SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

TAX ANALYSTS, *et al.*, *Plaintiffs*, v. DISTRICT OF COLUMBIA, *et al.*, *Defendants.*	2020 CA 001999 B Judge Robert R. Rigsby

DEFENDANT DISTRICT OF COLUMBIA'S REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

Defendant District of Columbia (the District) hereby replies to the portion of Plaintiffs' motion for *in camera* review that opposes the District's motion for summary judgment.[1] As explained below, Plaintiffs' arguments in opposition to summary judgment are unavailing and summary judgment in favor of the District is appropriate.

[1] Plaintiffs filed their motion as one requesting *in camera* review, but the memorandum of points and authorities attached to the motion both argues for *in camera* review and makes substantive arguments in opposition to the District's motion for summary judgment. *See* Pl.'s Mem. Points & Auth., filed Dec. 4, 2020. As stated in the District's Praecipe filed December 15, 2020, the District does not oppose Plaintiffs' request for *in camera* review. However, the District submits this reply in response to Plaintiffs' arguments in opposition to the District's motion for summary judgment. Because Plaintiffs' December 4, 2020 motion and accompanying memorandum was filed as a motion rather than an opposition, the District had 14 days under Super. Ct. Civ. R. 12-I(e) to respond and now timely files this reply.

ARGUMENT

I. **There Are No Material Factual Disputes that Preclude Granting Summary Judgment to the District.**

There are no material factual disputes that preclude entering judgment for the District at this stage of litigation. Plaintiffs argue that whether any material is reasonably segregable from exempt portions of the private letter rulings (PLRs) is a factual dispute. The District agrees that it is a dispute in this case, but not a factual one. Rather, segregability is a legal determination to be made by the Court. *See, e.g.*, *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 523 (D.C. 1989) (remanding for the trial judge to determine segregability). Accordingly, the parties' disagreement on this issue is simply a legal dispute to be resolved at the summary judgment stage.

II. **The PLRs Are Exempt from Disclosure.**

The District asserts that two FOIA exemptions apply to the PLRs—the "other laws" exemption in conjunction with the District tax code and the personal privacy exemption. In response, Plaintiffs argue that the relevant provisions of the tax code do not preclude disclosure and that the personal privacy exemption applies only to names and identifiers. As explained below, Plaintiffs arguments are unavailing.

A. **Multiple Tax Secrecy Provisions Preclude Disclosure.**

Plaintiffs acknowledge that various tax secrecy provisions govern "tax information" provided to the District. But Plaintiffs argue that the tax secrecy provisions should be given a narrow interpretation. For the reasons set forth in the District's motion for summary judgment, the applicable language is expansive, and should thus be read to broadly cover "state[] or local tax information either submitted by the taxpayer or otherwise obtained." Def.'s Mot. for Summ. J. at 5.

But even under Plaintiffs' interpretation of "tax information," the documents would still be exempt. Plaintiffs argue that the "tax information" protected by the tax code should be interpreted consistently with the federal tax provisions,[2] which bar disclosure of "a taxpayer's identity, *the nature, source, or amount* of his income, payments, receipts, deductions, exemptions, credits assets, liabilities, net worth, tax liability, tax withheld, deficiencies, overassessments, or tax payments . . . . *or any other data . . . furnished to* [the relevant tax authority] . . . with respect to the determination of the existence, *or possible existence*, of liability . . ." Pls.' Mot. at 6 (quoting 26 U.S.C. § 6103(b)(2)(A)) (emphasis added). Despite this, Plaintiffs argue that they are entitled to "the legal issue, the facts, and the agency's analysis" contained in the PLRs. But Plaintiffs do not and cannot reconcile an entitlement to this information with the definition of exempt information they themselves quote. Plaintiffs are not entitled to the facts submitted by a taxpayer along with the analysis of those facts if "any other data . . . furnished to [OTR] . . . with respect to the determination of the existence, or possible existence, of liability" is exempt from disclosure. Pls.' Mot. at 6 (quoting 26 U.S.C. § 6103(b)(2)(A)). Thus, even under Plaintiffs' reading of the tax secrecy provisions, Plaintiffs are not entitled to the information sought.

