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District of Columbia REGISTER

HIGHLIGHTS

- DC Council passes Act 20-67, Tax Revision Commission Report Extension and Procurement Streamlining Congressional Review Emergency Amendment Act of 2013
- DC Council schedules a public hearing on Bill 20-171, The District of Columbia Statehood Advocacy Act of 2013
- DC Council schedules a public oversight roundtable on the feasibility of converting to a public financing model for elections in the District of Columbia
- District of Columbia Taxicab Commission schedules a public hearing on the establishment of a uniform color scheme for taxicabs
- Department of Employment Services proposes criteria for granting of leave for illnesses and absences associated with domestic violence and sexual abuse
- Executive Office of the Mayor publishes the 2013 Freedom of Information Act Appeals decisions
- Department of Employment Services announces funding availability for the Youth Tech Program

DISTRICT OF COLUMBIA REGISTER

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-64

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 9, 2013

To approve, on an emergency basis, Modification Nos. 3 and 4 and proposed Modification No. 5 to Contract No. DCPO-2012-T-0368 with Accenture Federal Services, LLC, to provide services related to the maintenance of the District's Health Insurance Exchange ("HIX") system and to authorize payment for the goods and services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCPO-2012-T-0368 Modifications Approval and Payment Authorization Emergency Act of 2013".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 3 and 4 and proposed Modification No. 5 to Contract No. DCPO-2012-T-0368 with Accenture Federal Services, LLC, to provide services related to the maintenance of the District's HIX system, and authorizes payment in the amount of $1,344,560.00 for services received and to be received under the contract for option year one.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 9, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-65

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 11, 2013

To amend, on an emergency basis, the School Transit Subsidy Act of 1978 to clarify that foster youth are eligible for the foster youth transit subsidy program for educational and employment purposes until they reach the age of 21 years.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Foster Youth Transit Subsidy Emergency Amendment Act of 2013".

Sec. 2. Section 2 of the School Transit Subsidy Act of 1978, effective March 3, 1979 (D.C. Law 2-152; D.C. Official Code § 35-233), is amended as follows:

(a) Subsection (c) is amended as follows:

(1) Paragraph (2) is amended by striking the semicolon and inserting the phrase "; and" in its place.

(2) Paragraph (3) is amended by striking the phrase "; and" and inserting a period in its place.

(3) Paragraph (4) is repealed.

(b) A new subsection (f) is added to read as follows:

"(f)(1) Youth in the District's foster care system shall be eligible for a foster youth transit subsidy program ("Program") as established by the Mayor until they reach 21 years of age.

"(2) The Program shall allow qualified foster youth to travel on Metrobus, Metrorail, and other public transportation services offered by the District at subsidized or reduced fares.

"(3) The subsidized or reduced foster youth fare established pursuant to this subsection shall be valid only for the transportation of foster youth for educational and employment purposes.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

ENROLLED ORIGINAL

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 11, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-66

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 15, 2013

To amend, on an emergency basis, An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes to authorize an extension of time to dispose of District-owned real property located at 1421 Euclid Street, N.W., designated for tax and assessment purposes as Lot 0811 in Square 2665.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Extension of Time to Dispose of Justice Park Property Emergency Amendment Act of 2013".

Sec. 2. Section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801), is amended by adding new subsection (d-7) to read as follows:

"(d-7)(1) Notwithstanding subsection (d) of this section, the time period within which the Mayor may dispose of 1421 Euclid Street, N.W., designated for purposes of taxation and assessment as Lot 0811, in Square 2665, known as the Justice Park, for which disposition was approved by the Council pursuant to the Justice Park Property Disposition Approval Resolution of 2011, effective April 5, 2011 (Res. 19-77; 58 DCR 3199), is extended to April 5, 2014.

"(2) This subsection shall apply as of April 5, 2013.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206-02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

ENROLLED ORIGINAL

90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 15, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-67

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 15, 2013

To amend, on an emergency basis, due to Congressional review, section 47-462 of the District of Columbia Official Code to extend the deadline for the final report of the Tax Revision Commission; and to amend the Procurement Practices Reform Act of 2010 to allow the Tax Revision Commission to procure goods and services independent of the Chief Procurement Officer pursuant to a streamlined small-purchase procurement process for contracts for goods and services not exceeding $40,000.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Tax Revision Commission Report Extension and Procurement Streamlining Congressional Review Emergency Amendment Act of 2013".

Sec. 2. Section 47-462(d) of the District of Columbia Official Code is amended by striking the phrase "9 months after the Commission's appointment" and inserting the phrase "September 30, 2013" in its place.

Sec. 3. The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), is amended as follows:

(a) Section 201(b) (D.C. Official Code § 2-352.01(b)) is amended by adding a new paragraph (1A) to read as follows:

"(1A) The Tax Revision Commission, pursuant to section 407;".

(b) Section 407 (D.C. Official Code § 2-354.07) is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

"(a-1) The Tax Revision Commission may establish a streamlined noncompetitive process for entering into contracts for goods and services not exceeding $40,000.".

(2) Subsection (b) is amended by striking the phrase "this section" and inserting the phrase "this section or the $40,000 limitation of subsection (a-1) of this section" in its place.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

ENROLLED ORIGINAL

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 15, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-68

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 15, 2013

To amend, on a temporary basis, the Department of Health Functions Clarification Act of 2001 to authorize the Director of the Department of Health to award grants in fiscal year 2013 for clinical nutritional home delivery services for individuals living with cancer and other life-threatening diseases, ambulatory health services, poison control hotline and prevention education services, operations and primary care services for school-based health clinics, and a teen pregnancy prevention program.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Health Grant-Making Authority Temporary Amendment Act of 2013".

Sec. 2. Section 4907a of the Department of Health Functions Clarification Act of 2001, effective March 3, 2010 (D.C. Law 18-111; D.C. Official Code § 7-736.01), is amended by adding new subsections (c), (d), and (e) to read as follows:

"(c) For fiscal year 2013, the Director of the Department of Health shall have the authority to issue grants to qualified community organizations for the purpose of providing the following services:

"(1) Clinical nutritional home delivery services for individuals living with cancer and other life-threatening diseases;

"(2) Ambulatory health services for an amount not to exceed $3,239,980;

"(3) Poison control hotline and prevention education services for an amount not to exceed $350,000;

"(4) Operations and primary care services for school-based health clinics for an amount not to exceed $1,350,000; and

"(5) A teen pregnancy prevention program for an amount not to exceed $500,000.".

"(d) Any grant in excess of $250,000 issued pursuant to subsection (c) of this section shall be awarded through a competitive process unless otherwise authorized under law.

"(e) The Department of Health shall submit a quarterly report to the Council on all grants issued pursuant to the authority granted in subsection (c) of this section.".

ENROLLED ORIGINAL

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 15, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-69

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 15, 2013

To amend, on a temporary basis, the Health Benefit Exchange Authority Establishment Act of 2011 to streamline the procurement process for the Health Benefit Exchange Authority by clarifying that such procurements are not subject to the Procurement Practices Reform Act of 2010.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Health Benefit Exchange Authority Establishment Temporary Amendment Act of 2013".

Sec. 2. Section 5(a)(5) of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-94; D.C. Official Code § 31-3171.04(a)(5)), is amended by striking the phrase "consistent with" and inserting the phrase "and not subject to" in its place.

Sec. 3. Section 105(c) of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.05(c)), is amended as follows:

(a) Paragraph (14) is amended by striking the word "and" after the semicolon.

(b) Paragraph (15) is amended by striking the period at the end and inserting the phrase "; and" in its place.

(c) A new paragraph (16) is added to read as follows:

"(16) The Health Benefit Exchange Authority.".

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 5. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 15, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-70

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 15, 2013

To amend, on a temporary basis, the Deputy Mayor for Planning and Economic Development Limited Grant-Making Authority Act of 2012 to require the Deputy Mayor for Planning and Economic Development to issue a loan in the amount of $800,000 to support an affordable housing project in Ward 7.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Deputy Mayor for Planning and Economic Development Limited Grant-Making Authority Temporary Amendment Act of 2013".

Sec. 2. Section 2032 of the Deputy Mayor for Planning and Economic Development Limited Grant-Making Authority Act of 2012, effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 1-328.04), is amended as follows:

(a) Subsection (b)(F) is repealed.

(b) A new subsection (d) is added to read as follows:

"(d) Pursuant to subsection (c) of this section, the Deputy Mayor shall issue a loan for fiscal year 2013 in the amount of $800,000 for the purpose of providing assistance to a mixed-use development located in Ward 7, including 100% affordable housing units supporting former Lincoln Heights residents.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
May 15, 2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-71

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 16, 2013

To amend on an emergency basis, An Act To establish a code of law for the District of Columbia, to provide a borrower the same rights for a defective notice of default on residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage, to provide that a foreclosure sale of a property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate, to provide for a new definition of residential mortgage, to provide several technical changes to the text, and to amend the Foreclosure Mediation Fund provisions to allow mortgage-related or foreclosure-related settlement funds to be transferred into the fund and allow those funds to be used for specified mortgage-related or foreclosure-related matters.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Saving D.C. Homes from Foreclosure Enhanced Emergency Amendment Act of 2013".

Sec. 2. Subchapter Two of Chapter Sixteen of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1271; D.C. Official Code § 42-801 *et seq.*), is amended as follows:

(a) Subsection 539a(a) (D.C. Official Code § 42-815.01(a)) is amended by striking the phrase, "at least one of which is the principal place of abode of the debtor or his immediate family".

(b) Subsection 539b (D.C. Official Code § 42-815.02) is amended as follows:

(1) Designate the 2nd subsection (e) as subsection (f).

(2) Designate subsection (f) as subsection (g).

(3) Designate subsection (g) as subsection (h).

(4) Designate subsection (h) as subsection (i).

(5) Designate subsection (i) as subsection (j).

(6) The newly designated subsection (h) is repealed.

(7) New subsections (h-1), (h-2), (h-3), and (h-4) are added to read as follows:

"(h-1) A foreclosure sale of property secured by a residential mortgage shall be void if a lender files a notice of intention to foreclose on a residential mortgage without a mediation certificate.

"(h-2) A borrower shall have the same rights to assert a claim for a defective notice of default on residential mortgage as the law provides for a defective notice of intention to foreclose on a residential mortgage.

"(h-3) Except as provided in subsections (h-1) and (h-2) of this section, a mediation certificate shall serve as conclusive evidence that all other provisions of this act and implementing regulations have been complied with and can be relied upon by a bona fide purchaser and a bona fide purchaser's lender or assigns.

"(h-4) Nothing in this act shall be construed to limit a borrower's right to assert a claim for fraud or monetary damages against the borrower's lender.".

(c) Section 539 c(a) (D.C. Official Code § 42-815.03(a)) is amended to read as follows:

"(a)(1) There is established as a nonlapsing fund the Foreclosure Mediation Fund ("Fund") , into which shall be deposited the fees and penalties generated by the foreclosure mediation program, the District's share of proceeds from February 2012, consent judgments between the federal government and participating states, and any future designated settlements and funds.

"(2) The Fund shall be used for one or more of the following purposes:

"(A) Pay mortgage-related or foreclosure-related counseling;

"(B) Mortgage-related or foreclosure-related legal assistance or advocacy;

"(C) Mortgage-related or foreclosure-related mediation;

"(D) Outreach or assistance to help current and former homeowners secure the benefits for which they are eligible under mortgage-related or foreclosure-related settlements or judgments, and

"(E) Enforcement work in the area of financial fraud or consumer protection.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Sat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than

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90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 16,2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-72

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 16, 2013

To amend, on an emergency basis, An Act For the retirement of public-school teachers in the District of Columbia to allow for involuntary retirement for all excessed permanent status teachers without regard to whether a teacher chose to reject other options available to him or her.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Teachers' Retirement Emergency Amendment Act of 2013".

Sec. 2. Section 3(b) of An Act For the retirement of public-school teachers in the District of Columbia, approved August 7, 1946 (60 Stat. 876; D.C. Official Code § 38-2021.03(b)), is amended as follows:

(a) The existing text is designated as paragraph (1).

(b) A new paragraph (2) is added to read as follows:

"(2) For the purposes of this subsection, the term:

"(A) "Excessing" means the elimination of a teacher's position at a particular school, when such an elimination is not a reduction in force or abolishment, due to a:

"(i) Decline in student enrollment;

"(ii) Reduction in the local school budget;

"(iii) Closing or consolidation;

"(iv) Restructuring; or

"(v) Change in the local school program.

"(B) "Involuntarily separated" includes the excessing of a permanent status teacher, without regard to whether the teacher chose to reject options available to him or her, such as finding a placement elsewhere in the public schools of the District of Columbia.".

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report for the Teachers' Retirement Amendment Act of 2013, passed on 1st reading on May 7, 2013 (Engrossed version of Bill 20-64), as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

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Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 16,2013

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-73

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

MAY 16, 2013

To approve, on an emergency basis, Modification Nos. 6, 7, 8, and 11 to Contract No. DCRK-2008-C-0042 with Sedgwick Claims Management Services, Inc., to provide third party claims administration services for the District's Self-insured Workers' Compensation Program and to authorize payment for the goods and services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCRK-2008-C-0042 Modifications Approval and Payment Authorization Emergency Act of 2013".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 6, 7, 8, and 11 to Contract DCRK-2008-C-0042 with Sedgwick Claims Management Services, Inc., and authorizes payment in the amount of $2,412,338.00 for services received and to be received under that contract for option year two.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

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section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
May 16,2013

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-31

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 19, 2013

To honor the Gay and Lesbian Activists Alliance on the occasion of its 42nd anniversary and to recognize the distinguished citizens and organizations to which it will pay tribute at its anniversary reception.

WHEREAS, the Gay and Lesbian Activists Alliance of Washington, DC ("GLAA") was founded in April 1971 to advance the cause of equal rights for gay people in the District of Columbia through peaceful participation in the political process;

WHEREAS, GLAA ranks as the oldest continuously active gay, lesbian, bisexual, and transgender rights organization in the country;

WHEREAS, GLAA has long fought to improve District government services to GLBT people, from the police and fire departments to the Department of Health and the Office of Human Rights;

WHEREAS, GLAA played a key role in winning marriage equality in the District, working with coalition partners and District of Columbia officials to craft and implement a strategy for achieving a strong, sustainable victory;

WHEREAS, GLAA has participated in lobbying efforts to defeat undemocratic and discriminatory amendments to the District's budget;

WHEREAS, GLAA has been an outspoken advocate for a safe and affirming educational environment for sexual minority youth;

WHEREAS, GLAA has educated District voters by rating candidates for Mayor and Council;

WHEREAS, GLAA has provided leadership in coalition efforts on a wide range of public issues, from family rights to condom availability in prisons and public schools to police

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accountability;

WHEREAS, GLAA maintains a comprehensive website of LGBT advocacy materials, as well as the GLAA Forum blog and the DCGayEtc news aggregator to enhance its outreach; and

WHEREAS, GLAA, at its 42nd Anniversary Reception on April 25, 2013, will present its Distinguished Service Awards to several individuals and organizations who have served the GLBT community in the District of Columbia: Diana Bruce, Clarence J. Fluker, Brent Minor, Peter Rosenstein, and Jason A. Terry.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Gay and Lesbian Activists Alliance 42nd Anniversary Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia salutes GLAA on the occasion of its 42nd Anniversary Reception on April 25, 2013, and thanks its members for their long record of dedicated service that has advanced the welfare not only of the gay, lesbian, bisexual, and transgender community, but of the entire population of the District of Columbia.

Sec. 3. The resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-32

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 19, 2013

To recognize the 29th annual Marvin Gaye Day celebration in the District of Columbia, and to declare April 3, 2013 as "Marvin Gaye Day" in the District of Columbia.

WHEREAS, Marvin Gaye was a singer-songwriter whose hits, including *How Sweet It Is (To Be Loved By You)* and *I Heard It Through the Grapevine*, made people the world over smile and sing along;

WHEREAS, Marvin Gaye was born in the District of Columbia and attended Cardozo High School in Ward 1 and helped to establish Motown as a musical genre;

WHEREAS, his success continued to gain momentum through additional hits such as *What's Going On* and *Let's Get It On*; and

WHEREAS, the District of Columbia is committed to expanding cultural horizons, creative thinking, and the free exchange of ideas through its recognition of Marvin Gaye, a man whose musical genius forever changed the way we think, feel, and dance to the beat.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Marvin Gaye Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes the legacy of Marvin Gaye's musical contributions, and declares April 3, 2013 as "Marvin Gaye Day" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-33

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 19, 2013

To recognize and honor the Washington Metropolitan Chapter Community Associations Institute's role in support of residential community associations in the Nation's Capital, and to declare March 23, 2013 as "Community Association Day" in the District of Columbia.

