

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-39**

March 13, 2015

VIA ELECTRONIC MAIL

Mr. Dan McNeil

RE: FOIA Appeal 2015-39

Dear Mr. McNeil:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531(a) ("DC FOIA"), dated February 20th, 2015 (the "Appeal"). You ("Appellant") assert in the Appeal that the Office of the State Superintendent of Education ("OSSE") improperly withheld records in response to your request for information under DC FOIA dated August 8, 2014 (the "FOIA Request"). In your FOIA Request you seek documents from OSSE pertaining to the District of Columbia Public Schools and the teacher evaluation system known as IMPACT. The Appeal states that OSSE's "failure and refusal to furnish the requested information is arbitrary and capricious" and "injures WTU and AFT."

Background

Appellant's FOIA Request sought the following records:

1. Documents describing change in student enrollment from month to month, by school, by grade level and including the number of students: Exiting the state from DCPS
 - a. exiting DCPS to Public Charter Schools;
 - b. entering DCPS;
 - c. entering DCPS from Public Charter Schools; and
 - d. Transfers between DCPS schools.
2. Documents listing teacher transfers by school, including both the school exited and the school receiving, as well as grade, certification, IMPACT group and subject.
3. Documents listing teacher terminations, including each teacher's school, grade, IMPACT group, certification, subject and reason for the termination.
4. Documents showing principal turnover, including terminations and transfer, by school.

5. IMPACT scores for each teacher, including school, grade, IMPACT group, certification and subject, including:
 - a. Individual Value Added score (Group 1);
 - b. Composite Teaching and Learning Framework score;
 - c. Commitment to the School Community score;
 - d. School Value Added score (if applicable); and
 - e. Core Professionalism score.
6. Documents showing the distribution of teachers by IMPACT rating category (i.e., highly effective, effective, minimally effective, and ineffective) by school and grade level.
7. Documents describing bonuses distributed by DCPS to teachers, including the amount, each teacher's school, grade, IMPACT Group, certification and subject.
8. Documents listing bonuses distributed by DCPS to principals, including the amount and identifying the school.
9. Documents showing all changes to IMPACT, including changes to rating categories, for each school year, and the reasons for such changes.
10. Documents describing how IMPACT accounts and adjusts for student poverty, including food stamp recipients, welfare recipients, homelessness, single parent households, parental unemployment.
11. Documents showing the number and percentage of students at each school who are considered to be in poverty for purposes of IMPACT Individual Value Added calculations.
12. Documents showing the number and percentage of students at each school who meet the criteria for identifying the school as eligible (or not) for Community Eligibility status for free school lunch.
13. Documents describing students who attended at least one day of D.C. Comprehensive Assessment System (D.C.-CAS) testing for either Math or ELA, but did not attend or complete all sections of the test. For each student provide their school and grade level.
14. Documents describing any change in calculating D.C.-CAS scale scores or the cut scores for the proficiency levels.
15. Documents describing any change in calculating D.C.-CAS scale scores or the cut scores for the proficiency levels.
16. The value added technical reports prepared by Mathematica for DCPS for school years 2009-10, 2010-11, and 2013-14 (links on DCPS website are broken).

17. Documents listing the number of days of standardized testing for each school by grade level and the name of the tests administered.

18. Documents regarding the erroneous calculation of the IMPACT scores for DCPS teachers for the 2012-2013 school year.

In response, by email dated September 19, 2014, OSSE informed Appellant that the responsive documents were placed on a compact disk and delivered to AFT. In addition, OSSE provided a hyperlink to the location on its website with respect to request #1. OSSE included with the documents a Vaughn Index indicating that some records were being withheld based upon the exemption from disclosure under D.C. Code § 2-534(a)(4) and (6).

On Appeal, Appellant challenges the response to the FOIA Request, as follows:

1. Appellant contends the hyperlink to the 2013 mobility study provided by OSSE is incomplete because:

- It only covers the 2001-2012 school year.
- OSSE did not provide the records describing the change in the student enrollment from month-to-month, by school and grade level for each of the categories requested.
- OSSE provided no records identifying transfers between DCPS schools. Moreover, appellant notes that OSSE did not provide a justification for failing to provide the requested information for the years and in the format requested.

