

September 6, 2018

Filed Electronically

Office of the Prothonotary
Court of Common Pleas of Philadelphia County
First Judicial District of Pennsylvania
Civil Trial Division
City Hall
Philadelphia, PA 19107

RE: Submission of Record in:
Philadelphia Industrial Development Corporation v. Megan Shannon and City of Philadelphia, Department of Commerce, May Term 2018 – No. 02800

Dear Prothonotary:

We hereby submit the record in the above-referenced matter. Section 1303 of the Right-to-Know Law, 65 P.S. §§ 67.101, *et seq.*, (“RTKL”), defines the Record on Appeal as “the record before a court shall consist of the request, the agency’s response, the appeal filed under section 1101, the hearing transcript, if any, and the final written determination of the appeals officer.” Pursuant to *Department of Transportation v. Office of Open Records*, 7 A.3d 329 (Pa. Commw. Ct. 2010), this record includes all “evidence and documents admitted into evidence by the appeals officer pursuant to Section 1102(a)(2).” The record in this matter consists of the following:

Office of Open Records Docket No. 2018-0460 (consolidated):

1. The appeal filed by Megan Shannon (“Requester”) to the Office of Open Records (“OOR”) against the City of Philadelphia Department of Commerce, received March 13, 2018 and docketed as AP 2018-0460.
2. Official Notice of Appeal dated March 14, 2018, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
3. The appeal filed by the Requester to the OOR against the City of Philadelphia’s Mayor’s Office, received March 13, 2018 and docketed as AP 2018-0461.
4. Official Notice of Appeal dated March 14, 2018, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.

5. Email dated March 23, 2018, granting the City of Philadelphia's ("City") request for an extension of time to make a submission in the appeal.
6. Pennsylvania Department of Community and Economic Development's ("DCED") request to participate and position statement dated March 23, 2018.
7. City's submission dated March 28, 2018.
8. Requester's submission dated March 28, 2018.
9. Philadelphia Industrial Development Corporation's ("PIDC") request to participate and position statement dated April 4, 2018.
10. Email chain dated April 10, 2018 wherein Requester agrees to allow the OOR a two-week extension to issue the final determination.
11. The consolidated Final Determination dated April 26, 2018, issued by the OOR.

The OOR has discretion to hold a hearing on appeals filed but chose not to do so in this matter. Therefore, there is no transcript to transmit. Certification of the record in this case is attached to this letter. Please feel free to contact us for any reason in connection with this matter.

Sincerely,



Charles Rees Brown
Chief Counsel

Attachments

cc: Robert L. Kieffer, Esquire (City)
Megan Shannon, Esquire (Requester)
Karl S. Myers, Esquire (PIDC)
Scott W. Longwell, Esquire (DCED)

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

**PHILADELPHIA INDUSTRIAL
DEVELOPMENT CORPORATION,**

Petitioner,

v.

MEGAN SHANNON, et al

Respondent.

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:
:

May Term 2018

No. 02800

CERTIFICATION OF RECORD

I hereby certify the contents of the record transmitted with this Certification of Record pursuant to Pa.R.A.P. 1952 in *Megan Shannon v. Philadelphia Department of Commerce and Philadelphia Industrial Development Corporation*, OOR Dkt. AP 2018-0460 (consolidated), which is the subject of this appeal.

The record transmitted with this certification is generated entirely from the Office of Open Records database. It is our practice to scan in each and every document submitted in an appeal. Thus, no originals are being transmitted to this Court.

Also, my signature on this Certification of Record and on all other correspondence directed to the Court in connection with this matter may be electronic and not original. I hereby certify that this is my true and correct signature and that I have approved the use thereof for these purposes.



Erik Arneson, Executive Director
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
E-mail: openrecords@pa.gov

Dated: September 6, 2018

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

**PHILADELPHIA INDUSTRIAL
DEVELOPMENT CORPORATION,**
Petitioner,

v.

MEGAN SHANNON, et al
Respondent.

:
:
: **May Term 2018**
:
: **No. 02800**
:
:
:

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the Certified Record upon the following persons via first class mail or email addressed as follows:

Robert Kieffer, Esquire
Jo Rosenberger Altman, Esquire
City of Philadelphia
1515 Arch Street
Philadelphia, PA 19102
RKieffer@phila.gov
Jo.RosenbergerAltman@phila.gov

Scott W. Longwell, Esquire
Pennsylvania Department of
Community and Economic Development
400 North Street, 4th Floor
Harrisburg, PA 17120
SLongwell@pa.gov

Karl S. Myers, Esquire
Stradley Ronon Stevens & Young LLP
2600 One Commerce Square
Philadelphia, PA 19103
KMyers@Stradley.com

Megan Shannon
4826 Hazel Avenue
Philadelphia, PA 19143
Megan.Shannon@gmail.com



Faith Henry, Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
E-mail: fahenry@pa.gov

Dated: September 6, 2018

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

PHILADELPHIA INDUSTRIAL
DEVELOPMENT CORPORATION,
Petitioner,

v.

MEGAN SHANNON, et al
Respondent.

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: May Term 2018
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: No. 02800
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CERTIFIED RECORD

Charles Rees Brown
Chief Counsel
Commonwealth of Pennsylvania
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
Phone: (717) 346-9903
Fax: (717) 425-5343
E-mail: CharleBrow@pa.gov

Date: September 6, 2018

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION**

PHILADELPHIA INDUSTRIAL DEVELOPMENT CORPORATION,	:	
Petitioner,	:	
	:	May Term 2018
	:	
v.	:	No. 02800
	:	
MEGAN SHANNON, et al	:	
Respondent.	:	

**TABLE OF CONTENTS
RECORD**

*Megan Shannon v. Philadelphia Department of Commerce and Philadelphia Industrial
Development Corporation,
OOR Dkt. AP 2018-0460 (consolidated).*

Office of Open Records Docket No. 2018-0460 (consolidated):

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2. Official Notice of Appeal dated March 14, 2018, sent to both parties by the OOR, advising them of the docket number and identifying the appeals officer for the matter.
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11. The consolidated Final Determination dated April 26, 2018, issued by the OOR.

1

Sostar, Janelle K

From: no-reply@openrecords.pa.gov
Sent: Tuesday, March 13, 2018 2:25 PM
To: megan.shannon@gmail.com
Subject: PA Office of Open Records - Appeal Confirmation



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name: Megan Shannon
Address 1: 4826 Hazel Avenue
Address 2:
City: Philadelphia
State: Pennsylvania
Zip: 19143
Phone: 603-312-4433
Fax:
Email: megan.shannon@gmail.com
Agency (typed): Department of Commerce (Philadelphia)
Agency Address 1: City Hall
Agency Address 2:
Agency City: Philadelphia
Agency State: Pennsylvania
Agency Zip: 19107
Agency Phone: 215-686-7508
Agency Fax:
Agency Email: kathleen.lonie@phila.gov

Records Requested: I requested a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. The City gave me a redacted copy of its proposal to

RECEIVED
MAR 13 2018
OFFICE OF OPEN RECORDS

Amazon, titled "PHILADELPHIA DELIVERS, Response to the Amazon HQ2 RFP." I would like an uredacted version, or at least a version that does not redact the tax incentives the city is offering to Amazon as part of its bid.

Request Submitted to Agency Via: e-mail

Request Date: 01/18/2018

Response Date: 02/26/2018

No Response: No

Agency Open Records Officer: Kathleen Lonie

Reasons for Appeal: See attached file "Additional Reasons for Appeal.pdf"

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or notices extending the Agency's time to respond to my request: Yes

Agree to permit the OOR an additional 30 days to issue a final order: No

Interested in resolving this issue through OOR mediation: No

Attachments:

- RTKL request to mayor office.pdf
- RTKL - request to commerce.pdf
- Final Response - Shannon _677 and _697.pdf
- Email correspondence.pdf
- Additional Reasons for Appeal.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Megan K. Shannon - RTKL Appeal - Additional Reasons for Appeal

I requested a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. The City gave me a redacted copy of its proposal to Amazon, titled "PHILADELPHIA DELIVERS, Response to the Amazon HQ2 RFP." The "City of Philadelphia Proposal" section, including its table of contents, was redacted. The "Business Environment + Incentives" section, including the table of contents, was redacted. Finally, all of Section 5 of the city's proposal, including the title of that section, was redacted.

In response to my bid, the City stated the following reasons for denying me a full, un-redacted copy of the City's proposal:

- Records reflecting the "strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation." 65 P.S. § 67.708(b)(10)(i)(B).
- Records constituting or revealing a trade secret or confidential proprietary information pursuant to 65 P.S. § 67.708(b)(11), as well as, information protected from disclosure pursuant to the Pennsylvania Uniform Trade Secrets Act, 12 Pa.C.S. § 5301, *et seq.*, and the Federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, *et seq.*
- The contents of feasibility estimates or evaluations made for or by any agency relative to the leasing, acquiring or disposing of real property or an interest in real property, the purchase of public supplies or equipment including in the real estate transaction, or construction projects pursuant to 65 P.S. § 67.708(b)(22).
- Records including, but not limited to, a proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract, financial information of a bidder or offerer, or records of an agency proposal evaluation committee exempt from disclosure pursuant to 65 P.S. § 67.708(b)(26).

In response to the redaction based on 65 P.S. § 67.708(b)(10)(i)(B), this document does not reflect *strategy*. I am interested in knowing what monetary or tax incentives the city has offered in its bid; the bid has been developed and delivered and cannot change at this point.

The city's refusal to provide an un-redacted copy based on the argument that it contains "trade secret or confidential proprietary information" is specious with respect to the value of tax incentives it has offered. I am not interested in any trade secrets of the Philadelphia tech community that may be contained in the bid; I am only interested in the amount of tax incentives.

Further, I am not necessarily interested in learning the feasibility estimates of real estate; I strictly want to know the monetary value of what the City has offered to Amazon.

This bid to Amazon is not a proposal for supplies, services, or construction, therefore 65 P.S. § 67.708(b)(26) does not exempt the city from disclosure.

The City's bid to Amazon has been made, and the City cannot at this point change its proposal. Therefore, there is no detriment to the City if its bid and all of the financial incentives it has offered to Amazon is made public.

Sincerely,
Megan K. Shannon



Megan Shannon <megan.shannon@gmail.com>

FW: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

3 messages

City of Philadelphia Right to Know <righttoknow@phila.gov>
Reply-To: City of Philadelphia Right to Know <righttoknow@phila.gov>
To: megan.shannon@gmail.com

Thu, Jan 18, 2018 at 4:19 PM



THE CITY OF PHILADELPHIA

Dear Megan Shannon,

Thank you for your correspondence. This is an automatic response to let you know that the City will process your request and respond further within 5 business days of its receipt by an Open Records Officer. Please note that requests received after 5PM are deemed received the next business day.

Did you know that the City already releases a lot of information and open data online? You might be able to find the answer to your inquiry right now!

Here are some common types of requests we receive and where to find this information online right now:

- Search for a property's L&I related permits, licenses, violations, and appeals with the L&I property history tool.
- Search for a property's Real Estate Tax Balance with the Revenue Department's tax real estate lookup tool.
- Find all of the City of Philadelphia's open data sets on Open Data Philly, the Philadelphia region's open data portal.
- Search information about professional service contracts online at eContract Philly.
- Search information about procurement contracts online with PHL Contracts.
- Search City legislation and related hearings online with Legistar.
- Obtain financial disclosure forms from the Department of Records.

If you are seeking a police incident report, you can obtain the proper form from the Department of Records. Please note that police incident reports cost \$25.00.

The City of Philadelphia is often confused with other entities, such as the ones below. If you want to submit a request to one of these entities, please click the links below to be directed to their Open Records Policies:

- Philadelphia Parking Authority
- School District of Philadelphia
- City of Philadelphia District Attorney's Office
- Philadelphia Redevelopment Authority
- First Judicial District (Philadelphia Court of Common Pleas)

If one of these sources has solved your inquiry, please let us know! Otherwise, thank you for your patience, and we will be in touch soon.

Sincerely,
The City of Philadelphia

Please Note: To help make sure that future emails from us don't end up in your spam or junk folder, please add this email address to your safe sender list.

City of Philadelphia Right to Know <righttoknow@phila.gov>
Reply-To: City of Philadelphia Right to Know <righttoknow@phila.gov>
To: megan.shannon@gmail.com

Thu, Jan 25, 2018 at 8:28 AM



CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway Building
1515 Arch Street
Philadelphia, PA 19102

Sozi Pedro Tulante
City Solicitor

Re: FW: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid
Request #: 677

Dear Megan Shannon:

Thank you for writing to the City of Philadelphia ("City") with your request for information. A brief description of your request(s) as well as the City's internal tracking number can be found below.

Please note at the outset that requests for records to state and local agencies in Pennsylvania are generally governed by the Commonwealth's Right-To-Know Law, 65 P.S. § 67.101 et seq., (the "Act" or "RTK Law").

Be advised that we will be asserting the City's right to an additional thirty (30) calendar days to review the request as provided for by the Act. This right is being asserted for the following reasons:

- a) Bona fide staffing limitations (in retrieving and reviewing the record(s) requested);
- b) A legal review is necessary to determine whether the record(s) is a record(s) subject to access under the Act;
- c) To determine if the request requires the redaction of a public record(s);
- d) The extent or nature of the request precludes a response within the required time period.

We will contact you regarding this request within thirty (30) calendar days as required by law.

Respectfully,

A handwritten signature in black ink, appearing to read "Jill I. Freeman".

Jill I. Freeman
Deputy City Solicitor
(215) 683-5457
(215) 683-5069 (fax)
jill.freeman@phila.gov

Tracking #: Shannon 677

Request Summary: All documents sent to Amazon as part of the "Philly Delivers" HQ2 proposal.

Original Request:

Received: 1/18/18

From: Megan Shannon [mailto:megan.shannon@gmail.com]

Sent: Thursday, January 18, 2018 2:10 PM

To: Edward W. Garcia <Edward.W.Garcia@Phila.gov>

Subject: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

Dear Mr. Garcia:

I am attaching a Request for Access to Public Records pursuant to the Right To Know Law to request a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.

Sincerely,

Megan Shannon

Ticket attachments : 1. RTKL - request form.pdf

Robert Kieffer <righttoknow@phila.gov>
Reply-To: Robert Kieffer <righttoknow@phila.gov>
To: megan.shannon@gmail.com

Mon, Feb 26, 2018 at 4:36 PM

Dear Ms. Shannon,

Attached please find the final response to your Right to Know Law requests.

Thank you,

Robert L. Kieffer
Assistant City Solicitor
(215) 683-5032 (Tel.)
(215) 683-5069 (fax)

On Thu, Jan 18 at 4:19 PM , Megan Shannon <megan.shannon@gmail.com> wrote:
Received: 1/18/18

From: Megan Shannon [mailto:megan.shannon@gmail.com]

Sent: Thursday, January 18, 2018 2:10 PM

To: Edward W. Garcia <Edward.W.Garcia@Phila.gov>

Subject: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

Dear Mr. Garcia:

I am attaching a Request for Access to Public Records pursuant to the Right To Know Law to request a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.


Sincerely,

Megan Shannon

Final Response - Shannon _677 and _697.pdf

3/1/2018

Gmail - FW: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

 121K



CITY OF PHILADELPHIA

LAW DEPARTMENT
ONE PARKWAY BUILDING
1515 ARCH STREET
PHILADELPHIA, PA 19102

Sozi Pedro Tulante
City Solicitor

Robert L. Kieffer
Assistant City Solicitor
(215) 683-5032 (Tel.)
(215) 683-5069 (fax)
Robert.Kieffer@phila.gov

February 26, 2018

VIA ELECTRONIC MAIL

Megan Shannon
4826 Hazel Avenue
Philadelphia, PA 19143
Megan.shannon@gmail.com

Re: Shannon #677 and #697

Dear Ms. Shannon:

Thank you for writing to the City of Philadelphia (the "City") Mayor's Office (the "Mayor's Office") and Department of Commerce ("Commerce") with your requests for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 *et seq.* (the "Act" or "RTKL"). On January 18, 2018, the Mayor's Office and Commerce received your requests for the following:

"I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions."

On January 25, 2018, the City Law Department, on behalf of the Mayor's Office and Commerce, informed you that it would require up to an additional thirty (30) days to respond to your requests. This constitutes the final response of the Mayor's Office and Commerce to your requests.

At the outset, the City notes that the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101, *et seq.* (the "RTKL") balances the public's interest in disclosure with competing governmental and third party interests in keeping certain information confidential to facilitate governmental business, protect competitive and financial positions, and protect privacy and security interests. The RTKL was not intended to put Pennsylvania cities at a financial or competitive disadvantage. Indeed, the RTKL expressly exempts various records that could negatively impact the financial position of an agency if released. *E.g.*, 65 P.S. §§ 67.708(b)(1)(i) (exempting records which would result in the loss of Federal or State funds if disclosed); 708(b)(13) (records that would disclose the identity of an individual who lawfully makes a donation to an agency); *see also* the discussion of additional exemptions below. The City has considered these interests and the purpose of the RTKL carefully in applying applicable

exceptions, and has redacted information that is exempt from disclosure only to the extent the public release of such information would harm the competitive or financial position of entities that collaborated to submit the Philadelphia Delivers Proposal in the Amazon RFP process or in other business dealings, including the City.

As such, your requests for the City's proposal are *granted*, except to the extent it has been redacted on the grounds described above and below, and you may download a redacted copy of the proposal submitted by the City to Amazon for Amazon HQ2 at the following URL: https://www.dropbox.com/s/hjr99rl123iyr6b/PHL_AMAZON_FINAL%20Public.pdf?dl=0. The remainder of the City's submission to Amazon may be accessed at the following URL: <https://public.philadelphiadelivers.com/>.¹ The proposal has been redacted only to the extent it reflects information exempt from disclosure on one or more of such grounds, or a combination thereof including:

- Records reflecting the "strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation." 65 P.S. § 67.708(b)(10)(i)(B).
- Records constituting or revealing a trade secret or confidential proprietary information pursuant to 65 P.S. § 67.708(b)(11), as well as, information protected from disclosure pursuant to the Pennsylvania Uniform Trade Secrets Act, 12 Pa.C.S. § 5301, *et seq.*, and the Federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, *et seq.*
- The contents of feasibility estimates or evaluations made for or by any agency relative to the leasing, acquiring or disposing of real property or an interest in real property, the purchase of public supplies or equipment including in the real estate transaction, or construction projects pursuant to 65 P.S. § 67.708(b)(22).
- Records including, but not limited to, a proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract, financial information of a bidder or offerer, or records of an agency proposal evaluation committee exempt from disclosure pursuant to 65 P.S. § 67.708(b)(26).

Should you wish to contest any part of this decision, you may file an appeal with the Office of Open records as provided for in 65 P.S. § 67.1101. You have 15 business days from the mailing date of this response to challenge the City's response. Please direct any appeal to the Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234.

¹ See 65 P.S. § 67.704(b)(1). If you are unwilling or unable to access the records you have requested electronically, you may, within 30 days of receipt of this response, submit a written request to me to have the record converted to paper. Should you request paper copies, the City will provide you with an estimate of its processing charges at a fee of \$0.25 per page (as set by the Office of Open Records), which must then be paid before the requested records will be released. 65 P.S. § 67.1307(a), (b), (h); *id.* § 67.901; *accord Bussinger v. Pa. Dept. of Corrections*, AP 2010-0377 (Pa. OOR May 27, 2010); *see also Kinsella v. PENNDOT*, AP 2009-0987 (Amended) (Pa. OOR Dec. 16, 1009); *accord Buehl v. Pennsylvania Department of Corrections*, AP 2011-1411 (Pa. OOR Nov. 2, 2011). The actual total cost, including the actual cost of mailing if applicable, will be provided once records are provided, and you will be invoiced and/or refunded for the difference as appropriate. Checks or money orders may be made payable to the City of Philadelphia and sent to my attention.

Please be advised that this correspondence will close your request with our office as permitted by law.

Respectfully,

A handwritten signature in black ink, appearing to read 'Robert Kieffer', written in a cursive style.

Robert Kieffer
Assistant City Solicitor



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 1/18/18

REQUEST SUBMITTED BY: ☒ E-MAIL ☐ U.S. MAIL ☐ FAX ☐ IN-PERSON

REQUEST SUBMITTED TO (Agency name & address):
Edward Garcia, Deputy Director, Department of Commerce, 1515 Arch St., 12th Floor, Philadelphia, PA 19102, Edward.w.garcia@phila.gov

NAME OF REQUESTER: Megan Keefe Shannon

STREET ADDRESS: 4826 Hazel Avenue

CITY/STATE/COUNTY/ZIP(Required): Philadelphia, PA 19143

TELEPHONE (Optional): 603-312-4433 EMAIL (optional): megan.shannon@gmail.com

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information.
Please use additional sheets if necessary*

I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.

DO YOU WANT COPIES? ☒ YES ☐ NO

DO YOU WANT TO INSPECT THE RECORDS? ☒ YES ☐ NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? ☐ YES ☒ NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? ☒ YES ☐ NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

☐ I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*



March 14, 2018

Via E-Mail only:

Megan Shannon
4826 Hazel Avenue
Philadelphia, PA 19143
megan.shannon@gmail.com

Via E-Mail only:

Jill Freeman, Esquire
Agency Open Records Officer
City of Philadelphia Law Department
1515 Arch Street
Philadelphia, PA 19102
jill.freeman@phila.gov

Edward Garcia
Agency Open Records Officer
City of Philadelphia Commerce
Department
1515 Arch Street, 12th Floor
Philadelphia, PA 19102
edward.w.garcia@phila.gov

RE: OFFICIAL NOTICE OF APPEAL-DOCKET #AP 2018-0460

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, *et seq.* on **March 13, 2018**. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days. The OOR's Final Determination is currently due on **April 12, 2018**.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. The Parties agreement to mediate stays the Final Determination Deadline. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination, unless the Requester agreed to an additional 30 calendar day extension on the appeal form.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). **To meet this burden, the agency must provide evidence to the OOR.** The law requires the agency's position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR's website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by 11:59:59 p.m. on March 23, 2018. The record closing date is seven (7) business days from the date of this letter unless the proceedings have been stayed for the parties to submit a completed mediation agreement form, then the record will remain open for seven (7) additional business days beyond the mediation agreement submission deadline. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the above docket number on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

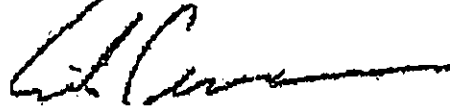
Commonwealth Court has held that "the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt." (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

Public Record Notice: All dockets, filings and OOR orders and opinions in this appeal will be public records and subject to public access with limited exception. The OOR's Final Determination will generally include a summary of the case including the identity of the parties and the relevant factual background. Final Determinations are available on the OOR's website and searchable on-line.

If you have general questions about the appeal process, please contact the OOR at (717) 346-9903. If you have questions specific to your appeal, please e-mail the assigned Appeals Officer (contact information is enclosed) - and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Arneson', written over a horizontal line.

Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Benjamin Lorah, Esq.

CONTACT INFORMATION:

**Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234**

FACSIMILE:

(717) 425-5343

E-MAIL:

blorah@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <http://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

3

Sostar, Janelle K

From: no-reply@openrecords.pa.gov
Sent: Tuesday, March 13, 2018 2:25 PM
To: megan.shannon@gmail.com
Subject: PA Office of Open Records - Appeal Confirmation



pennsylvania
OFFICE OF OPEN RECORDS

You have filed an appeal of an agency's response to a request for records under the Right-to-Know Law.

Name: Megan Shannon
Address 1: 4826 Hazel Avenue
Address 2:
City: Philadelphia
State: Pennsylvania
Zip: 19143
Phone: 603-312-4433
Fax:
Email: megan.shannon@gmail.com
Agency (typed): Department of Commerce (Philadelphia)
Agency Address 1: City Hall
Agency Address 2:
Agency City: Philadelphia
Agency State: Pennsylvania
Agency Zip: 19107
Agency Phone: 215-686-7508
Agency Fax:
Agency Email: kathleen.lonie@phila.gov

Records Requested:

I requested a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. The City gave me a redacted copy of its proposal to

RECEIVED
MAR 13 2018
OFFICE OF OPEN RECORDS

Amazon, titled "PHILADELPHIA DELIVERS, Response to the Amazon HQ2 RFP." I would like an uredacted version, or at least a version that does not redact the tax incentives the city is offering to Amazon as part of its bid.

Request Submitted to Agency Via: e-mail

Request Date: 01/18/2018

Response Date: 02/26/2018

No Response: No

Agency Open Records Officer: Kathleen Lonie

Reasons for Appeal: See attached file "Additional Reasons for Appeal.pdf"

Attached a copy of my request for records: Yes

Attached a copy of all responses from the Agency regarding my request: Yes

Attached any letters or notices extending the Agency's time to respond to my request: Yes

Agree to permit the OOR an additional 30 days to issue a final order: No

Interested in resolving this issue through OOR mediation: No

Attachments:

- RTKL request to mayor office.pdf
- RTKL - request to commerce.pdf
- Final Response - Shannon _677 and _697.pdf
- Email correspondence.pdf
- Additional Reasons for Appeal.pdf

I requested the listed records from the Agency named above. By submitting this form, I am appealing the Agency's denial, partial denial, or deemed denial because the requested records are public records in the possession, custody or control of the Agency; the records do not qualify for any exemptions under § 708 of the RTKL, are not protected by a privilege, and are not exempt under any Federal or State law or regulation; and the request was sufficiently specific.

Megan K. Shannon - RTKL Appeal - Additional Reasons for Appeal

I requested a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. The City gave me a redacted copy of its proposal to Amazon, titled "PHILADELPHIA DELIVERS, Response to the Amazon HQ2 RFP." The "City of Philadelphia Proposal" section, including its table of contents, was redacted. The "Business Environment + Incentives" section, including the table of contents, was redacted. Finally, all of Section 5 of the city's proposal, including the title of that section, was redacted.

In response to my bid, the City stated the following reasons for denying me a full, un-redacted copy of the City's proposal:

- Records reflecting the "strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation." 65 P.S. § 67.708(b)(10)(i)(B).
- Records constituting or revealing a trade secret or confidential proprietary information pursuant to 65 P.S. § 67.708(b)(11), as well as, information protected from disclosure pursuant to the Pennsylvania Uniform Trade Secrets Act, 12 Pa.C.S. § 5301, *et seq.*, and the Federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, *et seq.*
- The contents of feasibility estimates or evaluations made for or by any agency relative to the leasing, acquiring or disposing of real property or an interest in real property, the purchase of public supplies or equipment including in the real estate transaction, or construction projects pursuant to 65 P.S. § 67.708(b)(22).
- Records including, but not limited to, a proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract, financial information of a bidder or offerer, or records of an agency proposal evaluation committee exempt from disclosure pursuant to 65 P.S. § 67.708(b)(26).

In response to the redaction based on 65 P.S. § 67.708(b)(10)(i)(B), this document does not reflect *strategy*. I am interested in knowing what monetary or tax incentives the city has offered in its bid; the bid has been developed and delivered and cannot change at this point.

The city's refusal to provide an un-redacted copy based on the argument that it contains "trade secret or confidential proprietary information" is specious with respect to the value of tax incentives it has offered. I am not interested in any trade secrets of the Philadelphia tech community that may be contained in the bid; I am only interested in the amount of tax incentives.

Further, I am not necessarily interested in learning the feasibility estimates of real estate; I strictly want to know the monetary value of what the City has offered to Amazon.

This bid to Amazon is not a proposal for supplies, services, or construction, therefore 65 P.S. § 67.708(b)(26) does not exempt the city from disclosure.

The City's bid to Amazon has been made, and the City cannot at this point change its proposal. Therefore, there is no detriment to the City if its bid and all of the financial incentives it has offered to Amazon is made public.

Sincerely,
Megan K. Shannon



Megan Shannon <megan.shannon@gmail.com>

FW: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

3 messages

City of Philadelphia Right to Know <righttoknow@phila.gov>
 Reply-To: City of Philadelphia Right to Know <righttoknow@phila.gov>
 To: megan.shannon@gmail.com

Thu, Jan 18, 2018 at 4:19 PM



THE CITY OF PHILADELPHIA

Dear Megan Shannon,

Thank you for your correspondence. This is an automatic response to let you know that the City will process your request and respond further within 5 business days of its receipt by an Open Records Officer. Please note that requests received after 5PM are deemed received the next business day.

Did you know that the City already releases a lot of information and open data online? You might be able to find the answer to your inquiry right now!

Here are some common types of requests we receive and where to find this information online right now:

- Search for a property's L&I related permits, licenses, violations, and appeals with the L&I property history tool.
- Search for a property's Real Estate Tax Balance with the Revenue Department's tax real estate lookup tool.
- Find all of the City of Philadelphia's open data sets on Open Data Philly, the Philadelphia region's open data portal.
- Search information about professional service contracts online at eContract Philly.
- Search information about procurement contracts online with PHL Contracts.
- Search City legislation and related hearings online with Legistar.
- Obtain financial disclosure forms from the Department of Records.

If you are seeking a police incident report, you can obtain the proper form from the Department of Records. Please note that police incident reports cost \$25.00.

The City of Philadelphia is often confused with other entities, such as the ones below. If you want to submit a request to one of these entities, please click the links below to be directed to their Open Records Policies:

- Philadelphia Parking Authority
- School District of Philadelphia
- City of Philadelphia District Attorney's Office
- Philadelphia Redevelopment Authority
- First Judicial District (Philadelphia Court of Common Pleas)

If one of these sources has solved your inquiry, please let us know! Otherwise, thank you for your patience, and we will be in touch soon.

Sincerely,
 The City of Philadelphia

Please Note: To help make sure that future emails from us don't end up in your spam or junk folder, please add this email address to your safe sender list.

City of Philadelphia Right to Know <righttoknow@phila.gov>
Reply-To: City of Philadelphia Right to Know <righttoknow@phila.gov>
To: megan.shannon@gmail.com

Thu, Jan 25, 2018 at 8:28 AM



CITY OF PHILADELPHIA

LAW DEPARTMENT
One Parkway Building
1515 Arch Street
Philadelphia, PA 19102

Sozi Pedro Tulante
City Solicitor

Re: FW: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid
Request #: 677

Dear Megan Shannon:

Thank you for writing to the City of Philadelphia ("City") with your request for information. A brief description of your request(s) as well as the City's internal tracking number can be found below.

Please note at the outset that requests for records to state and local agencies in Pennsylvania are generally governed by the Commonwealth's Right-To-Know Law, 65 P.S. § 67.101 et seq., (the "Act" or "RTK Law").

Be advised that we will be asserting the City's right to an additional thirty (30) calendar days to review the request as provided for by the Act. This right is being asserted for the following reasons:

- a) Bona fide staffing limitations (in retrieving and reviewing the record(s) requested);
- b) A legal review is necessary to determine whether the record(s) is a record(s) subject to access under the Act;
- c) To determine if the request requires the redaction of a public record(s);
- d) The extent or nature of the request precludes a response within the required time period.

We will contact you regarding this request within thirty (30) calendar days as required by law.

Respectfully,

A handwritten signature in black ink, appearing to read "Jill I. Freeman".

Jill I. Freeman
Deputy City Solicitor
(215) 683-5457
(215) 683-5069 (fax)
jill.freeman@phila.gov

3/1/2018

Gmail - FW: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

Tracking #: Shannon 677

Request Summary: All documents sent to Amazon as part of the "Philly Delivers" HQ2 proposal.

Original Request:

Received: 1/18/18

From: Megan Shannon [mailto:megan.shannon@gmail.com]

Sent: Thursday, January 18, 2018 2:10 PM

To: Edward W. Garcia <Edward.W.Garcia@Phila.gov>

Subject: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

Dear Mr. Garcia:

I am attaching a Request for Access to Public Records pursuant to the Right To Know Law to request a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.

Sincerely,

Megan Shannon

Ticket attachments : 1. RTKL - request form.pdf

Robert Kieffer <righttoknow@phila.gov>
Reply-To: Robert Kieffer <righttoknow@phila.gov>
To: megan.shannon@gmail.com

Mon, Feb 26, 2018 at 4:36 PM

Dear Ms. Shannon,

Attached please find the final response to your Right to Know Law requests.

Thank you,

Robert L. Kieffer
Assistant City Solicitor
(215) 683-5032 (Tel.)
(215) 683-5069 (fax)

On Thu, Jan 18 at 4:19 PM , Megan Shannon <megan.shannon@gmail.com> wrote:
Received: 1/18/18

From: Megan Shannon [mailto:megan.shannon@gmail.com]

Sent: Thursday, January 18, 2018 2:10 PM

To: Edward W. Garcia <Edward.W.Garcia@Phila.gov>

Subject: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

Dear Mr. Garcia:

I am attaching a Request for Access to Public Records pursuant to the Right To Know Law to request a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.


Sincerely,

Megan Shannon

Final Response - Shannon _677 and _697.pdf

3/1/2018

Gmail - FW: Request for Access to Public Records Pursuant to the RTKL - Amazon Bid

 121K



CITY OF PHILADELPHIA

LAW DEPARTMENT
ONE PARKWAY BUILDING
1515 ARCH STREET
PHILADELPHIA, PA 19102

Sozi Pedro Tulante
City Solicitor

Robert L. Kieffer
Assistant City Solicitor
(215) 683-5032 (Tel.)
(215) 683-5069 (fax)
Robert.Kieffer@phila.gov

February 26, 2018

VIA ELECTRONIC MAIL

Megan Shannon
4826 Hazel Avenue
Philadelphia, PA 19143
Megan.shannon@gmail.com

Re: Shannon #677 and #697

Dear Ms. Shannon:

Thank you for writing to the City of Philadelphia (the "City") Mayor's Office (the "Mayor's Office") and Department of Commerce ("Commerce") with your requests for information pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 *et seq.* (the "Act" or "RTKL"). On January 18, 2018, the Mayor's Office and Commerce received your requests for the following:

"I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions."

On January 25, 2018, the City Law Department, on behalf of the Mayor's Office and Commerce, informed you that it would require up to an additional thirty (30) days to respond to your requests. This constitutes the final response of the Mayor's Office and Commerce to your requests.

At the outset, the City notes that the Pennsylvania Right-to-Know Law, 65 P.S. § 67.101, *et seq.* (the "RTKL") balances the public's interest in disclosure with competing governmental and third party interests in keeping certain information confidential to facilitate governmental business, protect competitive and financial positions, and protect privacy and security interests. The RTKL was not intended to put Pennsylvania cities at a financial or competitive disadvantage. Indeed, the RTKL expressly exempts various records that could negatively impact the financial position of an agency if released. *E.g.*, 65 P.S. §§ 67.708(b)(1)(i) (exempting records which would result in the loss of Federal or State funds if disclosed); 708(b)(13) (records that would disclose the identity of an individual who lawfully makes a donation to an agency); *see also* the discussion of additional exemptions below. The City has considered these interests and the purpose of the RTKL carefully in applying applicable

exceptions, and has redacted information that is exempt from disclosure only to the extent the public release of such information would harm the competitive or financial position of entities that collaborated to submit the Philadelphia Delivers Proposal in the Amazon RFP process or in other business dealings, including the City.

As such, your requests for the City's proposal are **granted**, except to the extent it has been redacted on the grounds described above and below, and you may download a redacted copy of the proposal submitted by the City to Amazon for Amazon HQ2 at the following URL: https://www.dropbox.com/s/hjr99rl123iyr6b/PHL_AMAZON_FINAL%20Public.pdf?dl=0. The remainder of the City's submission to Amazon may be accessed at the following URL: <https://public.philadelphiadelivers.com/>.¹ The proposal has been redacted only to the extent it reflects information exempt from disclosure on one or more of such grounds, or a combination thereof including:

- Records reflecting the "strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal or regulation." 65 P.S. § 67.708(b)(10)(i)(B).
- Records constituting or revealing a trade secret or confidential proprietary information pursuant to 65 P.S. § 67.708(b)(11), as well as, information protected from disclosure pursuant to the Pennsylvania Uniform Trade Secrets Act, 12 Pa.C.S. § 5301, *et seq.*, and the Federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, *et seq.*
- The contents of feasibility estimates or evaluations made for or by any agency relative to the leasing, acquiring or disposing of real property or an interest in real property, the purchase of public supplies or equipment including in the real estate transaction, or construction projects pursuant to 65 P.S. § 67.708(b)(22).
- Records including, but not limited to, a proposal pertaining to agency procurement or disposal of supplies, services or construction prior to the award of the contract, financial information of a bidder or offerer, or records of an agency proposal evaluation committee exempt from disclosure pursuant to 65 P.S. § 67.708(b)(26).

Should you wish to contest any part of this decision, you may file an appeal with the Office of Open records as provided for in 65 P.S. § 67.1101. You have 15 business days from the mailing date of this response to challenge the City's response. Please direct any appeal to the Office of Open Records, 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234.

¹ See 65 P.S. § 67.704(b)(1). If you are unwilling or unable to access the records you have requested electronically, you may, within 30 days of receipt of this response, submit a written request to me to have the record converted to paper. Should you request paper copies, the City will provide you with an estimate of its processing charges at a fee of \$0.25 per page (as set by the Office of Open Records), which must then be paid before the requested records will be released. 65 P.S. § 67.1307(a), (b), (h); *id.* § 67.901; *accord Bussinger v. Pa. Dept. of Corrections*, AP 2010-0377 (Pa. OOR May 27, 2010); *see also Kinsella v. PENNDOT*, AP 2009-0987 (Amended) (Pa. OOR Dec. 16, 1009); *accord Buehl v. Pennsylvania Department of Corrections*, AP 2011-1411 (Pa. OOR Nov. 2, 2011). The actual total cost, including the actual cost of mailing if applicable, will be provided once records are provided, and you will be invoiced and/or refunded for the difference as appropriate. Checks or money orders may be made payable to the City of Philadelphia and sent to my attention.

Please be advised that this correspondence will close your request with our office as permitted by law.

Respectfully,

A handwritten signature in black ink, appearing to read "Robert Kieffer", written in a cursive style.

Robert Kieffer
Assistant City Solicitor



pennsylvania

OFFICE OF OPEN RECORDS

STANDARD RIGHT-TO-KNOW REQUEST FORM

DATE REQUESTED: 1/18/18

REQUEST SUBMITTED BY: ☒ E-MAIL ☐ U.S. MAIL ☐ FAX ☐ IN-PERSON
Kathleen Lonie, Room 204 City Hall, Philadelphia, PA 19107

REQUEST SUBMITTED TO (Agency name & address):
kathleen.lonie@phila.gov

NAME OF REQUESTER: Megan Keefe Shannon

STREET ADDRESS: 4826 Hazel Avenue

CITY/STATE/COUNTY/ZIP(Required): Philadelphia, PA 19143

TELEPHONE (Optional): 603-312-4433 EMAIL (optional): megan.shannon@gmail.com

RECORDS REQUESTED: **Provide as much specific detail as possible so the agency can identify the information. Please use additional sheets if necessary*

I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.

DO YOU WANT COPIES? ☒ YES ☐ NO

DO YOU WANT TO INSPECT THE RECORDS? ☒ YES ☐ NO

DO YOU WANT CERTIFIED COPIES OF RECORDS? ☐ YES ☒ NO

DO YOU WANT TO BE NOTIFIED IN ADVANCE IF THE COST EXCEEDS \$100? ☒ YES ☐ NO

**** PLEASE NOTE: RETAIN A COPY OF THIS REQUEST FOR YOUR FILES ****
**** IT IS A REQUIRED DOCUMENT IF YOU WOULD NEED TO FILE AN APPEAL ****

FOR AGENCY USE ONLY

OPEN-RECORDS OFFICER:

☐ I have provided notice to appropriate third parties and given them an opportunity to object to this request

DATE RECEIVED BY THE AGENCY:

AGENCY FIVE (5) BUSINESS DAY RESPONSE DUE:

***Public bodies may fill anonymous verbal or written requests. If the requestor wishes to pursue the relief and remedies provided for in this Act, the request must be in writing. (Section 702.) Written requests need not include an explanation why information is sought or the intended use of the information unless otherwise required by law. (Section 703.)*

Henry, Faith

From: Microsoft Outlook
To: Megan.shannon@gmail.com
Sent: Wednesday, March 14, 2018 11:30 AM
Subject: Relayed: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461

Delivery to these recipients or groups is complete, but no delivery notification was sent by the destination server:

Megan.shannon@gmail.com (Megan.shannon@gmail.com)

Subject: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461



Shannon v.
Philadelphia Ma...

Henry, Faith

From: postmaster@Phila.onmicrosoft.com
To: Kathleen.Ionie@phila.gov
Sent: Wednesday, March 14, 2018 11:30 AM
Subject: Delivered: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461

Your message has been delivered to the following recipients:

Kathleen.Ionie@phila.gov (Kathleen.Ionie@phila.gov)

Subject: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461



Shannon v.
Philadelphia Ma...

Henry, Faith

From: postmaster@Phila.onmicrosoft.com
To: Jill.Freeman@phila.gov
Sent: Wednesday, March 14, 2018 11:30 AM
Subject: Delivered: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461

Your message has been delivered to the following recipients:

Jill.Freeman@phila.gov (Jill.Freeman@phila.gov)

Subject: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461



Shannon v.
Philadelphia Ma...

Henry, Faith

From: postmaster@Phila.onmicrosoft.com
To: RightToKnowLaw@phila.gov
Sent: Wednesday, March 14, 2018 11:30 AM
Subject: Delivered: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461

Your message has been delivered to the following recipients:

RightToKnowLaw@phila.gov (RightToKnowLaw@phila.gov)

Subject: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461



Shannon v.
Philadelphia Ma...

Henry, Faith

From: DC, OpenRecords
Sent: Wednesday, March 14, 2018 11:30 AM
To: 'Megan.shannon@gmail.com'; 'Kathleen.Ionie@phila.gov'; 'Jill.Freeman@phila.gov'; 'RightToKnowLaw@phila.gov'
Subject: Shannon v. Philadelphia Mayor's Office: OOR Dkt 2018-0461
Attachments: 2018-0461_Shannon-PhilaMayor.pdf

Dear Parties,

Please see the attached appeal that has been filed with the Office of Open Records. This matter has been assigned to an Appeals Officer (contact information can be found on page 4 of the attachment).

Please forward all future correspondence directly to the Appeals Officer and all other parties.

Sincerely,



Faith Henry

Administrative Officer
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 346-9903 | <http://openrecords.pa.gov>

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

As of Monday, February 5, 2018, the OOR's new physical and mailing address is 333 Market Street, 16th Floor, Harrisburg, PA 17101-2234. The other contact information has not changed: telephone (717) 346-9903; fax (717) 425-5343; e-mail address openrecords@pa.gov; webpage www.openrecords.pa.gov.

March 14, 2018

Via E-Mail only:

Megan Shannon
4826 Hazel Avenue
Philadelphia, PA 19143
megan.shannon@gmail.com

Via E-Mail only:

Jill Freeman, Esquire
Agency Open Records Officer
City of Philadelphia Law Department
1515 Arch Street
Philadelphia, PA 19102
jill.freeman@phila.gov

Kathleen Lonie
Agency Open Records Officer
City of Philadelphia Mayor's Office
Room 204 City Hall
Philadelphia, PA 19102
kathleen.lonie@phila.gov

RE: OFFICIAL NOTICE OF APPEAL-DOCKET #AP 2018-0461

Dear Parties:

Please review this information carefully as it affects your legal rights.

The Office of Open Records ("OOR") received this appeal under the Right-to-Know Law ("RTKL"), 65 P.S. §§ 67.101, *et seq.* on **March 13, 2018**. This letter describes the appeal process. A binding Final Determination will be issued pursuant to the timeline required by the RTKL. In most cases, that means within 30 calendar days. The OOR's Final Determination is currently due on **April 12, 2018**.

OOR Mediation: This is a voluntary, informal process to help parties reach a mutually agreeable settlement on records disputes before the OOR. To participate in mediation, both parties must agree in writing. The Parties agreement to mediate stays the Final Determination Deadline. If mediation is unsuccessful, both parties will be able to make submissions to the OOR, and the OOR will have 30 calendar days from the conclusion of the mediation process to issue a Final Determination, unless the Requester agreed to an additional 30 calendar day extension on the appeal form.

Note to Parties: Statements of fact must be supported by an affidavit or attestation made under penalty of perjury by a person with actual knowledge. Any factual statements or allegations submitted without an affidavit will not be considered. The agency has the burden of proving that records are exempt from public access (*see* 65 P.S. § 67.708(a)(1)). To meet this burden, the agency must provide evidence to the OOR. The law requires the agency's position to be supported by sufficient facts *and* citation to all relevant sections of the RTKL, case law and OOR Final Determinations. An affidavit or attestation is required to show that records do not exist. Blank sample affidavits are available on the OOR's website.

Submissions to OOR: Both parties may submit information and legal argument to support their positions by 11:59:59 p.m. on March 23, 2018. The record closing date is seven (7) business days from the date of this letter unless the proceedings have been stayed for the parties to submit a completed mediation agreement form, then the record will remain open for seven (7) additional business days beyond the mediation agreement submission deadline. *Submissions sent via postal mail and received after 5:00 p.m. will be treated as having been received the next business day.* The agency may assert exemptions on appeal even if it did not assert them when the request was denied (*Levy v. Senate of Pa.*, 65 A.3d 361 (Pa. 2013)).

Include the above docket number on all submissions related to this appeal. Also, any information you provide to the OOR must be provided to all parties involved in this appeal. Information shared with the OOR that is not also shared with all parties will not be considered.

Agency Must Notify Third Parties: If records affect a legal or security interest of an employee of the agency; contain confidential, proprietary or trademarked records of a person or business entity; or are held by a contractor or vendor, **the agency must notify such parties of this appeal immediately and provide proof of that notice by the record closing date set forth above.** Such notice must be made by (1) providing a copy of all documents included with this letter; and (2) advising that interested persons may request to participate in this appeal (*see* 65 P.S. § 67.1101(c)).

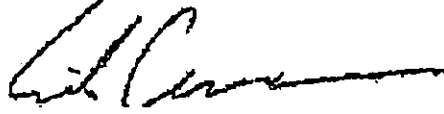
Commonwealth Court has held that "the burden [is] on third-party contractors ... to prove by a preponderance of the evidence that the [requested] records are exempt." (*Allegheny County Dep't of Admin. Servs. v. A Second Chance, Inc.*, 13 A.3d 1025, 1042 (Pa. Commw. Ct. 2011)). **Failure of a third-party contractor to participate in an appeal before the OOR may be construed as a waiver of objections regarding release of the requested records.**

Law Enforcement Records of Local Agencies: District Attorneys must appoint Appeals Officers to hear appeals regarding criminal investigative records in the possession of a local law enforcement agency. If access to records was denied in part on that basis, the Requester should consider filing a concurrent appeal with the District Attorney of the relevant county.

Public Record Notice: All dockets, filings and OOR orders and opinions in this appeal will be public records and subject to public access with limited exception. The OOR's Final Determination will generally include a summary of the case including the identity of the parties and the relevant factual background. Final Determinations are available on the OOR's website and searchable on-line.

If you have general questions about the appeal process, please contact the OOR at (717) 346-9903. If you have questions specific to your appeal, please e-mail the assigned Appeals Officer (contact information is enclosed) - and be sure to provide a copy of any correspondence to all other parties involved in this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read 'Erik Arneson', written over a horizontal line.

Erik Arneson
Executive Director

Enc.: Assigned Appeals Officer contact information
Entire appeal as filed with OOR



pennsylvania

OFFICE OF OPEN RECORDS

APPEALS OFFICER:

Benjamin Lorah, Esq.

CONTACT INFORMATION:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234

FACSIMILE:

(717) 425-5343

E-MAIL:

blorah@pa.gov

**Preferred method of contact and
submission of information:**

EMAIL

Please direct submissions and correspondence related to this appeal to the above Appeals Officer. Please include the case name and docket number on all submissions.

You must copy the other party on everything you submit to the OOR. The Appeals Officer cannot speak to parties individually without the participation of the other party.

The OOR website, <http://openrecords.pa.gov>, is searchable and both parties are encouraged to review prior final determinations involving similar records and fees that may impact this appeal.

The OOR website also provides sample forms that may be helpful during the appeals process. OOR staff are also available to provide general information about the appeals process by calling (717) 346-9903.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: _____

Today's date: _____

Name: _____

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip _____

E-mail _____

Fax Number: _____

Name of Requester: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Name of Agency: _____

Address/City/State/Zip _____

Telephone/Fax Number: _____ / _____

E-mail _____

Record at issue: _____

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☐ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, _____ (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

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Lorah, Benjamin

From: Brown, Charles (OOR)
Sent: Friday, March 23, 2018 10:55 AM
To: Robert Kieffer
Cc: Megan.shannon@gmail.com; Lorah, Benjamin
Subject: RE: Extensions Requested for Deadlines of Shannon v. City, AP 2018-0460, 0461

Mr. Kieffer,

Your request is granted.

Respectfully,



Charles Rees Brown
Chief Counsel
Office of Open Records
333 Market Street, 16th Floor
Harrisburg, PA 17101-2234
(717) 425-5991
(717) 425-5343 (facsimile)

charlebrow@pa.gov <http://openrecords.pa.gov>
www.newPA.com | www.visitPA.com

Confidentiality Notice: This electronic communication is privileged and confidential and is intended only for the party to whom it is addressed. If received in error, please return to sender.

From: Robert Kieffer [mailto:Robert.Kieffer@Phila.gov]
Sent: Friday, March 23, 2018 10:53 AM
To: Brown, Charles (OOR) <charlebrow@pa.gov>
Cc: Megan.shannon@gmail.com; Lorah, Benjamin <blorah@pa.gov>
Subject: FW: Extensions Requested for Deadlines of Shannon v. City, AP 2018-0460, 0461

Dear Chief Counsel Brown,

I received an out of office message from Appeals Officer Lorah upon sending the below request for extensions of time to respond to two appeals which currently must be responded to today. In his absence, I would respectfully ask that you grant the City's requested three business day extensions of the deadline for submissions, as I understand has been the practice in similar previous situations. I have copied both the requester and Appeals Officer Lorah on this communication.

Respectfully submitted,

Robert L. Kieffer, Esq.
Assistant City Solicitor, Right to Know Division
City of Philadelphia Law Department
1515 Arch Street, 17th Floor

Philadelphia, PA 19102
(215) 683-5032 (Phone)
(215) 683-5069 (Fax)

From: Robert Kieffer
Sent: Friday, March 23, 2018 10:44 AM
To: Lorah, Benjamin <blorah@pa.gov>
Cc: 'Megan.shannon@gmail.com' <Megan.shannon@gmail.com>
Subject: RE: Extensions Requested for Deadlines of Shannon v. City, AP 2018-0460, 0461

Dear Appeals Officer Lorah,

I would respectfully reiterate the City's request for an extension of time to respond to the instant appeals. The City requires additional time to secure the affidavits of necessary affiants and because of the City's unexpected closure this Wednesday due to the snow. Additionally, several members of the City's Right to Know Division have been out of the office this week. However, I previously did not realize that the City will be closed next Friday for the Good Friday holiday. In light of that, the City respectfully requests a 3 business day extension of time, until Wednesday, March 28th, to respond to the instant appeals.

The City intends to make a consolidated submission on appeal, and thus does not believe it is necessary for either request at issue in the instant appeals to be withdrawn.

Respectfully submitted,

Robert L. Kieffer, Esq.
Assistant City Solicitor, Right to Know Division
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
(215) 683-5032 (Phone)
(215) 683-5069 (Fax)

From: Megan Shannon [<mailto:megan.shannon@gmail.com>]
Sent: Thursday, March 22, 2018 1:34 PM
To: Lorah, Benjamin <blorah@pa.gov>
Cc: Robert Kieffer <Robert.Kieffer@Phila.gov>
Subject: Re: Extensions Requested for Deadlines of Shannon v. City, AP 2018-0460, 0461

Dear Appeals Officer Lorah,

I would like to note my objection to the City's request for an extension. The OOR's deadline for Final Determination is April 12th, and I would like to stick to that date if possible. I worry that pushing back this initial March 23rd deadline for the parties will have a domino effect and create further delays down the road. The Office of Open Records notified me and the City of the March 23rd deadline for supplemental arguments in support of our positions on March 14th, and it does not strike me as an unreasonable amount of time for supplemental arguments; I initially filed my RTKL request on January 18, 2018, so the City has been aware of this issue for at least two months already.

I would be willing to discuss consolidating my appeal or dropping the appeal against one of the two offices I requested records from if that will reduce the burden on the City's resources. I initially requested the records from both Commerce and the Mayor's Office because it was not clear which

office possessed the record I wanted. If both agencies have the record and the same argument about it being a public record, I have no objection to only pursuing my appeal against one agency.

Sincerely,
Megan Shannon

On Thu, Mar 22, 2018 at 11:40 AM, Robert Kieffer <Robert.Kieffer@phila.gov> wrote:

Dear Appeals Officer Lorah,

The City of Philadelphia respectfully requests 1 week extensions of the deadlines for submissions to *Shannon v. City of Philadelphia Department of Commerce*, O.O.R. Dkt. AP 2018-0460 and *Shannon v. City of Philadelphia Mayor's Office*, O.O.R. Dkt. AP 2018-0461, until 3/30/18. The City requires this additional time to complete its responses as it has been processing a high volume of requests and appeals recently, and was closed yesterday due to the poor weather.

Respectfully submitted,

Robert L. Kieffer, Esq.

Assistant City Solicitor, Right to Know Division

City of Philadelphia Law Department

[1515 Arch Street](#), 17th Floor

Philadelphia, PA 19102

[\(215\) 683-5032](tel:(215)683-5032) (Phone)

[\(215\) 683-5069](tel:(215)683-5069) (Fax)

6

Lorah, Benjamin

From: Longwell, Scott
Sent: Friday, March 23, 2018 4:12 PM
To: Lorah, Benjamin
Cc: edward.w.garcia@phila.gov; megan.shannon@gmail.com; jill.freeman@Phila.gov
Subject: DCED intervenor request AP 2018-0460 & 0461
Attachments: DCED Request to Participate.pdf; DCED Position Stmt.pdf

Dear Appeal Officer Lorah: Attached are DCED's Requests to Participate in the above two related cases, along with DCED's position statement. Thank you for your consideration. Scott Longwell

Scott W. Longwell | Assistant Counsel
PA Department of Community & Economic Development
Governor's Office of General Counsel
Office of Chief Counsel
Commonwealth Keystone Building
400 North Street, 4th Floor | Harrisburg, PA 17120-0225
Phone: 717.720.7306
dced.pa.gov | www.visitPA.com
www.ogc.pa.gov



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ATTORNEY WORK PRODUCT

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Please Note: If this email contains a PDF, then the attached PDF file must be produced exactly as provided; no alterations may be made to format or content. If changes are required for any reason, a new file must be provided by the Department of Community and Economic Development. Any alterations to the pdf file made by the recipient without the Department of Community and Economic Development's consent will render the pdf file and its contents null and void.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: AP-2018-0460

Today's date: 3/23/2018

Name: Scott Longwell, Dept. of Community and Economic Dev.

