

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2021-012**

September 26, 2022

**VIA ELECTRONIC MAIL ONLY**

Mr. Jonathan Cloar

RE: FOIA Appeal 2021-012

Dear Mr. Cloar:

This letter is in response to the administrative appeal that you have submitted to the Mayor pursuant to the District of Columbia Freedom of Information Act ("FOIA"), D.C. Code §§ 2-531, *et seq.* In your appeal, you have challenged the response of the Office of Tax and Revenue ("OTR") to your FOIA request, identified as 2020-0304\_451, which sought the following:

**1. ASSESSMENT INSTRUCTIONS OR GUIDELINES**

a. Any document relating to any policy, procedure, practice, instruction or guidance with respect to the calculation, derivation, formulation, creation or administration of the Tax Year 2021 real property tax assessments for retail properties.

**2. RENTAL RATES FOR RETAIL PROPERTIES**

- a. Any document, chart, or table identifying rental rates used by OTR on retail properties for the Tax Year 2021 assessment period.
- b. Any document or data reviewed by OTR to derive the rental rates used for assessing retail properties for Tax Year 2021.
- c. Any instructions or guidelines concerning adjustments or changes to the standard rental rates contained within OTR's CAMA system, including but not limited to the usage of any uniform adjustments specifically accommodated for within OTR's CAMA system (e.g. Very Poor, Poor, Fair, Average, Good, Excellent, Non-Market) to produce retail assessments for Tax Year 2021.
- d. Any document that relates in any way to the rental rates used in assessing retail properties for Tax Year 2021.

**3. VACANCY RATIO FOR RETAIL PROPERTIES**

- a. Any document, chart, or table identifying vacancy ratios used by OTR on

retail properties for the Tax Year 2021 assessment period.

b. Any document or data reviewed by OTR to derive the vacancy ratios used for assessing retail properties for Tax Year 2021.

c. Any instructions or guidelines concerning adjustments or changes to the standard vacancy ratios contained within OTR's CAMA system, including but not limited to the usage of any uniform adjustments specifically accommodated for within OTR's CAMA system (e.g. Very Poor, Poor, Fair, Average, Good, Excellent, Non-Market) to produce retail assessments for Tax Year 2021.

d. Any document that relates in any way to the vacancy ratios used in assessing retail properties for Tax Year 2021.

#### **4. EXPENSE RATIO FOR RETAIL PROPERTIES**

a. Any document, chart, or table identifying expense ratios used by OTR on retail properties for the Tax Year 2021 assessment period.

b. Any document or data reviewed by OTR to derive the expense ratios used for assessing retail properties for Tax Year 2021.

c. Any instructions or guidelines concerning adjustments or changes to the standard expense ratios contained within OTR's CAMA system, including but not limited to the usage of any uniform adjustments specifically accommodated for within OTR's CAMA system (e.g. Very Poor, Poor, Fair, Average, Good, Excellent, Non-Market) to produce retail assessments for Tax Year 2021.

d. Any document that relates in any way to the expense ratios used in assessing retail properties for Tax Year 2021.

#### **5. CAPITALIZATION RATES FOR RETAIL PROPERTIES**

a. Any document identifying the capitalization rates that OTR is using to prepare its assessments for retail properties for Tax Year 2021.

b. Any document identifying retail property sales used, considered, or reviewed by OTR to derive its Tax Year 2021 capitalization rates for retail properties.

c. Any document OTR used, reviewed, or reviewed in preparing its capitalization rates for retail properties for Tax Year 2021.

d. Any instructions or guidelines concerning adjustments or changes to the standard capitalization rates contained within OTR's CAMA system, including but not limited to the usage of any uniform adjustments specifically accommodated for within OTR's CAMA system (e.g. Very Poor, Poor, Fair, Average, Good, Excellent, Non-Market) to produce retail assessments for Tax Year 2021.

e. Any document that relates in any way to OTR's capitalization rates for retail properties for Tax Year 2021.

#### **6. RESERVES FOR RETAIL PROPERTIES**

a. Any document identifying the replacement reserve figures or percentages used

by OTR on retail properties for Tax Year 2021.

b. Any document or data used or reviewed by OTR to produce or derive the replacement reserves imputed to retail properties for Tax Year 2021.

c. Any document that relates in any way to OTR's replacement reserves used in assessing retail properties for Tax Year 2021.

d. Any instructions or guidelines concerning adjustments or changes to the standard replacement reserve figures or percentages contained within OTR's CAMA system, including but not limited to the usage of any uniform adjustments specifically accommodated for within OTR's CAMA system to produce retail assessments for Tax Year 2021.

## **7. INSTRUCTIONS OR GUIDELINES FOR RETAIL PROPERTIES**

a. Any instructions, guidelines, policies, or procedures regarding preparing assessments for retail properties for Tax Year 2021.

b. Any instructions, guidelines, policies, or procedures regarding the preparation of the (1) rental rates, (2) vacancy ratios, (3) expense ratios, (4) capitalization rates, or (5) replacement reserves that were derived by OTR to prepare the assessments for retail properties for Tax Year 2021.

c. Any instructions, guidelines, policies, or procedures relating to whether to use the income valuation approach, the cost valuation approach, or any other valuation approach in preparing the assessments for retail properties for Tax Year 2021.

## **8. COST VALUATION APPROACH DATA, INSTRUCTIONS, OR GUIDELINES**

a. Any document used or reviewed by OTR to produce, derive, calibrate, or otherwise inform the cost valuation model used by OTR to prepare the assessments for retail properties for Tax Year 2021.

b. Any instructions, guidelines, policies, procedures, or other document regarding the preparation or use of the cost valuation model used by OTR to prepare the assessments for retail properties for Tax Year 2021.

c. A listing of any base cost rates or adjustments used in the preparation of the Tax Year 2021 assessments for retail properties, or otherwise included within OTR's CAMA system.

It is my understanding that the above requested information and documents, including any compilation of this information, can be found in the possession of one or more of the following OTR employees: Mr. Olufemi Omotoso, Mr. Darrin Sharp, Mr. Walker West, Mr. Thomas Stevens, or Mr. Doug Collica.

On August 4, 2019, OTR granted your request, in part, by providing you with approximately 143 pages of responsive documents.

In your October 19, 2020 appeal, you have stated OTR "provided scant responsive documents

and failed to cite any exemptions as a basis for the limited nature of disclosure” and did not provide a *Vaughn* index. In response to your appeal, OTR stated your request was unduly burdensome, it did not reasonably describe the records sought and OTR was not required to create a *Vaughn* index.

### 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, FOIA creates the right “to inspect . . . and . . . copy any public record of a public body. . . .” D.C. Code § 2-532(a).

The primary issue in this appeal is whether the request adequately describes the records sought which, if so, would then give rise to the issues of whether OTR conducted an adequate search and was required to provide a *Vaughn* index.

Your request broadly uses the term “any” to describe an expansive list of guidelines, instructions, policies, practices, procedures, charts tables, data and other documents, for which OTR is then tasked with identifying and disclosing. Such a request does not reasonably describe the records sought and is insufficient to permit the identification and location of records within an agency without an unreasonable amount of effort. *See* 1 DCMR § 402.4 (“A request shall reasonably describe the desired records. Where possible, specific information regarding names, places, events, subjects, dates, files, titles, file designation, or other identifying information shall be supplied”); *Dale v. IRS*, 238 F. Supp. 2d 99, 104 (D.D.C. 2002) (a request for “any and all” records does not describe the records sought with reasonably sufficient detail). “[T]he rationale for this rule is that FOIA was not intended to reduce government agencies to full-time investigators on behalf of requesters.” *Assassination Archives & Research Ctr. v. CIA*, 720 F.Supp. 217, 219 (D.D.C.1989).

An agency's obligations commence upon receipt of a valid request. *See Crooker v. CIA*, 577 F.Supp. 1225 (D.D.C.1984); *Lilienthal v. Parks*, 574 F.Supp. 14, 17 (E.D.Ark.1983). As such, OTR has provided an adequate response to the request and any determination as to the remaining issues is not ripe for determination at this time.

### Conclusion

Based on the foregoing, this 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 the Superior Court of the District of Columbia in accordance with D.C. Code § 2-537.

Respectfully,

Mayor's Office of Legal Counsel

cc: LaVerne Lee, OTR FOIA Officer (by email only)