

**DISTRICT ATTORNEY
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ALVIN L. BRAGG, JR.
DISTRICT ATTORNEY

July 6, 2023

[VIA E-MAIL: mbekesha@judicialwatch.org]

Michael Bekesha
Judicial Watch, Inc.
425 Third Street, SW, Suite 800
Washington, DC 20024

Re: FOIL #2 APPEAL – *Gibson Dunn & Crutcher retainer agreement*

The New York County District Attorney's Office has received your Freedom of Information Law (FOIL) appeal in connection with the above matter. As the FOIL Appeals Officer, I have reviewed the FOIL file and am prepared to rule on this matter.

On May 15, 2023, the Records Access Officer (RAO), Madeleine Guilmain, granted your FOIL request by providing a redacted copy of the requested retainer agreement between this office and the above-named law firm, upon receipt of payment of the copying fee. You now appeal the redaction of the hourly rates listed in the retainer agreement provided.

As an initial matter, I find that the RAO had a reasonable basis for the isolated redactions and uphold her determination on the grounds provided and incorporate her analysis and cited legal authority. The hourly rate was properly redacted pursuant to Public Officers Law (POL) §87(2)(d). Under this exemption, an agency may deny public access to records or portions thereof that are "trade secrets or are submitted to an agency by a commercial enterprise...which if disclosed would cause substantial injury to [its] competitive position." *Id.*; *Matter of Verizon NY v NYS Public Service Comm.*, 46 Misc 3d 858, 878 (Sup Ct Albany Co 2014), *aff'd* 137 AD3d 66 (2016) (cost information entitled to trade secret protection); *see also Queens Rail Corp. v Metropolitan Transp. Auth.*, 2022 NY Slip Op 33023(U), *4 (Sup Ct NY Co 2022) (redacted cost proposals of an MTA contractor); *Matter of Schenectady v O'Keeffe*, 50 AD3d 1384 (3d Dept 2008), *app denied* 11 NY3d 702 (2008)(cost data a company incurred in operating its business); *Matter of Catapult Learning, LLC v NYC Dep't. of Education*, 109 AD3d 731, 732 (1st Dept 2013) (pricing and budget information in contract proposal).

Moreover, under POL §89(5)(b)(1), the company/firm which provided the subject record to a government agency has a right to notice of a request for confidential

information that falls within this POL exception, to determine whether said exception should be granted or continued. Upon receipt of this appeal and consultation with counsel for Gibson Dunn, I am informed that it will consent to this agency providing an unredacted copy of the subject agreement. Pursuant to this changed circumstance, I am providing herein an unredacted copy of the retainer agreement, bates-stamped "DANY 017-032."

In accordance with the above discussion, your appeal is granted to the extent of furnishing an unredacted copy of the retainer agreement.

Sincerely,

A handwritten signature in blue ink that reads "Robin McCabe". The signature is written in a cursive, flowing style.

Robin McCabe
Assistant District Attorney
Chief, Civil Litigation Unit

Enc.

cc: Committee on Open Government (w/o attachment)
Department of State
41 State Street
Albany, New York 12231