

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
MAYOR'S OFFICE OF LEGAL COUNSEL
Freedom of Information Act Appeal: 2017-89**

June 29, 2017

VIA ELECTRONIC MAIL

Arthur Slade

RE: FOIA Appeal 2017-89

Dear Mr. Slade:

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 denial you received from the Office of the Inspector General (“OIG”) with respect to your request for records related to an OIG investigation.

OIG received your FOIA request on June 24, 2016, for the status of a complaint filed with OIG concerning the hiring practices of the Department of Insurance, Securities and Banking as well as email transmissions between three individuals for the period from May 1, 2012 to June 24, 2016. On July 6, 2016, OIG denied your request in its entirety pursuant to D.C. Official Code § 2-534(a)(3)(A) (“Exemption 3(A)”), which protects from disclosure investigatory records compiled for law-enforcement purposes to the extent that production of the records would interfere with enforcement proceedings.

Approximately a year later, on June 15, 2017, you appealed OIG’s denial. In your appeal you requested access to email transmissions between three individuals¹ for the period from May 1, 2012 to June 15, 2017. OIG provided this Office with a response to your appeal on June 28, 2017.² In its response, OIG indicates that its investigation has been closed; therefore, Exemption 3(A) is no longer applicable.³

We note the inconsistencies between your original FOIA request and your FOIA appeal. Your appeal involves a narrower category of records, appears to name a different individual, and encompasses a longer timeframe. In light of OIG’s representation that it would reconsider your request subject to applicable FOIA exemptions, we consider your appeal to be a new FOIA request and hereby instruct OIG to process it according to D.C. Official Code § 2-532. We further note that the responsive email records OIG possesses would have been obtained pursuant

¹ The surname for one individual is different than the original request.

² Copies of OIG’s response and affidavit are attached.

³ OIG’s response indicates that the investigation was closed on June 30, 2016, which, if accurate, would mean that its denial issued on July 6, 2016, was improper; however, at this point the issue is moot as OIG acknowledges that Exemption 3(A) no longer applies.

to its investigation; therefore, while Exemption 3(A) is no longer applicable because the investigation has closed, D.C. Official Code § 2-534(a)(3)(C)⁴ may still apply in addition to D.C. Official Code § 2-534(a)(2)⁵ to protect portions of the responsive records from disclosure. Finally, you are free to assert any challenge by separate appeal to OIG's response to your renewed FOIA request.

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: Daniel W. Lucas, Inspector General, OIG (via email)

⁴ D.C. Official Code § 2-534(a)(3)(C) protects from disclosure investigatory records compiled for law-enforcement purposes to the extent that production of the records constitute an unwarranted invasion of personal privacy.

⁵ D.C. Official Code § 2-534(a)(2) protects from disclosure information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy.