

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ORIGINAL

UNITED STATES OF AMERICA,

Petitioner,

v.

THE SALVATION ARMY SOUTHERN
TERRITORY AND THE SALVATION
ARMY,

Respondents.

Case: 1:13-mc-00341

Assigned To : Jackson, Amy Berman

Assign. Date : 4/9/2013

Description: Miscellaneous

**PETITION TO ENFORCE SUBPOENA ISSUED BY THE UNITED STATES
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Petitioner, United States of America, respectfully requests that this Court issue an Order directing that Respondents, The Salvation Army Southern Territory and the Salvation Army (collectively, "The Salvation Army" or "Respondents"), produce documents requested in an administrative Subpoena *Duces Tecum* issued by the United States Department of Housing and Urban Development ("HUD"). This Petition is made pursuant to 42 U.S.C. § 3614(c). In support of this Petition, the United States of America respectfully refers the Court to the Declaration of Joel D. Armstrong ("Armstrong Decl.") and the attachments thereto, as well as the accompanying Memorandum in Support. As the basis for its Petition, the United States of America avers as follows:

Parties

1. Petitioner is the United States of America.
2. Respondents are The Salvation Army Southern Territory, 1424 Northeast Expressway, Atlanta, Georgia 30329-2088 and The Salvation Army, 2626 Pennsylvania Avenue,

NW, Washington, DC 20037-1618. Respondents transact business within this judicial district and division.

Jurisdiction and Venue

3. This Court has jurisdiction over this action under 42 U.S.C. § 3614(c), which provides that the Attorney General, on behalf of the Secretary of HUD, may enforce an administrative subpoena issued by HUD under the Fair Housing Act, 42 U.S.C. §§ 3601-3619.

4. Venue is proper in this Court under 28 U.S.C. §1391(b). Venue is also proper under 42 U.S.C. § 3614(c), which provides that an action to enforce an administrative subpoena issued by HUD may be brought “in appropriate proceedings in the United States district court for the district in which the person to whom the subpoena was addressed resides, was served, or transacts business.” The Subpoena was served on The Salvation Army through its Assistant to the Managing Attorney for The Salvation Army at One World Financial Center, c/o Paul W. Mourning, Esq., Cadwalder, Wickersham & Taft LLP, New York, NY 10281. Attached is a true and correct copy of the Subpoena *Duces Tecum* and the Affidavit of Service. *See* Armstrong Decl. ¶ 7, Attachment F.¹

Statutory Background

5. HUD is the federal agency charged with the administration and enforcement of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (“Fair Housing Act”). 42 U.S.C. §§ 3601-19. HUD is responsible for, *inter alia*, investigating complaints of unlawful housing discrimination. 42 U.S.C. §§ 3610, 3611; 24 C.F.R. § 103.200. In connection with such investigations, the Secretary of HUD, or his designee, may issue subpoenas. 42 U.S.C. § 3611(a); 24 C.F.R. § 103.215(b); 76 Fed. Reg. 73984, 73984 (Nov. 29, 2011) (delegation of authority from Secretary to Assistant Secretary for

¹ The Declaration of Joel D. Armstrong is attached as Exhibit 1.

Fair Housing and Equal Opportunity).

6. Subsection 814(c) of the Act, 42 U.S.C. § 3614(c), authorizes the Attorney General to seek judicial enforcement of administrative subpoenas issued by HUD through the initiation of appropriate proceedings before the United States district courts.

Factual Background

7. HUD has initiated an investigation of The Salvation Army, based upon the administrative complaint captioned: *Assistant Secretary of HUD v. Salvation Army*, No. 00-12-0007-8. The complaint alleges that Respondents discriminated against pregnant women because of their familial status and sex and men because of their sex, in violation of the Fair Housing Act. More specifically, the complaint alleges that Respondents terminated housing for four women at The Turning Point Center for Women and Children (“Turning Point”), a transitional housing program owned and operated by The Salvation Army, because they were pregnant. Attached is a true and correct copy of the complaint. *See* Armstrong Decl. at ¶ 4, Attachment A.

Issuance and Service of the Subpoena

8. HUD has made numerous requests to Respondents for information relevant to the investigation. HUD first requested copies of complete resident files for the four pregnant women terminated from Turning Point on January 9, 2012. *See id.* at ¶ 5, Attachment B. In response, on January 27, 2012, The Salvation Army provided resident files for the four women, but redacted all personal identifying information. *See id.* at ¶ 5, Attachment C. The Salvation Army explained that its national confidentiality policy precluded it from disclosing the identities of program participants without the consent of the residents, or a court order compelling such disclosure. *Id.*

9. On July 2, 2012, HUD requested unredacted copies of the resident files for the

four women. *See id.* at ¶ 6, Attachment D. In that same request, HUD also sought documentation of the women's transition plans and any alleged violations of program rules or policies. *Id.* On August 3, 2012, The Salvation Army reiterated that its national confidentiality policy precluded it from complying with HUD's request. *See id.* at ¶ 6, Attachment E.

Respondents also informed HUD that it had sent letters to the four women requesting their consent to the disclosure of their identities to HUD. *Id.* Three of these letters were returned as undeliverable, and The Salvation Army received no response to the fourth letter. *Id.* Through these written requests, HUD sought The Salvation Army's voluntary cooperation with the investigation, but it refused to provide the requested information. *See id.* at ¶¶ 5-6.

10. On August 30, 2012, HUD served The Salvation Army with a Subpoena *Duces Tecum*. The Subpoena contained three (3) narrowly-tailored requests for information relevant to HUD's investigation. *Id.* at ¶ 7, Attachment F. Those Requests are as follows:

1. Identify the person for each tenant file provided to HUD in connection with HUD's July 2, 2012 data request, or provide un-redacted copies of all documents relating to tenant files for each tenant terminated from the Turning Point Center for Women and Children transitional housing program in Washington, D.C., due to pregnancy.
2. For each person identified in response to request number one above, provide all documents relating to violations of rules and/or policies; and any other corrective, termination and/or eviction documentation issued to such person for any reason from October 1, 2008, to the present.
3. For each person identified in response to request number one above, provide a copy of all documents relating to individual transitional plans and any updates or periodic assessments made in connection therewith.

Id. at ¶ 7, Attachment F, pp. 3-4. To address The Salvation Army's concern about disclosing the identities of the program participants without their consent, HUD offered in the cover letter accompanying the Subpoena to treat the identities of the four women as confidential during the course of the investigation, to the extent permitted by law. *Id.* at ¶ 7, Attachment G.

11. On September 12, 2012, The Salvation Army responded to the Subpoena, objecting to the request that The Salvation Army produce personal identifying information of the former program participants. *Id.* at ¶ 7, Attachment H. It objected on the grounds that compliance with the Subpoena would violate The Salvation Army's Policy and Guidelines on Confidentiality and the Protection of Personal Privacy. *Id.*, Attachment H, p. 1. The Salvation Army reiterated that absent a court order or the consent of the program participants, it could not produce the requested information. *Id.* at ¶ 7.

12. By letter dated November 1, 2012, HUD referred this matter to the U.S. Department of Justice, Civil Rights Division. *Id.* at ¶ 8, Attachment I. HUD requested that the Department of Justice initiate appropriate proceedings to enforce the subpoena pursuant to 42 U.S.C. § 3614(c). *Id.*

13. HUD seeks an Order from this Court directing The Salvation Army to provide complete and unredacted responses to Request Nos. 1, 2, and 3.

Grounds for Relief

14. The Subpoena is proper in all respects.

15. The Salvation Army's objection to the Subpoena – that compliance would violate its internal privacy policy – is not a valid basis to refuse to comply with a subpoena.

Prayer for Relief

WHEREFORE, Petitioner respectfully requests enforcement of the Subpoena as follows:

a. That The Salvation Army be ordered to produce complete and unredacted responses to the information requested in Request Nos. 1-3 of the Subpoena, within eleven (11) days after being served with an appropriate Order from this Court; and

b. If The Salvation Army does not produce timely and complete responses to

Request Nos. 1-3, that it be ordered to appear and show cause before this Court why it should not be held in contempt for failing to produce the information ordered by this Court; and

c. That the Court grant the United States of America such other and further relief as may be necessary and proper to effectuate the Court's Order.

A proposed Order is attached for the Court's review and entry.

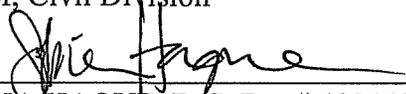
DATED: April 9, 2013

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar # 447889
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092
Chief, Civil Division

By:


SOBIA HAQUE, D.C. Bar # 483440
Special Assistant United States Attorney
555 Fourth Street, N.W.
Room E-4916
Washington, D.C. 20530
(202) 305-9927
Sobia.Haque2@usdoj.gov

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	Misc. No. _____
)	
THE SALVATION ARMY SOUTHERN)	
TERRITORY AND THE SALVATION)	
ARMY,)	
)	
Respondents.)	
)	

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
PETITION TO ENFORCE SUBPOENA ISSUED BY THE
UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

Petitioner, United States of America, respectfully submits this Memorandum of Points and Authorities in Support of its Petition to Enforce Subpoena Issued by the United States Department of Housing and Urban Development (“Petition”). For the reasons set forth herein, the Court should grant the Petition and compel Respondents, The Salvation Army Southern Territory and The Salvation Army (collectively, “The Salvation Army” or “Respondents”), to produce the documents requested in an administrative Subpoena *Duces Tecum* issued by the United States Department of Housing and Urban Development (“HUD”).

PRELIMINARY STATEMENT

The Salvation Army is being investigated by HUD for potential violations of the Fair Housing Amendments Act of 1988 (“Fair Housing Act”), 42 U.S.C. §§ 3601-19. Specifically, HUD is investigating whether Respondents discriminated against pregnant women because of their familial status and sex and men because of their sex, in violation of the Fair Housing Act. As part of HUD’s investigation, HUD’s Director of the Office of Systemic Investigations issued

a subpoena pursuant to 42 U.S.C. § 3611 to The Salvation Army for certain categories of documents (the “Subpoena”), including tenant files and related information for each tenant terminated from The Turning Point Center for Women and Children (“Turning Point”) due to pregnancy. In response, The Salvation Army objected on the grounds that compliance with the Subpoena, absent consent of the residents or a court order compelling such disclosure, would violate its internal national confidentiality policy.

An administrative subpoena is summarily enforceable if the subpoena is within the agency’s authority, it seeks information reasonably relevant to the agency’s inquiry, and it is not indefinite or unduly burdensome. *F.E.R.C. v. J.P. Morgan Ventures Energy Corp.*, No. 12-352, 2012 WL 5974177, at *1 (D.D.C. Nov. 29, 2012) (citing *United States v. ISS Marine Servs., Inc.*, No. 12-481, 2012 WL 5873682, at *3 (D.D.C. Nov. 21, 2012) (citations and internal quotations omitted)). As discussed below, HUD’s Subpoena to The Salvation Army satisfies each of these requirements. Accordingly, the Court should compel The Salvation Army to produce the documents requested in the Subpoena.

BACKGROUND

I. STATUTORY FRAMEWORK

HUD is the federal agency charged with the administration and enforcement of the Fair Housing Act. 42 U.S.C. §§ 3601-19. HUD is responsible for, *inter alia*, investigating complaints of unlawful housing discrimination. 42 U.S.C. §§ 3610, 3611; 24 C.F.R. § 103.200. In connection with such investigations, the Secretary of HUD may issue subpoenas. 42 U.S.C. § 3611(a); 24 C.F.R. § 103.215(b). Subsection 814(c) of the Act provides that, where voluntary compliance is not forthcoming, the Attorney General “may enforce such subpoena[s] in appropriate proceedings in the United States district court for the district in which the person to

whom the subpoena was addressed, resides, was served, or transacts business.” 42 U.S.C. § 3614(c); *see also* 24 C.F.R. § 180.545(g).

HUD’s authority to issue a subpoena is broad; an administrative agency has power “‘akin to that of a grand jury,’ which it may exercise ‘merely on the suspicion that the law is being violated, or even just because it wants assurance that it is not.’” *In re McVane*, 44 F.3d 1127, 1135 (2d Cir. 1995), quoting *United States v. Morton Salt Co.*, 338 U.S. 632 (1950). An administrative subpoena must be enforced if the information sought is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant. *F.E.R.C. v. J.P. Morgan Ventures Energy Corp.*, 2012 WL 5974177 at *1 (internal citations and quotations omitted).

II. FACTUAL BACKGROUND

HUD has initiated an investigation of The Salvation Army, based upon the administrative complaint captioned: *Assistant Secretary of HUD v. Salvation Army*, No. 00-12-0007-8. The complaint alleges that Respondents discriminated against pregnant women because of their familial status and sex and men because of their sex, in violation of the Fair Housing Act. More specifically, the complaint alleges that Respondents terminated housing for four women at Turning Point, a transitional housing program owned and operated by The Salvation Army, because they were pregnant.

In furtherance of its investigation of the complaint (and after making a number of requests to Respondents for complete and unredacted responses), on August 30, 2012, HUD served The Salvation Army with a Subpoena *Duces Tecum* (“Subpoena”) containing three narrowly-tailored requests for information relevant to HUD’s investigation. The Subpoena required production of the following documents:

1. Identify the person for each tenant file provided to HUD in connection with HUD's July 2, 2012 data request, or provide un-redacted copies of all documents relating to tenant files for each tenant terminated from the Turning Point Center for Women and Children transitional housing program in Washington, D.C., due to pregnancy.
2. For each person identified in response to request number one above, provide all documents relating to violations of rules and/or policies; and any other corrective, termination and/or eviction documentation issued to such person for any reason from October 1, 2008, to the present.
3. For each person identified in response to request number one above, provide a copy of all documents relating to individual transitional plans and any updates or periodic assessments made in connection therewith.

Subpoena, pp. 2-3.

On September 12, 2012, The Salvation Army responded to the Subpoena, objecting to the request that it produce personal identifying information of the former program participants. The Salvation Army objected on the grounds that compliance with the Subpoena, absent a court order or the consent of the program participants, would violate The Salvation Army's Policy and Guidelines on Confidentiality and the Protection of Personal Privacy.

ARGUMENT

I. STANDARD OF REVIEW -- THE COURT'S REVIEW OF ADMINISTRATIVE SUBPOENAS IS A LIMITED ONE.

"Administrative agencies wield broad power to gather information through the issuance of subpoenas." *Resolution Trust Corp. v. Thornton*, 41 F.3d 1539, 1544 (D.C. Cir. 1994). An agency "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). Moreover, "[f]ederal courts shall accord[] substantial deference to agency-issued subpoenas" *Thomas v. U.S. Dept. of Homeland Sec.*, 876 F.Supp.2d 1, 5 (D.D.C. 2012) (citing *In re Bank United F.S.B. (10061) Coral Gables, Florida*, No. C 11-80223, 2012 WL 1225931, at *2 (N.D.Cal. April 11, 2012)). "[T]he court's role in a proceeding to enforce an administrative

subpoena is a strictly limited one.” *FTC v. Texaco, Inc.*, 555 F.2d 862, 871-72 (D.C. Cir. 1977) (*en banc*), *cert. denied*, 431 U.S. 974 (1977). The Court considers only whether “the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” *Morton Salt*, 338 U.S. at 652; *see also F.E.R.C. v. J.P. Morgan Ventures Energy Corp*, 2012 WL 5974177 at *1. “If an agency’s subpoena satisfies these requirements, [the Court] must enforce it.” *Resolution Trust*, 41 F.3d at 1544; *see also Thomas v. U.S. Dept. of Homeland Sec.*, 876 F. Supp. 2d at 5.

II. HUD’S SUBPOENA SATISFIES THE REQUIREMENTS FOR ENFORCEMENT.

As noted above, an agency’s subpoena is to be enforced if the agency’s inquiry is within its authority, the demand is not too indefinite and the information sought is reasonably relevant. The Subpoena at issue in this case meets all of these requirements.

First, HUD’s inquiry is within its authority. Subsection 811(a) of the Fair Housing Act, 42 U.S.C. § 3611(a), grants HUD the authority to issue subpoenas in support of an administrative investigation to determine whether reasonable cause exists to believe that a discriminatory housing practice has occurred. *See also* 24 C.F.R. § 103.215(b). The Fair Housing Act defines “discriminatory housing practice” to include any act that would be unlawful under Section 804. 42 U.S.C. § 3602(f); 24 C.F.R. §§ 100.20 - 100.90. The complaint filed by the Assistant Secretary for Fair Housing and Equal Opportunity against The Salvation Army alleges that violations of Subsections 804(a), (b), and (c) of the Fair Housing Act have occurred. *See Armstrong Decl.*, Attachment A. In furtherance of its investigation, HUD seeks tenant and eviction documents, transitional plans, and the identities of four women who may be victims of the alleged discrimination. *Id.* at ¶ 4. HUD’s inquiry is thus clearly within its authority.

Second, the Subpoena is not too indefinite. Indeed, it is quite specific as it contains three narrowly-tailored requests for information relevant to HUD's investigation. There is no question that the Subpoena satisfies this requirement for enforcement of an administrative subpoena.

Similarly, the Subpoena meets the final requirement – that the information sought be reasonably relevant. The information requested by HUD is relevant and necessary to investigate allegations of violations of the Fair Housing Act based on familial status and sex because it will identify women who may have information about The Salvation Army's policies and practices and who may be victims of these allegedly discriminatory housing practices. Thus, HUD's Subpoena to Respondent satisfies all of the criteria for the enforcement of an administrative subpoena.

III. RESPONDENT'S INTERNAL PRIVACY POLICY IS NOT A BASIS FOR REFUSING TO COMPLY WITH A SUBPOENA.

The Salvation Army has not disputed the statutory authority, definiteness, or relevance of the Subpoena. Rather, it has refused to comply based on its internal confidentiality policy. The need for confidentiality is not a valid basis to refuse to comply with a subpoena, however. *E.E.O.C. v. C & P Telephone Co.*, 813 F. Supp. 874, 876 (D.D.C. 1993) (citing *University of Penn. v. EEOC*, 493 U.S. 182, 192 (1990)); *EEOC v. Associated Dry Goods Corp.*, 449 U.S. 590, 603 (1981). If necessary, a court may impose various conditions on the disclosure of confidential information to an administrative agency. *E.E.O.C. v. C & P Telephone Co.*, 813 F. Supp. at 877 (conditioning enforcement of the subpoena on the signing of a confidentiality agreement). In this case, HUD has previously offered to treat the identities of the four women as confidential during the course of the investigation. Armstrong Decl. at ¶ 7, Attachment G. Despite this offer, The Salvation Army refused to produce the information sought by the Subpoena. *Id.* at ¶ 7, Attachment H. Thus, the Court should enforce HUD's Subpoena, subject

to any conditions deemed necessary by it.

* * *

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court compel The Salvation Army to produce complete and unredacted copies of the documents requested in Request Nos. 1-3 of the Subpoena. A proposed order is enclosed herewith.

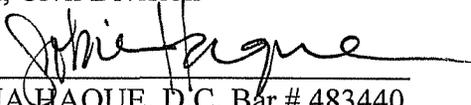
Dated: April 9, 2013.

Respectfully submitted,

RONALD C. MACHEN JR., D.C. Bar # 447889
United States Attorney

DANIEL F. VAN HORN, D.C. Bar #924092
Chief, Civil Division

By:


SOBIA HAQUE, D.C. Bar # 483440
Special Assistant United States Attorney
555 Fourth Street, N.W.
Room E-4916
Washington, D.C. 20530
(202) 305-9927
Sobia.Haque2@usdoj.gov

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

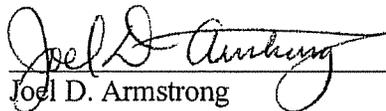
UNITED STATES OF AMERICA,)
)
 Petitioner,)
)
 v.)
)
 THE SALVATION ARMY,)
)
 Respondent.)

