

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-20**

January 8, 2016

VIA ELECTRONIC MAIL

Mr. James Sadowski

RE: FOIA Appeal 2016-20

Dear Mr. Sadowski:

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 (“DC FOIA”). In your appeal, you assert that the District of Columbia Housing Authority (“DCHA”) improperly withheld records you requested under the DC FOIA.

Background

On November 10, 2015, you submitted a FOIA request to DCHA for four categories of records. The first two categories involve names and addresses of participants in the Housing Choice Voucher Program (“HCVP”). The second two categories involve names and addresses of participants qualifying for a Low Income Housing Tax Credit (“LIHTC”).

DCHA responded to your request On December 4, 2015. In its response, DCHA stated that it is the District agency responsible for the administration of the HCVP on behalf of the U.S. Department of Housing and Urban Development (“HUD”), but that DCHA could not disclose the HCVP records sought. DCHA indicated that according to HUD guidance, personal information related to the administration of HCVP is protected from disclosure under the Privacy Act of 1974.¹ DCHA further asserted that the names and addresses of HCVP participants are protected under D.C. Official Code § 2-534(a)(2) (“Exemption 2”).² Regarding your request for LIHTC records, DCHA stated that the LIHTC program is administered by the District of Columbia Department of Housing and Community Development (“DHCD”). DCHA provided you with a phone number to contact DHCD for LIHTC records.

On appeal, you assert that the records at issue do not involve privacy interests. In support of your assertion, you distinguish your request from the FOIA request at issue in *Padou v. District of Columbia*, 29 A.3d 973 (D.C. 2010). You assert that similar information was allowed to be withheld in *Padou* only because the records involved protecting the privacy interests of mentally

¹ 5 U.S.C. §552a

² Exemption 2 protects “[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.”

ill individuals. Further, you argue that DCHA cannot withhold addresses because DCHA and HUD websites provide address information for some properties. Your appeal does not expressly assert any public interest in disclosure.

On December 22, 2015, DCHA provided this Office with a response to your appeal, in which it reaffirmed and explained its withholding under Exemption 2 and the Privacy Act of 1974.³ DCHA asserts that *Padou* is instructive for the application of Exemption 2 because impoverished individuals receiving HCVP assistance have similar privacy interests to avoid unwarranted harassment, ridicule, or embarrassment. DCHA also elaborates on the federal privacy statutes that it asserts prevent disclosure of the requested records. To provide further guidance on the relevant federal privacy statutes, DCHA's response includes Notice PIH-2014-10 on Privacy Protection Guidance issued by HUD, and an advisory letter issued by HUD regarding disclosure of housing records. Finally, DCHA reiterates that DHCD administers the LIHTC program.

Discussion

It is the public policy of the District of Columbia 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, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act. *See 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).

This appeal addresses only the categories of your request related to HCVP since DCHA indicated in both its initial response and its response to your appeal that DHCD administers the LIHTC program.

Under Exemption 2, determining whether disclosure of a record would constitute an invasion of personal privacy requires a balancing of the individual privacy interest against the public interest in disclosure. *See Department of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 762 (1989). The first part of the analysis is determining whether a sufficient privacy interest exists. *Id.*

A privacy interest is cognizable under DC FOIA if it is substantial, which is anything greater than *de minimis*. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information. *Skinner v. U.S. Dep't. of Justice*, 806 F. Supp. 2d 105, 113 (D.D.C. 2011). Information such as names,

³ A copy of DCHA's response is attached for your reference.

phone numbers, and home addresses are considered to be personally identifiable information and are therefore exempt from disclosure. *See, e.g., Department of Defense v. FLRA*, 510 U.S. 487, 500 (1994).

In addition to the baseline privacy interests in individual names and addresses involved, we agree with DCHA that there is a heightened privacy interest for individuals participating in the HCVP due to the stigma and embarrassment that could be associated with one's status as a recipient of public assistance. As DCHA indicates, one of the functions of the HCVP is to allow housing subsidy recipients the flexibility to rent in the private housing market among mixed-income communities and eliminate the concentration of poverty typically found in public housing. The fact that DCHA's website provides addresses of some public and affordable housing in the District is not relevant because there is no indication that the listed properties are affiliated with the HCVP. The listings on DCHA's website do not diminish the privacy rights of participants in the HCVP. *Id.* ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.").

The second part of the Exemption 2 analysis examines whether the individual privacy interest is outweighed by the public interest. *See Reporters Comm. for Freedom of Press*, 489 U.S. at 772-773. Aside from contesting the existence of privacy interests associated with the HCVP, you have not asserted any public interest in favor of disclosure of the names and addresses of HCVP participants. When there is a privacy interest in a record and no countervailing public interest, the record may be withheld from disclosure. *See, e.g. Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). As a result, we find that DCHA properly withheld records reflecting HCVP participants under Exemption 2.

With respect to the federal statutes incorporated under Exemption 6, DCHA represents that it administers HCVP on behalf of HUD. As indicated by DCHA and in HUD guidance, disclosure of the HCVP records is subject to the requirements of 5 U.S.C. §552a, and records maintained by DCHA for HCVP participants cannot be disclosed except in accordance with 5 U.S.C. §552a. We concur with DCHA that the requirements of 5 U.S.C. §552a for disclosure have not been met here; therefore, DCHA properly withheld the HCVP records under Exemption 6.

Conclusion

Based on the foregoing, we affirm DCHA's decision. 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

/s John A. Marsh*

John A. Marsh
Legal Fellow

cc: Qwendolyn Brown, Associate General Counsel, DCHA (via email)

*Admitted in Maryland; license pending in the District of Columbia; practicing under the supervision of members of the D.C. Bar