WHEREAS, the residential community of homeowner associations, housing cooperatives, and condominiums in the Nation's Capital has entered the new millennium;

WHEREAS, strong residential communities are the heart of city life and are essential for fostering civic responsibility and pride in the city;

WHEREAS, the prospects for the ongoing revitalization of the District of Columbia greatly depend on the flourishing of its residential core;

WHEREAS, the Community Associations Institute is dedicated to fostering vibrant, responsive, and competent residential community associations that promote harmony, community, and responsible leadership, enhancing the lives of their residents; and

WHEREAS, on Saturday, March 23, 2013, the Washington Metropolitan Chapter Community Associations Institute is celebrating the value added to the area's quality of life by community associations in the Nation's Capital.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Community Association Recognition Resolution of 2013”.

Sec. 2. The Council of the District of Columbia finds this an appropriate time to recognize and honor the Community Associations Institute, Washington Metropolitan Chapter's observation of Community Association Day in the Nation's Capital, and declares March 23, 2013 as "Community Association Day" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-34

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 19, 2013

To acknowledge and honor National Library Workers Day and the outstanding contributions of the District of Columbia Public Library staff to the residents of the District of Columbia.

WHEREAS, National Library Workers Day is April 16, 2013, and this year's theme is Communities Matter at Your Library;

WHEREAS, the Library Staff of the District of Columbia Public Library works diligently to provide excellent programming, guidance, and support to the residents and communities of the District of Columbia;

WHEREAS, the Library Staff provide assistance to all residents of the District through educational, social, and health services;

WHEREAS,, the Library Staff supports the residents of the District through fundraisers, drives, and other efforts to ensure that residents have the greatest opportunities to expand their learning;

WHEREAS, District of Columbia Public Library librarian Elissa Miller was named the America Reads Spanish Librarian of the Year for her work in promoting reading in Spanish and the District of Columbia Public Library holds regular Spanish reading sessions for residents of all ages to promote literacy, including a Baby Lap Time reading session in Spanish;

WHEREAS,, the Library Staff works to provide teenage residents with activities that educate and engage while also providing a safe environment, including Teen Movie Night and the Prom Hair and Makeup seminar;

ENROLLED ORIGINAL

WHEREAS, libraries across the District offer Jobseekers Clinics and Resume Clinics to help residents find meaningful employment;

WHEREAS, the Library Staff has made a commitment to the physical and mental health of residents by offering free HIV tests, blood pressure screenings, and yoga classes at various branches; and

WHEREAS, the Council of the District of Columbia is grateful for the Library Staff's dedication and contributions to the educational and developmental experiences of District residents.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Public Library Staff Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia acknowledges and honors the Library Staff for their exceptional contributions to the educational and developmental experiences of District residents.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-35

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 9, 2013

To recognize multi-instrumentalist, music theorist, composer, author, publisher, and entrepreneur Andrew White, to honor a native Washingtonian and Ward 5 resident, to pay tribute to one of America's and the world's greatest saxophonists, to prepare for the Smithsonian's National Museum of American History Jazz Appreciation Month; and to declare April 24, 2013, as "Andrew White Day" in the District of Columbia.

WHEREAS, Andrew Nathaniel White III was born on September 6, 1942 in Washington, District of Columbia, grew up in Nashville, Tennessee, and returned to the District of Columbia in 1960 to attend and graduate cum laude from Howard University;

WHEREAS, Andrew White furthered his education at world-renowned institutions, such as the Paris Conservatory of Music, Tanglewood Music Center, Dartmouth College, and the Center of Creative and Performing Arts at the State University of New York at Buffalo;

WHEREAS, Andrew White's career soared between 1966 and 1976 when he played the electric bass with legendary musicians, including Stevie Wonder and musical sensation singing group the Fifth Dimension;

WHEREAS, Andrew White continued to amaze the world by playing saxophone with the likes of Kenny Clark, Otis Redding, McCoy Tyner, Elvin Jones, Beaver Harris, and the Julius Hemphill Sextet;

WHEREAS, Andrew White has performed hundreds of personal solo appearances across the world and entertained music fans at the world's greatest venues, such as Lincoln Center, Carnegie Hall, the Kennedy Center, and Paris's Theatre du Chatelet;

WHEREAS, Andrew White is known as the "Keeper of the Trane" for his contributions as an educator and status as a world-renowned John Coltrane scholar;

ENROLLED ORIGINAL

WHEREAS, Andrew White has written over 400 original compositions, 48 records, and 32 original books and treatises, in addition to an 840-page autobiography entitled “Everybody Loves the Sugar”; and

WHEREAS, Andrew White is known as “Hercules” and “Marathon Man” for his vigorous passion for jazz and his fans during concerts, including performing a 12-hour show at the Top O'Foolery House of Jazz on Pennsylvania Avenue in 1975.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Andrew White Day Recognition Resolution of 2013”.

Sec. 2. The Council of the District of Columbia hereby recognizes, honors, and celebrates Andrew White and declares April 24, 2013, as “Andrew White Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-36

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 9, 2013

To recognize Peregrine Espresso and its owner Ryan Jensen for its achievements as America's Best Coffeehouse and dedication to the District through its impressive commitment to customer service and exceptional sustainability practices.

WHEREAS, Peregrine Espresso has maintained an outstanding relationship with the District by opening 3 world-class coffee shops in the Southeast, Northwest, and Northeast quadrants of the city and is committed to providing the residents of the District of Columbia with exemplary customer service;

WHEREAS, under the leadership of Peregrine Espresso's owner, Ryan Jensen, Peregrine won the coveted first place award for America's Best Coffeehouse in the Eastern Region and has been featured in renowned publications such as Food and Wine, Bon Appetit, Barista Magazine, Washingtonian, and Fresh Cup;

WHEREAS, the title America's Best Coffeehouse is not only indicative of beverage quality but also communication, teamwork, efficiency, and customer service;

WHEREAS, Peregrine Espresso employees Jeremy Sterner and Lindsey Kiser have been honored with first place awards from the Mid-Atlantic Regional Barista Competition, Latte Art World Championship, and Southeast Regional Barista Competition respectively; and

WHEREAS, Peregrine Espresso has implemented noteworthy sustainability efforts by utilizing wind power in their stores, composting a high percentage of its waste system, sourcing only socially and environmentally sustainable coffee, partnering with a local dairy with milk from grass-fed cows, and offering fair wages and benefits to its staff.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Peregrine Espresso Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia honors Peregrine Espresso for being named America's Best Coffeehouse.

Sec. 3. This resolution shall take effect upon the first day of publication in the District of Columbia Council Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-37

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 9, 2013

To recognize the importance of Black Lesbian & Gay Pride Day, Inc. ("DC Black Pride") to the community and welcome visitors from this region, across the country, and around the world to the festival and associated events.

WHEREAS, May 24, 2013 through May 26, 2013 marks the 23rd Annual DC Black Pride celebration;

WHEREAS, the theme for this year's celebrations is, "Step Up & Be Heard";

WHEREAS, DC Black Pride is the oldest and one of the largest Black Pride events in the world, drawing thousands of visitors from around the globe;

WHEREAS, the mission of DC Black Pride is to increase awareness of and pride in the diversity of the lesbian, gay, bisexual and transgender in the African American community as well as support organizations that focus on health disparities, education, youth and families;

WHEREAS, DC Black Pride is led by a volunteer Board of Directors that coordinates this annual event and consists of: Andrea Woody-Macko ;Derrick Dunning; Earl Fowlkes, Jr; June Spence; Kenneth Hopson; Kenya Hutton; Lauren Morris; Leandrea Gilliam; Marc Morgan; and Robert "Harold" Dinkins;

WHEREAS, as the very first Black Pride festival, DC Black Pride fostered the beginning of the Center for Black Equity (formerly known as the International Federation of Black Prides, Inc.), and the "Black Pride Movement," which now consists of 40 Black Prides on 4 continents;

WHEREAS, DC Black Pride 2013 is a multi-day festival featuring, an opening reception, community town hall meetings, basketball tournament, educational workshops, poetry slam, film festival, church service, musical performances, dancers, and other artists, and the Health and Wellness Expo, which serves as the culminating event of DC Black Pride; and

ENROLLED ORIGINAL

WHEREAS, DC Black Pride is widely considered to be one of the world's preeminent Black Pride celebrations, drawing more than 30,000 people to the Nation's Capital from across the United States as well as Canada, the Caribbean, South Africa, Great Britain, France, Germany, and the Netherlands.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "DC Black Lesbian & Gay Pride Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia hereby honors the hard work of all those involved in organizing the 23rd Annual DC Black Pride Celebration.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-38

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 9, 2013

To recognize and celebrate Ms. Delores Mack for her commitment and dedication to the residents of Southwest Washington, D.C.

WHEREAS, Ms. Delores Mack was employed at the Southwest Community House from 1973 through 2008 and worked with Ms. Roberta Patrick and staff to provide a myriad of social services to residents in Southwest Washington, D.C. in need of assistance;

WHEREAS, Ms. Delores Mack was responsible for the distribution of food, clothing, and financial aid for some of our most vulnerable citizens;

WHEREAS, Ms. Delores Mack personally prepared and served meals at the Southwest Community House for the homeless population;

WHEREAS, Ms. Delores Mack has been a strong advocate for seniors, constantly aware of their needs and concerns; and

WHEREAS, Ms. Delores Mack is a native Washingtonian and a lifetime resident of the Southwest Washington, D.C. community and has 4 daughters and one son.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Delores Mack Public Service Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia celebrates the accomplishments of Delores Mack and extends special congratulations to her and her family.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-39

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 9, 2013

To declare the month of April 2013 as "Sexual Assault Awareness Month" in the District of Columbia, recognize and support healthy human development, and prevent child and adult sexual abuse.

WHEREAS, women's organized protests against violence began in the late 1970s in England with 'Take Back the Night' marches;

WHEREAS, these women-only protests emerged in direct response to the violence that women encountered as they walked the streets at night;

WHEREAS, these activities became more coordinated and soon developed into a movement that extended to the United States and, in 1978, the first Take Back the Night events in the United States were held in San Francisco and New York City;

WHEREAS, sexual assault awareness activities expanded to include the issue of sexual violence against men and men's participation in ending sexual violence;

WHEREAS, in the late 1980s, the National Coalition Against Sexual Assault informally polled state sexual assault coalitions to determine when to have a national Sexual Assault Awareness Week, which preceded of Sexual Assault Awareness Month;

WHEREAS, the month of April has been designated as Sexual Assault Awareness Month in the United States and Sexual Assault Awareness Month was first observed nationally in April 2001, after the alarming statistics of sexual assaults and underreporting became more prevalent;

WHEREAS, according to the Department of Justice's National Crime Victimization Survey, every 2 minutes, someone in the United States is sexually assaulted;

WHEREAS, each year, there are approximately 207,754 victims of sexual assault;

WHEREAS, one out of every 6, or 17.7 million American women has been the victim of an attempted or completed rape in her lifetime;

ENROLLED ORIGINAL

WHEREAS, nearly 3 million men in the United States have been the victims of sexual assault or rape;

WHEREAS, today, 44% of sexual assault victims are under 18 years of age, and 80% of victims are under 30 years of age , with ages 12 through 34 years of age being the highest-risk years;

WHEREAS, girls ages 16 through 19 years of age are 4 times more likely than the general population to be victims of rape, attempted rape, or sexual assault;

WHEREAS, victims of sexual assault are 3 times more likely to suffer from depression, 6 times more likely to suffer from post-traumatic stress disorder, 13 times more likely to abuse alcohol, 26 times more likely to abuse drugs, and 4 times more likely to contemplate suicide;

WHEREAS, 54% of sexual assaults are not reported to the police, and 97%t of rapists will never spend a day in jail;

WHEREAS, according to the Centers for Disease Control and Prevention, among female victims of partner violence who filed a protective order, 68% reported they were raped by their intimate partner and 20% reported a rape-related pregnancy;

WHEREAS, approximately two-thirds of assaults are committed by someone known to the victim and 38% of rapists are a friend or acquaintance; and

WHEREAS, despite these harrowing statistics, sexual assault has decreased by 60% since 1993, thanks to the awareness campaigns by organizations like Break The Cycle, the D.C. Rape Crisis Center, Collective Action for Safe Spaces, Stop Street Harassment, and Men Can Stop Rape, and historic gains made by the Violence Against Women Act and other laws passed and being enforced around the country.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Sexual Assault Awareness Month Recognition Resolution of 2013”.

Sec. 2. The Council of the District of Columbia recognizes and supports Sexual Assault Awareness Month, and urges citizens to show their support for all victims of sexual assault and the fight against violent crimes. By working together and pooling our resources during the month of April, District residents can highlight sexual violence as a major public health, human rights and social justice issue and reinforce the need for prevention.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-40

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 9, 2013

To declare April 15, 2013, as "'If I Had a Trillion Dollars' Youth Film Festival Day" in the District of Columbia.

WHEREAS, the annual "If I Had A Trillion Dollars" Youth Film Festival asks youth to answer the questions "If you had the power to choose, how would you spend $1 trillion? What could that money do for your family, for your community, for your nation, or for the world?" by making short videos;

WHEREAS, in making the videos, youth are asked to consider the $1 trillion spent yearly on the United States military; the $1 trillion spent on the wars abroad in the Middle East, and the $1 trillion plus in tax cuts for the wealthiest Americans;

WHEREAS, the sponsors of the film festival are the American Friends Service Committee and the National Priorities Project, which created the festival to help integrate the voices and ideas of young people in the nation's budget debate;

WHEREAS, as revenue and spending decisions made at the federal level disproportionately affect young people, the festival is geared toward educating and inspiring young people to engage in civic activism;

WHEREAS, more than 240 youth submitted 63 videos, a record, in this 3rd annual "If I Had a Trillion Dollars" film festival, and with 25 entries having been named official selections;

WHEREAS, the videos feature clever lyrics, vivid images, and thoughtful policy recommendations by a diverse and creative group of young people;

WHEREAS, the young film makers range in age from 9 to 23 years, come from 33 different organizations and 6 schools, and live in Baltimore, Boston, Chicago, Kansas City, Los Angele, Miami, Milwaukee, New York, Pittsburgh, and other communities across 15 states;

WHEREAS, the festival culminates in Washington, D.C. from April 13 through April 15, 2013, with a youth leadership conference, a film screening for members of Congress, and a free public screening of the videos;

ENROLLED ORIGINAL

WHEREAS, the participants' trip to Washington, D.C. is for many their first visit to the Capitol City; their first participation in civic activism, and their first public discussion of their own budget priorities; and

WHEREAS, youth who are engaged and informed in the political process are a significant asset to the nation's future, and are especially welcome to Washington, D.C., the seat of the nation's capital.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "'If I Had a Trillion Dollars' Youth Film Festival Day Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia declares April 15, 2013, as "'If I Had a Trillion Dollars' Youth Film Festival Day" in the District of Columbia.

Sec. 3 This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-41

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 9, 2013

To declare April 18, 2013 as "Chess in the Schools Day" in the District of Columbia to encourage students, teachers, and parents to play chess and to promote awareness of the value of chess in education.

WHEREAS, chess engages students of all backgrounds and all abilities and promotes problem-solving and higher-level learning skills;

WHEREAS, chess is a powerful educational tool that improves academic performance and social skills;

WHEREAS, chess has broad cultural appeal and is played in countries all around the world;

WHEREAS, academic studies link chess education to higher scores in reading and math, as well as improvement in classroom behavior and self-esteem;

WHEREAS, the U.S. Chess Center has offered chess programs in more than 80 District of Columbia public schools and taught 30,000 children the rules, strategy, and etiquette of the game since its founding in 1992;

WHEREAS, the U.S. Chess Center is working to promote the adoption of chess into school curriculum and the benefits of chess in education;

WHEREAS, school leaders across the District of Columbia have expressed support for chess in the schools; and

WHEREAS, chess expert Rochelle Ballantyne will be visiting Washington, D.C., on April 18, 2013, to meet with students, teachers, and educators and to promote the work of the U.S. Chess Center.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Chess in the Schools Day Recognition Resolution of 2013".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia declares April 18, 2013 as "Chess in Schools Day" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-42

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To recognize the H. D. Woodson High School Lady Warriors Girls Basketball Team on its 2012-2013 championship season.

