

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR  
MAYOR'S OFFICE OF LEGAL COUNSEL  
Freedom of Information Act Appeal: 2017-72**

May 17, 2017

VIA ELECTRONIC MAIL

Jarrod S. Sharp, Esq.

RE: FOIA Appeal 2017-72

Dear Mr. Sharp:

This letter responds to two administrative appeals that you submitted to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537 (“DC FOIA”), asserting that the Metropolitan Police Department (“MPD”) improperly closed and failed to respond to DC FOIA requests you submitted on April 27, 2017, and April 6, 2017, respectively. For the reasons discussed below, we have consolidated these appeals.

On April 6, 2017, you sent a request to MPD for “all MPD e-mails that were sent to or received from [a named employee of the Mayor’s Office of Legal Counsel] and/or [another named employee of the Mayor’s Office of Legal Counsel] since 1 Jan 2017.” On April 27, 2017, you requested “all MPD e-mails that were sent to or received from [the same two employees of the Mayor’s Office of Legal Counsel] between March 20, 2017 and April 1, 2017.” MPD appropriately closed your second request because the time frame you specified in the first request encompassed the time frame specified in the second request.

MPD provided this Office with a response to your appeals on May 12, 2017.<sup>1</sup> In its response, MPD explained why it closed your second request. MPD also indicated that it had suspended further processing of your first request because you failed to commit to paying applicable fees associated with searching for and producing the documents you are seeking.

D.C. Official Code § 2-532(b-3) provides that an agency can require advance payment of fees in two situations: (1) when it has been determined that a fee will exceed \$250; and (2) when a “requester has previously failed to pay fees in a timely fashion.” This Office is not aware of any authority that allows an agency to suspend processing a FOIA request until a requester commits to paying applicable fees. However, you have failed to timely pay fees incurred by the processing of your previous FOIA requests, as noted in FOIA Appeals 2017-56, 2017-57, 2017-61, and 2017-62. Therefore, MPD may require advance payment from you here, as authorized by D.C. Official Code § 2-532(b-3).

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<sup>1</sup> A copy of MPD’s response is attached.

Based on the foregoing, MPD's decision is affirmed in part and remanded in part. Within 10 business days of this decision MPD shall provide you with a reasonable estimate of fees associated with responding to your first request. MPD need not process your request until it receives advance payment of those fees from you.

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: Ronald B. Harris, Deputy General Counsel, MPD (via email)