

January 8, 2021

VIA EMAILJohn Kenneth
[Address Undisclosed]**Re: OPRA Requests**

Dear Mr. Kenneth:

This firm represents North Star Academy Charter School of Newark (“North Star”) in connection with your requests under the Open Public Records Act, N.J.S.A. 47:1A-1 et seq. (“OPRA”) for a copy of: (1) the Memorandum of Understanding (“MOU”) referenced in North Star’s May 20, 2019 board minutes; and (2) the Master Services Agreement (“MSA”) referenced in North Star’s June 17, 2019 board minutes. I have reviewed the correspondence between you and North Star, and write in response to your December 16 and 17, 2020 emails renewing your requests for those documents. Please direct any future correspondence in connection with your OPRA requests to my attention.

For starters, I wanted to confirm to you that the MOU and MSA are one and the same. As you are aware, North Star contracts with Uncommon Schools to provide management services. Uncommon Schools provides those services through a master agreement. The May 20, 2019 board minutes you cite that refer to the “update on the revised Memorandum of Understanding” concern North Star’s draft version of the service agreement between it and Uncommon Schools. The final title of the MOU was changed to the MSA, as reflected in the board minutes from June 17, 2019 referenced in your requests. Thus, to the extent your requests seek the final version of the MSA, it is exempt from disclosure under N.J.S.A. 47:1A-1.1 for the reasons North Star previously stated. I do not interpret your request to seek the draft version of the agreement, as “[b]y their very nature, draft documents are preliminary and subject to further revision,” and thus shielded from disclosure under OPRA’s deliberative process exemption. Ciesla v. New Jersey Dep’t of Health & Senior Servs., 429 N.J. Super. 127, 140 (App. Div. 2012).

As for your claim that North Star has a conflict of interest under N.J.S.A. 18A:12-24(g) in asserting that the MSA is protected from disclosure because it contains Uncommon School’s confidential information, OPRA allows government agencies to object to producing any confidential information, regardless of who owns or provided that information. OPRA specifically exempts from disclosure “proprietary commercial or financial information obtained from any source.” N.J.S.A. 47:1A-1.1. Likewise, confidential information that would give an advantage to the information provider’s competitors must be withheld. See, e.g., Commc’ns Workers of Am. v. Rousseau, 417 N.J. Super. 341, 362–63 (App. Div. 2010) (government agency allowed to withhold

agreements with private equity funds that contained the funds' investment strategies); Matter of the Application for Medicinal Marijuana Alternative Treatment Ctr. for Pangaea Health & Wellness, LLC, No. A-2204-18T4, 2020 WL 6930605, at *13 (N.J. Super. Ct. App. Div. Nov. 25, 2020) (government agency allowed to withhold bids received from applicants for medical marijuana permits where applications contained technical information about applicants' operations). Consistent with OPRA, North Star has asserted these exemptions in its own right; it is not asserting them on behalf of any other entity. To interpret OPRA to only allow government agencies to invoke these exemptions when the information at issue belonged to the agency would discourage private companies from ever engaging with government agencies to provide services.

Last, although you note that under N.J.S.A. 47:1A-5(g) a government agency may redact exempt information from documents, it is not required to do so where redaction is not a feasible means of protecting confidential, proprietary information from unauthorized disclosure. As previously stated, North Star is required to shield the MSA under N.J.S.A. 47:1A-1.1.

If you have any additional question or concerns about North Star's response to your requests, please propose times and dates next week so that we may discuss this matter further.

Very truly yours,

s/ Craig Dashiell

Craig Dashiell

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cc: Karin Gerald (via email)