SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1893-16T4

PARSONS INFRASTRUCTURE AND ENVIRONMENT GROUP, INC.,

Plaintiff-Appellant,

v.

STATE OF NEW JERSEY, DEPARTMENT OF TREASURY, DIVISION OF PURCHASE AND PROPERTY, SGS TESTCOM, INC., and OPUS INSPECTION, INC.,

Defendants-Respondents,

and

APPLUS TECHNOLOGIES, INC.,

Defendant.

Argued December 14, 2017 – Decided February 26, 2018

Before Judges Simonelli, Rothstadt and Gooden Brown.

On appeal from Superior Court of New Jersey, Law Division, Mercer County, Docket No. L-1319-16.

Maeve E. Cannon and Wade D. Koenecke argued the cause for appellant (Stevens & Lee, PC, attorneys; Maeve E. Cannon and Patrick D. Kennedy, of counsel and on the briefs; Wade D. Koenecke, on the briefs).

Roza Dabaghyan, Deputy Attorney General, argued the cause for respondent State of New Jersey (Christopher S. Porrino, Attorney General, attorney; Melissa H. Raksa, Assistant Attorney General, of counsel; Roza Dabaghyan, on the brief).

Sandy L. Galacio argued the cause for respondent SGS Testcom, Inc. (Matthew J. Cowan and Windels Marx Lane & Mittendorf, attorneys; Matthew J. Cowan and Pasqualino Russo, of counsel and on the brief).

Jenna M. Beatrice argued the cause for respondent Opus Inspection, Inc. (Genova Burns, LLC, attorneys; Jennifer Borek of counsel and on the brief; Jenna M. Beatrice, on the brief).

PER CURIAM

Appellant Parsons Infrastructure and Environment Group, Inc. (Parsons) appeals from the Law Division's partial denial of its request for public records pursuant to the Open Public Records Act (OPRA), N.J.S.A. 47:1A-1.1, and the common law right of access. Parsons made the request in connection with its protest of defendant Department of Treasury, Division of Purchase and Property's (DPP) intended award of the Enhanced Motor Vehicle Inspection and Maintenance System contract to another bidder. We affirm.

The following facts are not in dispute. On December 21, 2015, on behalf of the New Jersey Motor Vehicle Commission (MVC) and the New Jersey Department of Environmental Protection (DEP),

DPP issued a Request for Proposal (RFP) for an Enhanced Motor Vehicle Inspection and Maintenance System (System), RFP No. 16-X-24049. The purpose of the RFP was to solicit contractor proposals to implement a next generation motor vehicle inspection and maintenance system. The RFP provisions specified all the bidding requirements.

On February 22, 2016, DPP's Proposal Review Unit received proposals from four contractors, Parsons, the incumbent contractor,[1] and defendants Applus Technologies, Inc. (Applus),[2] SGS Testcom, Inc. (SGS), and Opus Inspection, Inc. (Opus). In accordance with the RFP, DPP's Evaluation Committee evaluated each bid for conformity with the RFP's requirements, including consideration of pricing and other factors. On May 13, 2016, DPP sent a Notice of Intent (NOI) to award the contract to SGS. According to DPP, Opus' bid ranked second, Parsons' third, and Applus' fourth.

Upon receiving the NOI, Parsons immediately requested copies of the proposals submitted by SGS, Applus, and Opus, as well as the procurement file, pursuant to OPRA, the common law right of access, and DPP's protest regulations, N.J.A.C. 17:12-1.2. DPP,

---

[1] Parsons had been providing the services since 1978.

[2] Applus has not participated in this appeal.

in turn, notified the bidders that they had the right to object to the disclosure of any portion of their proposal and to provide a detailed statement identifying those sections.

After reviewing the bidders' responses, DPP provided Parsons with over 3000 pages of information, including redacted copies of the proposals. Along with the redacted proposals, DPP provided an exemption log identifying the pages redacted and the specific reason for the redaction. Quoting the security based exemptions contained in N.J.S.A. 47:1A-1.1, DPP notified Parsons that redactions reflected in the SGS and Opus proposals and appendices were "asserted by the State" to protect

> administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security; emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize the security of the building or facility or persons therein; and security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software[.]

