

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

September 20, 2017

VIA ELECTRONIC MAIL

Mr. Kemit Mawakana

RE: FOIA Appeal 2017-150

Dear Mr. Mawakana:

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 University of the District of Columbia ("UDC") improperly estimated its fees to process your requests under the DC FOIA.

This appeal is related to a prior determination, FOIA Appeal 2017-137, issued by this Office.¹ In FOIA Appeal 2017-137, UDC's decision to deny your requests for fee waivers was affirmed. We remanded the matter to UDC due to its inclusion of fees for Electronically Stored Information ("ESI") processing costs, which, based on the information available to us at the time, did not appear to be a direct cost of search, duplication, or review.

Previously, you requested that UDC provide you with itemized fee estimates for each subpart of your three FOIA requests submitted on April 17, 18, and 19 of 2017.² On September 6, 2017, you submitted your present appeal to this Office asserting that UDC should provide you with an itemized fee estimate for each subpart of your April 17 FOIA request, and UDC's estimate should not include costs deemed impermissible by FOIA Appeal 2017-137.

On September 18, 2017, UDC provided this office with a response to your appeal.³ UDC's response included two options of fee estimates for your April 17 request.⁴ The first option included ESI processing and estimated a total cost of \$72,647.70. UDC's response asserted additional support for its claim that ESI processing is a direct cost of search and review. The second option excluded ESI processing and estimated a total cost of \$1,473,333 with an itemized

¹ FOIA Appeal 2017-137 was related to your prior appeal, FOIA Appeal 2017-93. In FOIA Appeal 2017-93, this Office noted that due to the scope of your request, UDC may require advance payment of fees to process your request pursuant to D.C. Official Code § 2-532(b-3), which provides that an agency may require advance payment of a fee when the fee will exceed \$250.

² UDC previously aggregated your three FOIA requests for its fee estimate totaling \$108,790.35.

³ A copy of UDC's response is attached.

⁴ UDC noted that similar fee estimates for your requests from April 18 and 19 would also be provided to you.

cost breakdown for each subpart of the request. The second option also included a cost estimate totaling \$346,260 for a limited search and review of the records most likely to contain responsive documents. Both options used the same hourly rate of \$40 per hour and processing estimate of one minute per page. UDC asserts that the cost estimates of the second option are higher because the lack of ESI processing would require more records to be manually reviewed.

The hourly rate used in UDC's fee estimates is supported by the fee schedule in 1 DCMR § 408. UDC's estimate of one minute per page to search and review documents is reasonable. This Office is not in a position to analyze the estimated number of pages that UDC asserts that it expects to process under either fee option. *See Manning v. United States DOJ*, 234 F. Supp. 3d 26 (D.D.C. 2017) (finding that substantial weight is given to an agency declaration absent contrary evidence or evidence of bad faith).

Your appeal was based on UDC's aggregation of its fee estimate and the inclusion of ESI processing costs. UDC has since provided you with itemized fee estimates that exclude ESI processing costs. As a result, we consider your appeal to be moot, and it is dismissed.

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.

Respectfully,

Mayor's Office of Legal Counsel

cc: Alonzo Chisolm, Assistant General Counsel, UDC (via email)