

STATE OF NEW YORK
SUPREME COURT

COUNTY OF WESTCHESTER

ROBERT COX,

Index No. _____

Plaintiff,

-against-

VERIFIED PETITION

CITY OF NEW ROCHELLE and WILFREDO MELENDEZ,
in his official capacity as City Manager

Defendant(s).

For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules Petitioner
Robert Cox, by and through himself, respectfully alleges:

PRELIMINARY STATEMENT

1. This is an Article 78 proceeding to compel the City of New Rochelle to comply with the New York Freedom of Information Law (Public Officers Law §§ 84–90) by immediately disclosing the complete, unredacted bid proposal submitted on October 29, 2025 by The Young Companies LLC in response to Bid No. 5820 (“Request for Master Redeveloper Proposal”).
- 1.2. After terminating the RFP on November 13, 2025, Respondents lost any conceivable basis to withhold the document under POL § 87(2)(c). Respondents nevertheless continue to withhold and redact substantial portions of the Proposal, relying on vague, conclusory, and retroactive claims of “trade secret” protection that fail every requirement established by the Court of Appeals in *Matter of Markowitz v. Serio*, 11 NY3d 43 (2008) and *Matter of Data Tree, LLC v. Romaine*, 9 NY3d 454 (2007).

1.3. Respondents have also failed to provide the particularized justification for each redaction that is mandatory under controlling precedent, and there is evidence suggesting that the original public record may have been altered or returned to the private submitter for redaction — conduct that violates both FOIL and the Arts and Cultural Affairs Law.

PARTIES

4. Petitioner Robert Cox is a resident of the Republic of Ireland and the publisher of Talk of the Sound, a recognized news outlet covering New Rochelle. He is an “aggrieved person” within the meaning of POL § 89(4)(b) & (c).
- 4.5. Respondent City of New Rochelle is a public agency subject to FOIL.
- 4.6. Respondent Wilfredo Melendez is the City Manager and the designated appeals officer under POL § 89(4)(a).

JURISDICTION AND VENUE

7. This Court has jurisdiction pursuant to CPLR § 7804(b) and POL § 89(4)(b). Venue is proper in Westchester County pursuant to CPLR § 506(b).

FACTUAL ALLEGATIONS

8. On October 29, 2025, bids were due for Bid Number 5820, titled “Request for Master Redeveloper Proposal,” for the redevelopment of a public park in New Rochelle posted on the New Rochelle website on September 12, 2025 (Exhibit A)
- 8.9. The project generated significant public controversy, particularly regarding potential eminent domain implications (Exhibit B)
- 8.10. A single bid was submitted by The Young Companies LLC (hereinafter “The Young Companies”).

- 8.11. On October 30, 2025, Robert Cox submitted a FOIL request to the City for a complete, unredacted copy of The Young Companies' bid response (the "Proposal"), as well as any related correspondence or evaluations (Exhibit C)
- 8.12. On October 30, 2025, City Clerk Kim Jones acknowledged receipt of Cox's FOIL request to the City for a complete, unredacted copy of The Young Companies' bid response (the "Proposal"), as well as any related correspondence or evaluations and assigned the record request #25-153 (Exhibit D)
- 8.13. On October 30, 2025, Robert Cox also made a parallel informal request to City Manager Melendez to proactively release the Proposal on the City's website given the high level of public interest (Exhibit E).
- 8.14. The City denied both the formal FOIL request and the informal request (Exhibit F).
- 8.15. The City's denial cited exemptions under POL § 87(2)(c) (records that "would impair present or imminent contract awards or collective bargaining agreements") and related provisions (Exhibit F)
- 8.16. The City indicated that the Proposal would be revisited for release upon the award of the bid or termination of the RFP process (Exhibit F).
- 8.17. On November 13, 2025, City Manager Melendez publicly announced the termination of the RFP process (Exhibit G).
- 8.18. Upon termination of the RFP on November 13, 2025, any exemption under POL § 87(2)(c) ceased to apply.
- 8.19. On or about November 13, 2025, Robert Cox immediately renewed his FOIL request for the unredacted Proposal, emphasizing that no pending procurement existed to justify withholding (Exhibit H).
- 8.20. On November 21, 2025, upon learning that The Young Companies had requested the return of its bid response documents (Exhibit N), Robert Cox restated his demand for the Proposal (Exhibit J).