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip: 400 North Street, 4th FL. Harrisburg PA 17120

E-mail: slongwell@pa.gov

Fax Number: (717) 772-3103

Name of Requester: Megan Shannon

Address/City/State/Zip: 4826 Hazel Ave., Philadelphia PA 19143

Telephone/Fax Number: 1

E-mail: Megan.Shannon@gmail.com

Name of Agency: Philadelphia Dept. of Commerce

Address/City/State/Zip: 1515 Arch Street, 12th Floor Philadelphia PA 19102

Telephone/Fax Number: 1

E-mail: edward.w.garcia@phila.gov

Record at issue: DEED portion of Philadelphia Delivers Proposal

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☒ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary)

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, Scott Longwell (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: AP 2018-~~055~~ 0461

Today's date: 3/23/2018

Name: Scott Longwell, Dept. of Community and Economic Dev. (CED)

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip 400 North Street, 4th FL, Harrisburg PA 17120

E-mail slongwell@pa.gov

Fax Number: 717-772-3103

Name of Requester: Megan Shannon

Address/City/State/Zip 4826 Hazel Ave., Philadelphia PA 19143

Telephone/Fax Number: 1

E-mail Megan.Shannon@gmail.com

Name of Agency: City of Philadelphia, Office of Mayor

Address/City/State/Zip 1515 Arch Street, Philadelphia PA 19102

Telephone/Fax Number: 1

E-mail jill.freeman@phil.gov

Record at issue: QLED portion of economic ventures in Philadelphia delivers proposal

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☒ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, Scott Longwell (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

March 23, 2018

VIA ELECTRONIC MAIL

Benjamin Lorah, Esq.
Appeals Officer
PA Office of Open Records
Commonwealth Keystone Bldg.
400 North Street, 4th Floor
Harrisburg, PA 17120-0225
blorah@pa.gov

Re: AP# 2018-0460, 2018-0461; Megan Shannon v. Office of the Mayor of Philadelphia, and Shannon v. Philadelphia Dept. of Commerce

Dear Appeal Officer Lorah:

I represent the Pennsylvania Department of Community and Economic Development (DCED) in connection with the above-captioned appeals. This letter constitutes DCED's response as an intervenor to the two appeals filed by Ms. Shannon (Requester). DCED reserves the right to provide further evidence if the instant requests are appealed beyond the Office of Open Records (OOR). *Bowling v. Office of Open Records*, 990 A.2d 813, 822-823 (Pa. Commw 2010), *aff'd* 75 A.3d 453 (Pa. 2013). For the reasons set forth below the Requester's appeals should be dismissed and/or denied.

I. Background:

On March 20, 2018, DCED was made aware of Requester's two appeals (Appeals) from Requester's identical requests made under the Pennsylvania Right to Know Law, 65 P.S. §67.101 et seq., (RTKL) to the Office of the Mayor of Philadelphia and the Philadelphia Department of Commerce. DCED has contemporaneously with this position statement and affidavit, timely filed the requisite motions to intervene in the instant Appeals, as it concerns certain DCED records, specifically DCED's portion of the proposal submitted by the City of Philadelphia (City) for the Amazon second headquarters project (Philadelphia Delivers Proposal), which constitutes Confidential Proprietary information under the RTKL and constitutes a Trade Secret under the RTKL and the Trade Secrets Act.

II. LEGAL ARGUMENTS BY DCED:

A. THE REQUESTED PHILADELPHIA DELIVERS PROPOSAL, INCLUDING DCED'S PORTION OF SAME, IS CONFIDENTIAL AND PROPRIETARY INFORMATION OF DCED AND THE CITY PURSUANT TO SECTION 708(B)(11) OF THE RTKL AND THE PENNSYLVANIA TRADE SECRETS ACT.



pennsylvania
DEPARTMENT OF COMMUNITY
& ECONOMIC DEVELOPMENT

Section 67.708(b)(11) of the RTKL exempts "a record that constitutes or reveals a trade secret or confidential proprietary information".

Confidential Proprietary Information is defined in the RTKL as:

"Commercial or financial information received by an agency: (1) which is privileged or confidential; and (2) the disclosure of which would cause substantial harm to the competitive position of the [entity] that submitted the information."

The redacted portions of the Philadelphia Delivers Proposal for the Amazon HQ2 Project (HQ2 Project), satisfy the elements of confidential proprietary information exemption as to the City and DCED and should be exempt from release. The Philadelphia Delivers Proposal includes commercial and financial information, namely, specifically designed economic incentives to be offered by DCED and by the City, pre-selected City site locations meeting certain specifications and other forms of economic incentives and assistance to Amazon. The DCED portion of the incentive package outlines the framework for an entirely new DCED program. See Agency Attestation. The framework for the proposed new economic development program and other forms of proposed assistance are assets of unique value to DCED. The City and DCED therefore consider their respective summaries of proposed economic incentives within the Philadelphia Delivers Proposal to be confidential proprietary information and have been maintained as such. The Philadelphia Delivers Proposal was the product of a joint state and city cooperation for the H2Q Project, which was necessitated by Amazon's requirements. DCED provided its portion of the incentives to the City to incorporate into the Philadelphia Delivers Proposal.

The Philadelphia Delivers Proposal and related communications have been tightly controlled between DCED and the City and were the subject of non-disclosure agreements (NDAs) between DCED and the City and between DCED and the Philadelphia Industrial Development Authority (PIDC). See Attachment B. Neither the City nor the DCED shared the Philadelphia Delivers Proposal with outside third parties or the media. As addressed in the Ross Affidavit (Attachment A), DCED's portion of the Philadelphia Delivers Proposal has intrinsic value to DCED and is the result of countless hours of work and development to suit Amazon's specifications and requirements for one of the largest commercial projects in the nation. The disclosure of the redacted portion of the Philadelphia Delivers Proposal would significantly harm the City and DCED in future economic development prospects. (See Attachment A).

DCED disagrees with the conclusion reached by the appeals officer in *Paul Van Osdol and WTAE v. City of Pittsburgh*, OOR AP 2017-2247, wherein the appeals officer held that while the City of Pittsburgh and Allegheny County could each constitute a "person" for purposes of the Confidential Proprietary Information exemption under Section 708(b)(11) of the RTKL, that such information had to also be "submitted to an agency" to be protected. The "submitted by" language most likely represents the legislature's anticipated application of this section to private companies as prospective applicants to public agencies rather than a roundabout legislative attempt to curb on an agency's ability to protect its own confidential proprietary information.

Nevertheless, the underlying facts of the present matters differ from those in *Van Osdol* such that this additional condition was satisfied. Here DCED submitted the its incentive package to the City, an agency, to incorporate into the Philadelphia Delivers Proposal, so DCED's information was submitted to an agency. Accordingly, the Philadelphia Delivers Proposal contains confidential proprietary information of the City and DCED pursuant to Section 708(b)(11) of the RTKL and should not be subject to release.

The Philadelphia Delivers Proposal also contains DCED and City trade secrets. With respect to trade secrets, "information constitutes a "trade secret" based upon the following factors: (1) the extent to which the information is known outside of the business; (2) the extent to which the information is known by employees and others in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to the business and to competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others." *Commonwealth v. Eiseman*, 85 A.3d 1117, 1126 (Pa. Cmwlth. 2014), rev'd on other grounds, 633 Pa. 366, 125 A.3d 19 (Pa. 2015) (citing *Crum v. Bridgestone/Firestone North American Tire*, 2006 PA Super 230, 907 A.2d 578 (Pa. Super. 2006)). A "trade secret" must be an "actual secret of peculiar importance to the business and constitute competitive value to the owner." *Parsons v. Pennsylvania Higher Education Assistance Agency*, 910 A.2d 177, 185 (Pa. Cmwlth. 2006). "The most critical criteria are 'substantial secrecy and competitive value.'" *Eiseman*, 85 A.3d at 1126 (quoting *Crum*, 907 A.2d at 585.)" *Smith ex rel. Smith Butz, LLC v. Pa. Dep't of Envtl. Prot.*, 161 A.3d 1049, 1064 (Pa. Cmwlth. Ct. 2017).

Although Pennsylvania courts have only intimated, but not directly ruled on whether the government can hold a trade secret under the Right-to-Know Law (RTKL) as the appeals officer noted in *J. Dale Shoemaker and Public Source v. Pennsylvania Office of Governor*, O.O.R Dck. 2017-2254, the Uniform Trade Secrets Act (UTSA), 12 Pa. C.S. § 5301 et seq., allows the government to own and possess a trade secret. Under the both the UTSA and the RTKL, a trade secret is defined as:

"[i]nformation, including a formula, drawing, pattern, compilation including a customer list, program, device, method, technique or process that:

- (1) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

12 Pa.C.S. § 5302; 65 P.S. § 67.102; see also *W. Chester Univ. of Pa. v. Schackner*, 124 A.3d 382, 391 (Pa. Commw. Ct. 2015) (noting that both the UTSA and the RTKL define "trade secret" in an identical manner). In addition, the UTSA further defines a person to include a "government, governmental subdivision or agency or any other legal or commercial entity." 12 Pa.C.S. § 5302.

Under these definitions, both the UTSA's language and structure grants governments the right to own trade secrets, especially as the statute acknowledges that persons, which include governments, can obtain economic value from a trade secret. The Ohio Supreme Court reached a comparable conclusion in *State ex rel. Besser v. Ohio State Univ.* when it held that "the Ohio Uniform Trade Secrets Act . . . specifically defines a "person" who can have trade secrets to include "governmental entities." 721 N.E.2d 1044, 1049 (Ohio 2000) (citing R.C. 1333.61(C) (defining trade secret in an identical manner to Pennsylvania's RTKL and UTSA). Indeed, the very definition of a trade secret "implicates a property interest because an actor can be held liable for a theft of a trade secret," *W. Chester Univ. of Pa.*, 124 A.3d at 391 (citing 18 Pa.C.S. § 3930), or a person may be held liable for the misappropriation of one. 12 Pa.C.S. § 5304; *see also* 12 Pa.C.S. § 5302 (defining a misappropriation to include the "acquisition of a trade secret of another by a person," which includes governments). Other jurisdictions enacting the UTSA have also held that public entities can own trade secrets. *See, e.g., Univ. of Conn. v. Freedom of Info. Comm'n*, 36 A.3d 663, 668 (Conn. 2012) (finding that Connecticut's Uniform Trade Secrets Act "expressly applies to both public and private entities and clearly does not impose any requirement that either type of entity principally be engaged in trade."); *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 884 P.2d 592, 603 (Wa. 1994) (finding that the Uniform Trade Secrets Act provided an expansive definition of trade secret that included a university researcher's unfunded biomedical grant proposal because of the "potential . . . to eventuate in trade secrets"); *Scientific Games, Inc. v. Dittler Bros., Inc.*, 586 So.2d 1128, 1131 (Fla.App. 1991) (protecting opinions of state lottery's forensics examiner). Consequently, the Commonwealth may own a trade secret under the UTSA, as any another result would unreasonably allow the RTKL to strip the Commonwealth of its property rights.

Although it is not disputed that the RTKL's specific trade secret exception supplants the more general UTSA's exception under *Commonwealth v. Eisman*, 125 A.3d 18, 32 (Pa. 2015), as discussed above, courts must still look to the UTSA to provide clarity regarding what constitutes a trade secret. In the *Shoemaker v. Office of the Governor* appeal, the hearing officer concluded that a trade secret must "pertain[] to business or commerce." *J. Dale Shoemaker and Public Source v. Pennsylvania Office of Governor*, O.O.R. Dkt. 2017-2254, 2018 PA O.O.R.D. Lexis 163, *13. In support of this conclusion, the appeal officer cited two cases. The appeals officer relied on, in part, *Hoffman v. Commonwealth*, 455 A.2d 731 (Pa. Commw. Ct. 1983), for the proposition that a government cannot hold a trade secret "when the function is recognized as governmental, rather than that of a private business." However, *Hoffman* predates Pennsylvania's passage of the UTSA in 2004. In *Besser*, the Ohio Supreme Court found that the UTSA overruled prior case law when it noted that an earlier Ohio case holding that governments could not hold trade secrets was no longer good law because it "relied on a case from Pennsylvania, a jurisdiction that ha[d] not [yet] adopted the Uniform Trade Secrets Act." *Besser*, 721 N.E.2d at 1049 (citing *Hoffman v. Commonwealth*, 455 A.2d 731 (Pa. Commw. Ct. 1983). Because the UTSA grants governments the right to own trade secrets, the UTSA effectively supersedes *Hoffman*'s government function versus private business approach and any more general proposition that governments cannot own trade secrets.

In the second case, *Parsons v. Pa Higher Educ. Assistance Agency*, 910 A.2d 177, 183-4 (Pa. Commw. Ct. 2006), the Pennsylvania Higher Education Assistance Agency ("PHEAA") attempted to claim that travel vouchers and credit card bills for incidentals for its employees and board members were trade secrets under the RTKL. PHEAA argued that the travel vouchers and credit card bills contained confidential information about its methods and strategies of business development. *Id.* at 186. Despite noting that a trade secret must be "an actual secret of peculiar importance to the business," the Commonwealth Court did not rule that PHEAA could not own trade secrets on the basis that it was not a "business" nor did it discuss any kind of government function versus private business dichotomy or even address either as a threshold issue. *Id.* at 185. Instead, after PHEAA's chief officer acknowledged that that "many of the [travel] vouchers and receipts [at issue] would contain no competitive information at all," the Commonwealth Court found that the UTSA could not be used as an exception to the RTKL "to exempt public records containing no trade secrets at all." *Id.* at 186. Even then, the court conceded that the requested materials may contain secret information of competitive value and allowed PHEAA to redact those portions and supply the balance. *Id.* Accordingly, *Parsons* and, by extension, the UTSA and the RTKL, do not impose any additional trade or commerce requirements upon governments or government entities. *See also Univ. of Conn. v. Freedom of Info. Comm'n*, 36 A.3d 663, 668 (Conn. 2012) (finding that Connecticut's Uniform Trade Secrets Act "expressly applies to both public and private entities and clearly does not impose any requirement that either type of entity principally be engaged in trade.") (emphasis added). *State ex rel. Perrea v. Cincinnati Pub. Sch.*, 916 N.E.2d 1049, 1051 (Ohio 2009) (finding that multiple choice and constructed-response semester exams created by a public-school district carrying out its statutory educational duties were protected trade secrets under the Ohio Uniform Trade Secrets Act).

Nevertheless, even if the RTKL or UTSA were to impose a business or commerce requirement as the *Shoemaker* hearing officer concluded, DCED's and the City's proposed incentives to Amazon still satisfy the requirement. Undefined under the RTKL or the appeal officer's opinion, "business" is commonly defined as, among other things, "commercial transactions . . . SEE DOING BUSINESS." BLACK'S LAW DICTIONARY 240 (10th ed. 2014). In turn, "doing business" is defined as:

[t]he act of engaging in business activities; specif., the carrying out of a series of similar acts for the purpose of realizing a pecuniary benefit, or otherwise accomplishing a goal, or doing a single act with the intention of starting a series of such acts; esp., a nonresident's participation in sufficient business activities in a foreign state to allow the state's courts to exercise personal jurisdiction over the nonresident.

Id. at 590. DCED is legislatively tasked with numerous powers and duties, including the duty to "promote and encourage the location and development of new business, industries and commerce within the Commonwealth." 71 P.S. § 1709-3(3). In effect, DCED's goal is to "do business" or, more specifically, realize a pecuniary benefit for the Commonwealth. To carry out its public duty, however, DCED must actively compete in a larger market against other foreign, state, and local governments to attract businesses from outside the Commonwealth with a variety of financial and other incentives.

In upholding the importance of protecting government trade secrets created by a state university over the threat posed by a request under Connecticut's Freedom of Information Act, the equivalent of Pennsylvania's RTKL, the Connecticut Supreme Court reasoned as follows:

Once information is ordered disclosed . . . , it no longer meets the secrecy requirements of a trade secret and no subsequent use can be a proper basis for a claim of misappropriation. In effect, the protection to government trade secrets would be rendered a nullity.

Such a result could not have been intended. The university exemplifies a prime example of why that is so. It cannot reasonably be questioned that the university expends considerable resources of the state, on its own or in partnership with others, for the research and development of intellectual property. The state's ability to recoup costs or reap the financial benefits for such efforts would be seriously undermined if any member of the public could obtain such information simply by filing a request under the act.

Univ. of Conn. v. Freedom of Info. Comm'n, 36 A.3d 663, 669 (Conn. 2012). The Connecticut Supreme Court's reasoning is applicable here. DCED is tasked with expending considerable state resources, on its own or in partnerships with other agencies or business, to develop and encourage business through its various programs with the intent of recouping its considerable costs and reaping the extensive financial benefits from successful projects. In the present case, Amazon's HQ2 Project is projected to result in Amazon's spending up to five billion dollars in construction costs and the addition of a further thirty-eight billion to the local economy. Any production of DCED's or the City's proposed incentives would instantaneously destroy the value of the trade secrets contained therein and allow its other competitors in the market for the HQ2 project – other governments outside the Commonwealth – to adjust their proposed incentive packages without revealing them. Thus, neither DCED or the City would be able to “do business” with Amazon and secure the overwhelming “pecuniary benefit[s]” presented by Amazon's potential second headquarters.

Here, DCED has established that its portion of the Philadelphia Delivers Proposal is a trade secret under the two-part test under Section 708(b)(11). First, the redacted DCED incentive information from the Philadelphia Delivers Proposal derives economic value from not being generally known by others and not readily ascertainable to competitors. As Mr. Ross noted in his Affidavit, the center piece of the Commonwealth incentive package does not involve any existing DCED existing programs, but rather a completely new program with unique features designed for the HQ2 Project, so it has significant competitive value to DCED. (See Attachment A) DCED directed substantial resources in staff time, legal research and analysis, and contractor research in developing DCED's portion of the incentive offer that satisfies the parameters of what Amazon is seeking. Second, DCED's incentives offered through the Philadelphia Delivers Proposal have been the subject of strict efforts to maintain secrecy. All six Pennsylvania applicant Cities who received the DCED incentives for the HQ2 Project for their respective proposals were required to execute two-way non-disclosure agreements (NDAs), including the City and PIDC (See

Attachment B) Through the NDAs the parties established that the incentive information will remain protected for five years unless both parties agree to the release. Additionally, DCED has kept the DCED incentives tightly controlled within the agency, sharing the information only with staff who need to know its contents to perform their duties.

Based on the foregoing reasons, DCED's and the City's proposed incentives to Amazon in the Philadelphia Delivers Proposal are trade secrets under the UTSA and, thus, the RTKL, regardless of any requirement that the Commonwealth is engaged in business or commerce. Nevertheless, as previously noted, even if it is determined that a "doing business" test applies to the analysis, DCED has established that it engages *in business*. DCED's core function is to assist businesses and expand commerce within the state. DCED actively competes with other states and regions in the business of attracting companies through providing economic incentive offers. The competition for the HQ2 Project has been vigorous with over two hundred North American regions submitting proposals. The DCED incentives offered through the Philadelphia Delivers Proposal to Amazon were the result of countless hours of research and development and is information highly sought by competing regions. If DCED and the City were ordered to publicly release the unredacted Philadelphia Delivers Proposal it would negatively impact DCED's and the City's economic development prospects to secure the HQ2 Project or other large-scale future projects. Finally, such release would expose DCED and City work-product assets for other regions to exploit and appropriate.

III. THE OOR SHOULD STAY ANY ORDER REQUIRING DCED TO RELEASE THE PROPOSALS UNTIL THE RECENT CASES RELATED TO AMAZON PROPOSALS HAVE BEEN FULLY ADJUDICATED.

DCED asks that should the OOR determine that the redacted portions of the Philadelphia Delivers Proposal are public information subject to release, that the order be stayed until the resolution of appeals filed by the City of Pittsburgh (AP Dkt. No. 2017-2247), Allegheny County (AP Dkt. 2017-2248 and 2017-2252), and the Office of the Governor (AP Dkt. No. 2017-2254) relating to OOR final determinations ordering the release of the Pittsburgh Region Amazon proposal.

IV. CONCLUSION

The Philadelphia Delivers Proposal, to the extent redacted, contains confidential proprietary information of DCED and of the City, and trade secrets of the City and DCED and should be exempt from release.

DCED submitted its portion of the Philadelphia Delivers Proposal to the City, an agency. The release of DCED's portion of the Philadelphia Delivers Proposal would cause substantial harm to DCED and the City with respect to their competition for economic development projects for their respective regions. Other states and regions of other states would have immediate access to DCED's and the City's early stage incentive offerings to companies prior to a company's

acceptance of any offers. Therefore, the Philadelphia Delivers Proposal contains confidential proprietary information of DCED and of the City.


The Philadelphia Delivers Proposal also contains DCED trade secrets. The USTA recognizes that government subdivisions can own trade secrets. DCED's incentives for the HQ2 project have been kept confidential and were the subject of two-way NDAs between DCED, the City and PIDC. DCED's incentives framework is unique and valuable information, and not based upon any existing DCED programs. DCED's incentives for the HQ2 Project were the product of hundreds of staff hours in development and analysis. Accordingly, the redacted portions of the Philadelphia Delivers Proposal contain information important to the economic development business of the City and DCED.

For the foregoing reasons DCED respectfully requests that the OOR dismiss the Requester's Appeals. If the OOR concludes that it must grant the Appeals in part or in whole, the DCED requests that the OOR stay any such order to release the unredacted Philadelphia Delivers Proposal until the appeals from O.O.R. Dck. Nos. 2017-2248, 2017-2248, and 2017-2252, have been fully adjudicated.

Thank you for your consideration of this matter.

Respectfully submitted,

DATE 03/23/2018



Scott W. Longwell
Assistant Counsel
Pennsylvania Department of Community and Economic
Development
Phone: (717) 783-8452
400 North Street, 4th Floor
Commonwealth Keystone Building
Harrisburg, PA 17120

Enclosures

cc: Megan Shannon
(w/enclosures) [via email]

Jill Freeman, Esq. AORO, City of Philadelphia
(w/enclosures) [via email]

Jennifer Fogarty, Agency Open Records Officer, DCED
(w/enclosures) [via hand delivery]

DCED Exhibit A

OFFICE OF OPEN RECORDS

Megan Shannon

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v.

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Docket Nos. AP 2018-0460 & 0461

Office of Mayor of

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Philadelphia & Philadelphia

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Dept. of Commerce

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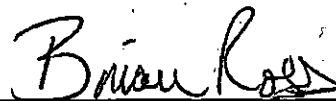
I, Brian Ross, Deputy Director for Project Management for the Department of Community and Economic Development (DCED), hereby aver:

1. I currently serve and have served as the Deputy Director for the Project Development for the Department of Community and Economic Development (DCED) since 2016. My responsibilities include, among other things, coordinating and managing the internal project review process and finalizing proposal documents for review and approval by the Director of the Governor's Action Team, DCED Secretary, and Governor. I also directly supervise Project Managers within the Harrisburg office, as well as the Regional Directors for the Southeast (Philadelphia) and Southwest (Pittsburgh) offices of the Governor's Action Team.
2. In my capacity as Deputy Director for Project Management, I was tasked with coordinating the development of the Commonwealth of Pennsylvania's economic incentive package to offer in response to the request for proposals sought by Amazon regarding its proposed second headquarters (HQ2 Project) to be included in each of the six Pennsylvania metropolitan area (MSAs) proposals.
3. Each MSA application to Amazon for the HQ2 Project contained both the MSA incentive proposal (MSA Incentive Proposal) and the DCED/Commonwealth Incentive Proposal (DCED Incentive Proposal). The DCED Incentive Proposal was developed based upon research and discussions between DCED and its contractor consultants and the MSAs and their contractor consultants and professionals, who looked at Amazon's requested site location and workforce specification needs as well as several other fiscal and non-fiscal factors. The DCED Incentive Proposal is a unique asset because it contains a framework and plan for a new DCED economic development program.
4. I am familiar with the two appeals filed by Megan Shannon related to her Right to Know Law requests to the Office of Mayor of Philadelphia and the Philadelphia Department of Commerce requesting an unredacted copy of the Philadelphia Delivers Proposal to Amazon for the HQ2 Project.

5. DCED considers the DCED Incentive Proposal portion of the Philadelphia Delivers Proposal to be confidential proprietary information to DCED and the Commonwealth of Pennsylvania. Should DCED be ordered to provide the DCED Incentive Proposal prior to Amazon's acceptance of one of the six MSA proposals, DCED and the Commonwealth of Pennsylvania would be placed at a competitive disadvantage as to North Carolina and other states whose proposals are shielded through statutory record exceptions to their states open records laws. See N.C. General Statutes, §132-6.
6. DCED has taken steps to maintain the confidentiality of the DCED Incentive Proposal. It has entered into non-disclosure agreements (NDAs) with each of the MSAs whereby the parties agreed that DCED would not release the MSA's portion of the joint incentive proposal to Amazon and the MSAs would not disclose the DCED Incentive Proposal to third parties except with affiliates as needed to further the joint proposal to Amazon. DCED has not shared the DCED Incentive Proposal with anyone other than its partner Agencies, contactors and affiliates and the MSA partners and their affiliates covered by the NDAs.
7. The proposals submitted to Amazon by cities and regions across North America are only the opening offers in what will be a long negotiation process with the various applicants and with the ultimate winning city or region. The DCED Incentive Proposal of the Philadelphia and other MSA proposals was specifically created for the HQ2 Project and its release, prior to the acceptance by Amazon, would allow other regions to supplement their proposals to match or copy the unique features of the DCED's Incentive Proposal and the MSA Incentive Proposals. This release would harm DCED by allowing the non-Commonwealth applicants to exploit and profit from work product developed by DCED staff and consultants.
8. The release of the DCED Incentive Proposal would also harm DCED in future negotiations with prospective companies looking to invest in new locations if the prospective business knew DCED's incentive offers would be open to public release prior to acceptance of a proposal.

Pursuant to 18 Pa. C.S. §4904(a), and under penalty of perjury, I declare the following is true and correct to the best of my knowledge.

March 23, 2018



Brian Ross, Deputy Director for Project
Management
Department of Community & Economic
Development

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B

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, is made as of the 6th day of October 2017, by and between the CITY OF PHILADELPHIA, acting through its DEPARTMENT OF COMMERCE, existing under and by virtue of the law of the State of Pennsylvania with offices located at 1401 JFK Boulevard, Philadelphia, Pennsylvania 19102 (the "City") for itself and on behalf of its affiliated entities (collectively, "Affiliates"), and the COMMONWEALTH OF PENNSYLVANIA, acting through the DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, for itself and on behalf of its Affiliates, with offices located at Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, Pennsylvania 17120 ("DCED").

WHEREAS, the CITY and DCED intend to enter into certain discussions about information and incentives to be offered as part of a bilateral state and local proposal to [Amazon.com, Inc. and its Affiliates] (the "Project") and the CITY and DCED may make certain information available to each other regarding the respective state and local incentives to be offered as part of the Project.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereby agree as follows:

1. The CITY agrees to supply to DCED certain information requested by DCED relating to the local economic incentives to be proposed for the Project, and DCED agrees to supply to the CITY certain information requested by the CITY related to DCED's economic incentive proposal for the Project.

2. As used herein, "Confidential Information" shall include, but not be limited to, written or oral communications, or tangible information (such as a writing, drawing or sample of material, or an account of confidential discussions reduced to writing) relating to the CITY or any of its Affiliates, or related to DCED or to any of its Affiliates, which meets the threshold definition of "Confidential Proprietary Information" and/or "Trade Secret" as defined in the Pennsylvania Right to Know Law, 65 P.S. §§67.102, and which has been marked "confidential" by the CITY or by DCED, as the case may be, prior to either party's receipt of such information. Notwithstanding anything herein otherwise contained, Confidential Information shall not include any item of information or data which: (a) is within the public domain prior to the time of disclosure or thereafter becomes within the public domain other than as a result of disclosure by DCED or the CITY or any of its representatives in violation of this Agreement; (b) was, on or before the date of disclosure to the recipient party, in the possession of such party, unless it was acquired by DCED or the CITY from a third party who was under an obligation of confidentiality at the time of disclosure; (c) is acquired by the DCED or the CITY from a third party not under an obligation of confidentiality to the CITY or to DCED, or is independently developed by DCED or the CITY; or, (d) is information, data or material that is required to be disclosed by state, federal or local law or regulation (including but not limited to the Pennsylvania Right to Know Law, 65 P.S. §§67.101-67.3104), or by order of government authorities or a court of competent jurisdiction.

3. (a) DCED agrees that except as otherwise herein permitted, without the prior written consent of the CITY, which consent may be withheld for any reason, it shall use the Confidential Information only for the purposes of the discussions to be held with the CITY and any project it may conduct with the CITY. DCED agrees to: (a) restrict disclosure of Confidential Information to those of its employees and agents that reasonably require access to the Confidential Information; (b) inform its employees and agents who receive Confidential Information of the existence of this Agreement and that they must comply with the terms hereof; and, (c) promptly notify the CITY in the case that disclosure of Confidential Information is requested or is required by a court of law, by law or regulation, or government agency, and cooperate with the CITY in any legal action it may take with regard to such request or requirement.

(b) The CITY agrees that except as otherwise herein permitted, without the prior written consent of DCED, which consent may be withheld for any reason, it shall use the Confidential Information only for the purposes of the discussions to be held with DCED and any project it may conduct with DCED. The CITY agrees to: (a) restrict disclosure of Confidential Information to those of its employees and agents that reasonably require access to the Confidential Information; (b) inform its employees and agents who receive Confidential Information of the existence of this Agreement and that they must comply with the terms hereof; and, (c) promptly notify DCED in the case that

disclosure of Confidential Information is requested or is required by a court of law, by law or regulation, or government agency, and cooperate with DCED in any legal action it may take with regard to such request or requirement.

4. DCED agrees to return any and all copies of Confidential Information to the CITY promptly as requested or at the termination, cancellation or expiration of this Agreement. The CITY agrees to return any and all copies of Confidential Information to DCED promptly as requested or at the termination, cancellation, or expiration of this Agreement. Notwithstanding the foregoing, the parties recognize that DCED, and the CITY, if the CITY is determined to be a local agency under the Pennsylvania Right to Know Law, are required to maintain data that is deemed to be a "record" as defined in the Pennsylvania Right to Know Law, 65 P.S. §§67.101-3104.

5. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed. Nothing in this Agreement shall be construed to place the CITY, its Affiliates, DCED, or its Affiliates, in relationship of partners, joint ventures or of principal and agent. The parties hereto have negotiated and entered into this Agreement solely as independent contractors, and no employer-employee relationship exists or shall be deemed to exist between them.

6. The obligation to prevent disclosure of Confidential Information shall survive the termination, cancellation or expiration of this Agreement for a period of five (5) years from the receipt of such information.

7. Should any disputes or questions arise between or among the parties to this Agreement during or after the term of this Agreement with respect to the rights, obligations and remedies hereunder of such parties or with respect to the construction or application of this Agreement which shall not be amicably resolved among the parties, the undersigned agree that such disputes or questions shall be submitted to the Pennsylvania Board of Claims in accordance with the laws of the Commonwealth of Pennsylvania.

8. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws principles. Should any provision of this Agreement be deemed unenforceable in any judicial proceeding, such determination shall not affect the validity and enforceability of the balance of this Agreement.

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinabove stated.

THE CITY OF PHILADELPHIA for itself and on behalf of Affiliates

By: _____

Harold T. Epps
Director of Commerce

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, for
itself and its Affiliates

By: _____

Dennis M. Davin
Secretary

APPROVED AS TO FORM
SOZI PEDRO TULANTE, CITY SOLICITOR

PER _____

Chief Deputy City Solicitor

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, is made as of the 13th day of October 2017, by and between the Philadelphia Industrial Development Corporation, a non-profit local development organization organized and existing under and by virtue of the law of the Commonwealth of Pennsylvania, with offices located at 1500 Market Street, Suite 2600 West, Philadelphia, PA 19102 (the "LDO") for itself and on behalf of its affiliated entities (collectively, "Affiliates"), and the COMMONWEALTH OF PENNSYLVANIA, acting through the DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, for itself and on behalf of its Affiliates, with offices located at Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, Pennsylvania 17120 ("DCED").

WHEREAS, the LDO and DCED intend to enter into certain discussions about incentives to be offered as part of a bilateral state and local proposal to Amazon.com, Inc. and its Affiliates (the "Project") and the LDO and DCED may make certain information available to each other regarding the respective state and local incentives to be offered as part of the Project.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereby agree as follows:

1. The LDO agrees to supply to DCED certain information requested by DCED relating to the local economic incentives to be proposed for the Project, and DCED agrees to supply to the LDO certain information requested by the LDO related to DCED's economic incentive proposal for the Project.
2. As used herein, "Confidential Information" shall include, but not be limited to, written or oral communications, or (tangible information (such as a writing, drawing or sample of material, or an account of confidential discussions reduced to writing) relating to the LDO or any of its Affiliates, or related to DCED or to any of its Affiliates, which meets the threshold definition of "Confidential Proprietary Information" and/or "Trade Secret" as defined in the Pennsylvania Right to Know Law, 65 P.S. §§67.102, and which has been marked "confidential" by the LDO or by DCED, as the case may be, prior to either party's receipt of such information. Notwithstanding anything herein otherwise contained, Confidential Information shall not include any item of information or data which: (a) is within the public domain prior to the time of disclosure or thereafter becomes within the public domain other than as a result of disclosure by DCED or the LDO or any of its representatives in violation of this Agreement; (b) was, on or before the date of disclosure to the recipient party, in the possession of such party, unless it was acquired by DCED or the LDO from a third party who was under an obligation of confidentiality at the time of disclosure; (c) is acquired by the DCED or the LDO from a third party not under an obligation of confidentiality to the LDO or to DCED, or is independently developed by DCED or the LDO; or, (d) is information, data or material that is required to be disclosed by state, federal or local law or regulation (including but not limited to the Pennsylvania Right to Know Law, 65 P.S. §§67.101-67.3104), or by order of government authorities or a court of competent jurisdiction.
3. (a) DCED agrees that except as otherwise herein permitted, without the prior written consent of the LDO, which consent may be withheld for any reason, it shall use the Confidential Information only for the purposes of the discussions to be held with the LDO and any project it may conduct with the LDO. DCED agrees to: (a) restrict disclosure of Confidential Information to those of its employees and agents that reasonably require access to the Confidential Information; (b) inform its employees and agents who receive Confidential Information of the existence of this Agreement and that they must comply with the terms hereof; and, (c) promptly notify the LDO in the case that disclosure of Confidential Information is requested or is required by a court of law, by law or regulation, or government agency, and cooperate with the LDO in any legal action it may take with regard to such request or requirement.

(b) The LDO agrees that except as otherwise herein permitted, without the prior written consent of DCED, which consent may be withheld for any reason, it shall use the Confidential Information only for the purposes of the discussions to be held with DCED and any project it may conduct with DCED. The LDO agrees to: (a) restrict disclosure of Confidential Information to those of its employees and agents that reasonably require access to the Confidential Information; (b) inform its employees and agents who receive Confidential Information of the existence of this Agreement and that they must comply with the terms hereof; and, (c) promptly notify DCED in the case that

disclosure of Confidential Information is requested or is required by a court of law, by law or regulation, or government agency, and cooperate with DCED in any legal action it may take with regard to such request or requirement.

4. DCED agrees to return any and all copies of Confidential Information to the LDO promptly as requested or at the termination, cancellation or expiration of this Agreement. The LDO agrees to return any and all copies of Confidential Information to DCED promptly as requested or at the termination, cancellation, or expiration of this Agreement. Notwithstanding the foregoing, the parties recognize that DCED, and the LDO, if the LDO is determined to be a local agency under the Pennsylvania Right to Know Law, are required to maintain data that is deemed to be a "record" as defined in the Pennsylvania Right to Know Law, 65 P.S. §§67.101-3104.

5. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed. Nothing in this Agreement shall be construed to place the LDO, its Affiliates, DCED, or its Affiliates, in relationship of partners, joint ventures or of principal and agent. The parties hereto have negotiated and entered into this Agreement solely as independent contractors, and no employer-employee relationship exists or shall be deemed to exist between them.

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9. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinabove stated.

The Philadelphia Industrial Development Corporation, for itself and on behalf of
Affiliates

By: 

John Grady, President

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, for
itself and its Affiliates

By: 

Dennis M. Davin
Secretary

7



CITY OF PHILADELPHIA

LAW DEPARTMENT
ONE PARKWAY BUILDING
1515 ARCH STREET
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Acting City Solicitor

Jo Rosenberger Altman
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VIA ELECTRONIC MAIL

Benjamin Lorah, Esq.
Commonwealth of Pennsylvania
Office of Open Records
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Re: Shannon v. City of Philadelphia Department of Commerce, AP 2018-0460
Shannon v. City of Philadelphia Mayor's Office, AP 2018-0461

Dear Appeals Officer Lorah:

I represent the City of Philadelphia (the "City") Department of Commerce ("Commerce") and Mayor's Office in connection with the above-captioned appeals. This letter constitutes the City's response to the appeals of Ms. Megan Shannon ("Appellant" or "Requester"). The City reserves the right to provide further evidence if the instant request is appealed beyond the Office of Open Records (the "OOR"). *Bowling v. Office of Open Records*, 990 A.2d 813, 822-23 (Pa. Commw. 2010), *aff'd* 75 A.3d 453 (Pa. 2013). For the reasons discussed below, the Requester's appeals should be dismissed and/or denied.

I. Background

On January 18, 2018, Commerce and the Mayor's Office received the instant requests from Appellant pursuant to the Pennsylvania Right-To-Know Law, 65 P.S. § 67.101 *et seq.*, (the "Act" or "RTKL"). The requests, though addressed to two separate City departments, sought the following identical records:

"I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions."

(the "Requests"). On January 25, 2018, the City sent initial five-day letters informing the Requester that it was asserting its right to an additional 30 calendar days to review the Requests. On February 26, 2018, the City sent a final response (the "Final Response") to Requester which granted the Requests in part and provided a redacted copy of the Philadelphia Delivers Proposal. On March 14, 2018, Commerce and the Mayor's Office received the instant appeals of the Final Response. The OOR granted an extension of the deadline for submissions to the instant appeals to March 28, 2018.

Amazon HQ2 RFP Process

The Philadelphia Delivers Proposal was submitted to Amazon in response to their Request for Proposal ("RFP") for a location for their second headquarters ("HQ2"). Amazon HQ2 is expected to house up to 50,000 employees with an average annual total compensation exceeding \$100,000, and to generate billions of dollars in economic development. Amazon HQ2 RFP, https://images-na.ssl-images-amazon.com/images/G/01/Anything/test/images/usa/RFP_3_V516043504.pdf (last visited Feb. 13, 2018). As one commenter explained:

"Bringing in up to 50,000 jobs into a city is pretty much an event you can't duplicate any other way. ... It's akin to winning the lottery. . . ."

"I'm from the Boston area — here's why I think it's the last place Amazon should build HQ2," Melia Robinson, available at: <http://www.businessinsider.com/why-boston-should-not-get-amazon-hq2-2018-1> (last visited February 15, 2018) (quoting Steve Glickman, co cofounder and executive director of the Economic Innovation Group).

Amazon chose a unique, highly competitive RFP process to decide on a location for HQ2. Understandably, competition is fierce. In response to Amazon's RFP, the City, along with the Philadelphia Industrial Development Corporation ("PIDC"), the Commonwealth's Department of Community & Economic Development ("DCED"), the Chamber of Commerce for Greater Philadelphia and numerous local organizations and businesses, collaborated to create and submit the Philadelphia Delivers Proposal to Amazon for HQ2. Amazon received 238 other bids, and has narrowed the field down to 20 metropolitan regions, with Philadelphia being one of them. See Sara Salinas, *CNBC* (Jan. 18, 2018), <https://www.cnn.com/2018/01/18/amazon-narrows-list-of-candidates-for-new-headquarters-hq2-to-20.html> ("Amazon narrows the list of metro areas for its new headquarters to 20.").

Representatives from various regions have explained that they will not release their proposal given the intense competition with other cities. "Cities try to lure Amazon, but want to keep the details secret," Linda DePillis, available at <http://money.cnn.com/2017/10/19/technology/business/amazon-headquarters/> (last accessed 10/19/2017); see also Douglas Hanks, *Miami Herald* (Jan. 18, 2018), <http://www.miamiherald.com/news/local/community/miami-dade/article195303434.html> (noting that Miami has not released a copy of their bid); Ryan Martin and James Briggs, *IndyStar* (Oct. 19, 2017), <https://www.indystar.com/story/money/2017/10/19/amazon-hq-2-central-indianas-bid-new-headquarters-submitted/780030001/> (Indianapolis has not released a copy of their bid).

The Philadelphia Delivers Proposal

In contrast to many of its competitors for HQ2, the City chose to publicly release a large portion of the Philadelphia Delivers Proposal upon its submission to Amazon, a copy of which is

attached as Exhibit D.¹ In doing so, the City carefully balanced the public's interest in disclosure and redacted information only to the extent the public release of such information is exempt from disclosure because it would harm the competitive or financial position of the entities that collaborated to submit the Philadelphia Delivers Proposal in the Amazon RFP process or in other business dealings, including the City. The City's decision to publicly announce the City's bid via the Philadelphia Delivers website as well as to release a lightly redacted copy of its proposal to Amazon is in clear contrast to many of the other finalists for Amazon HQ2, which for competitive reasons chose not to disclose significant – or any – portions of their proposals.

The City only redacted the Philadelphia Delivers Proposal to remove its Creative Pitch to Amazon, as well as City incentives and State incentives crafted by DCED. Such redactions were necessary as the City is still engaged in a fierce competition for Amazon HQ2, and cannot jeopardize the potential for 50,000 new jobs and billions of dollars in economic development – as well as revealing confidential trade secrets which would harm future business development (including business attraction, retention, and investment as well as talent development) – by releasing the unredacted Philadelphia Delivers Proposal.

The RTKL was not intended to put Pennsylvania government at a competitive or financial disadvantage, and it must be interpreted with this in mind. The release of the entire Philadelphia Delivers Proposal would put both the City and Commonwealth at competitive and financial disadvantages, both with regards to Amazon HQ2 and for future business development efforts. Sylvie Gallier-Howard, the Chief of Staff for the City's Department of Commerce attests as to the high profile and significant nature of the Amazon HQ2 competition. The release of the redacted portions of the Philadelphia Delivers Proposal would harm the Philadelphia region and Commonwealth's efforts to attract Amazon to Philadelphia, jeopardizing the potential addition of up to 50,000 new jobs and billions of dollars in economic development. Aff. of Sylvie Gallier-Howard, Chief of Staff, City of Philadelphia Department of Commerce ("Gallier-Howard Aff.") ¶ 20 (Mar. 28, 2018), Exhibit A. Ilene Burak, Senior Vice President and General Counsel for the Philadelphia Industrial Development Corporation ("PIDC") has attested similarly. Aff. of Ilene Burak, Senior Vice President and General Counsel, Philadelphia Industrial Development Corporation ("Burak Aff.") ¶ 22 (Feb. 14, 2018), Exhibit B.² Indeed, Ms. Burak attests that this may be the most intensely competitive business attraction bidding process in PIDC's history. Burak Aff. ¶ 27.

A great deal of research and creative inspiration went into what Commerce refers to as their "Creative Pitch" intended to give Philadelphia an edge in the competition. Gallier-Howard Aff. ¶ 11. Likewise, the City's incentive package, consisting of financial and non-financial incentives, was specifically tailored to appeal to Amazon, while leveraging both external partners and City resources that are atypical in business development. Gallier-Howard Aff. ¶ 8, 11. The Creative Pitch and City incentives, along with the State Incentives crafted by DCED, were the only information redacted when the City released the redacted Philadelphia Delivers Proposal. Gallier-Howard Aff. ¶ 13, 19.

¹ Due to file size limitations, the City is unable to attach Exhibit D, the redacted Philadelphia Delivers Proposal, to the City's emailed submission. The City therefore incorporates by reference the following file as Exhibit D: https://www.dropbox.com/s/hjr99rl123iyr6b/PHL_AMAZON_FINAL%20Public.pdf?dl=0. The remainder of the City's submission to Amazon may be accessed via the following URL: <https://public.philadelphiadelivers.com/>.

² The referenced affidavit by Ms. Burak was submitted as part of PIDC's submission to a prior appeal where the Philadelphia Delivers Proposal was at issue, *Opilo v. Pennsylvania Department of Community and Economic Development*, O.O.R. Dkt. AP 2018-0145. The City incorporates by reference any further submissions by PIDC and/or DCED.

The Creative Pitch and City incentives reflect the City's outside of the box thinking in business development, as well as how the City approaches these deals. Gallier-Howard Aff. ¶ 21. Ms. Gallier-Howard explains that this approach has developed over many years and its approach "is what gives the City a competitive edge when going head to head with other cities to land an event or draw a business to the region. The City has developed a core message for business development, but also customizes its approach to meet the unique needs of each business it attracts." Gallier-Howard Aff. ¶ 9. At the same time, the Creative Pitch and City incentives in the Philadelphia Delivers Proposal were designed specifically to appeal to Amazon and to compete in a unique, country-wide competition. *Id.* In order to compete, Commerce embraced Amazon's "customer obsession" ethos, and studied "the company deeply to craft a unique pitch that [Commerce and PIDC] felt would best match the company ethos and practices." Gallier-Howard Aff. ¶ 10.

The risk of harm to the City, PIDC, DCED, and other stakeholders from the release of the Philadelphia Delivers Proposal is real, not mere speculation. It is well known among municipalities that competition for Amazon HQ2 is fierce, and the value of having such detailed information about the core of a competitor's proposal is near priceless. Gallier-Howard Aff. ¶ 28. The release of the Philadelphia Delivers Proposal would allow the City's competition to better position themselves at the City's expense, and to match or exceed any incentives offered by the City or State. Gallier-Howard Aff. ¶ 25. The release of the style and structure of the City's pitch would also provide its competition with a roadmap to appropriating the City's themes, messaging, and overall creative approach to use against the City in this competition. Gallier-Howard Aff. ¶ 26. This would hurt the City in future business development opportunities as well since competitors would have inside information on how the City approaches and competes for opportunities of this nature – information which is not otherwise available to them through any legitimate means. Gallier-Howard Aff. ¶ 27. The release of the entire Philadelphia Delivers Proposal would harm Commerce's efforts to attract other businesses to Philadelphia, as well as impact the City's negotiating position with such businesses. Gallier-Howard Aff. ¶ 29. It is also reasonably likely to harm the efforts of PIDC, DCED, and other business development agencies, both public and private, to bring business to the Philadelphia region, and to the Commonwealth generally. Gallier-Howard Aff. ¶ 30; Burak Aff. ¶ 67-69. Indeed, it is not uncommon for the City to work with agencies outside of the City to create incentive packages for business attraction purposes, which are material parts of the City's overall presentation to such entities. Gallier-Howard Aff. ¶ 24. Ms. Burak also attests as to how PIDC would be harmed by the release of the Philadelphia Delivers Proposal, as the City incentives and Creative Pitch reflect PIDC's unique methods for attracting businesses to Philadelphia. Burak Aff. ¶ 43.

II. Argument

As a threshold matter, the RTKL is not intended to put Pennsylvania government at a competitive or financial disadvantage, and the RTKL must be interpreted with this in mind. The legislature made this intent clear in their drafting of the RTKL, as it seeks to balance the public's interest in disclosure with competing governmental and third-party interests in keeping certain information confidential to facilitate governmental business, protect competitive and financial positions, and to protect privacy and security interests. *See generally* 65 P.S. § 67.506(d)(3) (allowing an agency to release exempt records when the public interest in disclosure outweighs individual, agency, or public interests which favor restriction of access); 708(b) (providing 30 grounds of denial); 305(a) (noting that records are presumed public unless they are exempt under the RTKL, privilege, or any other Federal or State law or regulation or judicial order or decree); 707(b) (requiring agencies to provide notice of requests for confidential records of a third party to that third party).

The RTKL expressly exempts various records that could negatively impact the financial position of an agency if released. *See, e.g.*, 65 P.S. § 67.708(b)(1)(i) (exempting records which would result in the loss of Federal or State funds if disclosed); 708(b)(13) (records that would disclose the identity of an individual who lawfully makes a donation to an agency). Indeed, it is no coincidence that the *very first exemption* listed in the RTKL – which can also be redacted from financial records, which generally receive less protection under the RTKL – protects against the disclosure of records which would harm both an individual's personal security as well as an agency's loss of Federal or State funds. This is what the City is currently facing with this request, as the release of the state incentive proposal would undermine the Philadelphia region's competitive advantage in this and other business development deals, and lead to the City losing the benefit of such state business incentives. *See, e.g.*, Gallier-Howard Aff. ¶ 13-15, 25, 28; Burak Aff. ¶ 43, 46.

The RTKL also exempts records which, if they were released, would not allow government to efficiently conduct its day-to-day business. *See, e.g.*, 65 P.S. § 67.708(b)(10)(i)(A) (exempting internal pre-decisional deliberations); 708(b)(9) (exempting draft bills, resolutions, and statements of policy); 708(b)(7)(viii) (exempting employee personnel file materials except the final action of demotion or discharge); 708(b)(12) (exempting employee notes and working papers). The courts have recognized that while “the RTKL promotes the value of transparency in government,” there is real danger associated with unfettered access to government records, as it “could undermine other important established interests.” *California University of Pennsylvania v. Schackner*, 168 A.3d 413, 423 (Pa.Comm.w. 2017).

Many of the City's competitors have chosen not to release any portion of their proposals, and those who have understandably kept incentives close and confidential, and only bits of information have leaked in some circumstances – little has been confirmed. As City competitors are not required to release this information, a determination that Pennsylvania cities and regions must put their cards on the table in the Amazon HQ2 deal or in other similar deals in the future, would simply serve to financially handicap Pennsylvania and the City against their peers. This is clearly not the intention of the RTKL.

There can be no doubt that the General Assembly did not intend to put Pennsylvania cities at an economic disadvantage; a result that would ultimately hurt the citizens of Pennsylvania, by requiring the release of details on potential economic development deals. Collectively there is a clear intent that the RTKL not financially harm Pennsylvania government, put Pennsylvania government at a disadvantage, or make it harder for Pennsylvania government to conduct its business, and the RTKL exceptions discussed below must be interpreted with this in mind.

A. The Philadelphia Delivers Proposal is a Trade Secret

The Philadelphia Delivers Proposal is exempt from disclosure under the RTKL because it is a Trade Secret as defined by the RTKL. The RTKL exempts records which would constitute or reveal a trade secret. 65 P.S. § 67.708(b)(11). The Pennsylvania Supreme Court has held that the Trade Secret exemption in the RTKL is materially identical to the definition in the Commonwealth's Uniform Trade Secrets Act (the “UTSA”). *Com., Dept. of Public Welfare v. Eiseman*, 125 A.3d 19, 32 (Pa. 2015) (expressly adopting the Commonwealth Court's reasoning that the definitions of “trade secret” in the RTKL and UTSA are identical). “Trade Secret” is explicitly defined by the RTKL as the following:

“Trade secret.” Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

65 P.S. § 67.102. An agency must establish both elements of the two-part test for the exemption to apply. *See Office of the Governor v. Bari*, 20 A.3d 634 (Pa. Commw. 2011). The Commonwealth Court has endorsed a six-factor test for whether a record constitutes a Trade Secret: (1) the extent to which the information is known outside of the business; (2) the extent to which the information is known by employees and others in the business; (3) the extent of measures taken to guard the secrecy of the information; (4) the value of the information to his business and to competitors; (5) the amount of effort or money expended in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others. *Commonwealth v. Eiseman*, 85 A.3d 1117, 1128 (Pa. Commw. 2014), *rev'd in part*, *Pa. Dep't of Pub. Welfare v. Eiseman*, 125 A.3d 19 (Pa. 2015). The Commonwealth Court has also stated that there must be both actual competition and a likelihood of substantial competitive injury if the information were to be released. *Id.* A trade secret must be "of peculiar importance to the business and constitute competitive value to the owner." *Parsons v. Pa. Higher Educ. Assistance Agency*, 910 A.2d 177, 185 (Pa. Commw. 2006) (decided under the prior Right to Know Act). The redacted portions of the Philadelphia Delivers Proposal are closely guarded trade secrets and their release would harm the competitive position of the City in this and other business development deals, as well as the position of the City's partners who have collaborated on the proposal. For the reasons discussed above and below, the redacted portion of the proposal fits squarely within the definition of trade secret under the RTKL and the UTSA.

1. The Phrase "Trade Secret" is Defined by the RTKL and UTSA, and Reference to Alternate Definitions for the Phrase is Inappropriate

The phrase "Trade Secret" is defined by the RTKL and UTSA, and it is therefore improper to use any other definition.³ Where, as here, the legislature defines a word or phrase in a statute, Pennsylvania courts and tribunals are bound to use their definition, even when it may be different from ordinary usage. *Department of Environmental Protection v. City of Philadelphia*, 692 A.2d 598, 608 (Pa. Commw. 1997) (a court is bound by a statutory definition although such definition may be different from ordinary usage); 1 Pa.C.S. § 1921(a)-(b). It is inappropriate to dissect a defined term in order to create an ambiguity. It is only when a word or phrase is specifically *undefined* by a statute that it should be interpreted according to its plain meaning and common usage. *Pennsylvania State Police v. Grove*, 161 A.3d 877, 892 (Pa. 2017); 1 Pa.C.S. § 1903(a). Thus, as the phrase "Trade Secret" has already been defined, it is unnecessary and improper to separately define what the term "trade" means. As there is no mention or requirement of engaging in "trade" in the definition of Trade Secret in the RTKL, there is no separate requirement that the City be engaged in trade to claim the exemption. Rather, the only inquiry is whether the responsive record meets the two statutory prongs.

³ The UTSA should be read *in pari materia* with the RTKL as they contain *identical* definitions as to the phrase "Trade Secret" and thus plainly relate to the same things. *See* 1 Pa.C.S. § 1932(a) (statutes should be read *in pari materia* when they relate to the same things); *see also Schenck v. Township of Center, Butler County*, 893 A.2d 849, 853 (Pa. Commw. 2006) (reading the RTKL *in pari materia* with the Sunshine Act); *infra* p. 7 for further discussion; *cf. Com., Dept. of Public Welfare v. Eiseman*, 125 A.3d 19, 32 (Pa. 2015) (holding that the RTKL's Trade Secret exemption supplanted the UTSA based on the rules of statutory construction).

Indeed, the Supreme Court of Connecticut, a sister state that has also adopted the Uniform Trade Secrets Act, specifically rejected an argument that an entity had to separately engage in trade in order to be protected under the act or the Connecticut equivalent of the RTKL. The Court explained that the trade secret exceptions apply “to both public and private entities and clearly [do] not impose any requirement that either type of entity be principally engaged in a trade.” *Univ. of Conn. v. Freedom of Info. Comm’n*, 36 A.3d 663, 668 (Conn. 2012); *see also State ex rel. Perrea v. Cincinnati Pub. Sch.*, 916 N.E.2d 1049, 1051 (Ohio 2009) (finding exams protected under the Ohio Uniform Trade Secrets Act). The Supreme Court of Connecticut has also held that – using virtually identical language to the courts of Pennsylvania – exemptions to Connecticut’s Freedom of Information Act must be construed narrowly. *Director, Dept. of Information Technology of Town of Greenwich v. Freedom of Information Comm’n*, 874 A.2d 785, 791 (Conn. 2005) (“[I]t is well established that the general rule under the [act] is disclosure, and any exception to that rule will be narrowly construed in light of the general policy of openness expressed in the [act].”).

As the UTSA was intended to make Pennsylvania Trade Secret law uniform with that of other states, it – and the RTKL’s Trade Secret exemption, as it is materially identical – must be construed to effectuate that purpose. *Koken v. Reliance Ins. Co.*, 586 Pa. 269, 291–92, 893 A.2d 70, 83 (2006). Section 1927 of the Statutory Construction Act directs that, “[s]tatutes uniform with those of other states shall be interpreted and construed to effect their general purpose to make uniform the laws of those states which enact them.” 1 Pa.C.S. § 1927. While statutes and caselaw from other states are not binding on Pennsylvania courts and tribunals, “in construing a uniform law, this Court must consider the decisions of our sister states who have adopted and interpreted such uniform law and must afford these decisions great deference.” *Sternlicht v. Sternlicht*, 876 A.2d 904, 911 (Pa.Super. 2005); *Continental Ins. Co. v. Schneider, Inc.*, 873 A.2d 1286, 1294 (Pa.Super. 2005) (“Although these cases involved other jurisdictions’ versions of the UCC, they are nevertheless persuasive authority here as the relevant provisions in their UCC statutes are substantially similar to the provisions in the Pennsylvania UCC[.]”).

Regardless, as discussed below, business development clearly is a trade that is protected under the RTKL and UTSA.

