

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2015-14**

December 19, 2014

BY EMAIL

Nathan John Bresee, Esq.
Jackson & Campbell, P.C.

Re: Freedom of Information Act Appeal 2015-14

Dear Mr. Bresee:

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 December 9, 2014 (the “Appeal”). You assert that the Department of Consumer and Regulatory Affairs (“DCRA”) improperly withheld records in response to your request for information under DC FOIA on August 14, 2014 (the “FOIA Request”) by failing to respond to the FOIA Request.

Background

Appellant’s FOIA Request sought records related to a specified real property and construction and renovation activities thereon and specified individuals and entities. When DCRA failed to provide a timely final response to the FOIA Request, Appellant initiated the Appeal.

In its response to the Appeal, dated December 18, 2014, DCRA indicated that there was a delay in the receipt of the results of a search that it had requested from the Office of the Chief Technology Officer, which maintains emails on its behalf, and that it was reviewing the results of the search in anticipation of providing responsive records to Appellant. In addition, subsequent to the date of the Appeal, DCRA has contacted Appellant regarding the status of the FOIA Request.

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, the 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 the 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, but, in this case, the extension was not exercised. Accordingly, the responsive records will 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 DCRA to complete the review 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. Nevertheless, although the outcome will be the same, we can provide some assurances to Appellant by ordering DCRA to complete the review and to provide the responsive records to Appellant.

Conclusion

Therefore, we remand this matter to DCRA for disposition in accordance with this decision, without prejudice to challenge the response of DCRA 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 District of Columbia Superior Court.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Tania Williams