DPP also notified Parsons that in addition to the security-based exemptions, additional redactions to Opus' proposal were "based on [Opus'] assertion that the information was trade secret, proprietary commercial or financial information, and that the release would give an advantage to competitors . . . ."

Additionally, based on the privacy exemption, DPP withheld the names of the bidders' employees who would be working on the contract if awarded the bid.

Parsons filed a verified complaint and application for entry of an Order to Show Cause in the Law Division challenging the propriety of the redactions under OPRA and the common law right of access, and seeking injunctive relief and disclosure of the documents in un-redacted form.[3] After hearing oral argument on August 18, 2016, Judge Mary C. Jacobson decided to conduct an incamera review of the un-redacted documents, and permitted defendants to submit certifications explaining why the redactions were necessary.[4]

DPP submitted the certification of Joseph Salvatore, the State's Director of Information Security at the Office of Information Technology. Salvatore certified that the public release of "network topology" or "[i]nfrastructure [i]nformation[]

[3] Parsons obtained extensions of the bid protest deadline, initially from DPP and, ultimately, from this court.

[4] Relying on N. Jersey Media Grp., Inc. v. Twp. of Lyndhurst, 441 N.J. Super. 70, 105 (App. Div. 2015), aff'd, in part, rev'd, in part, 229 N.J. 541 (2017), the judge permitted the submission of "ex parte certifications in order for the State to provide confidential information that can elucidate their position but could actually jeopardize the need for confidentiality if it was released."

would provide a blueprint to non-authorized individuals or organization ([i]ntruders) to compromise information technology systems and the applications they support." He averred that "[d]isclosure of [i]nfrastructure [i]nformation could reasonably result in increased vulnerability of the . . . hardware and software, and susceptibility to threats from malicious software, hacking, Zero Day Exploits,[5] and social engineering[,]"[6] by providing "a map by which an [i]ntruder can determine the best way to penetrate the [S]ystem without being detected."

Salvatore explained that "the methods used for physical and logical security and surveillance" of the System "are designed to protect personnel, electronic information systems, and related buildings from natural and environmental hazards and unauthorized

---

[5] According to Salvatore, "[s]pecific components or combinations of components of hardware, software, and network connections may have known vulnerabilities called Zero Day Exploits, which are threats for which the hardware or software vendor has no immediate defense."

[6] Salvatore defined social engineering as

> a specific, targeted threat that uses the knowledge of the deployed hardware, software, or network components to gain access to information or compromise the system, sometimes by the [i]ntruder pretending to be a person with authority to access the hardware, software, or network components, or pretending to be a vendor seeking remote access to troubleshoot a reported problem.

intrusion." According to Salvatore, releasing the "physical and logical security mechanisms put personnel at risk and compromise official government documents and data" used by the public. Release would also

> place the [S]ystem in jeopardy due to the fact that all physical assets including hardware, workstations, equipment, official motor vehicle documents . . . , and the processes used to protect them would become public knowledge and place the [S]ystem in a compromised position because would-be attackers would have access to the techniques in place to thwart them.

SGS submitted the certification of Christopher Marlow, SGS' Information Technology Operations Manager, who expressed similar concerns as Salvatore. Marlow certified "[t]he Security-Related Redactions" included "detailed information concerning" "[a]nti-tamper methods;" "[s]ecure document storage;" "[s]ecurity response protocols;" "[s]ecurity training;" "[v]ideo capture and storage;" "[w]orkstation security configurations;" "[v]ulnerability patching frequencies;" "[m]ethodologies for authentication, authorization and auditing;" "[u]ser access levels;" "[a]dditional IT auditing;" "IT facility locations;" "[d]ata storage locations;" "[n]etwork data flows;" "[n]etwork security devices and protocols;" and "[m]ethods to ensuring data security and client access." Marlow specified that disclosure of "the Security-Related Redactions . . . could allow discovered but unpatched

vulnerabilities to be exploited by unauthorized parties" as well as "zero-day exploits" described as "a cyber attack that occurs on the same day a vulnerability is discovered in an application" and "exploited before a fix becomes available."

