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STEVEN WRONKO,

Plaintiff,

v.

**CITY OF NEWARK and KENNETH LOUIS, in
his official capacity as Municipal Clerk and
Records Custodian of the City of Newark,**

Defendants.

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:
: SUPERIOR COURT OF NEW JERSEY
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: LAW DIVISION: ESSEX COUNTY
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: DOCKET NO. ESX-L-1238-18
:
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: Civil Action
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:
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: **BRIEF IN SUPPORT OF MOTION TO**
:
: **DISMISS**
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PRELIMINARY STATEMENT

The City of Newark's strong, State-backed bid to become the second headquarters site ("HQ2") for Amazon.com, Inc. ("Amazon") could be Newark's best economic development opportunity in generations. Newark has reached a critical second phase of Amazon's consideration, but the City faces stiff competition from 19 other finalist cities around the country, most of whom—as explained below—have not publicly released their bids, as Newark has not, in order not to give other cities a competitive advantage. The Open Public Records Act has a "competitive advantage" exemption for *exactly* this reason, and Plaintiff Steven Wronko's demand to receive Newark's bid to Amazon pursuant to OPRA therefore should fail. Mr. Wronko also cannot remotely satisfy the common law balancing test. Newark's strong justification for keeping this information confidential during Amazon's consideration far outweighs Mr. Wronko's bare curiosity.

Last year, Amazon issued a Request for Proposals ("RFP") inviting municipalities throughout North America to submit specific information that would allow it to determine the ideal location for HQ2. More than 200 cities responded to that RFP, and for good reason: To staff HQ2, Amazon anticipates hiring as many as fifty thousand new, full-time employees with *average* per-employee compensation exceeding \$100,000, for \$5 billion in total *annual* investments just in personnel costs.

Amazon's economic impact on its current headquarters city, Seattle, has been immeasurable. Amazon itself estimates that "its investments in [its primary headquarters in] Seattle from 2010 through 2016 resulted in an additional \$38 billion to [Seattle's]

economy; [and] every dollar invested by Amazon in Seattle generated an additional \$1.4 for [Seattle's] economy overall." That is why the State of New Jersey enacted an unprecedented—and obviously fully public—law that would provide Amazon with highly attractive economic advantages if it chooses Newark as the site for HQ2. Amazon's expected investments in HQ2, and the corresponding influx of skilled labor, could revitalize not only Newark, but also the area's surrounding municipalities.

The Newark Community Economic Development Corporation ("NCEDC"), submitted a bid on behalf of Newark and Newark, entering Newark into a contest against 237 competing municipalities in the United States, Canada, and Mexico. Newark made a powerful pitch and now stands as one of only 20 candidate cities remaining in the competition. Newark's pitch to Amazon has statewide, bipartisan support, and there is a real chance that Amazon could choose the City as the location of HQ2.

Mr. Wronko, a frequent OPRA requestor and litigant, submitted an OPRA request asking for the following: (1) the City's bid, (2) any contracts with vendors or service providers used to place the bid, and (3) any resolution of the City Council approving the submission of the bid. Newark has no documents responsive to items (2) and (3) of Mr. Wronko's request: Neither NCEDC nor the City has any contracts with vendors or service providers used to place the City's bid. Additionally, the Newark Municipal Council has not passed any resolutions approving submission of the City's Amazon bid. Accordingly, the City's highly confidential bid to Amazon is the only document in the City's possession responsive to Mr. Wronko's request.

To be clear, there obviously is no such thing in America, New Jersey, or Newark, as a secret law. The State's economic incentives to Amazon, which have been enacted into law, are public. If and when Newark is fortunate enough to be selected as the site of HQ2, should any ordinances be required to facilitate the construction or operation of HQ2, those would be subject to public scrutiny. But just as one bidder in any private-sector competitive process should not see the details of other suitors' proposals, nothing in OPRA requires Newark to place itself at a disadvantage in one of the most important inter-governmental competitions in this century.