2. Governments Can and Do Have Trade Secrets Protected from Disclosure Under the RTKL

The City is clearly a “person” that can hold a trade secret, regardless of whether you look to the UTSA or definition under the Statutory Construction Act. *See* 12 Pa.C.S. § 5302 (UTSA definition of “Person”); 1 Pa.C.S. § 1991 (Statutory Construction Act definition of “Person”). Similarly, the Commonwealth is a “person” that is capable have having trade secrets. *Id.*; *see infra* p. 11-12 (discussing reading Section 708(b)(11) of the RTKL *in pari materia* with the UTSA). The Pennsylvania Commonwealth Court has expressly recognized that government entities can have trade secrets. *Parsons v. Pa. Higher Educ. Assistance Agency*, 910 A.2d 177, 185 (Pa. Commw. 2006). In *Parsons*, a requester sought “vouchers ... for travel by PHEAA employees and board members.” *Parsons*, 910 A.2d at 181. The Court held that the travel vouchers, while not *per se* exempt from disclosure under the UTSA, “may refer to secret information of competitive value” and could be redacted to remove it. *Id.* at 186. Thus, *Parsons* stands for the proposition that the government may create Trade Secrets and is able to exempt them, including by redaction as the City did here, and the

court in *Parsons* specifically contemplated that such records could include “strategy to break into a market” and other similar “secret information of competitive value.” *Id.*⁴

Similarly, sister states of this Commonwealth have also expressly found that the Uniform Trade Secrets Acts of their states cover records of government entities. *See, e.g., Univ. of Conn. v. Freedom of Info. Comm’n*, 36 A.3d 663, 668 (Conn. 2012); *State ex rel. Perrea v. Cincinnati Pub. Sch.*, 916 N.E. 2nd 1049, 1051 (Ohio 2009); *see also discussion supra* at p. 7 (discussing the principal of statutory construction that in construing a uniform law the Court must consider the decisions of sister states on the same language). The courts of Connecticut and Ohio which have made such findings must, similarly to Pennsylvania courts, strictly construe exceptions to disclosure under their public records laws. *State ex rel. Perrea v. Cincinnati Pub. Sch.*, 916 N.E. 2nd 1049, 1052 (Ohio 2009) (“Exceptions to disclosure under the Public Records Act, R.C. 149.43, are strictly construed against the public-records custodian, and the custodian has the burden to establish the applicability of an exception.”); *see supra* at p. 7 (further discussion on Connecticut’s public records law). Despite these rules of strict construction, the courts of these sister states of Pennsylvania have explicitly found that government can have record which are trade secrets. Thus, Pennsylvania government can and does have records which constitute trade secrets.

3. Business Development is Trade and Commerce In which the City is Engaged in

Even if the City were required to show that it has engaged in a trade, business development is “trade” and form of “commerce” which the City is engaged in through its Commerce Department with regards to the Amazon HQ2 proposal. The OOR has looked to Black’s Law Dictionary, which defines “trade” as “1. The business of buying and selling or bartering goods or services; **Commerce.... 2. A transaction or swap. 3. A business or industry occupation; a craft or profession.** – trade, vb.” BLACK’S LAW DICTIONARY 1721 (10th ed. 2014) (emphasis provided). Commerce is defined as “[t]he exchange of goods and services, esp. on a large scale involving transportation between cities, states, and countries.” *Id.* at 325. These definitions, however, must be read broadly in order to match the actual usage of the Trade Secret exemption by Pennsylvania courts.

Business development is a “trade” because it is a “craft or profession” and deals in business “transactions.” The mission of the City’s Commerce Department is to ensure that Philadelphia is a globally-competitive city and to foster economic development in the City. Gallier-Howard Aff. ¶ 3. Philadelphia is the poorest major city in the United States, making Commerce’s mission even more important to the citizens of the City and region as a whole. Gallier-Howard Aff. ¶ 3(b). One of Commerce’s specific functions is Business Development, where they play a lead role in recruiting and retaining businesses to Philadelphia. Gallier-Howard Aff. ¶ 4. Business development is so important to the City that Commerce works with a variety of public and private entities, including the Philadelphia Convention & Visitors Bureau, the Commonwealth’s Department of Community & Economic Development (“DCED”), the Philadelphia Industrial Development Corporation (“PIDC”), Select Greater Philadelphia, and the Chamber of Commerce for Greater Philadelphia. *Id.* Ms. Burak

⁴ The RTKL clearly contemplates that private businesses can perform governmental functions on behalf of an agency, while Pennsylvania courts have acknowledged that government does not always act as “government” in what it does. *See* 65 P.S. § 67.506(d) (allowing access to some records of third party government contractors); *see also SWB Yankees LLC v. Wintermantel*, 45 A.3d 1029, 1042-1044 (Pa. 2012) (holding that the operation of a baseball stadium was a “governmental function” performed on behalf of Lackawanna County while explicitly rejecting the idea that government always acts as government). In *SWB Yankees, LLC*, the Pennsylvania Supreme Court found that the operation of a baseball stadium, including vendor sales, was governmental in nature given, in large part, the revenue generated – but clearly such an operation is a business (that is typically run by private businesses) and can have competition and confidential strategies.

attests to how PIDC is a non-profit, non-stock corporation whose mission is to spur investment, support business growth, and foster development in Philadelphia. Burak Aff. ¶ 5, 7. She further attests to how the attraction of private businesses to Philadelphia is one of PIDC's core facets, and how PIDC and its affiliates have settled 6,700 transactions, including \$14 billion in financing. Burak Aff. ¶ 11, 13. Business development is itself clearly a profession; saying otherwise would undermine the work of the numerous public and private entities who collaborated on the Philadelphia Delivers Proposal. Business development – even undertaken by the City through its Commerce Department – is a “trade” which can possess or create trade secrets.

While the OOR has attempted to limit the definition to requiring some connection to the buying and selling of goods, there is no support for such a limitation. Quintessential trade secrets include customer lists, confidential techniques and other “tricks of the trade.” 65 P.S. Section 67.102 (defining trade secret); *Crum v. Bridgestone/Firestone North American Tire, LLC*, 907 A.2d 578, 585 (Pa.Super. 2006) (noting that Pennsylvania courts have adopted the definition of trade secret set forth in comment (b) of section 757 of the *Restatement (2d) of Torts*). These examples are in no way limited to businesses that engage in the sale of goods. Indeed, even the definition of “trade” the OOR relied on in *Van Osdol v. City of Pittsburgh*, AP 2017-2247 (Pa. OOR Jan. 24, 2018), recognizes that there are various types of trade, including transactions, industry occupations, a craft, or a profession. In the one case in which the Commonwealth Court expressly found that a state agency could protect trade secrets, the trade at issue was *student loans*, something which clearly does not involve the sale or bartering of goods. *Parsons v. Pa. Higher Educ. Assistance Agency*, 910 A.2d 177, 185 (Pa.Comm.w. 2006).

As explained above and below, the City's Creative Pitch and incentives reflect City strategy developed over years of engaging in business attraction, development and marketing opportunities – an approach unique to the City that is definitively ‘Philly’ in nature. The areas of business development, attraction, and retention, and the marketing of the City are a type of trade in which numerous cities and private entities compete.

4. The Philadelphia Delivers Proposal Meets Both Prongs of the Trade Secret Test

The Philadelphia Delivers Proposal meets both statutory prongs to be a trade secret, as it both derives economic value from not being generally known, and has been the subject of efforts to maintain its secrecy. The proposal has independent economic value as it is highly sought after by the City's competition for a competition which is still ongoing. Gallier-Howard Aff. ¶ 15. Additionally, outside the context of the RTKL, courts have found “trade secrets” to include “certain business and marketing information . . . an employer's business plans, marketing strategies, and financial projections. . . .” *BIEC Intern., Inc. v. Global Steel Services, Ltd.*, 791 F.Supp. 489, 545 (E.D.Pa.1992); *see also Youtie v. Macy's Retail Holding, Inc.*, 653 F.Supp.2d 612, 621 (E.D.Pa.2009) (providing other citations recognizing similar types of information as trade secrets). Thus, the *same kind of information* has already been found by Federal Courts in Pennsylvania to qualify for “trade secret” protection.

As described extensively above and in Ms. Gallier-Howard's affidavit, the confidential information redacted from the Philadelphia Delivers Proposal is not known outside the City and its strategic partners, the City has taken significant steps to safeguard the information even internally in the City and among its partners, and the City has a competitive advantage from such information remaining unknown. Gallier-Howard Aff. ¶ 32-36. The Creative Pitch and City incentive package was the result of significant efforts by the City and its partners, both in the long and short term, and it

cannot be readily acquired or duplicated by others through any proper means. Gallier-Howard Aff. ¶ 7-12, 20-31. In fact, as Ms. Gallier-Howard attests:

The value of having such detailed information about the core of a competitor's proposal cannot be accurately valued as it is near priceless, and in this particular deal worth billions of dollars in economic development. This fear is not mere speculation or guesswork; it is well known among municipalities that competition is fierce for HQ2 and the municipalities competing are actively studying and scrutinizing their competition.

Gallier-Howard Aff. ¶ 28. Ms. Burak similarly attests as to how the release of PIDC's proprietary information reflected in the City incentives and Creative Proposal would "furnish competitors with solid parameters by which they could refine their own strategies as part of their efforts to win businesses away from PIDC or otherwise cause PIDC to lose out in the marketplace." Burak Aff. ¶ 69. Thus, the redacted portions of the Philadelphia Delivers Proposal plainly implicate trade secrets of PIDC as well.

Additionally, Amazon is currently engaged in Phase 2 of its search for a location for HQ2, and the City remains in contention. Gallier-Howard Aff. ¶ 15. The release of the unredacted Philadelphia Delivers Proposal would not only harm the City's efforts to attract Amazon's HQ2, it would harm Commerce's future efforts to attract businesses to the City, as competitors would be able to gain inside information as to how the City approaches and competes for opportunities of this nature. Gallier-Howard Aff. ¶ 27, 29. As the City is a constituent part of the Commonwealth, any harm to the City would ultimately harm the Commonwealth as well. Gallier-Howard Aff. ¶ 25. The Commonwealth would additionally suffer harm as material portions of the information redacted from the Philadelphia Delivers Proposal have been obtained from DCED. Gallier-Howard Aff. ¶ 23. It is impossible to understate the extreme competitive nature of this process. Ms. Burak attests that this may be the most intensely competitive business attraction bidding process in PIDC's history, and that PIDC may be subject to competitive harm through the disclosure of its information. Burak Aff. ¶ 27, 71. The release of the unredacted Philadelphia Delivers Proposal would allow the City's competition to use the City's carefully crafted strategy to better position themselves at the City's expenses, match or exceed incentives offered by the City, and otherwise point out flaws in the City's proposal in order to strengthen their own, both in this instance and others. Gallier-Howard Aff. ¶ 25; Burak Aff. ¶ 69. It would also provide with them a roadmap to appropriating the City's themes, messaging, and overall creative approach. Gallier-Howard Aff. ¶ 26.

It is not merely speculation that the City would suffer harm if the proposal were to be released in its unredacted form; it is well known among municipalities that competition for Amazon HQ2 is fierce and that competitors are actively studying and scrutinizing their competition. Gallier-Howard Aff. ¶ 28. Indeed, the *same* concerns cited here by the City have been echoed by its competitors for Amazon HQ2. See Mark Robinson, *Virginia, Richmond Amazon HQ2 pitches to remain secret*, Richmond Times-Dispatch (Dec. 1 2017), http://www.richmond.com/news/virginia/virginia-richmond-amazon-hq-pitches-to-remain-secret/article_1d43bf5b-0fe7-5ddb-bf48-8e1b67ec47f9.html ("Revealing these strategies to the Commonwealth's competitors for economic development projects would adversely affect [Virginia's] competitive advantage, in that our competitors would know our 'playbook.'"); Andrew Metcalf, *Bethesda Magazine* (Jan. 9, 2018), <http://www.bethesdamagazine.com/Bethesda-Beat/2018/Heres-What-Montgomery-County-Highlighted-in-Its-Bid-for-Amazons-Second-Headquarters/> (quoting Maryland official who stated that releasing certain information "would hamper the county's ability to successfully compete with other jurisdictions."). In this extreme competition, any City competitor would almost certainly use

information obtained about the Philadelphia Delivers Proposal – through the RTKL or otherwise – to bolster their own submissions, providing additional economic value to their region if Amazon was to select it as the location of HQ2. Regardless, the competition for Amazon HQ2 is clearly very strong, and the value in the Philadelphia Delivers Proposal goes beyond merely the time the City spend creating it, instead consisting of the City’s strategy for competing in the realm of business attraction.

Additionally, the Philadelphia Delivers Proposal has been the subject of reasonable efforts to maintain its secrecy. This prong of the test is plainly meant to ensure that the parties took at least minimum steps to keep information secret, rather than to set a ceiling on how secret something may be kept.⁵ The City signed a non-disclosure agreement with DCED, attached as Exhibit C, which prohibits the City from making public any Confidential Information, including information deemed to be Trade Secrets and Confidential Proprietary Information, while working on the Philadelphia Delivers Proposal, and vice versa. Gallier-Howard Aff. ¶ 33. Other third-parties who collaborated with the City were also required to sign non-disclosure agreements prohibiting them from releasing any confidential City information. Gallier-Howard Aff. ¶ 34. Inside the City, the Philadelphia Delivers Proposal was saved using secure folders which were only accessible by a limited number of employees who needed access to it for their work at the City, and printing hard copies was also intentionally limited. Gallier-Howard Aff. ¶ 35. Ms. Burak attests as to the similar steps taken by PIDC to protect the Philadelphia Delivers Proposal. Burak Aff. ¶ 53-58.

For the foregoing reasons, the redacted portions of the Philadelphia Delivers Proposal are trade secrets exempt from disclosure under the RTKL, and the instant appeal should be denied.

B. The Philadelphia Delivers Proposal is Confidential Proprietary Information

The Philadelphia Delivers Proposal is exempt from disclosure under the RTKL because it constitutes Confidential Proprietary Information. The RTKL exempts records which constitute or reveal Confidential Proprietary Information. 65 P.S. § 67.708(b)(11). The RTKL defines Confidential Proprietary Information as:

“Confidential proprietary information.” Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

65 P.S. § 67.102. As with the Trade Secret exemption, an agency must establish that both elements of the two-part test are met for the exemption to apply. *See Office of the Governor v. Bari*, 20 A.3d 634 (Pa.Comm.w. 2011).

1. The Commonwealth is a Person Under the Uniform Trade Secrets Act, and that Act’s Definition Controls in this Instance

Commonwealth agencies are a “Person” under the Uniform Trade Secrets Act and thus the Confidential Propriety Information exemption can apply to their records. “Person” is undefined in the

⁵ Any finding to the contrary would undermine the intent of this section of the RTKL, as it would require agencies to keep confidential records (including those of third parties) secret, but not *too* secret. This was clearly not the legislatures intent.

RTKL, and as such typically the definition of “Person” in the Statutory Construction Act would control.⁶ However, the UTSA should be read *in pari materia* with the RTKL given the substantial overlap between it and the Trade Secret and Confidential Proprietary Information exemptions in the RTKL. See 1 Pa.C.S. § 1932(a) (statutes should be read *in pari materia* when they relate to the same things); see also *Schenck v. Township of Center, Butler County*, 893 A.2d 849, 853 (Pa.Comm.w. 2006) (reading the RTKL *in pari materia* with the Sunshine Act). The UTSA defines “Person” as “[a] natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, **governmental subdivision or agency** or any other legal or commercial entity.” 12 Pa.C.S. § 5302 (emphasis added). Thus, Commonwealth agencies are included in the UTSA’s definition of “Person” and should be considered “Persons” for purposes of the Section 708(b)(11) exemption.

2. The Philadelphia Delivers Proposal Reflects Confidential Proprietary Information Created and Received by the City

The City is clearly a “person” under the RTKL, regardless of whether you look to the UTSA or the definition under the Statutory Construction Act. See 12 Pa.C.S. § 5302 (UTSA definition of “Person”); 1 Pa.C.S. § 1991 (Statutory Construction Act definition of “Person”). This appeal involves DCED incentive information *received* by the City which was then incorporated into the City’s confidential proposal. See *Gallier-Howard Aff.* ¶ 6, 13, 19, 32 (collectively noting how DCED provided State incentive information to the City which the City then incorporated into the Philadelphia Delivers Proposal). Similar recent appeals, such as *Opilo v. Pennsylvania Department of Community and Economic Development*, AP 2018-0145 (Pa. OOR Mar. 26, 2018), involved the same information in the hands of other agencies.

However, these cases show why reading the RTKL to require an agency “receive” confidential information for it to be covered under the exemption makes no sense. According to the OOR’s interpretation in *Van Osdol v. City of Pittsburgh*, AP 2017-2247 (Pa. OOR Jan. 24, 2018), arguably the State Incentives now at issue have been “received” by the City and thus are exempt, but the City’s confidential information would not be exempt as it has been requested directly from the City and not a separate agency. However, when sought by the request underlying the afore-mentioned *Opilo* appeal, it would have been.⁷ Clearly the legislature intended for agencies to have confidential information but did not intend for the exchange of records like this – which is not uncommon given the frequent cooperation amongst government agencies – to have any bearing on whether they can constitute Confidential Proprietary Information.⁸ Therefore, “received” in the definition of Confidential Proprietary Information must be read to include information created by an agency in addition to information given to an agency. It would be an absurd result plainly not intended by the legislature for the Confidential Proprietary Information exemption to only apply to City records *received* by another

⁶ The Statutory Construction Act defines “person” to include “a corporation, partnership, limited liability company, business trust, other association, government entity (other than the Commonwealth), estate, trust, foundation or natural person.” 1 Pa.C.S. § 1991.

⁷ That issue was not directly addressed by the OOR in *Opilo*, as the OOR held that the Requester had limited her request on appeal to only seeking the State Incentives already in the possession of DCED. *Opilo v. Pennsylvania Department of Community and Economic Development*, AP 2018-0145 (Pa. OOR Mar. 26, 2018).

⁸ Indeed, the provisions of the RTKL otherwise reflect that such agency collaboration takes place and confidential information exchanged between agencies retains its confidential nature, just as internal predecisional deliberations among agencies are considered internal under the RTKL. 65 P.S. § 67.708(b)(10)(i)(A). Likewise, the General Assembly clearly did not intend for the RTKL to chill speech between government agencies.

agency but not those records in the hands of the agency that *created* them.⁹ 1 Pa.C.S. § 1922 (the legislature does not intend absurd results).¹⁰

3. The Philadelphia Delivers Proposal is Confidential Proprietary Information

The Philadelphia Delivers Proposal is exempt from disclosure as it constitutes Confidential Proprietary Information. The first prong of the test, requiring the information to be privileged or confidential, is met because, as discussed previously, the unredacted copy of the Philadelphia Delivers Proposal has not been publicly released, and only select individuals from the entities which created it and Amazon have such a copy. Gallier-Howard Aff. ¶ 34. The City signed a non-disclosure agreement with DCED which prohibits the City from making public any Confidential Information, including information deemed to be Trade Secrets and Confidential Proprietary Information, while working on the Philadelphia Delivers Proposal, and vice versa. *See* Exhibit C, The Non-Disclosure Agreement; *see also* Gallier-Howard Aff. ¶ 33. Other third-parties who collaborated with the City were also required to sign non-disclosure agreements prohibiting them from releasing any confidential City information. Gallier-Howard Aff. ¶ 34. Inside the City, the proposal was saved using secure folders which were only accessible by a limited number of employees who needed access to it for their work at the City, and printing hard copies was also intentionally limited. Gallier-Howard Aff. ¶ 35. Ms. Burak attests as to the similar steps taken by PIDC to protect the Philadelphia Delivers Proposal. Burak Aff. ¶ 53-58.

The second prong of the test for Confidential Proprietary Information, requiring the disclosure of the information to cause substantial harm to the City, is also met. It is hard to imagine a more substantial harm than the potential loss of a multi-billion-dollar economic investment in the Philadelphia region, which would include more than 50,000 jobs. Gallier-Howard Aff. ¶ 20; Burak Aff. ¶ 22. And as discussed, it is not mere speculation that harm to the City's competitiveness would come from its release, as it is well known among municipalities that competition is fierce for HQ2 and the, municipalities competing are actively studying and scrutinizing their competition. Gallier-Howard Aff. ¶ 28. This harm would also extend to all other business development deals the City attempts (as well as deals attempted by other business development agencies such as PIDC and DCED), as competitors would be able to obtain inside information into how the City approaches and competes for opportunities of this nature; this would, ultimately, harm the City's negotiating position. Gallier-Howard Aff. ¶ 27, 29, 30; Burak Aff. ¶ 42-45. As such, the release of the unredacted Philadelphia Delivers Proposal would harm not only the City's ability to effectively attract businesses to the region, but would also ultimately harm taxpayers whose government is not able to most effectively use their tax dollars. For these reasons, and as discussed extensively above, the Philadelphia Delivers Proposal is exempt from disclosure as Confidential Proprietary Information.

⁹ Or, alternatively, for "receipt" to include creation.

¹⁰ This is not the only provision within the RTKL that has led to confusion and serious concerns of constitutional violations, including such important issues as the lack of protection for due process rights, and potential violations of constitutional privacy rights. *See, e.g., Department of Public Welfare v. Froehlich ex rel. Community Legal Services*, 29 A.3d 863, 868 (Pa. Commw. 2011) ("Unfortunately, much in the RTKL is left open to interpretation, with no clear direction."); *Office of Governor v. Bari*, 20 A.3d 634, 648 (Pa. Commw. 2011) (discussing how the RTKL has severe due process issues with regards to third-party records); *Pa. State Educ. Ass'n v. Commonwealth, Dep't of Cmty. & Econ. Dev.*, 148 A.3d 142, 156 (Pa. 2016) (noting that "no provision of the RTKL speaks" to the protection of constitutionally privacy interests, which must nonetheless be respected). Indeed, the RTKL has even been construed by the courts to contain provisions which are not written in it. *See Com., Office of Open Records v. Center Tp.*, 95 A.3d 354, 369 (Pa. Commw. 2014) (holding that the OOR has authority to conduct *in camera* inspection despite there being no provision in the RTKL which explicitly grants it that authority).

C. The Philadelphia Delivers Proposal is Exempt as a Proposal

The Philadelphia Delivers Proposal is exempt as a proposal pertaining to agency procurement or disposal of supplies, services, or construction prior to the award of a contract. 65 P.S. § 67.708(b)(26). The plain language of the Section 708(b)(26) exemption does not limit its applicability to situations where, as here, an agency has submitted a bid to a vendor. Indeed, the Philadelphia Delivers Proposal *does* pertain to agency procurement – it is just that the City is contemplating the possibility of providing certain services to Amazon rather than being the purchaser of services. For the reasons discussed extensively above, the legislature clearly did not intend for bids for services submitted *to* the City to be exempt while bids submitted *by* the City are public, a result which would result in significant financial harm to Pennsylvania agencies. *See* 1 Pa.C.S. § 1922 (the legislature does not intend for absurd results); *see also supra* at p. 13 and note 10 (discussing the poor drafting of the RTKL). This exemption is, however, clearly intended to protect against unfair bidding practices, whether by government or third-parties, as well as to protect the integrity of such processes. Ordering the release of a proposal prior to the award of any contract would completely undermine this intent as well as put the City at a competitive disadvantage.

As Ms. Gallier-Howard attests, the City submitted a proposal to Amazon for Amazon HQ2. Gallier-Howard Aff. ¶ 5. Amazon is currently engaged in phase 2 of their search for a location for HQ2, and the City remains in contention. Gallier-Howard Aff. ¶ 15. As far as she is aware, no decision has yet been made by Amazon. *Id.* Therefore, the Philadelphia Delivers Proposal is exempt from disclosure pursuant to Section 708(b)(26) as a proposal pertaining to agency procurement.

D. The Redacted Portion of the Philadelphia Delivers Proposal Reflects City Strategy to Achieve the Successful Adoption of a Budget and Legislative Proposal

The RTKL exempts the strategy used to develop or achieve the successful adoption of a budget, legislative proposal or regulation. 65 P.S. § 708(b)(10)(i)(B). The City incentives, State incentives, and Creative Pitch were all created to attract Amazon to the City, and are part of a business attraction proposal that contemplates a business relocating, in part, to the Philadelphia area, as well as the further discussions that will result if such relocation and development talks progress. Gallier-Howard Aff. ¶ 14. Because they contemplate this further action, the redacted provisions of the proposal therefore reflect the City and State's legislative strategy to improve business development. This strategy is not a one off, but is rather part of Commerce's larger business development strategy for the City. Releasing these confidential portions of the bid now would undermine those goals, resulting in the very harm Section 708(b)(10)(i)(B) is designed to prevent, and they are therefore exempt from disclosure.

E. The Philadelphia Delivers Proposal is not a Financial Record

Lastly, the City notes that the Philadelphia Delivers Proposal not a Financial Record as defined by the RTKL. The RTKL defines "Financial Record" as:

"Financial record." Any of the following:

- (1) Any account, voucher or contract dealing with:
 - (i) the receipt or disbursement of funds by an agency; or
 - (ii) an agency's acquisition, use or disposal of services, supplies, materials, equipment or property.
- (2) The salary or other payments or expenses paid to an officer or employee of an agency, including the name and title of the officer or employee.

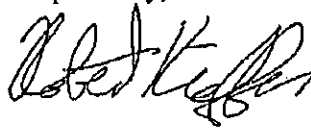
(3) A financial audit report. The term does not include work papers underlying an audit.

65 P.S. § 67.102. Fewer exemptions apply to Financial Records. 65 P.S. § 67.708(c). However, the Philadelphia Delivers Proposal does not meet the definition of a Financial Record. As Ms. Gallier-Howard attests, the Philadelphia Delivers Proposal does not contain or otherwise reflect the actual receipt or disbursement of any City funds, or use or disposal of services, supplies, materials, equipment or property, including in the portions which were redacted. Gallier-Howard Aff. ¶ 14. The Philadelphia Delivers Proposal is instead a business attraction proposal that contemplates future action and agreement, in part subject to legislative action, but it does not itself document the receipt, disbursement, use, acquisition, or disposal of anything. *Id.* Therefore, the Philadelphia Delivers Proposal is not a Financial Record.

III. Conclusion:

For the foregoing reasons, the City respectfully requests that the Instant Appeal be dismissed and/or denied. Thank you for your consideration of this matter.

Respectfully,



Jo Rosenberger Altman, Divisional Deputy City Solicitor
Robert Kieffer, Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, Floor 17
Philadelphia PA 19102

Cc: Sylvie Gallier-Howard, Chief of Staff, Philadelphia Department of Commerce (via email)
Megan Shannon (via email)

Exhibit A

Affidavit of Sylvie Gallier-Howard, First Deputy Commerce Director,
City of Philadelphia Department of Commerce

I, Sylvie Gallier-Howard, am the First Deputy Commerce Director for the City of Philadelphia (the "City") Department of Commerce ("Commerce") and am authorized to execute this affidavit. I state the following to the best of my knowledge, information and belief under penalty of perjury pursuant to 18 Pa.C.S. § 4904 relating to unsworn falsification of authorities:

1. I am aware of the requests at issue in the above-captioned appeal (the "Requests"), which seek the following records:

"I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions."

2. I am currently the First Deputy Commerce Director of the City's Department of Commerce. I have worked at Commerce since September 2012, including as the Chief of Staff. As First Deputy Commerce Director, I oversee Commerce's operations, legislative affairs, and communications.

- a. Prior to joining the City, I ran my own business, Clementine Consulting, providing organizational, strategic, and leadership expertise to non-profits, foundations, and social enterprises. The majority of my career has been centered around economic development, entrepreneurship, and community revitalization both in Philadelphia and abroad.

3. Commerce is the umbrella organization for economic development in the City, and coordinates the work of all related agencies. The mission of Commerce is to ensure that Philadelphia is a globally-competitive city where employers hire, entrepreneurs thrive, and innovation abounds; to recruit and retain a diverse set of businesses; to foster economic opportunities for all Philadelphians in all neighborhoods; and to partner with workforce development programs and local businesses on talent development with the goal of ensuring that all Philadelphians can find and retain living-wage jobs.

- a. Commerce supported over 5,400 businesses in Fiscal Year 2016, and over 4,600 in Fiscal Year 2017.
 - b. Philadelphia is the poorest major city in the United States. The work that Commerce does to attract businesses to the region is vital to changing that, as attracting better paying jobs is one of the best ways the City can help impoverished residents break out of the cycle of poverty.