EXHIBIT 1

5. HUD has made numerous requests for this information, and The Salvation Army has refused to provide it. HUD first requested copies of complete resident files for the four pregnant women evicted from Turning Point on January 9, 2012. See Attachment B (HUD request 1/9/12). In response, on January 27, 2012, The Salvation Army provided resident files for the four women, but redacted all personal identifying information. See Attachment C (Salvation Army 1/27/12 response). The Salvation Army explained that its national confidentiality policy precluded disclosure of the identities of its program participants without the consent of those individuals or a court order compelling such disclosure. Ibid.
6. On July 2, 2012, HUD requested unredacted copies of the resident files for the four women. See Attachment D (HUD 7/2/12 request). In that same data request, HUD also sought documentation of the women's transition plans and any alleged violations of program rules or policies. Ibid. On August 3, 2012, The Salvation Army reiterated that its national confidentiality policy precluded it from complying with HUD's request. See Attachment E (Salvation Army 8/3/12 response). The Salvation Army also informed HUD that it had sent letters to the four women requesting their consent to the disclosure of their identities to HUD. Ibid. The Salvation Army reported that three of these letters were returned as undeliverable, and that it had received no response to the fourth letter. Ibid.
7. On August 30, 2012, HUD served a subpoena *duces tecum* on The Salvation Army to obtain unredacted files for the four women, including their transition plans and any documentation concerning alleged violations of program rules or policies. See Attachment F (subpoena). To address The Salvation Army's concern about disclosing the identities of the program participants without their consent, HUD offered in the cover letter accompanying the subpoena to treat the identities of the four women as confidential during the course of the investigation, to the extent permitted by law. See Attachment G (cover letter). Nonetheless, The Salvation Army refused to provide the information, again stating that absent a court order or the consent of the program participants, it could not produce the requested information. See Attachment H (Salvation Army 9/12/12 objection).
8. In furtherance of its investigation, on November 1, 2012, HUD requested that the Department of Justice initiate proceedings to obtain compliance with the subpoena issued in FHEO Case No. 00-12-0007-8. See 42 U.S.C. § 3614(c); Attachment I (HUD's request for enforcement (without attachments)).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this day of 22nd February, 2013.



Joel D. Armstrong
Director, Systemic Investigations
Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 7th Street, SW
Washington, DC 20410

Attachment A

HOUSING DISCRIMINATION COMPLAINT

CASE NUMBER: 00-12-0007-8

1. Complainant:

Assistant Secretary for Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
451 Seventh Street, SW, Suite 5100
Washington, DC 20410

2. Other Aggrieved Persons:

Four (4) unnamed women.

3. The following is alleged to have occurred or is about to occur:

Denial of housing or making housing unavailable, Section 804(a) of the Fair Housing Act, 42 U.S.C. § 3604(a).

Discriminatory terms, conditions, privileges, or services and facilities, Section 804(b) of the Fair Housing Act, 42 U.S.C. § 3604(b).

Discriminatory statements and notices, Section 804(c) of the Fair Housing Act, 42 U.S.C. § 3604(c).

4. The alleged violation occurred because of:

Familial status (pregnant women), sex (female), and sex (male).

5. Address and location of the property in question (or if no property is involved, the city and state where the discrimination occurred):

The Turning Point Center for Women and Children
1434 Harvard Street, NW
Washington, DC 20009

6. **Respondent(s):**

The Salvation Army Southern Territory
1424 Northeast Expressway
Atlanta, Georgia 30329-2088

The Salvation Army
2626 Pennsylvania Avenue NW
Washington, DC 20037-1618

7. **The following is a brief and concise statement of the facts regarding the alleged violation:**

The Assistant Secretary for Fair Housing and Equal Opportunity, on behalf of the Secretary of the U.S. Department of Housing and Urban Development (HUD), is authorized to file a complaint of housing discrimination. Section 810 (a)(1)(A)(i).

The Salvation Army provides transitional housing programs throughout the United States. Many of the transitional housing programs are designed for single mothers and their children seeking to break the cycle of chronic homelessness and joblessness. The average length of stay for a family is one to two years.

The Turning Point Center for Women and Children, a transitional housing program owned and operated by The Salvation Army, is located at 1434 Harvard Street NW in Washington, DC. The program rules state: "it is Turning Point policy that there are to be no additions to a resident's family while she is enrolled in the Turning Point Program. **Pregnancy, regardless of outcome, will be grounds for dismissal from the program**" (emphasis in original document).

Prior to entering the Turning Point program, women must sign a contract stating that they accept the program rules, including the prohibition on additions to her family under any circumstances. The program director of Turning Point has stated that at least four (4) pregnant women have been terminated from the program since 2008.

This policy violates the Fair Housing Act by subjecting pregnant women to different terms and conditions of occupancy and making housing unavailable to pregnant women because of their pregnancy. The policy also violates the Act by indicating a preference, limitation, or discrimination on the basis of pregnancy. An ordinary reader of the policy would reasonably believe that housing at Turning Point is limited or restricted based on

familial status (pregnancy). In addition, the policy has a disparate impact based on sex (female), because only women can become pregnant.

Finally, Turning Point only admits women (and children, regardless of their sex) to their transitional housing program. This admission policy violates the Fair Housing Act by making housing unavailable to men because of their sex.

8. The most recent date on which the alleged discrimination occurred:

December 6, 2011 and ongoing.

9. Types of federal funds identified:

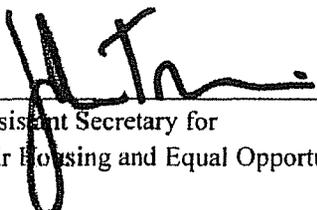
None.

10. The acts alleged in this complaint, if proven, may constitute a violation of the following:

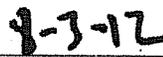
Sections 804(a), (b), and (c) of the Fair Housing Act.

Please sign and date this form:

I declare under penalty of perjury that I have read this complaint (including any attachments) and that it is true and correct.



Assistant Secretary for
Fair Housing and Equal Opportunity



Date

NOTE: HUD WILL FURNISH A COPY OF THIS COMPLAINT TO THE PERSON OR ORGANIZATION AGAINST WHOM IT IS FILED.

Attachment B

Lippincott, Alexandria

From: Beach, Allison W
Sent: Monday, January 09, 2012 11:42 AM
To: 'Mourning, Paul'
Cc: 'Facher, Jared'; Leake, Karina S
Subject: Turning Point resident file request

Mr. Mourning,

During an interview on December 6, 2011, Leslie Wooley stated that, from 2008 to present, four (4) women were terminated from the Turning Point transitional housing program due to pregnancy. For each of the four women, provide a copy of the resident files referenced in the interview, including, but not limited to, documentation of any violations and each resident's transition plan.

Please send the requested documents to HUD by Tuesday, January 17, 2012. We thank you in advance for your cooperation.

Allison Beach
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban Development
(202) 402-5894

Attachment C

CADWALADER

Cadwalader, Wickersham & Taft LLP
One World Financial Center, New York, NY 10281
Tel +1 212 504 6000 Fax +1 212 504 6666
www.cadwalader.com

New York London Charlotte Washington
Houston Beijing Hong Kong Brussels

January 27, 2012

BY FEDERAL EXPRESS

Ms. Allison Beach
Office of Fair Housing and Equal Opportunity
U.S. Department of Housing and Urban
Development
451 7th Street S.W.
Washington, D.C. 20410
(202) 402-5894

Re: The Salvation Army – National Headquarters

Dear Ms. Beach:

As you know, we represent The Salvation Army, the Georgia corporation, the corporate instrumentality of The Salvation Army's Southern Territory (the "Southern Territory"), in connection with the investigation that has been initiated by the Assistant Secretary for Fair Housing and Equal Opportunity of the United States Department of Housing and Urban Development ("HUD") "into the transitional housing practices of The Salvation Army" pursuant to the Federal Fair Housing Act, 42 U.S.C. § 3610(a)(1)(A)(iii) (the Fair Housing Act"). We write in response to your e-mail of January 9, 2012, which stated that "[d]uring an interview on December 6, 2011, Leslie Wooley stated that, from 2008 to present, four (4) women were terminated from the Turning Point transitional housing program due to pregnancy. For each of the four women, provide a copy of the resident files referenced in the interview, including, but not limited to, documentation of any violations and each resident's transition plan."

We are enclosing copies of the resident files for the four women of the Turning Point Center that were terminated from the program since October 1, 2008 at least in part based on a violation of the rule that program participants not become pregnant after entering the program. You will note that we have redacted the files to remove any personal identifying information. As we previously explained in our letter of May 13, 2010 to Mr. Joel D. Armstrong, Director of the Office of Systemic Investigations, The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy ("The National Confidentiality Policy") precludes The Salvation Army from disclosing the identity of program participants or any case

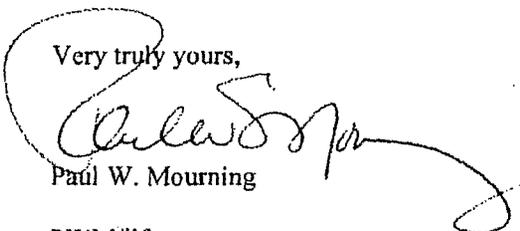
CADWALADER

Ms. Allison Beach
January 27, 2012

file information without the consent of the resident(s) in question or a court order compelling such disclosure.

We request **CONFIDENTIAL TREATMENT** pursuant to the Freedom of Information Act for this response and for the information enclosed herein. The information for which confidential treatment is requested is commercial information and/or proprietary in nature, and not available to the public from any other source. See 5 U.S.C. § 552(b)(4) and 24 C.F.R. § 15.3(a)(4).

Very truly yours,



Paul W. Mourning

PWM/jlf
Enclosures

cc: Ms. Karina Leake (w/o enclosures)

Attachment D



OFFICE OF FAIR HOUSING
AND EQUAL OPPORTUNITY

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

July 2, 2012

Certified Mail

Paul W. Mourning
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281

Re: Salvation Army's transitional housing programs

Dear Mr. Mourning:

Pursuant to subsection 3610 (a)(1)(A)(iii) of the Fair Housing Act ("Act"), U. S. 42 U.S.C. § 3601, et seq. the U. S. Department of Housing and Urban Development ("HUD") is continuing its preliminary investigation of the above referenced matter. HUD requests that your client, Salvation Army, provide the information requested in the attachment to this letter. Please note that this request is not exhaustive. As the investigation proceeds, additional information might be required.

HUD seeks your voluntary cooperation to obtain access to premises, records, documents, individuals, and other possible sources of information. See 42 U.S.C. § 3611(a); 24 C.F.R. §103.215(a). This includes residents of housing that is under investigation. As you know, federal laws place restrictions on disclosures of nonpublic, personal information about consumers. However, these restrictions do not apply where the information is disclosed to the government pursuant to an authorized investigation. Gramm-Leach-Bliley Act, 15 U.S.C. § 6802(e) (8); Right to Financial Privacy Act, 12 U.S.C. § 3413(h)(1)(A).

