

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JASON PRECHTEL,)
)
Plaintiff,)
)
v.)
)
CHICAGO TRANSIT AUTHORITY,)
)
Defendant.)

2014CH12415
CALENDAR/ROOM 15
TIME 00:00
General Chancery

COMPLAINT

NOW COMES Plaintiff, JASON PRECHTEL, by his undersigned attorneys, LOEVY & LOEVY, and brings this suit to overturn Defendant CHICAGO TRANSIT AUTHORITY's refusal, in willful violation of the Illinois Freedom of Information Act, to provide transparency into the highly publicized, nearly half-billion dollar Open Standards Fare System contract awarded to Cubic Transportation Systems and resulting in the fare collection system, Ventra. In support of his Complaint, PRECHTEL alleges:

INTRODUCTION

1. Pursuant to the fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act ("FOIA").

2. Restraints on access to information, to the extent permitted by FOIA, are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards, and other aspects of government activity that affect the conduct of government and the lives of the people.

3. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt.

4. FOIA and the Illinois Constitution command that all records relating to the obligation, receipt, and use of public funds are subject to inspection and copying by the public.

5. While a public body may object to a request on the basis that it is unduly burdensome, it may only do so only if the burden outweighs the public interest in disclosure. It may not do so for records relating to the use of public funds because all such records are subject to disclosure.

6. If the court determines that a public body willfully and intentionally failed to comply with FOIA, or otherwise acted in bad faith, the court shall impose upon the public body a civil penalty of not less than \$2,500 nor more than \$5,000 for each occurrence.

7. Under FOIA Section 11(h), “except as to causes the court considers to be of greater importance, proceedings arising under [FOIA] shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way.”

8. Defendant CHICAGO TRANSIT AUTHORITY has willfully and intentionally violated FOIA by providing PRECHTEL only a small and woefully incomplete subset of records related to the Open Fare contracting process.

9. CHICAGO TRANSIT AUTHORITY has refused to provide, for example, copies of bids that were not selected or contracts and invoices involving its advisors on the deal because CHICAGO TRANSIT AUTHORITY contends that the records are not sufficiently important to justify the alleged burden in producing them.

10. In fact, the public interest in disclosure of this information is colossal given the hundreds of millions of dollars and great many public transit riders throughout the Chicagoland area affected by the Open Fare contract, as well as the long history of scandals and controversies involving prior City of Chicago privatization and contracting processes and patronage scandals involving other local transit agencies impacted by the Open Fare contract.

11. Because the public interest in disclosure of these records far outweighs any burden in producing them, PRECHTEL asks the Court to compel CHICAGO TRANSIT AUTHORITY to produce these records and allow public scrutiny into the Open Fare contracting process.

PARTIES

12. Plaintiff JASON PRECHTEL is a freelance journalist and blogger who published an award-nominated series of stories related to the CHICAGO TRANSIT AUTHORITY's Open Fare contract and the selected vendor, Cubic Transportation Systems. (Exhibit A; Exhibit B)

13. Defendant CHICAGO TRANSIT AUTHORITY ("CTA") is a public body located in Cook County, Illinois.

BACKGROUND ON THE OPEN FARE CONTRACT

14. In August 2009, the CTA issued a Request For Proposals (RFP) for an Open Standards Fare Payment system. An Open Fare system is defined as a system where users can pay transit fare with credit cards, debit cards, smartphones, or reloadable transit cards.

15. The stated purpose of the transition to this payment system was to outsource CTA fare collection to a private vendor to minimize long-term operational costs and to modernize fare collection by providing a variety of payment options to riders.

16. The RFP included a two-step evaluation process to solicit potential vendors and assess the viability of the RFP's technical specifications. The assessment process was assigned to

William Blair & Co., who previously oversaw the deal that led to the widely criticized privatization of Chicago's parking meters.

17. On December 21, 2010, Cubic Transportation Systems donated \$1,500 to campaign fund Chicago for Rahm Emanuel. (Exhibit C)

18. On July 7, 2011, Governor Pat Quinn signed legislation mandating that the CTA, Pace, and Metra systems be unified under a universal fare card payment system by January 1, 2015. (Exhibit D)

19. CTA has highlighted to prospective bidders that the RFP offered the opportunity to market the system to Pace and Metra.

