.” *Cap. Newspapers*, 67 N.Y.2d at 566.

Respondent’s explanations fall far short of carrying this burden. For Part One of the request, it produced page after page of extensive redactions, yet it said nothing to justify each one. Its single email providing a vague reference to two exemptions did not even attempt to line up its claimed exemptions with its individual redactions. That leaves Petitioners — and this Court — unsure of which exemption Respondent claims for each redaction, highlighting another reason why the law requires Respondent to provide a more detailed explanation. For the records responsive to Part Two of the request, when Respondent finally got around to providing any explanation at all for the withholdings, Respondent again failed to provide any evidence to support its generic justification.

These conclusory statements fall far short of its obligation to provide “a particularized and specific justification.” The law requires Respondent to be precise about what exemption it claims

for each withholding, and it must justify its claims. Its withholdings cannot be supported under FOIL.

## **II. The Cited Exemptions Cannot Justify Respondent's Widespread, Overbroad Redactions in Part One of the Request.**

Even if Respondent had met FOIL's specification requirements, the two exemptions that it vaguely referenced cannot support its extensive redactions to the Part One records. The personal privacy and trade secrets exemptions must be applied narrowly, and Respondent failed to do so here — instead, it attempts to wield them to hide much more information than can possibly be withheld under either exemption. The Court should order Respondent to re-produce the complete records, with redactions limited to only the narrow information permitted by the exemptions.

### *a. The Personal Privacy Exemption Applies to Few if Any Records.*

The first exemption that Respondent cites, for personal privacy, *see* N.Y. Pub. Off. Law § 87(2)(b), only permits withholding material that “would ordinarily and reasonably be regarded as intimate, private information.” *Hanig v. Dep't of Motor Vehicles*, 79 N.Y.2d 106, 112 (1992). There is no indication here that any of the records qualify. These are records that construction companies submitted to a public agency in response to a request for proposals; there is nothing in them that could constitute “intimate, private information,” and, indeed, it would be unreasonable for a company to expect to maintain privacy over such public documents. *See, e.g., Pro. Standards Rev. Council of Am. Inc. v. New York State Dep't of Health*, 597 N.Y.S.2d 829, 831 (3d Dep't 1993) (“There is no showing that [a company], bidding on a public contract, had any reasonable expectation of not having its bid open to the public.”).

Because Respondent failed to provide the required “particularized and specific justification” for its redactions, *see supra* § I, Petitioners cannot determine which redactions Respondent believes are justified under the personal privacy exemption. Petitioners do not seek private contact

information, such as personal cell phone numbers and email addresses, which may properly be redacted. But nothing else from these bid records submitted to a state agency could reasonably qualify for withholding under this exemption.

Both the statute and case law underscore how narrow this personal privacy exemption is. The statute allows an agency to withhold records whose disclosure “would constitute an unwarranted invasion of personal privacy.” N.Y. Pub. Off. Law § 87(2)(b). It also provides examples of records that fall into the exemption. *See* N.Y. Pub. Off. Law § 89(2)(b). None of the examples appear to be relevant to the documents here, but they illustrate how personal and sensitive the information must be to qualify for withholding under this exemption. The examples allow for withholding such information as “employment, medical or credit histories or personal references of applicants for employment,” “medical or personal records of a client or patient in a medical facility,” “information of a personal nature reported in confidence to an agency and not relevant to the ordinary work of such agency,” and “electronic contact information . . . collected from a taxpayer” pursuant to tax law. *Id.* None of the examples pertain to something as non-personal as a construction company’s bid to a public agency.