2. Appellant contends that OSSE did not provide a list of teacher transfers by school as requested and did not describe why such records were not provided. Additionally, Appellant claims that the OSSE response was incomplete for the following reasons:

- No information was provided for 2013-2014;
- The lists include only classroom teachers, not counselors, librarians, social workers, psychologists, speech therapists, etc.
- For 2012-2013, the list does not include elementary art, music and PE teachers.
- The list for the earlier years only includes some elementary art, music, and PE teachers.
- The list for 2012-13 omits grade, certification, IMPACT group, and subject
- The lists for preceding years omits the IMPACT group for each teacher

3. Appellant claims that OSSE did not respond to Request #3 and did not describe why such records were not provided. Appellant contends that OSSE provided two documents in response to this request: the first document (for 2011-2012) states 91 teachers and principals were removed for ineffective ratings; the second document (for 2012-13) states that 38 teachers and principals were removed for ineffective ratings. No information was provided for 2009-10, 2010-11 or 2013-14. Moreover, the information provided did not list the terminations by teacher's school, grade, IMPACT group, certification and subject matter.

4. Appellant contends OSSE did not respond to Request #4 and did not describe why such records were not provided. OSSE provided one document indicating that 9 principals were terminated for being ineffective in 2012-13.

5. Appellant contends that the documents responsive to this request, which OSSE claims are exempt from disclosure under DC Code§ 2-534(a)(6) and 6 DCMR § B3113 can be produced without disclosing the identity of each teacher “after deletion of those portions which may be withheld from disclosure” pursuant to D.C. Code§ 2-534(a).

6. In response to this request OSSE provided the following 4 spreadsheets:

1. 2009-10 -showing number of teachers in each category at only 9 schools.
2. 2010-11 quantifying the number of teachers and principals exceeding, meeting or below expectations.
3. 2011-12 - it is unclear what information is described in this spreadsheet.
4. 2012-2013 -it is unclear what information is described in this spreadsheet.

Appellant asserts that these are not responsive to Request #6 and that OSSE does not describe why responsive records were not provided.

7. Appellant contends OSSE did not respond to Request #7 and did not describe why such information was not provided.

8. Appellant contends OSSE did not respond to Request #8 and did not describe why such information was not provided.

9. Appellant contends OSSE did not respond to Request #9 and did not describe why such information was not provided.

10. In response to this request OSSE provided a memo entitled "Accounting for Free and Reduced Price Lunch Eligibility in DC Value Added," dated September 30, 2013. Appellant asserts a belief that there are additional documents within OSSE's possession describing how IMPACT accounts and adjusts for student poverty. Appellant expresses concern over the fact that OSSE provided a memorandum related to free and reduced lunch as the sole measure of poverty. Appellant requests that OSSE provide any additional documents responsive to Request #10 or to explain why no such documents exist.

11. OSSE provided a memo "Accounting for Free and Reduced-Price Lunch Eligibility in DC Value Added" and identified it as being responsive to Request #11. Appellant claims that OSSE did not provide any information responding to Request #11 and did not provide any justification for failing to provide the records requested.

12. In response to request #12, OSSE provided two spreadsheets identified as follows:

1. 12.1 CEP Status DCPS 2013-14

2. 12.2 CEP Status DCPS 2012-13

Appellant contends that although the 2013-14 file is responsive, the 2012-13 file has no responsive data at all. Appellant asserts that no files were provided for the remaining years covered by the FOIA and that OSSE did not provide any justification for only providing responsive information only for 2013-14.

13. Appellant contends OSSE did not provide any information responding to Request #13 and did not provide any justification for failing to provide the information requested.

14. OSSE did not provide any information responding to Request #14 and did not provide any justification for failing to provide the records requested.

