

May 10, 2016

VIA E-MAIL

Mr. Jim Clark, Executive Vice President

MSI

Email: jclark@msinet.com

RE: 16-FOIA-047 Proposals - RFP #34552

Dear Mr. Clark:

We are in receipt of your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.*

I. Background

On February 26, 2016, we received your request for copies of the following related to the above referenced RFP:

1. Pulsar Advertising, Inc.'s submitted written proposal or response document;
2. NorthStar Strategies's submitted written proposal or response document;
3. TimeZone One's submitted written proposal or response document; and
4. Copies of all communications between Metra employees and employees of Pulsar Advertising from 9/20/15 and the current date

(**"Request"**).

We contacted you on March 23, explaining that our Procurement Department had provided us in excess of 385 pages of documents that may be responsive to your request. We advised that to review each document would be disruptive to the day-to-day operations of our department by inhibiting our ability to process other FOIA requests. We asked if you would consider narrowing down the scope of your Request to Pulsar Advertising, Inc.'s written proposal, with the understanding you could submit future requests for additional records. You responded that same day, agreeing to narrow your Request as noted above and if time allowed, you also wanted the written proposal or response document submitted by NorthStar Strategies. On March 28 we contacted you to advise that we were operating short-staffed and extended your response due date to April 26. We contacted you on April 26 to inform you that we were experiencing a high volume of non-commercial requests, and per Section 3.1(b) of the FOIA, we were required to give priority to those requests for non-commercial purposes and provided you with a new due date of May 3. Finally, we contacted you again on May 3 and informed you that we were working to finalize your request; however, we were still processing a number of non-commercial requests which we were required to give priority to over commercial requests, as previously noted. We then set your new due date for May 6, 2016.

II. Responsive Documents

In response to your Request, Metra's Procurement Department is providing you with a copy of the written proposals submitted by Pulsar Advertising, Inc. and NorthStar Strategies in response to RFP #34552 (**"Responsive Documents"**).

III. Partial Denial

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Therefore, Attorney Thomas Stuebner has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. Certain commercial and financial information contained within the Responsive Document is exempt from disclosure under Section 7(1)(g) of FOIA. Section 7(1)(g) of FOIA states that “trade secrets and commercial or financial information obtained from a person or business” can be exempt “where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.”
2. Additionally, certain personal information mentioned in the Responsive Document is being redacted because it is exempt from disclosure under Section 7(1)(c) of FOIA, which exempts “personal information contained within public records, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy....” Section 7(1)(c) goes on to say that, “‘Unwarranted invasion of personal privacy’ means the disclosure of information that is highly personal or objectionable to a reasonable person and in which the subject’s right to privacy outweighs any legitimate public interest in obtaining the information.” It has been determined that the aforementioned personal information falls squarely within that definition and its redaction is appropriate under FOIA.
3. Documents containing recommendations and opinions within the Responsive Documents which express recommendations or opinions have been redacted under Section 7(1)(f) of FOIA. Section 7(1)(f) exempts from disclosure any “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated ...[.]” 5 ILCS 140/7(1)(f). As such, Attorney Thomas Stuebner has determined that the aforementioned recommendations and opinions are properly redacted under Section 7(1)(f) of FOIA.
4. Private information contained within the Responsive Documents is exempt from disclosure under Section 7(1)(b) of FOIA. “Private information” is defined as “unique identifiers, including a person’s social security number, driver’s license number, employee identification number, biometric identifiers, personal financial information, passwords or other access codes, medical records, home or personal telephone numbers, and personal e-mail addresses,” as well as home address, and personal license plates. 5 ILCS 140/2(c-5).

IV. Denial

Of the 357 pages reviewed, fourteen (14) are being withheld in their entirety under Section 7(1)(g) of FOIA. Section 7(1)(g) of FOIA states that “trade secrets and commercial or financial information obtained from a person or business” can be exempt “where the trade secrets or commercial or financial information are furnished under a claim that they are proprietary, privileged or confidential, and that disclosure of the trade secrets or commercial or financial information would cause competitive harm to the person or business, and only insofar as the claim directly applies to the records requested.”

Twenty-four (24) pages containing recommendations are being withheld in their entirety under 7(1)(f) of FOIA which exempts from disclosure, “[p]reliminary drafts, notes, recommendations, memoranda and other records in which opinions are expressed, or policies or actions are formulated ...[.]” 5 ILCS 140/7(1)(f).

Accordingly, per Attorney Thomas Stuebner it has been determined that the aforementioned pages fall squarely within these definitions of FOIA, and withholding these pages in their entirety is appropriate.

V. Right of Review

A person whose request to inspect or copy a public record was treated by the public body as a request for a commercial purpose under Section 3.1 of FOIA may file a request for review with the Public Access Counselor (“PAC”) of the Illinois Attorney General’s Office for the limited purpose of reviewing whether the public body properly determined that the request was made for a commercial purpose. 5 ILCS 140/9.5(b)). You can file your Request for Review with the PAC by writing to:

Public Access Counselor
Office of the Attorney General
500 South 2nd Street
Springfield, Illinois 62706
Fax: 217-782-1396
E-mail: publicaccess@atg.state.il.us.

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

If I can be of further assistance to you, please do not hesitate to contact me.

Sincerely,



Kathleen E. Haton
Freedom of Information Officer
foia@metrarr.com
FOIA Hotline #312-663-3642

Attachments