WHEREAS, the H. D. Woodson High School Lady Warriors Girls Basketball Team players for the 2012-2013 season are:

Adel Allen (Point Guard)	Najee Prince (Guard)
Arjae Saunders (Guard)	Nia Jordan-Williams (Point Guard)
Armonie Lomax (Forward)	Raven Riley (Guard)
Breonn Hughey (Point Guard)	Shannon Dozier (Guard)
Erin Blaine (Forward)	Therese Gimore (Center)
Georgianna Gilbeaux (Guard)	Tytilayo Green (Forward);

WHEREAS, the H. D. Woodson High School Lady Warriors Girls Basketball Team was coached during the season by Head Coach Henry Anglin and Assistant Coach Michael Gray;

WHEREAS, the H. D. Woodson High School Lady Warriors Girls Basketball Team finished the season with an 8-game winning streak and an overall record of 25-11, including a undefeated 10-0 record in the District of Columbia Interscholastic Athletic Association ("DCIAA") and a perfect 8-0 record for home games played;

WHEREAS, the H. D. Woodson High School Lady Warriors Girls Basketball Team captured the DCIAA Championship on March 4, 2013, by defeating Woodrow Wilson High School, earning the team's 8th consecutive DCIAA girls basketball title; and

WHEREAS, the H. D. Woodson High School Lady Warriors Girls Basketball won the inaugural District of Columbia State Athletic Association State Championship on March 11, 2013 at the Verizon Center by defeating Georgetown Day School.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "H. D. Woodson High School Lady Warriors Girls Basketball Team Recognition Resolution of 2013".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia recognizes, honors, and salutes the achievement and sportsmanship of the H. D. Woodson High School Lady Warriors Girls Basketball Team and congratulates the players and coaches on their championship season.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-43

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To posthumously honor the life of Michael J. Kelly and his long-time marriage under common law to James D. Spellman, and to recognize their distinguished and dedicated citizenship in serving their communities in Logan Circle and Rehoboth Beach, Delaware.

WHEREAS, the late Michael J. Kelly and James D. Spellman, who began their marriage by taking residence together at Logan Circle in 1998, since the first days of their partnership, worked in support of efforts to advance the cause of equal rights for everyone, including marriage equality, through their energetic partnership in the political process in the District of Columbia and Rehoboth Beach, Delaware ("Washington's Summer Capital");

WHEREAS, they focused their philanthropic efforts on building a strong sense of community and creating a civic code of empathetic care through their commitment to strengthening and enhancing the education and direct service programs of Camp Rehoboth, which aims to build a positive environment for Rehoboth Beach in all its diversity, staunch the spread of AIDS and HIV, counsel and build the self-esteem of gay youth, and help older residents to age with dignity;

WHEREAS, their 18-year marriage attests to the values of the District of Columbia in recognizing the humanity of all people, acceptance of marriage equality through gender-neutral common law and, more recently, laws allowing same-sex civil unions; and

WHEREAS, the nation is engaged in a public discussion on the evolving definition of marriage and community, the District of Columbia forges new pathways led by the example of citizens, like the late Mr. Kelly and his surviving spouse Mr. Spellman, who show that through love, commitment, and civic action, we can build a community that honors, celebrates, and benefits from diversity.

RESOLVED, BY THE COUNICL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Michael J. Kelly Memorial Posthumous Recognition Resolution of 2013".

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia honors the late Michael J. Kelly for the example he and his partner James D. Spellman set for a strong same-sex marriage, their abiding commitment to ensuring all citizens have full access to the protections and rights enshrined in the Constitution, and for their joint efforts to build a strong, positive, and diverse community.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-44

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To posthumously recognize and honor the contributions of Joseph Yeldell, a community activist, public servant, and tireless advocate for residents of the District of Columbia.

WHEREAS, Joseph P. Yeldell, known to many as Joe "The Mayor's Man," was a lifelong resident of the District of Columbia, born on September 9, 1932, the 9th of 13 children;

WHEREAS, Joe P. Yeldell served in the United States Air Force, was a graduate of D.C. Teachers College, and received his Master's Degree from the University of Pittsburgh in 1961, majoring in education;

WHEREAS, Joe P. Yeldell was a mathematics teacher at Coolidge Senior High School in Ward 4 from 1961 to 1962;

WHEREAS, from 1962 to 1964, Joe P. Yeldell worked at the Bureau of Labor Statistics, specializing in mathematics;

WHEREAS, Joe P. Yeldell was appointed by President Lyndon B. Johnson on September 28, 1967 to serve on the first Council of the District of Columbia and chaired the Personnel Committee, which placed him in charge of hiring office staff for his colleagues;

WHEREAS, Joe P. Yeldell served 3 Mayors across 2 decades: Walter E. Washington, Marion Barry, and Sharon Pratt Kelly;

WHEREAS, Joe P. Yeldell served as Director of the Department of Human Resources from 1971 to 1977, managing a $400 million budget and 10,000 employees, and overseeing community mental health centers, Medicaid, student loans, and food stamps;

WHEREAS, Joe P. Yeldell served as General Assistant Mayor from 1977 to 1978;

WHEREAS; from 1979 to 1983, Joe P. Yeldell served as Special Assistant City Administrator, where he automated the management information system;

ENROLLED ORIGINAL

WHEREAS, from 1983 to 1990, Joe P. Yeldell was the Director of the Office of Emergency Management;

WHEREAS, from 1990 to 1993, Joe P. Yeldell was the President of JPY Associates, Inc., managing his own business with a healthy clientele;

WHEREAS, during his entire life, Joe P. Yeldell was active in his community and tutored and mentored many young adults;

WHEREAS, Joe P. Yeldell's more than 30 years of service is a testament to his resolve and determination to make the District of Columbia the great city it is today; and

WHEREAS, Joe P. Yeldell will always be known as an inspiration to the citizens of the District of Columbia, and will be remembered for his unwavering dedication to serving the community.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Joseph Phillip Yeldell Posthumous Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia commends and recognizes Joseph P. Yeldell for his years of exemplary service and outstanding commitment to the greater Washington, D.C. community.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20- 45

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 30, 2013

To recognize the service and contributions of Advisory Neighborhood Commissioner Allen E. Beach.

WHEREAS, since 1980, Allen E. Beach has served as an Advisory Neighborhood Commissioner on the Chevy Chase ANC (also known as ANC 3G or 3/4G);

WHEREAS, Commissioner Beach has served in Single Member Districts ANC 3G02, (1980–1984) and ANC 3G04, (1985–present);

WHEREAS, Commissioner Beach is the longest-serving, publicly elected official in District of Columbia history;

WHEREAS, during his 33-year tenure, Commissioner Beach has served as ANC Chairman (1982–84; 1986–1989), and as Treasurer or Secretary (1990-present);

WHEREAS, as Treasurer and otherwise, Commissioner Beach was always particularly attentive to every detail, ensuring that his ANC has always been a model of good governance in the city;

WHEREAS, Commissioner Beach has long been a noted historian of ANC 3/4G, providing the background on many issues in Chevy Chase and throughout the city;

WHEREAS, Commissioner Beach grew up on Chevy Chase Parkway, and for decades, he and his wife Martha have been residents of 3342 Stuyvesant Place, N.W., where they raised their 3 daughters;

WHEREAS, Mr. Beach also served as President of the Chevy Chase Citizens Association from 1985-1986 and continues to serve on its Executive Board, currently as second vice president;

ENROLLED ORIGINAL

WHEREAS, Mr. Beach served as a member of the Alcoholic Beverage and Control Board from 1994-2003;

WHEREAS, Mr. Beach has been active in many community organizations, including the Prevention of Blindness Society, the Palisades Swimming Pool Cooperative, and the Washington Association Financial Management Roundtable;

WHEREAS, the DC Federation of Citizens Associations has selected Commissioner Beach as its 2013 Outstanding Citizens Activist Award;

WHEREAS, Commissioner Beach has been a stalwart in protecting the needs of his constituents, the residents of Chevy Chase, and all of the people in the District;

WHEREAS, the residents of Chevy Chase, Ward 3, Ward 4, and the entire city will miss the dedication, enthusiasm, and sense of humor Commissioner Beach brought to all activities in which he participated; and

WHEREAS, the Council of the District of Columbia thanks Commissioner Beach for his loyalty to the city and his commitment to continued improvement.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Allen E. Beach Recognition Resolution of 2013”.

Sec. 2. The Council of the District of Columbia commends and recognizes Allen E. Beach for his exemplary years as a dedicated Advisory Neighborhood Commissioner, community activist, and role model for all those wanting to be involved in local government.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-46

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

May 7, 2013

To honor and recognize Greater Mount Calvary Holy Church for its impact on the District and to celebrate the street dedication of "Greater Mount Calvary Holy Church Way."

WHEREAS, Greater Mount Calvary Holy Church is located in Ward 5 at 610 Rhode Island Avenue, N.E.;

WHEREAS, Greater Mount Calvary Holy Church has been a member of the Ward 5 community for over 20 years;

WHEREAS, Bishop Alfred Owens, Jr. has had an impact on the District of Columbia community over the past 47 years;

WHEREAS, Calvary Christian Academy has educated and nurtured thousands of children;

WHEREAS, CATAADA House (Calvary's Alternative to Alcohol and Drug Addiction) is recognized by the Superior Court of the District of Columbia as one of the outpatient clinics to which it refers those in need of help in overcoming substance abuse and other addictions;

WHEREAS, Greater Mount Calvary Holy Church's Food Bank and Clothing Boutique has fed and clothed thousands of the District's most needy citizens and partnered with Feed the Children, Pepsi, and Wal-Mart to serve nearly 10,000 additional residents with non-perishable food and personal care items;

WHEREAS, Greater Mount Calvary Holy Church's Anchor of Hope Homeless Ministry provides life skills training and assistance to homeless citizens transitioning to established living;

WHEREAS, Greater Mount Calvary Holy Church's Health Care encompasses one of the first faith-based, nonprofit HIV/AIDS programs in the city and has provided much-needed support to families who would otherwise not be served; and

ENROLLED ORIGINAL

WHEREAS, the Greater Mount Calvary Holy Church Family Life Center is one of Ward 5's community and wellness hubs, providing community access to a sports and fitness facility, barbershop, hair salon and multi-purpose room often used by the community.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Greater Mount Calvary Holy Church Way Ceremonial Street Dedication Recognition Resolution of 2013".

Sec. 2. The Council of the District of Columbia recognizes Greater Mount Calvary Holy Church for its distinguished service and extensive contributions to the District of Columbia and its residents and celebrates the street dedication of Greater Mount Calvary Holy Church Way.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

COUNCIL OF THE DISTRICT OF COLUMBIA
NOTICE OF INTENT TO ACT ON NEW LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to consider the following legislative matters for final Council action in not less than **15 days.** Referrals of legislation to various committees of the Council are listed below and are subject to change at the legislative meeting immediately following or coinciding with the date of introduction. It is also noted that legislation may be co-sponsored by other Councilmembers after it's introduction.

Interested persons wishing to comment may do so in writing addressed to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, NW, Room 5, Washington, D.C. 20004. Copies of bills and proposed resolutions are available in the Legislative Services Division, 1350 Pennsylvania Avenue, NW, Room 10, Washington, D.C. 20004 Telephone: 724-8050 or online at www.dccouncil.us.

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COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILL

B20-286 Advanced Metering Infrastructure Implementation and Cost Recovery Authorization Amendment Act of 2013

Intro. 05-14-13 by Councilmembers McDuffie and Alexander and referred to the Committee on Government Operations

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PROPOSED RESOLUTIONS

PR20-282 District of Columbia Occupational Safety and Health Board Kathleen McKirchy Confirmation Resolution of 2013

Intro. 05-15-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Workforce and Community Affairs

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PR20-283 District of Columbia Occupational Safety and Health Board Joseph Koonz Confirmation Resolution of 2013

Intro. 05-15-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Workforce and Community Affairs

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PROPOSED RESOLUTIONS con't

PR20-284 District of Columbia Occupational Safety and Health Board Michael Kirkpatrick Confirmation Resolution of 2013

Intro. 05-15-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Workforce and Community Affairs

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PR20-285 District of Columbia Occupational Safety and Health Board Aryan Rodriguez Bocquet Confirmation Resolution of 2013

Intro. 05-15-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Workforce and Community Affair

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PR20-286 District of Columbia Occupational Safety and Health Board Earl Woodland Confirmation Resolution of 2013

Intro. 05-15-13 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Workforce and Community Affairs

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Council of the District of Columbia
Committee on the Judiciary and Public Safety
Notice of Public Hearing

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 20-32, THE "SURROGACY PARENTING AGREEMENT ACT OF 2013"

Thursday, June 20, 2013
11:30 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-32, the "Surrogacy Parenting Agreement Act of 2013". The hearing will be held on Thursday, June 20, 2013, beginning at 11:30 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004.

The purpose of this hearing is to receive public comments on Bill 20-32, which would amend Title 16 of the D.C. Code to permit surrogate parenting contracts that would establish a legal relationship between a child and his or her intended parent and govern the proceedings to establish that relationship. **Please note**: **Working with stakeholders, the Committee has made significant changes to the introduced version; the updated draft will be the subject of the hearing.** Please contact the Committee for a draft copy of the updated bill, which will also be posted on the Committee website prior to the hearing.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5:00 p.m. on Tuesday, June 18, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5 pm Monday, July 1, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Avenue, NW, Washington, D.C., 20004, or via email at tshuford@dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING
1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 20-156, Closing of a Public Alley in Square 77, S.O. 13-00803, Act of 2013

on

Monday, June 10, 2013
11:00 a.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces a public hearing of the Committee of the Whole on Bill 20-156, the "Closing of a Public Alley in Square 77, S.O. 13-00803, Act of 2013." The public hearing will be held Monday, June 10, 2013, at 11:00 a.m. in Hearing Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The stated purpose of Bill 20-156 is to approve the closing of the entire T-shaped public alley in Square 77 in Ward 2. Approval of Bill 20-156 is related to the construction of a new residence hall for the George Washington University.

Those who wish to testify are asked to contact the Committee of the Whole, at (202) 724-8196, or e-mail Crispus Gordon, III, Legislative Assistant, at cgordon@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Thursday, June 6, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 6, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. Copies of Bill 20-156 can be obtained through the Legislative Services Division of the Secretary of the Council or on http://dcclims1.dccouncil.us/lims.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, June 24, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

Bill 20-171, the District of Columbia Statehood Advocacy Act of 2013

on

Thursday, July 11, 2013
10:00 a.m., Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on Bill 20-171, the District of Columbia Statehood Advocacy Act of 2013. The public hearing will be held at 10:00 a.m. on Thursday, July 11, 2013 in Hearing Room 412 of the John A. Wilson Building.

The stated purpose of Bill 20-171 is to appropriate a total of $1.1 million for the District's Statehood Delegation and related activities. The Bill would establish a District of Columbia Statehood Delegation Fund to further the goals of promoting statehood, including full voting rights for citizens of the District of Columbia, by implementing programs, an annual conference and/or symposium, and developing a website with information regarding Statehood. The Bill would provide $35,000 salary for each of the members of the District of Columbia Statehood Delegation, and would appropriate $550,000 for lobbying services and a media campaign.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Renee Johnson, Legislative Assistant, at rjohnson@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Tuesday, July 9, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on July 9,, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of Bill 20-171 can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://dcclims1.dccouncil.us/lims.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday, July 25, 2013.

Council of the District of Columbia
Committee on the Judiciary and Public Safety
Notice of Public Hearing

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

REVISED

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY

ANNOUNCES A PUBLIC HEARING ON

BILL 20-193, THE "ADMINISTRATIVE BIRTH CERTIFICATE AMENDMENT ACT OF 2013"

THURSDAY, JUNE 6, 2013
11:00 a.m.
Council Chamber, Room 500
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, will convene a public hearing on Bill 20-193, the "Administrative Birth Certificate Amendment Act of 2013". The hearing will be held on Thursday, June 6, 2013, beginning at 11:00 a.m. in the Council Chamber Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004**. (This hearing was previously scheduled to begin at 10:00 a.m.)**

The purpose of this hearing is to receive public comments on Bill 20-193, which would establish that birth certificates are adequate proof of parentage.

The Committee invites the public to testify. Individuals and representatives of organizations who wish to testify should contact Tawanna Shuford at 724-7808 or tshuford@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5:00 p.m. on Tuesday, June 4, 2013. Witnesses should bring 15 copies of their testimony. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups.

If you are unable to testify at the public hearing, written statements are encouraged and will be made part of the official record. Written statements should be submitted by 5:00 p.m. on Thursday, June 20, 2013 to Ms. Shuford, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Avenue, NW, Washington, D.C., 20004, or via email at tshuford@dccouncil.us.

Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs
Notice of Public Hearing

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite G-6 Washington, DC 20004

COUNCILMEMBER VINCENT B. ORANGE, SR., CHAIR COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS ANNOUNCES A PUBLIC HEARING

ON

B20-268, THE "SAVING D.C. HOMES FROM FORECLOSURE CLARIFICATION AND TITLE INSURANCE CLARIFICATION AMENDMENT ACT OF 2013"

WEDNESDAY, JUNE 12, 2013, 10:00 A.M JOHN A. WILSON BUILDING, ROOM 500 1350 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20004

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public roundtable by the Committee on Business, Consumer, and Regulatory Affairs on B20-268, the "Saving D.C. Homes from Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013". The public roundtable is scheduled for Wednesday, June 12, 2013 at 10:00 a.m. in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

B20-268, the "Saving D.C. Homes From Foreclosure Clarification and Title Insurance Clarification Amendment Act of 2013" amends the District of Columbia Saving D.C. Homes from Foreclosure Amendment Act of 2010 (the "Act"). The Act was enacted out of concern that District of Columbia foreclosure laws did not provide adequate protection for District of Columbia homeowners and the various title insurance acts were enacted to provide consumer protection tools to the Commissioner of the Department of Insurance, Securities and Banking (DISB) and the public.

The proposed amendments do the following: provide borrowers the same rights for a defective Notice of Default on Residential Mortgage as the law provides for a defective Notice of Intention to foreclose on a Residential Mortgage; establish that a foreclosure sale shall be void if a lender files a Notice of Intention to Foreclose on a Residential Mortgage without a final mediation certificate; remove all reference to specific fee amounts and provide that the Commissioner shall set all applicable fees through rulemaking; provide that mediation shall conclude within 180 days of mailing the required forms; clarify that the District of Columbia Procurement Practices Act

does not apply to contracts entered into by the Commissioner, or his or her designee, fore mediation services, housing counseling services, foreclosure prevention or remediation services provided pursuant to the Saving D.C. Homes Act or the Attorneys' General National Mortgage Settlement Agreement; provide that nothing in the Act shall be construed to create any new administrative, judicial or other review not otherwise available under existing laws; further clarify the definition of "good faith" and its indicators; provide new definitions for the term residential mortgage and mediation services; provide finality and a defined appeal period to the issuance of a mediation certificate or determination by the Mediation Administrator; amend the 21st Century Financial Modernization Act of 2000 to provide that judicial review of any final order or action of DISB, or its successor, shall be in the Superior Court of the District of Columbia, with certain exceptions; and incorporate prior amendments made in the Saving D.C. Homes from Foreclosure Temporary Amendment Act of 2013. The proposed amendments also revise the Title Insurance Producer Act of 2010, The Title Insurance Act of 2010; and the Producer Licensing Act of 2002 to make certain clarifying and conforming amendments.

Individuals and representatives of organizations who wish to testify at the public roundtable are asked to contact Faye Caldwell or Gene Fisher of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us or gfisher@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Wednesday, June 5, 2013. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. In the interest of expediting the Committee consideration of B20-268, the official record will remain open until 10:00 a.m. of business Thursday, June 13, 2013. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite G-6 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
NOTICE OF PUBLIC HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
ANNOUNCES A PUBLIC HEARING

on

PR 20-229, UDC Board of Trustees Alejandra Y. Castillo Confirmation Resolution of 2013;
PR 20-230, UDC Board of Trustees Gabriela D. Lemus Confirmation Resolution of 2013;
PR 20-231, UDC Board of Trustees Maj. Gen. Errol R. Schwartz Confirmation Resolution of 2013;
PR 20-232, UDC Board of Trustees Elaine A. Crider Confirmation Resolution of 2013;
PR 20-233, UDC Board of Trustees George Vradenburg Confirmation Resolution of 2013; &
PR 20-234, UDC Board of Trustees Stephen W. Porter Confirmation Resolution of 2013

on

Tuesday, June 25, 2013
11:00 a.m., Council Chamber, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson announces the scheduling of a public hearing of the Committee of the Whole on PR 20-229, UDC Board of Trustees Alejandra Y. Castillo Confirmation Resolution of 2013; PR 20-230, UDC Board of Trustees Gabriela D. Lemus Confirmation Resolution of 2013; PR 20-231, UDC Board of Trustees Maj. Gen. Errol R. Schwartz Confirmation Resolution of 2013; PR 20-232, UDC Board of Trustees Elaine A. Crider Confirmation Resolution of 2013; PR 30-233, UDC Board of Trustees George Vradenburg Confirmation Resolution of 2013; and PR 20-234, UDC Board of Trustees Stephen W. Porter Confirmation Resolution of 2013. The hearing will be held at 11:00 a.m. on Tuesday, June 25, 2013 in the Council Chamber of the John A. Wilson Building.

The stated purpose of PRs 20-229 – 20-234 is to confirm for appointment the nominations of Alejandra Castillo, Gabriela Lemus, Major General Errol Schwartz, Elainer Crider, George Vradenburg, and Stephen Porter to the Board of Trustees of the University of the District of Columbia. The purpose of this hearing is to receive testimony from government and public witnesses as to the fitness of these nominees for the Board.

Those who wish to testify should contact Ms. Christina Setlow, Legislative Counsel, at (202) 724-8196, or via e-mail at csetlow@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Friday, June 21, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on Friday, June 21, 2013 the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses. A copy of PRs 20-229 – 20-234 can be obtained through the Legislative Services Division of the Secretary of the Council's office or on http://dcclims1.dccouncil.us/lims.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on June 28, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
COMMITTEE ON EDUCATION
NOTICE OF JOINT PUBLIC OVERSIGHT HEARING

1350 Pennsylvania Avenue, NW, Washington, DC 20004

CHAIRMAN PHIL MENDELSON
THE COMMITTEE OF THE WHOLE
AND
COUNCILMEMBER DAVID CATANIA
THE COMMITTEE ON EDUCATION
ANNOUNCE A JOINT PUBLIC OVERSIGHT HEARING

on

TRUANCY REDUCTION IN THE D.C. PUBLIC SCHOOL SYSTEM

on

Monday, June 24, 2013
1:00 p.m., Hearing Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Council Chairman Phil Mendelson and Councilmember David Catania announce the scheduling of a Joint Public Oversight Hearing of the Committee of the Whole and the Committee on Education to discuss truancy reduction in the District of Columbia Public School System (DCPS). The public oversight hearing is scheduled for Monday, June 24, 2013 at 1:00 p.m., in hearing room 412 of the John A. Wilson Building.

The purpose of this public oversight hearing is to hear testimony regarding the progress of DCPS and supporting agencies in responding to the problem of truancy, and to ascertain what the government plans to do this upcoming school year (2013-2014) to reduce truancy. Experience shows that many of the District's students with high rates of truancy will never finish school and, as a result, will most likely struggle to be productive adults. Similar hearings were held on November 8, 2012 and February 28, 2013, and the Committees will continue to hold these oversight hearings. Even though truancy is not exclusive to DCPS, this hearing will focus on efforts regarding DCPS students.

Those who wish to testify are asked to telephone the Committee of the Whole, at (202) 724-8196, or e-mail Renee Johnson, Legislative Assistant, at rjohnson@dccouncil.us and provide their name, address, telephone number, and organizational affiliation, if any, by the close of business Thursday, June 20, 2013. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on June 20, 2013, the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to five minutes; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, July 8, 2013.

Council of the District of Columbia
COMMITTEE ON GOVERNMENT OPERATIONS
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON
COMMITTEE ON GOVERNMENT OPERATIONS

AND

COUNCILMEMBER MARY CHEH, CHAIRPERSON
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT

ANNOUNCE A PUBLIC OVERSIGHT ROUNDTABLE ON

THE DISTRICT'S SUMMER STORM WEATHER PREPAREDNESS

Friday June 7, 2013, 11:00 AM
Room 500 John A. Wilson Building
1350 Pennsylvania Ave., NW
Washington, D.C. 20004

On June 7, 2013, Councilmembers Kenyan R. McDuffie, Chairperson of the Committee on Government Operations, and Mary Cheh, Chairperson of the Committee on Transportation and the Environment will convene a public oversight roundtable on the District's Summer Storm Weather Preparedness. This public roundtable will be held in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave, NW at 11:00 AM.

Recently, the District has suffered from stronger and stronger weather systems, especially over the summer months. These storms have caused millions of dollars in weather related damage, lengthy power outages, and have left residents without access to the telephone, water, and air-conditioning. This roundtable will explore what steps are being taken by District agencies and utilities to prepare for this year's storms.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify at the hearing should contact Mr. Ronan Gulstone, Committee Director at (202) 724-8028, or via e-mail at rgulstone@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Wednesday June 5, 2013. Representatives of organizations will be allowed a maximum of five (5) minutes for oral presentation and individuals will be allowed a maximum of three (3) minutes for oral presentation. Witnesses should bring 10 copies of their written testimony and if possible submit a copy of their testimony electronically to rgulstone@dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted either to the Committee, or to Ms. Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. The record will close at the end of the business day on June 21, 2013.

Council of the District of Columbia
COMMITTEE ON GOVERNMENT OPERATIONS
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON COMMITTEE ON GOVERNMENT OPERATIONS

ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON

THE FEASIBILITY OF CONVERTING TO A PUBLIC FINANCING MODEL FOR ELECTIONS IN THE DISTRICT OF COLUMBIA

Thursday July 11, 2013, 11:00 AM
Room 500 John A. Wilson Building
1350 Pennsylvania Ave., NW
Washington, D.C. 20004

On July 11, 2013, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Government Operations, will convene a public roundtable on the feasibility of converting to a public financing model for elections in the District of Columbia. This public roundtable will be held in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Ave, NW at 11:00 AM.

Various jurisdictions around the country have enacted legislation converting their campaign financing systems to public or quasi-public financing models. This roundtable will explore the feasibility of creating a public financing system in the District. Witnesses are encouraged to discuss best practices from other jurisdictions and proposed methods of financing publicly-funded elections.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify at the hearing should contact Mr. Ronan Gulstone, Committee Director at (202) 724-8028, or via e-mail at rgulstone@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday July 9, 2013. Representatives of organizations will be allowed a maximum of five (5) minutes for oral presentation and individuals will be allowed a maximum of three (3) minutes for oral presentation. Witnesses should bring 10 copies of their written testimony and if possible submit a copy of their testimony electronically to rgulstone@dccouncil.us.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted either to the Committee, or to Ms. Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. The record will close at the end of the business day on July 26, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE ON THE JUDICIARYAND PUBLIC SAFETY
NOTICE OF PUBLIC OVERSIGHT ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, DC 20004

COUNCILMEMBER TOMMY WELLS, CHAIRPERSON
COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE

on

"The Metropolitan Police Department's Strategic Services Bureau"

Thursday, June 27, 2013
11 a.m.
Room 412, John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember Tommy Wells, Chairperson of the Committee on the Judiciary and Public Safety, announces the scheduling of a public oversight roundtable "The Metropolitan Police Department's Strategic Services Bureau." The roundtable will be held at 11 a.m. on Thursday, June 27, 2013 in Room 412 of the John A. Wilson Building.

The purpose of this oversight roundtable is for the Committee to discuss with the Metropolitan Police Department (MPD) the role and responsibilities of the Strategic Services Bureau. This is the first in a series of public oversight roundtables designed to highlight and discuss the work of the various bureaus within the MPD.

Those who wish to testify should contact Ms. Tawanna Shuford at (202) 724-7808 or via e-mail at tshuford@dccouncil.us, and provide their name, address, telephone number, organizational affiliation and title (if any) by close of business Tuesday, June 25, 2013. Persons wishing to testify are asked to submit 15 copies of written testimony. Witnesses should limit their testimony to three minutes.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Shuford. The record will close at 5:00 p.m. on Monday, July 1, 2013.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT

MARY M. CHEH, CHAIR

REVISED

NOTICE OF PUBLIC ROUNDTABLE ON

PR20-184, the "District of Columbia Water and Sewer Authority Board of Directors Ms. Ellen O. Boardman Confirmation Resolution of 2013"

PR20-185, the "District of Columbia Water and Sewer Authority Board of Directors Mr. James Bunn Confirmation Resolution of 2013"

PR20-186, the "District of Columbia Water and Sewer Authority Board of Directors Mr. Keith Anderson Confirmation Resolution of 2013"

PR20-279, the "District of Columbia Water and Sewer Authority Board of Directors Mr. Obiora 'Bo' Menkiti Confirmation Resolution of 2013"

Monday, June 3, 2013
at 11:00 a.m.
in Room 412 of the
John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004

On Monday, June 3, 2013, Councilmember Mary M. Cheh, Chairperson of the Committee on the Transportation and the Environment, will hold a public Roundtable on PR20-184, the "District of Columbia Water and Sewer Authority Board of Directors Ms. Ellen O. Boardman Confirmation Resolution of 2013"; PR20-185, the "District of Columbia Water and Sewer Authority Board of Directors Mr. James Bunn Confirmation Resolution of 2013"; PR20-186, the "District of Columbia Water and Sewer Authority Board of Directors Mr. Keith Anderson Confirmation Resolution of 2013"; and PR20-279, the "District of Columbia Water and Sewer Authority Board of Directors Mr. Obiora 'Bo' Menkiti Confirmation Resolution of 2013." The Roundtable will begin at 11:00 a.m. in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. **This notice is revised to add PR20-279, which the Mayor transmitted to the Council after this hearing had been scheduled.**

These resolutions would confirm Ellen O. Boardman, James Bunn, Keith Anderson, and Obiora "Bo" Menkiti as members of the Board of Directors of the District of Columbia Water and Sewer Authority, more commonly known as DC Water.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official Hearing Record. Anyone wishing to testify should contact

Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring 8 copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Aukima Benjamin, staff assistant to the Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. They may also be e-mailed to abenjamin@dccouncil.us or faxed to (202) 724-8118. The record will close at the end of the business day on Monday, June 17, 2013.

Council of the District of Columbia
Committee on Education
Notice of Public Roundtable

1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

COUNCILMEMBER DAVID A. CATANIA, CHAIRPERSON
COMMITTEE ON EDUCATION

Announces a Public Roundtable

On

PR20-0193: Public Charter School Board Herbert R. Tillery Confirmation Resolution of 2013; PR20-0194: Public Charter School Board Barbara Nophlin Confirmation Resolution of 2013; and PR20-0195: Public Charter School Board Sara Mead Confirmation Resolution of 2013

On

Wednesday, June 12, 2013
1 p.m.
Room 412
1350 Pennsylvania Avenue, NW
Washington, D.C. 20004

Councilmember David A. Catania, Chairperson of the Committee on Education, announces a Public Roundtable on PR20-0193: Public Charter School Board Herbert R. Tillery Confirmation Resolution of 2013; PR20-0194: Public Charter School Board Barbara Nophlin Confirmation Resolution of 2013; and PR20-0195: Public Charter School Board Sara Mead Confirmation Resolution of 2013 at 1 p.m. on Wednesday, June 12, 2013 in room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW.

The purpose of this roundtable is to discuss the nomination of Herbert R. Tillery, Deborah Nophlin, and Sara Mead to the District of Columbia Public Charter School Board.

Members of the public wishing to testify should contact Jamaal Jordan at 202-724-8061 or jjordan@dccouncil.us no later than 5 p.m. on Monday June 10. Members of the public unable to testify in person may submit written testimony which will be made part of the official record. Copies of written statements should be submitted to the Committee on Education no later than 5 p.m. on Friday June 14, 2013.

Council of the District of Columbia
Committee on Business, Consumer, and Regulatory Affairs
Notice of Public Roundtable

John A. Wilson Building 1350 Pennsylvania Avenue, NW, Suite G-6 Washington, DC 20004

COUNCILMEMBER VINCENT B. ORANGE, SR., CHAIR COMMITTEE ON BUSINESS, CONSUMER, AND REGULATORY AFFAIRS ANNOUNCES A PUBLIC ROUNDTABLE

ON

- **PR20-203, THE "BREW PUB AND WINE PUB HOURS RESOLUTION OF 2013"**

- **PR20-250, THE "SAFETY PLAN RULEMAKING APPROVAL RESOLUTION OF 2013"**

THURSDAY, JUNE 6, 2013, 10:00 A.M JOHN A. WILSON BUILDING, ROOM 120 1350 PENNSYLVANIA AVENUE, N.W. WASHINGTON, DC 20004

Councilmember Vincent B. Orange, Sr. announces the scheduling of a public roundtable by the Committee on Business, Consumer, and Regulatory Affairs on PR20-203, the "Brew Pub and Wine Pub Hours Resolution of 2013" and PR20-250, the "Safety Plan Rulemaking Approval Resolution of 2013". The public roundtable is scheduled for Thursday, June 6, 2013 at 10:00 a.m. in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Ave., NW, Washington, DC 20004.

PR20-203, the "Brew Pub and Wine Pub Hours Resolution of 2013" amends section 705 of Title 23 of the District of Columbia Municipal Regulations (DCMR) to make clear that the sale of beer in growlers by brew pub permit holders, and the sale of wine by wine pub permit holders, for off-premises consumption, is limited to the hours between 7:00 a.m. and midnight seven days a week. Without Council action, the resolution will be deemed disapproved on July 30, 2013.

