

# VAN NESS SOUTH TENANTS ASSOCIATION

April 1, 2022

Ms. Lorry Bonds  
General Counsel  
District of Columbia Housing Authority  
1133 North Capitol Street, NE, #210  
Washington, DC 20002

Dear Ms. Bonds,

I am writing to submit a FOIA request for rent information for 3003 Van Ness Street NW, an apartment property managed by Equity Residential corporation and its subsidiary, Smith Property Holdings Van Ness. I am the president of the Van Ness South Tenants Association, which represents residents of 3003 Van Ness.

I and many other residents of 3003 Van Ness support the use of vouchers to subsidize housing for lower income individuals and families. However, the Bowser administration appears to have vastly expanded such programs in our area without providing any information about them.

Residents are concerned about the effect these programs on rent-stabilization, which helps make housing affordable for many DC families. The DCHA website shows that it [pays up to \\$2,648](#) for a one-bedroom with utilities in the Van Ness neighborhood – more than \$500 per month more than a typical one-bedroom at 3003 Van Ness. If DCHA pays any amount greater than the rent-stabilized rent it undermines rent stabilization and makes housing less affordable for other residents.

For these reasons, we seek the information listed below. *We do not seek personal data* and we expect that if there is personal data on a document, that it will be redacted to protect privacy.

1. Any agreement, formal or informal, including by not limited to Housing Assistance Payments Contracts, between DCHA and Smith Property Holdings Van Ness or Equity Residential, pertaining to the property at 3003 Van Ness Street, NW.
2. The aggregate number of residents supported by DCHA vouchers in calendar years 2015, 2016, 2017, 2018, 2019, 2021, and 2022, broken down by program (e.g., Housing Choice, Housing First, etc.) and by provider (e.g., via DCHA, DHS, another agency, or non-governmental nonprofit, etc.)
3. A list of current rents paid to Equity Residential or Smith Property Holdings for apartments at 3003 Van Ness using DCHA vouchers or any other DCHA funding, including the total rent received by the landlord, the amount paid by DCHA, and the number of bedrooms.

Sincerely,



Harry Gural  
President, Van Ness South Tenants Association

cc: Hammere Gebreyes, Director of Strategic Planning, DCHA  
Rachel Joseph, Chief Operating Officer, DCHA  
Councilmember Mary Cheh  
Councilmember Anita Bonds



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**RE: FOIA request for 3003 Van Ness Street NW**

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foia <foia@dchousing.org>  
To: Harry Gural <harrygural@gmail.com>  
Cc: foia <foia@dchousing.org>

Tue, Apr 12, 2022 at 4:19 PM

Pursuant to DC Official Code § 2-532, we hereby acknowledge receipt of your FOIA request received on *April 1, 2022*, and send this acknowledgment to advise you that your request is in process. Please be advised that the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records may cause a delay in the processing of not more than ten (10) days beyond the initial statutory fifteen (15) day time period. If we determine that your request cannot be processed within the statutory timeframe, we will provide you with written notification of any such extension and advise you of the proposed response date of your FOIA request. Pursuant to 1 DCMR §408.1, please find below our standard charges for processing FOIA requests:

- Search fee:
- \$4.00 per quarter hour, after 1<sup>st</sup> hour, by clerical personnel
  - \$7.00 per quarter hour, after 1<sup>st</sup> hour, by professional personnel
  - \$10.00 per quarter hour, after 1<sup>st</sup> hour, by supervisory personnel

Review fee: Charges for the initial review of documents shall be assessed at the rates provided above.

Duplication fee: \$0.25 per page for copies made by photocopy machines

In the event the cost to produce the documents responsive to your FOIA request exceeds \$250, we will contact you to advise you of the fees, obtain your consent for payment, and proceed with processing your request.

Please feel free to contact our office at 202-535-2835, if you have any questions.

**Chiffaun Williams**

**Senior Paralegal Specialist**

Office of General Counsel

**District of Columbia Housing Authority**

e: [pwilliams@dchousing.org](mailto:pwilliams@dchousing.org)

m: (202) 848-1552

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[www.dchousing.org](http://www.dchousing.org)

# VAN NESS SOUTH TENANTS ASSOCIATION

April 15, 2022

Ms. Kimberly August  
Managing Senior Associate General Counsel and FOIA Officer  
District of Columbia Housing Authority  
1133 North Capitol Street, NE, #210  
Washington, DC 20002

Dear Ms. August,

Thank you for your 4/14 email responding to our 4/1 letter and FOIA request for DCHA records concerning the apartment complex at 3003 Van Ness.

As I stated in my email of 4/12, the Van Ness South Tenants Association is a registered DC nonprofit organization and should receive a waiver of any fees associated with our FOIA request. We have submitted other FOIA requests to other District agencies in the past and we have never been asked to pay a fee for retrieving or copying records.

Our request is in the public interest because DHCA's "approved rents" and the amounts in actually pays for apartments affect the availability and the cost of apartments for DC residents who do not have housing vouchers. There is evidence that DCHA may be paying extraordinarily high rents, [up to \\$2,648 for a one bedroom apartment with utilities](#), for units occupied by tenants with DCHA vouchers – far above market prices or rent-stabilized prices. If true, this would undermine DC rent-stabilization law and discriminate against residents who don't receive vouchers.