Moreover, the Act authorizes the Secretary of HUD to issue subpoenas and order discovery in aid of investigations and hearings. 42 U.S.C. § 3611(a). If your client refuses to make its records or employees available to us, we will subpoena the information and depose these individuals as necessary. See, e.g., *International Business Machines v. Edelman*, 526 F.2d 37, 44 (2nd Cir. 1975) (it is established principle that counsel has a right to interview witnesses in private and without the consent of opposing counsel).

HUD seeks and will use the information in its investigation of the housing practices of Salvation Army pursuant to HUD's authority to investigate possible unlawful discrimination on the basis of sex and familial status under the Act. The Act prohibits coercing, intimidating, threatening, or interfering with the complainant's right to file the complaint or with anyone aiding in the investigation. 42 U.S.C. § 3617.

Please ensure that the Salvation Army, its officers, agents, and employees retain intact all documents and records, including computer files, that refer or relate in any way to the housing activities of Salvation Army, its predecessors, successors, assignors, assignees for the past five years that are in your custody or control, or the custody or control of any of the partners, co-owners, managers, employees, or agents of Salvation Army. Do not alter, destroy, or otherwise dispose of any such records.

Karina Leake, (202) 402-6719, and Allison Beach of HUD's Washington, D.C. Office of Fair Housing and Equal Opportunity are the investigators on this case. You are required to respond to this request within 5 days of the receipt of this letter.

Please forward all requested information to Karina Leake at the following address:

Office of Systemic Investigations
U.S. Department of Housing and Urban Development
451 7th St. SW, Suite 5216
Washington, DC 20410

Please be assured that HUD is committed to a full and fair preliminary investigation. Accordingly, HUD will receive and consider any information that you believe is relevant to this inquiry. HUD trusts that Salvation Army shares its interest in a fair and complete investigation of these issues and appreciates your cooperation in this regard.

Sincerely,



Joel D. Armstrong
Director
Office of Systemic Investigations

Salvation Army
Request for Information

These requests pertain to documents and information from October 1, 2008, through the present.

1. In January 2012, Salvation Army provided redacted copies of the resident files of four (4) women referenced during the December 6, 2011 interview. Provide un-redacted tenant files for the women terminated from the Turning Point transitional housing program due to pregnancy. In addition to the un-redacted tenant files, provide documentation of the women's transition plan and any violations.
2. Provide a list of all of the Salvation Army's transitional housing programs that accept pregnant women and/or allow women who become pregnant to continue participating in the housing program.
3. From the list provided in item 2 above, provide the house rules, admission and termination policies in effect from 2008 through the present for at least three (3) transitional housing programs from each Territory (Eastern, Western, Southern, Central).

Attachment E

Lippincott, Alexandria

From: Facher, Jared [Jared.Facher@cwt.com]
Sent: Friday, August 03, 2012 5:45 PM
To: Beach, Allison W
Cc: Mourning, Paul; Leake, Karina S
Subject: RE: The Salvation Army -- Fair Housing Act - Investigation by the Department of Housing and Urban Development -- Southern Territory
Attachments: Southern Territory Transitional Housing Programs.pdf; Transitional Living Center -- Clearwater.pdf; START Transitional Program -- Fort Worth.pdf; F.A.I.T.H. program -- Sarasota.pdf

Dear Ms. Beach,

Attached please find the response of The Salvation Army's Southern Territory to HUD's July 2, 2012 request for additional information concerning The Salvation Army's transitional housing programs. Specifically, attached (i) is a list of all the transitional housing programs in the Southern Territory that accept pregnant women and/or allow women who become pregnant to continue participating in the housing program, and (ii) the "house rules, admission and termination policies" in effect for (a) the START Transitional Program in Fort Worth, Texas, (b) the Transitional Living Center in Clearwater, Florida, and (c) the F.A.I.T.H. program in Sarasota, Florida, three of these transitional housing programs. In addition, please note that The Salvation Army operates domestic violence shelters in seven confidential locations in Florida, Georgia, North Carolina, Texas and Virginia. Nothing herein shall be construed as an admission that such facilities or the facilities on the attached list are subject to the Fair Housing Act, 42 U.S.C. § 3601 et seq.

With respect to the request for unredacted copies of the four resident files from the Turning Point Center for Women and Children in Washington D.C., we have previously advised, both in our June 18, 2012 e-mail and our January 27, 2012 letter to you, and in our prior letter of May 13, 2010 to Mr. Joel D. Armstrong, that The Salvation Army's National Policy and Guidelines on Confidentiality and the Protection of Personal Privacy precludes The Salvation Army from disclosing the identity of program participants or any case file information without the consent of the participant or a court order. As we reported to you in our e-mail of July 3, 2012, The Salvation Army sent letters via certified mail to these four former residents using their last known contact information seeking their consent for the disclosure of the requested information. Three of these letters have been returned as undeliverable. The Salvation Army has not received a response from one other. Accordingly, at this time, The Salvation Army cannot disclose the requested information in the absence of a court order directing such disclosure. Please be advised in this connection that The Salvation Army will oppose disclosure if such an order is applied for.

We request **CONFIDENTIAL TREATMENT** pursuant to the Freedom of Information Act for this response and for the information contained herein. The information for which confidential treatment is required is commercial information and/or proprietary in nature, and not available to the public from any other source. See 5 U.S.C. § 552(b)(4) and 24 C.F.R. § 15.3(a)(4).

Regards,

Jared Facher
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
Tel: +1 212.504.6494
Fax: +1 212.504.6666
jared.facher@cwt.com
www.cadwalader.com

Attachment F

AFFIDAVIT OF SERVICE

Cover Letter and Subpoena Duces Tecum

Case Number: 00-12-0007-8

Plaintiff:
Assistant Secretary, Office of Fair Housing and Equal Opportunity

vs.

Defendant:
The Salvation Army

For:
U.S. Department of Housing and Urban Development
451 7th St, SW
Systematic Investigations c/o Joel Armstrong
Washington, DC 20410

Received by Direct Process Server, LLC on the 27th day of August, 2012 at 12:51 pm to be served on The Salvation Army, One World Financial Center, c/o Paul W. Mourning, Esq. Cadwalader, Wickersham & Taft LLP, New York, NY 10281.

I, Alvin Gonzalez, being duly sworn, depose and say that on the 30th day of August, 2012 at 4:47 pm, I:

served a CORPORATION by delivering a true copy of the Cover Letter and Subpoena Duces Tecum, to: Owen Ridges, Jr. as Assistant To The Managing Attorney for The Salvation Army, at the address of: One World Financial Center, c/o Paul W. Mourning, Esq. Cadwalader, Wickersham & Taft LLP, New York, NY 10281, and informed said person of the contents therein, in compliance with state statutes.

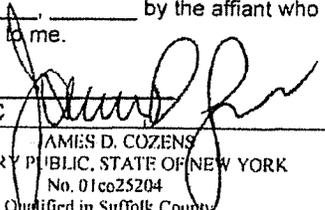
Description of Person Served: Age: 40, Sex: M, Race/Skin Color: Black, Height: 6'-2", Weight: 180, Hair: Black, Glasses: Y

I certify that I am over the age of 18, have no interest in the above action. Under penalties of perjury, I declare I have read the foregoing document and the facts stated are true.

SEP 04 2012

Subscribed and Sworn to before me on the _____ day of _____ by the affiant who is personally known to me.

NOTARY PUBLIC


JAMES D. COZENS
NOTARY PUBLIC, STATE OF NEW YORK
No. 01co25204
Qualified in Suffolk County
Commission Expires May 24, 2015



Alvin Gonzalez

Direct Process Server, LLC
373 Smithtown Byp
Suite 212
Hauppauge, NY 11788
(631) 406-6989
Our Job Serial Number: DPR-2012002219



DEFINITIONS

As used in this subpoena:

1. "Document" as used in this subpoena is used in the broadest sense permitted by the Federal Rules of Civil Procedure and means:

(i) the original, all non-identical copies, and drafts of writing of any kind, including, but not limited to, notes, correspondence, memoranda, reports, minutes, pamphlets, letters, contracts, telegrams, messages (including reports, notes, and memoranda of telephone conversations and conferences), calendar and diary entries, records, data, computerized documents, electronically stored documents, compilations, drawings, graphs, charts, data compilations, telephone logs, signs; and

(ii) photographs, audio tapes, films, videotapes, sound recordings, and similar means of reproduction from which information can be obtained.

All attachments or enclosures to a document are deemed to be part of such documents.

2. "Salvation Army" means the Turning Point Center for Women & Children, in Washington, D.C.

INSTRUCTIONS

The documents produced should not be redacted or altered in any way that modifies their contents. The Salvation Army may, if it chooses, supplement its production with materials that explain what it views as errors or omissions in any document it produces. Under no circumstances, however, should the Salvation Army either withhold a document because it believes that it is inaccurate or produce a document in response to these requests in any form other than that in which the document is customarily maintained.

REQUESTED DOCUMENTS

1. Identify the person for each tenant file provided to HUD in connection with HUD's July 2, 2012 data request, or provide un-redacted copies of all documents relating to tenant files for each tenant terminated from the Turning Point Center for Women and Children transitional housing program in Washington, D.C., due to pregnancy.
2. For each person identified in response to request number one above, provide all documents relating to violations of rules and/or policies; and any other corrective, termination and/or eviction documentation issued to such person for any reason from October 1, 2008, to the present.

3. For each person identified in response to request number one above, provide a copy of all documents relating to individual transitional plans and any updates or periodic assessments made in connection therewith.

FAILURE TO COMPLY WITH A SUBPOENA

The Assistant Secretary may refer any instance of non-compliance with this subpoena to the United States Attorney General for enforcement pursuant to 42 U.S.C. § 3614(c) and 24 C.F.R. § 180.545(g).

CRIMINAL PENALTIES

The Fair Housing Act, 42 U.S.C. § 3611(c), provides that:

(1) Any person who willfully fails or neglects to attend and testify or to answer any lawful inquiry or to produce records, documents, or other evidence, if it is in such person's power to do so, in obedience to the subpoena or other lawful order under [42 U.S.C. § 3611](a), shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

(2) Any person who, with intent thereby to mislead another person in any proceeding under this title—

(A) makes or causes to be made any false entry or statement of fact in any report, account, record, or other document produced pursuant to subpoena or other lawful order under subsection (a);

(B) willfully neglects or fails to make or to cause to be made full, true, and correct entries in such reports, accounts, records, or other documents; or

(C) willfully mutilates, alters, or by any other means falsifies any documentary evidence;

shall be fined not more than \$100,000 or imprisoned not more than one year, or both.