- c. To achieve this mission, Commerce is divided into three areas: Neighborhood and Business Services, the Office of Economic Opportunity, and Business Development.
 - d. Business Development includes business attraction, retention, and investment, as well as talent development. These related components are linked together in this context out of necessity, as Commerce must excel in all of them in order to most successfully develop business in the City. Commerce spends millions of dollars annually on its Business Development operations.
 - e. Commerce also oversees operation of the Philadelphia International Airport ("PHL"), and works closely with the Port of Philadelphia ("PhilaPort").
4. As part of Commerce's Business Development function, the department plays a lead role in recruiting and retaining businesses to Philadelphia and marketing the city. Commerce regularly works with public and private entities including, but not limited to, the Commonwealth's Department of Community & Economic Development ("DCED"), the Philadelphia Industrial Development Corporation ("PIDC"), Select Greater Philadelphia, the Philadelphia Convention & Visitors Bureau, various Chambers of Commerce, Community Development Corporations, and Business Associations.
- a. Some of the organizations Commerce routinely partners with, such as Select Greater Philadelphia and PIDC, have a core mission of attracting business to the Philadelphia region and supporting the growth of existing businesses.
 - b. Business attraction, both business relocation as well as attracting high profile events, is hyper competitive. Commerce is often competing against other cities, sometimes as close as neighboring states, and sometimes as far as in other countries.

The Philadelphia Delivers Proposal

- 5. I am familiar with the proposal submitted by the City to Amazon for Amazon HQ2 (the "Philadelphia Delivers Proposal"), which is the record responsive to both Requests. In my role as Commerce's Chief of Staff, which was my job title at that time, I participated in the creation and submission of the Philadelphia Delivers Proposal.
- 6. To develop the Philadelphia Delivers Proposal, Commerce partnered with PIDC, DCED, the Chamber of Commerce for Greater Philadelphia and numerous local organizations and businesses to harness the creative talent of the region. Commerce also leveraged its partnerships with PHL, PhilaPort, and related drivers of economic activity in the region to ensure that the proposal sold the Philadelphia region to the best of its abilities.

7. The Philadelphia Delivers Proposal is the result of weeks of directed efforts by the City and its partners, most notably PIDC, but it stood on the shoulders of years of experience in marketing, business and talent attraction. It was possible because of the countless successful events held in the City, meetings with other businesses exploring relocation, and learning from lost opportunities. While the RFP required the City to turn around its proposal in a short time frame, the City was able to draw on years of experience between the City and its private and public partners in responding.
8. Commerce worked closely with the City's partners, including PIDC, to create the Philadelphia Delivers Proposal. The proposal contains the City's incentive package, which includes financial and non-financial incentives, and the City's "Creative Pitch" described below.
9. Over the years, Commerce has developed confidential marketing strategies and innovative approaches to attract large events and businesses to the region. This is what gives the City a competitive edge when going head to head with other cities to land an event or draw a business to the region. The City has developed a core message for business development, but also customizes its approach to meet the unique needs of each business it attracts.
10. In the case of the Philadelphia Delivers proposal, we embraced the company's value of "customer obsession" and studied the company deeply to craft a unique pitch that we felt would best match the company ethos and practices.
11. A great deal of research and creative inspiration was poured into what we have internally called the "Creative Pitch" to Amazon, which was carefully crafted with the City's public and private partners to give Philadelphia an edge in this extremely high-profile competition.
12. The City incentive package was likewise specifically crafted to appeal to Amazon based on our research into the company, the City's experience, and third-party input, with this nationwide competition in mind. We thought outside of the box, leveraging both external partners and City resources that are atypical in business development that we thought would appeal directly to Amazon.
13. The Creative Pitch and City incentives overlap, but cover pages 5-14, 17, 46, 54-58, 84, and 87-94 of the Philadelphia Delivers Proposal. They additionally overlap with the State Incentives crafted by DCED on page 46. The remainder of the redacted pages are the State Incentives.
14. The Philadelphia Delivers Proposal is a business attraction proposal that contemplates a business relocating, in part, to the Philadelphia area, and the further discussions that will result if such relocation and development progresses. It does not contain or in any other way reflect the receipt or disbursement of any City funds, nor the acquisition, use or disposal of services, supplies, materials, equipment, or property, including in the portions which were redacted.

15. Amazon is currently engaged in phase 2 of their search for a location for HQ2, and the Philadelphia region remains in contention. To the best of my information, knowledge and belief, no decision has yet been made.

The City's Release of a Redacted Philadelphia Delivers Proposal

16. Despite the unique confidentiality concerns with business attraction, and this deal specifically, the City takes transparency seriously. Contemporaneously with submitting its confidential proposal to Amazon, the City unveiled the Philadelphia Delivers website, publicly available at <https://public.philadelphiadelivers.com/>.
17. After receiving numerous RTK requests for Philadelphia's written proposal, the City carefully worked internally and with its business partners to balance the public's interest in disclosure without harming the competitive or financial position of entities that collaborated to submit the proposal, including the City.
18. The City ultimately released a redacted copy of the Philadelphia Delivers Proposal. A copy of the redacted Philadelphia Delivers Proposal is attached to the City's legal submission as Exhibit C.

The Creative Pitch, City Incentives, and State Incentives

19. The City redacted just three types of information from the Philadelphia Delivers Proposal: The Creative Pitch, the City incentives, and the State incentives which were crafted by DCED. No other type of information was redacted from the publicly released version of the Philadelphia Delivers Proposal.
20. The release of the redacted portions of the Philadelphia Delivers Proposal would harm the Philadelphia region and Commonwealth's efforts to attract Amazon and its partners to Philadelphia, jeopardizing the potential addition of up to 50,000 new jobs and billions of dollars in economic development, which ultimately harms the businesses and citizens of Philadelphia.
21. The Creative Pitch and City incentives reflect the City's outside of the box thinking in business attraction and how the City approaches these deals. At the same time, they were crafted specifically to appeal to Amazon and compete on a country-wide scale.
22. The Creative Pitch is what reflects the City's style, and includes confidential information on the City's strategy for growth and development in various areas of the City, as well as insight into how the City views its competitors, all information that is not publicly available and we believe would be used to negatively impact the City in this deal or others if released.
23. The State incentives were crafted by DCED and provided to the City and other municipalities across the Commonwealth. The City repackaged their design into one

which was consistent with the City's messaging to Amazon in the Philadelphia Delivers Proposal.

24. It is not uncommon for Commerce to work with agencies outside of the City, such as PIDC and DCED, to create incentive packages for business attraction. While such incentive packages may originate outside of the City, they are a material part of the City's overall presentation to outside entities, including here with Amazon.
25. The City and other stakeholders involved with the Philadelphia Delivers Proposal would be harmed by the release of the redacted portions of the proposal because it would allow the City's competition for Amazon HQ2 to use the carefully crafted strategy the City created with its partners to better position themselves at the City's expense, allow them to match or exceed the incentives offered by the City, and otherwise attempt to point out flaws in the City's proposal in an attempt to strengthen their own. Any harm to the City in its efforts to attract business would be reasonably likely to harm the Commonwealth as well, as the City is a constituent part of it.
26. The release of the style and structure of the City's Creative Pitch would provide the City's competition with a roadmap, allowing them to appropriate the City's themes, messaging, and overall creative approach.
27. This could hurt the City not only in the instant deal but in future business attraction opportunities as competitors would be able to obtain inside information into how the City approaches and competes for opportunities of this nature. This is information that otherwise is not available to them through any legitimate means.
28. The value of having such detailed information about the core of a competitor's proposal cannot be accurately valued as it is near priceless, and in this particular deal worth billions of dollars in economic development. This fear is not mere speculation or guesswork; it is well known among municipalities that competition is fierce for HQ2 and that the municipalities competing are actively studying and scrutinizing their competition.
29. Thus, not only would the release of the redacted sections of the Philadelphia Delivers Proposal harm the City's efforts to attract Amazon HQ2 to Philadelphia, their release would harm other Commerce efforts to attract businesses to Philadelphia for the same reasons described previously, as well as the City's negotiating position with such businesses.
30. It is also reasonably likely that their release would harm the efforts of PIDC, DCED, and other business attraction agencies, both public and private, to bring business to the Philadelphia region and the Commonwealth generally.
31. Because Commerce worked so closely with PIDC to craft the Creative Pitch and City incentives Package, it is not possible to separate out PIDC's confidential information from the City's – it is one and the same.

The Proposal Has Been Securely Stored

32. Because the Philadelphia Delivers Proposal contains confidential information provided to the City by DCED, a copy of the proposal was provided to DCED, subject to a non-disclosure agreement.
33. The non-disclosure Agreement ("NDA") prohibits the City from making public any Confidential Information, including information deemed to be Trade Secrets and Confidential Proprietary Information, obtained from DCED while working on the Philadelphia Delivers Proposal, and vice versa.
34. Other than by secure delivery to Amazon, the full Philadelphia Delivers Proposal was not distributed beyond DCED, PIDC, and select City employees. Other third parties who collaborated with the City were required to sign nondisclosure agreements prohibiting them from releasing any confidential City information given the sensitivity of the competition, and with one exception, none were provided the City incentive package, or State incentives ultimately submitted. The City has released to a third party a portion of the City's Creative Pitch and incentive package only because the portion released reflected that third party's confidential information, as carefully packaged by the City. This disclosure was done solely to allow them to participate in the instant appeal.
35. Internally, the proposal was safeguarded by using a secure network folder that was only accessible by a limited number of employees who needed to access it for their work at the City. Any employee who needed access to the proposal had to be given permission to access it by one of the two Administrators who controlled it. Even among those employees, the City intentionally limited printing copies of the proposal given its highly confidential nature.
36. Amazon was provided with unredacted hard copies sent via U.S. Mail, as well as an electronic copy which could be accessed using a password-protected website.

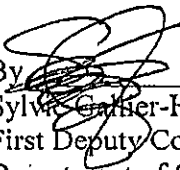
By  on 3/28/18
Sylvie Gallier-Howard
First Deputy Commerce Director
Department of Commerce
1515 Arch St., 12th Floor
Philadelphia, PA 19102
(215) 683-2009 (phone)
Sylvie.GallierHoward@phila.gov

Exhibit B

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

EMILY OPILO
c/o THE MORNING CALL,

Requester,

v.

PENNSYLVANIA DEPARTMENT
OF COMMUNITY AND ECONOMIC
DEVELOPMENT,

Agency.

No. AP 2018-0145

AFFIDAVIT OF ILENE BURAK

I, Ilene Burak, hereby swear and affirm as follows:

1. I am Senior Vice President and General Counsel for the Philadelphia Industrial Development Corporation ("PIDC"), and am an authorized signatory for PIDC with respect to this matter.

The Request

2. I am familiar with the Right-to-Know Law request (the "Request") submitted on November 30, 2017 by Emily Opilo c/o The Morning Call to the Pennsylvania Department of Community and Economic Development ("DCED").

3. As it relates to PIDC, Ms. Opilo's Request seeks a "cop[y] of the Amazon HQ₂ proposal[] for ... Philadelphia ... for which officials signed a non-disclosure agreement with the Commonwealth of PA."

4. I am making this Affidavit in connection with PIDC's submission as to Ms. Opilo's appeal to the Office of Open Records, which Ms. Opilo filed after DCED granted the Request in part, and denied it in part.

PIDC

5. PIDC is a Pennsylvania non-profit, non-stock corporation with offices located at 1500 Market Street, Suite 2600 West, Philadelphia, PA 19102-2126.

6. PIDC is the economic development corporation serving the City's residents, businesses, and other stakeholders.

7. PIDC's mission is to spur investment, support business growth, and foster developments that create jobs, revitalize neighborhoods, and drive growth in every part of the City of Philadelphia.

8. To achieve its mission, PIDC attracts, manages, and invests public and private resources in the clients, communities, and markets that energize Philadelphia's economy.

9. PIDC offers flexible financing tools, a targeted portfolio of industrial and commercial real estate, and decades of Philadelphia-based knowledge to help its clients invest, develop, and grow.

10. PIDC also structures and invests in public-private partnerships for key City policy areas and development priorities.

11. For 60 years, PIDC and its affiliates have settled 6,700 transactions, including \$14 billion in financing that has leveraged over \$25 billion in total investment, and assisted in creating and retaining hundreds of thousands of jobs.

12. PIDC's direct loan and managed third-party portfolio at the start of 2016 exceeded \$642 million, representing 520 loans.

PIDC's Trade in Attracting Private Businesses

13. As noted above, one of the core facets of PIDC's business and trade is the attraction of private businesses to Philadelphia to support the City's economy and its growth.

14. To draw private businesses to the City, PIDC utilizes the full panoply of resources at its disposal, including its financing tools, real estate portfolio, and its decades of Philadelphia-based knowledge, methods, and ideas.

15. PIDC competes against other similar economic development entities and consultants, who are also trying to attract private businesses to their own locales.

16. PIDC and its competitors in the business attraction marketplace constantly vie against one another to try to offer proposals superior to one another to draw more private businesses to their respective locales.

17. PIDC utilizes its carefully-developed, confidential, and proprietary mix of financing, real estate, and intellectual know-how – which it has honed over the past 60 years – and applies them to craft individually-targeted proposals to attempt to convince businesses to locate or relocate their operations in Philadelphia.

18. As a recent example, PIDC was able to utilize its resources and proprietary skill set to successfully attract Dietz & Watson to consolidate and expand its operations in the Tacony section of Philadelphia.

19. During that process, PIDC was engaged in direct competition against entities in New Jersey, which were seeking to retain Dietz & Watson's presence in New Jersey.

20. PIDC was able to win the Dietz & Watson business due to PIDC's proposal, which drew upon PIDC's unique and proprietary combination of financing tools, real estate resources, and unique Philadelphia-based knowledge, methods, and ideas.

The Amazon HQ2 Process

21. In September 2017, Amazon issued a Request for Proposals ("RFP") seeking bids for the location of its second headquarters ("HQ2").

22. According to Amazon, it expects to invest over \$5 billion in construction and intends to grow HQ2 to include as many as 50,000 full-time, well-paying jobs.

23. Amazon's HQ2 is expected to have a very significant and positive impact on the economy of the locality chosen as the host site.

24. As expected, the HQ2 RFP has resulted in an intensely competitive bidding process.

25. In October 2017, over 200 localities submitted bids in response to the HQ2 RFP, including the City of Philadelphia.

26. PIDC had significant and material input into the Philadelphia proposal, and its confidential and proprietary tools, methods, and information have been used to develop the Philadelphia proposal.

27. The Amazon HQ2 RFP process may be the most intensely competitive business attraction bidding process in PIDC's history.

28. That said, this process is similar to other business attraction scenarios where PIDC has been in direct competition with its competitors in other localities.

29. In January 2018, Amazon narrowed the 200-plus submittals down to 20.

30. Philadelphia was selected as one of the 20 finalists.

31. Each of the other 19 finalist locales is working through or with one of PIDC's competitors to try to win Amazon's HQ2.

The "Philadelphia Delivers" RFP Response

32. The City of Philadelphia's RFP response to Amazon, which was prepared in consultation and cooperation with PIDC, and which includes PIDC's proprietary materials, is a 108 page document entitled "Philadelphia Delivers."

33. The City has voluntarily chosen to disclose most of the content of the Philadelphia Delivers proposal to the public, and to the Requester.

34. A copy of the public version of the proposal is attached as "Exhibit A." It is also available at: https://www.dropbox.com/s/hjr99rl123iyr6b/PHL_AMAZON_FINAL%20Public.pdf?dl=0

35. In addition, a public website provides additional information and details on Philadelphia's proposal. See <https://public.philadelphiadelivers.com/>

PIDC-Protected Items in the Philadelphia Delivers Proposal

36. Certain material have been withheld from the Philadelphia Delivers proposal.

37. Two discrete types of information have been redacted from the Philadelphia Delivers proposal that pertain to PIDC.

38. Those redacted items are extremely sensitive and proprietary to PIDC.

39. Those redacted items also are protected by non-disclosure agreements that have been signed by relevant parties, who have promised to protect that information from public disclosure.

40. First, the Philadelphia Delivers proposal has been redacted to remove sensitive and proprietary items relating to financial incentives and financial programs that have been proposed to Amazon (the "City Incentives").

41. Second, the proposal has been redacted to remove its creative proposal to Amazon – a mix of the City's and PIDC's selling points and creative and out-of-the-box ideas, which have been marketed and presented to Amazon through a creative and unique methodology (the "Creative Proposal").

42. The City Incentives and Creative Proposal were developed and shared between PIDC and the City and reflect specific financial information and other material supplied by PIDC to – and received by – the City of Philadelphia.

43. The City Incentives and Creative Proposal reflect and discuss a particular application of PIDC's proprietary financial tools, proposals, methods, and marketing and other ideas, all of which are unique to PIDC's business and trade of attracting businesses to the City.

44. This application of PIDC's financial tools, proposals, methods, and ideas included in the Philadelphia Delivers proposal is extremely sensitive and confidential to PIDC.

45. PIDC considers this information supplied in the Philadelphia Delivers proposal as proprietary to PIDC and also as the intellectual property of PIDC.

46. The particular utilizations of PIDC's financial tools, methods, proposals, and ideas are crucial building blocks for PIDC to successfully compete in the business attraction marketplace.

47. PIDC has invested significant time and capital resources in developing the means for deployment of its financial tools, financial proposals, and trade methods and ideas – not only for the Amazon HQ2 proposal, but for all of the proposals that PIDC has made over the years and decades.

48. PIDC's financial tools and proposals, and its methods and ideas, have been carefully crafted, calibrated, and refined over time, and are based on PIDC's long history of experience and success in attracting businesses to the City.

49. The selection and particular deployment of PIDC's financial tools, its various types of financial proposals, and its trade methods and ideas in a given business attraction setting vary by scenario.

50. Substantial investment of time and effort is made to refine PIDC's specific strategy for each proposal; the Amazon proposal is no exception.

51. PIDC never publicly discloses a proposal's specific financial terms and chosen financial tools or its particular methods or ideas at any time during the bidding process.

52. PIDC treats each of these items as highly confidential and privileged.

53. Anyone accessing PIDC's confidential information is always expected and required to maintain this information in confidence.

54. For the Amazon HQ2 proposal, certain parties with access to PIDC's confidential information were mandated to sign non-disclosure agreements providing that those parties would protect PIDC's proprietary information.

55. PIDC always applies and honors electronic and physical security protocols to keep its proprietary information under wraps.

56. PIDC's proprietary information cannot be accessed by anyone outside PIDC, and cannot be accessed by anyone even within PIDC – except those with a business need to know it.

57. To accomplish that protection, PIDC employs computer password and cybersecurity measures, as well as physical file security measures, all of which are in compliance with applicable industry protocols.

58. Those steps ensure that unwanted access is prevented.

59. PIDC's proprietary information therefore is not easily or readily available either outside or even inside PIDC.

60. None of PIDC's competitors know the particulars of any of PIDC's proprietary information, and they cannot duplicate it – as it is unique to PIDC.

61. PIDC's proprietary information is not required to be submitted to the City for review and approval as part of any particular business attraction proposal process.

62. If PIDC's proprietary information depicted in the City Incentives and Creative Proposal portions of the City's proposal was publicly disclosed during the ongoing Amazon RFP process, such would undermine PIDC's competitive position.

63. Indeed, public disclosure will allow one, some, or all of the other 19 remaining bidders to adjust their own bids to undercut and undermine PIDC's market position – both specifically (as to the Amazon RFP) and also more generally (in the overall business attraction marketplace).

64. Specifically, the other bidders could steal PIDC's proprietary blend of financial tools, financial proposals, and trade methods and ideas to try to match or outbid the City or to otherwise refine their own proposals based on insights unfairly gained from PIDC.

65. Those other bidders could unfairly take advantage of PIDC's years of experience and significant investments in developing its proprietary information without having to make such investments or develop such experience on their own.

66. The other bidders also could use the information gained to attempt to falsely or otherwise improperly or unfairly disparage the City's Amazon proposal.

67. Even worse, improper access by the other bidders to PIDC's proprietary information will give those other bidders insights on PIDC's global strategies that it deploys for all of its business attraction proposals.

68. Other bidders could learn from this PIDC information and then use that information to undercut PIDC in future business attraction bidding processes.

69. As such, PIDC's proprietary information reflected in the City Incentives and Creative Proposal has independent economic value because, if disclosed, it would furnish competitors with solid parameters by which they could refine their own strategies as part of their efforts to win businesses away from PIDC or otherwise cause PIDC to lose out in the marketplace.

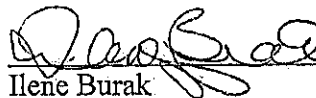
70. Underscoring the unfairness to PIDC is the fact that, in some other jurisdictions, other bidders' proposals may not be subject to public disclosure under those other jurisdictions' public records laws.

71. As such, if a ruling were to be made against PIDC here, then PIDC may be subjected to competitive harm through the disclosure of its information, whereas bidders from other jurisdictions will not be subjected to that same harm.

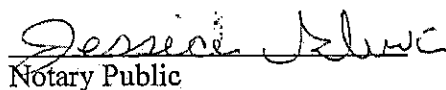
72. This will unfairly tilt the competitive playing field in favor of PIDC's competitors and against PIDC.

73. For any and all of these reasons, the release of the City Incentives and Creative Proposal would unfairly cause PIDC to suffer substantial harm to its competitive position.

I hereby swear and affirm that the foregoing statements are true and correct to the best of my knowledge and belief.


Ilene Burak

Signed and Sworn to Before Me:


Notary Public

On February 14, 2018

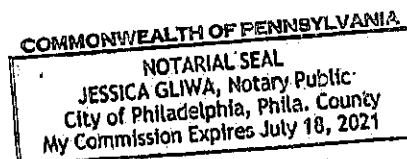


Exhibit C

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT, is made as of the 6th day of October 2017, by and between the CITY OF PHILADELPHIA, acting through its DEPARTMENT OF COMMERCE, existing under and by virtue of the law of the State of Pennsylvania with offices located at 1401 JFK Boulevard, Philadelphia, Pennsylvania 19102 (the "City") for itself and on behalf of its affiliated entities (collectively, "Affiliates"), and the COMMONWEALTH OF PENNSYLVANIA, acting through the DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, for itself and on behalf of its Affiliates, with offices located at Commonwealth Keystone Building, 4th Floor, 400 North Street, Harrisburg, Pennsylvania 17120 ("DCED").

WHEREAS, the CITY and DCED intend to enter into certain discussions about information and incentives to be offered as part of a bilateral state and local proposal to [Amazon.com, Inc. and its Affiliates] (the "Project") and the CITY and DCED may make certain information available to each other regarding the respective state and local incentives to be offered as part of the Project.

NOW THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties hereby agree as follows:

1. The CITY agrees to supply to DCED certain information requested by DCED relating to the local economic incentives to be proposed for the Project, and DCED agrees to supply to the CITY certain information requested by the CITY related to DCED's economic incentive proposal for the Project.

2. As used herein, "Confidential Information" shall include, but not be limited to, written or oral communications, or tangible information (such as a writing, drawing or sample of material, or an account of confidential discussions reduced to writing) relating to the CITY or any of its Affiliates, or related to DCED or to any of its Affiliates, which meets the threshold definition of "Confidential Proprietary Information" and/or "Trade Secret" as defined in the Pennsylvania Right to Know Law, 65 P.S. §§67.102, and which has been marked "confidential" by the CITY or by DCED, as the case may be, prior to either party's receipt of such information. Notwithstanding anything herein otherwise contained, Confidential Information shall not include any item of information or data which: (a) is within the public domain prior to the time of disclosure or thereafter becomes within the public domain other than as a result of disclosure by DCED or the CITY or any of its representatives in violation of this Agreement; (b) was, on or before the date of disclosure to the recipient party, in the possession of such party, unless it was acquired by DCED or the CITY from a third party who was under an obligation of confidentiality at the time of disclosure; (c) is acquired by the DCED or the CITY from a third party not under an obligation of confidentiality to the CITY or to DCED, or is independently developed by DCED or the CITY; or, (d) is information, data or material that is required to be disclosed by state, federal or local law or regulation (including but not limited to the Pennsylvania Right to Know Law, 65 P.S. §§67.101-67.3104), or by order of government authorities or a court of competent jurisdiction.

3. (a) DCED agrees that except as otherwise herein permitted, without the prior written consent of the CITY, which consent may be withheld for any reason, it shall use the Confidential Information only for the purposes of the discussions to be held with the CITY and any project it may conduct with the CITY. DCED agrees to: (a) restrict disclosure of Confidential Information to those of its employees and agents that reasonably require access to the Confidential Information; (b) inform its employees and agents who receive Confidential Information of the existence of this Agreement and that they must comply with the terms hereof; and, (c) promptly notify the CITY in the case that disclosure of Confidential Information is requested or is required by a court of law, by law or regulation, or government agency, and cooperate with the CITY in any legal action it may take with regard to such request or requirement.

(b) The CITY agrees that except as otherwise herein permitted, without the prior written consent of DCED, which consent may be withheld for any reason, it shall use the Confidential Information only for the purposes of the discussions to be held with DCED and any project it may conduct with DCED. The CITY agrees to: (a) restrict disclosure of Confidential Information to those of its employees and agents that reasonably require access to the Confidential Information; (b) inform its employees and agents who receive Confidential Information of the existence of this Agreement and that they must comply with the terms hereof; and, (c) promptly notify DCED in the case that

disclosure of Confidential Information is requested or is required by a court of law, by law or regulation, or government agency, and cooperate with DCED in any legal action it may take with regard to such request or requirement.

4. DCED agrees to return any and all copies of Confidential Information to the CITY promptly as requested or at the termination, cancellation or expiration of this Agreement. The CITY agrees to return any and all copies of Confidential Information to DCED promptly as requested or at the termination, cancellation, or expiration of this Agreement. Notwithstanding the foregoing, the parties recognize that DCED, and the CITY, if the CITY is determined to be a local agency under the Pennsylvania Right to Know Law, are required to maintain data that is deemed to be a "record" as defined in the Pennsylvania Right to Know Law, 65 P.S. §§67.101-3104.

5. Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed. Nothing in this Agreement shall be construed to place the CITY, its Affiliates, DCED, or its Affiliates, in relationship of partners, joint ventures or of principal and agent. The parties hereto have negotiated and entered into this Agreement solely as independent contractors, and no employer-employee relationship exists or shall be deemed to exist between them.

6. The obligation to prevent disclosure of Confidential Information shall survive the termination, cancellation or expiration of this Agreement for a period of five (5) years from the receipt of such information.

7. Should any disputes or questions arise between or among the parties to this Agreement during or after the term of this Agreement with respect to the rights, obligations and remedies hereunder of such parties or with respect to the construction or application of this Agreement which shall not be amicably resolved among the parties, the undersigned agree that such disputes or questions shall be submitted to the Pennsylvania Board of Claims in accordance with the laws of the Commonwealth of Pennsylvania.

8. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to its conflicts of laws principles. Should any provision of this Agreement be deemed unenforceable in any judicial proceeding, such determination shall not affect the validity and enforceability of the balance of this Agreement.

9. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and together which shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year hereinabove stated.

THE CITY OF PHILADELPHIA for itself and on behalf of Affiliates

By: Harold T. Epps
Harold T. Epps
Director of Commerce

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, for
itself and its Affiliates

By: Dennis M. Davin
Dennis M. Davin
Secretary

APPROVED AS TO FORM
SOZI PEDRO TULANTE, CITY SOLICITOR

PER [Signature]
Chief Deputy City Solicitor

Lorah, Benjamin

From: Robert Kieffer <Robert.Kieffer@Phila.gov>
Sent: Wednesday, March 28, 2018 5:09 PM
To: Lorah, Benjamin
Cc: Megan.shannon@gmail.com
Subject: City Response re: Shannon v. Commerce, Mayor's Office, AP 2018-0460, 0461
Attachments: City Response - Shannon AP 2018-0460, 0461 With Exhibits.pdf

Dear Appeals Officer Lorah,

Please see attached for the City's response to the appeals of Ms. Megan Shannon, *Shannon v. City of Philadelphia Department of Commerce*; O.O.R. Dkt. AP 2018-0460, and *Shannon v. City of Philadelphia Mayor's Office*, O.O.R. Dkt. AP 2018-0461.