Forcing the City to publicly release its bid would give all of the competing municipalities insight into Newark's strategy and the opportunity to strengthen their own bids in response. Newark, meanwhile, would remain ignorant of what its competitors offered. Furthermore, City officials have signed a non-disclosure agreement ("NDA") with Amazon in which City representatives agreed to withhold the details of this bidding process. Releasing our bid, when almost no other candidates have and after having signed an NDA, could possibly offend Amazon and weaken the City's chances at attracting HQ2.

OPRA does not require public release of the City's bid. Releasing that bid could cost Newark its fighting chance at a truly transformative economic development opportunity. Even a small chance that public release of the bid could impact Newark's competitive position is intolerable. Newark therefore respectfully requests that the Court dismiss Mr. Wronko's lawsuit.

STATEMENT OF FACTS

A. THE CITY OF NEWARK'S BID

1. On September 7, 2017, Amazon published an RFP inviting municipalities from all over North America to submit proposals that would allow it to determine the ideal location for HQ2. (Amazon's RFP has been submitted to the Court as Exhibit A to the Plaintiff's Verified Complaint.)
2. On or about October 19, 2017, NCEDC submitted the City's bid inviting Amazon to place HQ2 in the City of Newark.
3. NCEDC crafted the City's bid. (See Exhibit A to the Noguera Certification, Certification of Aisha Glover, President and Chief Executive Officer of the NCEDC)
4. NCEDC did not have any contracts with vendors or service providers used to place the bid. (Id.)
5. NCEDC did not have any contracts with RFP writers, PR firms, or architectural firms used to place the bid. (Id.)
6. The City does not have any contracts with vendors or service providers used to place the bid. (See Exhibit B to the Noguera Certification, Certification of Edith Gill, Records Manager of the City of Newark.)
7. The City does not have contracts with RFP writers, PR firms, or architectural firms used to place the bid. (Id.)
8. The Municipal Council of the City of Newark has not passed any resolutions authorizing the submission of the bid. (Id.)

B. PLAINTIFF'S OPRA REQUEST

1. On January 31, 2018, Plaintiff Steven Wronko made a request under OPRA and the common law seeking the following documents:

- The bid/RFP and all accompanying documents submitted by Newark to Amazon for their RFP regarding its new headquarters.
- Any contracts with vendors or service provides [sic] that you used to place the bid, like RFP writers, PR forms, architectural firms, etc.
- Any resolution of the City Council approving the submission of the bid.
(Plaintiff's OPRA request is attached as Exhibit B to Plaintiff's Verified Complaint.)

C. THE CITY'S RESPONSE

1. Kenyatta K. Stewart, Acting Corporation Counsel of the City of Newark, denied Plaintiff's request citing OPRA's competitive advantage exemption. (See Exhibit C to Plaintiff's Verified Complaint.)
2. On or about February 26, 2018, the Clerk of the City of Newark received the present Complaint, Order to Show Cause, and attached documents.

D. AMAZON REDUCES CITY CANDIDATES FROM 238 TO TOP 20

1. On or about January 18, 2018, Amazon announced that it had narrowed the group of 237 applicants down to 20 finalists for selection as the site of its HQ2: (1) Atlanta, Ga. (2) Austin, Tex., (3) Boston, Mass., (4) Chicago, Ill., (5) Columbus, Ohio, (6) Dallas, Tex., (7) Denver, Colo., (8) Indianapolis, Ind. (9) Los Angeles, Cal., (10)

Miami, Fla., (11) Montgomery Co., Md., (12) Nashville, Tenn., (13) New York, N.Y., (15) Northern Va., Va., (16) Philadelphia, Pa., (17) Pittsburgh, Pa., (18) Raleigh, N.C., (19) Toronto, Ontario, Canada, and (20) Newark, N.J.