ADDITIONAL PROTECTIONS AND DUTIES OF PERSONS SUBJECT TO SUBPOENAS ISSUED DURING FAIR HOUSING INVESTIGATIONS

24 C.F.R. § 180.545(f):

Motion to quash or limit subpoena. Upon a motion by the person served with a subpoena or by a party, made within five days after service of the subpoena (but in any event not less than the time specified in the subpoena for compliance), the [Assistant Secretary] may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(2) Condition denial of the motion upon the advancement, by the party on whose behalf the subpoena was issued, of the reasonable cost of producing subpoenaed books, papers or documents. Where circumstances require, the [Assistant Secretary] may act upon such a motion at any time after a copy of the motion has been served upon the party on whose behalf the subpoena was issued.

Fed. R. Civ. P. 45(c): Protecting a Person Subject to a Subpoena:

(1) Avoiding Undue Burden or Expense; Sanctions. [The Assistant Secretary] must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. . . .

(2) Command to Produce Materials or Permit Inspection.

(A) Appearance Not Required. A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial. . . .

(3) Quashing or Modifying a Subpoena.

(A) When Required. On timely motion, the [Assistant Secretary] must quash or modify a subpoena that:

(i) fails to allow a reasonable time to comply;

(ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person--except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;

(iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) When Permitted. To protect a person subject to or affected by a subpoena, the [Assistant Secretary] may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information;

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) Specifying Conditions as an Alternative. In the circumstances described in Rule 45(c)(3)(B), the [Assistant Secretary] may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the [Assistant Secretary]:

(i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(ii) ensures that the subpoenaed person will be reasonably compensated.

Fed. R. Civ. P. 45(d) Duties in Responding to a Subpoena:

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) Documents. A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) Form for Producing Electronically Stored Information Not Specified. If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) Electronically Stored Information Produced in Only One Form. The person responding need not produce the same electronically stored information in more than one form.

(D) Inaccessible Electronically Stored Information. The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

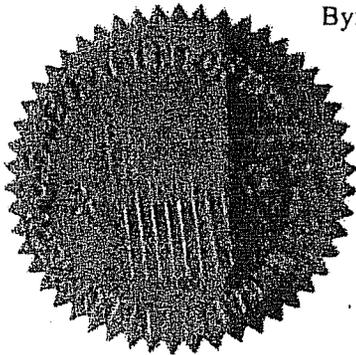
(A) Information Withheld. A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

(i) expressly make the claim; and

(ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) Information Produced. If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

The authority to issue subpoenas pursuant to fair housing investigations having been delegated to me by the Assistant Secretary, I have signed this subpoena and caused the seal of the United States Department of Housing and Urban Development to be affixed thereto at Washington, the District of Columbia, on August 19, 2012.



By: Joel Armstrong
Joel Armstrong
Director
Office of Systemic Investigations

APPROVED BY: Kathleen M. Pennington
Kathleen M. Pennington
Assistant General Counsel
for Fair Housing Enforcement

Date: August 20, 2012

Attachment G



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-2000

August 17, 2012

Paul W. Morning, Esq.
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281

Re: *Assistant Secretary v. The Salvation Army*, FHEO Case No. 00-12-0007-8

Dear Mr. Mouming:

Enclosed is a subpoena requiring your client, the Salvation Army, to produce certain documents in connection with the U.S. Department of Housing and Urban Development (HUD)'s investigation in the above-referenced matter. Specifically, the subpoena directs the Salvation Army to either identify the person for each tenant file previously provided pursuant to HUD's July 2, 2012 data request, or provide un-redacted copies of the tenant files for each tenant terminated from the Turning Point Center for Women & Children's ("Turning Point") transitional housing program in Washington, D.C., due to pregnancy. Additionally, the subpoena directs the Salvation Army to produce any documentation concerning these tenants' transitional plans and/or violations.

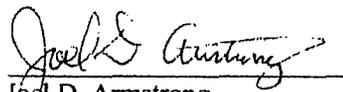
In declining to produce un-redacted files, you expressed concern about disclosing the identities of Turning Point participants without their authorization. To the extent permitted by law, HUD will agree to treat the identities of these individuals as confidential during the course of the investigation. The Salvation Army may provide the information as follows:

1. The Salvation of Army may designate as "CONFIDENTIAL" any document, information or material identifying the participants if such document, information or material is of a private, sensitive or personal nature.
2. The Salvation of Army should have a good-faith basis in fact and law that the material is confidential to designate it as such. For example, publicly available material should not be designated as "CONFIDENTIAL."
3. Material may be designated as "CONFIDENTIAL" by stamping the word "CONFIDENTIAL" on the face of the writing, document or other information.

4. Information or material designated as "CONFIDENTIAL" will be held in strictest confidence and shall be kept securely.
5. Access to "CONFIDENTIAL" documents, information or materials, as well as written or oral summaries or accounts thereof, shall be limited to necessary HUD personnel.
6. HUD personnel will not make more copies of any "CONFIDENTIAL" information or material than are reasonably necessary to conduct the investigation.
7. The parties will endeavor to pursue a stipulated protective order regarding the exchange of confidential information if a Charge of Discrimination is issued in the above-referenced matter, and no party elects to have the case heard in federal court.

If you have any questions regarding this matter, please contact Karina Leake or Allison Beach, the investigators assigned to this case, at (202) 402-6719.

Sincerely,



Joel D. Armstrong
Director
Office of Systemic Investigations

Attachment H

CADWALADER

Cadwalader, Wickersham & Taft LLP
One World Financial Center, New York, NY 10281
Tel +1 212 504 6000 Fax +1 212 504 6666
www.cadwalader.com

New York London Charlotte Washington
Houston Beijing Hong Kong Brussels

September 12, 2012

VIA FEDEX

Mr. Joel D. Armstrong
Director
Office of Systemic Investigations,
U.S. Department of Housing and Urban
Development
451 Seventh Street, SW
Suite 5216
Washington, DC 20410

Re: Assistant Secretary v. The Salvation Army (FHEO Case Number 00-12-0007-8)

Dear Mr. Armstrong:

As you know, we represent The Salvation Army, a Georgia corporation, the corporate instrumentality of The Salvation Army in its Southern Territory, in connection with the above-referenced complaint dated August 3, 2012 (the "Complaint"), initiated by the Secretary of United States Department of Housing and Urban Development ("HUD"), alleging violations of the Federal Fair Housing Act at The Salvation Army's Turning Point Center for Women and Children located at 1434 Harvard Street NW, Washington, D.C. 20009 (the "Turning Point Center"). We write this letter in response to the subpoena duces tecum served on The Salvation Army on August 30, 2012 (the "Subpoena"), which seeks the files of four participants in the Turning Point Center program who were terminated from the program after becoming pregnant. Specifically, consistent with Federal Rules of Civil Procedure 45(c)(2)(B), we write to object to the request in the Subpoena that The Salvation Army produce personal identifying information of these former program participants on the grounds that compliance with the Subpoena would violate The Salvation Army's Policy and Guidelines on Confidentiality and the Protection of Personal Privacy (the "National Confidentiality Policy"), a copy of which is enclosed. As we previously have advised you, because of this policy and the commitment to Salvation Army program participants that it represents, The Salvation Army cannot produce the information requested in the Subpoena absent a court order so directing or the consent of the program participants, which despite The Salvation Army's best efforts, has not been obtained.

C A D W A L A D E R

Mr. Joel D. Armstrong
September 12, 2012

Prior History Of HUD's Requests With Respect To The Subpoenaed Documents

The Subpoena requests that The Salvation Army "identify" or "provide un-redacted copies" of documents relating to the four pregnant women who were terminated from the Turning Point Center. A similar request was originally made on April 14, 2010 during the interviews of two employees of the Turning Point Center conducted by Ms. Barbara Delaney, the former HUD investigator assigned to this matter. Specifically, during the interviews, Ms. Delaney requested access to case files of former Turning Point Center program participants that were terminated from the program while they were pregnant. She was advised that the National Confidentiality Policy precluded The Salvation Army from disclosing the identity of program participant(s) or any case file information without the consent of the program participant(s) in question or a court order compelling such disclosure. We followed up this advice by alerting you in our letter dated May 13, 2010, of the limited circumstances in which The Salvation Army could disclose such information because of the National Confidentiality Policy. A copy of the May 13, 2010 letter is enclosed.

The next request for documents relating to these participants in the Turning Point Center program was made by Ms. Allison Beach, the HUD investigator now assigned to this matter, in her e-mail dated January 9, 2012 (the "January 9, 2012 Request"), in which she requested the files of the participants, including "documentation of any violations" and the "transition plan." In response to the January 9, 2012 Request, on January 27, 2012, on behalf of The Salvation Army, we produced to HUD the complete files maintained by the Turning Point Center relating to these four program participants, consisting of hundreds of pages of information, redacted to remove any personal identifying information. The redactions were of names, addresses, and other personal identifying information of the program participants as well as personal identifying information of other individuals referenced in the files, including children and other relatives of the program participants, and other program participants. We informed Ms. Beach that, as we had explained in the May 13, 2010 letter to you, the National Confidentiality Policy precludes The Salvation Army from disclosing the identity of program participants unless the participant consents to the disclosure or a court of competent jurisdiction orders such disclosure.

By e-mail dated May 30, 2012 (the "May 30, 2012 Request"), Ms. Beach acknowledged receipt of the redacted files and requested that The Salvation Army consent to HUD conducting an on-site review of the files for the four program participants to obtain their names and last known addresses. In response to this request, by e-mail dated June 18, 2012, we reiterated to Ms. Beach that The Salvation Army was precluded by the National Confidentiality Policy from identifying its program participants without the consent of the participant or a court order compelling such disclosure. We further informed Ms. Beach that in response to the

C A D W A L A D E R

Mr. Joel D. Armstrong
September 12, 2012

May 30, 2012 Request. The Salvation Army wrote to each of the four former program participants, sending letters via certified mail using their last known contact information, to ask whether they would consent to the disclosure of the information requested by HUD.

By letter dated July 2, 2012, you once again requested the information that was sought in the January 9, 2012 Request, among other things. In response, by e-mail to Ms. Beach dated August 3, 2012, we again stated that the National Confidentiality Policy precluded The Salvation Army from disclosing this information without the consent of the program participant or a court order. In this connection, we advised that three of the letters sent by The Salvation Army to the last known address of the four former program participants were returned to The Salvation Army as "undeliverable," and that The Salvation Army had not received any response to the fourth letter. Accordingly, we advised Ms. Beach that The Salvation Army could not disclose the requested information in the absence of a court order directing such disclosure and that The Salvation Army would oppose disclosure if such an order was applied for.

