



April 24, 2019

**VIA E-MAIL**

Kaschee Porter  
Law Clerk  
Landman Corsi Ballaine & Ford P.C.  
Email: [kporter@lcbf.com](mailto:kporter@lcbf.com)

RE: 19-FOIA-081 PSAs - BNSF/UP; Track Access

Dear Kaschee Porter:

We are in receipt of your request for information pursuant to the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“**FOIA**”).

**I. Background**

On March 20, 2018, we received your request for copies of:

1. All Metra Purchase of Service Agreements with the BNSF and UP Railroads during the past 10 years; and
2. All Metra track access and use agreements with the BNSF and UP Railroads during the past 10 years.

(“**Request**”).

We contacted you on March 22 seeking clarification as to what was meant by, “All Metra track access and use agreements with the BNSF and the UP railroads during the past 10 years.” You responded to our email that same day stating that you were requesting all contracts between Metra and the BNSF Railroad which grant Metra the right to operate on BNSF’s property, including its tracks, railroad right-of-way, and other facilities; and all other contracts between Metra and BNSF permitting Metra to have access to BNSF property and its facilities. Additionally, you requested all contracts between Metra and the Union Pacific Railroad which grant Metra the right to operate on Union Pacific’s property, including its tracks, railroad right-of-way and other facilities; and all other contracts between Metra and Union Pacific permitting Metra to have access to Union Pacific property and its facilities (“**Request**”).

Your Request is granted in part and denied in part.

**II. Responsive Documents**

In response to part 1 of your Request, Metra’s is providing you with the following records for the past 10 years:

- BNSF Railway Company:

- PSA between the Commuter Rail Division (“CRD”) of the Regional Transportation Authority and the BNSF Railway Company dated December 14, 2016;
- Union Pacific Railroad Company:
  - Third Amendment, dated December 22, 2009, to PSA dated November 1, 1999;
  - Amended & Restated PSA, dated January 28, 2010, with Exhibits;
  - Third Amendment, dated November 22, 2013, to PSA dated January 28, 2010;
  - Second Amendment, dated August 23, 2013, to PSA dated January 28, 2010;
  - Fourth Amendment, dated December 21, 2015, to PSA dated January 28, 2010;
  - Section 10.05 of PSA letter, dated November 16, 2017;
  - Fifth Amendment, dated November 21, 2017, to PSA dated January 28, 2010;
  - Memorandum of Understanding, dated November 21, 2017;
  - PSA Service Change Notice letter, dated December 5, 2017;
  - Accounting Change Request ACR-UP-43, dated July 10, 2018;
  - Accounting Change Request ACR-UP-44, dated July 10, 2018; and
  - Accounting Change Request ACR-UP-45, dated December 19, 2018

**(“Responsive Documents”).**

As for part 2 of your Request, Metra’s Contracts Department advises that Metra does not have the right to operate on BNSF nor UP property. Metra pays the BNSF and the UP to install facilities and the Fixed Facility Agreements with both BNSF and the UP allow Metra and its commuters to use the facilities (tracks, signals, platforms, stations, etc.) in commuter service.

**III. Partial Denial**

While FOIA requires public bodies to provide access to public records generally, FOIA also authorizes units of government to withhold certain information. Attorney Keith Pardonnet has determined the insurance information referenced in the Responsive Documents is exempted from disclosure under Section 7(1)(s) of FOIA which authorizes units of government to withhold “[a]ny and all proprietary information and records related to the operation of an intergovernmental risk management association or self-insurance pool or jointly self-administered health and accident cooperative or pool Insurance or self-insurance (including any intergovernmental risk management association or self-insurance pool) claims, loss or risk management information, records, data, advice or communications.” 5 ILCS 140/7(1)(s).

**IV. Right of Review**

A person whose request to inspect or copy a public record was treated by the public body as a request for a commercial purpose under Section 3.1 of FOIA may file a request for review with the Public Access Counselor (“PAC”) of the Illinois Attorney General’s Office for the limited purpose of

reviewing whether the public body properly determined that the request was made for a commercial purpose. 5 ILCS 140/9.5(b)). You can file your Request for Review with the PAC by writing to:

Public Access Counselor  
Office of the Attorney General  
500 South 2nd Street  
Springfield, Illinois 62706  
Fax: 217-782-1396  
E-mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us).

If you choose to file a Request for Review with the PAC, you must do so within 60 calendar days of the date of this partial denial letter. 5 ILCS 140/9.5(a). Please note that you must include a copy of your original FOIA request and this partial denial letter when filing a Request for Review with the PAC.

You also have the right to seek judicial review of your partial denial by filing a lawsuit in the circuit court. 5 ILCS 140/11.

If we can be of further assistance to you, please do not hesitate to contact us.

Sincerely,



Kathleen E. Haton  
Freedom of Information Officer  
[foia@metrarr.com](mailto:foia@metrarr.com)  
FOIA Hotline #312-663-3642

Attachments