

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

**Freedom of Information Act Appeal: 2012-51**

June 15, 2012

Brian J. Petruska

Dear Mr. Petruska:

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 May 25, 2012 (the “Appeal”). You, on behalf of Benjamin Kreider (“Appellant”), assert that the District Department of Transportation (“DDOT”) improperly withheld records in response to your request for information under DC FOIA dated February 13, 2011 (the “FOIA Request”).

Background

Appellant’s FOIA Request sought “all correspondence between DDOT and Facchina Construction or Facchina/Skanska Joint Venture relating to back pay owed by Facchina to its workers on the 11<sup>th</sup> Street Bridge project in Washington, DC.”

In response, by letter dated April 19, 2012, DDOT provided 42 pages of responsive records to Appellant, but withheld two pages of the records consisting of 4 email messages under D.C. Official Code § 2-531(a)(4) pursuant to an exemption for the attorney-client privilege.

On Appeal, Appellant challenges the denial, in part, of the FOIA Request. Appellant contends that DDOT failed to establish the attorney-client privilege because it has failed to identify any attorneys who were parties to the emails, it has not shown that they were sent for the purpose of obtaining legal advice, and it has not shown that they were not shared with third parties.

In its response, dated June 14, 2012, DDOT reaffirmed and amplified its prior position. It states that the emails were sent for the purpose of seeking legal advice regarding the redaction of documents and that the email senders and recipients were limited to agency official and attorneys. In the alternative, DDOT maintains that emails are exempt from disclosure pursuant to the deliberative process privilege under D.C. Official Code § 2-531(a)(4) because they were predecisional communications regarding the redaction and production of documents. DDOT provided a privilege log and copies of the documents withheld for *in camera* review.

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.

As set forth above, the FOIA Request sought, in pertinent part, “all correspondence between DDOT and Facchina Construction or Facchina/Skanska Joint Venture . . .” We have examined the privilege log and the records withheld. None of the emails was sent to or by Facchina Construction or Facchina/Skanska Joint Venture. Therefore, the withheld records are nonresponsive to the FOIA Request and need not be disclosed. Accordingly, we do not need to consider the applicability of the claim of exemptions asserted by DDOT.

#### Conclusion

Therefore, the decision of DDOT is upheld. The Appeal is hereby dismissed.

This constitutes the final decision of this office. 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.

Sincerely,

Donald S. Kaufman  
Deputy General Counsel

cc: Nana Bailey-Thomas, Esq.