

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor



May 4, 2009

BY U.S. MAIL

[REDACTED]  
Pine Knot, KY 426

Re: Freedom of Information Act Appeal

Dear [REDACTED]

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. § 2-531 *et seq.* (the "DC FOIA"), dated October 16, 2008 (the "Appeal"). We forwarded the Appeal to the Office of the Chief Medical Examiner ("OCME") with a request for a response. The OCME responded by e-mail dated February 12, 2009 ("OCME Response"). We note your Appeal was misdirected to the District of Columbia Department of Corrections before being forwarded to OCME.

In your initial FOIA Request dated September 25, 2008, you sought copies of all records related to you in any format or form.

OCME responded to your FOIA Request in a letter dated October 1, 2008, notifying you OCME is "[U]nable to provide you with any information related to [REDACTED]'s autopsy. . ." and disclosure of the information sought would "[C]onstitute an unwarranted invasion of personal privacy."

On Appeal, Appellant challenges OCME's denial of his FOIA request. In summary, Appellant believes the exemption OCME relied upon does not support "complete denial of all information" and [REDACTED] no longer has a privacy interest because he is deceased.

### Discussion

It is the public policy of the District government 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, 2001 Ed. § 2-531. In aid of that policy, the DC FOIA creates the right "to inspect ... and ... copy any public record of a public body . . ." *Id.* § 2-532(a). Yet that right is subject to various exemptions, which may form the basis for a denial of a request. D.C. Official Code, 2001 Ed. § 2-534.

Under the DC FOIA, an agency must make a record available, unless the record falls within one of the statutory exemptions. OCME claims the records sought by Appellant are exempt from disclosure under exemption 2 of the DC FOIA which states, "Information of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." § 2-534(a)(2). Determining whether disclosure is clearly unwarranted, the court must balance the public interest in disclosure against personal privacy interests. *See Washington Post Co. v. U.S. Dept. of Health and Human Services*, 690 F.2d 252 (D.C. 1982).

Here, it is very clear the disclosure of [REDACTED] autopsy report to Appellant would be a clearly unwarranted invasion of privacy. Although it is true [REDACTED] is deceased, it does not mean his right to privacy does not survive. Rather, under the Health Insurance Portability and Accountability Act [REDACTED]'s right to the confidentiality of his medical information, including the autopsy report, survives after death. Although Appellant believes he is entitled to the autopsy report because he was convicted of [REDACTED] murder, this is a misguided belief. The only information contained in the autopsy report is the cause and manner of death. There is nothing in the autopsy report related to Appellant or his trial.

Further, D.C. Official Code § 5-1412 *et seq.*, would also prevent Appellant from obtaining a copy of the autopsy report unless he had written authorization by the next of kin, a subpoena, or a court order. Appellant has not put forth any information indicating he has one of the above and OCME is not obligated to disclose the autopsy report without one of the foregoing.

Because we can conceive of no public interest in disclosing the autopsy report to Appellant solely because he was convicted of [REDACTED] murder, the autopsy report has been properly withheld by OCME. Therefore, we are satisfied with the OCME Response and UPHOLD its denial on appeal and your appeal is DISMISSED.

If you are dissatisfied with this decision, you are free under the DC FOIA to commence a civil action against the District of Columbia government in the District of Columbia Superior Court.

Regards,

*Runako Allsopp*

Runako Allsopp  
Deputy General Counsel to the Mayor

cc:

