

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-13**

December 15, 2015

VIA ELECTRONIC MAIL

Nicholas Soares

RE: FOIA Appeal 2016-13

Dear Mr. Soares:

This letter responds to the administrative appeal you filed with the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”). In your appeal, you assert that the Department of Health Care Finance (“DHCF”) improperly withheld records you requested under the DC FOIA.

Background

On August 25, 2015, you sent twelve (12) part FOIA request to DHCF for “documents related to the provision of case management services for children under the Early and Periodic, Screening, Diagnostic and Treatment (“EPSDT”) services program of Medicaid, which are provided under DHCF contract by Health Services for Children with Special Needs, Inc.” On October 9, 2015, DHCF granted in part and denied in part your requests. In specific, DHCF withheld 21 records as trade secrets protected under D.C. Official Code § 2-534(a)(1) (“Exemption 1”).¹

On appeal, you challenge DHCF’s withholding of responsive records. You assert four primary objections to the withholding: (1) the records are inherently public material according to D.C. Official Code § 2-536; (2) the records were generated pursuant to a contract and are therefore inherently public according to D.C. Official Code § 2-532(a-3); (3) the records sought are not commercially valuable because HSCSN is not engaged in a competition for its contract and the only reason the information could possibly harm HSCSN is if HSCSN were violating its contractual obligations; and (4) DHCF’s statements are “not credible[,]” because the records “are squarely within the authority of the District of Columbia government.” Further, you argue that even if Exemption 1 were applicable, DHCF should have reasonably segregated the withheld documents.

DHCF provided this office with a memorandum in response to your appeal on December 3, 2015, reaffirming its decision to withhold records under Exemption 1.

¹ Exemption 1 exempts from disclosure “trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would results in substantial harm to the competitive position of the person from whom the information was obtained.”

Discussion

It is the public policy of the District of Columbia 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. Official Code § 2-531. In aid of that policy, the DC FOIA creates the right “to inspect . . . and . . . copy any public record of a public body . . .” *Id.* at § 2-532(a). The right to inspect a public record, however, is subject to exemptions. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, 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 instant matter involves the protection of proprietary information from public disclosure. To withhold responsive records under Exemption 1, DHCF must show that the information: (1) is a trade secret or commercial or financial information; (2) was obtained from outside the government; and (3) would result in substantial harm to the competitive position of the person from whom the information was obtained. D.C. Official Code § 2-534(a)(1). The D.C. Circuit has defined a trade secret, for the purposes of the federal FOIA, “as a secret, commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort.” *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). The D.C. Circuit has also instructed that the terms “commercial” and “financial” used in the federal FOIA should be accorded their ordinary meanings. *Id.* at 1290.

Exemption 1 has been “interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury.” *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987); *see also*, *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989). In construing the second part of this test, “actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply.” *Essex Electro Eng’rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). *See also* *McDonnell Douglas Corp. v. United States Dep’t of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption “does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would ‘likely’ do so. [citations omitted]”). The passage of time can reduce the likelihood of competitive harm. *See Teich v. FDA*, 751 F. Supp. 243, 253 (D.D.C. 1990) (rejecting competitive harm claim based partly upon fact that documents were as many as twenty years old). *But see* *Ctr. for Auto Safety v. Nat’l Highway Traffic Safety Admin.*, 93 F. Supp. 2d 1, 16 (D.D.C. 2000) (declaring that “[i]nformation does not become stale merely because it is old”).

