

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

October 31, 2017

VIA ELECTRONIC MAIL

William Matzelevich

RE: FOIA Appeal 2018-019

Dear Mr. Matzelevich:

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"), on the grounds that the Department of General Services ("DGS") should not be able to invoke a 10-day extension pursuant to D.C. Official Code § 2-532(d) to respond to your September 27, 2017 request seeking one email and one email attachment.

This Office contacted DGS on October 19, 2017, and notified the agency of your appeal. DGS responded on the same day, providing you with a final response to your request and the two records you sought. DGS's response asserted that portions of its disclosure were redacted pursuant to D.C. Official Code § 2-534 ("Exemption 4").

Exemption 4 vests public bodies with discretion to withhold "inter-agency or intra-agency memorandums and letters which would not be available by law to a party other than an agency in litigation with the agency[.]" This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Exemption 4 encompasses the deliberative process privilege. See *McKinley v. Bd. of Governors of the Fed. Reserve Sys.*, 647 F.3d 331, 339 (D.C. Cir. 2011). The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and it is deliberative if it "reflects the give-and-take of the consultative process." *Id.*

Here, DGS redacted portions of the email attachment you requested on the grounds that these portions are protected by Exemption 4. From the context of the corresponding email dated August 8, 2016,¹ we glean that the redacted language constitutes draft responses to questions regarding the Hearst pool project. The email dated August 11, 2016, that DGS disclosed in

¹ Your request incorrectly references this email as dated August 9, 2016.

response to your FOIA request contains the final responses to the same questions. As a result, the withheld preliminary draft answers are both predecisional and deliberative, and disclosure would risk inaccurately reflecting the views of the agency. Accordingly, the redactions DGS made to the document it disclosed to you on October 19, 2017 are justifiable under Exemption 4 of DC FOIA.

Your appeal was based on DGS's failure to timely respond to your request, and the agency has now responded. Moreover, we have reviewed the redactions DGS made to the documents it provided to you, and we find that these redactions are proper under DC FOIA.

This shall constitute 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 DC FOIA.

Respectfully,

Mayor's Office of Legal Counsel

cc: Victoria Black Johnson, Program Support Specialist, DGS (via email)