2. On or about February 8, 2018, Abdul-Malik Ali- the Manager of Housing and Real Estate of the City of Newark, Seth Wainer- Chief Information Officer of the City of Newark, and John Palmieri- Deputy Mayor of the City of Newark each signed NDA's with Amazon. (The Non-Disclosure Agreements between Amazon and the City and its representatives is attached as Exhibit C to the Noguera Certification).

E. COMPETITIVE DISADVANTAGE

Only Four of 20 Finalist Cities Have Publicly Released Their Bids

1. The cities of Toronto in Canada; Miami, Florida; Boston, Massachusetts; and Columbus, Ohio have publicly released their responses to Amazon's RFP. The Response of the City of Columbus, Ohio is attached as Exhibit D to the Noguera certification. Boston's publicly-released document does not contain any information regarding whatever tax incentives it has offered or may offer to Amazon. See Exhibit H to the Griffin Certification, pg. 115.) After Miami released its first bid to the public, Miami's representatives recognized that doing so placed Miami at a competitive disadvantage. (See Exhibit E to the Noguera Certification, Rene Rodriguez and Andres Viglucci, *If Amazon Picks Miami, Where Would HQ2 Be? Those Who Know Have Been Sworn to Secrecy*, Miami Herald, Feb. 2, 2018. <http://www.miamiherald.com/news/business/real-estate->

[news/article197875244.html](https://www.miamiherald.com/news/article197875244.html)

2. On or about the week of Feb. 2, 2018, Michael Finney the CEO of the Miami-Dade Beacon Council, the entity spearheading the attempt to lure Amazon to Florida, made the following statement: “Anytime we compete for a project of this magnitude...we think it’s really important to maintain as much confidentiality as possible...It prevents our competitors from diving into our proposal and tipping our hand with respect to directionally where we might be going.” Id.

Other Cities Have Released Documents So Heavily Redacted As To Be Tantamount to Total Secrecy

3. On November 16, 2017, Denver, Colo. released a redacted bid copy that did not specify what incentives Denver would offer Amazon or even where in either Denver or the surrounding areas it intended to place the headquarters. (Exhibit F to the Noguera Certification.)
4. Montgomery County, Maryland has publicly released a heavily redacted bid, which conceals locations, incentives, and even Maryland’s purported technology advantages. (See Exhibit G to the Noguera Certification.)
5. Washington, D.C. released a portion of its bid to the public alongside a website dedicated to convincing Amazon to build HQ2 in D.C. However, any mention of financial incentives D.C. plans to offer Amazon is missing from its publicly available bid or the website www.obviouslydc.com. (Exhibit H to the Noguera Certification is the publicly available bid portion.)

6. In response to a FOIA request, D.C. released a heavily redacted document entitled “Incentives.” The rationale D.C. advanced for the redactions was that providing the information would lead to a competitive disadvantage. (See Exhibit I to the Noguera Certification, D.C. Bid- Redacted Incentives.)
7. Prior to Jan. 17, 2018, Victor Hoskins, the Director of Arlington Economic Development, which submitted the bid inviting Amazon to build HQ2 in D.C.- made the following statement regarding the need for secrecy regarding the details of D.C.’s bid: “Until you get to the point when a decision is being made, you really want to keep as much confidential as possible. That’s your hand. If you’ve played any kind of card game, the last thing you want to do if you want to win is show your hand...I understand the need for the public to know, and I believe that the public should be able to know everything they need to know- but at the appropriate time.” (Exhibit J to the Noguera Certification: Martin Austermuhle, *What We Found Out About D.C.’s Bid for Amazon HQ2 – And What We Didn’t*, WAMU (American University Washington D.C.), Jan. 17, 2018. <https://wamu.org/story/18/01/17/found-d-c-s-bid-amazon-hq2-didnt/>.)
8. On October 31, 2017, the Mayor’s Office of the City of Philadelphia received the following request on Pennsylvania’s Right to Know Law: “A copy of the bid submitted in response to Amazon’s request for proposals for the site of its second headquarters, any contracts with third-party providers for services rendered regarding the Amazon HQ2 bid.” (Exhibit K to the Noguera Certification: Open

Public Records Request for Philadelphia Bid, Submitted via MuckRock, Dec. 20, 2017.