Generally, records are “commercial” as long as the submitter has a “commercial interest” in them. *See Baker & Hostetler LLP v. U.S. Dep’t of Commerce*, 473 F.3d 312, 319 (D.C. Cir. 2006). *But see* *Chicago Tribune Co. v. FAA*, 1998 U.S. Dist. LEXIS 6832, *6 (N.D. Ill. May 5, 1998) (finding that chance events that happened to occur in connection with a commercial

operation were not commercial information regarding documentation of medical emergencies during commercial fights). Although it is unnecessary to engage in a “sophisticated economic analysis of the likely effects of disclosure, conclusory and generalized allegations of substantial competitive harm are unacceptable and cannot support an agency’s decision to withhold requested documents.” *Watkins v. United States Bureau of Customs*, 643 F.3d 1189, 1195 (9th Cir. 2011). Instead, a court may make a determination of economic harm by considering the cost of obtaining the withheld information, and the possible windfall to competition that would result from its release, such as whether:

a competitor could use the content of the [records] affirmatively to wreak competitive harm on [the company at issue] by acquiring records that, according to [the company] and undisputed by the plaintiff, show what is and is not working in companies’ marketing from the perspective of its customers. *See id.* . . . In applying the *National Parks* test, the D.C. Circuit noted that when commercial information “is freely or cheaply available from other sources ... it can hardly be called confidential and agency disclosure is unlikely to cause competitive harm.” *Id.* at 51. Nevertheless, when “competitors can acquire the information only at considerable cost, agency disclosure may well benefit the competitors at the expense of the submitter.” *Id.*

Pub. Citizen v. United States Dep’t of Health & Human Servs., 66 F. Supp. 3d 196, 213 (D.D.C. 2014).

This Office shall address your four principal objections in connection with the above-cited case law regarding Exemption 1.

Objection 1

Your first objection is premised on the notion that records responsive to Requests 1 and 4 are inherently public documents under District law, therefore DCHF’s withholding of these documents was improper. In support of this argument, you cite to provisions of D.C. Official Code § 2-536(a), which mandate disclosure of:

(2) Administrative staff manuals and instructions to staff that affect a member of the public; . . . (4) Those statements of policy and interpretations of policy, acts, and rules which have been adopted by a public body; (5) Correspondence and materials referred to therein, by and with a public body, relating to any regulatory, supervisory, or enforcement responsibilities of the public body, whereby the public body determines, or states an opinion upon, or is asked to determine or state an opinion upon, the rights of the District, the public, or any private party . . .

Objection 1 lacks merit because FOIA exemptions apply to information that must be made public under D.C. Official Code § 2-536. The first sentence of the statute provides: “Without limiting the meaning of other sections of this subchapter . . .” Thus, although specific categories of information are deemed public under § 2-536, certain portions of this information may be

protected under DC FOIA.² Moreover, even if § 2-536 provided for mandatory disclosures of documents notwithstanding FOIA exemptions, this Office concludes that the withheld documents, with the exception of Documents 2 and 3, are not of the types of documents described in § 2-536(a).³

Objection 2

Your second objection consists of a similar argument that certain records are inherently public under the language of D.C. Official Code § 2-532(a-3), which states, “A public body shall make available for inspection and copying any record produced or collected pursuant to a contract with a private contractor to perform a public function . . .” This objection is also meritless, as it too fails to take into account the plenary applicability of § 2-534, which exempts certain matters from disclosure under the subchapter containing both statutes (Subchapter II of Title V of the D.C. Official Code). In other words, although a contract with a private contractor to perform a public function is generally considered a public record under § 2-532, it is also subject to applicable exemptions under § 2-534.

Objection 3

Your third objection is your stated belief that HSCSN is not engaged in competition and that the release of any of the withheld documents could not harm HSCSN unless HSCSN is failing to comply with its obligations under its contract with DHCF.

The crux of this matter is whether HSCSN’s withheld records, reflected in Documents 1-21, constitute commercially valuable information. This Office conducted an *in camera* review of the 21 documents that DHCF withheld and shall analyze each in turn under Exemption 1 (with the exception of Document 11, which is analyzed under Exemption 2).