Opus submitted the certification of their president, James E. Sands, Jr., outlining the "confidential, proprietary and/or trade secret" information contained in their proposal and expressly invoking the OPRA exemption. Sands certified Opus' Visionary High-Efficiency Inspection Process, Wait Time System, Lane Configuration Plan, and Xpress Test Facility Design: 1) were "specifically customized for the RFP based on New Jersey property, building and lane configurations[;]" 2) was "a technical development . . . known only to Opus" and known only by twenty-two Opus employees who had signed non-disclosure agreements; 3) contained information "guarded by Opus under a secure . . . server requiring user authentication via tracked user name and password" for access, which information was highly valuable to Opus in future contracts, would be valuable to competitors, such as Parsons, and would place Opus "in a position of substantial competitive disadvantage in [the] industry" if disclosed; and 4) constituted a system that could not be duplicated by competitors without access to their proposal.

After conducting the incamera review, on October 3, 2016, in an oral decision, Judge Jacobson denied Parsons "access to the []redacted security information because it [fell] within the protection of the security exemption of OPRA." The judge noted that under OPRA, the inquiry was limited to determining whether the documents were public records and whether they fell within an exemption. She also acknowledged that the agency had the burden of proving "that the denial was authorized by law[,]" and "there ha[d] to be a clear demonstration" that non-disclosure was warranted because "the exemptions should be narrowly construed in favor of disclosure."

After reviewing the un-redacted records in conjunction with certifications provided by each vendor and "Salvatore's [twenty-eight-]page detailed certification . . . [,]" the judge was satisfied that DPP met its burden and provided "a strong basis for not providing the documents under OPRA."[7] She recognized that the State was entering into a "very big contract[8] of great public importance" and wanted "to make sure that the processes [were]

[7] In this regard, the judge distinguished Salvatore's "detailed certification" from Gilleran v. Bloomfield, 440 N.J. Super. 490 (App. Div. 2015), rev'd, 227 N.J. 159 (2016), "where the certification was not sufficiently specific . . . ."

[8] SGS' bid was over $136 million, Opus' was over $213 million and Parson's was over $248 million.

secure . . . particularly from . . . threats of cyberterrorism." She noted that although "the RFP had requested . . . draft security plans and descriptions of plans as part of the submission[,]" many of the provisions would be the same in any final plan.

Judge Jacobson carefully scrutinized the State's "very strong position that to release the . . . security plan and descriptions of the different aspects of the security plan, would jeopardize the security of . . . any new motor vehicle system . . . installed as a result of the contract award." She concluded that the State's concern about the safety and security of the System was valid and agreed that nondisclosure was warranted to avoid "cyber attacks" and "vulnerability to intruders" because knowledge of the proposals "could provide specific insight to an intruder as to how to exploit hardware, software, network components, and the applications they support."

For example, she pointed to "a diagram . . . that explained how the whole [S]ystem worked . . . and presented a clear security risk." In addition, "the plan itself explained all of the proposed security features . . . ." According to the judge, "with the knowledge contained in the redacted portions[,] an intruder could remove information footnotes that would be critical for the operators of the [S]ystem to locate and take proactive measures to prevent any further . . . incursion into the [S]ystem." She

was persuaded that disclosing the proposals "would unnecessarily compromise the [S]ystem and the data integrity" including the integrity of the stickers issued to motorists, and "could give a roadmap to intruders who wanted to circumvent the security and surveillance measures designed to protect the personnel and the electronic information systems, the buildings in which the inspections are being done, and various other intrusions."