- 8.21. On November 21, 2025, Robert Cox submitted a new FOIL request for all emails, memoranda, or other records related to The Young Companies' request for return of the documents, including any communications between the City and The Young Companies regarding the Proposal's handling, redaction, or retention (Exhibit J).
- 8.22. Despite the termination, the City engaged in weeks of additional stonewalling in a series of email exchanges and provided no substantive response to the renewed request. Attached hereto as Exhibit I is a true and complete copy of email correspondence between myself (Robert Cox) and City Manager Melendez from October 31 2025 to December 3, 2025. printed from my email account attached hereto as Exhibit I.
- 8.23. On November 25, 2025, City Manager Melendez stated: "Proposals were requested to be returned by the requestor. They have been asked to redact items at the request of the FOIL. We are waiting on the redacted version." (Exhibit I, p. 31.) Cox replied moments later: "Are you telling me you returned the bid proposal documents? Are you telling me you are asking the developer to redact the documents and return redacted documents to you so you can then release them? If so, what is the timeline on this?" (Exhibit I, p. 41.) The City provided no clarification.
- 8.24. On December 2, 2025, Melendez offered a different explanation: "The proposal was received as per RFP solicitation... Developer requested proposal be returned... Original then returned. FOIL provided. Not manipulated in any way." (Exhibit I, p. 58.) Cox immediately responded that he did not understand the statement, that it failed to clarify the prior email, and requested a clearer version in complete sentences for accurate public reporting. (Exhibit I, p. 66.)
- 8.25. Later that day, Melendez provided yet another version: "To clarify the process, the City worked with the proposer to identify the portions they asserted to be trade secrets... The City has maintained a copy of the original, unredacted pro-

posal... At no point was the City's only copy of the proposal provided to the proposer or replaced by another version." (Exhibit I, p. 64) Cox replied: "This is quite obviously NOT what you said previously. I will note your new position on this matter in a subsequent article. I will be appealing every redaction soon." (Exhibit I, p. 64.) Melendez never addressed why the proposer would request a copy of its own submitted proposal as claimed in his December 2, 2025 email (Exhibit I, p. 64).

- 8.26. Notably, in the City's December 4, 2025 denial of Petitioner's administrative appeal (Exhibit N) was attached an email and letter from Cuddy + Feder (counsel for Bob Young LLC) requesting return of the proposal (not a copy) and unspecified "additional materials" a partial granting of Cox's FOIL on November 21, 2025 for all emails, memoranda, or other records related to The Young Companies' request for return of the documents, including any communications between the City and The Young Companies regarding the Proposal's handling, redaction, or retention (Exhibit J). There is no mention in the Cuddy + Feder email or letter of Bob Young LLC requesting a copy or doing so for the purpose of making redactions or identifying portions asserted to be trade secrets or working with the City to identify redactions.
- 8.27. Any such additional materials would have been responsive to Cox's FOIL requests, yet they were neither provided nor even acknowledged as existing.
- 8.28. These evolving and inconsistent explanations, coupled with the City's failure to promptly resolve Cox's inquiries or provide complete records, constitute continued constructive denial and delay in violation of FOIL.
- 8.29. On December 1, 2025, the City produced a heavily redacted version of the Proposal (Exhibit L).
- 8.30. The December 1, 2025 production raises serious concerns about the integrity of the original record.

- 8.31. The redacted production shows apparent alterations, including discrepancies in pagination suggesting a missing page around page 24, which contains the site map.
- 8.32. The redacted production includes modifications to the site map's legend that conveniently obscure areas implicated in the eminent domain controversy.
- 8.33. Statements in an email exchange by City officials appear to confirm that the City retains a copy of the original, unredacted version of the Proposal as submitted on October 29, 2025 (Exhibit M).
- 8.34. Despite retaining a copy of the original, the City has failed to produce it, instead providing a version with post-hoc redactions that were apparently directed by The Young Companies after the RFP was terminated (Exhibit L), consequently on December 3, 2025 Cox filed an appeal to the City Manager (Exhibit O) and a new FOIL request for all emails, memoranda, or other records related to The Young Companies' request for return of the documents, including any communications between the City and The Young Companies regarding the Proposal's handling, redaction, or retention (Exhibit J, p. 7)

EXHAUSTION OF ADMINISTRATIVE REMEDIES

35. By letter dated December 4, 2025 (Exhibit N), Respondents issued their final administrative determination denying Petitioner's appeal. Petitioner has exhausted all administrative remedies, and simultaneously acknowledged Cox's December 3, 2025 FOIL for all emails, memoranda, or other records related to The Young Companies' request for return of the documents (Exhibit J, p. 7) which remains pending at the time of this Petition.

AS AND FOR A FIRST CAUSE OF ACTION

(Violation of FOIL – Improper Withholding After Termination of Procurement)

35-40. Upon the November 13, 2025 termination of the RFP, any possible protection under POL § 87(2)(c) ceased to exist. Respondents' continued withholding and redaction of the Proposal is arbitrary, capricious, and contrary to law.

AS AND FOR A SECOND CAUSE OF ACTION

(Violation of FOIL – Trade-Secret Exemption Not Properly Invoked)

41–48. The Court of Appeals in *Markowitz v. Serio*, 11 NY3d 43 (2008) and the Appellate Division in *Verizon N.Y. v. Mills*, 60 AD3d 150 (3d Dept 2009) hold that the § 87(2)(d) trade-secret/commercial-harm exemption requires: (a) actual assertion of confidentiality by the submitter at the time of submission, (b) independent evaluation by the agency, and (c) particularized proof of substantial competitive injury.