PR20-250, the "Safety Plan Rulemaking Approval Resolution of 2013" amends section 720 of Title 23. This rulemaking is in response to D.C. Law 19-168, the Fiscal Year 2013 Budget Support Act of 2012 (Act), which became law on September 20, 2012 with an effective date of October 1, 2012. The Act amends section 25-723(c) Title 25 of the D.C. Code to allow eligible on premise retailer's licensees to apply to the Alcoholic Beverage Regulation Administration (ABRA) to sell and serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day on

District or federal holidays and certain holiday weekends. The Act also requires on-premise licensees to provide written notification of its intent to extend its hours of operation and submit a public safety plan to ABRA once each calendar year no fewer than 30 days before the first holiday on which a licensee seeks to extend its hours of operation. This rulemaking clarifies what information an on-premise licensee must include in its public safety plan. Without Council action before August 6, 2013, the resolution will be deemed disapproved.

Individuals and representatives of organizations who wish to testify at the public roundtable are asked to contact Faye Caldwell or Gene Fisher of the Committee on Business, Consumer, and Regulatory Affairs at (202) 727-6683 or by email at fcaldwell@dccouncil.us or gfisher@dccouncil.us and provide their name(s), address, telephone number, email address and organizational affiliation, if any, by close of business Thursday, May 30, 2013. Each witness is requested to bring 20 copies of his/her written testimony. Representatives of organizations and government agencies will be limited to 5 minutes in order to permit each witness an opportunity to be heard. Individual witnesses will be limited to 3 minutes.

If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. The official record will remain open until close of business Wednesday, June 12, 2013. Copies of written statements should be submitted to the Committee on Business, Consumer, and Regulatory Affairs, Council of the District of Columbia, Suite G-6 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s)

A reprogramming will become effective on the 15th day after official receipt unless a Member of the Council files a notice of disapproval of the request which extends the Council's review period to 30 days. If such notice is given, a reprogramming will become effective on the 31st day after its official receipt unless a resolution of approval or disapproval is adopted by the Council prior to that time.

Comments should be addressed to the Secretary to the Council, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Room 5, Washington, D.C. 20004. Copies of reprogramming requests are available in Legislative Services, Room 10. Telephone: 724-8050

Reprog. 20-54: Request to reprogram $27,000,000 between Master Projects in the Federal Capital Fund and the Highway Trust Fund within the District Department of Transportation (DDOT) was filed in the Office of the Secretary on May 16, 2013. This reprogramming is needed to properly align the Master Projects to correspond to DDOT's planned obligations for this fiscal year and future spending.

RECEIVED: 14 day review begins May 17, 2013

Reprog. 20-55: Request to reprogram $500,000 of Fiscal Year 2013 Local funds budget authority within the Office of the Chief Financial Officer (OCFO) was filed in the Office of the Secretary on May 21, 2013. This reprogramming covers overtime costs in the Customer Service, Real Property Tax, Compliance, Revenue Accounting and Returns Processing Administrations.

RECEIVED: 14 day review begins May 22, 2013

Reprog. 20-56: Request to reprogram $1,703,989 of Local funds budget authority within the Department of Forensic Sciences (DFS) was filed in the Office of the Secretary on May 21, 2013. This reprogramming is needed to support the cost for forensic science equipment, supplies and contracts necessary to perform critical public safety duties.

RECEIVED: 14 day review begins May 22, 2013

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

RESCIND

5/10/2013

Notice is hereby given that:

License Number: ABRA-086025 **License Class/Type: C Restaurant**

Applicant: 901 DC LLC

Trade Name: 901 Restaurant & Bar

ANC: 2C

Has applied for the renewal of an alcoholic beverages license at the premises:

901 9TH ST NW, WASHINGTON, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

6/24/2013

HEARING WILL BE HELD ON

7/8/2013

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

ENDORSEMENTS: Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 2 am	11 am -2 am	-
Monday:	11 am - 2 am	11 am - 2 am	-
Tuesday:	11 am - 2 am	11 am - 2 am	-
Wednesday:	11 am - 2 am	11 am - 2 am	-
Thursday:	11 am - 2 am	11 am - 2 am	-
Friday:	11 am - 3 am	11 am - 3 am	-
Saturday:	11 am - 3 am	11 am - 3 am	-

Days	Hours of Sidewalk Cafe Operation	Hours of Sales Sidewalk Cafe
Sunday:	11 am - 12 am	11 am - 12 am
Monday:	11 am - 12 am	11 am - 12 am
Tuesday:	11 am - 12 am	11 am - 12 am
Wednesday:	11 am - 12 am	11 am - 12 am
Thursday:	11 am - 12 am	11 am - 12 am
Friday:	11 am - 12 am	11 am - 12 am
Saturday:	11 am - 12 am	11 am - 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MAY 29, 2013
2000 14TH STREET, N.W., SUITE 400S,
WASHINGTON, D.C. 20009

Ruthanne Miller, Chairperson
Members:
Nick Alberti, Donald Brooks, Herman Jones, Mike Silverstein

Show Cause Hearing (Status) **9:30 AM**
Case # 12-251-00369; Jasper Ventures, LLC, t/a Capitale (formerly K Street)
1301 K Street NW,License #72225, Retailer CN, ANC 2F
Trade Name Change Without Board Approval

Fact Finding Hearing **9:30 AM**
Cyril W. Smith and Warren J. Smith t/a California Liquors; 2100 18th Street NW, License #5018, Retailer A, ANC 1C
License in Safekeeping

Fact Finding Hearing **9:30 AM**
American Arab Communication & Translation Center, LLC, t/a Zenobia Lounge
1025 31st Street NW, License #85003, Retailer CR, ANC 2E
License in Safekeeping

Fact Finding Hearing **9:30 AM**
Temporary License Application; Date of Event: June 1, 2013,Applicant: Nancy Y. Miyahira, on behalf of Georgetown Business Improvement District
Neighborhood: 1000 Wisconsin Ave NW (Between M and K Streets)

Show Cause Hearing **10:00 AM**
Case # 12-AUD-00048; Himalayan Heritage, Inc., t/a Himalaya Heritage, 2305 18th Street NWm, License #79577, Retailer CR, ANC 1C
Failed to File Quarterly Statements (2nd Quarter 2012)

Show Cause Hearing **11:00 AM**
Case # 12-CMP-00472; Kartik, Incorporated, t/a New York Liquors, 1447 Maryland Ave NE, License #76234, Retailer A, ANC 6A
Sold Go-Cups

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Show Cause Hearing **1:30 PM**

Case # 12-CMP-00683; Federal Center Hotel Associates, LLC, t/a Holiday Inn (Capitol), 550 C Street SW, License #75950, Retailer CH, ANC 6D

No ABC Manager on Duty

Protest Hearing **2:30 PM**

Case # 13-PRO-00002; 2408 Wisconsin Avenue, LLC, t/a Mason Inn, 2408 Wisconsin Ave NW, License #79644, Retailer CT, ANC 3B

Substantial Change (Summer Garden with 48 Seats)

CORRECTION***

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 24, 2013
Petition Date:	July 8, 2013
Hearing Date:	July 22, 2013
License No.:	ABRA68476
Licensee:	Circle Productions, Inc.
Trade Name:	Black Cat
License Class:	Retailer's Class "CX" Multipurpose
Address:	1811 – 14th St., NW

WARD 1 ANC 1B SMD 1B12

Notice is hereby given for a request received from the Licensee to partially terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board. Licensee seeks to terminate Section 4(d) and Section 9 of the Settlement Agreement.

Parties to the Settlement Agreement: Circle Productions, Inc. T/A Black Cat and A Group of Five (5) or more Residents.***

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC NOTICE

Persons objecting to the approval of a renewal application are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009.

RENEWAL NOTICES

POSTING DATE: 5/24/2013
PETITION DATE: 7/8/2013
HEARING DATE: 7/22/2013

License Number: ABRA-075836 **Applicant: The Popal Group LLC**
License Class/Type: C Restaurant **Trade Name: Napoleon**
ANC: 1C **Premise Address: 1847 COLUMBIA RD NW**

Endorsements: Entertainment, Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Summer Garden Operation	Hours of Sales Summer Garden	Hours of Entertainment
SUN:	10 am - 12 am	10 am -12 am	12 am - 11 pm	12 pm - 11 pm	6 pm - 12 am
MON:	11:30 am - 12 am	11:30 am - 12 am	12 pm - 11 pm	12 pm - 11 pm	6 pm - 12 am
TUE:	11:30 am - 1 am	11:30 am - 1 am	12 pm - 11 pm	12 pm - 11 pm	6 pm - 12 am
WED:	11:30 am - 2 am	11:30 am - 2 am	12 pm - 11 pm	12 pm - 11 pm	6 pm - 1 am
THU:	11:30 am - 2 am	11:30 am - 2 am	12 pm - 11 pm	12 pm - 11 pm	6 pm - 2 am
FRI:	11:30 am - 3 am	11:30 am - 3 am	12 pm - 11 pm	12 pm - 11 pm	6 pm - 3 am
SAT:	10 am - 3 am	10 am - 3 am	12 pm - 11 pm	12 pm - 11 pm	6 pm - 3 am

License Number: ABRA-089558 **Applicant: Tacodog, LLC**
License Class/Type: C Restaurant **Trade Name: Taqueria Nacional**
ANC: 2B **Premise Address: 1407 - 1409 T ST NW**

Endorsements:

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
SUN:	8 am - 12 am	8 am -12 am	-
MON:	8 am - 12 am	8 am - 12 am	-
TUE:	8 am - 12 am	8 am - 12 am	-
WED:	8 am - 12 am	8 am - 12 am	-
THU:	8 am - 12 am	8 am - 12 am	-
FRI:	8 am - 1 am	8 am - 1 am	-
SAT:	8 am - 1 am	8 am - 1 am	-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC NOTICE

Persons objecting to the approval of a renewal application are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009.

RENEWAL NOTICES

POSTING DATE: 5/24/2013
PETITION DATE: 7/8/2013
HEARING DATE: 7/22/2013

License Number: ABRA-091137 **Applicant: We Are 4 Partners LLC**
License Class/Type: C Restaurant **Trade Name: ARCURI**
ANC: 2E **Premise Address: 2400 WISCONSIN AVE NW**

Endorsements: Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Summer Garden Operation	Hours of Sales Summer Garden	Hours of Entertainment
SUN:	11 am - 2 am	11 am -2 am	11 am - 2 am	11 am - 2 am	11 am - 12 am
MON:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
TUE:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
WED:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
THU:	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 2 am	11:30 am - 12 am
FRI:	11:30 am - 3 am	11:30 am - 3 am	11:30 am - 3 am	11:30 am - 3 am	11:30 am - 1 am
SAT:	11 am - 3 am	11 am - 3 am	11 am - 3 am	11 am - 3 am	11:30 am - 1 am

License Number: ABRA-091976 **Applicant: 4830 MacArthur Blvd. Inc.**
License Class/Type: C Restaurant **Trade Name: Little China Cafe**
ANC: 3D **Premise Address: 4830 MACARTHUR BLVD NW**

Endorsements: Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Summer Garden Operation	Hours of Sales Summer Garden	Hours of Entertainment
SUN:	12 pm - 10 pm	12 pm -10 pm	12 pm - 10 pm	12 pm - 10 pm	-
MON:	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	-
TUE:	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	-
WED:	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	-
THU:	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	-
FRI:	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	-
SAT:	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	11 am - 10 pm	-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC NOTICE

Persons objecting to the approval of a renewal application are entitled to be heard before the granting of such license on the hearing date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, DC 20009.

RENEWAL NOTICES

POSTING DATE: 5/24/2013
PETITION DATE: 7/8/2013
HEARING DATE: 7/22/2013

License Number: ABRA-088282 **Applicant: Nimellis Pizzeria, LLC**

License Class/Type: D Restaurant **Trade Name: Wise Eats Cafe/Wiseats**

ANC: 3B **Premise Address: 2132 WISCONSIN AVE NW**

Endorsements: Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Summer Garden Operation	Hours of Sales Summer Garden	Hours of Entertainment
SUN:	11 am - 12 am	11 am -12 am	11 am - 12 am	11 am - 12 am	-
MON:	11 am - 3 am	11 am - 2 am	11 am - 3 am	11 am - 2 am	-
TUE:	11 am - 3 am	11 am - 2 am	11 am - 3 am	11 am - 2 am	-
WED:	11 am - 3 am	11 am - 2 am	11 am - 3 am	11 am - 2 am	-
THU:	11 am - 3 am	11 am - 2 am	11 am - 3 am	11 am - 2 am	-
FRI:	11 am - 4 am	11 am - 3 am	11 am - 4 am	11 am - 3 am	-
SAT:	11 am - 4 am	11 am - 3 am	11 am - 4 am	11 am - 3 am	-

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 24, 2013
Petition Date:	July 8, 2013
Hearing Date:	July 22, 2013
License No.:	ABRA 086604
Licensee:	919 U Street, LLC
Trade Name:	El Roy
License Class:	Retailer's Class "C" Restaurant
Address:	919 U Street, NW
Contact:	Ian Hilton: 843-442-7090/Candace Fitch: 703-899-1214

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this licensee has applied for a substantial change to its License under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such change on the Hearing Date at 10:00 am, 2000 14th Street, NW, 4th Floor, Washington, D.C. 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request for Class Change from "CR" Restaurant to "CT" Tavern.

HOURS OF OPERATION
Sunday 12:00 pm - 2:00 am; Monday through Thursday 4:00 pm – 2:00 am; Friday 4:00 pm - 3:00 am; Saturday: 12:00 pm – 3:00 am.

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION
Sunday 12:00 pm – 2:00 am; Monday through Thursday: 4:00 pm – 2:00 am; Friday: 4:00 pm -3:00 am; Saturday: 12:00 pm – 3:00 am

HOURS OF LIVE ENTERTAINMENT
Sunday through Thursday: 6:00 pm – 11:00 pm; Friday and Saturday: 6:00 pm – 1:00 am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE/ CONSUMPTION FOR THE SUMMER GARDEN
Sunday: 12:00 pm – 2:00 am; Monday through Thursday: 4:00 pm – 2:00 am; Friday: 4:00 pm – 3:00 am; Saturday: 12:00 pm – 3:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

ON

CORRECTION*

5/17/2013

Notice is hereby given that:

License Number: ABRA-088504 **License Class/Type: C Restaurant**

Applicant: 1541 Q LLC

Trade Name: ette *

ANC: 2F

Has applied for the renewal of an alcoholic beverages license at the premises:

1541 14TH ST NW, WASHINGTON, DC 20005

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

7/1/2013

HEARING WILL BE HELD ON

7/15/2013

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

ENDORSEMENTS:

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	8am - 1:30am	8am -1am	-
Monday:	8am - 1:30am	8am - 1am	-
Tuesday:	8am - 1:30am	8am - 1am	-
Wednesday:	8am - 1:30am	8am - 1am	-
Thursday:	8am - 1:30am	8am - 1am	-
Friday:	8am - 2:30am	8am - 2am	-
Saturday:	8am - 2:30am	8am - 2am	-

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 24, 2013
Petition Date: July 8, 2013
Hearing Date: July 22, 2013

License No.: ABRA-078058
Licensee: Prospect Dining, LLC
Trade Name: George
License Class: Retail Class "C" Restaurant
Address: 3251 Prospect Street NW
Contact: Andrew Kline 202-686-7600

WARD 2 ANC 2E03 SMD2E03

Notice is hereby given for a request received from the Licensee to terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board.

Parties to the Settlement Agreement: Prospect Dining, LLC and ANC 2E

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 24, 2013
Petition Date:	July 8, 2013
Hearing Date:	July 22, 2013
License No.:	ABRA-011583
Licensee:	Multi-Management, Inc.
Trade Name:	Habana Village
License Class:	Retailer's Class "C" Restaurant
Address:	1834 Columbia Road, NW

WARD 1 ANC 1C SMD 1C03

Notice is hereby given for a request received from the Licensee to terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board.

Parties to the Settlement Agreement: Multi-Management, Inc., Advisory Neighborhood Commission 1C and the Kalorama Citizens Association

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 24, 2013
Petition Date: July 8, 2013
Hearing Date: July 22, 2013

License No.: ABRA-090258
Licensee: Fusion D & G LLC
Trade Name: Hitching Post
License Class: Retailer's Class "C" Tavern
Address: 200 Upshur Street, NW
Contact: Ana P. Quinones, 301-466-9507

WARD 4 ANC 4C SMD 4C10

Notice is hereby given that this applicant has applied for a substantial change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

NATURE OF SUBSTANTIAL CHANGE
Request to add a Summer Garden with seats for approximately 20 patrons.

