

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2015-40**

March 18, 2015

VIA ELECTRONIC MAIL

Mr. Dan McNeil

RE: FOIA Appeal 2015-40

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 District of Columbia Public Schools ("DCPS") 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 DCPS pertaining to the teacher evaluation system known as IMPACT. The Appeal states that DCPS'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:
  - a. exiting the state from DCPS
  - b. exiting DCPS to Public Charter Schools;
  - c. entering DCPS;
  - d. entering DCPS from Public Charter Schools; and
  - e. 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.

DCPS fully responded to the FOIA Request on November 26, 2014. Documents were provided to Appellant as well as hyperlinks to websites where the responsive information could be located. In their response, DCPS indicated that some records were being withheld based upon the exemption from disclosure under D.C. Code § 2-534(a)(2) and § 2-534(a)(6).

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

1. Appellant is satisfied with the DCPS response to request #10.
2. Appellant questions the assertion that DCPS does not possess any responsive documents. To the extent that DCPS possesses such documents, Appellant requests that these documents be produced or that DCPS explain why they do not exist.
3. Appellant claims that DCPS can provide the information requested without creating an unwarranted invasion of privacy.
4. Appellant contends DCPS only partially responded to this request. Attachment A included a list of principals by school each school year 2009-10 through 2013-14. DCPS did not provide any documents describing principal turnover, listing the number or schools from which principals had been terminated, or identifying transfers of principals from one DCPS school to another. Appellant believes that there are additional documents within DCPS's possession that are responsive to request #4 and requests that DCPS provide such additional documentation or explain why no such documents exist.
5. Appellant contends that the documents responsive to this request, which DCPS claims are exempt from disclosure under DC Code § 2-534(a)(2) 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. Appellant asserts that the documents produced are not responsive and DCPS did not provide a legal justification for failing to provide responsive documents. Attachment B provided only the district-wide percentages of teachers in each rating category, while the request asked for the distribution of IMPACT ratings by grade and school for 2009-10 through 2013-14. Appellant believes that DCPS has this data because it would be impossible to provide district-wide percentages without knowing the distribution by school and grade level. In fact, DCPS submitted the more specific information to the DC Council for the 2011-12 school year.
7. Appellant asserts that the documents produced are only partially responsive, Attachment C contained only the bonus amount awarded by year, but without identifying each teacher's school, grade, IMPACT group, certification and subject. Appellant claims that DCPS has this information because they have provided it to the DC council in past

years for oversight hearings. Appellant believes that these records can be produced subject to redaction.

8. Appellant contends DCPS was non-responsive. The documents provided contained the bonus amounts awarded by year, but without identifying each teacher's school, grade, IMPACT group, certification and subject. Appellant believes that DCPS has this information because it was provided to the DC Council in past years for oversight hearings.

9. Appellant contends the DCPS response was only partially responsive because the IMPACT guidebooks contain some of the requested information, but does not describe why changes were made. For example, in 2012-13. DCPS added the IMPACT rating category of "developing" and AFT believes that DCPS possesses additional documents related to that significant change. DCPS did not include a legal justification for their limited response.

10. Appellant is satisfied with the DCPS response to request #10.

11. Appellant claims that the DCPS was non-responsive with regard to request #11 and that DCPS did not provide a legal justification for failing to provide responsive documents. The document identified in DCPS's response lists whether a school is high or low poverty and the stated purpose of that document is for "determining LIFT and IMPACT plus bonuses and service credits." For this reason, Appellant believes there are additional, undisclosed documents.

12. Appellant contends that DCPS was non-responsive and did not provide a legal justification for failing to provide responsive documents. According to Appellant, the link provided only lists schools that meet Community Eligibility stats and not the number and percentages of students who meet the criteria.

13. Appellant is satisfied with the DCPS response to request #13.

14. Appellant contends that DCPS was only partially responsive and did not provide a legal justification for failing to provide the D.C.-CAS scale scores without personally identifiable information. Appellant notes that the DC Council posted the scaled scores on its website on February 17, 2015.

15-18. Appellant is satisfied with the DCPS response to request #15-18.

DCPS 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 March 3, 2015, DCPS stated that it affirms all of its responses with the exception of Request #12. With regard Request #12, DCPS is willing to perform another search for responsive documents. With regard to the remaining specific numeric requests, DCPS 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:

- a. Exiting the state from DCPS;
- b. exiting DCPS to Public Charter Schools;
- c. entering DCPS;
- d. entering DCPS from Public Charter Schools; and
- e. Transfers between DCPS schools.

DCPS does not maintain the requested information.

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.

DCPS does not possess any responsive documents.

3. Documents listing teacher terminations, including each teacher's school, grade, IMPACT group, certification, subject, and reason for the termination.

