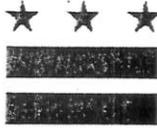


GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

February 6, 2009

BY U.S. MAIL

[Redacted]
Friedenbergsburg, VA [Redacted]

Re: Freedom of Information Act Appeal

[Redacted]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. § 2-531 *et seq.* (the "DC FOIA"), dated December 16, 2008 (the "Appeal"). We forwarded the Appeal to the District of Columbia Department of Human Resources ("DCHR") with a request for a response. DCHR responded by e-mail, dated January 7, 2009.

Background

In your initial FOIA Request dated June 29, 2009, you asked for copies of the selection certificate for Vacancy Announcement Number 6786 (DS-1811-11), which corresponded to a Criminal Investigator position at the Department of Corrections (DOC).

DCHR responded to your request on August 1, 2009, stating that because you did not apply for the position, the agency was unable to release the selection certificate to you. DCHR did, however, provide you with a copy of the vacancy announcement. On appeal, you argued that DCHR improperly withheld the selection certificate from you because you had not applied for the job; however, you stated that there was no reason for you to apply for the vacant position because you are already employed by DOC. You further argued that DCHR's response to your appeal violated the purpose and intent of the FOIA law. By e-mail to our office dated January 7, 2009, DCHR submitted a response to the Appeal, reiterating its original argument that you were not permitted to have access to the selection certificate because you had not applied for the position and

further adding that the disclosure of the document would violate Section 3112.8 of Chapter 31 of the District Personnel Manual. DCHR stated that had you applied for the position, the agency would have been able to give you the selection certificate with all of the names redacted except for yours. However, since you did not apply, DCHR was unable to provide you with this information.

Discussion

It is the public policy of the District government that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code, 2001 Ed. § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect ... and ... copy any public record of a public body" *Id.* § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. D.C. Official Code, 2001 Ed. § 2-534. Further, under Section 2-534, public records may be exempt from disclosure if the information is specifically exempted from disclosure by statute. See D.C. Code § 2-534(a)(6).

DCHR argues that it is withholding the selection certificate pursuant to Chapter 31, §3112.8 of the District of Columbia Personnel Regulations, which provides as follows:

The names of applicants for positions or eligibles on registers, certificates, employment lists, or other lists of eligibles, or their rating or relative standing shall not be information available to the public.

In accordance with this statute, an agency may not release the selection certificate to someone who is a member of the public. However, if a person has applied for a vacant position, an agency may release the selection certificate but must redact the identifying information of the competing applicants. DCHR argues that since you did not apply for the position, you are considered a member of the public and may not have access to the selection certificate. You argued that it was unnecessary for you to apply for the position. More precisely, you stated:

"I saw absolutely little or no need to apply for these vacancies as I am already employed as a criminal investigator [at DOC]." [REDACTED] Appeal, p. 2.

We find that although you are an employee at the same agency where the vacant position was posted, you were still required to submit an application in order to apply for the position. Notably, the vacancy announcement required applicants to respond by June 8, 2007, by providing certain documentation and responding to ranking factors. The announcement further stated that, "[f]ailure to respond to all ranking factors will eliminate you from consideration." The announcement did not indicate that there was an exception to complying with these requirements for employees already working in other capacities at DOC. Therefore, given that you failed to apply for Vacancy Announcement Number 6786, you were not considered a candidate for this position. As such, pursuant

to Chapter 31, §3112.8 of the District of Columbia Personnel Regulations, you are not entitled to receive the selection certificate, even in its redacted form. For these reasons, we UPHOLD the decision of DCHR and DISMISS this Appeal.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Regards,



Runako Allsopp
Deputy General Counsel to the Mayor

cc: Diana Haines Walton
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