Likewise, Judge Jacobson concluded that Parsons was "not entitled to the redacted material under the common law." She explained:

> To be able to get access to a document under the common law[,] you have to show that they [a]re common law public documents, which is shown in this case because the definition is very broad . . . .
>
> Parsons clearly has an interest in the subject matter of the material. . . . [I]t's a particularized interest. . . . Parsons is a disappointed bidder who currently has the contract, is going to lose a very lucrative contract, is very concerned that there was a big disparity in price between SGS and the Parsons bid amount.
>
> Parsons is concerned that there may be a deviation from the requirements of the RFP which would require that . . . the SGS bid be thrown out. They may want to . . . mak[e] the same kind of arguments as to the number two bidder which was Opus . . . .
>
> They filed this litigation to enhance their chances of making a viable protest or making the strongest possible protest to

> submit to [DPP]. So they clearly have a particularized interest.
>
> So the only thing that's left to do is the toughest part of any common law analysis and that's the balancing of the Parsons' right to access the unredacted material against the State's interest in preventing disclosure.

Citing the six factors identified in Loigman v. Kimmelman, 102 N.J. 98 (1986), she acknowledged that some of the factors were not relevant to the case at hand. Instead, she focused on the first factor, the extent to which disclosure will impede agency functions, and the resulting impact on the agency's decision making, reasoning:

> [T]here [i]s concern about the decision making that could be chilled by disclosure . . . [T]he decision making . . . at stake here[] is the ultimate decision making of adopting a security plan for . . . the Motor Vehicle Inspection Stations and that if this information was provided, made public, it would make that decision making more difficult.
>
> They might have to go away from the draft, not want to embrace any piece of the draft because the public would know what . . . had been proposed and there would be concern that if they adopted the draft that there would be the roadmap provided to enhance the possibility of a cyber attack.

In contrast, she considered the impact of non-disclosure on Parson's ability to launch a formidable protest, explaining:

> Parsons will be limited if the information that's sought is not turned over to them. And

> so you have Parsons' . . . effort to protest which is . . . largely based on the interest of the company to try to prevail and retain the contract, but it also has the public interest because public bidding statutes are infused with the public interest and you want to make sure that . . . whichever vendor gets the contract can fulfill it.
>
> And Parsons is very concerned that how could . . . SGS fulfill the contract for . . . the price that they bid. So it's . . . their own self-interest that they're seeking to promote but there is also the general public interest in assuring that the bid was not defective and they may very well not be able to do as complete an analysis with the redactions in this case.

She concluded:

> But in light of the Salvatore certification in which there was the great detail as to the concerns of the State for protecting the draft plans of these vendors to protect the security of any Motor Vehicle Inspection System ultimately put in place versus the interest of a particular vendor to have the fullest possible protest, the [c]ourt finds that the interest of the State outweighs the interest of Parsons.
>
> . . . .
>
> [W]hen you're talking about the security of the State process and the importance of the integrity of that [S]ystem and the State's . . . realistic concern that it could be breached if this information is made public[,] . . . the balancing goes in favor of the State.

However, relying on the factors enunciated in Burnett v. Cty. of Bergen, 198 N.J. 408 (2009), to determine whether privacy

interests support a redaction, Judge Jacobson ordered the disclosure of the names of the vendor employees working on the system, particularly SGS' employees. In so doing, citing Tractenburg v. Twp. of West Orange, 416 N.J. Super. 354 (App. Div. 2010), she also rejected SGS' invocation of the competitive disadvantage exception in OPRA. She concluded that "employee names really don't have the same need for confidentiality as proprietary information or trade secrets" and there was no disadvantage "other than pure speculation on the part of SGS" that "releasing the names would have a competitive disadvantage" as "a rival could try to hire them away." She noted that SGS' concern was not the concern the "Legislature had in mind" when enacting "the competitive disadvantage exception" and there were other contractual "mechanisms by which SGS [could] protect its employees . . . ."

On October 11, 2016, Judge Jacobson issued a supplementary oral decision addressing DPP's redaction of technological information contained in Opus' proposal based on the trade secret, proprietary information and competitive disadvantage provisions of OPRA and the common law, and concluded that Parsons was not entitled to the information. In determining that the OPRA exemption applied, she analogized the facts to Commc'n Workers of

Am. v. Rousseau, 417 N.J. Super. 341, 358 (App. Div. 2010), and pointed to

> [t]he sworn representation by Opus that it had spent approximately $70,000 developing this system to customize it for New Jersey, that there were a limited number of employees that had worked on it, . . . that only certain individuals had access . . . and that Opus very much believed that it would be a competitive disadvantage to turn this all over to one of their competitors, Parsons.

Further, she rejected Parsons' contention that Opus' "lane configuration" and "wait time system" would have been exposed to the public anyway. She reasoned that

> just seeing it from the outside may not give the key to the technology that you need to do it the way that Opus proposes to do it and, frankly, since Opus, at least at this point, did not win the contract, it's not at all clear that . . . anyone will ever see what's been customized for New Jersey . . . .

Similarly, in addressing the common law right of access, the judge noted "it's pretty much a similar analysis" as was conducted at the October 3, 2016 hearing. She acknowledged that "Parsons has [a] particularized interest" in obtaining the information sought as a "disappointed bidder[.]" She observed that the redactions "will not prevent Parsons from doing a protest[,]" admittedly not "as informed a protest as they wish." She acknowledged that "while the common law does not have exemptions the way OPRA does, . . . trade secrets[] are something that's

acknowledged under the common law." In balancing the interests, the judge concluded that "to turn over technology that's been developed by Opus in the guise of doing a protest to a main competitor, I think the balance falls in favor of Opus here." Thus, Judge Jacobson determined that the State had met its burden and that Opus satisfied the requirements articulated "in the trade secret and proprietary information case law." She entered a memorializing order on October 12, 2016, entering judgment "in favor of [d]efendants, except for release of the names of SGS employees[,]" and dismissing the complaint with prejudice.

Parsons filed a motion seeking over $57,500 in attorney's fees and costs as the prevailing party under OPRA, N.J.S.A. 47:1A-6. On November 30, 2016, after hearing oral argument, Judge Jacobson determined in an oral decision that Parsons was "a partially prevailing party" but substantially reduced the "inflated" amount sought. She considered the factors delineated in the case law and the Rules of Professional Conduct 1.5(a), including the level of success achieved, the type of case, the complexity of the issues, and the experience level of the attorneys.

She noted that OPRA litigation was a summary action, involving "no discovery," and "no trial." In addition, according to the judge, there was "almost no legal research" and "no legal analysis"

in connection with the request for the names and during "oral argument, the names were hardly mentioned at all." In terms of the hourly rate, Judge Jacobson reduced the requested rate, finding that $350 was "an appropriate amount in Mercer County for attorneys doing OPRA cases, even attorneys with experience." Citing New Jerseyans for a Death Penalty Moratorium v. Dep't of Corr., 185 N.J. 137 (2005), "where the critical factor . . . quoted . . . [was] the degree of success obtained[,]" she reduced the counsel fee award to $3500 for ten hours plus $50 towards costs because, in the judge's view, "the level of success . . . in the scheme of things . . . [was] quite low." A memorializing order was entered on December 1, 2016, and this appeal followed.

On appeal, Parsons renews its arguments, arguing that the "trial court improperly affirmed DPP's blanket redactions to SGS' and Opus' bid proposals based on OPRA's security exemptions . . . ." Parsons also challenges the trial court's denial of access under the common law. Parsons argues that "DPP's expansive redactions are contrary to controlling law, which has expressly rejected the imposition of blanket security redactions to public bidding documents." Parsons also challenges DPP's reliance on "Opus' contention that the [technological] information was exempt from disclosure under OPRA as confidential trade secret/proprietary information" as well as under the common law.

According to Parsons, if Opus was awarded the contract, their systems and processes would have been "visible to millions of New Jersey motorists as they pass through the inspection process[,]" thereby defeating their trade secret protection. Lastly, Parsons argues that the trial court erred in granting it "nominal attorneys' fees and costs under OPRA's mandatory fee-shifting provision," and urges us to "grant Parsons' full application . . . ."[9] Like the trial judge, we reject Parsons' arguments and affirm substantially for the reasons stated in Judge Jacobson's comprehensive and well-reasoned oral decisions. We add only the following comments.

