

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-12**

January 6, 2016

VIA ELECTRONIC MAIL

Ms. Katherine Wright

RE: FOIA Appeal 2017-12

Dear Ms. Wright:

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 request you submitted on September 23, 2016, to DHCD for records relating to low income housing tax credits.

DHCD acknowledged receipt of your request on September 23, 2016. Since that communication, despite your attempts to contact DHCD by phone and email, you have not received a response or an update from DHCD regarding your request. As a result, you are appealing DHCD’s failure to respond as a constructive denial under D.C. Official Code § 2-532(e).

On December 28, 2016, this Office notified DHCD of your appeal and requested a response. DHCD responded by email on January 5, 2016, stating that an “undetermined portion” of the requested records are available online. DHCD offered no explanation for the several month delay or lack of communication with you. In addition, DHCD did not describe its search, stating only that it has “already begun but requires coordination.” DHCD further requested a “10 day extension to respond to the original FOIA request.”

DHCD has failed to provide you with records within the 15 business 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 pursuant to D.C. Official Code § 2-532(e). Having denied your request, and having failed to offer an explanation of the reasons for the denial, this Office finds DHCD to be improperly withholding the records at issue.

In light of the above, this Office orders DHCD to, within 5 business days of the date of this decision: (1) identify the documents you have requested that are available online; and (2) provide

you with any remaining responsive documents in DHCD's possession, subject to redaction or withholding in accordance with D.C. Official Code § 2-534.

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)