

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-63**

May 10, 2017

VIA ELECTRONIC MAIL

Mr. Kel McClanahan

RE: FOIA Appeal 2017-63

Dear Mr. Sharp:

This letter responds to the administrative appeal that 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 District of Columbia Office on Aging (“DCOA”) improperly denied a request you submitted on behalf of your clients.

After you filed your appeal,¹ DCOA informed our Office that “In light of the Court of Appeals recent decision . . . DCOA does not intend to file a response [to your appeal].” DCOA indicated that it will instead process the request.

An agency withholding public records has the burden of justifying that withholding. *See* 1 DCMR § 412.5. Here, DCOA has chosen to not defend its withholding. As a result, this Office remands this matter to DCOA and orders it to produce documents on a rolling basis beginning immediately, pursuant to D.C. Official Code § 2-537(a)(2).

Your appeal is hereby dismissed; provided, that the dismissal shall be without prejudice to you to assert any challenge, by separate appeal, to DCOA’s substantive response.

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 DC FOIA.

Respectfully,

Mayor’s Office of Legal Counsel

cc: Michael Kirkwood, General Counsel, DCOA (via email)

¹ It should be noted that while your appeal is dated April 28, 2016, it was not received by this Office until April 26, 2017.