9. On December 20, 2017, the City Solicitor of Philadelphia released a redacted bid copy stating the following: “the Pennsylvania Right-to-Know Law (“RTKL”) was not intended to put Pennsylvania cities at a financial disadvantage...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.” Id.

Most of the 20 Finalist Cities, Including Newark, Have Kept Their Responses to Amazon Fully Confidential

10. Atlanta, Georgia has refused to release its bid to the public. On or about the month of February 2018, Georgia Governor Nathan Deal made the following statement regarding this decision: “Other states, if they were our competition, could file an Open Records request and find out what Georgia was offering. And we couldn’t find out what they were offering...[Georgia] need[s] to make sure we’re not being taken advantage of by other states trying to one-up us.” (Exhibit L to the Noguera Certification: Scott Trubey and Greg Bluestein, *Secrecy Surround Amazon HQ2 Bid Keeps Georgians in the Dark*, The Atlanta Journal-Constitution, Feb. 22, 2018.)
<https://www.myajc.com/news/local/secrecy-surrounding-amazon-hq2-bid-keeps-georgians-the-dark/JLdLykRvSVCGgINyQWEMAP/>.

11. Austin and Dallas Texas have both declined to release any information and submitted their bids through their respective Chambers of Commerce, which are not subject to Open Public Records' Requests. (Exhibit M to the Noguera Certification: Leif Reigstad, *Texas Cities Won't Disclose How Much Taxpayer Money They've Offered Amazon*, Texas Monthly- The Daily Post, Oct. 25, 2017. <https://www.texasmonthly.com/the-daily-post/amazon-proposal-hq2-taxpayer-texas/>.)
12. Austin declined to release its bid because of "a law stating that information doesn't have to be released if it would give advantage to a competitor or bidder" whereas Dallas cited exemption related to Texas specific economic development negotiations. (Exhibit N to the Noguera Certification: Josh Cornfield, Sophia Tareen, Jamie Stengle, Michelle R. Smith, Ben Finley, Corey Williams, Emery Delasio, Jilie Carr Smyth, and Anthony Izaguirre, *In Bids to Lure Amazon's HQ2, Cities Won't Disclose What They're Offering in Incentives*, Associated Press (AP), Dallas Morning News, Jan. 11, 2018. <https://www.dallasnews.com/business/amazon/2018/01/11/bids-lure-amazons-hq2-cities-wont-disclose-offering-incentives/>.)
13. On or about November 16, 2017, a private citizen made an FOIA request with the City of Chicago asking in relevant part for: "A copy of the bid submitted in response to Amazon's request for proposals for the site its second headquarters, any contracts with third-party providers for services rendered regarding the Amazon

HQ2 bid.” (Exhibit O to the Noguera Certification: Letter from Shannon Leonard, Freedom of Information Officer of the City of Chicago denying access to the bid, Nov. 16, 2017).

14. Counsel for the City of Chicago denied the request because providing that information would place Chicago at a competitive disadvantage. (Id.)
15. Indianapolis, Indiana has announced that its bid and details surrounding its bid will remain confidential. (Exhibit P to the Noguera Certification: Fox 59, *Indianapolis Submits Bid to Host Amazon’s New \$5 Billion Headquarters*, Oct. 18, 2017.)
16. Nashville, TN has not released its bid or provided any concrete details regarding what it would offer Amazon. (Exhibit Q to the Noguera Certification: Stephen Elliot, *Nashville Makes Its Case for Amazon*, Nashville Scene, Dec. 14, 2017. <https://www.nashvillescene.com/news/features/article/20985819/nashville-makes-its-case-for-amazon>.)
17. Although some information is available regarding details of New York’s offer, New York has rejected Open Public Records requests for its bid. On or about October 24, 2017, a representative of Muckrock requested a copy of the bid submitted by New York City in response to Amazon’s request for proposals. (See Exhibit R to the Noguera Certification: Letter from New York Rejecting MuckRock Bid Access)
18. The Empire State Development Corporation rejected MuckRock’s bid request citing its own version of the competitive advantage exemption. Id.
19. Virginia also has refused to release its bid.

