

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

May 8, 2009

BY U.S. MAIL

[REDACTED]
Washington, DC 200

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 April 2, 2009 (the "Appeal"). We forwarded the Appeal to the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") with a request for a response. The DMPED responded by e-mail dated April 29, 2009 ("DMPED Response").

In your initial FOIA Request dated March 28, 2009, you sought copies of "all documents and materials submitted in response to the District's "Solicitation for Offers" for Slowe Elementary School, located at 14th and Jackson St NE."

DMPED responded to your FOIA Request in an e-mail dated March 31, 2009, notifying you the agency would not be producing the documents you sought based on exemption 1 of the DC FOIA.

On Appeal, Appellant challenges DMPED's denial of her FOIA request. In summary, Appellant believes DMPED misapplied DC FOIA exemption 1 and no competitive harm can occur because the application period has closed.

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.

Exemption 1 of the DC FOIA states “trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained” is exempt from disclosure. § 2-534(a)(1).

In *National Parks & Conservation Association v. Morton*, the court used the following standard to determine whether commercial or financial information provided to the government by persons outside the government is confidential, “if its disclosure would either “impair the government’s ability to obtain necessary information in the future” or “cause substantial harm to the competitive position of the person from whom the information was obtained,” then it comes within the exemption. 498 F.2d 765, 770 (D.C. 1974). We note this case was limited by *Critical Mass Energy Project v. Nuclear Regulatory Commission*, where the court held the two-prong test only applies to make the information confidential if the government required the information to be submitted. 975 F.2d 871 (D.C. 1992).

Here, releasing the information Appellant seeks would cause substantial harm to the competitive position of the entity submitting the proposal. The proposal itself represents the entity’s competitive position because it contains detailed financial and commercial information about how the entity operates. And placing this information in the public domain would give an unfair advantage to the entity’s competitors. Because of this concern, we see no reason to release this information to Appellant.

Therefore, we UPHOLD the decision of DMPED to withhold the documents under exemption 1 of the DC FOIA.

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
Deputy General Counsel to the Mayor