Please do not delay processing our FOIA request due to your internal deliberation of whether or not fees should be waived. If it is useful for your internal planning, you may assume that we would pay research fees and copying fees if you reject our request for a public interest waiver and if we do not prevail in a formal appeal of that rejection. In other words, there is no reason to delay the statutory deadlines. The FOIA request was made on April 1<sup>st</sup> and therefore the 15-day deadline is April 16<sup>th</sup>, with a possible extension of 10 additional days to April 26<sup>th</sup>.

Sincerely,



Harry Gural  
President, Van Ness South Tenants Association

cc: Ms. Lorry Bonds, General Counsel  
Hammere Gebreyes, Director of Strategic Planning, DCHA  
Rachel Joseph, Chief Operating Officer, DCHA  
Councilmember Mary Cheh  
Councilmember Anita Bonds



Harry Gural <harrygural@gmail.com>

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## FOIA Response: 3003 Van Ness Street NW

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foia <foia@dchousing.org>

Tue, Apr 19, 2022 at 8:10 AM

To: "Harry Gural (harrygural@gmail.com)" <harrygural@gmail.com>

Cc: foia <foia@dchousing.org>, Eric Topor <etopor@dchousing.org>, Kimberly August <kaugust@dchousing.org>

This is in response to your FOIA request received on "April 1, 2022", by the District of Columbia Housing Authority ("DCHA"), requesting the following for information:

- 1. Any agreement, formal or informal, including by not limited to Housing Assistance Payments Contracts, between DCHA and Smith Property Holdings Van Ness or Equity Residential, pertaining to the property at 3003 Van Ness Street, NW.**
- 2. The aggregate number of residents supported by DCHA vouchers in calendar years 2015, 2016, 2017, 2018, 2019, 2021, and 2022, broken down by program (e.g., Housing Choice, Housing First, etc.) and by provider (e.g., via DCHA, DHS, another agency, or nongovernmental nonprofit, etc.)**
- 3. A list of current rents paid to Equity Residential or Smith Property Holdings for apartments at 3003 Van Ness using DCHA vouchers or any other DCHA funding, including the total rent received by the landlord, the amount paid by DCHA, and the number of bedrooms.**

The FOIA Act does not require the District of Columbia Housing Authority ("DCHA") to conduct research for requesters, answer written questions, or in any other way create records (such as lists or statistics) to respond to a request. As such DCHA can only provide copies of existing documents and/or records maintained by the agency under FOIA.

In accordance with the District of Columbia Freedom of Information Act ("DC FOIA"), D.C. Official Code § 2-532 (2001), we thoroughly searched the applicable agency records and submit the following responses to your request.

- 1. Any agreement, formal or informal, including by not limited to Housing Assistance Payments Contracts, between DCHA and Smith Property Holdings Van Ness or Equity Residential, pertaining to the property at [3003 Van Ness Street, NW](#).**

In accordance with D.C. Code §2-532, we thoroughly searched the applicable agency records and found there were no documents responsive to this request.

- 2. The aggregate number of residents supported by DCHA vouchers in calendar years 2015, 2016, 2017, 2018, 2019, 2021, and 2022, broken down by program (e.g., Housing Choice, Housing First, etc.) and by provider (e.g., via DCHA, DHS, another agency, or nongovernmental nonprofit, etc.)**

In accordance with D.C. Code §2-532, we thoroughly searched the applicable agency records and found there were no documents responsive to this request.

However, current HCVP voucher rental rate information by neighborhoods and bedroom sizes is publicly available. You may visit the Landlord Section of the DCHA website to access and search [Approved HCVP Rents in the District of Columbia](#). You can gather information about the [Approved HCVP Rents in the District of Columbia Neighborhood Columbia Heights](#).

DCHA does not keep a historical record of HCVP rents; however, you can visit the [U.S. Department of Housing and Urban Development's \(HUD\) Fair Market Rent Documentation System](#) to access and search that historical information.

**3. A list of current rents paid to Equity Residential or Smith Property Holdings for apartments at 3003 Van Ness using DCHA vouchers or any other DCHA funding, including the total rent received by the landlord, the amount paid by DCHA, and the number of bedrooms.**

In accordance with D.C. Code §2-532, we thoroughly searched the applicable agency records and found there were no documents responsive to this request.

If you consider this response a denial of your request, you are advised that under D.C. Code § 2-537 and 1 DCMR 412, you have the right to appeal to the Mayor or the Superior Court of the District of Columbia.

If you elect to appeal to the Mayor, your appeal must be in writing and contain "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well as on the outside of the envelope. The appeal must include (1) a copy of the original request, (2) a copy of this letter, (3) a statement of the circumstances, reasons, and or arguments advanced in support of disclosure, and (4) a daytime telephone number, and e-mail and/or U.S. Mail address at which you can be reached. The appeal must be mailed to the Mayor's Office of Legal Counsel, FOIA Appeal, and 1350 Pennsylvania Avenue, N.W., Suite 407, Washington, D.C. 20004. Electronic versions of the same information can instead be e-mailed to the Mayor's Office of Legal Counsel at [foia.appeals@dc.gov](mailto:foia.appeals@dc.gov). Further, a copy of all appeal materials must be forwarded to me.

Please feel free to contact me with any questions.

**Chiffaun Williams**

**Senior Paralegal Specialist**

Office of General Counsel

**District of Columbia Housing Authority**

e: [pwilliams@dchousing.org](mailto:pwilliams@dchousing.org)

# VAN NESS SOUTH TENANTS ASSOCIATION

April 20, 2022

Ms. Brenda Donald  
Executive Director  
District of Columbia Housing Authority  
1133 North Capitol Street, NE, #210  
Washington, DC 20002

Dear Ms. Donald,

I am writing in response to DCHA's recent rejection of our FOIA request for aggregate information about the number of DCHA vouchers used and the rents paid for apartments at 3003 Van Ness Street, NW. DCHA refused to provide any information whatsoever, stating "*we thoroughly searched the applicable agency records and found that there were no documents responsive to this request.*"

It strains the imagination to think that the DC Housing Authority has no records whatsoever of how many households it sponsors at a given address and at what cost. For this reason, we ask that you overturn the blanket rejection of our request and that take action to quickly provide the information requested.

I and many other residents of 3003 Van Ness and the surrounding community support the use of vouchers to subsidize housing for low-income individuals and families. However, the DCHA [list of approved rents](#) reveals extremely high rates – \$2,648 for a one-bedroom apartment in our area. These DCHA rents [are 187% of HUD Fair Market Rents](#); they vastly exceed rent stabilized rates; and they far exceed even market rates. Some landlords advertise mediocre apartments for [exactly the maximum rate](#), suggesting that DHCA likely approves such charges. A recent DCHA training even advised prospective landlords about how to receive the maximum approved rents.

Research [suggests](#) that properly capped and administered vouchers likely do not drive up market rents. However, the inverse also is true – extremely high voucher rents likely drive up rents for those without vouchers. Such high rates also would be an enormous financial windfall to landlords and give them huge incentives to employ source of income discrimination (SOI) against renters without vouchers. This not only directly harms renters directly affected but, if these abuses were widely known, would undermine public support for the Housing Choice Vouchers Program, the Moving to Work Demonstration Program, and other housing initiatives.

Residents of 3003 Van Ness and other apartment buildings in the city have a right to know whether extremely high DCHA voucher reimbursement rates discriminate against them and against other non-voucher holders seeking housing. There is [substantial evidence](#) that many of the large, rent-stabilized apartment buildings along Connecticut Avenue have experienced extremely high conversion rates, with voucher-holding tenants displacing others. This undermines rent-stabilization, which is one of the most important mechanisms for restraining rapid increases in housing costs citywide.

On April 1 we submitted a FOIA request asking for aggregate data on the number of residents housed at 3003 Van Ness using DCHA vouchers for 2015-2022; the letter to General Counsel Lorry

Bonds is attached. We also requested a list of current rents paid by DCHA and amounts received by the property owner. In addition, we requested information on any contracts between DCHA and Equity Residential or its subsidiary, Smith Property Holdings Van Ness. We specifically stated that we do not seek any personal or identifying information.

Nevertheless, DCHA systematically blocked our simple FOIA request. On April 12<sup>th</sup>, we received an email stating that there would be steep research fees, as much as \$40 per hour. I sent a second letter on April 15<sup>th</sup>, explaining the tenants association is a nonprofit organization and demonstrating that obtaining the requested information is in the public interest. Finally, on April 19<sup>th</sup>, we received a blanket rejection of every element of our FOIA request, claiming that DCHA does not have even the most basic records of its own operations.

It is not plausible for DCHA to claim that it keeps no records. It also is wrong for DCHA to refuse to share basic data that clearly is in the public interest and that clearly affects the rights of renters. For these reasons, I reiterate our request for the information listed in our attached letter of April 1<sup>st</sup> and ask that DCHA expedite the retrieval of this data.

Sincerely,



Harry Gural  
President, Van Ness South Tenants Association

cc: Eugene Adams, Director, Mayor's Office of Legal Counsel  
Lorry Bonds, General Counsel, DCHA  
Eric Topor, Associate General Counsel, DCHA  
Rachel Joseph, Chief Operating Officer, DCHA  
Hammere Gebreyes, Director of Strategic Planning, DCHA  
Kimberly August, FOIA Officer, DCHA

Marianne Nazzaro, Director, Moving to Work, HUD  
Margaret O'Sullivan, Regional Public Housing Director, HUD  
Christine Jenkins, DC Director, HUD

Councilmember Mary Cheh  
Councilmember Anita Bonds  
Councilmember Robert White

Attached:

FOIA request to DCHA General Counsel Lorry Bonds – 4/1/22  
Email from DCHA to VNSTA, estimated steep costs for processing the request – 4/12/22  
Letter from VNSTA to DCHA claiming a fee waiver for nonprofit organizations – 4/15/22  
Email from DCHA to VNSTA rejecting all information requested – 4/19/22





