

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-38**

March 4, 2015

VIA ELECTRONIC MAIL

Mr. Daniel Siesser

RE: FOIA Appeal 2015-38

Dear Mr. Siesser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a) (“D.C. FOIA”), dated February 12, 2015 (the “Appeal”). You assert in the Appeal that you requested documents from the Office of the Chief Financial Officer (“OCFO”) pertaining to a data dump of select fields on the Real Property Recordation and Transfer Tax Form FP 7/C, and OFCO failed to respond to your request. In the Appeal, you advised that the information you request was “already public”, that you were requesting that the data be aggregated because “it would take thousands of hours to pull these records individually.”

We forwarded the Appeal to OCFO with a request for a response. OCFO responded by a letter dated February 27, 2015 (the “OCFO Response”). A copy of that Response was sent to you. In their Response, OCFO contends that the FP-7/C tax forms are not permitted to be disclosed under §47-4406(e-1) and the corresponding regulations, and therefore fall within the ambit of exemption (a)(6) of the D.C. FOIA statute.

It is the public policy of the District of Columbia (the “District”) government that “all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.” D.C. Code § 2-537(a). In aid of that policy, D.C. FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id.* at § 2-534.

The D.C. FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

The crux of this matter is whether the requested records are public, or whether they are exempt from disclosure under D.C. FOIA §2-534(a)(6). D.C. FOIA § 2-534(a)(6) provides an exemption for information specifically exempt from disclosure by statute if the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or

establishes particular criteria for withholding or refers to particular types of matters to be withheld.

With regard to the records at issue in this appeal, the FP 7/C is a tax return form described in §§ 42-1103(b) (1) & (2) as “an integral part of the deed.” Although the DC Code generally provides for the secrecy of tax returns, under §47-4406(e-1) “[t]he confidentiality] provisions of this section shall not apply to the return required by § 42-1103 . . . *unless otherwise provided by regulation.*” In turn, D.C. Code § 42-1103(b)(3) states that “[t]he return shall not be confidential or subject to the provisions of §§ 47-1805.04 and 47-4406, *unless otherwise provided by regulation.* The corresponding regulations, do, in fact, deny public access to these records. Pursuant to 9 DCMR §§ 508 and 608, access to tax returns related to deeds (such as the FP 7/C) is restricted to:

- “(a) The person or persons filing the return or document;
- (b) An official or employee of the District who has duties and responsibilities in connection with those returns or documents;
- (c) An official of the government of the United States when acting in his or her official capacity; or
- (d) An official of a state or political subdivision of a state when acting in his or her official capacity, if similar privileges are accorded to District audit officials by that state or political subdivision.”

Thus, the D.C. code clearly incorporates any nondisclosure provisions pertaining to the FP-7/C tax returns contained in the DCMR. Accordingly, the relevant DCMR provisions in §§ 508 and 608, which prohibit the public disclosure of tax returns such as the FP-7/C are firmly rooted in statutory authority and trigger the application of D.C. FOIA §2-534(a)(6). As Appellant does not qualify under one of the specified categories of persons who are permitted to inspect such records under 9 DCMR §§ 508 and 608, the requested records are exempt from disclosure under D.C. Code § 2-534(a)(6).

We are satisfied with OCFO’s Response based on our review of the relevant law and regulations as they pertain to the requested materials. Therefore, the decision of OCFO is upheld and the appeal is hereby DISMISSED.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you are free under the FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,

/s Sarah Jane Forman

Sarah Jane Forman
Associate Director
Mayor’s Office of Legal Counsel