SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

TAX ANALYSTS, et al., *Plaintiffs*, v. DISTRICT OF COLUMBIA, *et. al.*, *Defendants*.	Case No. 2020 CA 001999 B Judge Robert R. Rigsby

ORDER

This matter is before the Court on the *Defendant District of Columbia*'s ("the District") *Opposed Motion for Summary Judgment, filed on* November 23, 2020. Plaintiff filed an Opposition on December 4, 2020, and Defendant filed a Reply on December 18, 2020.[1] Upon consideration of the parties' submissions and the entire record herein, Defendant's Motion is **granted**.

BACKGROUND

Private Letter Rulings (PLRs) are the Office of Tax and Revenue's ("OTR") "response to taxpayer requests for guidance on specific tax matters. A ruling may be relied upon a taxpayer concerning a specific tax matter, since the ruling binds OTR as to the specific tax matter." Def. Ex. 7, *Private Letter Rulings – Tax Law and Guidance, Office of Tax and Revenue, available at* https://otr.cfo.dc.gov/node/410292 (last accessed, Jan. 11, 2021). PLRs apply solely to the taxpayers requesting them, and OTR does not consider them as having precedential effect. *See id.* PLRs thus contrast with other types of tax guidance provided by OTR, such as tax notices, tax

[1] Along with their opposition, Plaintiffs filed a *Motion for In Camera Review of Records* to review the 24 PLRs at issue in the instant dispute.

rulings, and declaratory orders, which provide generalized interpretive guidance or decisions made through public administrative proceedings, all of which are available online. *See* Def. Ex. 8, *Tax Law and Guidance,* Office of Tax and Revenue, available at https://otr.cfo.dc.gov/page/tax-law-and-guidance (last accessed Jan. 11, 2021).

On October 8, 2019, Plaintiffs submitted a District of Columbia Freedom of Information Act Request ("FOIA") to the Office of the Chief Financial Officer ("OCFO"), of which OTR is a sub-agency. *See* DC. Code § 1-204.24a, seeking copies of all private letter rulings, general information letters, and technical advice memoranda prepared by OTR between January 1, 2016 and October 8, 2019. Ex 2, Pls.' Oct. 8, 2019 FOIA Request. On November 14, 2019, OCFO denied the request, citing FOIA exemptions 1 and 6, which respectively exempt from disclosure confidential business records and other records for which disclosure is specifically prohibited by statute. Def. Ex. 3, OCFO's Nov. 14, 2019 Letter.

Plaintiffs appealed that decision to the Mayor on November 20, 2019. Def. Ex. 4 Pls.' Nov. 20, 2019 Appeal. In response to the appeal, OCFO submitted a letter stating that it did not locate any general information letters or technical advice memoranda but had located 24 private letter rulings responsive to Plaintiff's request. Def. Ex. 5, OCFO's Dec. 16, 2019 Response to Pls.' Appeal, at 1. OCFO further indicated that FOIA exemption 2, which exempts disclosure of personal private information, also applied to portions of the PLRs *Id.* The Mayor denied the appeal on January 14, 2020, agreeing that the three FOIA exemptions cited by OCFO applied, and stating that any-nonexempt material was not reasonably segregable from the exempt portions of the letters. Ex. 6, Jan 14, 2020 Denial of Appeal. Plaintiffs now bring suit to compel disclosure of these Private Letter Rulings.

LEGAL STANDARD

Summary Judgment

To prevail on a motion for summary judgment, the moving party has the burden of demonstrating, based on the entire record, that there is no genuine issue as to any material fact and that it is thus entitled to judgment as a matter of law. *See* Super. Ct. Civ. R. 56(c); *see also Wash. Inv. Ptnrs. of Del., LLC v. Sec. House*, 28 A.3d 566, 573 (D.C. 2011) (citing *Grant v. May Department Stores Co.*, 786 A.2d 580, 583 (D.C. 2001)). "A genuine issue of material fact exists if the record contains 'some significant probative evidence…so that a reasonable fact-finder would return a verdict for the non-moving party.'" *See Brown v. 1301 K St. Ltd. P'ship*, 31 A.3d 902, 908 (D.C. 2011) (citing *1836 S St. Tenants Ass'n v. Estate of Battle*, 965 A.2d 832, 836 (D.C. 2009)).

