

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR



Office of the General Counsel to the Mayor

November 6, 2006

BY HARD COPY AND ELECTRONIC MAIL

[REDACTED]
Fayetteville, Georgia 302

[REDACTED]

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 (the "FOIA"), D.C. Official Code § 2-531 *et seq.* (2001 & 2006 Supp.), dated October 19, 2006. We deemed your appeal complete upon receipt of a copy of your initial FOIA request to the Office of Finance and Treasury (the "OFT"), a component of the Office of the Chief Financial Officer ("OCFO"), on October 23, 2006.

In your initial request to the OFT, dated September 7, 2006, you sought:

"a copy (list) of all checks which are (not) presumed to be abandoned under D.C. Official Code 41-112, currently held by the [OFT] . . . Disbursing Operation. These checks are not presumed to be abandoned under D.C. law. D.C. checks are presumed to be abandoned only when they remain outstanding for more than one year. We specifically are requesting a copy of all outstanding check[s] presumed (not) abandoned under D.C. Code 41-112. In addition, please provide payee/vendor name, last known address, check amount, check date, and check number."

On October 16, 2006, the Disclosure Attorney in the Office of Tax and Revenue ("OTR"), another component of the OCFO, wrote you to advise that the OFT has no records responsive to your request:

"The OFT does not keep track of or prepare a list of un-cashed checks issued by the District Government in the ordinary course of business unless and until they are presumed to be abandoned under D.C. law. Checks are presumed to be abandoned . . . when they remain un-cashed for more than one year. . . . In this regard, [D.C. law] . . . requires personnel in the OFT to annually compile a report

of all District checks that have not been cashed (a) as of June 30th, and (b) that are presumed to be abandoned.”

On October 23, 2006, we forwarded a copy of your administrative appeal to the OFT, with a request that the agency respond to your appeal. We received the agency's response on October 30, 2006, and a slightly amended response on November 1, 2006, which we accepted for consideration as of the latter date. OFT explains that it does not maintain a collection or roster of the checks described in your FOIA request. Instead, OFT refers such checks to the government agencies on whose behalf the checks initially issued. Only after the checks have gone uncashed for more than a year are they deemed abandoned and subject to compilation for purposes of giving public notice by publication, in accordance with the governing statute.

“Public records” are defined as records “prepared, owned, used in the possession of, or retained by” the government agency. D.C. Official Code § 2-502(18) (2001). The FOIA does not require the OFT to compile records, especially records pertaining to documents that are not in the OFT's possession. Rather, the statutory objective is to facilitate the public disclosure of records held or already created by the government agencies. On the strength of the OFT's explanation of the procedures applicable to checks outstanding less than one year and hence not yet deemed abandoned, we affirm the agency's denial of your request. We note that in any event, on the basis of our decision in your prior administrative appeal to the Mayor involving checks uncashed for more than a year, information beyond the name and address of the payee would not be subject to disclosure, and the disclosable information need be provided only upon payment of a fee charged by the agency as provided in the FOIA for the costs associated with retrieving, compiling, and duplicating the records sought.

We hope that this letter will explain the Mayor's resolution of your administrative appeal to your satisfaction. You remain free under the FOIA to commence a civil action against the District of Columbia government at any time in the District of Columbia Superior Court.

Sincerely,



Leonard H. Becker
General Counsel, EOM