Beyond those statutory examples, courts apply an objective standard in determining what constitutes an “unwarranted” invasion of privacy, which “is measured by what would be offensive and objectionable to a reasonable [person] of ordinary sensibilities.” *Ruberti, Girvin & Ferlazzo P.C. v. New York State Div. of State Police*, 218 A.D.2d 494, 498 (3d Dep’t 1996) (quoting *Dobranski v. Houper*, 154 A.D.2d 736, 737 (3d Dep’t 1989)). Specifically, an agency may only withhold information under the privacy exemption if the material “would ordinarily and reasonably be regarded as intimate, private information.” *Hanig*, 79 N.Y.2d at 112. This is a high bar for the government to meet. For example, where a requester sought financial disclosure

statements that a district attorney filed with a public agency, the Third Department held that the records had to be disclosed, *including* the portions containing “the general information regarding the income and investments of [the attorney’s] family members.” *Humane Soc. of U.S. v. Fanslau*, 54 A.D.3d 537, 538 (3d Dep’t 2008). The court concluded that public disclosure of this personal financial information, even as to the family members, “does not amount to an unwarranted invasion of personal privacy.” *Id.*

Here, it is difficult to imagine any “intimate, private information” that was contained in these bid submissions, and Respondent has provided no further justification to support invoking the exemption. Beyond narrow redactions for private contact information, the personal privacy exemption cannot justify any of Respondent’s redactions. Respondent must produce the responsive records, without those redactions.

*b. The Trade Secret Exemption Does Not Permit Respondent’s Widespread Redactions.*

Similarly, the trade secrets exemption cannot justify Respondent’s sweeping redactions. This exemption allows an agency to withhold records that “are trade secrets” or that, if disclosed, “would cause substantial injury to the competitive position of the subject enterprise.” N.Y. Pub. Off. Law § 87(2)(d). But the exemption cannot apply here. First, no “substantial injury” could occur by releasing the requested records because “[t]here is no showing that [a company], bidding on a public contract, had any reasonable expectation of not having its bid open to the public.” *Pro. Standards Rev. Council of Am. Inc. v. New York State Dep’t of Health*, 597 N.Y.S.2d 829, 831 (3d Dep’t 1993); *see also CAT\*ASI, Inc. v. New York State Ins. Dep’t*, 760 N.Y.S.2d 284, 287 (Sup. Ct., N.Y. Cnty. 2002) (“[O]nce a contract is conditionally awarded to a bidder, the terms of the successful bidder’s response to the Request for Proposal could no longer be ‘competitively

sensitive.” (quoting *Cross-Sound Ferry Servs. Inc. v. Dep’t of Transp.*, 219 A.D.2d 346, 349 (3d Dep’t 1995))).

Furthermore, to employ this exemption, Respondent must meet a high bar, establishing either that the material satisfies the legal test for qualifying as a trade secret, or that the disclosure of the material in fact “would” — not merely “could” — cause “substantial injury” to the company at issue. N.Y. Pub. Off. Law § 87(2)(d). Respondent has not even attempted to meet its burden here. New York courts are clear that, to be a trade secret, the information “must first of all be secret.” *Ashland Mgmt. Inc. v. Janien*, 82 N.Y.2d 395, 407 (1993). That means it must be “known to only one or a few and kept from the general public.” Comm. Open Gov’t Advisory Op. 19237 (Jan. 8, 2015), <https://docs.opengovernment.dos.ny.gov/coog/ftext/2015/f19237.htm>. A trade secret further must pass a multi-factor test, which asks:

(1) the extent to which the information is known outside of [the] business; (2) the extent to which it is known by employees and others involved in [the] business; (3) the extent of measures taken by [the business] to guard the secrecy of the information; (4) the value of the information to [the business] and [its] competitors; (5) the amount of effort or money expended by [the business] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

*Ashland Mgmt. Inc.*, 82 N.Y.2d at 407 (quoting Restatement of Torts § 757, comment b); *see also* 44A N.Y. Jur. 2d Disclosure § 209. There is no indication that the vast majority of the information redacted from the documents could meet this test — or, for that matter, that the information is even secret.

The law does not allow Respondent to speculate about whether particular information constitutes a trade secret or “would cause substantial injury” if released. Instead, Respondent “must present specific, persuasive evidence that disclosure will cause [the company] to suffer a competitive injury; it cannot merely rest on a speculative conclusion that disclosure might potentially cause harm.” *Markowitz v. Serio*, 11 N.Y.3d 43, 51 (2008) (requiring disclosure of

information because the “evidence suggesting they will suffer a competitive disadvantage is theoretical at best”); *see also* Comm. Open Gov’t Advisory Op. 18124 (May 26, 2010), <https://docs.opengovernment.dos.ny.gov/coog/ftext/fl8124.html> (explaining it is the agency’s burden “to demonstrate that disclosure would cause substantial injury to the competitive position of the vendor”).