Harry Gural <harrygural@gmail.com>

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## Letter requesting reversal of DCHA decision to deny FOIA request for data on housing vouchers at 3003 Van Ness

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Kimberly August <kaugust@dchousing.org>

Wed, Apr 20, 2022 at 2:40 PM

To: Harry Gural <harrygural@gmail.com>

Cc: foia <foia@dchousing.org>, "eugene.adams@dc.gov" <eugene.adams@dc.gov>, "foia.appeals@dc.gov" <foia.appeals@dc.gov>, Eric Topor <etopor@dchousing.org>, Possilett Williams <pwilliams@dchousing.org>, "Rachel M. Joseph" <rmjoseph@dchousing.org>, Hammere Gebreyes <hgebreye@dchousing.org>, Mary Cheh <mcheh@dccouncil.us>, Anita Bonds <ABonds@dccouncil.us>, Robert White <rwhite@dccouncil.us>, "Marilyn.B.O'Sullivan@hud.gov" <Marilyn.B.O'Sullivan@hud.gov>, "Christine.Jenkins@hud.gov" <Christine.Jenkins@hud.gov>, "marianne.nazzaro@hud.gov" <marianne.nazzaro@hud.gov>, Brenda Donald <bdonald@dchousing.org>, Lorry Bonds <LBonds@dchousing.org>

Mr. Gural,

In our April 19, 2022, response to your FOIA request, the District of Columbia Housing Authority (DCHA) advised you on how to proceed if you considered our response a denial of your request. (See the attached email.) **Your request for Director Donald to overturn the FOIA response is inappropriate** and inconsistent with the requirements delineated in the District of Columbia Freedom of Information Act. However, under D.C. Code § 2-537 and 1 DCMR 412, you have the right to appeal to the Mayor's Office of Legal Counsel or the Superior Court of the District of Columbia.

If you elect to appeal to the Mayor's Office of Legal Counsel, your appeal must be in writing and contain "Freedom of Information Act Appeal" or "FOIA Appeal" in the subject line of the letter as well as on the outside of the envelope.

The appeal must include:

- (1) a copy of the original request
- (2) a copy of this letter
- (3) a statement of the circumstances, reasons, and or arguments advanced in support of disclosure, and
- (4) a daytime telephone number, and e-mail and/or U.S. Mail address at which you can be reached.

The appeal must be mailed to the Mayor's Office of Legal Counsel, FOIA Appeal, and 1350 Pennsylvania Avenue, N.W., Suite 407, Washington, D.C. 20004.

Electronic versions of the same information can instead be e-mailed to the Mayor's Office of Legal Counsel at [foia.appeals@dc.gov](mailto:foia.appeals@dc.gov). Further, a copy of all appeal materials must be forwarded to DCHA.

Finally, be advised that the email address ([brenda.donald@dc.gov](mailto:brenda.donald@dc.gov)) that you used to send the letter to Executive Director Brenda Donald requesting that she overturn the FOIA response is not a DCHA email.

That email address was Director Donald's email at the District of Columbia Child and Family Services Agency (CFSA) before she retired from the agency.

Regards,

**Kimberly J. August**

**Managing Senior Associate General Counsel and Freedom of Information Act (FOIA) Officer**

Office of General Counsel

**District of Columbia Housing Authority**

e: [kaugust@dchousing.org](mailto:kaugust@dchousing.org)

**Pronouns: she/her/hers**

d: (202) 774-2754

m: (202) 390-0709

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[www.dchousing.org](http://www.dchousing.org)

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**From:** Harry Gural [mailto:[harrygural@gmail.com](mailto:harrygural@gmail.com)]

**Sent:** Wednesday, April 20, 2022 1:38 PM

**To:** [brenda.donald@dc.gov](mailto:brenda.donald@dc.gov)

**Cc:** foia; [eugene.adams@dc.gov](mailto:eugene.adams@dc.gov); [foia.appeals@dc.gov](mailto:foia.appeals@dc.gov); Eric Topor; Kimberly August; Possilett Williams; Rachel M. Joseph; Hammere Gebreyes; Mary Cheh; Anita Bonds; Robert White; [Marilyn.B.O'Sullivan@hud.gov](mailto:Marilyn.B.O'Sullivan@hud.gov); [Christine.Jenkins@hud.gov](mailto:Christine.Jenkins@hud.gov); [marianne.nazzaro@hud.gov](mailto:marianne.nazzaro@hud.gov)

**Subject:** Letter requesting reversal of DCHA decision to deny FOIA request for data on housing vouchers at 3003 Van Ness

**CAUTION:**

**This email originated from outside of DCHA. Do not click on any links or open attachments unless you recognize the sender and know the content is safe. If you're unsure, forward this email as an attachment ONLY to [suspmail@dchousing.org](mailto:suspmail@dchousing.org)**

[Quoted text hidden]

----- Forwarded message -----

From: foia <[foia@dchousing.org](mailto:foia@dchousing.org)>

To: "Harry Gural ([harrygural@gmail.com](mailto:harrygural@gmail.com))" <[harrygural@gmail.com](mailto:harrygural@gmail.com)>