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2 Although the District looks to interpretations of the federal FOIA statute for guidance in interpreting the District's FOIA statute, there is no analogous principle governing interpretation of the District tax code. *Cf. Doe v. District of Columbia Metro. Police Dep't*, 948 A.2d 1210, 1220 (D.C. 2008) (stating that "except where the two acts differ," cases interpreting the federal FOIA are instructive); *Sch. St. Assocs. Ltd. P'ship v. District of Columbia*, 764 A.2d 798, 805 (D.C. 2001) ("[W]e owe a level of deference to OTR's interpretation of its governing statute.").

B. <u>The Personal Privacy Exemption Also Protects Tax Information.</u>

The parties are in agreement that the personal privacy exemption precludes release of "names and personal identifiers." Pls.' Mot. at 8. Although Plaintiffs would stop there, this exemption applies more broadly than to mere names and identifiers.

Disclosing the details of information provided by individuals under the promise of confidentiality constitutes an unwarranted invasion of personal privacy. *See District of Columbia v. Fraternal Order of Police, Metropolitan Police Dep't Labor Committee* ("*FOP 2013*"), 75 A.3d 259, 267 (D.C. 2013) ("Like the D.C. Circuit, we conclude that a government pledge of confidentiality, made in good faith and consistently honored, should be given weight on the privacy side of the scale."). As such, "the burden shifts to the requestor to demonstrate that the disclosure of the withheld information would advance a significant public interest, and that public interest in disclosure outweighs the privacy concern." *Fraternal Order of Police, Metropolitan Police Labor Committee v. District of Columbia* ("*FOP 2015*"), 124 A.3d 69, 77 (D.C. 2015) (footnote omitted).

Plaintiffs do not seriously argue that *private* letter rulings are not issued under a promise of confidentiality by the District. And contrary to Plaintiffs' reliance on a single public guidance being "adapted" from a PLR, Plaintiffs point to no instance of a PLR being publicly released. Thus, the District has made a promise of confidentiality "in good faith and consistently." *FOP 2013*, 75 A.3d at 267. And Plaintiffs have failed to show that the public interest in disclosure would outweigh the privacy concerns. Plaintiffs acknowledge that the District routinely provides public tax guidance. *See* Pls.' Mot. at 9; *see also* Def. Mot. for Summ. J. Ex. 8. Instead, Plaintiffs argue that the public has an interest in avoiding the development of "secret law." Pls.' Mot. at 9. But it is undisputed that the District does not consider PLRs as having precedential effect. *See* Def.'s Stmt. of Material Undisputed Facts ¶ 2. And although the PLRs "bind" OTR with respect to the taxpayer requesting the guidance, they are not truly binding as OTR can withdraw or revoke a PLR. Def. Mot. for Summ. J. Ex. 7. And OTR emphasizes that a PLR "may not be used by any other taxpayer." *Id.* Thus, it is simply inaccurate to characterize PLRs as some sort of "secret law."

Accordingly, Plaintiffs have not met their burden to show that the public interest outweighs the privacy concerns of the PLRs. The FOIA privacy exemption thus applies and precludes disclosure.

CONCLUSION

For these reasons, and for the reasons stated in the District's moving memorandum of points and authorities in support of its motion for summary judgment, the Court should grant summary judgment in favor of the District after its review of the documents *in camera*.

Date: December 18, 2020

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

CHAD COPELAND
Deputy Attorney General
Civil Litigation Division

/s/ *Christina Okereke*
CHRISTINA OKEREKE [219272]
Chief, Civil Litigation Division Section I

/s/ *Matthew Trout*
MATTHEW TROUT [1030119]
Assistant Attorney General
400 Sixth Street, N.W.
Washington, D.C. 20001
(202) 724-5695
(202) 724-6590 (fax)
matthew.trout1@dc.gov

Counsel for Defendant District of Columbia