

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-102**

October 13, 2015

Mr. Bobby Hazel

RE: FOIA Appeal 2015-102

Dear Mr. Hazel:

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 ("DC FOIA"). In your appeal, you assert that the District's Office of Risk Management ("ORM") improperly withheld records you requested under the DC FOIA.

This appeal relates to your earlier FOIA Appeal 2015-72, in which you requested records from the Metropolitan Police Department ("MPD") related to the investigation of the murder of Thomas Hazel. On June 8, 2015, this office issued a determination with respect to FOIA Appeal 2015-72, in which we affirmed the MPD's position that it does not retain the homicide files you are seeking.

In a letter to this Office dated June 16, 2015, you alleged that the MPD did in fact have responsive documents. The basis for your claim was a letter from the ORM dated April 7, 2015. In that letter the ORM responded to a civil claim you filed against the District regarding the death of Thomas Hazel. ORM's response denying the claim contained the statement "we have reviewed the file and facts contained therein." You asserted that ORM's response - that it reviewed the "file and facts" - demonstrated that MPD had documents related to the death of Thomas Hazel.

This office responded to your allegation in a letter dated June 23, 2015. In the response we informed you that the MPD and ORM are separate District agencies; therefore, the ORM's response to your civil claim does not demonstrate what records the MPD retains. Further, we instructed you to submit a FOIA request to ORM to obtain the "file and facts" ORM reviewed to process your claim.

In a letter dated, September 3, 2015, you requested assistance from the Office of the Attorney General ("OAG") because you received no acknowledgement or response to your FOIA request or FOIA appeal related to the "file and facts" the ORM reviewed for your claim.<sup>1</sup> On September 22, 2015, the OAG forwarded this letter to the Mayor's general counsel, who subsequently

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<sup>1</sup> Your September 3<sup>rd</sup> letter had attached "Exhibits" including a FOIA request to ORM dated July 7, 2015, and a FOIA appeal dated August 12, 2015. Neither the ORM nor this office has any records or evidence or receiving the request or appeal previously.

forwarded the letter to this Office and the ORM. Prior to receiving your letter from the Mayor's General Counsel, this Office had not received the FOIA appeal you sent to us pertaining to ORM's failure to respond to your FOIA request.

After receiving your FOIA appeal and underlying request from the Mayor's general counsel, this Office asked the ORM for its response to your request for the "file and facts" the ORM reviewed to process your claim. The ORM responded to this Office on October 9, 2015, reaffirming that it never received your FOIA request. Further, ORM asserts that it did not receive any files from the MPD; rather, the "file and facts" the claim officer reviewed were those that the ORM created internally to process the claim.

Here, your request states "[t]he requester seeking for [sic] the file and facts pertaining to Thomas Hazel." While the context of your request indicates that you are seeking MPD records from the ORM, a reasonable interpretation of the language of your request is that you seek any records the ORM used or reviewed to process your claim related to the death of Thomas Hazel. Now that the ORM is aware of your request, it will process your request and disclose the records it maintains in response to your request pursuant to DC FOIA.

#### Conclusion

Based on the foregoing, we consider your appeal to be moot and it is dismissed. The ORM shall respond to your request for the file and facts reviewed to process the claim related to the death of Thomas Hazel within 10 business days of this decision. This constitutes the final decision of this office; provided that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to the ORM's response.

Sincerely,

/s/ Melissa C. Tucker

Melissa C. Tucker  
Associate Director  
Mayor's Office of Legal Counsel

cc: Jed Ross, Acting Chief Risk Officer, ORM (via email)