Subpoena

The Subpoena requests as follows:

1. Identify the person for each tenant file provided to HUD in connection with HUD's July 2, 2012 data request, or provide un-redacted copies for all documents relating to tenant files for each tenant terminated from the Turning Point Center for Women and Children transitional housing program in Washington, D.C., due to pregnancy.
2. For each person identified in response to request number one above, provide all documents relating to violations of rules and/or policies; and any other corrective, termination and/or eviction documentation issued to such person for any reason from October 1, 2008, to the present.
3. For each person identified in response to request number one above, provide a copy of all documents relating to individual transitional plans and any updates or periodic assessments made in connection therewith.

The Subpoena seeks documents that have already been requested by HUD and produced by The Salvation Army. In response to the previous requests, The Salvation Army produced the

C A D W A L A D E R

Mr. Joel D. Armstrong
September 12, 2012

complete files for each of the four former program participants that are maintained by the Turning Point Center, redacted only to prevent the disclosure of personal identifying information.

Because The Salvation Army has not been able to obtain the consent of the four former program participants of the Turning Point Center, as set forth above and previously disclosed to HUD, the National Confidentiality Policy precludes The Salvation Army from disclosing this personal identifying information without a court order. Although The Salvation Army has voluntarily cooperated with HUD in its investigation for over two and a half years, the National Confidentiality Policy requires The Salvation Army to make this objection to the Subpoena.

Your letter of August 19, 2012

Although we acknowledge and appreciate your offer to treat the identities of the program participants as "confidential during the course of the investigation," HUD's promises of confidentiality do not relieve The Salvation Army of its commitment to its program participants not to disclose their personal identifying information as requested in the Subpoena. The Salvation Army adopted the National Confidentiality Policy so that its program participants could be confident that no one, including government representatives, would be granted access to their confidential information unless they consented or a court determined that there is good cause for the disclosure of such information. We do not suggest that HUD would unnecessarily disclose the names or any other confidential information of the former program participants of the Turning Point Center, but The Salvation Army cannot violate this longstanding commitment to its program participants. The Salvation Army cannot effectively operate its programs without establishing some level of trust with the residents of its facilities. HUD is asking The Salvation Army to break that trust.

Regardless of the confidentiality issues, at this time, and as previously requested in our letter to you of May 13, 2010, we would appreciate an opportunity to discuss the substantive issues involved in the Complaint, so that The Salvation Army can be provided with some clarity with respect to HUD's position relating to sex-based or other programmatic restrictions on participation in transitional housing programs. Such clarity would better enable The Salvation Army to carry on its charitable social service work. We refer you in this connection to the answer to the Complaint that was submitted by The Salvation Army on September 7, 2012.

* * *

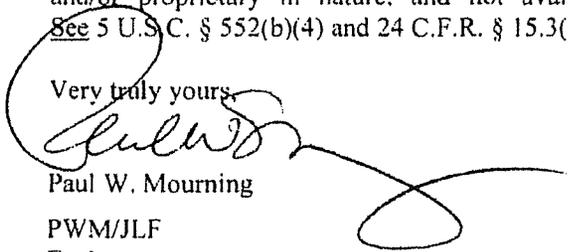
On behalf of The Salvation Army, we request **CONFIDENTIAL TREATMENT** pursuant to the Freedom of Information Act for this response and for the information contained herein. The information for which confidential treatment is requested is commercial information

CADWALADER

Mr. Joel D. Armstrong
September 12, 2012

and/or proprietary in nature, and not available to the public from any other source.
See 5 U.S.C. § 552(b)(4) and 24 C.F.R. § 15.3(a)(4).

Very truly yours,


Paul W. Mourning

PWM/JLF
Enclosures

The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy

The Salvation Army
Commissioners' Conference
National Minute/Policy

Category: Policies, Procedures and Guidelines

CC References: 05/2000 Policy (pp. 524-526)

Other References: Guidelines (pp. 527-530)

Effective:

Date Posted:

The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy

POLICY

People seek help from Salvation Army program units when they have special needs which may range from fairly simple to painfully difficult. Their need for service and the help that can be given is determined through sharing factual and personal information. For this to be effective, there must be trust that the program unit will hold the shared information confidential.

Therefore, the commitment to confidentiality extends to all Salvation Army officers, employees, and volunteers. It includes the knowledge that a person is or has been a recipient of service. The Salvation Army will consider carefully matters of confidentiality as they obtain within the particular setting and commit itself to the highest level of agency practice within a given community.

The presumption of confidentiality applies to The Salvation Army unit as a whole, not only to an individual staff person, since client information is normally shared internally for legitimate purposes of training, supervision, records accountability, and expanded client service.

Principles of confidentiality and how these are carried forward in the program unit will be part of the orientation of each new employee, advisory organization member, and other volunteers. As a general principle, no information about individuals receiving Salvation Army services will be disclosed outside of the organization except when informed written consent has been obtained from the service recipient. National Salvation Army guidelines, which are received and updated periodically regarding particular confidentiality issues, should be available to all staff.

Individual program units will assume responsibility for being fully aware of and responsive to the requirements pertaining to confidentiality that impact upon them as a result of contractual commitments, the requirements of law specific to the program, the demands of standard-setting bodies, as well as Salvation Army standards for the particular program.

Original Approval by the May 1981 Commissioners' Conference

Latest Revision Approved by the May 2000 Commissioners' Conference (pp. 524-526)

GUIDELINES

The following guidelines are issued in connection with The Salvation Army Policy Statement on Confidentiality and the Protection of Personal Privacy.

1. Fact of Participation

The fact that an individual is or has been a participant in a Salvation Army social service or community service program should not be disclosed outside The Salvation Army unit, except as may be specifically defined in the national standards in effect for the particular kind of program. This restraint will not apply to public meetings or programs in which participants take part as "members," e.g., troop activities, community center programs, and boys' clubs.

Inquiries by visit, telephone or letter regarding a participant in a Salvation Army residential program should be answered with the statement that information as to whether a particular individual is or has been in residence cannot be divulged; that, if in fact the individual is in residence, he/she will be advised of the inquiry, and that, at his/her discretion, the client will or will not communicate with the inquirer.

2. Disclosure to Other Organizations

Disclosure of limited client information to other social service agencies, for the purpose of a referral to or from The Salvation Army, generally would be permitted if a determination is made that the disclosure is in the interest of the client.

Before client records can be disclosed to individuals or agencies outside of The Salvation Army, the written consent of the client must be obtained. The consent should be in writing and should identify the information to be disclosed, the person or agency to whom it will be disclosed, the purpose of the disclosure, and the date upon which the client's consent expires. Use of the Authorization for Release of Information form is recommended for this purpose. The form may be found in the resource, *"Basic Social Services — A Primer of Policies, Standards, and Procedures."*

On the other hand, information is to be withheld where The Salvation Army is required by law (as in alcohol and drug programs regulated or funded by a federal agency or in child care or health care facilities, which disclosure is prohibited by state regulations) and/or where by contract The Salvation Army has agreed to maintain the confidentiality of client records.

Disclosure of information relating to program participants should not be made to employers, credit agencies, unions, or other similar organizations, except under terms and conditions contractually defined where employment is an integral part of the program (e.g., contracts with federal or state correctional authorities for early release programs), or at the request, and with the consent of the participant.

If there is doubt about whether client information should be disclosed, local legal counsel should be obtained and the appropriate Salvation Army administrative headquarters should be consulted before the information is disclosed.

3. Clearing House

Whereas, as a general rule, there is no objection to participation by The Salvation Army in clearing houses, there are any number of situations in which such disclosure is prohibited by contract or regulation or where disclosure of the information could damage the client. Because of the varied and fluctuating makeup of the usual Army case load, written consent of the client should be included in the clearing house procedure. The information provided to the clearing house should be limited to that which is necessary for the clearing house to perform its basic function. The clearing house should

The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy

provide some written statement (e.g., agreement or policy statement) that the clearing house will limit the further disclosure of such information.

Where clearing house information is shared electronically by several agencies through computer access, the clearing house should have written agreements from each participating agency limiting computer access to appropriate staff at each agency.

4. Information to the Client

In some situations The Salvation Army may be required by state or municipal law to disclose to the participant information contained in his/her own case record. Information disclosed should be limited to that which is included in the formally completed and approved case record. The formal case record should contain factual information, not informal counselor notes and/or casual observations. Information provided by other agencies should not be shared, as it is not the property or responsibility of The Salvation Army.

5. Law Enforcement Personnel

Except where a crime has been committed at a Salvation Army institution, disclosure to law enforcement agencies, whether local or state police, district attorney or the FBI, of the participation by an individual in a Salvation Army program, or of information contained in record, should be refused.

Whether served by an attorney in a civil action or at the instance of a governmental agency, a subpoena served on The Salvation Army for information regarding a participant should be resisted. It is noted that a subpoena is not the same as a court order. Specifically, local legal counsel should be retained to appear in court to move to quash the subpoena, thus compelling the person seeking disclosure of the information to show the court good cause for such disclosure, in order to request a court order. In any case, before any action is taken, the local Salvation Army operation should contact its immediate administrative headquarters.

Since an arrest warrant or a search warrant is a court order which has been issued by a court after a showing of probable cause, if such a warrant is presented to a Salvation Army facility relating to a client in residence, The Salvation Army facility should cooperate with the law enforcement agency in making the arrest or the search, preferably in a manner which will involve the least disruption of the program at the facility.

Because law enforcement personnel are precluded from conducting a search of a residence without an arrest or search warrant, and because a criminal summons does not constitute a warrant, The Salvation Army should not produce a participant or otherwise cooperate with law enforcement personnel seeking to serve a criminal summons on a resident at a Salvation Army institution. Law enforcement personnel should be advised that they will be required to produce a valid arrest or search warrant before The Salvation Army will cooperate with them, whether in making the arrest or the search, on the terms set forth in the prior paragraph. (This paragraph added per MLC's letter of August 17, 2001)

6. Release of Records Under Court Order

The Salvation Army is the owner and controller of all client records. No records may be removed from Salvation Army premises or transmitted to other parties without specific written approval by The Salvation Army officer in charge or the executive director, in consultation with local legal counsel.

In the event that Salvation Army client records are required by order of a court of competent jurisdiction, when good cause for such disclosure has been determined by the court, the records which have been subpoenaed by the court shall be delivered to the court, on the date requested, only by The Salvation Army officer in charge or the executive director or other staff as designated in writing.