Cc: foia <[foia@dchousing.org](mailto:foia@dchousing.org)>, Eric Topor <[etopor@dchousing.org](mailto:etopor@dchousing.org)>, Kimberly August <[kaugust@dchousing.org](mailto:kaugust@dchousing.org)>

Bcc:

Date: Tue, 19 Apr 2022 12:10:30 +0000

Subject: FOIA Response: 3003 Van Ness Street NW

This is in response to your FOIA request received on "April 1, 2022", by the District of Columbia Housing Authority ("DCHA"), requesting the following for information:

# VAN NESS SOUTH TENANTS ASSOCIATION

August 22, 2022

Mr. Eugene Adams  
Director  
Mayor's Office of Legal Counsel, FOIA Appeals  
John A. Wilson Building, Suite 407  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Re: Freedom of Information Act Appeal

Dear Mr. Adams,

I am writing to appeal the decision by the DC Housing Authority (DCHA) to deny our Freedom of Information Act request for information related to the use of housing vouchers at 3003 Van Street, the residents of which are represented by the Van Ness South Tenants Association.

Our [FOIA request](#) is for aggregate, non-personal data – specifically, the number of housing vouchers used at 3003 Van Ness that were provided or paid for by DCHA, by year (2015-2022), by program, and by provider. We also seek copies of contracts (with names redacted) between DCHA and Equity Residential, also operating as Smith Property Holdings Van Ness, as well as a list of the rents actually paid for the apartments rented with housing vouchers.

DCHA denied this request, claiming that “*we thoroughly searched the applicable agency records and found that there were no documents responsive to this request.*” However, it does not seem plausible that DCHA has no records of how many vouchers it processes at a specific address and at what cost.

Mayor Muriel Bowser has said that the public has a right to detailed information about the housing voucher programs. In a meeting with me and six other tenant association presidents on June 8, she said that she is committed to transparency and pledged that [she would seek release of detailed information](#) about the housing voucher programs. We now ask the Mayor's Office of Legal Counsel to demonstrate her commitment to transparency by ordering DCHA to release the information requested by FOIA in a timely manner.

The requested information is important to residents of 3003 Van Ness, who have suffered for many years from poor treatment by owner and manager Equity Residential corporation, which misled and overcharged tenants in a scam for which it was successfully prosecuted by Attorney General Karl Racine, and was forced to pay [two million dollars in penalties](#). Residents also have suffered from Equity's chronic neglect of security, for which it was [threatened with another lawsuit](#) by the Attorney General. It now appears that Equity Residential is using housing vouchers to squeeze more profits out of the property while further hurting residents. The information requested via FOIA would help us understand the extent of the harm.

Anecdotal evidence suggests that Equity leases apartments at 3003 Van Ness to a substantial number of housing voucher recipients, but the exact number is unknown. A FOIA request to the DC Department of Health and Human Services found that in 2022 the agency was using housing vouchers to support 41 households comprised of formerly unhoused individuals at 3003 Van Ness. The total number of households supported by vouchers likely is much higher. Only DCHA, which processes the vouchers distributed by other agencies and organizations, has comprehensive knowledge of the number of vouchers used under various programs at specific properties.

The FOIA requests both the number of units rented using vouchers and the rents actually paid, because this combination of data is critical to understanding the effect of the voucher programs. It appears that Equity may be charging voucher recipients more than it would for non-voucher recipients. If so, this would partly explain why [the company has treated its long-time tenants so poorly](#) – it can make higher profits by preferentially leasing to voucher recipients, discriminating against non-voucher recipients. It also would explain why Equity [refuses to provide adequate maintenance](#) and [neglects building security](#).

Renting to a large number of voucher recipients at inflated rents also would drive up housing costs for residents who don't receive housing vouchers, undermining their ability to negotiate for fair rents. It would reduce the number of rent-stabilized units available, further driving up rents and weakening consumer protections. And it would decrease the ability of the tenant association to mount an effective TOPA negotiation as Equity Residential plans to put the property up for sale.

In addition, the requested data may contain evidence of illegal behavior. For example, it is against the law to charge voucher recipients higher rents than non-voucher recipients for substantially similar units. It also is illegal to create poor living conditions to [constructively evict](#) tenants.

Release of the information in our FOIA request also is important for the general public, which has a right to know if taxpayer money is being wasted, including funds provided by the U.S. Department of Housing and Urban Development, and by the District of Columbia. It has a right to know the extent of windfall profits to landlords. It has a right to know the extent of the large-scale expansion of the use of housing vouchers in selected residential apartment buildings and neighborhoods. And it has a right to know if taxpayer money is being used to reduce the number rent-stabilized apartment units in the District, which now are largely occupied by modest- and middle-income families and individuals. This would drive up the cost of housing for many Washingtonians.

It is not plausible for DCHA to claim that it keeps no records on the number of voucher recipients by program, year or by property or that it keeps no records on the actual rents paid. The Freedom of Information Act mandates that such data, which is clearly in the public interest, should be released. For these reasons, we reiterate our request for the information listed in our attached letter of April 1 and ask the Mayor's Office of Legal Counsel to impose a firm deadline for DCHA to share the requested information with our tenant association and with the public.