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR INSIDE PREMISES
Sunday through Saturday 10:00 am – 2:00 am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES/SERVICE AND CONSUMPTION FOR THE SUMMER GARDEN
Sunday through Saturday 10:00 am – 12:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

RESCIND **ON**

3/15/2013

Notice is hereby given that:

License Number: ABRA-086595 **License Class/Type: C Restaurant**

Applicant: La Morenita Restaurant, LLC

Trade Name: La Morenita

ANC: 1A

Has applied for the renewal of an alcoholic beverages license at the premises:

3539 Georgia AVE NW, WASHINGTON, DC 20010

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR BEFORE:

4/29/2013

HEARING WILL BE HELD ON

5/13/2013

AT 10:00 AM, 2000 14th Street, NW, 4th Floor, Washington, DC 20009

ENDORSEMENTS:

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	7 am - 2 am	12 pm -1:30 am	-
Monday:	7 am - 2 am	11 am - 1:30 am	-
Tuesday:	7 am - 2 am	11 am - 1:30 am	-
Wednesday:	7 am - 2 am	11 am - 1:30 am	-
Thursday:	7 am - 2 am	11 am - 1:30 am	-
Friday:	7 am - 3 am	11 am - 2:30 am	-
Saturday:	7 am - 3 am	11 am - 2:30 am	-

FOR FURTHER INFORMATION CALL (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 24, 2013
Petition Date: July 8, 2013
Hearing Date: July 22, 2013

License No.: ABRA-076804
Licensee: The Griffin Group, LLC
Trade Name: Policy
License Class: Retail Class "C" Restaurant
Address: 1902-1906 14th Street NW
Contact: Andrew Kline 202-686-7600

WARD 2 ANC 2B SMD2B09

Notice is hereby given for a request received from the Licensee to terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board.

Parties to the Settlement Agreement: The Griffin Group, LLC t/a Policy, Dupont Circle Citizens Association and A Group of More Than Five (5) Individuals.

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 24, 2013
Petition Date: July 08, 2013
Hearing Date: July 22, 2013

License No.: ABRA-090797
Licensee: Radius LLC
Trade Name: Radius
License Class: Retailer's Class "C" Restaurant
Address: 3155 Mount Pleasant Street, NW
Contact: Lenka Makalova-Culbertson 202-234-0202

WARD 1 ANC 1D SMD 1D04

Notice is hereby given for a request received from the Licensee to terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board.

Parties to the Settlement Agreement: Radius LLC t/a Radius, Frank Connell, Michael Clements, and Laurie Collins, President, Mount Pleasant Neighborhood Alliance, Signatories

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 24, 2013
Petition Date: July 8, 2013
Hearing Date: July 22, 2013

License No.: ABRA-060149
Licensee: Romain's Table, Inc.
Trade Name: Romain's Table/The Diner
License Class: Retailer's Class "CR"
Address: 2453 18th Street, NW
Contact: Michael Fonseca 202-625-7700

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has applied for a substantial change to its license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the Hearing Date at 10:00 am, 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petition and/or request to appear before the Board must be filed on or before the Petition Date.

NATURE OF CHANGE TO OPERATION
Sidewalk café with 20 seats.

HOURS OF OPERATION INSIDE PREMISES
Sunday through Saturday 24 Hours

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION INSIDE PREMISES
Sunday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am

HOURS OF OPERATION ON SIDEWALK CAFÉ
Sunday through Thursday 6:30 am – 1:00 am; Friday Saturday 6:30 am – 2:00 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION ON SIDEWALK CAFÉ
Sunday through Thursday 10:00 am – 1:00 am; Friday and Saturday 10:00 am – 2:00 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 24, 2013
Petition Date:	July 8, 2013
Hearing Date:	July 22, 2013
License No.:	ABRA-025781
Licensee:	Tryst, Inc.
Trade Name:	Tryst
License Class:	Retailer's Class "C" Restaurant
Address:	2459 18th Street, NW

WARD 1 ANC 1C SMD 1C07

Notice is hereby given for a request received from the Licensee to terminate the Settlement Agreement applicable to the licensed premises, as approved and incorporated into an order by the Board.

Parties to the Settlement Agreement: Tryst, Inc. and Kalorama Citizens Association

Objectors are entitled to be heard before the granting of such request on the Hearing Date at 10:00 am, 2000 14th Street, N.W., 400 South, Washington, DC 20009. Petitions and/or requests to appear before the Board must be filed on or before the Petition Date.

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARING

The D.C. Historic Preservation Review Board will hold a public hearing to consider applications to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the properties to the National Register of Historic Places:

Case No. 13-17: Park View Playground and Field House
693 Otis Place, NW
Square 3032, Lot 1

The hearing will take place at **9:00 a.m. on Thursday, July 25, 2013**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10A DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street, SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

The Board's hearing is open to all interested parties or persons. Public and governmental agencies, Advisory Neighborhood Commissions, property owners, and interested organizations or individuals are invited to testify before the Board. Written testimony may also be submitted prior to the hearing. All submissions should be sent to the address above.

For each property, a copy of the historic landmark application is currently on file and available for inspection by the public at the Historic Preservation Office. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates the property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

Eligibility for Federal Tax Provisions: If a property is listed in the National Register, certain Federal tax provisions may apply. The Tax Reform Act of 1986 (which revised the historic preservation tax incentives authorized by Congress in the Tax Reform Act of 1976, the Revenue Act of 1978, the Tax Treatment Extension Act of 1980, the Economic Recovery Tax Act of 1981, and the Tax Reform Act of 1984) provides, as of January 1, 1987, for a 20% investment tax credit with a full adjustment to basis for rehabilitating historic commercial, industrial, and rental residential buildings. The former 15% and 20% Investment Tax Credits (ITCs) for rehabilitation of older commercial buildings are combined into a single 10% ITC for commercial and industrial buildings built before 1936. The Tax Treatment Extension Act of 1980 provides Federal tax deductions for charitable contributions for conservation purposes of partial interests in historically important land areas or structures. Whether these provisions are advantageous to a property owner is dependent upon the particular circumstances of the property and the owner. Because the tax aspects outlined above are complex, individuals should consult legal counsel or the appropriate local Internal Revenue Service office for assistance in determining the tax consequences of the above provisions. For further information on certification requirements, please refer to 36 CFR 67.

Qualification for Federal Grants for Historic Preservation When Funds Are Available: The National Historic Preservation Act of 1966, as amended, authorizes the Secretary of the Interior to grant matching funds to the States (and the District or Columbia) for, among other things, the preservation and protection of properties listed in the National Register.

Owners of private properties nominated to the National Register have an opportunity to concur with or object to listing in accord with the National Historic Preservation Act and 36 CFR 60. Any owner or partial owner of private property who chooses to object to listing must submit to the State Historic Preservation Officer a notarized statement certifying that the party is the sole or partial owner of the private property, and objects to the listing. Each owner or partial owner of private property has one vote regardless of the portion of the property that the party owns. If a majority of private property owners object, a property will not be listed. However, the State Historic Preservation Officer shall submit the nomination to the Keeper of the National Register of Historic Places for a determination of eligibility for listing in the National Register. If the property is then determined eligible for listing, although not formally listed, Federal agencies will be required to allow the Advisory Council on Historic Preservation an opportunity to comment before the agency may fund, license, or assist a project which will affect the property. If an owner chooses to object to the listing of the property, the notarized objection must be submitted to the above address by the date of the Review Board meeting.

For further information, contact Tim Dennee, Landmarks Coordinator, at 202-442-8847.

DISTRICT OF COLUMBIA TAXICAB COMMISSION
GOVERNMENT OF THE DISTRICT OF COLUMBIA

NOTICE OF PUBLIC HEARING

Notice of Proposed Rulemaking to Establish the Uniform Color Scheme for Taxicabs in the District, to Include Both Independent and Company-Owned Vehicles, Chapter 5, of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations.

MAY 29, 2013
10:00 A.M.

The DC Taxicab Commission (DCTC) has scheduled a Public Hearing at 10:00 am on Wednesday, May 29, 2013 at the Old Council Chambers 441 4th Street, NW, regarding proposed rulemaking to establish the uniform color scheme for taxicabs in the District, to include both independent and company-owned vehicles..

Those interested in testifying should register by calling 202-645-6018, Extension 4 by Tuesday, May 28, 2013 at 4:00 pm. Participants should submit ten (10) copies of their remarks in writing prior to the hearing. Please note the office will be closed in observance of Memorial Day on Monday, May 27, 2013. Written copies of remarks should also be submitted to the Commission Secretary at the hearing. Comments are limited to the specific subject matter of this Public Hearing.

The proposed rulemaking being considered for Title 31 DCMR Chapter 5 was published in the D.C. Register, Volume 60, No. 20 beginning on page 006691 on May 10, 2013.

Copies of the proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. (202) 645-6018. The proposed rulemaking will also be available on the DCTC website at www.dctaxi.dc.gov.

The public hearing will take place at the following time and location:
WEDNESDAY, MAY 29, 2013, 10:00 am
Old Council Chambers, 441 4th Street, NW

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JULY 30, 2013
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001

TO CONSIDER THE FOLLOWING: The Board of Zoning Adjustment will adhere to the following schedule, but reserves the right to hear items on the agenda out of turn.

9:30 A.M. MORNING HEARING SESSION

A.M.

WARD FIVE

18597 ANC-5B **Application of James M. LeSane**, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, to allow an addition to an existing one-family detached dwelling not meeting the side yard (section 405) requirements in the R-1-B District at premises 1515 Jackson Street, N.E. (Square 4014, Lot 803).

WARD ONE

18598 ANC-1A **Application of 3612 Park Place LLC,** pursuant to 11 DCMR § 3103.2, for a variance from the minimum lot area requirements under subsection 401.3, to convert two vacant row dwellings into a six (6) unit apartment house in the R-4 District at premises 3612 Park Place, N.W. (Square 3035, Lots 837 and 838).

WARD FIVE

18590 ANC-5C **Application of District of Columbia Public Library,** pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements to permit the reconstruction of a library under section 2101.1, in the C-2-A District at premises 1801 Hamlin Street, N.E. (Square 4210, Lot 825).

WARD ONE

18596 ANC-1B **Application of Community Three Development LLC,** pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under section 772, a variance from the rear yard requirements under section 774, a variance from the off-street parking requirements under subsection 2101.1, and a variance from the parking space size requirements under subsections 2115.2 and 2115.4, to allow the

construction of a new mixed-use development in the Arts/C-3-A District at premises 2200-2202 14th Street, N.W. (Square 202, Lots 33, 827 and 828).

WARD ONE

18599
ANC-1A

Application of Trinity AME Zion Church, pursuant to 11 DCMR § 3104.1, for a special exception to allow a parking lot (last approved under BZA Order No. 16298) under section 213, in the R-5-B District at premises 1417, 1493 and 1507 Meridian Place, N.W. (Square 2684, Lots 556,557 and 558).

WARD THREE

THIS APPLICATION WAS POSTPONED FROM THE MARCH 12, 2013 AND MAY 21, 2013, PUBLIC HEARING SESSIONS:

18577
ANC-3C

Appeal of Lawrence M. and Kathleen B. Ausubel, pursuant to 11 DCMR §§ 3100 and 3101, from a February 13, 2013, decision by the Department of Consumer and Regulatory Affairs, to allow an electrical cabinet in the yard of a one-family dwelling in the TSP/R-1-A District at premises 2750 32nd Street, N.W. (Square 2119, Lots 12 and 25).

PLEASE NOTE:

Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board.

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, and Zoning. Pursuant to Subsection 3117.4, of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board. Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form**. This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

FOR FURTHER INFORMATION, CONTACT THE OFFICE OF ZONING AT (202) 727-6311.

LLOYD J. JORDAN, CHAIRMAN, S. KATHRYN ALLEN, JEFFREY L. HINKLE AND A MEMBER OF THE ZONING COMMISSION ---------- BOARD OF ZONING ADJUSTMENT, CLIFFORD W. MOY, SECRETARY TO THE BZA, SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

THIRD NOTICE OF PROPOSED RULEMAKING

The State Superintendent of Education, pursuant to the authority set forth in Article II of An Act to provide for compulsory school attendance for the taking of a school census in the District of Columbia, and for other purposes, as amended, effective February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-201 *et seq.* (2001 ed. & 2012 Supp.)); as amended by Section 302 of the South Capitol Street Memorial Amendment Act of 2012, effective June 7, 2012 (D.C. Law 19-141, 59 DCR 3083 (April 20, 2012); D.C. Official Code §§ 38-201 *et seq.*); Mayor's Order No. 2012-116, dated July 26, 2012; Sections 3(b)(11), 3(b)(15) and 7c of the State Education Office Establishment Act of 2000, as amended, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(11), 2602(b)(15) and 2609(c)(2) (2012 Supp.)); and Section 403 of the State Board of Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code §38-2652(a)(14) (2012 Supp.)); hereby gives notice of her intent to amend, in not less than fifteen (15) days after the publication of this notice in the *D.C. Register*, Chapter 21 (Compulsory Education and School Attendance at Public Educational Institutions) of Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the District of Columbia Municipal Regulations (DCMR).

This is the third (3rd) proposal on this subject, taking into consideration public comments received on the proposed rules published on March 15, 2013 (60 DCR 3732); the January 4, 2013 proposal (60 DCR 38); public comments made at a State Board of Education meeting on February 20, 2013; and feedback from the State Board of Education at public work sessions held in March 2013.

The Office of the State Superintendent of Education ("OSSE") is responsible for enforcing compliance with the compulsory education and attendance laws in the District of Columbia and ensuring that all school-age children regularly attend school. Federal grants received by Local Education Agencies (LEAs) also mandate reporting through OSSE of attendance and graduation cohort data dependent upon attendance information.

School attendance data is a primary source of early warning signs to identify students at risk and provide opportunities for them to receive intervention services. A student who intermittently attends school misses key steps in the instructional process. Student absence affects student performance and progressive ability to master concepts in math, science and reading. Further, data indicates that truancy is a warning sign that a student may be experiencing behavioral health issues.

This rule has been revised to address student attendance at public schools and schools receiving District funding. (1) Private schools will be addressed separately in a new chapter in keeping with state level oversight responsibilities. (2) In response to comments from the Public Charter School Board and the District of Columbia Public Schools, this proposal eliminates a number of proscriptive requirements, thereby giving schools greater flexibility to addressing implementation of the South Capitol Memorial Amendment Act of 2012. (3) Given the

importance of uniformity and school wide understanding of these requirements, OSSE will continue to provide technical assistance to LEAs and individual schools.

Chapter 21 (Compulsory Education and School Attendance at Public Educational Institutions) of Subtitle A (Office of the State Superintendent of Education) of Title 5 (Education) of the DCMR is amended to read as follows:

Chapter 21 COMPULSORY EDUCATION AND SCHOOL ATTENDANCE

2100 GENERAL PROVISIONS

2100.1 The legal authority for this chapter is based upon Article II of An Act to provide for compulsory school attendance, for the taking of a school census in the District of Columbia, and for other purposes, as amended, effective February 4, 1925 (43 Stat. 806; D.C. Official Code § 38-201 *et seq.* (2001 ed. & 2012 Supp.)); as amended by Section 302 of the South Capitol Street Memorial Amendment Act of 2012, effective June 7, 2012 (D.C. Law 19-141, 59 DCR 3083, (April 20, 2012); D.C. Official Code §§ 38-201 *et seq.*); Mayor's Order No. 2012-116, dated July 26, 2012; Sections 3(b)(11), 3(b)(15) and 7c of the State Education Office Establishment Act of 2000, as amended, effective October 21, 2000 (D.C. Law 13-176; D.C. Official Code §§ 38-2602(b)(11), 2602(b)(15) and 2609(c)(2) (2012 Supp.)); and Section 403 of the State Board of Education Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code §38-2652(a)(14) (2012 Supp.)).

2100.2 This chapter shall apply to a public educational institution as defined in this chapter to include any elementary or secondary educational program operating in the District of Columbia that is subject to the control or oversight of a local educational agency.

2100.3 Unless otherwise approved by OSSE, a school year for attendance purposes shall include a minimum of one hundred eighty (180) regular instructional days and the following requirements:

(a) An instructional day shall be at least six (6) hours in length for students, including time allotted for lunch periods, recess, and class breaks;

(b) The six (6)-hour minimum instructional day requirement shall not be applicable to an evening school program, prekindergarten program, or kindergarten program.

2100. 4 Student attendance shall be consistent with the reporting requirements in Section 2101.

2100.5 Daily attendance shall include participation in school-sponsored field trips; participation in an off-site school sponsored or approved activity during a

regularly scheduled school day; in-school suspensions; and the number of days a student receives instructional services while expelled or while serving an out-of-school suspension.