15. Appellant asserts that the "Technical Report for Spring 2013 Test Administration of DC CAS" which was provided by OSSE in response to this request in only partially responsive to request #15. Appellant believes that there are more documents within OSSE's possession describing changes to the D.C.-CAS scale scores and cut scores for the proficiency levels. Appellant claims that the document provided by OSSE confirms the existence of additional documents, including reports, agendas and training materials, which fall within the definition of records that are responsive to this request.

16. OSSE did not provide any information responding to Request #16 and did not provide any justification for failing to disclose the records that were requested.

17. OSSE did not provide any information responding to Request #17 and did not provide any justification for failing to disclose the records that were requested.

18. Appellant is satisfied with OSSE's response to Request #18.

OSSE was provided with a copy of the Appeal and given an opportunity to respond to the Mayor's Office of Legal Counsel. In reply, by email dated February 27, 2015, as supplemented March 3, 2015 OSSE, stated that upon receiving the FOIA Request, their Data Division did a complete search for responsive records. The OSSE attorney assigned to FOIA reviewed the request and determined that most of the information requested was not maintained by OSSE. OSSE gathered forty-four (44) documents from the data team. These documents were confirmed by the Director of the data team to be the totality of the responsive records maintained by OSSE. The records were reviewed for exemptions. With regard to the specific numeric requests, OSSE responds to Appellant as follows:

1. Documents describing change in student enrollment from month-to-month, by school, by grade level and including the number of students:

OSSE has only conducted analyses of within school year student mobility for school years 2011-2012 and 2012-2013. There are no records in OSSE's possession covering the remaining requested years.

2. Documents listing teacher transfers by school, including both the school exited and the school receiving, as well as grade, certification, IMPACT group and subject:

OSSE does not possess particularized records documenting teacher transfers as requested by the Appellant. Rather, OSSE produces annual records of teachers for its reporting requirements to the United States Department of Education, which were produced. From this information, transfers can be discerned by noting a teacher assigned to one school one year and a new school the next year.

3 & 4. Documents listing teacher terminations, including each teacher's school, grade, IMPACT group, certification, subject and reason for the termination & Documents showing principal turnover, including terminations and transfer, by school:

OSSE states that it does not maintain records listing teacher terminations by school, grade, IMPACT group, certification and subject matter as requested by Appellant. OSSE has only produced records of teacher termination for school years 2011-12 and 2012-13 and principal terminations for 2012-13.

5. IMPACT scores for each teacher, including school, grade, IMPACT group, certification and subject:

OSSE does not believe that there are any segregable portions of a teacher's evaluation that can be produced pursuant to this request. DCPS teachers are government employees, and the evaluations of government employees are confidential personnel records. OSSE reports on teacher evaluations only in aggregate, showing percentages of effective and highly-effective teachers. Those aggregate reports were produced.

6, 10, 11 & 12. (6) Documents showing the distribution of teachers by IMPACT rating category; (10) Documents describing how IMPACT accounts and adjusts for student poverty, including food stamp recipients, welfare recipients, homelessness, single parent households, parental unemployment; (11) Documents showing the number and percentage of students at each school who are considered to be in poverty for purposes of IMPACT Individual Value Added calculations; (12) Documents showing the number and percentage of students at each school who meet the criteria for identifying the school as eligible (or not) for Community Eligibility status for free school lunch:

The disclosed documents are the only records in OSSE's possession responsive to requests #6, 10, 11, and 12.

7, 8, 9, 13, 16, &17. (7) Documents describing bonuses distributed by DCPS to teachers, including the amount, each teacher's school, grade, IMPACT Group, certification and subject; (8) Documents listing bonuses distributed by DCPS to principals, including the amount and identifying the school; (9) Documents showing all changes to IMPACT, including changes to rating categories, for each school year, and the reasons for such changes; (13) Documents describing students who attended at least one day of D.C. Comprehensive Assessment System (D.C.-CAS) testing for either Math or ELA, but did not attend or complete all sections of the test. For each student provide their school and grade level; (16) The value added technical reports prepared by Mathematica for DCPS for school years 2009-10, 2010-11, and 2013-14; (17)Documents listing the number of days of standardized testing for each school by grade level and the name of the tests administered:

Requests #7, 8, 9, 13, 16, and 17 are records that are not in OSSE's possession.