Once the movant satisfies this burden, the burden shifts to the non-moving party to show the existence of an issue of material fact. *See id.*; *Bruno v. Western Union Fin. Servs., Inc.*, 973 A.2d 713, 717 (D.C. 2009). To defeat summary judgment, the non-moving party "must produce at least enough evidence to make out a prima facie case in support of his position," *Bruno*, 973 A.2d at 717 (internal quotations and citation omitted), and a showing of proof sufficient to create a genuine issue of a material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). "A movant is entitled to summary judgment when the evidence is such that a reasonable jury, drawing all reasonable inferences in the non-movant's favor, could not return a verdict for the non-movant." *See Walker v. Johnson*, 798 F.3d 1085, 1091 (D.C. Cir. 2015) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 255 (1986)).

District of Columbia Freedom of Information Act

"The District of Columbia FOIA. . . .was modeled on the corresponding federal statute, 5 U.S.C. § 552 (1982), and many of its provisions closely parallel those of the federal act." *Barry v. Washington Post Co*., 529 A.2d 319, 321 (D.C. 1987). Like the federal FOIA, the D.C. FOIA embodies a strong policy that favors the disclosure of information related to governmental affairs and the acts of public officials. *Id.* This policy "requires the courts to read narrowly any statutory exemptions from disclosure." *Id.* (citing *Dunhill v. Director, District of Columbia Department of Transportation*, 416 A.2d 244, 247 n.5 (D.C. 1980)). "The act provides for full disclosure unless the information requested is exempted under a specific statutory provision; in the absence of a statutory exemption, a court has no general equitable power to prevent disclosure under FOIA of public documents and records." *Id.* (citing *Washington Post Co. v. United States Department of State*, 222 U.S. App. D.C. 248, 250, 685 F.2d 698, 700 (1982), *cert. granted*, 464 U.S. 812, 104 S. Ct. 65, 78 L. Ed. 2d 80, *vacated as moot*, 464 U.S. 979, 104 S. Ct. 418, 78 L. Ed. 2d 355 (1983)). The Court has no power to create additional exemptions from disclosure. *Id* Finally, "any doubts about the applicability of a particular exemption must be resolved in favor of disclosure." *Id.* (citing *Hawkes v. Internal Revenue Service*, 467 F.2d 787, 795-796 (6th Cir. 1972)). Judicial review of an agency's decision under D.C. FOIA is *de novo*, the burden is on the agency to sustain its decision, and the court may examine the withheld documents *in camera* in order to assess any exemption claims. D.C. Code §2-537(b).

DISCUSSION

Section 47-4406 Prohibits the Disclosure of PLRs

Defendants argue that summary judgment is appropriate because the documents at issue, 24 PLRs, are exempt from disclosure under D.C. Code 47-4406, which governs the secrecy of tax returns and tax information. Defendants claim that the section 47-4406 is a separate statute that specifically exempts the PLRs from disclosure thus qualifying as an exemption under D.C. FOIA section § 2-534(a)(6)(A). The Court agrees.

Section 47-4406 states in relevant part that:

> an officer, employee, or contractor, or former officer, employee, or contractor of the District of Columbia shall not divulge or make known in any manner the amount of reported value, or any information relating to value or the computation of value disclosed in a [tax] return required to be filed under this title. . . . This subsection shall also be applicable to federal, state, or local tax returns (or copies of these returns) *and to federal, state, or local tax information either submitted by the taxpayer or otherwise obtained.*

D.C. Code § 47-4406 (emphasis added)[2]

The face of the provision leaves no discretion to District officials and applies not only to "returns" but also to any "tax information" submitted by the taxpayer, whether it is included in the return or not. *See id*. There are instances where the statute contemplates disclosure. *See id*. § 47-4406 (b)-(e). However, FOIA is not listed among the exceptions to disclosure, and none of the other narrow exceptions apply. *See id.* There are also criminal penalties that attach to anyone who willingly discloses this tax information. § 47-4406 (f).