Sincerely,



Harry Gural  
President, Van Ness South Tenants Association

cc: Mayor Muriel Bowser  
Brenda Donald, Executive Director, DCHA  
Victor Martinez, Deputy Executive Director, DCHA  
Lorry Bonds, General Counsel, DCHA  
Eric Topor, Associate General Counsel, DCHA  
Rachel Joseph, Chief Operating Officer, DCHA  
Hammere Gebreyes, Director of Strategic Planning, DCHA  
Kimberly August, FOIA Officer, DCHA  
Danielle Bastarache, Deputy Assistant Secretary, Public and Indian Housing, HUD  
Krista Mills, Executive Director, Public and Indian Housing, HUD  
Steven Durham, Director, Housing Voucher Programs, HUD  
Marianne Nazzaro, Director, Moving to Work, HUD  
Patricia Knight, Director, Recovery and Prevention Corps, HUD  
Marilyn O'Sullivan, Regional Public Housing Director, HUD  
Jane Miller, Region 3 Deputy Regional Administrator, HUD  
Christine Jenkins, DC Director, HUD  
Councilmember Mary Cheh  
Councilmember Anita Bonds  
DC Council Chairman Phil Mendelson

Attached:

FOIA request to DCHA General Counsel Lorry Bonds – 4/1/22  
Email from DCHA to VNSTA, estimating steep costs for processing the request – 4/12/22  
Letter from VNSTA to DCHA claiming a fee waiver for nonprofit organizations – 4/15/22  
Email from DCHA to VNSTA rejecting all information requested – 4/19/22  
Letter from VNSTA to DCHA Executive Director Brenda Donald – 4/20/22  
Email from Kimberly August to VNSTA re: appeal to MOLC – 4/20/22



**Brenda Donald, Executive Director**

**TRANSMITTED VIA EMAIL**

September 19, 2022

Eugene Adams, Director  
Mayor's Office of Legal Counsel  
1350 Pennsylvania Ave, NW, Suite 407  
Washington, DC 20004  
[Eugene.adams@dc.gov](mailto:Eugene.adams@dc.gov)

Re: DCHA's Response to FOIA Appeal 2022-210

Director Adams:

The District of Columbia Housing Authority (DCHA) submits this Response to the FOIA Appeal of Harry Gural in the above-referenced matter.

On April 19, 2022, DCHA responded to Harry Gural's April 1, 2022, FOIA request for the following information:

1. Any agreement, formal or informal, including by not limited to Housing Assistance Payments Contracts, between DCHA and Smith Property Holdings Van Ness or Equity Residential, pertaining to the property at 3003 Van Ness Street, NW.
2. The aggregate number of residents supported by DCHA vouchers in calendar years 2015, 2016, 2017, 2018, 2019, 2021, and 2022, broken down by program (e.g., Housing Choice, Housing First, etc.) and by provider (e.g., via DCHA, DHS, another agency, or nongovernmental nonprofit, etc.)
3. A list of current rents paid to Equity Residential or Smith Property Holdings for apartments at 3003 Van Ness using DCHA vouchers or any other DCHA funding, including the total rent received by the landlord, the amount paid by DCHA, and the number of bedrooms.

Mr. Gural is correct in his assertion that DCHA responded to all three requests by advising him that DCHA found that there were no documents responsive to his requests. In regard to questions 1 and 3, DCHA reiterates that it does not have any Housing Assistance Payments Contracts (HAP) with entities named "Smith Property Holdings Van Ness," "Smith Property Holdings," or "Equity Residential" for apartment units located at 3003 Van Ness St NW, Washington, DC 20008. DCHA's response to questions 1 and 3 was not a denial of the requests. Instead, it was simply a notification that the requested information did not exist and, consequently, that there were no records to produce.

In regard to request 2, DCHA's response stems from the fact that the District of Columbia Freedom of Information Act ("DC FOIA" or the "Act"), D.C. Official Code § 2-532 (2001) does



**Brenda Donald, Executive Director**

not require that DCHA conduct research for requesters, answer written questions, or in any other way create records (such as lists or statistics) to respond to a request. More deliberatively, FOIA does not require an agency to *create* documents or opinions in response to an individual's request for information or to obtain records from another agency. *Dugan v. DOJ*, 82 F. Supp. 3d 485 (2015).

Under the DC FOIA Act, DCHA can only provide copies of existing documents or records maintained by the agency under FOIA. The request for question 2 by Mr. Gural was not for a document, but for DCHA to answer a question concerning voucher quantities. DCHA staff did not find a document responsive to this question and FOIA does not require DCHA to create or generate new records to conform to Mr. Gural's FOIA request if no such records already exist.

DCHA recognizes that FOIA provides the public with the right to request access to our records. In addition, DCHA understands that FOIA requires it to disclose public records, except for those records or portions of records protected from disclosure by the exemptions found in DC Code § 2-534. However, by its very nature, the FOIA statute is responsive. Accordingly, a party must at a minimum submit a request for a *document* for consideration. DCHA's obligation upon receipt of a proper FOIA request is to search the applicable agency records to determine if there are documents responsive to the request. The agency does not have an obligation to create records; instead, the obligation is to search for existing records.