Respondent has provided no such “specific, persuasive evidence” to justify its redactions — nor could it. The sweeping redactions in this production go far beyond anything that could be considered a trade secret or information whose release would cause substantial harm. Just to take one set of examples, Respondent repeatedly redacted information about bidders’ prior construction projects and experience. In one document, the company E.W. Howell’s “qualifications and experience” are entirely redacted. Ex. 6 at 104-08. In another, a current project apparently being built by the firm Andron is redacted. *Id.* at 114 (“Our current experience building the new [redacted] positions us to be a tremendous resource for the project team.”). In a third, Andron’s “projects completed within the past five years” are entirely redacted. *Id.* at 126-46. It is hard to imagine how construction companies’ prior and ongoing construction projects could be “known to only one or a few and kept from the general public.” It is equally hard to imagine how disclosure of a company’s experience, which it chose to trumpet to a public entity that it hopes to work for, would “cause substantial injury” if released.

These examples are only the tip of the iceberg in terms of Respondent’s vastly excessive redactions. But because those redactions are so broad and Respondent failed to provide particularized justifications, it is not possible for Petitioners to go redaction-by-redaction to explain why each one is improper. From the limited information available to Petitioners at this stage, it



appears the vast majority of the redactions, if not all of them, are unsupportable under the trade secret exemption.

It may not be necessary to go redaction-by-redaction because, with respect to documents like these, New York courts have held that once the RFP process is complete and a contract has been awarded, the terms of the proposals “could no longer be competitively sensitive.” *Cross-Sound Ferry Servs. Inc.*, 219 A.D.2d at 349; *see also* Comm. Open Gov’t Advisory Op. 16957 (Jan. 23, 2008), <https://docsopengovernment.dos.ny.gov/coog/ftext/fl6957.html>. Without specific evidence to the contrary, everything in these bids should be publicly released, as the bidding is complete and nothing in the records could reasonably remain “competitively sensitive.”

In its administrative appeal decision, Respondent claimed that Ms. Traster was confusing “bids” with “proposals,” and that the documents at issue here are “proposals” that have some greater degree of sensitivity, allowing Respondent to redact more of them. Ex. 9 at 2. This is untrue for multiple reasons. First, there is no legal distinction between “bids” and “proposals” for purposes of a public records request — the text of FOIL provides no such distinction, and FOIL case law uses the terms “bids” and “proposals” interchangeably. *See, e.g., Cross-Sound Ferry Servs. Inc.*, 219 A.D.2d at 346 (stating that the government “issued a request for *proposals* . . . inviting contract *bids* for the development and operation of a high-speed ferry service” (emphasis added)). Even Respondent’s own county laws state that all “[p]rocurement information” — whether denominated as a “bid” or a “proposal” — “shall be a public record to the extent provided in [FOIL], and shall be available to the public as provided in such statute.” Rockland Cnty. L. § 140-1.6. Whether these are “bids” or “proposals,” they must be produced under FOIL just the same, and the law does not support the claim that one is more sensitive than the other. And even if the companies incorrectly believed that the documents they were submitting were entitled to

greater confidentiality, that has no bearing on FOIL. Unless a FOIL exemption clearly applies, the fact “[t]hat the documents may have been furnished in confidentiality does not render them beyond the scope of FOIL disclosure.” *New York 1 News v. Off. of President of Borough of Staten Island*, 231 A.D.2d 524, 525 (2d Dep’t 1996).

Respondent cannot use the trade secret exemption to justify its extensive redactions. It has failed to put forward evidence that any of the redacted documents meet the test for being a “trade secret,” or that disclosure of the material “would cause substantial injury.” Respondent has provided no support, let alone the “specific, persuasive evidence” that is required, to back up its conclusory claims. *Markowitz*, 11 N.Y.3d at 51. The records must be produced without the unlawful redactions.

*c. Respondent Failed to Meet Its Obligation to Apply Exemptions Narrowly.*

Even if the personal privacy or trade secrets exemption did apply to some of the material, the law requires that all other redacted information must be disclosed. Respondent failed to do so.