The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy

If the court requires a review of a client record, The Salvation Army representative shall bring (not send) the record to the court, and request that the court review such record in closed chambers and admit only the minimum portion of such record which is relevant to the proceedings under consideration.

7. Limitations of Court Testimony

No Salvation Army personnel shall testify concerning areas of a client's life for which they are not fully educated and licensed to make appropriate professional assessments.

8. Child Abuse

Notwithstanding any other provisions of these guidelines, Salvation Army facilities will comply with all state and municipal laws requiring reporting to governmental agencies of instances of child abuse. Failure to comply with such laws can result in criminal sanctions.

Original Approval by the May 1984 Commissioners' Conference
Latest Revision Approved by the May 2000 Commissioners' Conference (pp. 527-530)



Authorization For Release of Information Form

CADWALADER

Cadwalader, Wickersham & Talt LLP
New York London Charlotte Washington Beijing

One World Financial Center, New York, NY 10281
Tel 212 504 6000 Fax 212 504 6666
www.cadwalader.com

May 13, 2010

VIA FEDEX AND ELECTRONIC MAIL

Mr. Joel D. Armstrong
Director
Office of Systemic Investigations, EDS
U.S. Department of Housing and Urban
Development
451 Seventh Street, SW
Suite 5234
Washington, DC 20410

Re: The Salvation Army – National Headquarters

Dear Mr. Armstrong:

As National Legal Counsel to The Salvation Army in the United States, we are representing The Salvation Army, the Georgia corporation, the corporate instrumentality of The Salvation Army's Southern Territory (the "Southern Territory"), in connection with the investigation that has been initiated by the Assistant Secretary for Fair Housing and Equal Opportunity in the United States Department of Housing and Urban Development ("HUD") "into the transitional housing practices of The Salvation Army" pursuant to the Federal Fair Housing Act, 42 U.S.C. § 3610(a)(1)(A)(iii) (the "Fair Housing Act"), particularly to determine whether The Salvation Army "unlawfully discriminates against persons on the basis of sex (female) and familial status (pregnant women) with respect to the terms and conditions and making housing unavailable."

As you are aware, by letter dated January 15, 2010, we provided a response to the request for information that was enclosed with your initial letter of December 4, 2009 to the National Commander of The Salvation Army. With your letter to us of February 26, 2010, you enclosed a "second request for information" (the "Second Request") relating to facilities in the Southern Territory.

In our letter to you of March 19, 2010, we responded to the Second Request by (i) identifying all of the Adult Rehabilitation Centers operated by The Salvation Army in the Southern Territory, (ii) identifying the Turning Point Center for Women and Children in Washington, D.C. ("Turning Point Center") as the only "transitional housing" program for women operated by The Salvation Army in the District of Columbia, and (iii) providing copies of the operating policies and procedures of the Turning Point Center.

C A D W A L A D E R

Mr. Joel D. Armstrong
May 13, 2010

In response to our March 19, 2010 letter, Ms. Barbara Delaney, the investigator from the Office of Systemic Investigations that has been assigned to this matter, requested that The Salvation Army make several staff members of the Turning Point Center available for interviews concerning the Turning Point Center's "policies and practice of the program." In furtherance of the Southern Territory's voluntary cooperation with HUD, we subsequently arranged for Ms. Delaney to visit the Turning Point Center on April 14, 2010 to interview Ms. Leslye Wooley, Director of Program Services for The Salvation Army's National Capital Area Command, and Ms. Pam Lieber, Director of the Turning Point Center. Jared L. Facher, Esq., of our firm sat in on both interviews. Later the same day we received an e-mail from Ms. Delaney in which she requested that The Salvation Army identify "another transitional housing program for women in the Northern Virginia area" so that a further interview could be scheduled at that location the following week.

Before any further interviews of Southern Territory personnel take place, we would like to address certain issues that arose during the April 14, 2010 interviews at the Turning Point Center. In the course of the interviews, Ms. Delaney requested access to the case files of two former residents of the Turning Point Center and advised that she intended to conduct interviews of Turning Point Center residents. Mr. Facher explained to Ms. Delaney that The Salvation Army's National Policy and Guidelines on Confidentiality and the Protection of Personal Privacy (the "National Confidentiality Policy"), a copy of which is enclosed, precludes The Salvation Army from disclosing the identity of program participants or any case file information without the consent of the resident(s) in question or a court order compelling such disclosure. At the conclusion of the interviews, Ms. Delaney requested a tour of a resident apartment. Mindful of the National Confidentiality Policy, the Turning Point Center staff made arrangements to show Ms. Delaney an empty apartment so as not to compromise the privacy and confidentiality of residents. Ms. Delaney took advantage of this access to approach a young resident of the Turning Point Center with a very young child on her lap, to hand the woman her business card, and advise the woman that she is from "HUD" and that the woman should contact her if she had any "concerns".

As a result of Ms. Delaney's actions, we have recommended to the Southern Territory that it not volunteer to host any future interviews of its staff at transitional housing programs or other residential facilities. Furthermore, as required by the National Confidentiality Policy, this will confirm that The Salvation Army will not make any resident available for an interview or provide any resident records for inspection by HUD without the consent of the resident or an order entered by a court after The Salvation Army has had an opportunity to object on grounds of privacy and confidentiality.

More substantively, we believe that it would be constructive, at this point, to engage in a discussion concerning the basis for HUD's investigation of The Salvation Army. In particular, we would like to understand HUD's substantive position regarding programmatic-based

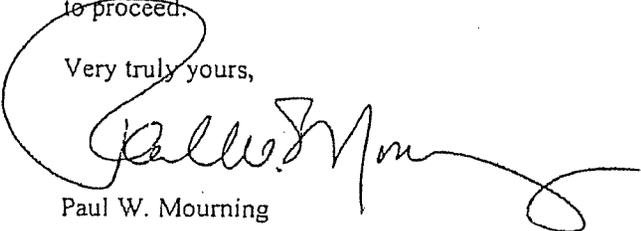
C A D W A L A D E R

Mr. Joel D. Armstrong
May 13, 2010

restrictions on participation in transitional housing programs, including whether a provider of transitional housing services may limit participation in a particular facility, for example, to women with children, or discharge a program participant from such a shelter for violating rules relating to pregnancy that are intended to benefit program participants. Questions raised by Ms. Delaney during the April 14, 2010 interviews suggest that she believes such restrictions may be inconsistent with the non-discrimination provisions of the Fair Housing Act, notwithstanding our general sense that participation in many residential social service programs today are restricted by sex and/or familial status for legitimate programmatic reasons. Rather than devoting resources to an extensive factual investigation, particularly where the facts may not be in question, we respectfully request, on behalf of the Southern Territory, that we have an opportunity to discuss these substantive issues directly with the appropriate personnel at HUD. The purpose of such a discussion would be to provide clarity to The Salvation Army with respect to HUD's position relating to sex-based or other programmatic restrictions on participation in transitional housing programs to better enable The Salvation Army to carry on its charitable social service work in this time of unprecedented need.

In view of the foregoing, we will await further advice from your office as to how HUD wishes to proceed.

Very truly yours,


Paul W. Mourning

Enclosure

PWM/jlf

C A D W A L A D E R

Mr. Joel D. Armstrong
May 13, 2010

cc: Commissioner Maxwell Feener

The Honorable Shaun Donovan, Secretary, U.S. Department of Housing
and Urban Development

Mr. John Trasviña, Assistant Secretary, Fair Housing and Equal Opportunity,
U.S. Department of Housing and Urban Development

Ms. Barbara Delaney, Office of Systemic Investigations, U.S. Department
of Housing and Urban Development

Mr. Mark Linton, Director, Center for Faith-Based and Neighborhood
Partnerships, U.S. Department of Housing and Urban Development

The Salvation Army
Commissioners' Conference
National Minute/Policy

Category: Policies, Procedures and Guidelines
CC References: 05/2000 Policy (pp. 524-526)
Other References: Guidelines (pp. 527-530)

Effective:
Date Posted:

The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy

POLICY

People seek help from Salvation Army program units when they have special needs which may range from fairly simple to painfully difficult. Their need for service and the help that can be given is determined through sharing factual and personal information. For this to be effective, there must be trust that the program unit will hold the shared information confidential.

Therefore, the commitment to confidentiality extends to all Salvation Army officers, employees, and volunteers. It includes the knowledge that a person is or has been a recipient of service. The Salvation Army will consider carefully matters of confidentiality as they obtain within the particular setting and commit itself to the highest level of agency practice within a given community.

The presumption of confidentiality applies to The Salvation Army unit as a whole, not only to an individual staff person, since client information is normally shared internally for legitimate purposes of training, supervision, records accountability, and expanded client service.

Principles of confidentiality and how these are carried forward in the program unit will be part of the orientation of each new employee, advisory organization member, and other volunteers. As a general principle, no information about individuals receiving Salvation Army services will be disclosed outside of the organization except when informed written consent has been obtained from the service recipient. National Salvation Army guidelines, which are received and updated periodically regarding particular confidentiality issues, should be available to all staff.

Individual program units will assume responsibility for being fully aware of and responsive to the requirements pertaining to confidentiality that impact upon them as a result of contractual commitments, the requirements of law specific to the program, the demands of standard-setting bodies, as well as Salvation Army standards for the particular program.

Original Approval by the May 1981 Commissioners' Conference
Latest Revision Approved by the May 2000 Commissioners' Conference (pp. 524-526)

GUIDELINES

The following guidelines are issued in connection with The Salvation Army Policy Statement on Confidentiality and the Protection of Personal Privacy.

1. Fact of Participation

The fact that an individual is or has been a participant in a Salvation Army social service or community service program should not be disclosed outside The Salvation Army unit, except as may be specifically defined in the national standards in effect for the particular kind of program. This restraint will not apply to public meetings or programs in which participants take part as "members," e.g., troop activities, community center programs, and boys' clubs.

Inquiries by visit, telephone or letter regarding a participant in a Salvation Army residential program should be answered with the statement that information as to whether a particular individual is or has been in residence cannot be divulged; that, if in fact the individual is in residence, he/she will be advised of the inquiry, and that, at his/her discretion, the client will or will not communicate with the inquirer.

2. Disclosure to Other Organizations

Disclosure of limited client information to other social service agencies, for the purpose of a referral to or from The Salvation Army, generally would be permitted if a determination is made that the disclosure is in the interest of the client.

