

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

Freedom of Information Act Appeal: 2012-78

September 18, 2012

Ms. Deanne Rose Upson

Dear Ms. Upson:

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 September 4, 2012 (the “Appeal”). You (“Appellant”) assert that the Metropolitan Police Department (“MPD”) improperly withheld records in response to your request for information under DC FOIA dated March 19, 2012 (the “FOIA Request”) by failing to respond to the FOIA Request.

Background

Appellant’s FOIA Request sought records “relating to myself, my daughter . . . and her biological father . . .” In addition, it sought records relating to other children, and their birth mothers (who are named), alleged to be fathered by such biological father. Although MPD acknowledged, and emails were exchanged regarding a clarification to, the FOIA Request, when a final response to the FOIA Request was not received, Appellant initiated the Appeal.

In response, by email dated September 17, 2012, MPD stated that it would provide records, subject to certain redactions for privacy, to Appellant “concerning herself, her daughter, and the daughter’s father . . . upon her providing sufficient identification that she is one of the parents of the child that is identified in the documents.” Appellant and MPD subsequently exchanged emails, copied to this office, which indicate that Appellant is unwilling to accept the proffer of MPD based on the condition stated.

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).

The administrative record in this matter indicates that MPD has not responded to the FOIA Request, but, in response to the Appeal, has merely made a proffer to furnish records, which proffer will not be accepted. Moreover, the proffer only addresses the first part of the FOIA Request, that is, records regarding the Appellant, her daughter, and the biological father, but not records of the children and birth mothers of the biological father.¹ At this time, as the MPD has not responded to the FOIA Request and there is not a sufficient administrative record to determine whether or not any exemptions to disclosure apply to the FOIA Request, we are ordering MPD to respond to the FOIA Request (both parts) within five business days of the date of this order.

Conclusion

Therefore, we remand this matter to MPD. MPD shall respond to the FOIA Request within five business days of the date of this order. This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of MPD.

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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald Harris, Esq.

¹ We note that, based on the response of MPD, the biological relationships of these individuals has not been established for the purposes of the Appeal.