

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2015-92**

August 27, 2015

VIA ELECTRONIC MAIL

Katherine Jefferson

RE: FOIA Appeal 2015-92

Dear Ms. Jefferson:

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 in June 2015 you submitted to the District Department of Transportation (“DDOT”) a series of requests for certain records. Since that time, DDOT has indicated that records that are responsive to your request are voluminous, consisting of 2,152 pages of email messages. DDOT has not yet produced the documents; however, it has provided you with several different cost estimates and requested that you pre-pay for the records.

The crux of your appeal relates to your frustration with the length of time that DDOT is taking to produce the documents and the varying cost estimates it has provided you. We interpret our jurisdiction under D.C. Official Code § 2-537(a) to be limited to determining whether a record may be withheld under DC FOIA. We have generally considered a fee-related appeal to be within our jurisdiction only when the fees charged were so unreasonable or excessive as to be deemed a denial of the right to inspect the requested records.¹

Under D.C. Official Code § 2-532(b), DC FOIA provides an agency burdened by a FOIA request with recourse, as it permits some of the cost of production to be shifted to the requestor. *See District of Columbia v. FOP*, 33 A.3d 332, 347-348 (D.C. 2011). Further, pursuant to D.C. Official Code § 2-532(b-3), an agency may require an individual to pre-pay for requested records if the public body determines that the fee will exceed \$250. Although DDOT has provided you with different estimates related to your request, the lowest amount has been in excess of \$250.

Here, we believe you are entitled to a specific breakdown of the fees associated with your request. Accordingly, in response to your appeal we asked DDOT to provide you with this information, particularly since you have received several different quotes. DDOT responded to your appeal in a letter dated August 26, 2015, on which this office was copied. The letter provides detailed information as to the number of hours that various levels of DDOT personnel have spent responding to your FOIA request, which generated 2,152 pages of documents. Although we sympathize with your frustration over having received a wide range of fee

¹ *See, e.g.*, FOIA Appeals 2014-04, 2012-21, and 2013-26.

estimates in connection with your request, DDOT's final quote is not excessive given the nature of your request and the time DDOT personnel has spent responding to it.²

Since DDOT has provided you with a final, detailed breakdown of the fees associated with your request and has indicated that you will receive the documents by September 4, 2015, we consider this appeal to be moot, and it is dismissed. The dismissal shall be without prejudice, however, and you may submit a subsequent appeal if you wish to challenge any aspect of DDOT's substantive response.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Sincerely,

/s/ Melissa C. Tucker

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

cc: Karen Calmeise, Esq., DDOT (via email)

² Although the parameters of your FOIA request are not addressed in this appeal, we note that we have previously held on numerous occasions that requests like the one you submitted to DDOT are unreasonably broad and unduly burdensome. *See, e.g.*, FOIA Appeals 2011-09R and 2011-23.