We exercise de novo review of the trial court's interpretation and application of OPRA. Paff v. Ocean Cty. Prosecutor's Office, 446 N.J. Super. 163, 175 (App. Div.), certif. granted, 228 N.J. 403 (2016). In doing so, we give no special deference to the trial court's interpretation of the law or its view of the legal consequences that flow from established facts. Manalapan Realty, LP v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Likewise, the standard of review when reviewing a common law right of access

[9] Parsons also argues for the first time on appeal that "if this [c]ourt were to grant Parsons access to the subject records under the common law and not OPRA," Parsons is still entitled to "an award of reasonable attorney's fees and costs pursuant to [Mason v. City of Hoboken, 196 N.J. 51 (2008)]." In light of our decision, we need not address this point.

case is generally de novo. Paff, 446 N.J. Super. at 175. However, "[i]f a court conducts an incamera review of documents and engages in a balancing of interests in connection with a common-law-based request to inspect public records, we apply a more deferential standard of review." Id. at 176; see also Shuttleworth v. City of Camden, 258 N.J. Super. 573, 588 (App. Div. 1992). Thus, factual findings should not be disturbed "as long as they are supported by adequate, substantial, and credible evidence." Paff, 446 N.J. Super. at 175-76.

OPRA mandates that "all government records shall be subject to public access unless exempt[ed,]" N.J.S.A. 47:1A-1, and places the burden of establishing an exemption on the government, N.J.S.A. 47:1A-6, to provide a specific reason for withholding a government record. Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth., 423 N.J. Super. 140, 162 (App. Div. 2011). Under OPRA, a "government record" is defined in N.J.S.A. 47:1A-1.1, and clearly encompasses the documents that are the subject of this dispute. Nevertheless, OPRA provides safeguards in the form of exemptions from disclosure to protect confidentiality and security, including

> administrative or technical information regarding computer hardware, software and networks which, if disclosed, would jeopardize computer security;

> emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein;
>
> security measures and surveillance techniques which, if disclosed, would create a risk to the safety of persons, property, electronic data or software. . . .
>
> [Ibid.]

Contrary to Parsons' argument, Gilleran v. Bloomfield, 227 N.J. 159 (2016) does not stand for the proposition that all security information in a public-bidding document should be released. In Gilleran, our Supreme Court addressed OPRA's security exemptions, acknowledged that "the exception does not create a 'blanket exception' for all security-system-related material," and provided examples of information that could be released by noting "[e]xamples could include public-bidding documents in connection with acquisition of a security system and documents revealing the cost of the system." Id. at 173.

However, in exempting from disclosure the security camera video footage of Town Hall and the adjacent police station requested under OPRA by the plaintiff in that case, the Court indicated:

> Even if neither security exception[10] is meant to operate as a blanket exception, the Legislature's exceptions—written without knowing the extent of the public safety challenges that the future might bring—were phrased in a way that allows flexibility in application for security purposes. They maintain the confidentiality of information categories when disclosure of the information, considering the totality of its worth, would compromise the integrity of a security system and defeat the purpose to having security exceptions in OPRA.
>
> . . . .
>
> Current events since the new millennium make evident the present day difficulties of maintaining daily security for public buildings and people using them. The security exceptions prevent OPRA requests from interfering with such security efforts. Even if the Legislature could not have predicted precisely all the many types of criminal, terroristic events that have happened since OPRA was enacted, the Legislature created flexible exceptions to preserve public safety and security. Now, we know that knowledge of the vulnerabilities of a security system could allow an ill-motivated person to know when and where to plant an explosive device, mount an attack, or learn the movements of persons, placing a public building or persons at risk. Information that reveals the capabilities and vulnerabilities of surveillance cameras that are part of a public facility's security system is precisely the type of information that the exceptions meant to keep confidential in furtherance of public safety.