Respectfully submitted,

Robert L. Kieffer, Esq.
Assistant City Solicitor, Right to Know Division
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
(215) 683-5032 (Phone)
(215) 683-5069 (Fax)

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Megan Keefe Shannon
4826 Hazel Avenue
Philadelphia, PA 19143
603-312-4433 | megan.shannon@gmail.com

March 28, 2018

VIA E-MAIL

Appeals Officer Benjamin Lorah, Esq.
Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0245

RE: Shannon v. City of Philadelphia Department of Commerce, O.O.R. Dkt. AP 2018-0460
Shannon v. City of Philadelphia Mayor's Office, O.O.R. Dkt. AP 2018-0461

Dear Appeals Officer Lorah:

I am requesting that the Office of Open Records grant my Appeal because the City of Philadelphia's response to Requests for Proposals from Amazon ("Amazon bid") is a public record subject to disclosure, not exempted under any section of the Right to Know Law. The Right To Know Law is "designed to promote access to official government information in order to prohibit secrets, scrutinize the actions of public officials and make public officials accountable for their actions." Bowling v. Office of Open Records, 990 A.2d 813, 824 (Pa. Commw. Ct. 2010). I am requesting Philadelphia's Amazon Bid so that City officials will be held accountable to their own citizens rather than to an out of state corporation.

I. Introduction

Amazon's potential investment in Philadelphia could be transformative. The City Solicitor argues that 50,000 jobs and billions of dollars of economic development from Amazon are at stake. However, while publicizing the potential input from Amazon, the City is simultaneously failing to disclose the cost of Amazon's investment. Billions of dollars could be invested into the city, but Philadelphians are being kept in the dark about whether that also involves millions or billions of dollars in tax breaks to Amazon. Philadelphians cannot assess the real benefit to the city without also knowing what it will cost them in tax breaks and special treatment for the third richest corporation in the United States. (See "Amazon is Now More Valuable Than Microsoft and Only 2 Companies are Worth More," Flora Carr, February 15, 2018 at <http://fortune.com/2018/02/15/amazon-microsoft-third-most-valuable-company/>). Philadelphia remains America's poorest big city, with a 25% poverty rate. (See "An Uncomfortable Life: Philly Still America's Poorest Big City," Alfred Lubrano, September 13, 2017, at <http://www.philly.com/philly/news/philadelphia-census-deep-poverty-poorest-big-city-income->

[survey-20170914.html](#)). Philadelphia's citizens deserve to know what tax breaks and economic incentives are being offered to an out of state corporation rather than to Philadelphians. The overall benefit of Amazon landing in Philadelphia could outweigh the cost, but Philadelphians deserve to decide for themselves with all information available, including the City's Bid.

My Appeal should be granted because the City has failed to provide Affidavits specifically explaining how the Amazon Bid is exempt from disclosure. The City may not rely on conclusory affidavits.

II. The Amazon Bid is Not Exempt From Disclosure Under 65 P.S. § 67.708(b)(10)(i)(B) because it does not contain records reflecting the “strategy to be used to develop or achieve the successful adoption of a budget, legislative proposal, or regulation.”

In West Chester University of Pennsylvania v. Shackner, West Chester University's ("WCU") Foundation argued that its contract with a lobbying firm hired to educate the public about a Senate Bill to allow WCU to separate from the State System of Higher Education was exempted from disclosure under 65 P.S. § 67.708(b)(10)(i)(B) because it would “reveal strategy employed to enact legislation.” 124 A.3d 382, 386 (Commw. Ct. Pa. 2015). The OOR found that the WCU Foundations contract with the lobbying firm was not exempt from disclosure because the Foundation “[did] not identify what portions of the [lobbying firm] contract contains strategic information or how it constitutes ‘strategy’ and conclusory affidavits may not be relied upon to meet an agency’s burden of proof.” Id at 387.

Here, as in West Chester v. Shackner, the City has not explained how the redacted portions of its Proposal constitute “strategy”. The City may not make a conclusory statement that there is “strategy” to meet its burden of proof that the Proposal is not subject to disclosure. The City has failed to make a specific explanation of how the redaction portions reflect strategy, therefore the City may not claim exemption from disclosure pursuant to § 708(b)(10)(i)(B).

The Affidavit of Sylvie Gallier-Howard, First Deputy Commerce Director, does not explain how the Amazon Bid constitutes “strategy.” Her Affidavit outlines the honorable, admirable hard work that has gone into creating the bid, but fails to specify how the Bid is “strategy.”

II. The City's Amazon Bid Is Not Exempt From Disclosure Under 65 P.S. § 67.708(b)(11) Because The Bid Is Not A Trade Secret or Confidential Proprietary Information.

While I do not admit or agree that the City of Philadelphia may hold a trade secret, whether or not the City can hold a trade secret is irrelevant because the Amazon Bid is not a trade secret. The Bid does not have any economic value and it being secret does not add any economic value. Making the bid public while the other finalists in the Amazon HQ2 bid does not

give other cities or states a competitive advantage. Philadelphia's incentives are supposedly specifically tailored to Philadelphia and its unique geography and population; anything special about Philadelphia's Amazon Bid would not apply to other finalists.

In support of its position, the City produced a copy of the Affidavits of Ilene Burak of the Philadelphia Industrial Development Corporation and of Sylvie Gallier-Howard, First Deputy Commerce Director. These Affidavits fails to establish with any specificity how the Amazon Bid contains a "trade secret" or "confidential proprietary information." The City cannot rely on conclusory affidavits and without a proper explanation of how the record is exempt, my Appeal should be granted.

Further, Ms. Burak's affidavit was made in response to an appeal from Emily Opilo, No. AP 2018-0145. On March 26, 2018, the Office of Open Records granted the Ms. Opilo's appeal, holding that the DCED's Incentive Proposal is not exempt from disclosure because it is not confidential proprietary information or a trade secret. The Office of Open Records held on March 26, 2018, that Pittsburgh's Amazon Bid could not be confidential proprietary information, and did not constitute a trade secret. The City of Philadelphia has failed to provide affidavits differentiating its own bid.

III. The Office Of Open Records Has Already Held That The Department of Community And Economic Development's "State Incentives" Are Not Exempt From Disclosure

The PA DCED's March 23, 2018 Position Statement claims that Philadelphia's Amazon Bid contains "specifically designed economic incentives to be offered by DCED and by the City" and outlined "the framework for an entirely new DCED program." DCED's argument boils down to a claim that releasing the Amazon Bid would reduce the competitiveness of the bid. DCED claims that production of the unredacted Amazon bid would "instantaneously destroy the value of the trade secrets contained therein and allow its other competitors in the market for the HQ2 project... to adjust their proposed incentive packages without revealing them."

However, on March 26, 2018, the Office of Open Records ruled that the DCED's Incentive Proposal *is* in fact a public record subject to disclosure, not exempt under any section of the RTK law. *See* Opilo v. Department of Community and Economic Development, No. AP 2018-0145.

IV. Conclusion

I am neither in favor of nor against Amazon building a new facility in Philadelphia, and I am neither in favor of nor against the City offering some type of financial incentive to lure Amazon here. I cannot form an opinion because I do not know what is on the table. Without an informed opinion, I have no business contacting my City Councilperson to encourage her to vote

for or against whatever legislation may be required to fulfill the promises Philadelphia is making to Amazon. The City is effectively barring me from participation in citizenship.

Therefore, I respectfully request that the instant Appeal be granted.

Megan Keefe Shannon
4826 Hazel Avenue
Philadelphia, PA 19143

CC: Robert Kieffer (via e-mail)
Scott Longwell (via e-mail)

Lorah, Benjamin

From: Megan Shannon <megan.shannon@gmail.com>
Sent: Wednesday, March 28, 2018 9:58 PM
To: Lorah, Benjamin
Cc: Robert Kieffer; Longwell, Scott
Subject: Shannon v. Commerce, Mayor's Office, AP 2018-0460, 0461
Attachments: Megan Shannon Rebuttal - AP 2018-0460, 0461.pdf

Dear Appeals Officer Lorah:

Please see attached my rebuttal to the City's response to my Appeals, *Shannon v. City of Philadelphia Department of Commerce*, O.O.R. Dkt. AP 2018-0460, and *Shannon v. City of Philadelphia Mayor's Office*, O.O.R. Dkt. AP 2018-0461.

Sincerely,
Megan K. Shannon

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Stradley Ronon Stevens & Young, LLP

2005 Market Street, Suite 2600

Philadelphia, PA 19103

Telephone 215.564.8000

Fax 215.564.8120

www.stradley.com

Karl S. Myers

kmyers@stradley.com

215.564.8193

April 4, 2018

RECEIVED

APR 06 2018

OFFICE OF OPEN RECORDS

**Via Email (blorah@pa.gov)
& US Mail**

Benjamin Lorah, Esquire
Appeals Officer
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

**Re: Megan Shannon v. City of Philadelphia, Commerce Department
No. AP 2018-0460**

**Megan Shannon v. City of Philadelphia, Mayor's Office
No. AP 2018-0461**

Dear Appeals Officer Lorah:

This firm represents the Philadelphia Industrial Development Corporation ("PIDC") with respect to the above-referenced Right-to-Know Law appeals. PIDC writes for two reasons: (1) to request permission to appear before the Office of Open Records as a direct interest party; and (2) to make its merits submission that certain materials redacted from the subject Amazon proposal for Philadelphia constitute PIDC's "confidential proprietary information" and "trade secrets" and thus are exempt from Right-to-Know Law disclosure.

**A. PIDC requests permission
to appear as a direct interest party.**

PIDC requests permission, pursuant to 65 P.S. §67.1101(c), to appear as a direct interest party before the OOR with respect to these matters. PIDC seeks to participate in order to

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A Pennsylvania Limited Liability Partnership

 **MERITAS** LAW FIRMS WORLDWIDE

000115

assert its support for the partial denial of the subject RTKL Requests by the City of Philadelphia (the “City”). Attached as *Exhibit 1* are completed OOR Request to Participate as Direct Interest Party forms.

This request is timely under §1101(c) of the RTKL, as PIDC was first notified and first became aware of the appeals by the Requester, Megan Shannon, on March 20, 2018. Attached as *Exhibit 2* is a copy of the email notification (without attachments) sent by the City and received by PIDC’s counsel on that date.

PIDC should be allowed to participate because it has a direct and substantial interest in these disputes, and wishes to submit probative information and argument in support of its interest. In these appeals, Requester seeks proprietary information that belongs to PIDC. PIDC asks that it be permitted to present the OOR with information and arguments concerning exemptions that are specifically designed to protect the information of entities like PIDC – specifically, the two exemptions for “confidential proprietary information” and “trade secrets” found in section 708(b)(11) of the RTKL. PIDC’s presentation will be of assistance to the OOR in reaching a just determination on the matters at issue, especially given that PIDC has an interest in preventing disclosure of its protected information.

For these reasons, PIDC respectfully requests that the OOR allow it to participate in these matters, pursuant to 65 P.S. §67.1101(c).¹ Compare Finnerty v. DHS, No. AP 2015-

¹ PIDC’s requests to participate here differ from the one it submitted in Opilo v. DCED, No. AP 2018-0145, 2018 WL 1542109 (OOR Mar. 26, 2018). There, the OOR declined to allow PIDC to participate because the OOR construed the requester’s appeal as having narrowed the request solely to certain state-based incentives that the OOR concluded PIDC was not seeking to protect. Here, by contrast, there is no question that Requester is seeking materials PIDC is seeking to protect.

0255, 2015 WL 1954492, *1-2 (OOR Apr. 27, 2015) (granting permission to participate pursuant to §1101(c) to allow parties to argue subsection 11 exemptions applied).

B. PIDC's information is exempt pursuant to the RTKL.

In these matters, the Requester, Megan Shannon, has appealed the partial denial of her Requests by the City. Each of Requester's January 18, 2018 Requests state:

I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.

PIDC asserts that the City's partial denial of the Requests should be sustained because section 708(b)(11) of the Right-to-Know Law applies to preclude disclosure of PIDC's protected information.² In support, PIDC submits the below arguments, as well as the Affidavit of Ilene Burak, Senior Vice President and General Counsel for PIDC, who is a knowledgeable and authoritative witness on the matters herein. Ms. Burak's Affidavit is attached as *Exhibit 3*. Ms. Burak provides comprehensive and conclusive factual support for PIDC's position that its information is protected from disclosure under the RTKL.

² PIDC also supports, joins in, and adopts by reference the City's position in these matters, as set forth in the City's written submissions and supporting documents. PIDC also joins in and adopts by reference any submissions that may be made by others in support of the City's position, as appropriate.

1. **Background**

a. **PIDC**

PIDC is a Pennsylvania non-profit, non-stock corporation with offices located in Philadelphia.³ Burak Aff. ¶5. It is the economic development corporation serving the City's residents, businesses, and other stakeholders. Id. at ¶6. PIDC's mission is to spur investment, support business growth, and foster developments that create jobs, revitalize neighborhoods, and drive growth in every part of the City of Philadelphia. Id. at ¶7.

To achieve its mission, PIDC attracts, manages, and invests public and private resources in the clients, communities, and markets that energize Philadelphia's economy. Id. at ¶8. PIDC offers flexible financing tools, a targeted portfolio of industrial and commercial real estate, and decades of Philadelphia-based knowledge to help its clients invest, develop, and grow. Id. at ¶9. PIDC also structures and invests in public-private partnerships for key City policy areas and development priorities. Id. at ¶10.

For 60 years, PIDC and its affiliates have settled 6,700 transactions, including \$14 billion in financing that has leveraged over \$25 billion in total investment, and assisted in creating and retaining hundreds of thousands of jobs. Id. at ¶11. PIDC's direct loan and managed third-party portfolio at the start of 2016 exceeded \$642 million, representing 520 loans. Id. at ¶12.

³ PIDC is not an agency subject to the RTKL. See PIDC v. Ali, No. 528 CD 2010, 2011 WL 10843527 (Pa. Commw. 2011) (holding PIDC is not a "local agency" under the RTKL).

b. **PIDC's Trade in Attracting Private Businesses**

As noted above, one of the core facets of PIDC's business and trade is the attraction of private businesses to Philadelphia to support the City's economy and its growth. Id. at ¶13. To draw private businesses to the City, PIDC utilizes the full panoply of resources at its disposal, including its financing tools, real estate portfolio, and its decades of Philadelphia-based knowledge, methods, and ideas. Id. at ¶14.

PIDC competes against other similar economic development entities and consultants, who are also trying to attract private businesses to their own locales. Id. at ¶15. PIDC and its competitors in the business attraction marketplace constantly vie against one another to try to offer proposals superior to one another to draw more private businesses to their respective locales. Id. at ¶16. PIDC utilizes its carefully-developed, confidential, and proprietary mix of financing, real estate, and intellectual know-how – which it has honed over the past 60 years – and applies them to craft individually-targeted proposals to attempt to convince businesses to locate or relocate their operations in Philadelphia. Id. at ¶17.

As a recent example, PIDC was able to utilize its resources and proprietary skill set to successfully attract Dietz & Watson to consolidate and expand its operations in the Tacony section of Philadelphia. Id. at ¶18. During that process, PIDC was engaged in direct competition against entities in New Jersey, which were seeking to retain Dietz & Watson's presence in New Jersey. Id. at ¶19. PIDC was able to win the Dietz & Watson business due to PIDC's proposal, which drew upon PIDC's unique and proprietary combination of financing tools, real estate resources, and unique Philadelphia-based knowledge, methods, and ideas. Id. at ¶20.

c. **The Amazon HQ2 Process**

In September 2017, Amazon issued a Request for Proposals (“RFP”) seeking bids for the location of its second headquarters (“HQ2”). Id. at ¶21. According to Amazon, it expects to invest over \$5 billion in construction and intends to grow HQ2 to include as many as 50,000 full-time, well-paying jobs. Id. at ¶22. Amazon’s HQ2 is expected to have a very significant and positive impact on the economy of the locality chosen as the host site. Id. at ¶23.

As expected, the HQ2 RFP has resulted in an intensely competitive bidding process. Id. at ¶24. In October 2017, over 200 localities submitted bids in response to the HQ2 RFP, including the City of Philadelphia. Id. at ¶25.

PIDC had significant and material input into the Philadelphia proposal, and its confidential and proprietary tools, methods, and information have been used to develop the Philadelphia proposal. Id. at ¶26. The Amazon HQ2 RFP process may be the most intensely competitive business attraction bidding process in PIDC’s history. Id. at ¶27. That said, this process is similar to other business attraction scenarios where PIDC has been in direct competition with its competitors in other localities. Id. at ¶28.

In January 2018, Amazon narrowed the 200-plus submittals down to 20. Id. at ¶29. Philadelphia was selected as one of the 20 finalists. Id. at ¶30. Each of the other 19 finalist locales is working through or with one of PIDC’s competitors to try to win Amazon’s HQ2. Id. at ¶31.

d. **The “Philadelphia Delivers” RFP Response**

The City of Philadelphia’s RFP response to Amazon, which was prepared in consultation and cooperation with PIDC, and which includes PIDC’s proprietary materials, is a 108 page document entitled “Philadelphia Delivers.” Id. at ¶32.

The City has voluntarily chosen to disclose most of the content of the Philadelphia Delivers proposal to the public, and to the Requester. Id. at ¶33. A copy of the public version of the proposal is attached to the Burak Affidavit as ***Exhibit A***, and it is also available here: https://www.dropbox.com/s/hjr99rl123iyr6b/PHL_AMAZON_FINAL%20Public.pdf?dl=0. Id. at ¶34. In addition, a public website provides additional information and details on Philadelphia’s proposal (<https://public.philadelphiadelivers.com/>). Id. at ¶35.

2. **PIDC’s information constitutes “confidential proprietary information” and “trade secrets” protected by the RTKL.**

Two discrete types of information have been redacted from the Philadelphia Delivers proposal that pertain to PIDC, and PIDC maintains they are exempt from disclosure under the RTKL. Id. at ¶¶36-37. Indeed, these redacted items are extremely sensitive and proprietary to PIDC. Id. at ¶38. Those redacted items also are protected by non-disclosure agreements that have been signed by relevant parties, who have promised to protect that information from public disclosure. Id. at ¶39.

First, the Philadelphia Delivers proposal has been redacted to remove sensitive and proprietary items relating to financial incentives and financial programs that have been

proposed to Amazon (the “City Incentives”).⁴ Id. at ¶40.

Second, the proposal has been redacted to remove its creative proposal to Amazon – a mix of the City’s and PIDC’s selling points and creative and out-of-the-box ideas, which have been marketed and presented to Amazon through a creative and unique methodology (the “Creative Proposal”).^{5, 6} Id. at ¶41.

⁴ The City Incentives are similar to other kinds of pricing information that the OOR routinely finds exempt under section 708(b)(11). See Yoder v. Lancaster Cty. Solid Waste Mgmt. Auth., No. AP 2016-0796, 2017 WL 1856985 (OOR May 5, 2017) (Lorah, A.O.) (information relating to third party’s “cost structure, pricing and business methodologies and operations” held protected by section 708(b)(11)); Ropart Asset Mgmt. v. Pa. Turnpike Comm’n, No. AP 2013-2380, 2014 WL 201994, *3 (OOR Jan. 14, 2014) (noting that the “OOR has previously held that fees and pricing information are confidential proprietary information and may be protected as confidential proprietary information”); Hunzeker v. Pa. Ins. Dep’t, No. AP 2013-0509, 2013 WL 1856150, *4 (OOR Apr. 25, 2013) (holding contractor’s pricing information protected by section 708(b)(11)).

⁵ Requester’s written submission in support of her appeal could be understood as narrowing her Requests to only the City Incentives. To the extent the OOR agrees, it is respectfully submitted that Requester has waived or withdrawn her Requests as to the Creative Proposal.

⁶ The Creative Proposal includes the kinds of competitive business and marketing information the OOR routinely finds exempt under section 708(b)(11). See, e.g., Hague v. Pa. Ins. Dep’t, No: AP 2017-0560, 2017 WL 6729070, *9 (OOR Dec. 26, 2017) (section 708(b)(11) protected company’s “business plans, strategies and initiatives”); Citizens for Pa.’s Future v. Dep’t of Conserv. & Nat. Res., No. AP 2013-0402, 2013 WL 5352641, *4-5 (OOR Sept. 13, 2013) (same; company’s gas drilling maps); McElroy v. Dep’t of Pub. Welfare, No. AP 2014-0194, 2014 WL 1492879 (OOR Apr. 9, 2014) (same; proprietary software); Nixon v. Pa. Ins. Dep’t, No. AP 2013-0729, 2013 WL 2949126 (OOR June 11, 2013) (same; information on health plan’s network strategy); Barnes v. Phila. Sch. Dist., No. AP 2011-0638, 2011 WL 2973433 (OOR July 13, 2011) (same; information on data warehousing company’s business methods, systems, and capabilities); cf. Hodges v. DOC, No. AP 2015-0241, 2015 WL 1431794 (OOR Mar. 23, 2015) (Lorah, A.O.) (same; client list).

- a. **PIDC's information constitutes
"confidential proprietary information."**
- i. **The Right-to-Know Law exempts
"confidential proprietary information."**

Under section 708(b)(11) of the RTKL, a record that "constitutes or reveals" "confidential proprietary information" is exempt from disclosure. See 65 P.S. §67.708(b)(11). The RTKL defines "confidential proprietary information" as:

Commercial or financial information received by an agency:

- (1) which is privileged or confidential; and
- (2) the disclosure of which would cause substantial harm to the competitive position of the person that submitted the information.

65 P.S. §67.102. Thus, in order to establish entitlement to this exemption, PIDC is only required to show: (1) the information is commercial or financial in nature; (2) it is kept in confidence; and (3) disclosure of the information would cause PIDC competitive harm. Id.

The burden of proof is a mere preponderance of the evidence. See 65 P.S. §67.708(a)(1) (stating "preponderance of the evidence" standard); Jaeger v. Bureau of Workers' Comp., 24 A.3d 1097, 1101 n.10 (Pa. Commw. 2011) (preponderance standard "is the lowest evidentiary standard, tantamount to a more likely than not inquiry"). PIDC therefore is only required to show that it is more likely than not that the City Incentives and Creative Proposal are commercial or financial in nature, are kept in confidence, and that their disclosure would cause competitive harm to PIDC.

ii. The evidence shows the City Incentives and Creative Proposal constitute “confidential proprietary information.”

Here, PIDC’s evidence, as set forth in the Burak Affidavit, easily clears this low evidentiary hurdle.

First, there can be no serious dispute that the subject PIDC information is commercial or financial in nature. As explained in detail above in subsection (B)(1)(b), PIDC is engaged in the business or trade of business attraction. The information it developed and which is reflected in the City Incentives and Creative Proposal is PIDC’s commercial or financial information, which it developed as part of its business affairs. And PIDC provided that information to, and it was received by, the City.⁷ Burak Aff. ¶42.

Second, the information is kept confidential and privileged. PIDC never publicly discloses a proposal’s specific financial terms and chosen financial tools or its particular methods or ideas at any time during the bidding process. Id. at ¶51. And PIDC treats each of these items as highly confidential and privileged. Id. at ¶52.

To protect its information, PIDC always applies and honors electronic and physical security protocols to keep its proprietary information under wraps. Id. at ¶55. PIDC’s proprietary information cannot be accessed by anyone outside PIDC, and cannot be accessed by anyone even within PIDC – except those with a business need to know it. Id. at ¶56. To

⁷ The OOR’s decisions in Walsh v. Allegheny County, No. AP 2017-2323, 2018 WL 1034991 (OOR Feb. 20, 2018), Van Osdol v. City of Pittsburgh, No. AP 2017-2247 (OOR Jan. 24, 2018), and Van Osdol v. Allegheny County, No. AP 2017-2248 (OOR Jan. 24, 2018) (and perhaps other decisions) thus are distinguishable, as there is no question here that PIDC submitted information to the City and that PIDC would suffer competitive harm from its disclosure.

accomplish that protection, PIDC employs computer password and cybersecurity measures, as well as physical file security measures, all of which are in compliance with applicable industry protocols. Id. at ¶57. Those steps ensure that unwanted access is prevented. Id. at ¶58. PIDC's proprietary information therefore is not easily or readily available either outside or even inside PIDC. Id. at ¶59.

None of PIDC's competitors know the particulars of any of PIDC's proprietary information, and they cannot duplicate it – as it is unique to PIDC. Id. at ¶60. PIDC's proprietary information is not required to be submitted to the City for review and approval as part of any particular business attraction proposal process.⁸ Id. at ¶61. And anyone accessing PIDC's confidential information is always expected and required to maintain this information in confidence. Id. at ¶53. For the Amazon HQ2 proposal, certain parties with access to PIDC's confidential information were mandated to sign non-disclosure agreements providing that those parties would protect PIDC's proprietary information. Id. at ¶54.

Third, disclosure of PIDC's information would cause substantial harm to PIDC's competitive position. As background, the City Incentives and Creative Proposal reflect and discuss a particular application of PIDC's proprietary financial tools, proposals, methods, and marketing and other ideas, all of which are unique to PIDC's business and trade of attracting businesses to the City. Id. at ¶43. This application of PIDC's financial tools, proposals,

⁸ PIDC's information thus cannot be considered as falling within a "financial record." See DPW v. Eiseman, 125 A.3d 19, 29-32 (Pa. 2015) (items required to be submitted for government approval can be considered "financial records"). Nor can that information otherwise fall within the "financial record" concept, at least because it does not constitute an "account, voucher or contract." See 65 P.S. §67.708(c), §67.102.

methods, and ideas included in the Philadelphia Delivers proposal is extremely sensitive and confidential to PIDC. Id. at ¶44. PIDC considers this information supplied in the Philadelphia Delivers proposal as proprietary to PIDC and also as the intellectual property of PIDC. Id. at ¶45. The particular utilizations of PIDC's financial tools, methods, proposals, and ideas are crucial building blocks for PIDC to successfully compete in the business attraction marketplace. Id. at ¶46.

PIDC has invested significant time and capital resources in developing the means for deployment of its financial tools, financial proposals, and trade methods and ideas – not only for the Amazon HQ2 proposal, but for all of the proposals that PIDC has made over the years and decades. Id. at ¶47. PIDC's financial tools and proposals, and its methods and ideas, have been carefully crafted, calibrated, and refined over time, and are based on PIDC's long history of experience and success in attracting businesses to the City. Id. at ¶48. The selection and particular deployment of PIDC's financial tools, its various types of financial proposals, and its trade methods and ideas in a given business attraction setting vary by scenario. Id. at ¶49. Substantial investment of time and effort is made to refine PIDC's specific strategy for each proposal; the Amazon proposal is no exception. Id. at ¶50.

If PIDC's proprietary information depicted in the City Incentives and Creative Proposal portions of the City's proposal was publicly disclosed during the ongoing Amazon RFP process, such would undermine PIDC's competitive position. Id. at ¶62. Indeed, public disclosure will allow one, some, or all of the other 19 remaining bidders to adjust their own bids to undercut and undermine PIDC's market position – both specifically (as to the Amazon RFP) and also more generally (in the overall business attraction marketplace). Id. at ¶63.

Specifically, the other bidders could steal PIDC's proprietary blend of financial tools, financial proposals, and trade methods and ideas to try to match or outbid the City or to otherwise refine their own proposals based on insights unfairly gained from PIDC. Id. at ¶64. Those other bidders could unfairly take advantage of PIDC's years of experience and significant investments in developing its proprietary information without having to make such investments or develop such experience on their own. Id. at ¶65. The other bidders also could use the information gained to attempt to falsely or otherwise improperly or unfairly disparage the City's Amazon proposal. Id. at ¶66.

Even worse, improper access by the other bidders to PIDC's proprietary information will give those other bidders insights on PIDC's global strategies that it deploys for all of its business attraction proposals. Id. at ¶67. Other bidders could learn from this PIDC information and then use that information to undercut PIDC in future business attraction bidding processes. Id. at ¶68.

Underscoring the unfairness to PIDC is the fact that, in some other jurisdictions, other bidders' proposals may not be subject to public disclosure under those other jurisdictions' public records laws. Id. at ¶70. As such, if a ruling were to be made against PIDC here, then PIDC may be subjected to competitive harm through the disclosure of its information, whereas bidders from other jurisdictions will not be subjected to that same harm. Id. at ¶71. This will unfairly tilt the competitive playing field in favor of PIDC's competitors and against PIDC. Id. at ¶72.