#7—OSSE does not possess information relating to DCPS teacher bonuses.

#8—OSSE does not possess information related to principal bonuses.

#9—IMPACT is DCPS's internal system; OSSE does not administer the IMPACT system. As a result, OSSE does not receive technical reports on changes to IMPACT.

#13—OSSE does not possess individual student information regarding daily participation in statewide assessments. Local education agencies track individual student participation or non-participation; OSSE receives aggregate reporting on the number of students that participated, not on the students that did not fully participate.

#16—OSSE possesses only the Mathematica reports produced for OSSE, not those produced for DCPS. OSSE's reports were produced, although labeled #17.

#17—OSSE does not possess records of the number of standardized testing days for each school by grade level with the name of the tests administered. Local education agencies administer a number of tests and assessments that are not state-level assessments. The administration of these standardized tests is not overseen by OSSE. The record labeled as #17 is mislabeled. There were no documents produced for #17.

14. OSSE asserts that item #14 requests information that is prohibited from disclosure by OSSE regulation. Individual student assessment scores are available only to the parent. The items for request #14 should have been listed on the original privilege log but it was not. In their response to the Appeal, OSSE provided a revised privilege log that included these documents.

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). 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).

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978). Under the law, an agency “has no duty either to answer questions unrelated to document requests or to create documents.” *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985).

In order to establish the adequacy of a search,

‘the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.’ [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a ‘reasonableness test to determine the ‘adequacy’ of a search methodology, *Weisberg v. United States Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983); *Campbell v. United States DOJ*, 164 F.3d 20, 27 (D.C. Cir. 1998).

We have summarized the arguments and counter-arguments of the parties above. As a general matter, Appellant makes repeated assertions that OSSE did not sufficiently explain why certain documents were not provided. The law only requires the disclosure of nonexempt documents, not answers to questions. Under the law, an agency “has no duty . . . to answer questions unrelated to document requests . . .” *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). DC FOIA provides a right to access of documents, not a right to challenge the correctness or reasoning of an agency decision, to interrogate an agency, to require an agency to conduct research, or otherwise to require answers to questions posed as FOIA requests. *See* Department of Justice Guide to the Freedom of Information Act (2009) at 51, n. 127 (collecting cases, reported and unreported). Therefore, as long as OSSE has conducted a reasonable search for documents, and produced all non-exempt, responsive documents, they have met their obligations under FOIA.

With regard to requests #7, 8, 9, 13, 16, 17, OSSE states that it does not possess the requested information. With regard to requests #2, 6, 10, 11, & 12, OSSE declares that it has disclosed all of the records in their possession that are responsive to these requests. As we have stated in prior decisions, *see, e.g.*, Freedom of Information Act Appeal 2012-65, in order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of

records requested and search for the records in those locations. Based on the administrative record, we are satisfied that OSSE has met its statutory obligation with respect to these requests. We find that OSSE has made a reasonable and adequate search and that no responsive records exist regarding requests #7, 8, 9, 13, 16, 17. Moreover, OSSE is under no obligation to create responsive documents where none exist. Given the wording of your request and the documents provided by OSSE, it is probable that no records exist exactly matching requests #2, 6, 10, 11, & 12. Therefore, we find that there was no denial of FOIA with regard to requests #2, 6, 7, 8, 9, 10, 11, 12, 13, 16 & 17 of Appellant's Request. With regard to these requests, the decision of OSSE is upheld.

With regard to request #1, OSSE states that it only has records relating to the student mobility for school years 2011-12 and 2012-13; there are no records in OSSE's possession covering the remaining requested years. In their response to the FOIA Request, OSSE directed Appellant to a hyperlink connected to these studies. It has been held that an agency is not obligated under FOIA to produce records when the information is publically accessible via its website or the Federal Register. *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). *See also Crews v. Commissioner*, 85 A.F.T.R.2d 2169, 2000 U.S. Dist. LEXIS 21077 (C.D. Cal. 2000)(production satisfied for documents that are publicly available either in the agency's reading room or on the Internet). Here, we find that OSSE made a reasonable and adequate search and that no additional responsive records exist regarding request #1. Moreover, OSSE posted the available responsive records online and provided Appellant with the information necessary to access these records. Therefore, we find that there was no denial of FOIA regarding request #1. The decision of OSSE is upheld.