---

[10] We note that while the Court's focus was on the "emergency or security information or procedures for any buildings or facility" and "security measures and surveillance techniques" exceptions to N.J.S.A. 47:1A-1.1, the analysis applies with equal force to all three exceptions invoked here. Gilleran, 227 N.J. at 171.

[Id. at 173-74.]

We agree with Judge Jacobson's rejection of Parsons' arguments, albeit without the benefit of the Supreme Court's decision in Gilleran, which was decided after Judge Jacobson's ruling. Like Gilleran, Salvatore's certification detailing the cyber security risks to providing the proposals[11] supplied an adequate basis to support DPP's position that disclosure would reveal the System's "vulnerabilities" and "security-compromising information," and was "contrary to the legislative intent motivating OPRA's exemptions based on security concerns." Id. at 176-77.

OPRA also exempts disclosure of government records relating to "trade secrets and proprietary commercial or financial information" and "information which, if disclosed, would give an advantage to competitors or bidders[.]" N.J.S.A. 47:1A-1.1. Courts have recognized that "OPRA does not require an independent demonstration of confidentiality. Rather, . . . if the document contains commercial or proprietary information it is not

[11] Notably, unlike Gilleran where the township's denial of access to the video footage was upheld without an "individualized review and excision" of specific objectionable material contained in the tapes, here, Salvatore's assessment was based on his scrutiny of the un-redacted proposals and identification of discrete material "posing a security risk[.]" Id. at 168-69.

considered a government record and not subject to disclosure." Rousseau, 417 N.J. Super. at 358.

Because OPRA does not define a trade secret, in Rousseau, we noted that a trade secret "may consist of any . . . compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it." Id. at 361. (quoting Restatement of Torts § 757 cmt. b (1939)). To determine whether trade secret protection is warranted, courts have generally utilized the test laid out in Ingersoll-Rand Co. v. Ciavatta, 110 N.J. 609, 637 (1988), focusing on the following factors:

> (1) the extent to which the information is known outside of the [owner's] business; (2) the extent to which it is known by employees and others involved in the [owner's] business; (3) the extent of measures taken by the owner to guard the secrecy of the information; (4) the value of the information to the [owner] and to [his] competitors; (5) the amount of effort or money expended [by the owner] in developing the information; and (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.
>
> [Ibid.]

Here, we agree with Judge Jacobson's conclusion that the redacted technological portions of Opus' bid proposal qualify as trade secrets under OPRA. As Judge Jacobson poignantly observed,

it would be fundamentally unfair to afford Parsons the tools to duplicate Opus' system under the guise of a bid protest.

Turning to the common law, to obtain a common law right of access to documents, "the person seeking access must 'establish an interest in the subject matter of the material,' and . . . the citizen's right to access 'must be balanced against the State's interest in preventing disclosure.'" Keddie v. Rutgers, 148 N.J. 36, 49 (1997) (first quoting South Jersey Publ'g Co. v. N.J. Expressway Auth., 124 N.J. 478, 487 (1991); then quoting Higg-A-Rella, Inc. v. Cty of Essex, 141 N.J. 35, 46 (1995)). Thus, the evaluation involves a two-step inquiry and the burden of proof is on the public entity to establish that its need for nondisclosure outweighs the need for disclosure. Educ. Law Ctr. v. N.J. Dep't of Educ., 198 N.J. 274, 302 (2009).

When balancing the competing interests, courts consider the following factors:

> (1) the extent to which disclosure will impede agency functions by discouraging citizens from providing information to the government; (2) the effect disclosure may have upon persons who have given such information, and whether they did so in reliance that their identities would not be disclosed; (3) the extent to which agency self-evaluation, program improvement, or other decisionmaking will be chilled by disclosure; (4) the degree to which the information sought includes factual data as opposed to evaluative reports of policymakers; (5) whether any findings of

> public misconduct have been insufficiently corrected by remedial measures instituted by the investigative agency; and (6) whether any agency disciplinary or investigatory proceedings have arisen that may circumscribe the individual's asserted need for the materials.
>
> [Id. at 303 (quoting Loigman, 102 N.J. at 113).]