20. Prior to November 9, 2017, a Muckrock representative sent the Virginia Economic Development Partnership Authority a request for “a copy of the bid submitted in response to Amazon’s request for proposals for the site of its second headquarters, any contracts with third-party providers for services rendered regarding the Amazon HQ2 bid, and any marketing budgets regarding Amazon-related expenditures.” (Exhibit S, Letter from VDEP General Counsel denying Muckrock FOIA request, Nov. 9, 2017.)
21. In response Sarah Jones McNinch, General Counsel for the Virginia Economic Development Partnership Authority (“VEDP”), denied the request because, among other reasons, releasing the bid would place Virginia at a competitive disadvantage. Id.
22. Pittsburgh has been adamant in its refusal to release its bid. On November 27, 2017, Pittsburgh denied an open public records request for the proposal inviting Amazon to the Pittsburgh area and the requestor filed suit in Pennsylvania’s Office of Open Public Records (“POP”). See Exhibit T to the Noguera Certification: Van Osdol v. Allegheny County, AP No. 2017-2248 (Jan. 24, 2018).
23. On January 24, 2018, POP ruled against Pittsburgh. Id.
24. PGHQ2, the stand-alone company formed to develop and submit Pittsburgh’s bid, has expressed its intent to appeal the POP decision and to keep its bid confidential. (Exhibit U to the Noguera Certification: PGHQ2 Statement on Pittsburgh’s Amazon HQ2 Proposal, Office of Open Records Ruling).

25. In its litigation before the Pennsylvania's Open Public Records Office, Pittsburgh's representatives have gone on record stating "This is a competition with more than 200 other communities nationwide. We believe not disclosing the details of our playbook provides a competitive advantage." (Exhibit V, Mark Belko, *Pittsburgh Keeping Details on Amazon Bid Under Wraps*, Pittsburgh Post-Gazette, Nov. 28, 2017.)

<http://www.post-gazette.com/business/2017/11/28/Pittsburgh-Allegheny-County-deny-right-to-know-requests-Amazon-HQ2/stories/201711280170>.

26. Raleigh, North Carolina has either denied or ignored open public records requests for its bid. (Exhibit W to the Noguera Certification: Tyler Dukes, *In NC, Bidding Process for Amazon HQ2 Veiled in Secrecy*, NCCapitol (North Carolina) December 13, 2017. <http://www.wral.com/in-nc-bidding-process-for-amazon-hq-veiled-in-secrecy/17177370/>; Exhibit X to the Noguera Certification: Muckrock-Raleigh, North Carolina bid Requests.)

27. Before January 18, 2018, Michael Hicks, a professor of Economics at Ball State University in Indiana, made the following statement regarding the HQ2 competition: "If I'm a municipal team in Raleigh, I'm going to spend a lot of time reading newspapers and calling people trying to find out deal packages for all of these competing locations." (Exhibit Y to the Noguera Certification: Anna Hansel, *Heartland Tech. Amazon's HQ@ Finalists Are Big Cities With Secretive Bids*, Jan. 18, 2018.)

<https://venturebeat.com/2018/01/18/amazons-hq2-finalists-are-big-cities-with-secretive-bids/>.

ARGUMENT

POINT I

OPRA'S COMPETITIVE ADVANTAGE EXEMPTION PERMITTED NEWARK TO DENY PLAINTIFF'S REQUEST FOR THE CITY'S BID

Although Newark does not dispute that its response to Amazon's RFP falls within OPRA's expansive definition of "government record" in N.J.S.A. 47:1A-1.1, and therefore must carry the burden of proving that the denial of access is authorized by law pursuant to N.J.S.A. 47:1A-6, the City has met that burden. OPRA's "competitive advantage" exemption shields Newark's bid from public disclosure while the bidding process is underway.

