

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR**



Mayor's Office of Legal Counsel

August 11, 2017

VIA ELECTRONIC MAIL

Ms. Jacqueline Belletomasini

RE: FOIA Appeal 2017-116

Dear Ms. Belletomasini:

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"). In your appeal, you assert that the Office of Human Rights ("OHR") improperly withheld records you requested from OHR under DC FOIA.

Background

On July 20, 2017, you submitted a request to OHR for a copy of the contents of a "white three-ring binder submitted to [an OHR employee] in December 2016...." On July 24, 2017, OHR informed you that it would process your FOIA request after OHR issues final rulings in your pending discrimination cases.¹

On appeal, you challenge OHR's response and clarify that you are only seeking copies of documents that you personally submitted to OHR because you did not retain copies for yourself.

OHR responded to your appeal in a letter to this Office in which it reasserted its position that the records you seek are protected from disclosure until your pending discrimination cases are resolved.² In support of its position, OHR proffered that the records you seek are protected from disclosure pursuant to D.C. Official Code § 2-534(a)(3)(A)(i) ("Exemption 3(A)(i)") as the responsive documents are investigatory records that are compiled for law enforcement purposes and whose disclosure would interfere with enforcement proceedings. OHR also asserted that personal information in the records is protected pursuant to D.C. Official Code § 2-534(a)(2) ("Exemption (2)") and D.C. Official Code § 2-1402.52(c) through D.C. Official Code § 2-534(a)(6)(A). Additionally, OHR claimed that pursuant to 4 DCMR §§ 723.1 and 723.2, documents in a complaint file cannot be disclosed until after final resolution of the complaint. Finally, OHR contended that your FOIA appeal potentially interferes with OHR's enforcement duties, and such interference is punishable by fine and imprisonment pursuant to D.C. Official Code § 2-1402.64(a).

¹ You submitted two FOIA requests involving different cases; however, only one request is at issue in this appeal.

² OHR's response is attached for your reference.

Discussion

It is the public policy of the District of Columbia 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). The right to examine public records is subject to various exemptions that may form the basis of 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).

Here, many issues can be disposed of by addressing OHR’s interpretation of your appeal. Based on your request for the contents of an unspecified white three-ring binder, it appears that OHR interpreted your request as seeking OHR’s investigative file in your discrimination case.³ OHR’s response to your appeal is predicated on its interpretation that you are seeking the investigative file; however, your appeal clarifies that you are only seeking copies of documents that you submitted to OHR in December of 2016. Even if the documents you submitted have been incorporated into OHR’s investigatory file, OHR has not articulated and we cannot contemplate any harm to the enforcement proceeding that would occur by providing you with copies of your own documents. As a result, it is inappropriate for OHR to invoke Exemption 3(A)(i) to withhold the documents that you submitted. If OHR maintains the documents that you submitted, you are entitled to a copy of them. *See* D.C. Official Code § 2-502(18) (defining a “public record” as any “documentary materials... retained by a public body”).

The protection of privacy interests under Exemption (2) and D.C. Official Code § 2-1402.52(c) is not applicable here for similar reasons, as the only privacy interest at issue is yours. Regarding OHR’s assertion that the records must be withheld pursuant to 4 DCMR §§ 723.1 and 723.2, we note that regulations do not control FOIA disclosures. *See* D.C. Code § 2-534(a)(6) (stating that other statutes, not regulations, can prevent FOIA disclosure). While 4 DCMR §§ 723.1 and 723.2 are instructive to prevent harm to an ongoing enforcement proceeding and protect privacy interest, as discussed above those concerns are not at issue here because the only documents you are seeking are those that you previously provided to OHR.

Finally, OHR’s contention that your FOIA appeal may constitute criminal misconduct pursuant D.C. Official Code § 2-1402.64(a) is troubling. By itself, your attempt to exercise your right to submit an administrative appeal to the Mayor in accordance with D.C. Official Code 2-537 demonstrates no misconduct. Further, we would be reluctant to conclude that exercising FOIA appeal rights could ever be considered to “willfully resist, prevent, impede or interfere with” OHR’s enforcement of the District’s Human Rights Act.

³ OHR’s response to your appeal also references another FOIA request you submitted for the records in a separate discrimination case; however, that request is not at issue in this appeal.

Conclusion

Based on the foregoing, we remand OHR's decision. Within 10 days from the date of this decision, OHR shall disclose to you copies of the records you provided to OHR in December 2016, to the extent that OHR has maintained a copy of them.

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,

The Mayor's Office of Legal Counsel

cc: Ebony M. Robinson-Scott, General Counsel, OHR (via email)