The state’s highest court has explained that FOIL’s “exemptions are to be narrowly construed,” and “only where the material requested falls squarely within the ambit of one of these statutory exemptions may disclosure be withheld.” *Gould*, 89 N.Y.2d at 275. As a result, “blanket” withholdings “are inimical to FOIL’s policy of open government.” *Id.* Here, Respondent’s widespread, wholesale redactions to the Part One material highlight its failure to construe and apply the exemptions narrowly. Respondent may withhold only the material that falls “squarely” in one of the law’s exemptions, *id.*, and it must produce all other material, including material that appears alongside exempted information but that is not itself exempt from disclosure.

**III. Respondent Must Release the Records Responsive to Part Two of the Request.**

Respondent improperly imposed a blanket withholding of the records that are responsive to Part Two of Ms. Traster’s request, which sought “notes of the committee assessing the bids and

any determination made to accept or reject a submitted bid.” Ex. 1 at 4. In its initial FOIL response, Respondent failed to address these records at all.<sup>1</sup> See Ex. 7. Later, at the appeal stage, Respondent claimed that the records responsive to Part Two were withheld under the “inter-agency or intra-agency materials” exemption. Ex. 9; see N.Y. Pub. Off. Law § 87(2)(g). This claim cannot support Respondent’s blanket withholding, for three reasons: the types of records that Ms. Traster requested have specifically been held disclosable in prior cases; the law forbids the kind of blanket withholding that Respondent is attempting; and the intra-agency exemption that Respondent cites includes several carve-outs that require disclosure of much, if not all, of the material here.

First, courts have repeatedly concluded that disclosing “the basis of the determination to accept the successful bid proposal by the agency together with its findings, reports and memoranda” — exactly the kinds of records Ms. Traster seeks — “would be expressive of the legislative purposes set forth in [FOIL].” *CAT\*ASI, Inc. v. New York State Ins. Dep’t*, 760 N.Y.S.2d 284, 287 (Sup. Ct., N.Y. Cnty. 2002) (quoting *Contracting Plumbers Co-Op. Restoration Corp. v. Ameruso*, 430 N.Y.S.2d 196, 198 (Sup. Ct., N.Y. Cnty. 1980)). It is no different here. The records requested must be disclosed.

Second, “blanket exemptions” — such as Respondent’s invocation of the intra-agency exemption here — “are contrary to FOIL’s policy of open government.” *Brown v. New York City Police Dep’t*, 264 A.D.2d 558, 560 (1st Dep’t 1999). Instead, as with the Part One documents, Respondent must justify why FOIL allows it to withhold each document. *Id.* at 561. It may not impose a “blanket” withholding on all documents responsive to Part Two.

---

<sup>1</sup> This lack of response violated FOIL, which requires Respondent to perform a “diligent search” for responsive records and to produce all responsive, non-exempt records. N.Y. Pub. Off. Law § 89(3); see also *De Fabritis v. McMahon*, 301 A.D.2d 892, 894 (3d Dep’t 2003) (requiring agency that identified *some* of the requested records to conduct a “diligent search” for the remaining records).

Third, the intra-agency exemption includes several carve-outs for material that must be released. They require, among other things, that agencies disclose any intra-agency records that contain “statistical or factual tabulations or data.” N.Y. Pub. Off. Law § 87(2)(g)(i). In other words, as the Court of Appeals has explained, “documents that contain ‘statistical or factual tabulations or data’ are subject to FOIL disclosure, whether or not embodied in a final agency policy or determination” that would otherwise have to be disclosed. *Gould*, 89 N.Y.2d at 276. And “[f]actual data” is defined as any “objective information, in contrast to opinions, ideas, or advice exchanged as part of the consultative or deliberative process of government decision making.” *Id.* at 277. Therefore, even if some portion of the responsive records is properly withheld under the intra-agency exemption, Respondent must still produce any portions that contain factual material, as opposed to opinions or advice. *Id.*

The statute additionally requires disclosure of intra-agency records that include “final agency policy or determinations.” N.Y. Pub. Off. Law § 87(2)(g)(iii). Thus, as in the carve-out for factual material, any part of a record that constitutes a final determination must also be disclosed, notwithstanding other parts of the record that the agency may be able to withhold. To the extent that Respondent “relied on” these records in reaching its final decision or “adopted [them] as the basis for [its] decision,” the records must be disclosed. *New York 1 News*, 231 A.D.2d at 525.

