

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor



May 8, 2009

BY U.S. MAIL



Washington, DC 200

Re: Freedom of Information Act Appeal

Dear 

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 March 31, 2009 (the "Appeal"). We forwarded the Appeal to the Office of Property Management ("OPM") with a request for a response. The OPM responded by letter dated April 17, 2009 ("OPM Response").

In your initial FOIA Request dated January 22, 2009, you sought copies of:

- "1. Any and all agreements with Associated Builders Inc., including but not limited to the agreement for the erection of stands for presidential inaugural reviewing stands including in front of the White House and Wilson Building;
2. Solicitation No. DCAM-2008-B-0111 and any amendments thereto;
3. Any and all bids associated with Solicitation No. DCAM-2008-B-0111 and any amendments thereto;
4. All contracts, including amendments to contracts, related to construction of viewing stands and bleachers for Presidential Inaugural events in 2005 and 2009;
5. All bids submitted regarding the construction of viewing stands and bleachers for Presidential Inaugural events in 2005 and 2009;
6. All memoranda of understanding related to the construction of viewing stands and bleachers for Presidential Inaugural events in 2005 and 2009;
7. All budget requests and documents related to the construction of viewing stands and bleachers for Presidential Inaugural events in 2005 and 2009;

[REDACTED]

May 8, 2009

Page 2

8. All records, including but not limited to communications, emails, notes, meeting minutes, billing invoices and reimbursement slips related to the construction of viewing stands and bleachers for Presidential Inaugural events in 2005 and 2009; and
9. All documents related to requests for reimbursements from the federal government or other sources to the District for expenditure of funds related to the reviewing stands and bleachers for Presidential Inaugural events in 2005 and 2009."

Additionally, Appellant sought to receive the aforementioned records in electronic format and a complete waiver of fees associated with the processing of the request.

OPM responded to your FOIA Request by letter dated February 13, 2009, notifying you the agency would need no more than "10" additional business days to respond to your request. Additionally, OPM stated "we do not waive FOIA fees." Further, from the record, it appears the parties communicated via email and telephone concerning the FOIA fees associated with this FOIA Request.

On Appeal, Appellant challenges OPM's denial of its fee waiver.

#### 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.

This Appeal focuses solely on whether Appellant is entitled to a fee waiver under the DC FOIA. OPM has stated they are prepared to release the documents to Appellant, subject to the resolution of the fee issue. Section § 2-532(b) provides that, "documents may be furnished without charge or at a reduced charge where a public body determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public." Further, one who intends to use requested documents for a commercial purpose, such as litigation, is not entitled to a waiver of fees. See Rozet v. HUD, 59 F.Supp.2d 55 (D.C. 1999).

Since Thomas Jefferson's second inaugural on March 4, 1805, it has been a tradition for the president to parade down Pennsylvania Avenue from the Capitol to the White House. According to the Joint Congressional Committee on Inaugural Ceremonies, the inaugural parade is a celebrated and much anticipated event for millions

of Americans across the country. In 1873 President Grant, started the tradition of reviewing the parade at the White House. And in 1881, President James Garfield reviewed the parade from a specially built stand in front of the White House and reviewing stands were also erected along Pennsylvania Avenue for visitors.

Based on the foregoing, we determine the documents Appellant seeks will benefit the general public and are not being used for a commercial purpose. Although Appellant is an attorney, there is no evidence in the record to suggest Appellant will actually use the documents "in anticipation or preparation for litigation, which would be a commercial purpose. Rather, Appellant stated she has no intent to use the documents for a commercial purpose and the documents will be "made available and published to the public as a matter of public interest." We see no reason to discredit Appellant's intentions on this point.

Therefore, we ORDER OPM to GRANT Appellant a waiver of fees associated with this FOIA Request and to turn the documents over to Appellant within ten (10) days of the date of this decision.

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: Camille Sabbakhan  
General Counsel  
Office of Property Management