Document 1

DHCF withheld Document 1, “Authorization of Health Services,” under the claim that it contains trade secrets, which are protected under Exemption 1. This document appears to be incidental to a contract between the District and a private party for the performance of a public function. As a result, it appears that its disclosure is mandated under D.C. Official Code § 2-532 (a-3) unless a DC FOIA exemption applies. Here, DHCF has described this document as containing trade secrets, requiring it to be withheld to prevent competitive harm. This Office disagrees. Unlike the facts in a related appeal, FOIA Appeal 2016-11, this contract at issue here is between the government and a private company - not between two private parties. As a result

² Your citation to 1 D.C.M.R. § 400.4 is equally inapplicable, as that regulation allows for disclosure “as a matter of discretion.” By withholding the records, DHCF has exercised its discretion. As a result, 1 D.C.M.R. § 400.4 has no bearing on whether DHCF is compelled to produce the withheld records.

³ The applicability and effect of § 2-536(a) on Documents 2 and 3 are discussed below in the Objection 3 analysis.

of its public nature, this document cannot be described as proprietary. Therefore, Document 1 should be disclosed.

Document 2

DHCF withheld Document 2, “Case Management policies,” under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. This document (or rather, collection of documents) appears to be a set of agreed upon policies made between the District and a private party for the performance of a public function. As a result, it appears that disclosure is mandated under D.C. Official Code § 2-536 (a)(4), unless a DC FOIA exemption directly applies. DHCF has described this document as containing trade secrets, requiring it to be withheld to prevent competitive harm. This Office disagrees. The policies outlined in this lengthy document reflect the private body’s understanding of its duties in performing a public function on behalf of the public. The document does not explain *how* HSCSN meets its duties; it merely articulates *what* those duties are. Moreover, to the extent that Document 2 represents a process or plan, it is not one made and closely held solely by HSCSN. Any process or plan contained in Document 2 is the result of an understanding with the District government as to the full extent of the public function being assumed by HSCSN. Document 2 is not a trade secret or commercial information and therefore should be disclosed.

Document 3

DHCF withheld Document 3, “Care Management Compliance Training,” under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. Document 3 contains two parts: (1) an October 22, 2014 Powerpoint presentation; (2) and a two-page set of training scenario hypothetical exercises. The scenarios appear to be originally written hypotheticals for training, and the PowerPoint presentation appears to be an answer key. The October 22, 2014 PowerPoint presentation consists entirely of citations to the public contract, with short snippets describing which provisions of the public contract are relevant to the hypothetical.

Document 3 reveals HSCSN’s proprietary training process. The training process revealed in these documents was created at a cost to HSCSN. Releasing information about this process would amount to a windfall to HSCSN’s competitors and could limit HSCSN’s ability to competitively vie for future similar contracts by allowing competitors to mimic HSCSN’s training strategies. *See Pub. Citizen*, 66 F. Supp. 3d at 213. Document 3 was therefore properly withheld.

Document 4

DHCF withheld Document 4, “Working with People with Special Needs: A Self-Study Guide for Care Managers,” under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. Page 2 of Document 4 states that “[p]ermission is granted for photocopying of this guide providing it is not altered or credited in any way and provided that an appropriate credit line is given. Credit line: ‘From Working with People with Special Needs, a Self-Study Guide for Care Managers, Cardea Institute, 2012.’” In light of the plain language of this

document, we do not consider it to be a secret, trade or otherwise. Document 4 should therefore be disclosed.

Documents 5-10

DHCF withheld Documents 5-10, “PACE Application – Job Description[s],” under the claim that they contain trade secrets, which are protected under Exemption 1. Documents 5-10 include what appears to be a screenshot from an internal database for tracking job descriptions. Documents 5-10 include both the subjective factors HSCSN seeks in employees, as well as the weighting HSCSN assigns to these factors. The specific hiring philosophy and process evident in these documents was created at a cost to HSCSN. Releasing information about this process would amount to a windfall to HSCSN’s competitors and could limit HSCSN’s ability to competitively vie for future similar contracts by mimicking HSCSN’s hiring strategies. *See Pub. Citizen*, 66 F. Supp. 3d at 213.

Based on DHCF’s representations and our *in camera* review of the documents, it is evident that the documents contain commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. We agree with DHCF that actual competition exists from HSCSN and that disclosure of the information would provide competitors insight into HSCSN’s strategy for hiring, thereby allowing the recruitment of HSCSN’s employees. Accordingly, we find that the commercial and financial information in Documents 5-10 was properly withheld under Exemption 1. *See Venetian Casino Resort, L.L.C. v. EEOC*, 530 F.3d 925, 927 (2008) (“Venetian’s particular concern was that competitors and labor unions would obtain confidential information regarding its hiring practices, which information they would use to its economic detriment.”).

Document 11

DHCF withheld Document 11, which is titled “SAMPLE,” under a claim of trade secrets under Exemptions 1 and a claim of personal privacy under Exemption 2. Having reviewed the spreadsheet document *in camera*, this Office concludes that the document contains personally identifiable medical information, including patient names, Medicaid IDs, and birthdates. Releasing this information would constitute a clearly unwarranted invasion of personal privacy under Exemption 2 of the DC FOIA.⁴ Further, reasonable segregability is not possible with regard to the document, as it is a spreadsheet in which essentially every column of information is protected. Disclosure of the non-exempt provisions of the spreadsheet would amount to an unintelligible document. Since this document was properly withheld under Exemption 2, an analysis under Exemption 1 is not necessary.

⁴ Exemption 2 of DC FOIA provides that “Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy” may be exempt from disclosure. D.C. Official Code § 2-534(a)(2).

Documents 12-17

Documents 12-17 are HSCSN's Customer Satisfaction Surveys for 2013-2014, which DHCF withheld under a claim of trade secrets under Exemption 1. For the reasons discussed in FOIA Appeal 2015-11, the Customer Satisfaction Surveys are commercially valuable information, the release of which could cause HSCSN competitive harm by amounting to a windfall for competition. Based on DHCF's representations and our *in camera* review of the documents, it is evident that the documents contain commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. We agree with DHCF's claim that actual competition exists from HSCSN and that disclosure of the information would provide competitors with insight into how HSCSN administers its customer surveys and analysis. Therefore, we find that the commercial and financial information in Documents 12-17 was properly withheld under Exemption 1.

Documents 18

DHCF withheld Document 18, "FOIA REQUEST CARE MANAGEMENT (Response # 7a-c)," under a claim of trade secrets under Exemption 1. Based on its title, this document appears to have been generated to respond to this FOIA request, as opposed to in connection with a commercially valuable process created in the ordinary course of business. Generally, an agency has no duty to create a document in response to a FOIA request. *See Forsham v. Harris*, 445 U.S. 169, 186 (1980) (citing *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 161-62 (1975)); *accord Yeager v. DEA*, 678 F.2d 315, 321, (D.C. Cir. 1982) ("It is well settled that an agency is not required by FOIA to create a document that does not exist in order to satisfy a request."). Nevertheless, if the chart is somehow responsive to the request at issue, it should be disclosed since it does not contain any commercially valuable information.

Documents 19 and 20

DHCF withheld Documents 19 and 20, which are quality and performance improvement evaluations for 2013 and 2014, under a claim of trade secrets under Exemption 1. Documents 19-20 include what appears to be data collected by HSCSN, along with a detailed analysis of that data as it relates to the performance of HSCSN in providing care. Documents 19 and 20 essentially amount to HSCSN's process of self-evaluation for the purpose of improving its product. The process revealed in these documents was created at a cost to HSCSN. Releasing information about this process would amount to a windfall to HSCSN's competitors and could limit HSCSN's ability to competitively vie for future similar contracts by mimicking HSCSN's hiring strategies. *See Pub. Citizen*, 66 F. Supp. 3d at 213.

Based on DHCF's representations and our *in camera* review of the documents, it is evident that they contain commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. We agree with DHCF that HSCSN has actual business competition and that disclosure of the information contained in Documents 19 and 20 would allow competitors insight into HSCSN's management strategy to analyze and improve its services. Therefore, we find that the commercial and financial information in Documents 19 and 20 was properly withheld under Exemption 1.