Regarding requests # 5 & 14 OSSE asserts that the responsive records are exempt under D.C. Official Code § 2-534(a)(6) as "[i]nformation specifically exempted from disclosure by statute." In response to Appellant's FOIA request #5, OSSE did provide aggregate reports of teacher evaluations generated by OSSE showing percentages of effective and highly-effective teachers but did not provide documents related to individual teachers because "DCPS teachers are government employees and the evaluation of government employees are confidential personnel records." Likewise, OSSE maintains that request #14 also relates to information that is prohibited from disclosure by law. OSSE provided this office with an updated that Vaughn index that included this document on the privilege log.

D.C. Official Code § 2-534(a)(6) ("Exemption 6") provides an exemption for information specifically exempt from disclosure by statute if the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld. With regard to request #14, OSSE cites 5 DCMR A2302 which provides "[state-wide assessment testing] data that identifies individual student information shall be reported or made public in conformance with District and federal laws." The applicable federal law in this instance is the Family Educational Rights and Privacy Act ("FERPA"), which "requires schools and educational agencies receiving federal financial assistance to comply with certain conditions. One condition specified in the Act is that [student records] may not be released without [the student's] consent." *Owasso Independent School District v. Falvo*, 534 U.S. 426, 428-29 (2002). Data about individual students that are maintained by a school district, including individual state wide

assessment testing scores are student records protected by FERPA. 20 U.S.C. § 1232g(a)(4)(A). Their privacy is not impacted by FOIA. *United States v. Miami University*, 294 F.3d 797 (6th Cir. 2002). DC FOIA does not grant anyone the right to view a student's private educational records, which are protected by a federal statute. Therefore, we find that there was no denial of FOIA regarding request #14. The decision of OSSE is upheld.

With regard to request #5, OSSE asserts that requested teacher evaluations are not permitted to be disclosed under 6 DCMR § 3113.2. Accordingly, the contention of OSSE is that disclosure is exempt under Exemption 6, which, as discussed above, provides that an agency can withhold statutorily exempted information. In this instance, OSSE cites a rule under the District of Columbia Municipal Regulations for which there is no statutory counterpart. Accordingly, it is dubious that a personnel rule alone can support an exemption which requires statutory authority. In previous decisions (Freedom of Information Act Appeal 2011-36) we have found that a personnel rule alone does not trigger an exemption under Exemption 6. However, that is not the end of the inquiry. The rule cited by OSSE is rooted in personal privacy considerations, which considerations are addressed by other exemptions under DC FOIA. In our previous decision, we judged the public accessibility of personnel records by the standard of § 2-534(a)(2) ("Exemption (2)").

District of Columbia Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." All information that "applies to a particular individual" qualifies for consideration under this exemption. *Dep't of State v. Washington Post Co.*, 456 U.S. 595 (1982); see also *New York Times Co. v. NASA*, 920 F.2d 1002, 1005 (D.C. Cir. 1990) (en banc). A privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. See *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

There is cognizable and sufficient privacy interests in information about an individual contained in performance evaluations and relating to the employment process. *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros*, 941 F. Supp. 1015 (D. Kan. 1996). They describe such personal matters as a teacher's aptitude, attitude, and basic competence.

