

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Mayor's Office of Legal Counsel

February 6, 2018

VIA ELECTRONIC MAIL

Ms. Sydney Householder

RE: FOIA Appeal 2018-70

Dear Ms. Householder:

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"). In your appeal, you challenge the timeframe that the Office of the Chief Technology Officer ("OCTO") applied to your FOIA request.

Background

On January 3, 2018, you submitted a request to OCTO for five categories of records. The first three categories of the request pertained to contracts for projects to increase internet access. The remaining two categories related to records of meetings that you allege OCTO held regarding the internet access projects. On January 9, 2018, OCTO acknowledged receipt of your request only with respect to the two parts related to non-contractual records of meetings. On Saturday, January 20, 2018, based on a response you received from a FOIA request you submitted to another agency,<sup>1</sup> you contacted OCTO and asked that it process the first three parts of your request as well. On Monday, January 22, 2018, OCTO responded that it would process the three parts as a new request.

This Office received your appeal on January 23, 2018, and contacted OCTO for its response. Your appeal asserts two arguments. You claim that the timeframe for processing your request should start on the date you submitted the request (January 3, 2018) rather than the date OCTO claims it received the request (January 9, 2018). Additionally, you argue that the timeframe to process all five parts of your request should have begun on January 3, because there was no valid reason for OCTO to ignore the first three parts of your request until January 22nd.

OCTO responded to your appeal on January 26, 2018.<sup>2</sup> In its response, OCTO states that the timeframe to process FOIA requests starts on the date an agency receives a request rather than the date on which a requester submits it. OCTO also indicates that its FOIA Officer did not

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<sup>1</sup> Prior to submitting your FOIA request to OCTO, you sent the same request to the Office of Contracting and Procurement ("OCP"). OCP responded to your request on January 19, 2018, stating that it had no responsive records and suggesting that you ask OCTO for records pertaining to the "non-contractual portion of your request."

<sup>2</sup> A copy of OCTO's response is attached.

receive your request until January 9th. Additionally, OCTO asserts that its reason for initially processing only two parts of your request was based on your own instructions via phone and email; namely, you advised OCTO on December 6, 2017, via email, that you intended to submit a FOIA request to OCTO seeking a response to only the two non-contractual parts of a request that you had previously submitted to OCP. Additionally, OCTO argues that you misinterpreted OCP's response because you claim that OCP informed you that OCTO would possess all the documents responsive to your request, but OCP's response states only that you should contact OCTO for the non-contractual portions of the request.

On January 31, 2018, OCTO provided you with its response to the two parts of your request pertaining to non-contractual records stating that it did not possess any responsive records and that the Department of Small and Local Business Development might possess responsive records. On the same day, OCTO also provided you with a partial response to the three parts of your request pertaining to contractual records. OCTO's partial response included assertions that it had not found any contractual records responsive to your request and that it would need additional information regarding your request to search further.

### Discussion

It is the public policy of the District of Columbia that "all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees." D.C. Official Code § 2-531. In aid of that policy, DC FOIA creates the right "to inspect . . . and . . . copy any public record of a public body . . ." D.C. Official Code § 2-532(a). The right created under the DC FOIA to inspect public records is subject to various exemptions that may form the basis for denial of a request. *See* D.C. Official Code § 2-534.

The DC FOIA was modeled on the corresponding federal Freedom of Information Act, *Barry v. Washington Post Co.*, 529 A.2d 319, 321 (D.C. 1987). Accordingly, decisions construing the federal statute are instructive and may be examined to construe the local law. *Washington Post Co. v. Minority Bus. Opportunity Comm'n*, 560 A.2d 517, 521, n.5 (D.C. 1989).

Your appeal is based solely on OCTO's characterization of the date on which it received your request. This Office's jurisdiction is limited to "review[ing] the public record to determine whether [a record] may be withheld from public inspection." D.C. Official Code § 2-537(a). Under D.C. Official Code § 2-532(e), when an agency fails to fulfill a request within the time requirements established in D.C. Official Code §§ 2-532(c) and (d), the request may be deemed denied.<sup>3</sup> As a result, the timeframe of your request is only relevant for the purposes of an administrative appeal if it constitutes a deemed denial.

Because OCTO has provided responses to all categories of your request, the issue of whether OCTO constructively denied your request by failing to respond within a certain time period is

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<sup>3</sup> Your appeal was unripe when it was submitted on January 23, 2018, because even if the timeframe for processing your request began on January 3, 2018, your request could not be deemed denied pursuant to D.C. Official Code §§ 2-532(c) until January 25, 2018.

now moot. We note that, pursuant to D. C. Official Code § 2-532(c)(1), the timeframe for processing a FOIA request begins upon the date an agency receives a request rather than the date a requester submits it. However, the activity log on the FOIAXpress portal indicates that OCTO personnel did receive your request on January 3, 2018, the same date that you submitted it. Additionally, we note that OCTO's initial decision to process only two parts of your request was based on a reasonable interpretation of your communications that you were only seeking OCTO's response to certain parts of your request and that the remaining portion of the request was pending with OCP.

### Conclusion

Based on the foregoing, we consider your appeal to be moot and hereby dismiss it without prejudice. You are free to challenge OCTO's substantive responses to your request by separate appeal to this Office.

This constitutes 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: Niquelle Allen, FOIA Officer, OCTO (via email)