



SAN DIEGO
HOUSING
COMMISSION

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NEWSPAPER ARTICLE OMITTED IMPORTANT DETAILS

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The article the San Diego Union-Tribune published on its website on September 15, 2017, at 5 p.m. about the San Diego Housing Commission (SDHC) and its nonprofit affiliate, Housing Development Partners (HDP), was misleading and unfairly excluded important details.

Contrary to the article, SDHC fulfilled its responsibilities under the California Public Records Act. It released all of the documents that were requested, while also adhering to other legal requirements that prevent the disclosure of certain proprietary or confidential information. In addition, the Internal Revenue Service (IRS) concluded quickly that HDP was in good standing as a nonprofit organization.

There was no story here – except for what the San Diego Union-Tribune concocted by leaving out details that provided necessary context.

The Union-Tribune did not refer to HDP in any way in its written requests until an email at 4:16 p.m. on Monday, September 11, in which the newspaper’s reporter wrote to SDHC, “please consider this email a formal request for any and all Internal Revenue Service audits of the San Diego Housing Commission and/or any of its subsidiaries, including Housing Development Partners.”

SDHC produced those documents, which clearly showed that the IRS has accepted HDP’s tax return, as filed and with no changes, and that HDP is in good legal standing and continues to qualify for exemption from federal income tax.

The IRS informed HDP of this determination less than four months after informing HDP that it had been selected for an audit.

The IRS did not produce any “audit” document other than the [letter notifying HDP of the audit](#) and the [letter stating the result of the audit](#). While these key points may have been omitted from the newspaper article, both of those letters were provided to the Union-Tribune.

SDHC has never been audited by the IRS.

The Union-Tribune did not disclose in this article that the public records request submitted to SDHC on May 22, 2017, never mentioned HDP by name, but did seek a voluminous amount of documents over a five-year period. The Union-Tribune requested the following:

I request a copy of all emails, text messages and other electronic communications that include the following keywords, from Jan. 1, 2013 until the date this request is fulfilled:

“Internal Revenue Service”

“IRS”

“tax return”

“tax audit”

“nonprofit status”

“501(c)3 exemption”

It is important to point out that SDHC informed the Union-Tribune on June 1, 2017, that a preliminary search identified 90,000 electronic communications that included at least one of the requested keywords since January 1, 2013. SDHC also informed the Union-Tribune that retrieving and reviewing all of these documents for potential privileges would cost SDHC an estimated \$20,000. SDHC proceeded to offer on multiple occasions to work with the Union-Tribune to try to narrow the scope of its request until August 8, by which time the newspaper had revised its request to the keyword “Internal Revenue Service” and the time frame of June 30, 2015, to November 1, 2015.

SDHC explained to the Union-Tribune in an email on September 11, 2017, that the overwhelming majority of the 2,000 documents that were identified in response to the newspaper’s revised request were determined to be employee files with privileged information [Government Code Section 6254(c)] or documents from developers, first-time homebuyers and others that are protected by Internal Revenue Code Section 6103 [e.g., records related to a first-time homebuyer’s application for and receipt of assistance through SDHC’s First-Time Homebuyer Program.] In addition, SDHC stated that the documents were exempt from production under the provisions of Government Code Section 6254(k).

In a follow-up email to the Union-Tribune on September 14, in response to additional questions they submitted, SDHC explained in writing that all responsive and non-privileged documents were produced. All other documents were exempt from production and/or were privileged and/or non-responsive. In some cases, documents were communications between attorneys and a client, which are subject to the Attorney-Client Privilege. Additional privileges included, but were not limited to: Evidence Code Section 1040 (official information); California Government Code Section 6254(i) (taxpayer information); and California Revenue & Taxation Code Sections 7056 and 7056.5.

The Union-Tribune did not include any references to these legal privileges or statutes in the article. Further, and importantly, there was no “audit” generated by the IRS; instead the IRS provided a letter to HDP indicating the results of the IRS review, which was a determination that HDP’s tax returns were accepted without any change and that HDP continued to qualify as an Internal Revenue Code Section 501(c)(3) corporation. This finding by the IRS certainly wasn’t made clear in the Union-Tribune’s article.

In addition, the Union-Tribune omitted the reason for a \$5,700 IRS penalty assessed on SDHC in 2010, which SDHC paid. In the email to the Union-Tribune on September 14, SDHC wrote that the IRS imposed the penalty because there were instances when taxpayer identification numbers (TIN) that were on W-9 forms that had been submitted to SDHC, by people working with SDHC, differed from the TINs that the IRS had on file for the same individuals or businesses. A similar penalty in 2013 for \$7,400 was waived by the IRS.

The San Diego Union-Tribune provided their readers a disservice by providing incomplete, misleading details. The complete details indicate no wrongdoing by HDP or SDHC.

SDHC takes its service to our community seriously. We pride ourselves in continuously improving our systems and processes to ensure we provide the best and most cost-effective affordable housing to those in need.