

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-26**

March 17, 2017

VIA ELECTRONIC MAIL

Mr. Mark Eckenwiler

RE: FOIA Appeal 2017-26

Dear Mr. Eckenwiler:

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"), alleging that the District Department of Transportation ("DDOT") failed to respond to a request you submitted to DDOT.

Background

In specific, you contend that you submitted a FOIA request to DDOT by email on February 2, 2017, and that as of the date of your appeal (March 3, 2017), "DDOT has made no response of any kind other to [sic] acknowledge receipt of the request (via email on Feb. 2 from Karen R. Calmeise, Esq.)." You further contend that DDOT's failure to timely respond to your request constitutes a denial thereof.

This Office notified DDOT of your appeal and asked the agency to respond. On March 14, 2017, DDOT sent this Office a response, including a copy of an email exchange between DDOT and you that occurred on February 2 and 3, 2017.¹ The email exchange indicates that upon receiving your request on February 2, 2017, DDOT's FOIA officer, Ms. Calmeise, responded an hour later by acknowledging your request and asking you to submit it on the District government's online FOIA portal. You responded to Ms. Calmeise the same day, asking, "May I construe this response as a denial?" The following morning, February 3, 2017, Ms. Calmeise replied, "No, just forwarding you the online link in order to have you put your request into the FOIA system . . . This is not a denial. Your input insures that the request is not mistyped or input in error. I am in the office now if you wish or need clarification."

Ms. Calmeise asserts that you did not respond to her February 3, 2017 email, and that DDOT should not be construed as having denied your request because Ms. Calmeise specifically stated in her last email to you that your request was not being denied. Ms. Calmeise further indicates that DDOT is in the process of responding to your request.

¹ Copies of the documents DDOT sent are attached.

Analysis

FOIAXpress, the online portal through which Ms. Calmeise requested you submit your FOIA request, was launched by the District government in 2014 to provide FOIA requesters with a centralized system to submit FOIA requests and appeals to various District agencies. The system allows FOIA officers to track and respond to requests, and it allows FOIA requesters to check the status of their submissions and read frequently-requested public records. There is no requirement that a FOIA request be submitted through FOIAXpress in order to be processed; however, it is the District government's preferred method for processing requests, and agencies are encouraged to use the system to ensure that requests are timely and properly addressed.

The day after you emailed your request to Ms. Calmeise, she informed you - in response to your query - that DDOT had not denied your request. She also invited you to contact her for clarification, presumably if you were unwilling or unable to enter the request into FOIAXpress. Because the two of you were engaged in an ongoing email exchange, we find it understandable that Ms. Calmeise interpreted your lack of response to mean that you would be entering your request into the portal or that you had decided not to pursue it. In either event, we disagree with your position that DDOT "made no response of any kind" to you other than to acknowledge receipt of your request on February 2, 2017.

Conclusion

The failure of a public body to comply with a request within the statutory timeframe shall be deemed a denial of the request under D.C. Official Code § 2-532(e). When an agency fails to disclose a public record, the Mayor shall compel the agency to do so. *See* D.C. Official Code § 2-537. Here, DDOT has indicated to this Office that it is searching for responsive documents and will send them to you within 5 business days of the date of this decision. Based on this representation, we dismiss your appeal as moot; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DDOT's substantive response.

This constitutes the final decision of this office. If you are dissatisfied with this decision, you may commence a civil action in the Superior Court of the District of Columbia in accordance with the DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Karen R. Calmeise, Esq., Hearings/FOIA Officer, DDOT (via email)