

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

August 16, 2017

VIA ELECTRONIC MAIL

Anonymous Requestor

RE: FOIA Appeal 2017-118

Dear Anonymous Requestor:

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 Office of the Deputy Mayor for Public Safety and Justice ("ODMPSJ") to respond to a June 24, 2017, request you submitted to ODMPSJ for email records relating to the Democratic National Committee and the Profiling Project.

Upon receiving your appeal on August 2, 2017, this Office notified ODMPSJ and requested that it provide us with a response. ODMPSJ did not provide a response.

Your appeal was based on ODMPSJ's failure to respond to your request, and ODMPSJ has subsequently not responded on appeal.

ODMPSJ failed to provide you with a response 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 ODMPSJ 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, ODMPSJ did not assert an exemption to justify withholding records at any point. As a result, this Office finds that ODMPSJ constructively denied your request pursuant to 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 ODMPSJ to be improperly withholding the records. *See* 1 DCMR § 412.5 ("Within five (5) days . . . of receipt of its copy of the FOIA appeal the agency shall file a response . . .").

In light of the above, within 15 business days of the date of this decision, ODMPSJ shall: (1) search for responsive documents;<sup>1</sup> (2) review responsive documents for redactions pursuant to

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<sup>1</sup> Please note that ODMPSJ is only required to search for records that your request reasonably describes – e.g. emails from parties that you have identified. 1 DCMR § 402.4. ODMPSJ is not required to answer the parts of your request that amount to interrogatories, would require the

D.C. Official Code § 2-534(b); and (3) begin providing you with responsive documents on a rolling basis.<sup>2</sup>

If you wish to assert a substantive challenge ODMPSJ'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: Helder Gil, Chief of Staff, ODMPSJ (via email)

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creation of new records, or are so broad as to not "permit the identification and location of the record by the agency without an unreasonable amount of effort . . ." See 1 DCMR § 402.5; *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985) (stating an agency "has no duty either to answer questions unrelated to document requests or to create documents."); see also FOIA Appeal 2014-41; FOIA Appeal 2017-36.

<sup>2</sup> Please note that because of the size and scope of this request, you may be required to pre-pay for these services. See D.C Official Code § 2-532(b-3); 1 DCMR § 408.