

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-09**

December 16, 2016

VIA ELECTRONIC MAIL

Mr. Kahlil Palmer

RE: FOIA Appeal 2017-09

Dear Mr. Palmer:

This letter responds to the administrative appeal you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 ("DC FOIA"). Your appeal is based on the failure of the Department of Housing and Community Development ("DHCD") to respond to a July 18, 2016, request you submitted to DHCD for records relating to rent control exemptions from the beginning of 2010 to present.

Upon receiving your appeal on November 30, 2016, this Office notified DHCD and requested that it provide us with a response. On December 15, 2016, DHCD forwarded to this Office an email that purported to respond to your initial request by providing you with the information you requested for the time period of 2011 to present. The email also stated, without explanation for the 5-month delay, that records for the remaining time period you have requested are still being "collected."

Your appeal was based on DHCD's failure to respond to your request, and DHCD has subsequently responded in part to this request. As a result, we consider your appeal to be partially moot with respect to the documents you sought that DHCD provided you on December 15, 2016.

As to the outstanding records sought in your July 18, 2016 request, DHCD failed to provide them within the 15 days prescribed by D.C. Official Code § 2-532 (c)(1). Further, based on the record before this Office, it appears that DHCD did not seek an extension to respond to your request by "written notice . . . setting forth the reasons for extension and expected date for determination," as contemplated by D.C. Official Code § 2-532 (d)(1). Lastly, DHCD did not assert an exemption to justify withholding records at any point. As a result, this Office finds that DHCD constructively denied your request. D.C. Official Code § 2-532(e). Having denied your request, and having failed to offer an explanation to this Office for the reasons for such denial, this Office finds DHCD to be improperly withholding the records that it maintains it is "collecting."

In light of the above, this Office orders DHCD to, within 5 business days of the date of this decision: (1) provide you with the outstanding requested documents; or (2) provide you with a detailed explanation of all steps it has taken since your July 2016 request to retrieve and produce

the documents you are seeking¹ and continue to provide you and this Office with weekly updates on the status of your request until all responsive, non-privileged documents have been produced.

If you wish to assert a substantive challenge of the documents DHCD produced to you on December 15, 2016, or DHCD's subsequent responses made pursuant to this decision, you may do so by separate appeal to 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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Timothy Wilson, FOIA Officer, DHCD (via email)
Julia Wiley, General Counsel, DHCD (via email)

¹ If DHCD sends you a detailed explanation of its search efforts, the agency shall send a copy to this Office of same.