20. In November 2011, the CTA Board of Directors voted to award the Open Fare contract to Cubic Transportation Systems. The Board did not disclose the names or proposed amounts of the other bidders. (Exhibit E)

21. In contrast, at the same time as CTA's announcement, the Southeastern Pennsylvania Transportation Authority Board of Directors unanimously voted to award a contract for an open fare system to ACS Transport Solutions Group, and disclosed that the competing bidders were Cubic Transportation Systems and Scheidt & Bachmann and that the ACS bid for \$129.5 million was \$5 million lower than the bid made by Cubic. (Exhibit F)

22. At the time the Cubic contract was awarded, CTA's former technology chief was manager of Chicago operations for Cubic. He has since rejoined CTA. (Exhibit G)

23. As has been widely reported, CTA's Open Fare rollout in late 2013 was plagued with glitches, errors in reading Ventra cards, allegations of overpayments, difficulties transferring balances from ChicagoCards to Ventra cards, lengthy customer service call wait times, uncollected fares, and server failures.

24. These problems generated so much public interest that they led to an audit by the Regional Transportation Authority and several class action lawsuits. (Exhibit H; Exhibit I)

25. Nonetheless, William Blair has presented Ventra as a Public-Private Partnership case study and referred to the RFP process as “a vigorous, transparent selection process”—a dubious assertion that cannot be reconciled with CTA’s refusal to provide complete information to the public about the bidding process or non-selected bids. (Exhibit J)

26. There exists a long and unfortunate history of patronage and questionable deals in Illinois public transportation and in City of Chicago privatization against which the Open Fare RFP process and the public’s interest in full disclosure should be viewed.

27. In 2008, former Chicago Mayor Richard Daley announced that the city would lease its parking meters for 75 years to a consortium led by Morgan Stanley for \$1.16 billion. In a later report, the Inspector General's office found that the city's parking meter lease was undervalued by \$974 million. (Exhibit K)

28. Consultant William Blair & Co.—the same William Blair who handled the Open Fare RFP—was selected to perform the parking meter valuation without any bidding process. According to the Chicago Reader, William Blair made \$4.3 million on the deal. At the time of the award, William Blair was reportedly involved in multibillion dollar deals with a consortium led by Morgan Stanley, the winning bidder, in violation of City contracting rules. (*Id.*)

29. On March 31, 2014, an Illinois Department of Transportation task force released a report that alleged that Metra maintained 30 years of records of patronage hiring recommendations on index cards. (Exhibit L)

30. Metra CEO Alex Clifford abruptly resigned in July 2013 and received an \$871,000 severance package, prompting rumors of “hush money” over claims Clifford made that

Illinois House speaker Michael Madigan asked Clifford to give pay raises and promotions to certain individuals at Metra. (Exhibit M)

31. On July 3, 2014, Gov. Pat Quinn ordered an end to political hiring at the Illinois Department of Transportation, after allegations of patronage prompted the resignation of the head of IDOT. (Exhibit N; Exhibit O)

32. In another example of questionable practices in City contracting, in 2003 the City of Chicago awarded a contract to Redflex Traffic Systems to provide cameras to track commuters driving through red lights.

33. Redflex officials have been accused of bribing a City official who oversaw the contract and was recently arrested and charged with plotting to steer the contract to Redflex. (Exhibit P)

34. The Chicago Tribune reported irregularities with the operation of the City's red light cameras that resulted in a spike in tickets that neither the City nor Redflex explained. (Exhibit Q) The City had initially fought the production of the records that ultimately exposed the problem. (Exhibit R)

35. As another example, a well-connected Chicago construction company recently paid an eight-figure settlement to resolve a whistleblower suit involving allegations of fraudulent minority contracting practices. That company had performed work on CTA projects. (Exhibit S)

36. All of this background and context, with regard to both Open Fare specifically and City and other transit authority contracting generally, makes clear that there is a tremendous public interest in full disclosure about the Open Fare RFP and selection process, which CTA has refused to provide. Each of the press articles attached as exhibits to this Complaint is a true and correct copy and has been offered to demonstrate the newsworthiness of the subject matter.