Teacher evaluations are intra-agency documents, meant to improve teacher performance, not to embarrass them, harm their reputation, or make people less willing to enter the profession. Disclosure of evaluative materials would discourage candid discussion within the agency regarding teacher performance and thus undermine the OSSE's ability to perform its functions. Teachers have a reasonable expectation of privacy regarding their performance evaluation, particularly in light of the language of 6 DCMR § 3113.1, which limits the public dissemination of personnel information to: 1) name, 2) present and past position titles, 3) present and past grades, 4) present and past salaries, and 4) present and past duty stations (which includes room numbers, shop designations, or other identifying information regarding buildings or places of employment). Performance evaluations are not included among those items available for public

review. 6 DCMR § 3113.1. Thus, we find that there is an individual privacy interest in the information contained in individual teacher evaluations.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is “to open agency action to the light of public scrutiny.” *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)). This basic policy of ‘full agency disclosure unless information is exempted under clearly delineated statutory language,’ indeed focuses on the citizens' right to be informed about “what their government is up to.” *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)). Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct. *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 772-773 (1989).

Appellant claims that redaction can safeguard the privacy of the information contained in the evaluations. D.C. Official Code § 2-534(b) provides, in pertinent part, that “any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of those portions which may be withheld from disclosure under subsection (a) of this section.” Thus, there is a question as to whether OSSE should have disclosed the evaluations with redactions. A determination of whether non-exempt information in a record is reasonably segregable turns on the intelligibility of the record after the removal of the exempt information and the burden that removing the exempt material would impose on the agency. *Kalwasinski*, 2010 U.S. Dist. LEXIS 62659, 2010 WL 2541363, (citing *Mokhiber v. U.S. Dep't of Treasury*, 335 F. Supp. 2d 65, 71 (D.D.C. 2004)). To the extent that the removal of exempt information would leave “little more than templates,” so that “the purpose served by releasing the records in full is no longer served,” disclosure of redacted records is not required. *See id.*, (citing *Warren v. Soc. Sec. Admin.*, 2000 U.S. Dist. LEXIS 12385, 2000 WL 1209383, (W.D.N.Y. Aug. 22, 2000)). Generally, “[a]gencies are entitled to a presumption that they complied with the obligation to disclose reasonably segregable material.” *Sussman v. U.S. Marshal's Serv.*, 494 F. 3d 1106, 1117, 377 U.S. App. D.C. 460 (D.C. Cir. 2007). However, “[i]f the requester successfully rebuts this presumption, the burden lies with the government to demonstrate that no segregable, non-exempt portions were withheld.” *Id.*

OSSE states that the evaluations are non-segregable. Due to the nature of the requested information, it is reasonable to conclude that any portions of the compiled responsive documents that may be exempt from non-disclosure under FOIA are so inextricably intertwined with exempt material as to be non-segregable and that “little more than a template” would remain.

Appellant does not persuade us that OSSE withheld segregable, non-exempt information. Thus, given the privacy concerns at issue, which are inherent in the decision to adopt 6 DCMR § B3113, we find that disclosure of teacher evaluations is exempt under Exemption (2) because the public interest in disclosure does not outweigh the individual privacy interest. The aggregated data that was delivered in response to request #5 represents OSSE's best documents available in

response to your FOIA request. Therefore, we find that there was no denial of FOIA regarding request #5. The decision of OSSE is upheld.

With regard to requests #3 &4, OSSE's response does not indicate whether or not documentation exists for each school year covered by the request. Based on the administrative record, it is unclear why OSSE only produced records for school years 2011-12 and 2013-13 in response to requests #3 &4.

With regard to request #15, OSSE's response does not indicate whether certain documentation referenced in the "Technical Report for Spring 2013 Test Administrative of DC CAS" is in OSSE's possession and available for disclosure. Therefore, we are ordering OSSE to respond to items #3, 4, & 15 in Appellant's FOIA Request within five business days of the date of this order.

Conclusion

Therefore, we UPHOLD, in part, the decision of OSSE and REVERSE and REMAND, in part. OSSE is ordered to provide to Appellant any additional documentation in their possession regarding teacher terminations for 2009-2010, 2010-11, and 2013-14, documents showing principal turnover for 2009-10, 2010-11, and 2013-14, as well as any documentation referenced in the "Technical Report for Spring 2013 Test Administrative of DC CAS" that exists and is in OSSE's possession.

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,

/s/ Sarah J Forman

Sarah Jane Forman
Associate Director
Mayor's Office of Legal Counsel (MOLC)