DCPS denies this request. The requested information is exempt from release pursuant to D.C. Official Code §2-534 (a) (2) - Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

4. Documents showing principal turnover, including terminations and transfer, by school.

In response to this request, DCPS provided appellant with spreadsheets for schools years 2009-10 -2013-14 (“Attachment A”).

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.

DCPS denied this request, asserting an exemption from disclosure pursuant to D.C. Official Code §2-534 (a) (2). DCPS states that these records are exempt because they include information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.

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.

In response to this request, DCPS provided appellant with spreadsheets for schools years 2009-10 - 2013-14 (“Attachment B”) that display district-wide percentages of teachers in each IMPACT rating category.

7. Documents describing bonuses distributed by DCPS to teachers, including the amount, each teacher's school, grade, IMPACT Group, certification and subject.

In response to this request, DCPS provided appellant with spreadsheets for schools years 2009-10 -2013-14 (“Attachment C”) that document bonuses paid to DCPS staff. DCPS also provided a hyperlink to additional responsive information. DCPS claimed an exemption pursuant to D.C. Official Code §2-534 (a) (2) with regard to some of the information responsive to this request.

8. Documents listing bonuses distributed by DCPS to principals, including the amount and identifying the school.

In response to this request, DCPS also referred the Appellant to Attachment C, which included spread sheets documents principal and school leader bonuses for school years 2012-13 and 2013-14. Additional responsive information has been withheld from release pursuant to D.C. Official Code §2-534 (a) (2).

9. Documents showing all changes to IMPACT, including changes to rating categories, for each school year, and the reasons for such changes.

DCPS directed Appellant to the IMPACT Guidebook in the DCPS website.

10. Documents describing how IMPACT accounts and adjusts for student poverty, including food stamp recipients, welfare recipients, homelessness, single parent households, parental unemployment.

DCPS directed Appellant to segment of the DCPS website where this information is located.

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.

In response to this request, DCPS referred the Appellant to a document on the DCPS website entitled “IMPACTplus/LIFT Permanent FARM Status” which consists of a list of high- and low-poverty schools that “will be used for the purposes of determining LIFT and IMPACTplus bonuses and service credits.”

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.

In response to request #12, DCPS agrees to perform another search for responsive documents.

13. Documents describing students who attended at least one day of D.C.

DCPS asserts that it does not possess any data or documents responsive to this request.

14. Documents listing D.C. CAS scores - both the scale score and proficiency level sorted by student, school, grade, and teacher, including student subgroup characteristics.

DCPS provided a hyperlink to data sets located on their website where responsive information regarding aggregate DC CAS data (broken down by school and subgroup) is publicly available. DCPS denies any additional disclosure of individual level student data pursuant to D.C. Official Code §2-534 (a) (6) (B) and the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g. Moreover, DCPS informed us that DC CAS is administered and maintained by the Office of the State Superintendent of Education (“OSSE”), thus any request for this data should have been filed with OSSE.

### Discussion

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). 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). Moreover, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding.

We have summarized the arguments and counter-arguments of the parties above. As a general matter, Appellant makes repeated assertions that DCPS did not provide sufficient “legal justification” regarding why specific requests for documents were not satisfied. The law only requires the disclosure of nonexempt documents in the possession of the agency, not answers to questions. Therefore, as long as DCPS conducted a reasonable search, produced all non-exempt responsive documents, and explained why they withheld exempted information, they have met their obligations under FOIA.

With regard to requests #2 & 14 DCPS states that it does not possess the requested information. With regard to requests #4, 7, 8, & 9 DCPS declares that it has disclosed all of the non-exempt 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 DCPS has met its statutory obligation with respect to these requests. We find DCPS conducted a reasonable search with regard to requests #2, 4, 7, 8, 9 & 14.

Moreover, DCPS is under no obligation to create responsive documents where none exist. Given the wording of your request and the documents provided by DCPS, it is probable that no records exists exactly matching requests #2, 4, 9 & 14. Although additional records may exist with regard to requests #7 & 14, we find that DCPS has properly claimed an exemption under DC Code 2-534 (a) (2) (“Exemption 2”) and DC Code 2-534 (a) (6) (“Exemption 6”) with regard to these requests. A more detailed analysis of the application of these exemptions to requests #7 & 14 follows later in this decision.