Here, regarding the security redactions, DPP's interest in maintaining the integrity of the System and the information it is designed to safeguard outweighs Parsons' interest in a full protest. Likewise, as to the trade secret redactions, DPP's interest in maintaining the competitiveness of the bidding process weighs in favor of nondisclosure.

Regarding the judge's fee determinations, it is well established that "fee determinations by trial courts will be disturbed only on the rarest of occasions, and then only because of a clear abuse of discretion." Packard-Bamberger & Co. v. Collier, 167 N.J. 427, 444 (2001) (quoting Rendine v. Pantzer, 141 N.J. 292, 317 (1995)). "[A]buse of discretion is demonstrated if the discretionary act was not premised upon consideration of all relevant factors, was based upon consideration of irrelevant or inappropriate factors, or amounts to a clear error in judgment." Masone v. Levine, 382 N.J. Super. 181, 193 (App. Div. 2005).

OPRA includes mandatory fee shifting, providing, in pertinent part, that "a requestor who prevails in any [OPRA] proceeding shall be entitled to a reasonable attorney's fee." N.J.S.A. 47:1A-6. "To be entitled to such counsel fees under OPRA, a plaintiff must be a prevailing party in a lawsuit . . . that was brought to enforce his or her access rights." Smith v. Hudson Cty. Register, 422 N.J. Super. 387, 393 (App. Div. 2011). A plaintiff can make such a showing if records are disclosed "after the entry of some form of court order or enforceable settlement" granting access. Mason v. City of Hoboken, 196 N.J. 51, 57, 76-77, 79 (2008) (citation omitted). Alternatively, under the catalyst theory, "when a government agency voluntarily discloses records after a lawsuit is filed[,]" plaintiffs are entitled to counsel fees if they "can establish a 'causal nexus' between the litigation and the production of requested records" and "that the relief ultimately secured by plaintiffs had a basis in law." Id. at 57, 76-77, 79. Under the common law right of access, litigants must make a similar showing. Id. at 79.

When fee shifting is permissible, a court must ascertain the "lodestar"; that is, the "number of hours reasonably expended by the successful party's counsel in the litigation, multiplied by a reasonable hourly rate." Litton Indus., Inc., v. IMO Indus., Inc., 200 N.J. 372, 386 (2009) (citation omitted). To compute the

lodestar, courts must first determine the reasonableness of the hourly rates charged by the successful party's attorney in comparison to rates "for similar services by lawyers of reasonably comparable skill, experience and reputation" in the community. Rendine, 141 N.J. at 337 (quoting Rode v. Dellarciprete, 892 F.2d 1177, 1183 (3d Cir. 1990)). The court must then determine the reasonableness of the hours expended on the case. Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 21-22 (2004).

"Whether the hours the prevailing attorney devoted to any part of a case are excessive ultimately requires a consideration of what is reasonable under the circumstances[,]" and should be informed by the degree of success achieved by the prevailing party. Id. at 22-23. "[A] reduction may be appropriate if 'the hours expended, taking into account the damages prospectively recoverable, the interests to be vindicated, and the underlying statutory objectives, exceed those that competent counsel reasonably would have expended.'" Walker v. Giuffre, 209 N.J. 124, 132 (2012) (quoting Rendine, 141 N.J. at 336). Additionally, the "trial court should reduce the lodestar fee if the level of success achieved in the litigation is limited as compared to the relief sought." Ibid.

Here, Judge Jacobson correctly determined that plaintiff was a partially prevailing party based on the disclosure of SGS'

employee names. In determining the reasonableness of the fees, the judge considered the requisite factors delineated in the Rules of Professional Conduct 1.5(a) as well as the level of success in relation to the overall litigation, and awarded a markedly reduced amount. Inasmuch as the judge's reasoning is unassailable, we discern no abuse of discretion.

Affirmed.