I. OPRA's Competitive Advantage Exemption Allows the City to Withhold its Bid.

OPRA contains twenty-one exemptions to the definition of "government records," including information, which if disclosed would give an advantage to competitors or bidders." N.J.S.A. 47:1A-1.1. This exemption has not been the subject of much litigation, perhaps because the statutory text is so clear. In one of the few cases to construe the competitive advantage exemption, a trial court applied the customary OPRA doctrine that reasons for withholding documents must be "specific" and that courts "will require a relatively detailed analysis in manageable segments." Comm'n Workers of Am. v. McCormack., 417 N.J. Super. 412, 442 (Law Div. 2008) (quoting Loigman v. Kimmelman, 102 N.J. 98, 110 (1986)). It is black-letter law, however, that when disclosure of information would cause harm to a competitive position or would enable a competitor to

learn details of opponent strategies and adjust its strategy in response, such documents are subject to OPRA's competitive advantage exemption. See Commc'n Workers of Am. v. Rousseau, 417 N.J. Super. 341 (App. Div. 2010).

To be sure, the "competitive advantage" *usually* at issue is that of private firms doing business or competing to do business with the government. For example, in Rousseau, the Appellate Division reviewed whether limited partnership agreements between the Division of Investment of the Department of the Treasury and private investment companies to create a private equity fund using State employee pension deposits were subject to release under OPRA. Id. The Division asserted that the competitive advantage exemption, alongside other statutory exemptions, allowed it to withhold the agreements with the private equity firms because to release those agreements would put the private equity firms at a competitive disadvantage relative to their peers. Id. at 346. The agreements under review:

Detailed a fund's limitations on buying and selling investments. Any competitor knowing when a fund's strategy would induce it to buy or sell would enjoy an advantage over the fund. Defendants point to a situation where, by reviewing a fund's partnership agreement, a competitor could learn when a fund would be liquidating an investment. As the time for liquidation neared, a competitor could gain an advantage by offering an artificially low price. Id. at 362.

Similarly, in McCormack, *supra*, various unions brought action against the State Department of New Jersey seeking disclosure under OPRA of partnership and side letter agreements with private equity firms, which invested in State pension funds. McCormack, 417 N.J. Super. at 419. In finding that the competitive advantage exemption allowed the State to withhold the agreements, the Court applied reasoning almost identical to that applied in Rousseau, *supra*. The Court reasoned:

Defendants explain how disclosure of the agreements would reveal the bargains that each fund strikes with their investors. Competitors who become aware of these bargains through disclosure of the agreements have the information necessary to undercut the bargain that a private equity fund offers to an investor. Pulling away investors to a fund in this manner would advantage a competitor. Id. at 443.

Nothing in the statutory text, however—and certainly nothing in Rousseau or McCormack—restricts use of the “competitive advantage” exemption to private actors. The exemption broadly applies whenever disclosure “would give an advantage to competitors or bidders,” including where the government itself is “competitor or bidder.”

Mr. Wronko anticipates this argument by contending that the City’s “fear of providing an advantage to competitors stems *wholly* (emphasis added) from the hypothetical fact that other finalist cities may amend their own bids based on information that could be learned if Newark’s bid is released to the public.” See Exhibit C to Griffin

Cert. That is incorrect as a matter of fact—the City did not limit its denial of Mr. Wronko’s request to that single basis—but even were it true, it suffices to bring Newark’s HQ2 bid firmly within the OPRA exemption. The opportunity for other finalist cities to comment privately to Amazon about what they would seek to characterize as weaknesses in Newark’s bid, or to tailor their own bids in response, is hardly “hypothetical.” Untold billions of dollars of economic activity are at stake and the finalist cities are competing fiercely for that rare and precious opportunity. Most of those finalists have released nothing about their bids precisely because doing so would put them at a competitive disadvantage.