Here, it is undisputed that the Private Letter Rulings Plaintiffs seek are the Defendant's responses to private requests by taxpayers for advice on their specific tax circumstances based on the information they provided to OTR. *See* Def. Ex. 7. This is "tax information. . .submitted by the taxpayer," which the District of Columbia shall not divulge." D.C. Code § 47-4406. Because this tax information is "specifically exempted from disclosure by statute" in a manner that

[2] In granting in part and denying in part the District's motion to dismiss, the Court based its ruling on the first half of this clause relating to "any information relating to value or the computation of value, disclosed in a [tax] return." *See* July 20, 2020 Order at 4-5. The District does not rely on this portion of the provision. Rather the District bases it's argument on the latter half of this provision, which states that "[t]his subsection shall also be applicable to federal, state, or local tax returns . . and to *federal, state or local tax information. . . .*" D.C. Code § 47-4406 (emphasis added).

"leave[s] no discretion on this issue," D.C. FOIA does not entitle Plaintiffs to this information. D.C. Code § 2-534(a)(6). Accordingly, the District is entitled to summary judgment on this basis.

Plaintiffs argue that the "tax information" protected by the tax code should be interpreted consistently with federal tax provisions 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). Plaintiffs argue that they are entitled to "the legal issue, the facts, and the agency's analysis" contained in the PLRs. Plaintiffs however cannot reconcile this entitlement with the definition of exempt information quoted above. 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 Plaintiff's reading of the tax secrecy provisions, Plaintiffs are not entitled to the information sought.

<u>The PLRs Are Not Reasonably Segregable from Any-Non Exempt Information</u>

FOIA requires disclosure of "[a]ny reasonably segregable portion of a public record" not exempt from disclosure. D.C. Code § 2-534(b). The D.C. Court of Appeals has not defined "reasonably segregable" but other Courts applying federal FOIA evaluate whether "exempt" and non-exempt information are 'inextricably intertwined,' such that the excision of the exempt information would impose significant costs on the agency and produce and edited document with little informational value." *Mays v. Drug Enforcement Admin.*, 234 F.3d 1324, 1327 (D.C. Cir.

2000) (quoting *Neufeld v. IRS*, 646 F.2d 661, 666 (D.C. Cir. 1981). "[I]n the context of FOIA cases, [the District] routinely look[s] to federal law to interpret analogous provisions in our own Act." *Fraternal Order of Police, Metro. Labor Comm. V. District of Columbia*, 113 A.3d 195, 199 (D.C. 2015). Under D.C. Code § 2-537(b), the Court may "examine the contents of such records or any part thereof shall be withheld under any of the exemptions set forth in 2-534." Here, the PLRs are in their entirety an evaluation of the tax consequences of a taxpayer's financial circumstances. *See* Def. Ex. 8. Redacting the tax-exempt information from an analysis of the same would "Produce an edited document with little informational value," *Mays*, 243 F.3d at 1327, and therefore it is appropriate to withhold the documents in their entirety. *See id.*

In light of the above the Court also denies the Plaintiffs' *Motion for In Camera Review* of the 24 PLRs at issue in this case.

CONCLUSION

Accordingly, and based on the entire record herein, it is this the 13th day of January, 2021, hereby

ORDERED that Defendants' Motion for Summary Judgment is **GRANTED;** and it is further

ORDERED that Summary Judgment is **GRANTED** in favor of Defendant and against Plaintiffs; and it is further

ORDERED that Plaintiff's Motion for In Camera Review of Records is **DENIED;**

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SO ORDERED.

Robert R. Rigsby

Robert R. Rigsby, Associate Judge

Superior Court of the District of Columbia

Copies to:

Counsel of Record Via CaseFileXpress