PRECTHEL'S REQUEST AND CTA'S REFUSAL TO COMPLY

37. On April 14, 2014, PRECHTEL requested the following records under FOIA from CTA: "Any and all documents related to RFP-Steps 1 and 2 of Requisition No. B09OP03968, including names of all participating bidders in RFP-Step 1, all participating bidders and dollar amounts of bids made in RFP-Step 2 and all related communications between the CTA and outside financial and legal advisors." (Exhibit T)

38. In response on April 22, 2014, CTA claimed that "it is unclear as to what documents are within the scope" of the request, which could include "voluminous records." CTA also claimed that communications with financial and legal advisors "would require significant time to review." (Exhibit U)

39. CTA asserted the "undue burden" provision under FOIA Section 3(g) and asked PRECHTEL to narrow his request, ignoring that a request is only unduly burdensome if the burden "outweighs the public interest in the information" and ignoring that **all** records related to the use of public funds are subject to disclosure. (*Id.*)

40. While PRECHTEL's request was not unduly burdensome, PRECHTEL withdrew his request and made a new narrowed request on April 24, 2014, seeking a subset of all records related to the RFP: "1. All bid packages, responses, or other documents submitted by any bidder to the CTA for Requisition No. B09OP03968 Open Fare RFP Steps 1 and 2, and all written communication with bidders about the RFP; 2. All formal and informal policies, procedures, directives, instructions, practices, or other such documents applicable to the Open Fare RFP review and decision-making process; 3. All reports by outside financial advisors regarding Open Fare RFP and any responses to the RFP; 4. All contracts between CTA and William Blair & Co., Peralta Garcia Solutions, or Thompson Coburn Fagel Haber applicable to work performed in connection with the Open Fare RFP, invoices submitted by those companies for that work, and

payment records for those invoices; 5. The RFP instructions to bidders for each step of the Open Fare RFP; and 6. All documents evidencing the bases for CTA's selection of the winning bidder in the Open Fare RFP." (Exhibit V)

41. On May 1, 2014, CTA again asserted undue burden in response to PRECHTEL's narrowed request. (Exhibit W)

42. CTA claimed that each bid would "have to be extensively reviewed for exempt material, including by the companies submitting bids to procurement" (*id.*), despite the fact that Step-1 bidders were expressly told their bids would **not** be considered confidential: "**No Expectation of Confidentiality of Information Submitted.** By responding to this RFP-Step One a Prospective Partner, Team and each Team Member acknowledge and agree that there is no expectation that any information submitted to the CTA or its representatives, including all materials and information provided, discussed, disclosed or otherwise conveyed, whether in writing or otherwise to CTA or its representatives, including, but not limited to, demonstrations, presentations, meetings, negotiations, technical information, data, data movement, transmittals, storage, analysis, and/or study, and the identity of any third party involved with, assisting, or in any manner related to a Prospective Partner, Team or Team Member, will be treated by the CTA or its representatives as confidential. . . . In addition pursuant to the provisions of local, state and federal law including the Illinois Open Meetings Law, the Federal Freedom of Information Act, etc. the CTA and its representatives may be required to disclose the Confidential Information." (Exhibit X (excerpts of original, with full copy available at <http://www.transitchicago.com/assets/1/solicitations/9OP03968.pdf>) (emphasis in original))

43. CTA further claimed that PRECHTEL's request for the policies, procedures, etc. applicable to the RFP was somehow "unclear," but identified 1300 pages of records that it contended would be unduly burdensome to review. (Exhibit W)

44. CTA again ignored the public interest in this information and the requirement that all records related to the use of public funds be disclosed in its May 1 response. (*Id.*)