Thus, even if the intra-agency exemption could be invoked for some portion of the Part Two records, it cannot provide an across-the-board shield. FOIL forbids the “blanket” withholding that Respondent has attempted here. Any records or parts of records that contain factual information must be disclosed, and any records or parts of records that reflect a final determination must also be disclosed.

#### IV. The Court Should Grant Petitioners Attorney's Fees and Litigation Costs.

Should Petitioners substantially prevail in this proceeding, this Court should also grant attorney's fees and other litigation costs. The legislature amended FOIL in 2017 to provide for mandatory attorney's fees in certain instances to "encourage compliance with FOIL and to minimize the burdens of cost and time from bringing a judicial proceeding," recognizing that, "[o]ften, people simply cannot afford to take a government agency to trial to exercise their right to access public information." *Reiburn v. N.Y. City Dep't of Parks & Recreation*, 171 A.D.3d 670, 671 (1st Dep't 2019) (quoting 2017 N.Y. Assembly Bill A2750). FOIL provides that where (1) a petitioner has "substantially prevailed" in an Article 78 proceeding to obtain the requested records; and (2) "the court finds that the agency had no reasonable basis for denying access," the court "shall assess, against such agency involved, reasonable attorney's fees and other litigation costs reasonably incurred by [the petitioner]." N.Y. Pub. Off. Law § 89(4)(c)(ii) (emphasis added). For all the reasons described above, Respondent has no reasonable basis for denying access to the records Ms. Traster requested.

A petitioner "substantially prevails" in a FOIL proceeding when, in response to litigation, the petitioner receives the requested records. *See Cobado v. Benziger*, 163 A.D.3d 1103, 1106 (3d Dep't 2018). "This does not mean that petitioner received every page of every document sought in [her] request, but that [she] obtained the 'full and only response available pursuant to the statute under the circumstances.'" *Lansner & Kubitschek v. N.Y. State Off. of Children & Family Servs.*, 64 Misc. 3d 438, 454 (Sup. Ct., Albany Cnty. 2019) (quoting *Legal Aid Soc'y v. N.Y. State Dep't of Corr. and Cmty. Supervision*, 105 A.D.3d 1120, 1122 (3d Dep't 2013)); *see also Madeiros v. N.Y. State Educ. Dep't*, 30 N.Y.3d 67, 79 (2017) (awarding fees despite agency's redactions being upheld because "petitioner's legal action ultimately succeeded in obtaining substantial unredacted post-commencement disclosure responsive to her FOIL request"). Because Respondent has no

reasonable basis for denying access to the requested records, Petitioners request that the Court award attorney's fees and litigation costs.

### CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant their petition and (1) direct Respondent to comply with its FOIL obligations and produce the requested records, with redactions that are limited to only the material that may properly be withheld under FOIL's exemptions, within twenty (20) days; (2) award Petitioners the attorney's fees and litigation costs incurred in obtaining Respondent's belated compliance with FOIL; and (3) grant Petitioners such further relief as the Court deems just and proper.

Dated: July 11, 2025

Respectfully submitted,

By: /s/ Michael Linhorst

Michael Linhorst  
Heather E. Murray  
Cornell Law School First Amendment Clinic  
Myron Taylor Hall  
Ithaca, New York 14853  
Tel.: (607) 255-8518  
mml89@cornell.edu  
hem58@cornell.edu

*Counsel for Tina Traster  
and Tina Traster Productions, LLC*

**SECTION 202.8-b CERTIFICATION**

I, Michael Linhorst, do hereby certify that this document complies with the word count limit set forth in Section 202.8-b of the Uniform Civil Rules. The word count of this Memorandum of Law is 5,497 words. The word count excludes any caption, table of contents, table of authorities, and signature block, and it is compliant with the word count limit. This document was prepared using Microsoft Word. The font of this document is Times New Roman, size 12.

/s/ Michael Linhorst  
Michael Linhorst