It has been held that an agency is not obligated under FOIA to produce records when the information is publically accessible. *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). “[A]gency record[s]” have not been “improperly withheld,” when they are “already are available from their primary sources” because they are “on the public record” cannot be deemed “improperly withheld.” *Tax Analysts v. Department of Justice*, 643 F. Supp. 740, 743-44 (D.D.C. 1986). In the case of records already publicly available, FOIA's primary purpose, to prevent “secret agency law,” is not at risk. *Id.*

Here, Appellant contends that DCPS must possess records that are fully responsive to requests #7, 8 & 14 because DCPS submitted this kind of information to the DC Council in years past during oversight hearings. Because the DC Council has extensive authority to oversee DCPS, the Council, in exercising this authority, is within its right to compel DCPS to create records. Appellant does not enjoy the same authority under FOIA. Thus, simply because DCPS can create records of a certain kind, does not mean they regularly do so or that they can be compelled to do so under FOIA. Moreover, the DC Council is the primary source of this information, since it was created by DCPS specifically for the Council’s education committee. Appellant has acknowledged that these records can be found online at the DC Council website. DCPS is not obligated to create any records akin to those provided to the DC Council under this FOIA request. Furthermore, we find that DCPS is not required to produce documents responsive to requests #7, 8 & 14 which are publicly available on the Council website.



Therefore, we find that there was no denial of FOIA with regard to requests ##2, 4, 7, 8, 9 & 14 of Appellant's Request. With regard to these requests, the decision of DCPS is upheld. DCPS has claimed Exemption 2 applies to withheld documents responsive to requests #3, 5, 7 & 8. These requests pertain to teacher termination information, teacher evaluations, and teacher and principal bonuses, respectively.

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.

[A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. *See Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. *See Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

*Stern v. FBI*, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, "numerous courts have held that disclosure of both favorable and unfavorable information regarding an employee's job performance, such as the receipt of a financial bonus, or a particular rating after an evaluation, constitutes more than a de minimis invasion of privacy because the information contains personal information about job performance. *Long v. Office of Pers. Mgmt.*, 2007 U.S. Dist. LEXIS 72887, 64 (N.D.N.Y. Sept. 30, 2007) (citing *Warren v. SSA*, No. 98-CV-0116E (SC), 2000 U.S. Dist. LEXIS 12385, 2000 WL 1209383, (W.D.N.Y. Aug. 22, 2000)).

Although it has been recognized that "the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.' [citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008). A disclosure that the employment of a person has been terminated due to poor performance may be, at the least, embarrassing and may result in further contact and questioning by third parties. Thus, there is a

cognizable and sufficient privacy interest in information about teacher terminations, performance evaluations and financial bonuses.

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 withheld information. 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 DCPS should have disclosed the additional information about terminations, evaluations and bonuses 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.*

DPS states with regard to requests #3, 5, 7 & 8, “providing the information in the manner that it was requested would force us to produce personally identifiable personnel information that is exempt under 2-534 (a) (2). We provided information in a manner that would not invoke that exemption.” 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 DCPS withheld segregable, non-exempt information. Thus, given the privacy concerns at issue, we find that disclosure of detailed information related to

teacher terminations, teacher evaluations and teacher and principal bonuses are exempt under Exemption (2) because the public interest in disclosure does not outweigh the individual privacy interest. The portions of data that were delivered in response to requests #3, 5, 7 & 8 represent DCPS's best documents available in response to your FOIA request. Therefore, we find that there was no denial of FOIA regarding request #3, 5, 7 & 8. The decision of DCPS is upheld.

Regarding requests #14 DCPS asserts that the some of 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 #14, DCPS did direct Appellant to publicly available aggregated data sets containing CAS proficiency levels in reading and math, broken down by school and subgroup.

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, DCPS cites § 2-534(a)(6)(B) which covers information "specifically exempted from disclosure by statute (other than this section), provided that such statute: (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld."

The relevant statute in this case 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 DCPS is upheld.

With regard to request #6 DCPS's response provided the district-wide percentages of teachers in each rating category, while the request asked for the distribution of IMPACT ratings by grade and school for 2009-10 through 2013-14. We agree with Appellant that it is possible that DCPS has additional data because it would be impossible to provide district-wide percentages without knowing the distribution by school and grade level. We order DCPS to conduct an additional search to determine if such records are in their possession and to produce any such records that are non-exempt.

With regard to request #11 DCPS responded with a document that lists whether a school is high or low poverty for the purpose of "determining LIFT and IMPACT plus bonuses and service credits" rather than for purposes of IMPACT Individual Value Added calculations, as requested. It is unclear from the DCPS response if they possess any documents that more closely align with

the specific inquiry of request #11. We order DCPS to conduct an additional search to determine if such records are in their possession and to produce any such records that are non-exempt.

With regard to request #12, DCPS agrees to perform another search for responsive documents.

We order DCPS to respond to items #6, 11, & 12 in Appellant's FOIA Request within five business days of the date of this order.

### Conclusion

Therefore, we UPHOLD, in part, the decision of DCPS and REVERSE and REMAND, in part. DCPS is ordered to provide to Appellant any additional documentation in their possession regarding 1) IMPACT ratings by grade and school, and 2) wealth disparities among students for purposes of IMPACT Individual Value Added calculations that exist, are non-exempt, and in the possession of DCPS.

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)