Document 21

DHCF withheld Document 21, “EUT.CCA 100 Clinical Care Advance Overview Assessment,” under a claim of trade secrets under Exemption 1. Unlike Document 4, almost every page of this document has a disclaimer stating the information is subject to copyright and that the document is “Confidential and Proprietary – Restricted Information / Provided for Internal Use only – Do Not Distribute To Any Third Parties . . .” The document appears to be a comprehensive, step-by-step guide, with annotated screenshots, explaining how to use proprietary software.

Based on DHCF’s representations and our *in camera* review of the documents, it is evident that Document 21 contains commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. The third party at issue here created Document 21 as a guide to train HSNCS in the use of proprietary software. We agree with DHCF that the third party has actual business competition. Disclosure of the information would damage both HSNCS by providing its competitors with valuable training at no cost, and the third party, which developed the training and has intellectual property rights associated with it. Exemption 1 was therefore properly invoked, and Document 21 was properly withheld.

Objection 4

The fourth general argument that you raise on appeal is that “documents that contain information about the policies, procedures, and outcomes of HSCSN’s case management program are squarely within the authority of the District of Columbia government.” For the reasons discussed above, notwithstanding the fact that HSCSN performs a public function pursuant to a contract with the District, some of the documents at issue in your request are exempt from public disclosure under the DC FOIA. For that reason, as well as the reasons discussed in the Exemption 1 analysis above, this Office does not find Objection 4 to be persuasive.

Reasonable Segregability

Under DC FOIA, even when an agency establishes that it has properly withheld a document under an asserted exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). “To demonstrate that it has disclosed all reasonably segregable material, ‘the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a withheld document to which they apply.’” *Judicial Watch, Inc. v. U.S. Dep’t of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F. Supp. 2d 106, 120 (D.D.C. 2010)).

With respect to Documents 3, 5-17, 19, 20 and 21, we find that they are not segregable and are protected in their entirety from disclosure under Exemption 1. The categories and descriptions in the documents reveal HSCSN’s commercial and financial strategy in hiring, managing, and self-evaluation. This information, if disclosed, could cause substantial competitive harm to HSCSN by providing a windfall to its competitors.

With respect to Documents 1, 2, 4, and 18, we have concluded as described above that they should be released; therefore, we need not address their segregability.

Conclusion

Based on the foregoing, we affirm DHCF's decision in part and remand it in part. Within seven (7) business days from the date of this decision, DHCF shall release Documents 1, 2, 4, and 18 in accordance with the guidance provided in this determination.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director
Mayor's Office of Legal Counsel

cc: Kevin O'Donnell, Attorney Advisor, DHCF (via email)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-13R**

February 5, 2016

VIA ELECTRONIC MAIL

Kevin O'Donnell
Attorney Advisor
Department of Health Care Finance

RE: FOIA Appeal 2016-13R

Dear Mr. O'Donnell:

This letter responds to your request for reconsideration of the administrative appeal Mr. Soares filed with the Mayor under the District of Columbia Freedom of Information Act. In your request for reconsideration you assert that this Office erred in its December 15, 2015,¹ decision ordering the Department of Health Care Finance ("DHCF") to release certain withheld records. We have reviewed our decision and address each withheld document in turn.

Document 1

DHCF withheld Document 1, "Authorization of Health Services," under the claim that it contains trade secrets, which are protected under Exemption 1. In FOIA Appeal 2016-13, this Office stated that Document 1 appears to be incidental to a contract between the District and a private party to perform a public function. As a result, we concluded that disclosure of Document 1 is mandated under D.C. Official Code § 2-532(a-3) unless a DC FOIA exemption applies. DHCF has maintained that this document contains trade secrets, which must be withheld to prevent competitive harm to HSCSN. We disagreed and continue to disagree with this characterization. Document 1's content and structure borrow heavily from a public contract, and it is not clear that anything in it constitutes "commercial information," even under the very broad definition of "commercial information" in case law construing DC FOIA. Moreover, this Office is not convinced that the documents would cause competitive harm if obtained by HSCSN's competitors.

