



April 7, 2020

VIA E-MAIL

Mr. Brian Lynch, Ph.D.

NIRO McAndrews, LLP

Email: blynch@niro-mcandrews.com

RE: 19-FOIA-165 Info - RFP 215 for ACORN

Dear Mr. Lynch:

Metra's FOIA Department ("FOIA Department") is responding to your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* ("FOIA").

I. Background

On June 20, 2019, the FOIA Department received your request for "complete copies of all proposals submitted in response to Metra's RFP #215 for an Automated Communications and Onboard Reporting Network (ACORN)... We would like to receive documents including, but not limited to, Price and Technical proposal submittals, Clarification Responses, BAFO proposal submittals and the agency's evaluation records" ("**Request**").

The FOIA Department contacted you on August 7, 2019 to inform you that your Request as written was unduly burdensome as our department must review, and if necessary, redact over 2,200 pages of records which would severely inhibit our ability to process other non-commercial requests. The FOIA Department asked that you narrow the scope of your Request with the understanding that you may submit future requests for additional records. A series of emails were exchanged, and on August 8, 2019, you narrowed your Request to "information from all the companies that submitted proposals. The parts that we are most interested in are: A) the pricing portions and B) sections 1, 2, and 3 of the technical proposals".

On October 7, 2019, the FOIA Department contacted you to ask for clarification as to the types of documents you were seeking in relation to that portion of your request for: "B) sections 1, 2, and 3 of the technical proposals". You responded that "Sections 1, 2, and 3 of the technical proposals are cover letters, project understanding, and key personnel, respectively".

II. Responsive Documents

In response to your Request, the FOIA Department is providing you with the following documents received from the four (4) companies that responded to RFP #215:

- Clever Devices: Section 3 – Key Personnel;
- GBS Group: Pricing, Section 1 – Cover Letter and Section 2 – Understanding of Project Scope;
- ISC: Pricing, Sections 1, 2 and 3; and
- LATA: Sections 1, 2 and 3

(“**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 Georgette Geha has determined that the following portions of the Responsive Documents are exempt from disclosure under certain provisions of FOIA:

1. Private information contained within the Responsive Documents is redacted under Section 7(1)(b) of FOIA. 5 ILCS 140/7(1)(b). "Private information" means 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 email addresses. 5 ILCS 140/2(c-5).
2. Confidential information marked as such and contained within the Responsive Documents is redacted under Section 7(1)(g) of FOIA, which states that “[t]rade 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.” 5 ILCS 140/7(g).

IV. Denial

Clever Devices’ Pricing and its Sections 1 & 2; GBS’ Section 3; and LATA’s Pricing are specifically marked as “Confidential” and are withheld in their entirety under Section 7(1)(g) of FOIA, which 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.” 5 ILCS 140/7(g). The aforementioned documents are exempt from disclosure because they are specifically marked as “Confidential” or “Proprietary” and their disclosure would likely cause competitive harm to the above-named businesses.

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 62701
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.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. E. Haton".

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

Attachments