45. While PRECHTEL's revised request was not unduly burdensome, PRECHTEL withdrew his revised request and made a further revised request on May 7, 2014, for: "1. CTA Requisition No. B090P03968 Open Fare RFP Step 2 (in other words, the Step 2 approximate functional equivalent to <http://www.transitchicago.com/assets/1/solicitations/9OP03968.pdf>). 2. All Requisition No. B090P03968 Open Fare RFP Step 1 submittals, confidentiality agreements, and prospective partner feedback documents (see CTA Requisition No. B090P03968 Open Fare RFP Step 1, Table 7). 3. All Requisition No. B090P03968 Open Fare RFP Step 2 submittals. 4. All contracts between the CTA and William Blair & Co., Peralta Garcia Solutions, or Thompson Coburn Fagel Haber applicable to work performed in connection with the Open Fare RFP, invoices submitted by those companies for that work, and payment records for those invoices. (Exhibit Y)

46. In response, CTA once again claimed the request was unduly burdensome because it would allegedly "encompass thousands of pages of records, some of which would require substantial review." CTA continued to ignore the public interest in the information and the requirement that all records related to the use of public funds are subject to disclosure. (Exhibit Z)

47. On May 22, 2014, PRECHTEL declined to further narrow his request but offered CTA 21 days, instead of the 5 days required under FOIA, to produce the records. (Exhibit AA)

48. In response on June 10, 2014, CTA produced only the RFP Step 2 and subsequent addenda, a copy of the Open Standards Fare System and Services contract between the CTA and Cubic Transportation Systems, and three peripheral records related to the contract, refusing to produce, for example, advisor contracts and invoices and copies of non-winning bids that would

allow the public to evaluate whether CTA selected the best bidder. Some of the records CTA produced appear to have been, at least in part, improperly redacted. Like its prior undue burden claims, CTA ignored the public interest in disclosure entirely and the required disclosure of all records related to the use of public funds. (Exhibit BB)

49. On June 30, 2014, PRECHTEL provided the following response to CTA: “Thanks for your response. I don't agree that what I'm asking for is unduly burdensome, but I will grant CTA 90 days from today to comply with my request. I would like records produced on a rolling basis as they are ready. Please let me know within 5 business days if CTA agrees.” (Exhibit CC)

50. CTA ignored PRECHTEL's June 30 offer of additional time and has produced no further records.

51. The records sought in PRECHTEL's May 7, 2014 request all relate to the obligation, receipt, and use of public funds, and are thus subject to inspection and copying by the public under FOIA Section 2.5.

52. Even if the undue burden provision of FOIA applied to records that relate to the obligation, receipt, and use of public funds, the Open Fare conversion has been an issue of major public interest, as were, for example, the City of Chicago parking meter lease and the Redflex bribery scandal. CTA's refusal to produce the non-winning Open Fare bids raises serious issues about the integrity and effectiveness of the Open Fare bid process.

53. Therefore, even if a significant amount of work would be involved to collect, review, and produce these records, which PRECHTEL disputes, that burden would be far outweighed by the public interest in transparency into a major contract that affects a significant number of area residents living in a city and state in financial disarray. The public literally cannot afford to allow the City or its agencies to enter into major contracts without full public transparency and scrutiny.

COUNT I – WILLFUL VIOLATION OF FOIA

54. The above paragraphs are incorporated by reference.

55. CTA is a public body under FOIA.

56. The records sought in PRECHTEL's May 7, 2014 FOIA request are non-exempt public records of CTA and would not be unduly burdensome to produce.

57. CTA's violation was willful and intentional and in bad faith. Upon information and belief, based on the obvious public interest in disclosure of the records that clearly outweighs any legitimate burden in producing them, CTA has withheld these records not based on burden, but on the fear of public scrutiny similar to that raised by the parking meter deal and Redflex scandal. Even if CTA did not withhold the records for fear of scrutiny, the obligation to produce them was sufficiently obvious that CTA must have known it was required to do so when it refused.

WHEREFORE, PRECHTEL asks that the Court:

- i. in accordance with FOIA Section 11(f), afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way;
- ii. declare that CTA has violated FOIA;
- iii. order CTA to produce the requested records;
- iv. enjoin CTA from withholding non-exempt public records under FOIA;
- v. award PRECHTEL reasonable attorneys' fees and costs;
- vi. award PRECHTEL civil penalties of \$2500 to \$5000 for each violation; and
- vii. award such other relief the Court considers appropriate.

RESPECTFULLY SUBMITTED,



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