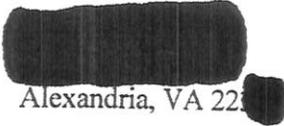


GOVERNMENT OF THE DISTRICT OF COLUMBIA  
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

June 24, 2009

  
Alexandria, VA 22304

Dear 

This letter responds to your appeal (the "Appeal") to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code, 2001 Ed. §§ 2-351 *et seq.* ("DC-FOIA"), dated February 9, 2009. Our office forwarded your Appeal to the District of Columbia Department of Corrections ("DOC") with a request for a response. DOC responded to the Appeal on April 3, 2009. DOC also supplemented the record with its initial response to your FOIA request on June 22, 2009. The foregoing represents the appellate record, upon which this decision is based.

**Background**

On October 17, 2008, you submitted a FOIA request to DOC requesting a list of 78 records related to the Bynum v. District of Columbia, et al., Case No. 2-956 and Barnes v. District of Columbia, Case No. 06-315. On December 12, 2008, DOC responded to your request indicating that since the Bynum action had been settled, that you were barred from "reopening discovery or re-litigating the case." DOC FOIA Response at p. 1. DOC also added that since Barnes is a pending case, that you were forbidden from obtaining access to any records because the action is ongoing and you could not use the FOIA statute as a substitute for discovery. Furthermore, DOC argued that your request was too broad and burdensome "because of the difficulty of clearly identifying which portion of the request may be different from the discovery requests in Bynum and Barnes." DOC FOIA Response at p. 1. Finally, DOC invited you to submit a more refined FOIA request, narrowing the scope of the records sought and "clearly identifying records sought that are not part of the Bynum and Barnes lawsuits." DOC FOIA Response at p. 1. You failed to respond to DOC's invitation to submit an amended response. You then filed the instant Appeal on February 9, 2009, stating that your original FOIA request had been denied. On April 3, 2009, DOC responded to your Appeal, arguing that you did not provide a basis for your appeal and the agency also reiterated that your FOIA request constituted an attempt to re-litigate the case.

### 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.

Given that you failed to submit a more refined FOIA request as invited to do so by DOC, this office will address your original FOIA request as submitted. The case law is clear that the purpose of FOIA is to inform the public about agency action and not to benefit private litigants. See NLRB v. Sears Roebuck & Co., 421 U.S. 132, 143 (1975). The Court further established this fact in U.S. v. Agunbiade, No. 90-CR-610(S)-02 (JRB), 1995 U.S. Dist. Lexis 8043, \*20 (E.D.N.Y. 1995), in which the court stated that:

"FOIA was not designed nor meant to serve as a discovery device for civil or criminal litigants and the requestor cannot employ the statute as a means to enlarge his rights to discovery."

It is apparent from the record that you are seeking to obtain documents that directly relate to the current lawsuit and that could potentially be the subject of a discovery request or dispute. As such, DOC was correct in withholding records related to the Barnes lawsuit. Furthermore, given that the subject matter of the current lawsuit encompasses matters similar to those in the settled lawsuit (Bynum), it would undermine standing case law if this office were to order DOC to provide you with the records you requested which pertain to the Bynum lawsuit. Disclosure of the Bynum records would have the equivalent impact of expanding your discovery rights in the pending Barnes case. See Agunbiade at p. 20. Therefore, DOC's decision is UPHeld 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 at any time in the District of Columbia Superior Court.

Sincerely,



Runako Allsopp  
Deputy General Counsel  
Executive Office of the Mayor