For these reasons, PIDC's proprietary information reflected in the City Incentives and Creative Proposal has independent economic value because, if disclosed, it would furnish

competitors with solid parameters by which they could refine their own strategies as part of their efforts to win businesses away from PIDC or otherwise cause PIDC to lose out in the marketplace. Id. at ¶69. Accordingly, the release of the City Incentives and Creative Proposal would unfairly cause PIDC to suffer substantial harm to its competitive position. Id. at ¶73.

Based on this evidence, PIDC has demonstrated that its information is commercial or financial, that it undertakes efforts to keep its information confidential and privileged, and that it will suffer substantial harm to its competitive position if the subject information were to be released. PIDC therefore has shown, at least by a preponderance of the evidence, that it is entitled to the protection of the “confidential proprietary information” exemption in section 708(b)(11) of the RTKL. Compare Smith Butz v. Pa. Dep’t of Env’tl. Prot., 161 A.3d 1049, 1064-66 (Pa. Commw. 2017) (holding exemption satisfied based on affidavit submission by company that material was protected because it showed its “methodology,” which is “unique and client specific”); Giurintano v. Department of General Services, 20 A.3d 613, 616-17 (Pa. Cmwlth. 2011) (holding same).

b. PIDC’s information constitutes “trade secrets.”

**i. The Right-to-Know Law
exempts “trade secrets.”**

Separate and independent from the “confidential proprietary information” exemption, any document that “constitutes or reveals” a “trade secret” is exempt from disclosure

under section 708(b)(11) of the RTKL.⁹ See 65 P.S. §67.708(b)(11). The RTKL defines a “trade secret”¹⁰ as:

Information, including a formula, drawing, pattern, compilation, including a customer list, program, device, method, technique or process that:

- (1) derives independent economic value, actual or potential, from not being generally known to and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and
- (2) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy....

65 P.S. §67.102. The factors to be considered in determining a “trade secret” are as follows:

- (1) the extent to which the information is known outside of the business;
- (2) the extent to which the information is known by employees and others in the business;
- (3) the extent of measures taken to guard the secrecy of the information;
- (4) the value of the information to the business and to competitors;

⁹ See Office of Governor v. Bari, 20 A.3d 634, 647-48 (Pa. Commw. 2011) (“Importantly, ‘confidential proprietary information’ and ‘trade secret’ are defined separately under Section 102 of the RTKL; therefore, the terms are not interchangeable.” (footnote omitted)).

¹⁰ The fact that the RTKL directly defines the term “trade secret” draws into question the OOR’s reasoning in the Walsh and Van Osdol cases, cited above, where the OOR used a dictionary definition to construe the word “trade.” See, e.g., Mt. Lebanon v. Gillen, 151 A.3d 722, 728 (Pa. Commw. 2016) (“The RTKL does not define the term “donation.” *Because it is not defined*, the Court must look to the common usage and meaning of the word To ascertain the common usage and meaning of a word, the Court may properly consider the dictionary definitions of the word.” (emphasis added)).

- (5) the amount of effort or money expended in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

Smith Butz, 161 A.3d at 1064 (citation omitted). Of these, “[t]he most critical criteria are ‘substantial secrecy and competitive value.’” Id. (citation omitted).

Once again, the burden of proof is a mere preponderance of the evidence. See 65 P.S. §67.708(a)(1) (stating “preponderance of the evidence” standard); Jaeger, 24 A.3d at 1101 n.10 (preponderance standard “is the lowest evidentiary standard, tantamount to a more likely than not inquiry”). PIDC therefore is only required to show that it is more likely than not that the City Incentives and Creative Proposal meet the above criteria.

ii. The evidence shows the City Incentives and Creative Proposal constitute “trade secrets.”

Once again, PIDC’s evidence, as set forth in the Burak Affidavit, easily clears this low evidentiary hurdle.

First, the subject PIDC information is hardly known outside of PIDC. Any given application of PIDC’s financial tools, proposals, methods, and ideas included in the Philadelphia Delivers proposal is extremely sensitive and confidential to PIDC – and that includes the Amazon RFP. Burak Aff. ¶44. PIDC never publicly discloses a proposal’s specific financial terms and chosen financial tools or its particular methods or ideas at any time during the bidding process. Id. at ¶¶51, 56. Indeed, PIDC treats each of these items as highly confidential and privileged. Id. at ¶52. PIDC’s proprietary information is not required to be submitted to the City for review and approval as part of any particular business attraction proposal process. Id. at ¶61. In rare instances when this information is shared outside of PIDC, anyone accessing

PIDC's confidential information is always expected and required to maintain this information in confidence. Id. at ¶53. In fact, for the Amazon HQ2 proposal, certain parties with access to PIDC's confidential information were mandated to sign non-disclosure agreements providing that those parties would protect PIDC's proprietary information. Id. at ¶54.

Second, the subject PIDC information is not widely known even by employees and others within PIDC. As set forth in the Burak Affidavit, PIDC's proprietary information cannot be accessed by anyone even within PIDC, except those with a business need to know it. Id. at ¶56.

Third, PIDC undertakes extensive measures to guard the secrecy of the information. PIDC always applies and honors electronic and physical security protocols to keep its proprietary information under wraps. Id. at ¶55. To accomplish that protection, PIDC employs computer password and cybersecurity measures, as well as physical file security measures, all of which are in compliance with applicable industry protocols. Id. at ¶57. Those steps ensure that unwanted access is prevented. Id. at ¶58. PIDC's proprietary information therefore is not easily or readily available either outside or even inside PIDC. Id. at ¶59.

Fourth, the subject PIDC information is highly valuable to PIDC and also to its competitors. The City Incentives and Creative Proposal reflect and discuss a particular application of PIDC's proprietary financial tools, proposals, methods, and marketing and other ideas, all of which are unique to PIDC's business and trade of attracting businesses to the City. Id. at ¶43. PIDC considers this information supplied in the Philadelphia Delivers proposal as proprietary to PIDC and also as the intellectual property of PIDC. Id. at ¶45. The particular

utilizations of PIDC's financial tools, methods, proposals, and ideas are crucial building blocks for PIDC to successfully compete in the business attraction marketplace. Id. at ¶46.

If PIDC's proprietary information depicted in the City Incentives and Creative Proposal portions of the City's proposal was publicly disclosed during the ongoing Amazon RFP process, such would undermine PIDC's competitive position. Id. at ¶62. Indeed, public disclosure will allow one, some, or all of the other 19 remaining bidders to adjust their own bids to undercut and undermine PIDC's market position – both specifically (as to the Amazon RFP) and also more generally (in the overall business attraction marketplace). Id. at ¶63.

These other bidders could steal PIDC's proprietary blend of financial tools, financial proposals, and trade methods and ideas to try to match or outbid the City or to otherwise refine their own proposals based on insights unfairly gained from PIDC. Id. at ¶64. Those other bidders could unfairly take advantage of PIDC's years of experience and significant investments in developing its proprietary information without having to make such investments or develop such experience on their own. Id. at ¶65. The other bidders also could use the information gained to attempt to falsely or otherwise improperly or unfairly disparage the City's Amazon proposal. Id. at ¶66.

Even worse, improper access by the other bidders to PIDC's proprietary information will give those other bidders insights on PIDC's global strategies that it deploys for all of its business attraction proposals. Id. at ¶67. Other bidders could learn from this PIDC information and then use that information to undercut PIDC in future business attraction bidding processes. Id. at ¶68.

Underscoring the unfairness to PIDC is the fact that, in some other jurisdictions, other bidders' proposals may not be subject to public disclosure under those other jurisdictions' public records laws. Id. at ¶70. As such, if a ruling were to be made against PIDC here, then PIDC may be subjected to competitive harm through the disclosure of its information, whereas bidders from other jurisdictions will not be subjected to that same harm. Id. at ¶71. This will unfairly tilt the competitive playing field in favor of PIDC's competitors and against PIDC. Id. at ¶72.

PIDC's proprietary information reflected in the City Incentives and Creative Proposal thus has independent economic value because, if disclosed, it would furnish competitors with solid parameters by which they could refine their own strategies as part of their efforts to win businesses away from PIDC or otherwise cause PIDC to lose out in the marketplace. Id. at ¶69. Therefore, the release of the City Incentives and Creative Proposal would unfairly cause PIDC to suffer substantial harm to its competitive position. Id. at ¶73.

Fifth, PIDC has expended extensive time and money in developing its proprietary methods. Indeed, PIDC has invested significant time and capital resources in developing the means for deployment of its financial tools, financial proposals, and trade methods and ideas – not only for the Amazon HQ2 proposal, but for all of the proposals that PIDC has made over the years and decades. Id. at ¶47. PIDC's financial tools and proposals, and its methods and ideas, have been carefully crafted, calibrated, and refined over time, and are based on PIDC's long history of experience and success in attracting businesses to the City. Id. at ¶48. The selection and particular deployment of PIDC's financial tools, its various types of financial proposals, and its trade methods and ideas in a given business attraction setting vary by scenario. Id. at ¶49.

Substantial investment of time and effort is made to refine PIDC's specific strategy for each proposal; the Amazon proposal is no exception. Id. at ¶50.

Sixth, it would be extremely difficult – indeed, PIDC believes it would be impossible – for a competitor to properly acquire or duplicate PIDC's information. Indeed, none of PIDC's competitors know the particulars of any of PIDC's proprietary proposal information, and they cannot duplicate it – as it is unique to PIDC. Id. at ¶60.

Based on this evidence, PIDC has demonstrated that it satisfies each and every one of the criteria for a "trade secret" under the RTKL – in particular, the most "critical" criteria of "substantial secrecy" and "competitive value." Compare Smith Butz, 161 A.3d at 1064-66 (Pa. Commw. 2017) (holding exemption satisfied based on affidavit submission by company that material was protected because it showed its "methodology," which is "unique and client specific"). PIDC therefore has shown, at least by a preponderance of the evidence, that it is entitled to the protection of the "trade secret" exemption in section 708(b)(11) of the RTKL.

Benjamin Lorah, Esquire
April 4, 2018
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For the reasons expressed above and in PIDC's enclosed Affidavit, PIDC submits that the OOR should deny Requester's appeals from the partial denial of her Requests by the City of Philadelphia. Accordingly, the City should not be required to take any further action on the Requests.

Respectfully submitted,



Karl S. Myers

Enclosures

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Jo Rosenberger Altman, Esquire, Divisional Deputy City Solicitor, City of Philadelphia
(w/encl. via email: Jo.RosenbergerAltman@phila.gov)
Robert Kieffer, Esquire, Assistant City Solicitor, City of Philadelphia
(w/encl. via email: Robert.Kieffer@phila.gov)

3504184

000135

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: AP 2018-0460

Today's date: April 4, 2018

Name: Philadelphia Industrial Development Corporation

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip Karl S. Myers, Esq., Stradley Ronon, 2600 One Commerce Sq., Philadelphia, PA 19103

E-mail kmyers@stradley.com

Fax Number: 215.564.8120

Name of Requester: Megan Shannon

Address/City/State/Zip 4826 Hazel Avenue, Philadelphia, PA 19143

Telephone/Fax Number: 603.312.4433 /

E-mail megan.shannon@gmail.com

Name of Agency: City of Philadelphia, Commerce Department

Address/City/State/Zip 1515 Arch Street, 12th Floor, Philadelphia, PA 19102

Telephone/Fax Number: 215.686.7508 /

E-mail edward.w.garcia@phila.gov

Record at issue: Amazon proposal for the City of Philadelphia

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☒ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, /s/ Karl S. Myers (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

REQUEST TO PARTICIPATE BEFORE THE OOR

Please accept this as a Request to Participate in a currently pending appeal before the Office of Open Records. The statements made herein and in any attachments are true and correct to the best of my knowledge, information and belief. I understand this statement is made subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsifications to authorities.

NOTE: The requester filing the appeal with the OOR is a named party in the proceeding and is NOT required to complete this form.

OOR Docket No: AP 2018-0461

Today's date: April 4, 2018

Name: Philadelphia Industrial Development Corporation

PUBLIC RECORD NOTICE: ALL FILINGS WITH THE OOR WILL BE PUBLIC RECORDS AND SUBJECT TO PUBLIC ACCESS WITH LIMITED EXCEPTION. IF YOU DO NOT WANT TO INCLUDE PERSONAL CONTACT INFORMATION IN A PUBLICLY ACCESSIBLE RECORD, PLEASE PROVIDE ALTERNATE CONTACT INFORMATION IN ORDER TO RECEIVE FUTURE CORRESPONDENCE RELATED TO THIS APPEAL.

Address/City/State/Zip Karl S. Myers, Esq., Stradley Ronon, 2600 One Commerce Sq., Philadelphia, PA 19103

E-mail kmyers@stradley.com

Fax Number: 215.564.8120

Name of Requester: Megan Shannon

Address/City/State/Zip 4826 Hazel Avenue, Philadelphia, PA 19143

Telephone/Fax Number: 603.312.4433 /

E-mail megan.shannon@gmail.com

Name of Agency: City of Philadelphia, Mayor's Office

Address/City/State/Zip Room 204 City Hall, Philadelphia, PA 19107

Telephone/Fax Number: 215.686.7508 /

E-mail kathleen.lonie@phila.gov

Record at issue: Amazon proposal for the City of Philadelphia

I have a direct interest in the record(s) at issue as (check all that apply):

- ☐ An employee of the agency
- ☒ The owner of a record containing confidential or proprietary information or trademarked records
- ☐ A contractor or vendor
- ☐ Other: (attach additional pages if necessary) _____

I have attached a copy of all evidence and arguments I wish to submit in support of my position.

Respectfully submitted, /s/ Karl S. Myers (must be signed)

Please submit this form to the Appeals Officer assigned to the appeal. Remember to copy all parties on this correspondence. The Office of Open Records will not consider direct interest filings submitted after a Final Determination has been issued in the appeal.

From: [Robert Kieffer](#)
To: [Myers, Karl](#); [Longwell, Scott](#); [Gregory Iannarelli](#)
Subject: Appeals from City RTKL Responses re: Amazon HQ2 Proposal
Date: Tuesday, March 20, 2018 4:54:12 PM
Attachments: [OOR Letter AP 2018-0460, Shannon v. Commerce.pdf](#)
[OOR Letter AP 2018-0461, Shannon v. Mayor's Office.pdf](#)

External Email - Think Before You Click

Karl, Scott, and Greg,

The City received the attached appeals last Wednesday of two Right to Know requests seeking the City's proposal for Amazon HQ2. Please determine whether your clients will be participating.

Thank you,

Robert L. Kieffer, Esq.
Assistant City Solicitor, Right to Know Division
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102
(215) 683-5032 (Phone)
(215) 683-5069 (Fax)

IN THE PENNSYLVANIA OFFICE OF OPEN RECORDS

MEGAN SHANNON,

Requester,

v.

CITY OF PHILADELPHIA,
COMMERCE DEPARTMENT,

Agency.

No. AP 2018-0460

MEGAN SHANNON,

Requester,

v.

CITY OF PHILADELPHIA,
MAYOR'S OFFICE,

Agency.

No. AP 2018-0461

AFFIDAVIT OF ILENE BURAK

I, Ilene Burak, hereby swear and affirm as follows:

1. I am Senior Vice President and General Counsel for the Philadelphia Industrial Development Corporation ("PIDC"), and am an authorized signatory for PIDC with respect to this matter.

The Requests

2. I am familiar with the Right-to-Know Law requests (the "Requests") submitted on January 18, 2018 by Megan Shannon to the City of Philadelphia's Commerce Department and Mayor's Office (collectively, the "City").

3. Ms. Shannon's Requests each state:

I am requesting a copy of all documents sent to Amazon as part of the "Philly Delivers" proposal sent to Amazon in response to its Requests for Proposals for cities to compete for its second headquarters. Amazon requested an electronic copy and five hard copies of the city's response to be sent between October 16 and 19, 2017. I would like a copy of all documents sent in response to Amazon's RFP, including Philadelphia's written responses to the RFP questions.

4. I am making this Affidavit in connection with PIDC's submission as to Ms. Shannon's appeals to the Office of Open Records, which Ms. Shannon filed after the City granted the Requests in part, and denied them in part.

PIDC

5. PIDC is a Pennsylvania non-profit, non-stock corporation with offices located at 1500 Market Street, Suite 2600 West, Philadelphia, PA 19102-2126.

6. PIDC is the economic development corporation serving the City's residents, businesses, and other stakeholders.

7. PIDC's mission is to spur investment, support business growth, and foster developments that create jobs, revitalize neighborhoods, and drive growth in every part of the City of Philadelphia.

8. To achieve its mission, PIDC attracts, manages, and invests public and private resources in the clients, communities, and markets that energize Philadelphia's economy.

9. PIDC offers flexible financing tools, a targeted portfolio of industrial and commercial real estate, and decades of Philadelphia-based knowledge to help its clients invest, develop, and grow.

10. PIDC also structures and invests in public-private partnerships for key City policy areas and development priorities.

11. For 60 years, PIDC and its affiliates have settled 6,700 transactions, including \$14 billion in financing that has leveraged over \$25 billion in total investment, and assisted in creating and retaining hundreds of thousands of jobs.

12. PIDC's direct loan and managed third-party portfolio at the start of 2016 exceeded \$642 million, representing 520 loans.

PIDC's Trade in Attracting Private Businesses

13. As noted above, one of the core facets of PIDC's business and trade is the attraction of private businesses to Philadelphia to support the City's economy and its growth.

14. To draw private businesses to the City, PIDC utilizes the full panoply of resources at its disposal, including its financing tools, real estate portfolio, and its decades of Philadelphia-based knowledge, methods, and ideas.

15. PIDC competes against other similar economic development entities and consultants, who are also trying to attract private businesses to their own locales.

16. PIDC and its competitors in the business attraction marketplace constantly vie against one another to try to offer proposals superior to one another to draw more private businesses to their respective locales.

17. PIDC utilizes its carefully-developed, confidential, and proprietary mix of financing, real estate, and intellectual know-how – which it has honed over the past 60 years – and applies them to craft individually-targeted proposals to attempt to convince businesses to locate or relocate their operations in Philadelphia.

18. As a recent example, PIDC was able to utilize its resources and proprietary skill set to successfully attract Dietz & Watson to consolidate and expand its operations in the Tacony section of Philadelphia.

19. During that process, PIDC was engaged in direct competition against entities in New Jersey, which were seeking to retain Dietz & Watson's presence in New Jersey.

20. PIDC was able to win the Dietz & Watson business due to PIDC's proposal, which drew upon PIDC's unique and proprietary combination of financing tools, real estate resources, and unique Philadelphia-based knowledge, methods, and ideas.

The Amazon HQ2 Process

21. In September 2017, Amazon issued a Request for Proposals ("RFP") seeking bids for the location of its second headquarters ("HQ2").

22. According to Amazon, it expects to invest over \$5 billion in construction and intends to grow HQ2 to include as many as 50,000 full-time, well-paying jobs.

23. Amazon's HQ2 is expected to have a very significant and positive impact on the economy of the locality chosen as the host site.

24. As expected, the HQ2 RFP has resulted in an intensely competitive bidding process.

25. In October 2017, over 200 localities submitted bids in response to the HQ2 RFP, including the City of Philadelphia.

26. PIDC had significant and material input into the Philadelphia proposal, and its confidential and proprietary tools, methods, and information have been used to develop the Philadelphia proposal.

27. The Amazon HQ2 RFP process may be the most intensely competitive business attraction bidding process in PIDC's history.

28. That said, this process is similar to other business attraction scenarios where PIDC has been in direct competition with its competitors in other localities.

29. In January 2018, Amazon narrowed the 200-plus submittals down to 20.
30. Philadelphia was selected as one of the 20 finalists.
31. Each of the other 19 finalist locales is working through or with one of PIDC's competitors to try to win Amazon's HQ2.

The "Philadelphia Delivers" RFP Response

32. The City of Philadelphia's RFP response to Amazon, which was prepared in consultation and cooperation with PIDC, and which includes PIDC's proprietary materials, is a 108 page document entitled "Philadelphia Delivers."

33. The City has voluntarily chosen to disclose most of the content of the Philadelphia Delivers proposal to the public, and to the Requester.

34. A copy of the public version of the proposal is attached as "Exhibit A." It is also available at: https://www.dropbox.com/s/hjr99rl123iyr6b/PHL_AMAZON_FINAL%20Public.pdf?dl=0

35. In addition, a public website provides additional information and details on Philadelphia's proposal. See <https://public.philadelphiadelivers.com/>

PIDC-Protected Items in the Philadelphia Delivers Proposal

36. Certain material have been withheld from the Philadelphia Delivers proposal.

37. Two discrete types of information have been redacted from the Philadelphia Delivers proposal that pertain to PIDC.

38. Those redacted items are extremely sensitive and proprietary to PIDC.

39. Those redacted items also are protected by non-disclosure agreements that have been signed by relevant parties, who have promised to protect that information from public disclosure.

40. First, the Philadelphia Delivers proposal has been redacted to remove sensitive and proprietary items relating to financial incentives and financial programs that have been proposed to Amazon (the “City Incentives”).

41. Second, the proposal has been redacted to remove its creative proposal to Amazon – a mix of the City’s and PIDC’s selling points and creative and out-of-the-box ideas, which have been marketed and presented to Amazon through a creative and unique methodology (the “Creative Proposal”).

42. The City Incentives and Creative Proposal were developed and shared between PIDC and the City and reflect specific financial information and other material supplied by PIDC to – and received by – the City of Philadelphia.

43. The City Incentives and Creative Proposal reflect and discuss a particular application of PIDC’s proprietary financial tools, proposals, methods, and marketing and other ideas, all of which are unique to PIDC’s business and trade of attracting businesses to the City.

44. This application of PIDC’s financial tools, proposals, methods, and ideas included in the Philadelphia Delivers proposal is extremely sensitive and confidential to PIDC.

45. PIDC considers this information supplied in the Philadelphia Delivers proposal as proprietary to PIDC and also as the intellectual property of PIDC.

46. The particular utilizations of PIDC’s financial tools, methods, proposals, and ideas are crucial building blocks for PIDC to successfully compete in the business attraction marketplace.

47. PIDC has invested significant time and capital resources in developing the means for deployment of its financial tools, financial proposals, and trade methods and ideas – not only for the Amazon HQ2 proposal, but for all of the proposals that PIDC has made over the years and decades.

48. PIDC's financial tools and proposals, and its methods and ideas, have been carefully crafted, calibrated, and refined over time, and are based on PIDC's long history of experience and success in attracting businesses to the City.

49. The selection and particular deployment of PIDC's financial tools, its various types of financial proposals, and its trade methods and ideas in a given business attraction setting vary by scenario.

50. Substantial investment of time and effort is made to refine PIDC's specific strategy for each proposal; the Amazon proposal is no exception.

51. PIDC never publicly discloses a proposal's specific financial terms and chosen financial tools or its particular methods or ideas at any time during the bidding process.

52. PIDC treats each of these items as highly confidential and privileged.

53. Anyone accessing PIDC's confidential information is always expected and required to maintain this information in confidence.

54. For the Amazon HQ2 proposal, certain parties with access to PIDC's confidential information were mandated to sign non-disclosure agreements providing that those parties would protect PIDC's proprietary information.

55. PIDC always applies and honors electronic and physical security protocols to keep its proprietary information under wraps.

56. PIDC's proprietary information cannot be accessed by anyone outside PIDC, and cannot be accessed by anyone even within PIDC – except those with a business need to know it.

57. To accomplish that protection, PIDC employs computer password and cybersecurity measures, as well as physical file security measures, all of which are in compliance with applicable industry protocols.

58. Those steps ensure that unwanted access is prevented.

59. PIDC's proprietary information therefore is not easily or readily available either outside or even inside PIDC.

60. None of PIDC's competitors know the particulars of any of PIDC's proprietary information, and they cannot duplicate it – as it is unique to PIDC.

61. PIDC's proprietary information is not required to be submitted to the City for review and approval as part of any particular business attraction proposal process.

62. If PIDC's proprietary information depicted in the City Incentives and Creative Proposal portions of the City's proposal was publicly disclosed during the ongoing Amazon RFP process, such would undermine PIDC's competitive position.

63. Indeed, public disclosure will allow one, some, or all of the other 19 remaining bidders to adjust their own bids to undercut and undermine PIDC's market position – both specifically (as to the Amazon RFP) and also more generally (in the overall business attraction marketplace).

64. Specifically, the other bidders could steal PIDC's proprietary blend of financial tools, financial proposals, and trade methods and ideas to try to match or outbid the City or to otherwise refine their own proposals based on insights unfairly gained from PIDC.

65. Those other bidders could unfairly take advantage of PIDC's years of experience and significant investments in developing its proprietary information without having to make such investments or develop such experience on their own.

66. The other bidders also could use the information gained to attempt to falsely or otherwise improperly or unfairly disparage the City's Amazon proposal.

67. Even worse, improper access by the other bidders to PIDC's proprietary information will give those other bidders insights on PIDC's global strategies that it deploys for all of its business attraction proposals.

68. Other bidders could learn from this PIDC information and then use that information to undercut PIDC in future business attraction bidding processes.

69. As such, PIDC's proprietary information reflected in the City Incentives and Creative Proposal has independent economic value because, if disclosed, it would furnish competitors with solid parameters by which they could refine their own strategies as part of their efforts to win businesses away from PIDC or otherwise cause PIDC to lose out in the marketplace.

70. Underscoring the unfairness to PIDC is the fact that, in some other jurisdictions, other bidders' proposals may not be subject to public disclosure under those other jurisdictions' public records laws.

71. As such, if a ruling were to be made against PIDC here, then PIDC may be subjected to competitive harm through the disclosure of its information, whereas bidders from other jurisdictions will not be subjected to that same harm.

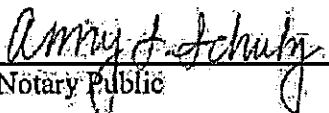
72. This will unfairly tilt the competitive playing field in favor of PIDC's competitors and against PIDC.

73. For any and all of these reasons, the release of the City Incentives and Creative Proposal would unfairly cause PIDC to suffer substantial harm to its competitive position.

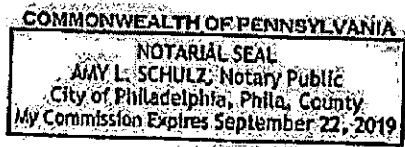
I hereby swear and affirm that the foregoing statements are true and correct to the best of my knowledge and belief.


Ilene Burak

Signed and Sworn to Before Me:


Notary Public

On April 4, 2018



PHILADELPHIA DELIVERS

Response to the
Amazon HQ2 RFP

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CITY OF PHILADELPHIA

OFFICE OF THE MAYOR
215 City Hall
Philadelphia, PA 19107
(215) 686-2181
FAX (215) 686-2180

JAMES F. KENNEY
Mayor

October 16, 2017

Jeff Bezos
Founder and CEO
Amazon
2121 7th Avenue
Seattle, WA 98121

Dear Mr. Bezos:

Thank you for the opportunity to present Philadelphia's credentials in response to the Amazon HQ2 RFP. Your solicitation generated a tremendous outpouring of support and excitement from our diverse community of stakeholders across the city, truly making me proud. Philadelphia offers you unparalleled sites in a major city that still has plenty of room to grow, a personality that complements Amazon's, and a lifestyle that is delightfully frugal.

More than 160 CEOs signed a letter of support from the corporate community, spearheaded by the Greater Philadelphia Chamber of Commerce. Members of the tech and startup community submitted 96 testimonials to express how being located in Philadelphia has benefited their companies. Our small business and community organizations joined weekly phone calls to share their thoughts and ensure that Philadelphia's proposal took the needs of local businesses into account. Over 65 college and university presidents produced their own letter to tout the strengths of Philadelphia's education institutions, and nearly 70% of students surveyed by Campus Philly said that they would want to intern with Amazon if the company was located here. At the University of Pennsylvania's Wharton School, students took it upon themselves to organize not one, but two competitions to showcase their big ideas on how Philadelphia could best pitch your company. Just one week after your RFP was released, Philadelphia City Council signed a resolution encouraging Amazon to choose our city, and our local State Representatives have been advocating in Harrisburg for a comprehensive partnership with the Commonwealth of Pennsylvania on incentives.