

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR

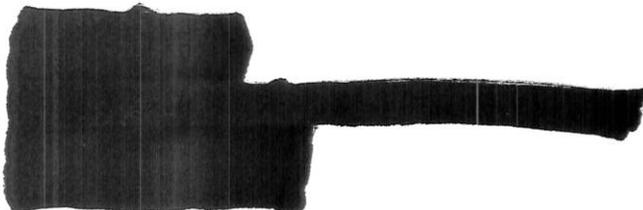


Office of the General Counsel to the Mayor



July 20, 2009

BY U.S. MAIL



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 May 19, 2009 (the "Appeal"). We forwarded the Appeal to the Metropolitan Police Department ("MPD") with a request for a response. The MPD responded by electronic mail dated June 23, 2009 ("MPD Response").

In your initial FOIA Request dated March 16, 2009, you sought copies of all materials primary involving disciplinary, complaint, and investigatory action(s), related to  ("FOIA Request").

MPD responded to your FOIA Request in an undated letter informing you that your request is denied under D.C. Code §§ 2-534(a)(2) or (a)(3)(C). MPD issued a follow-up response in a letter dated April 21, 2009, notifying you under D.C. Personnel Regulations, Chapter 31, Records Management and Privacy of Records, § 3113, only certain information could be released concerning current and former employees. Because your FOIA Request went beyond the releasable information stipulated in § 3113, and the personal privacy provision of the DC FOIA statute, MPD was again denying your request.

On Appeal, Appellant believes the materials sought by Appellant are not properly exempt by the DC FOIA statute, especially as it relates to privacy reasons when the request involves the activities of public servants.

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. Code § 2-531 (2001 Ed.). In aid of that policy, the DC FOIA creates the right "to inspect ... and ... copy any public record of a public body . . . ." *Id.* at § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id.* at § 2-534.

To begin with, Appellant has indicated her FOIA Request was made "[F]or purposes of pending litigation in the Superior Court of the District of Columbia." In *U.S. v. Agunbiade*, No. 90-CR-610(S)-02 (JRB), 1995 U.S. Dist. Lexis 8043, \*20 (E.D.N.Y. 1995), the court stated, "FOIA was not designed nor meant to serve as a discovery device for civil or criminal litigants and the requestor cannot employ the statute as a means to enlarge his rights to discovery."

Here, it is evident Appellant's FOIA Request will be used to obtain matters that are traditionally handled through the discovery process in a court proceeding. By Appellant's own admission, the materials sought will be used for purposes of litigation. As expressed in *NLRB v. Sears Roebuck & Co.*, 421 U.S. 132, 143 (1975), FOIA is to be used to inform the public about government activities and not to benefit private litigants having lawsuits against public bodies. Therefore, we will hold in abeyance our decision regarding MPD's decision to withhold the requested records from disclosure until the litigation is resolved. Additionally, for the reason(s) articulated above, MPD is not required to submit a *Vaughn* index for the withheld materials.

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