DHCF cites to section II.B.4 of Document 1 as the quintessential example of how the policy "delineate[s] with specificity the internal process implemented at HSCSN." This "process," which, if revealed to competitors would supposedly amount to a windfall, consists essentially of (1) assigning a number to a request; (2) putting the request in a system for verification; and (3) issuing an oral decision within 48 hours. This is not a commercially valuable process; this is a routine procedure in a large operation. The policy does not describe how the "HSCSN IT system" works, what it looks like, or how it integrates with other operations. The policy does not

¹ FOIA Appeal 2016-13

describe the process by which a decision is made, nor does it indicate the manner in which an oral decision should be delivered. The policy describes the public function HSCSN is performing only in the broadest of terms. Therefore, this Office disagrees that the release of this document would allow a competitor of HSCSN to gain an unfair advantage.

Document 2

DHCF withheld Document 2, “Case Management policies,” under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. After reconsideration, for the same reasons articulated above and in FOIA Appeal 2016-13, this Office reaffirms that the release of Document 2 would not harm HSCSN’s competitive position.

Document 4

DHCF withheld Document 4, “Working with People with Special Needs: A Self-Study Guide for Care Managers,” under a claim that it contains trade secrets, which are protected from disclosure under Exemption 1. Page 2 of Document 4 states that “[p]ermission is granted for photocopying of this guide provided it is not altered or credited in any way and provided that an appropriate credit line is given. Credit line: ‘From Working with People with Special Needs, a Self-Study Guide for Care Managers, Cardea Institute, 2012.’” In light of the plain language of this document, in our previous decision we did not consider it to be a secret, trade or otherwise. Upon reconsideration, however, this Office concludes that the license on the front of the document was not necessarily meant to provide for unlimited disclosure of the document to the public.

Based on DHCF’s representations and our *in camera* review of the documents, we find that Document 4 contains commercial information provided by a party outside the government sufficient to meet the threshold for protection under Exemption 1. The third party at issue here created Document 4 as part of a guide to train HSNCS employees. We agree with DHCF that the third party has actual business competition. DHCF has represented on reconsideration that HSNCS paid \$100,000 to develop Document 4. As a result, disclosure of the information therein would damage HSNCS by providing its competitors with valuable training at no cost. Disclosure would also damage the third party that developed the training and has intellectual property rights associated with it. This Office therefore concludes that Exemption 1 was properly invoked, and Document 4 was properly withheld.

Reasonable Segregability

Under DC FOIA, even when an agency establishes that it has properly withheld a document under an asserted exemption, it must disclose all reasonably segregable, nonexempt portions of the document. *See, e.g., Roth v. U.S. Dep’t of Justice*, 642 F.3d 1161, 1167 (D.C. Cir. 2011). “To demonstrate that it has disclosed all reasonably segregable material, ‘the withholding agency must supply a relatively detailed justification, specifically identifying the reasons why a particular exemption is relevant and correlating those claims with the particular part of a

withheld document to which they apply.”” *Judicial Watch, Inc. v. U.S. Dep’t of Treasury*, 796 F. Supp. 2d 13, 29 (D.D.C. 2011) (quoting *Jarvik v. CIA*, 741 F .Supp. 2d 106, 120 (D.D.C. 2010)).

With respect to Documents 4, we find that it is not segregable and is protected in its entirety from disclosure under Exemption 1. The training manual is comprehensive and specific to HSCSN’s business strategy. The release of any information in the document could cause substantial competitive harm to HSCSN by providing a windfall to its competitors.

Since we have affirmed our decision that Documents 1 and 2 should be released in their entirety, we need not address whether they are segregable.

Conclusion

Based on the foregoing, we affirm our previous decision in part and reverse in part. Within seven (7) business days from the date of this decision, DHCF shall release Documents 1 and 2. With respect to Document 4, we find that DHCF may continue to withhold it in accordance with Exemption 1.

This constitutes the final decision of this Office. Please be advised that in accordance with D.C. Official Code § 2-537(a)(2), if DHCF continues to withhold Documents 1 and 2, Mr. Soares may bring suit in the Superior Court of the District of Columbia to compel production.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Nicholas Soares, Esq. (via email)