Before client records can be disclosed to individuals or agencies outside of The Salvation Army, the written consent of the client must be obtained. The consent should be in writing and should identify the information to be disclosed, the person or agency to whom it will be disclosed, the purpose of the disclosure, and the date upon which the client's consent expires. Use of the Authorization for Release of Information form is recommended for this purpose. The form may be found in the resource, *"Basic Social Services — A Primer of Policies, Standards, and Procedures."*

On the other hand, information is to be withheld where The Salvation Army is required by law (as in alcohol and drug programs regulated or funded by a federal agency or in child care or health care facilities, which disclosure is prohibited by state regulations) and/or where by contract The Salvation Army has agreed to maintain the confidentiality of client records.

Disclosure of information relating to program participants should not be made to employers, credit agencies, unions, or other similar organizations, except under terms and conditions contractually defined where employment is an integral part of the program (e.g., contracts with federal or state correctional authorities for early release programs), or at the request, and with the consent of the participant.

If there is doubt about whether client information should be disclosed, local legal counsel should be obtained and the appropriate Salvation Army administrative headquarters should be consulted before the information is disclosed.

3. Clearing House

Whereas, as a general rule, there is no objection to participation by The Salvation Army in clearing houses, there are any number of situations in which such disclosure is prohibited by contract or regulation or where disclosure of the information could damage the client. Because of the varied and fluctuating makeup of the usual Army case load, written consent of the client should be included in the clearing house procedure. The information provided to the clearing house should be limited to that which is necessary for the clearing house to perform its basic function. The clearing house should

The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy

provide some written statement (e.g., agreement or policy statement) that the clearing house will limit the further disclosure of such information.

Where clearing house information is shared electronically by several agencies through computer access, the clearing house should have written agreements from each participating agency limiting computer access to appropriate staff at each agency.

4. Information to the Client

In some situations The Salvation Army may be required by state or municipal law to disclose to the participant information contained in his/her own case record. Information disclosed should be limited to that which is included in the formally completed and approved case record. The formal case record should contain factual information, not informal counselor notes and/or casual observations. Information provided by other agencies should not be shared, as it is not the property or responsibility of The Salvation Army.

5. Law Enforcement Personnel

Except where a crime has been committed at a Salvation Army institution, disclosure to law enforcement agencies, whether local or state police, district attorney or the FBI, of the participation by an individual in a Salvation Army program, or of information contained in record, should be refused.

Whether served by an attorney in a civil action or at the instance of a governmental agency, a subpoena served on The Salvation Army for information regarding a participant should be resisted. It is noted that a subpoena is not the same as a court order. Specifically, local legal counsel should be retained to appear in court to move to quash the subpoena, thus compelling the person seeking disclosure of the information to show the court good cause for such disclosure, in order to request a court order. In any case, before any action is taken, the local Salvation Army operation should contact its immediate administrative headquarters.

Since an arrest warrant or a search warrant is a court order which has been issued by a court after a showing of probable cause, if such a warrant is presented to a Salvation Army facility relating to a client in residence, The Salvation Army facility should cooperate with the law enforcement agency in making the arrest or the search, preferably in a manner which will involve the least disruption of the program at the facility.

Because law enforcement personnel are precluded from conducting a search of a residence without an arrest or search warrant, and because a criminal summons does not constitute a warrant, The Salvation Army should not produce a participant or otherwise cooperate with law enforcement personnel seeking to serve a criminal summons on a resident at a Salvation Army institution. Law enforcement personnel should be advised that they will be required to produce a valid arrest or search warrant before The Salvation Army will cooperate with them, whether in making the arrest or the search, on the terms set forth in the prior paragraph. (This paragraph added per NLC's letter of August 17, 2001)

6. Release of Records Under Court Order

The Salvation Army is the owner and controller of all client records. No records may be removed from Salvation Army premises or transmitted to other parties without specific written approval by The Salvation Army officer in charge or the executive director, in consultation with local legal counsel.

In the event that Salvation Army client records are required by order of a court of competent jurisdiction, when good cause for such disclosure has been determined by the court, the records which have been subpoenaed by the court shall be delivered to the court, on the date requested, only by The Salvation Army officer in charge or the executive director or other staff as designated in writing.

The Salvation Army Policy and Guidelines on Confidentiality and the Protection of Personal Privacy

If the court requires a review of a client record, The Salvation Army representative shall bring (not send) the record to the court, and request that the court review such record in closed chambers and admit only the minimum portion of such record which is relevant to the proceedings under consideration.

7. Limitations of Court Testimony

No Salvation Army personnel shall testify concerning areas of a client's life for which they are not fully educated and licensed to make appropriate professional assessments.

8. Child Abuse

Notwithstanding any other provisions of these guidelines, Salvation Army facilities will comply with all state and municipal laws requiring reporting to governmental agencies of instances of child abuse. Failure to comply with such laws can result in criminal sanctions.

Original Approval by the May 1984 Commissioners' Conference
Latest Revision Approved by the May 2000 Commissioners' Conference (pp. 527-530)



Authorization For Release of Information Form

Attachment I



OFFICE OF GENERAL COUNSEL

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-0500

November 1, 2012

Steven H. Rosenbaum, Chief
U.S. Department of Justice
Civil Rights Division
Housing and Civil Enforcement Section
950 Pennsylvania Ave, NW – NWB
Washington, DC 20530

Attn.: Elizabeth Singer

Re: Request for Enforcement of Subpoena in Assistant Secretary v. The Salvation Army,
FHEO Case No. 00-12-0007-8

Dear Mr. Rosenbaum:

Pursuant to subsection 814(c) of the Fair Housing Act, 42 U.S.C. § 3614(c), and the Memorandum of Understanding between our departments concerning enforcement of the Act, the Department of Housing and Urban Development (“HUD”) requests that the Department of Justice initiate proceedings to obtain compliance with the investigatory subpoena issued in the above-referenced case. Pursuant to subsection 811(a) of the Act, 42 U.S.C. § 3611(a), HUD’s Office of Fair Housing and Equal Opportunity (“FHEO”) served a subpoena on The Salvation Army on August 30, 2012. Attachment A. We are referring this matter to your office for enforcement because The Salvation Army has refused to comply with the subpoena.

On August 3, 2012, Assistant Secretary John Trasviña filed a Secretary-initiated complaint against The Salvation Army, alleging that its Turning Point Center for Woman & Children (“Turning Point”) violated the Act on the basis of sex and familial status. Attachment B. The Salvation Army operates certain transitional housing programs that are not open to pregnant women. In furtherance of its investigation, HUD seeks tenant and eviction documents, transitional plans, and the identities of four tenants evicted from Turning Point because they were pregnant. The identities of the four women are important because HUD seeks to identify potential victims of the alleged discrimination as part of its investigation.

HUD has made numerous requests for this information, and The Salvation Army has refused to provide it. HUD first requested copies of complete resident files for the four pregnant women terminated from Turning Point on January 9, 2012. Attachment C. In response, on January 27, 2012, The Salvation Army provided resident files for the four women, but redacted all personal identifying information. Attachment D. The Salvation Army explained that its national confidentiality policy precluded it from disclosing the identities of program participants without the consent of the residents, or a court order compelling such disclosure. Ibid.

On July 2, 2012, HUD requested unredacted copies of the resident files for the four women. Attachment E. In that same data request, HUD also sought documentation of the women's transition plans and any alleged violations of program rules or policies. Ibid. On August 3, 2012, The Salvation Army reiterated that its national confidentiality policy precluded it from complying with HUD's request. Attachment F. The Salvation Army also informed HUD that it had sent letters to the four women requesting their consent to the disclosure of their identities to HUD. Ibid. Three of these letters were returned as undeliverable, and The Salvation Army received no response to the fourth letter. Ibid.

On August 30, 2012, HUD served the subject subpoena on The Salvation Army. Attachment A. To address The Salvation Army's concern about disclosing the identities of the program participants without their consent, HUD offered to treat the identities of the four women as confidential during the course of the investigation, to the extent permitted by law. Ibid. Despite HUD's offer, The Salvation Army objected to the subpoena's request for the personal identifying information of the four women, again stating that absent a court order or the consent of the program participants, it could not produce the requested information. Attachment G. We therefore request that you take action to enforce the subpoena so as to obtain unredacted files for the four women, including their transition plans and any documentation concerning alleged violations of program rules or policies.

We appreciate your assistance in this matter. If you have any questions about this case, please contact me at 202-402-3330 or attorneys Alexandria Lippincott at 202-402-5072 or Onjil McEachin at 202-402-6502.

Sincerely,



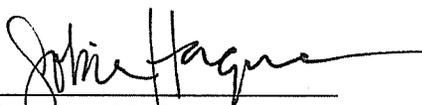
Kathleen M. Pennington
Assistant General Counsel
for Fair Housing Enforcement

Attachments A - G

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the Petition to Enforce Subpoena Issued by the United States Department of Housing and Urban Development; the Memorandum of Points and Authorities in Support of Petition to Enforce Subpoena Issued by the United States Department of Housing and Urban Development; and the corresponding Proposed Order to be served upon Respondents by first-class mail this 9th day of April, 2013.

Paul Mourning, Esq.
Cadwalader, Wickersham & Taft LLP
One World Financial Center
New York, NY 10281
paul.mourning@cwt.com



SOBIA HAQUE

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,)	
)	
Petitioner,)	
)	
v.)	Misc. No. _____
)	
THE SALVATION ARMY SOUTHERN)	
TERRITORY AND THE SALVATION)	
ARMY,)	
)	
Respondents.)	

[PROPOSED] ORDER

UPON CONSIDERATION of the United States of America's Petition to Enforce Subpoena Issued by the United States Department of Housing and Urban Development and the entire record herein, and for good cause shown, it is hereby:

ORDERED that the Government's petition is GRANTED;

ORDERED that The Salvation Army shall produce to Alexandria Lippincott, Office of General Counsel, U.S. Department of Housing and Urban Development, 451 7th St. SW, Washington, DC 20410, within eleven (11) days after service of this Order, complete responses to the information requested in Request Nos. 1-3 of the Subpoena;

ORDERED that in the event that The Salvation Army does not produce timely and complete responses to the requested information as set forth above, it is further Ordered that Respondents appear before the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Courtroom No. _____, on the _____ day of _____, 2013 at _____ .m., and show cause why it should not be held in contempt for failing to produce the information designated in this Order.

Date

United States District Judge