Despite Mr. Gural's assertions to the contrary, the point of this, for purposes of the initial request and subsequent appeal, is not whether it is plausible or reasonable, but rather whether the records exist. In the instant situation, they do not, and that is why DCHA did not cite in its response to Mr. Gural's request that it withheld records.

Although DCHA does not possess records responsive to Mr. Gural's requests, the substance of Mr. Gural's requests may implicate the protected privacy interests of DCHA program participants. Mr. Gural asserts that he is seeking Housing Choice Voucher Program (HCVP) data to review rent reasonableness policies. As the HCVP administrator in the District of Columbia, DCHA must protect the Personal Data or Personal Identifiable Information (PII) of HCVP applicants and participants. As the program's administrator, DCHA is concerned with providing data to individuals or entities that could use that information to target or discriminate against our participants.

DCHA's concern about the overall well-being of its participants and commitment to affirmatively furthering fair housing by championing the United States Department of Housing and Urban Development's (HUD) goal to make HCVP participants indistinguishable from market-rate residences to eliminate the stigma of using a voucher is a priority. The agency is fully committed to upholding the federal Fair Housing Act of 1968 and the District of Columbia Human Rights Act of 1977 and would not want to unwittingly engage in any action, whether intentional or unintentional, that seeks to undermine the eradication of housing discrimination.



## District of Columbia Housing Authority

1133 North Capitol Street N.E.,  
Washington, DC 20002-7599  
(202) 535-1000 | [dchousing.org](http://dchousing.org)

**Brenda Donald, Executive Director**

DCHA respectfully requests that the Mayor's Office of Legal Counsel deny this administrative appeal because its response was proper and consistent with the DC FOIA Act.

Thank you in advance for your consideration.

Regards,

Kimberly J. August

Managing Senior Associate General Counsel and Freedom of Information Act (FOIA) Officer  
Office of General Counsel

District of Columbia Housing Authority

e: [kaugust@dchousing.org](mailto:kaugust@dchousing.org)

Pronouns: she/her/hers

d: (202) 774-2754

m: (202) 390-0709

[www.dchousing.org](http://www.dchousing.org)



# VAN NESS SOUTH TENANTS ASSOCIATION

September 20, 2022

Mr. Eugene Adams  
Director  
Mayor's Office of Legal Counsel, FOIA Appeals  
John A. Wilson Building, Suite 407  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Re: DCHA's second refusal to provide information requested by FOIA

Dear Mr. Adams,

I am writing in response to DCHA's September 19<sup>th</sup> letter, which [again refuses to provide the information](#) we requested by the Freedom of Information Act, denying that such information exists. We find it inconceivable that DCHA does not have the most basic aggregate data about the housing vouchers it processes for our building at 3003 Van Ness.

DCHA's second rejection of [our FOIA request](#) hinges on its claim that it does not have a *specific document* that fulfills our request, claiming that it would have to create such a document – which, it argues, lies outside the scope of FOIA. However, we do not request new analysis but merely existing information about the number of vouchers distributed under various programs. If that information does not already exist in a single document, it certainly is contained in a small number of existing documents. On the other hand, if DCHA really has no documents whatsoever summarizing the number of vouchers it processes, this would suggest that the agency is in complete disarray, unable to be a reliable steward of taxpayer money or an efficient provider of affordable housing.

DCHA also argues that it cannot provide the requested information because it would “implicate the protected privacy interests of DCHA program participants.” However, our FOIA request specifically states that we don't want data on individuals, only “aggregate, non-personal data.”

It is telling that DCHA says that the point “is not whether [the FOIA request] is plausible or reasonable, but rather whether such records exist.” We think that the fact that our request is reasonable is entirely the point – the public has a right to know about DCHA's conduct of a program that has had an enormous impact on thousands of residents of apartment buildings like ours. If the request were not reasonable, DCHA would not try to make reasonableness beside the point. Given that the request is reasonable and in the public interest, the Mayor's Office of Legal Counsel should require DCHA to provide documents that would provide the basic information requested by FOIA.

Sincerely,



Harry Gural  
President, Van Ness South Tenants Association

cc: Mayor Muriel Bowser  
Brenda Donald, Executive Director, DCHA  
Victor Martinez, Deputy Executive Director, DCHA  
Lorry Bonds, General Counsel, DCHA  
Eric Topor, Associate General Counsel, DCHA  
Rachel Joseph, Chief Operating Officer, DCHA  
Hammere Gebreyes, Director of Strategic Planning, DCHA  
Kimberly August, FOIA Officer, DCHA  
Danielle Bastarache, Deputy Assistant Secretary, Public and Indian Housing, HUD  
Krista Mills, Executive Director, Public and Indian Housing, HUD  
Steven Durham, Director, Housing Voucher Programs, HUD  
Marianne Nazzaro, Director, Moving to Work, HUD  
Patricia Knight, Director, Recovery and Prevention Corps, HUD  
Marilyn O'Sullivan, Regional Public Housing Director, HUD  
Jane Miller, Region 3 Deputy Regional Administrator, HUD  
Christine Jenkins, DC Director, HUD  
Councilmember Mary Cheh  
Councilmember Anita Bonds  
DC Council Chairman Phil Mendelson

