

CLIENT ALERT

D.C. District Court Denies Stay in FOIA Case, Authorizing Release of PPP Borrower Names and Amounts as Soon as December 1

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On November 24, 2020, the United States District Court for the District of Columbia denied the Small Business Administration's (SBA) motion to stay the release of the names, addresses, and precise loan amounts for borrowers that had obtained loans approved pursuant to the Paycheck Protection Program (PPP) and the Economic Injury Disaster Loans (EIDL) program, and the Court ordered SBA to release this information by December 1, 2020. This gives SBA just one week to notice its appeal and seek an administrative stay in the United States Court of Appeals for the District of Columbia Circuit. Unless SBA obtains a stay from the D.C. Circuit, the District Court's ruling could result in the release of the loan information, which was requested by various media organizations through the Freedom of Information Act (FOIA), as soon as December 1, 2020.

In *WP Co. LLC v. U.S. Small Bus. Admin.*, No. CV 20-1240, a number of news organizations submitted FOIA requests for a wide range of initial PPP loan data. As Crowell has [previously reported](#), SBA produced some of the requested data, but withheld the precise amounts of all loans of \$150,000 or more, as well as recipients' identities for loans under that figure under FOIA Exemptions 4 and 6. FOIA Exemptions 4 and 6 protect (1) privileged or confidential commercial or financial information obtained from a person and (2) information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy respectively. On November 5, the Court granted the motions for summary judgment of the news organizations and ruled that SBA must supplement its prior disclosure with the names, addresses, and precise loan amounts of all PPP borrowers. See 2020 WL 6504534 (D.D.C. Nov. 5, 2020). SBA moved to stay that ruling.

In considering the four factors relating to a stay pending appeal, the Court found that the case involves a novel application of FOIA Exemptions 4 and 6 and raises "serious legal questions," and that "once the information has been turned over, the bell cannot be unring on appeal." The Court also acknowledged that "stays are frequently granted in FOIA cases," again due to the fact that once the information is disclosed, the opportunity to appeal the release of the information is effectively mooted.

Nevertheless, distinguishing the "public's" interest in disclosure from the "government's" interest in this case to safeguard sensitive information, the Court decided in favor of disclosure, finding that there is a "powerful public interest in disclosure" of the complete list of borrowers and precise loan amounts to facilitate "meaningful evaluation" of the government's activities in administering the PPP program. The Court ruled that rather than wait for the conclusion of SBA's appeal, and despite acknowledging that release might have the effect of mooting SBA's appeal, immediate release of the information is warranted in order to facilitate "critical, ongoing federal debate and to remedy failures in the loan-disbursement process moving forward."

SBA will likely pursue a stay with the D.C. Circuit before the information is released on December 1st. Crowell & Moring is standing by to discuss the implications of the potential release of this PPP information with borrowers.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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