Michael Finney, the head of the group authoring Miami’s bid, said, “we think it’s really important to maintain as much confidentiality as possible...it prevents our competitors from diving into our proposal and tipping our hand with respect to where we might be going.” Ex. F. Georgia Governor Nathan Deal stated, “Other states, if they were our competition, could file an Open Records request and find out what Georgia was offering and we couldn’t find out what they were offering... [Georgia needs] to make sure we’re not being taken advantage of by other states trying to one-up us.” Exhibit L.

Representatives from Washington, D.C., notwithstanding its available website, redacted the incentives they offered Amazon for fear of providing competitors with an advantage. See Exhibit I. Philadelphia, Pittsburgh, Austin, Dallas, Chicago, New York, and Virginia have all cited competitive advantage as a reason they have either not provided or redacted their submissions. (Exhibits K, V, M, N, O, R, S). The other cities

have simply provided nothing and not given a justification.

Furthermore, Staff of the City of Newark have signed a non-Disclosure Agreement (“NDA”) in which City representatives agreed not to reveal details of the bidding process. Exhibit C. The City recognizes that a non-disclosure agreement does not trump OPRA; however, violating an NDA and publicizing the City’s bid when so many of our competitors have not would place the City at a competitive disadvantage.

With the exception of the Miami and Boston bids, Newark does not have any information about what financial incentives competing cities are offering. Moreover, the bid submitted by Boston does not provide any specifics regarding what they are willing to offer Amazon by way of tax incentives.

Bringing Amazon to Newark could revitalize this area and Newark needs every advantage that it can get against cities as rich as New York and Los Angeles. The Court should recognize the competitive disadvantage that public release of Newark’s bid would force upon the City in this once-in-a-lifetime race and dismiss Mr. Wronko’s claim.

POINT II

The Court Should Deny Plaintiff’s Common Law Request

Newark’s strong interest in maintaining the confidentiality of its HQ2 bid, as explained above, also outweighs the meager interest—basically amounting to no more than curiosity—that Mr. Wronko put forward in his brief.

Newark respectfully submits that Mr. Wronko has not even cleared the first hurdle of the common-law balancing test. He has not articulated a sufficient interest in viewing

Newark's HQ2 bid. Mr. Wronko is not a resident of Newark or even of Essex County; he "resides in Spotswood, New Jersey," in Middlesex County. Complaint ¶ 2. He states that he has an interest in knowing how much Newark "spent in creating its proposal," but Newark has made clear that it has no documents responsive to that aspect of Mr. Wronko's request.

Even assuming Mr. Wronko has an interest cognizable in the common law, that interest does not outweigh Newark's strong interest in keeping its HQ2 bid confidential while Amazon's selection process is underway. Mr. Wronko could not have stated it better: "[T]he addition of Amazon to Newark has the potential for far reaching implications, financial and otherwise, that would affect all citizens of New Jersey." That is why the State of New Jersey recently enacted, on an overwhelming bipartisan basis, Chapter 282, "An Act concerning tax credits for certain business headquarters located in this State," providing unprecedented incentives to lure Amazon to New Jersey.

Mr. Wronko and all other taxpayers can read Chapter 282 and he and all voters in New Jersey had an opportunity to opine on it in last November's statewide elections. He can comment, too, on any ordinances that Newark ultimately may adopt if Amazon chooses Newark as the site of HQ2. Mr. Wronko's unsupported statement that he "has a significant interest in learning about the proposal Newark submitted" (Plaintiff's Letter Brief at 14) does not make it so, and certainly does not counter-balance Newark's declaration-supported—and, indeed, self-evident—need to preserve its competitive advantage relative to the other finalist cities.

CONCLUSION

Based on the foregoing arguments, it is requested that the City's motion to dismiss be granted.

Respectfully submitted,

Kenyatta K. Stewart, Esq.
Acting Corporation Counsel
Attorney for City of Newark

By: /S Samora Noguera
Samora Noguera
Assistant Corporation Counsel

Date: March 26, 2018