49. Respondents have produced no evidence that The Young Companies designated any portion of the Proposal as confidential or trade secret at the time of submission on October 29, 2025.

50. Respondents' December 4 letter contains only boilerplate descriptions ("proprietary financial modeling," "confidential business strategies") that are legally insufficient under Data Tree and every subsequent appellate decision.

51. Allowing a bidder to designate material as confidential after the RFP is terminated constitutes an impermissible retroactive creation of an exemption.

AS AND FOR A THIRD CAUSE OF ACTION

(Failure to Provide Particularized Justification / Vaughn Index)

52-55. Respondents have failed to correlate a single redaction to a specific statutory exemption and factual basis, rendering judicial review impossible and violating the mandate of Data Tree, (9 NY3d at 464–465) and *Matter of Hofstra Univ. v. Nassau County Planning Commn.* (80 Misc 3d 781 [Sup Ct, Nassau County 2023]).

AS AND FOR A FOURTH CAUSE OF ACTION

(Evidence of Record Tampering / Improper Return to Private Party)

56–60. The discrepancies in pagination and sitemap legend between the original submission and the redacted version produced on December 1, 2025 (Exhibit L) combined with Respondents' admission that The Young Companies requested return of the bid documents (Exhibit O), and admission in the Final Determination (Exhibit N) that the version provided to Cox on December 1, 2025 was altered, stating “Any pagination differences arise from formatting in the redacted reproduction”, raise a substantial question whether Respondents returned the only copy of the public record to the bidder or permitted the bidder to alter it — conduct that would violate Arts & Cultural Affairs Law §§ 57.05, 57.25 and the Local Government Records Retention Schedule (CO-2 & MU-1).

AS AND FOR A FIFTH CAUSE OF ACTION

(Violation of Mandatory Regulations – Failure to Transmit Appeal Denial to the Committee on Open Government)

61. The regulations promulgated by the Committee on Open Government expressly provide that “[a] copy of the written notice of denial of access to records on appeal, including the reasons for the denial, shall be sent to the Committee on Open Government at the same time that it is sent to the person who requested the records” (22 NYCRR § 214.9(e)).

62. Respondents' December 4, 2025 appeal-denial letter (Exhibit N) contains no indication that a copy was simultaneously transmitted to the Committee on Open Government at coog@dos.ny.gov, nor has the Committee received or acknowledged receipt of the denial as of the date of this Petition.

63. This failure is not a mere technical oversight. The simultaneous-transmission requirement is mandatory and is designed to enable the Committee to exercise its statutory advisory function under Public Officers Law § 89(1)(b)(iii) and to maintain statewide oversight of agency compliance with FOIL.

64. By failing to comply with this unambiguous regulatory mandate, Respondents have acted in violation of lawful procedure, in excess of their jurisdiction, and in an arbitrary and capricious manner (see CPLR § 7803(3)).

65. This regulatory violation constitutes an independent ground for annulling the December 4, 2025 determination (Exhibit N) and further demonstrates that Respondents' continued withholding of the requested records lacks any reasonable basis in law.

AS AND FOR A SIXTH CAUSE OF ACTION

(Entitlement to Attorney's Fees and Costs)

66–69. Respondents had no reasonable basis in law for their initial denial under § 87(2)(c) after November 13, 2025, nor for their continued withholding thereafter. Petitioner has substantially prevailed and is entitled to reasonable attorney's fees and litigation costs pursuant to POL § 89(4)(c)(i) & (ii).

RELIEF REQUESTED

WHEREFORE, Petitioner respectfully prays that this Court enter judgment:

- a) Annulling and setting aside Respondents' December 4, 2025 determination in its entirety (Exhibit N);
- b) Directing Respondents to produce, within ten (10) days, the complete, unredacted Proposal as originally submitted on October 29, 2025;
- c) In the alternative, directing Respondents to produce the document to the Court for in camera inspection and thereafter ordering disclosure of all non-exempt portions;
- d) Directing Respondents to produce a proper particularized index correlating each redaction to a specific exemption and detailed factual basis;
- e) Directing production of all records responsive to Petitioner's November 21, 2025 request concerning the return/redaction of the Proposal (Exhibit J);

- f) Awarding Petitioner reasonable attorney's fees, litigation costs, and disbursements pursuant to POL § 89(4)(c); and
- g) Granting such other and further relief as the Court deems just and proper.

Dated: December 12, 2025

Dublin, Ireland

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VERIFICATION

STATE OF NEW YORK

COUNTY OF WESTCHESTER) ss.:

I affirm this 12 day of December, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters I believe it to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

Robert Cox

