

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2016-75**

June 27, 2016

VIA ELECTRONIC MAIL

Mr. Mary Wellbank

RE: FOIA Appeal 2016-75

Dear Ms. Wellbank:

This letter responds to the administrative appeal you submitted 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 Office of Contract Procurement (“OCP”) improperly withheld records you requested under the DC FOIA.

Background

On June 25, 2015, you submitted a request to OCP for portions of enumerated contracts. OCP granted your request and released 4 pages of responsive documents; however, the agency redacted tax identification number (“TINs”) pursuant to the privacy exemption under DC FOIA.

Subsequently, you appealed OCP’s response on the grounds that: (1) you believe other responsive contracts exist but were not provided to you; and (2) you disagree that “the information [sought] is confidential in any way . . .”

In preparing its response to your appeal, OCP conducted an additional search that yielded additional documents responsive to your request, including the contracts referenced in your appeal. OCP provided you with these documents on June 22, 2016, with redactions made to the companies’ TINs.

On June 22, 2016, OCP responded to your appeal, in which it reasserted to this Office its position that redactions made to TINs were proper under D.C. Official Code § 2-534(a)(2).

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 . . .” *Id.* at § 2-532(a). The right created under DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request.

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), 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).

We find that the aspect of your appeal challenging the absence of two contracts in OCP's original production is moot by virtue of OCP's subsequent release of those documents.

The crux of the remainder of this matter is whether OCP properly redacted the TINs of corporations found in the contracts you requested.

D.C. Official Code § 2-534(a)(2) ("Exemption 2") provides an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."

The Supreme Court in a unanimous decision has determined that under federal FOIA corporations do not have "personal privacy" that is protected by the privacy exemptions. *FCC v. AT&T Inc.*, 562 U.S. 397, 409-410 (2011). The Court reached this conclusion despite the fact that the definition of "person" in the federal FOIA includes a corporation. *Id.*¹ Although corporations are entitled to certain protections under FOIA through the trade secrets and commercial information exemption, they do not have a personal privacy interest as it is contemplated in the associated FOIA exemption. *Id.* at 408-409 ("[W]e far more readily think of corporations as having "privileged or confidential" documents than personally private ones."). OCP has not raised an Exemption 1, trade secrets, argument in this matter. Because of the particular nature of the trade secrets exemption, this Office will not speculate as to potential competitive harm absent further briefing.

Conclusion

Based on the foregoing, we deem part of your appeal moot because OCP has provided you with the records you were seeking. With respect to the TINs that OCP redacted, we reverse OCP's decision on the grounds that this information cannot be withheld under Exemption 2. Within 7 business days of the date of this decision, OCP shall either release to you the previously redacted TINs, or supplement the response it previously submitted to this Office with a different justification for the redaction of TINs.

¹ A corporation is also a "person" as defined in D.C. FOIA. *See* D.C. Official Code §§ 2-539, 2-502

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 DC FOIA.

Sincerely,

/s Melissa C. Tucker

Melissa C. Tucker
Associate Director

cc: Nancy Hapeman, General Counsel and FOIA Officer, OCP (via email)