

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR**

Freedom of Information Act Appeal: 2012-27

February 13, 2012

Rosemary Hainey, Esq.

Dear Ms. Hainey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (“DC FOIA”), dated January 31, 2012 (the “Appeal”). You (“Appellant”) assert that the Department of Housing and Community Development (“DHCD”) improperly withheld records in response to your request for information under DC FOIA dated December 16, 2011 (the “FOIA Request”) by failing to respond to the FOIA Request.

Background

Appellant’s FOIA Request sought records regarding all lobbying activities by the Apartment and Office Building Association of Metropolitan Washington with respect to DHCD. Although Appellant and DHCD exchanged emails clarifying the FOIA Request, when a final response was not received, Appellant initiated the Appeal. In response to the Appeal, by email dated February 10, 2012, DHCD stated that it was processing the FOIA Request, but had experienced a delay in obtaining the records. It stated further that it had provided, by letter dated February 6, 2012, a partial response to Appellant and it would provide the remaining responsive records upon the completion of its search.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right “to inspect ... and ... copy any public record of a public body . . .” *Id.* at § 2-532(a). Moreover, in his first full day in office, the District’s Mayor Vincent Gray announced his Administration’s intent to ensure that DC FOIA be “construed with the view toward ‘expansion of public access and the minimization of costs and time delays to persons requesting information.’” Mayor’s Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id.* at § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987), and decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

D.C. Official Code § 2-532(c) provides that an agency shall have 15 business days to respond to a request. D.C. Official Code § 2-532(d) provides for an extension of 10 business days to respond to a request. In this case, the extension was exercised, but the responsive records were not be produced within the statutory period.

However, there is little relief that we can currently offer. The most that we can do is to order DHCD to complete the search that it has already initiated and provide the responsive records as it has already proffered to do. Thus, we could view the Appeal as moot on this basis. Indeed, DCHD has already provided some of the responsive records. Nevertheless, although the outcome will be the same, we can provide some assurances to Appellant by ordering DCHD to complete its search and to provide the remaining responsive records.

Conclusion

Therefore, we remand this matter to DCHD for disposition in accordance with this decision, without prejudice to challenge, by separate appeal, the response of DCHD when made.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Vonda J. Orders, Esq.