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR**



**Mayor's Office of Legal Counsel**

January 27, 2023

**VIA ELECTRONIC MAIL ONLY: (harrygural@gmail.com)**

Mr. Harry Gural  
Van Ness South Tenants Association  
3003 Van Ness Street, NW #S-707  
Washington, D.C. 20008

RE: FOIA Appeal 2022-210

Dear Mr. Gural:

This letter responds to the administrative appeal that you have submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Code §§ 2-531, *et seq.* ("DC FOIA"). In your appeal, you have challenged the response of the District of Columbia Housing Authority ("DCHA")

Background

On April 1, 2022, you submitted a DC FOIA request to DCHA which sought the following:

1. Any agreement, formal or informal, including by not limited to Housing Assistance Payments Contracts, between DCHA and Smith Property Holdings Van Ness or Equity Residential, pertaining to the property at 3003 Van Ness Street, NW.
2. The aggregate number of residents supported by DCHA vouchers in calendar years 2015, 2016, 2017, 2018, 2019, 2021, and 2022, broken down by program (e.g., Housing Choice, Housing First, etc.) and by provider (e.g., via DCHA, DHS, another agency, or non-governmental nonprofit, etc.).
3. A list of current rents paid to Equity Residential or Smith Property Holdings for apartments at 3003 Van Ness using DCHA vouchers or any other DCHA funding, including the total rent received by the landlord, the amount paid by DCHA, and the number of bedrooms.

DCHA responded to your request on April 19, 2022 by advising you that after a search of the applicable agency records it did not have any responsive documents. DCHA also stated Housing Choice Voucher Program ("HCVP") rental rate information is publicly available on the Landlord Section of the DCHA website and, while DCHA does not keep a historical record of HCVP rents, this information may be found in the Department of Urban Development's Fair Market Rent Documentation System. Further, DCHA explained that it is not required "to conduct research for requesters, answer written questions, or in any other way create records (such as lists or statistics) to respond to a request."

On August 22, 2022, you filed an appeal with this Office asserting “it does not seem plausible that DCHA has no records of how many vouchers it processes at a specific address and at what cost.”

We notified DCHA of your appeal on September 16, 2022 and requested a response. DCHA responded on September 19, 2022 reiterating “it does not have any Housing Assistance Payments Contracts (HAP) with entities named “Smith Property Holdings Van Ness,” “Smith Property Holdings,” or “Equity Residential” for apartment units located at 3003 Van Ness St NW, Washington, DC 20008.” DCHA also noted that request #2 “was not for a document, but for DCHA to answer a question concerning voucher quantities” and “staff did not find a document responsive to this question and FOIA does not require DCHA to create or generate new records to conform to [your] FOIA request if no such records already exist.”

### 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. 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 . . . .” D.C. Code § 2-532(a).

DC FOIA was modeled on the corresponding federal Freedom of Information Act. See *Barry v. Washington Post Co.*, 529 A.2d 319, 312 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe local law. See *Washington Post Co. v. Minority Bus. Opportunity Comm’n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

### *Adequacy of the Search*

In determining whether an agency conducted an adequate search in response to a records request, the test is not whether documents might conceivably exist, but whether the agency’s search for responsive documents was adequate. See *Weisberg v. U.S. Dep’t of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. U.S. Dep’t of Justice*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search:

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ (*Oglesby v. United States Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)) . . . The court applies a ‘reasonableness’ test to determine the ‘adequacy’ of a search methodology, (*Weisberg v. United States Dep’t of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983)) . . . .

*Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

In this instance, DCHA has indicated that it “thoroughly searched the applicable agency records”, and did not locate any responsive documents. In the absence of anything more than speculation in the record, this explanation is generally accepted. However, DCHA’s response filed with this Office has raised an issue that needs to be addressed. Specifically, in response to your appeal, DCHA stated the following:

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In regard to questions 1 and 3, DCHA reiterates that it does not have any Housing Assistance Payments Contracts (HAP) with entities named “Smith Property Holdings Van Ness,” “Smith Property Holdings,” or “Equity Residential” for apartment units located at 3003 Van Ness St NW, Washington, DC 20008.

With regard to request #1 this response suggests DCHA might have only searched for Housing Assistance Payments Contracts, while you specifically requested “any agreement” between DCHA and the named entities pertaining to the referenced property. For this reason, a remand to the agency is appropriate to clarify the search that was performed and to confirm this search was not limited solely to Housing Assistance Payments Contracts. Finally, DCHA is correct that your request #2 is not phrased as a document request and you are encouraged to revise and resubmit this portion of your request to DCHA if appropriate.

#### Conclusion

Based on the foregoing, we remand this matter to DCHA to clarify the search performed and to take any additional action necessary, if any. The remainder of your appeal is denied.

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 in Superior Court of in accordance with D.C. Official Code § 2-537.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Kimberly J. August, DCHA FOIA Officer (via email only)