2101 ATTENDANCE RECORDS AND REPORTING

2101.1 Each educational institution operating in the District of Columbia shall maintain an accurate, contemporaneous, and daily attendance record for each student who is enrolled in or who attends the educational institution.

2101.2 Records shall be maintained as follows:

(a) The requirement to maintain an attendance record for a student who has completed the enrollment process for an educational institution shall begin on the educational institution's first (1st) official school day and continue throughout the school year, unless the student officially withdraws from the educational institution; fails to attend at least one (1) day of school in the first three (3) weeks of school without notification for such absence; or transfers to another educational institution; and

(b) Expulsion or suspension of a student during the school year does not relieve the educational institution of the duty to record and report the student's daily attendance for the school year in which the expulsion or suspension occurred until such time as the student officially withdraws from or enrolls in another educational institution; or such time as the educational institution that, despite best efforts, it is unable to contact the parent or guardian.

2101.3 The attendance record for each student shall contain the following:

(a) Dates of enrollment;

(b) Daily legible or machine-readable records of daily attendance, noting the student as present or absent for a full or partial school day;

(c) Determination of the nature of each absence as excused, unexcused; suspension-related; or expulsion-related;

(d) Dates of withdrawal from the educational institution or confirmed transfer to another educational institution, including the name and location of the educational institution to which the student transferred and follow up notation(s) to confirm the child's new placement;

(e) Dates of each referral to the school-based student support team, the Child and Family Services Agency ("CFSA"), the Court Social Services Division of the Superior Court of the District of Columbia ("Court Social

Services"); or the Office of the Attorney General Juvenile Section ("OAG-Juvenile Section") related to absenteeism or truancy;

(f) Dates of marking periods;

(g) Dates on which a law enforcement officer enforcing compulsory attendance laws returns the student to the educational institution;

(h) Daily late arrival time, beginning with school year 2015 or at such time that the school is capable of implementing this subsection, whichever is earlier;

(i) Dates and times of early dismissals from the school day, as authorized by the educational institution, beginning with school year 2015 or at such time that the school is capable of implementing this subsection, whichever is earlier;

(j) Dates and brief description of communications with student, parent(s) or guardian(s) with regard to school attendance and absences, including the record of or a cross-reference to the record documenting:

(1) Contact with parents, guardians, or other primary caregivers; and

(2) Interventions, services, and service referrals related to absences other than those listed in subparagraph (d);

(k) Underlying causes for student's absenteeism or truancy as determined by the school-based student support team;

(l) Action plans and strategies implemented by the school-based student support team to eliminate unexcused absences; and

(m) Services utilized by the student to reduce unexcused absences.

2101.4 Prior to the beginning of each school year, an educational institution shall designate an attendance monitor(s) to be responsible for collecting, maintaining, and reporting the attendance records required for each student consistent federal and District requirements. An attendance monitor shall:

(a) Ensure timely submission of attendance in conformance with this chapter; and

(b) Submit corrected attendance records via an automated, electronic feed, or such other format.; and provide any corrections to attendance records within fifteen (15) business days of submission; and

(c) Timely respond to requests for clarification of submitted attendance records.

2101.5 The name and contact information of the designated attendance monitor shall be reported by the educational institution prior to the first (1st) official school day of each school year.

2101.6 Within sixty (60) days after the completion of each school year, an educational institution shall submit to OSSE the report described in D.C. Official Code § 38-203(i). Such report shall include attendance information in aggregate form, excluding individual student data.

2101.7 Prior to the beginning of each school year, OSSE shall issue a report including the following information:

(a) Truancy rates for each educational institution;

(b) Progress in improving attendance and reducing truancy for each educational institution; and

(c) Each educational institution's compliance with key attendance and truancy requirements.

2101.8 An educational institution shall maintain attendance records as part of the student's permanent record and for such periods of time as may be otherwise specified by applicable laws and regulations.

2101.9 Within two (2) business days after each occurrence of a student's tenth (10th) unexcused absence during a school year, the educational institution shall:

(a) Notify the Metropolitan Police Department ("MPD") within two (2) business days after each occurrence of a student's tenth (10th) unexcused absence during the school year;

(b) Send the student's parent a letter, under signature of the Chief of the Metropolitan Police Department, notifying the parent that he or she may be in violation of the school attendance requirements and subject to prosecution under District of Columbia laws; and

(c) Notify OSSE of the student's ten (10) days of the unexcused absence.

2101.10 Upon notification from the educational institution under § 2101.8, OSSE shall provide the parent with a copy of the Truancy Prevention Resource Guide published by OSSE.

2102 ABSENCES

2102.1 Any absence, including an absence from any portion of the instructional day, without a valid excuse shall be presumed to be an unexcused absence.

2102.2 An educational institution shall define categories of valid excuses for an absence, which shall include the following categories:

(a) Illness or other bona fide medical cause experienced by the student;

(b) Exclusion, by direction of the authorities of the District of Columbia, due to quarantine, contagious disease, infection, infestation, or other condition requiring separation from other students for medical or health reasons;

(c) Death in the student's family;

(d) Necessity for a student to attend judiciary or administrative proceedings as a party to the action or under subpoena;

(e) Observance of a religious holiday;

(f) Lawful suspension or exclusion from school by school authorities;

(g) Temporary closing of facilities or suspension of classes due to severe weather, official activities, holidays, malfunctioning equipment, unsafe or unsanitary conditions, or other condition(s) or emergency requiring a school closing or suspension of classes;

(h) Failure of the District of Columbia to provide transportation in cases where the District of Columbia has a legal responsibility for the transportation of the student;

(i) Medical or dental appointments for the student;

(j) Absences to allow students to visit their parent or a legal guardian, who is in the military; immediately before, during, or after deployment; and

(k) An emergency or other circumstances approved by an educational institution.

2102.3 An educational institution shall publish and make available to parents and students the attendance policies and procedures, including a list of valid excused absences.

2102.4 An educational institution shall obtain an explanation from the student's parent or guardian verifying the reason for an absence.

2103 ABSENTEE INTERVENTION AND SCHOOL-BASED STUDENT SUPPORT TEAMS

2103.1 An educational institution shall implement a specific protocol for absenteeism (absenteeism protocol) including a focus on prevention of unexcused absences, also referred to as truancy, and academic and behavioral interventions to address the needs of students.

2103.2 Each LEA shall incorporate evidence-based practice into its absenteeism protocol, considering procedures to address the following:

(a) A description of valid excused absences consistent with this chapter;

(b) A process for informing, training, and educating school staff, students, parents, guardians, and the community with regard to enhancing school attendance, implementing truancy reduction methods, administering attendance policies and procedures, and related collaborative services; and

(c) Procedures for monitoring, reporting, addressing, and evaluating attendance and absences consistent with District of Columbia attendance and absence reporting requirements including:

(1) A procedure requiring reasonable and diligent attempts to make personal contact with the parent or guardian of a student, on the same day and each time a student has the equivalent of one (1) day of unexcused absence, with daily follow-ups as necessary;

(2) A continuum of school practices and services including meaningful supports, incentives, intervention strategies, and consequences for dealing with absenteeism and consultation with parents or guardians, both at the onset of absenteeism and in those circumstances where chronic absenteeism persists, which continuum shall not include off-site suspension and/or expulsion as intervention strategies;

(3) A referral process whereby within two (2) school days after a student has accumulated five (5) or more unexcused absences in one (1) marking period or other similar time frame, the student shall be referred to a school-based student support team which will meet within five (5) school days of the referral and regularly thereafter to:

(A) Review and address the student's attendance and determine the underlying cause(s) for the student's unexcused absences;

(B) Employ reasonable and diligent efforts to communicate and to collaborate with the student and parents or guardian;

(C) Communicate and collaborate with the student's existing Individualized Education Program (IEP) team, as applicable;

(C) Provide timely response to the student's truant behavior;

(D) Make recommendations for academic, diagnostic, or social work services;

(E) Use school and community resources to abate the student's truancy including referral to a community-based organization when available; and

(F) Develop and implement an action plan in consultation with the student and student's parents or guardian;

(4) A student who accumulates ten (10) unexcused absences at any time during a school year shall be considered to be chronically truant. The school-based student support team assigned to the student shall notify the school administrator within two (2) school days after the tenth (10^{th}) unexcused absence with a plan for immediate intervention including delivery of community-based programs and any other assistance or services to identify and address the student's needs on an emergency basis;

(5) A process including specific due process procedures, for a parent, guardian, or student to appeal any attendance violation decisions made by the educational institution; and

(6) A process to ensure that the LEA maintains complete, accurate, and contemporaneous records of the work of the school-based student support team to reduce unexcused absences, including records of all meetings that take place after a student accumulates five (5) or more unexcused absences in one (1) marking period or other similar time frame and after a student accumulates ten (10) unexcused absences at any time during a school year.

2103.3 In addition to the report required at the end of each school year pursuant to D.C. Official Code § 38-203(i), an educational institution shall provide, upon request, student-level data and records evidencing the work of school-based student support teams.

2103.4 A school-based student support team shall be guided by the following principles:

(a) Prior to performing school-based student support team functions, appointed team members shall be provided training on the compulsory attendance laws, regulations, and policies of the District of Columbia and OSSE; absenteeism and truancy intervention strategies and best practices; and available remedies and services to ameliorate the causes of absenteeism and truancy;

(b) A school-based student support team shall include the educational institution's designated attendance monitor;

(c) Core school-based student support team membership should typically include a :

(1) General education teacher;

(2) School nurse, psychologist, counselor, and/or social worker, if applicable; and

(3) School administrator with decision-making authority.

(d) Selection of additional members of a team should be guided by the needs of the particular student, which may include the following:

(1) IDEA/Section 504 coordinator and/or special education personnel;

(2) Early learning/Head Start teacher;

(3) Bilingual or English as a second language teacher;

(4) Representatives of CFSA and/or Department of Youth Rehabilitation Services (DYRS);

(5) McKinney-Vento homeless liaison; and/or

(6) Guardian *ad litem.*

2103. 5 Each educational institution shall develop a process to refer students to District of Columbia entities under the following circumstances:

(a) Students ages five (5) through thirteen (13) shall be referred by the educational institution to the CFSA not later than two (2) business days after:

(1) Each accrual of ten (10) unexcused absences within one (1) school year; and

(2) Immediately at any time that educational neglect is suspected; and

(b) Until the 2013-14 school year, students age fourteen (14) through seventeen (17) years of age shall be referred by the educational institution to the Court Social Services and to the Office of Attorney General Juvenile Section not later than two (2) business days after the accrual of fifteen (15) unexcused absences at any time within one (1) school year.

2103.6 Copies of the following documents shall be provided with a referral made pursuant to this chapter:

(a) The student's attendance and absence record;

(b) Any prevention and intervention plans;

(c) Documentation related to referrals and outcome of such referrals;

(d) Documentation representing evidence of communications, services, and attendance related interventions taken by the school;

(e) Documentation of suspected educational neglect;

(f) Documentation of personal contacts with, and written notification to, parents or guardians with regard to the unexcused absences; and

(g) If applicable, the student's Individualized Education Program pursuant to IDEA or Section 504 services plan, with any supporting evaluations or assessments.

2199 DEFINITIONS

"Absence" --A full or partial school day on which the student is not physically in attendance at scheduled periods of actual instruction at the educational institution in which s/he was enrolled or attended, and is not in attendance at a school-approved activity that constitutes part of the approved school program.

"**Absenteeism" --** A pattern of not attending school, including the total number of school days within one school year on which a student is marked with an excused or unexcused absence.

"Action plan" --A written document that is designed to meet the individual and specialized needs of the student and contains the relevant details of the student's attendance record, the school-based or third-party-provided interventions toward addressing the underlying causes of truancy as

determined by the school-based student support team, and expected attendance goals.

"Attendance monitor" --The person(s) designated by the principal or chief school administrator of an educational institution to be responsible for collecting, maintaining, and reporting attendance records that are required pursuant to District of Columbia compulsory education and school attendance laws, regulations, and OSSE policies for each student enrolled in the educational institution.

"Chronic Absenteeism" --The accumulation within one (1) school year of ten (10) or more school days on which a student is marked absent, including excused and unexcused absences.

"Chronically Truant" -- A school aged child who is absent from school without a legitimate excuse for ten (10) or more days within a single school year.

"Consultation" --A meeting or conversation between the school-based student support team of an educational institution and a student's parents or guardians in which the team, on the part of the educational institution, engages in meaningful discussions about the issues underlying the student's absenteeism prior to making any decision about action plans, interventions, or services to address the student's absenteeism.

"Educational institution" –Any elementary or secondary educational program operating in the District of Columbia that is subject to the control or oversight of a local educational agency.

"Educational neglect" --The failure of a parent or guardian to ensure that a child attends school consistent with the requirements of the law including, without limitation, the failure to enroll a school-age child in an educational institution or provide appropriate private instruction; permitting chronic absenteeism from school; inattention to special education needs; refusal to allow or failure to obtain recommended remedial education services; or the failure to obtain treatment or other special education services without reasonable cause.

"Elementary/secondary educational program" --A course of instruction and study from and including pre-Kindergarten through the end of high school, any portion thereof, or its equivalent.

"Enrollment" --A process through which a student obtains admission to a public or public charter school that includes, at a minimum the following stages:

(1) Application by student to attend the school;

(2) Acceptance and notification of an available slot to the student by the school;

(3) Acceptance of the offered slot by the student (signified by completion of enrollment forms and parent signature on a "letter of enrollment agreement form";

(4) Registration of the student in the Student Information System (SIS) by school upon receipt of required enrollment forms and letter of enrollment agreement; and

(5) Receipt of educational services, which are deemed to begin on the first official school day.

(6) The LEA's obligation to determine eligibility for special education services or to provide special education services on an existing IEP is triggered upon completion of registration (stage 4).

"IDEA" --The "Individuals with Disabilities Education Act", approved April 13, 1970 (84 Stat. 191; 20 U.S.C. §1400 *et seq*.), as amended by Pub. L. 108-446, approved December 3, 2004 (118 Stat. 2647).

"Full school day" --The entirety of the instructional hours regularly provided on a single school day.

"Late arrival" --Arrival by a student at the educational institution after the official start of the school day as defined by the educational institution. Late arrival does not include any period of time that would constitute a partial school day as defined by this chapter.

"LEA" --Local Educational Agency, pursuant to 20 USCS § 7801(26)(A), a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State, or of or for a combination of school districts or counties that is recognized in a State as an administrative agency for its public elementary schools or secondary schools.

"Marking period" --A portion of a school year between two dates, at the conclusion of which period students are graded or marked.

"**McKinney-Vento**" --The "McKinney-Vento Homeless Assistance Act of 1987", as amended, Title VII, Subtitle B; 42 U.S.C. 11431-11435.

"OSSE" --The Office of the State Superintendent of Education.

"Partial school day" --At least twenty percent (20%) of the instructional hours regularly provided on a single school day; which shall be deemed to be a full school day, when a student is absent during this period of time without an excused absence.

"Parent" --A biological parent, guardian or other person who resides in the District of Columbia who has custody or control of a school–age child as defined in this chapter.

"Present" --A single school day on which the student is physically in attendance at scheduled periods of actual instruction at the educational institution in which she or he was enrolled and registered for at least eighty percent (80%) of the full instructional day, or in attendance at a school-approved activity that constitutes part of the approved school program for that student.

"School-age child" --A child who between five (5) years of age on or before September 30 of the current school year or eighteen (18) years.

"Section 504" --Section 504 of the **"**Rehabilitation Act of 1973", approved September 26, 1973 (87 Stat. 394; 29 U.S.C. § 794).

"STEM" --Educational instruction in science, technology, engineering, and mathematics.

"Truant" --A school-age child who is absent from school without a legitimate excuse for absence.

"Truancy rate" --The incidence of students who are absent without valid excuse as defined by 5 DCMR A § 2102 on ten (10) or more occasions within a single school year, divided by the total number of students enrolled for a single school year, as determined by the final enrollment audit conducted by OSSE, pursuant to D.C. Official Code § 38-203. Truancy rate may be calculated and reported at the school, LEA, and state levels.

Persons wishing to comment on this rule should submit their comments in writing to Office of the State Superintendent of Education, 810 First Street, NE, 9th Floor, Washington, D.C. 20002, Attention: Jamai Deuberry [phone number (202) 724-7756], Office of General Counsel, or to OSSEcomments.proposedregulations@dc.gov. All comments must be received no later than fifteen (15) days after publication of this notice in the *D.C. Register.* Copies of this rulemaking may also be obtained from the OSSE website at www.osse.dc.gov or upon request at the above referenced location.

DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director, District of Columbia Department of Employment Services, pursuant to the authority set forth in Sections 11, 14 and 15 of the Accrued Sick and Safe Leave Act of 2008 (Act), effective May 13, 2008, (D.C. Law 17-0152; D.C. Official Code §§32-131.01-.16 (2010 Repl.)) and Mayor's Order 2008-153, dated November 6, 2008, hereby gives notice of the intent to amend Chapter 32, entitled "Accrued Safe and Sick Leave", of Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days after publication of this rulemaking in the *D.C. Register*.

The rulemaking is necessary to implement Section 15 of the Act to establish the criteria for the granting of a hardship exemption from the requirements of the Act. The purpose of the Act is to require employers in the District of Columbia to provide leave for illness and absences associated with domestic violence and sexual abuse.

The proposed rule, Section 3218, was first published in the *D.C. Register* on December 19, 2008 (55 DCR 12707). It was transmitted to the Council of the District of Columbia on December 11, 2008 as part of a Proposed Rulemaking for the Act. The 45-day period of Council review expired on January 24, 2009 without action taken by the Council. Section 3218 was withdrawn from the Council on February 27, 2009.

This rulemaking proposes a new Section 3218 and will be transmitted to the Council for a 45-day review, as required by D.C. Official Code § 32-131.14.

A new Section 3218 is added to Chapter 32, of Title 7 DCMR, to read as follows:

3218 HARDSHIP EXEMPTION

3218.1 An employer may apply to the Associate Director of the Office of Labor Standards of the Department of Employment Services for an exemption from the provisions of the Act, pursuant to Section 15 of the Act (D.C. Official Code § 32-131.14).

3218.2 The application shall be in writing and shall include a narrative fully explaining the basis for the request and shall be accompanied by supporting documentation sufficient to demonstrate that the hardship has been or will be created by complying with the Act.

3218.3 Hardship means a negative impact caused or to be caused by the Act that:

(a) Threatens or will threaten the financial viability of the employer;

(b) Jeopardizes the ability of the employer to sustain operations;

(c) Significantly degrades the quality of the employer's operations; or

(d) Creates a significant negative financial impact on the revenues or income of the employer.

3218.4 After receipt of an application, the Associate Director may request additional information from the employer and designate a date by which such information shall be provided. Failure of the employer to provide the additional information by the date designated by the Associate Director may provide a basis for an unfavorable determination of the application.

3218.5 If the employer establishes that the Act has caused or will cause hardship, the Associate Director shall approve the application, exempt the employer from application of the Act, and establish the time period during which the exemption shall apply.

3218.6 The time period during which the exemption applies shall be consistent with the time period during which the hardship is likely to exist; provided, if the time period is greater than one (1) year, the employer may be required to reapply for the exemption after one (1) year.

3218.7 The Associate Director shall issue a written decision within twenty-one (21) days after receiving a complete application, including any additional information requested pursuant to § 3218.4. The written decision shall fully explain the reasons for approving or rejecting the application and for establishing the specific time period during which the exemption shall apply.

3218.8 The employer may appeal the decision of the Associate Director to the Director within ten (10) days after the issuance of the decision. An appeal shall be in writing and shall provide a clear explanation of the basis of the appeal.

3218.9 The Director shall issue a decision on the appeal within thirty (30) days after receiving the appeal.

All persons desiring to comment on the subject matter of this prepared rule making should file comments in writing to Tonya Sapp, General Counsel, D.C Department of Employment Services, 4058 Minnesota Avenue, N.E, Suite 5800, Washington, D.C. 20019. Comments must be received no later than thirty (30) days after the publication of this notice in the *D.C. Register*. Copies of this proposal may be obtained, at cost, by writing to the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-093
May 16, 2013

SUBJECT: Delegation of Authority Under the Employee Transportation Amendment Act of 2012 to the Director of the Department of Public Works

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2012 Supp.), and pursuant to sections 106, 107(a), and 301 of the Employee Transportation Amendment Act of 2012, D.C Law 19-223, effective March 5, 2013, 59 DCR 13537 ("Act"), it is hereby **ORDERED** that:

1. The Director of the Department of Public Works is delegated the Mayor's authority under section 106 of the Act to transmit to the Council a plan to expand the use of alternative fuels in government vehicles.

2. The Director of the Department of Public Works is delegated the Mayor's authority under section 107(a) of the Act to transmit to the Council a report addressing how government employees travel at work and the availability of transit subsidies to government employees.

3. The Director of the Department of Public Works is delegated the Mayor's authority under section 301 of the Act to issue rules.

4. **EFFECTIVE DATE:** This Order shall be effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-094
May 16, 2013

SUBJECT: Delegation of Authority to the Director of the District Department of Transportation – Permits for Tunnels, Conduits, and Pipes in Public Streets

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2012 Supp.), and section l(d) of An Act To grant additional power to the Commissioners of the District of Columbia, and for other purposes, approved December 20, 1944, 58 Stat. 819, D.C. Official Code § 1-301.01(d) (2012 Supp.), it is hereby **ORDERED** that:

1. The Director of the District Department of Transportation is hereby delegated the authority to issue revocable permits to any person for the installation or construction of tunnels, and the laying of conduits and pipes, in the alleys, streets, and avenues in the District of Columbia under the jurisdiction of the Mayor.

2. The Director of the District Department of Transportation is hereby empowered to promulgate such regulations as are deemed necessary to issue the permits authorized by paragraph 1 of this Order and to determine what terms, conditions, bonds, or rental fees shall be imposed.

3. Mayor's Order 90-68, issued April 30, 1990, is hereby rescinded.

4. This Order shall supersede all previous Mayor's Orders to the extent of any inconsistency.

5. **EFFECTIVE DATE:** This Order shall be effective immediately.

VINCENT C. GRAY
MAYOR

ATTEST:
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-095
May 16, 2013

SUBJECT: Appointments and Reappointments – The District of Columbia Commission on Persons with Disabilities

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and in accordance with the Disability Rights Protection Act of 2006, effective March 8, 2007, D.C. Law 16-239, D.C. Official Code § 2-1431.01 *et seq.* (2007 Repl.) and Mayor's Order 2009-165, dated September 25, 2009, it is hereby **ORDERED** that:

1. **TARIK SHARIF KAHN** is appointed as a public member of the District of Columbia Commission on Persons with Disabilities ("Commission"), replacing Elizabeth Stone, to complete the remainder of a three year term to end July 8, 2014.

2. **ARTHUR GINSBERG** is appointed as a public member of the Commission, replacing A. Franklin Anderson, to complete the remainder of a three year term to end September 30, 2013, and for a new term to end September 30, 2016.

3. **OLIVER WASHINGTON, JR.** is appointed as a public member of the Commission, replacing Seth Galanter, to complete the remainder of a three year term to end September 30, 2013, and for a new term to end September 30, 2016.

4. **DERRICK SMITH** is appointed as a public member of the Commission, replacing Leslie Calman, to complete the remainder of a three year term to end September 30, 2014.

5. The following persons are reappointed as public members of the Commission, to complete the remainder of unexpired terms to end September 30, 2013, and for new three year terms to end September 30, 2016:

   CHARLES BULTER
   DENISE DECKER

6. **DENISE DECKER** is appointed as Chairperson of the Commission, and shall serve in that capacity at the pleasure of the Mayor.

7. **EFFECTIVE DATE:** This Order shall become effective immediately.

VINCENT C. GRAY
MAYOR

ATTEST: **CYNTHIA BROCK-SMITH**
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-096
May 17, 2013

SUBJECT: Establishment of the Task Force to Combat Fraud

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(11) (2012 Supp.), and in accordance with section 126m of the Seniors Protection Amendment Act of 2000, effective June 8, 2001, D.C. Law 13-301, D.C. Official Code § 22-3226.13 (2012 Supp.), which requires the Mayor to form a Task Force to Combat Fraud, it is hereby **ORDERED** that:

I. ESTABLISHMENT

There is established a Task Force to Combat Fraud ("Task Force") in the executive branch of the District government.

II. PURPOSE

A. The Task Force shall be formed for the following purposes:

1. Collecting information on telephone fraud;

2. Taking steps to educate the public about fraud, including telephone fraud;

3. Sharing information related to telephone fraud with District government agencies;

4. Sharing information related to telephone fraud with other state and federal law enforcement agencies; and,

5. Advising the Mayor on enforcement of laws to combat telephone fraud.

III. FUNCTIONS

A. The Task Force shall collect information related to telephone fraud within the District and share this information with District government agencies, other state law enforcement agencies, and federal law enforcement agencies as necessary to prevent telephone fraud.

B. The Task Force may investigate, as necessary, the applicability and feasibility of implementing the Telephone Fraud Amendment Act of 2000 (D.C. Code § 22-3226.01 *et seq.)*, and use monies from the Fraud Prevention Fund for the purpose of educating the public regarding fraud and crime prevention, including telephone fraud.

IV. MEMBERSHIP AND PROCEDURE

A. Members of the Task Force shall be appointed by the Mayor, and may include representatives from the following agencies:

1. Metropolitan Police Department;

2. Department of Consumer and Regulatory Affairs;

3. Office of the Attorney General; and,

4. Any additional representatives of District government agencies may be appointed by the Mayor as deemed necessary and appropriate.

B. The Mayor shall appoint the Chairperson of the Task Force.

C. Meetings of the Task Force shall be called by the Chairperson and shall be held at such times and locations as are designated by the Chairperson.

D. A vacancy on the Task Force shall be filled in the same manner that the original appointment was made.

E. A majority of the voting members of the Task Force who are present at any meeting shall constitute a quorum. An audio or written transcript or transcription shall be kept for all meetings at which a vote is taken.

F. Members of the Task Force shall not be entitled to reimbursement for actual and necessary expenses incurred in the performance of official duties and shall not be compensated for time expended in the performance of official duties.

V. TERMS

A. Government members appointed by the Mayor shall serve at the pleasure of the Mayor.

VI. ADMINISTRATION

A. Each department, agency, instrumentality, or independent agency of the District shall cooperate with the Task Force and provide any information, in a timely manner, that the Commission requests to carry out the provisions of this Order.

B. The Office of the Attorney General shall provide administrative and clerical support to the Task Force.

VII. EFFECTIVE DATE: This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-097
May 17, 2013

SUBJECT: Appointments – Task Force to Combat Fraud

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and in accordance with the Seniors Protection Amendment Act of 2000, effective June 8, 2001, D.C. Law 13-301, D.C. Official Code § 22-3226.13 (2012 Supp.), and Mayor's Order 2013-096, dated May 17, 2013, which establishes the Task Force to Combat Fraud ("Task Force"), it is hereby **ORDERED** that:

1. **BENNETT RUSHKOFF** is appointed as a member, and Chairperson, of the Task Force, representing the Office of the Attorney General for the District of Columbia, and shall serve in that capacity at the pleasure of the Mayor.

2. **WALLACE HAMILTON KURALT, III** is appointed as a member of the Task Force, representing the Department of Consumer and Regulatory Affairs, and shall serve in that capacity at the pleasure of the Mayor.

3. **BRIAN HARRIS** is appointed as a member of the Task Force, representing the Metropolitan Police Department, and shall serve in that capacity at the pleasure of the Mayor.

4. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-098
May 17, 2013

SUBJECT: Reappointment and Appointments – Developmental Disabilities State Planning Council

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and in accordance with Mayor's Order 2009-165, dated September 25, 2009, it is hereby **ORDERED** that:

1. **VICTOR ROBINSON** is reappointed to the Developmental Disabilities State Planning Council ("State Planning Council") as a consumer member, for a term to end March 18, 2016.

2. **ALISA JACKSON-GRAY** is appointed to the State Planning Council as a consumer member, replacing Haley Kimmet, for a term to end March 18, 2016.

3. **AMBER KEOHANE** is appointed to the State Planning Council, representing a provider of services to persons with developmental disabilities, member, replacing Aimee Griffin, for the unexpired portion of a term to end March 18, 2014.

4. **TIFFANY MCLAURIN-SMALLWOOD** is appointed to the State Planning Council as a consumer member, replacing Susie King, for a term to end March 18, 2016.

5. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray

VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith

CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2013-099
May 20, 2013

SUBJECT: Appointment - Board of Nursing

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2012 Supp.), and in accordance with section 204 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986, D.C. Law 6-99, D.C. Official Code § 3-1202.04 (2012 Supp.), which established the Board of Nursing ("Board"), it is hereby **ORDERED** that:

1. **VERA W. MAYER**, who was nominated by the Mayor on January 7, 2013, and whose nomination was deemed approved by the Council on March 9, 2013, pursuant to Proposed Resolution 20-0035, is appointed as a consumer member of the Board, replacing Selina Howell, whose term expired July 21, 2011, for the remainder of an unexpired term to end July 7, 2015.

2. **EFFECTIVE DATE:** This Order shall become effective immediately.

Vincent C. Gray
VINCENT C. GRAY
MAYOR

ATTEST: Cynthia Brock-Smith
CYNTHIA BROCK-SMITH
SECRETARY OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSE CANCELLATIONS

WEDNESDAY, May 29, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Letter dated May 9, 2013 from ***Ruby Tuesday, Inc. T/A Ruby Tuesday #4179***, 710-7th Street, NW. Class CR02. License No. 060143. Licensee states that business closed April 28, 2013 and surrendered its license.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
CHANGE OF HOURS AGENDA

WEDNESDAY, MAY 29, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales. Approved Hours of Operation: Sunday through Saturday 7:00 am – 10:00 pm. Approved Hours of Alcoholic Beverage Sales/Service: Monday through Saturday 9:00 am – 10:00 pm. Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service: Sunday through Saturday 7:00 am – 10:00 pm. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 6A. SMD 6A03. ***7 River, LLC T/A River Mart***, 250-11th Street, NE. Retailer's Class A. License No. 089591.

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2. Review of Change of Hours Application to change Hours of Operation and Hours of Alcoholic Beverage Sales (Sunday Only). Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service: Monday through Saturday 9:00 am – 10:00 pm. Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service: Sunday through Saturday 9:00 am – 10:00 pm. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 5E. SMD 5E07. ***Rajwinder Pal Singh T/A Bloomingdale Liquors***, 1836 1st Street, NW. Retailer's Class A, License No. 060424.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

WEDNESDAY, MAY 29, 2013
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On May 29, 2013 at 4:00 pm, the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed "to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations."

1. Case#13-251-00044 Haydee's 2000, 6303 GEORGIA AVE NW Retailer C Nightclub, License#: ABRA-060187

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2. Case#13-251-00050 Jumbo Liquors, 1122 H ST NE Retailer A Retail - Liquor Store, License#: ABRA-000420

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3. Case#13-CC-00012 Chinatown Coffee Company, 475 H ST NW Retailer C Tavern, License#: ABRA-083981

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4. Case#13-CMP-00211 Secret Lounge & Restaurant, 1414 9TH ST NW Retailer C Tavern, License#: ABRA-090210

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
AGENDA

WEDNESDAY, MAY 29, 2013 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of Application for Substantial Change: Seating Capacity Increase in Basement from 49 to 162; Summer Garden Endorsement (21 seats). ***Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service:*** Sunday through Thursday 12:00 pm – 1:30 am; Friday and Saturday 11:00 am – 2:00 am. ***Approved Hours for Entertainment:*** Sunday through Thursday 6:00 pm – 12:00 am; Friday and Saturday 6:00 pm – 1:00 am. ***Proposed Hours of Operation and Hours of Alcoholic Beverage Sales/Service for Summer Garden:*** Sunday through Thursday 12:00 pm – 1:30 am; Friday and Saturday 11:00 am – 2:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 5D. SMD 5D06. ***Tree House Lounge***, 1006 Florida Avenue NW Retailer CT, Lic.#: 91618.

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2. Review of Application for License in Safekeeping. [NOTE: Licensee filed for Chapter 11 Bankruptcy Reorganization 4/29/13] ***Balletto Dining Lounge,*** 1050 17th Street NW Retailer CR03, Lic.#: 14073.

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3. Review of Application for Change of Hours (Sunday Only***). Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service*** Sunday 10:00 am – 12:00 am; Monday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am. ***Approved Hours for Entertainment:*** Sunday 10:00 am – 12:00 am; Monday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am. ***Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service:*** Sunday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am. ***Proposed Hours for Entertainment:*** Sunday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 1B. SMD 1B12. ***Red Lounge,*** 2013 14th Street NW Retailer CR02, Lic.#: 76011.

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4. Review of Application for License in Safekeeping. No pending investigative matters. No pending enforcement matter. No outstanding fines/citations. No Settlement Agreement. ANC 2F. SMD 2F05. ***Roc Bar,*** 1426 L Street NW Retailer CT, Lic.#: 89818.

Board's Agenda – May 29, 2013 - Page 2

5. Review of Application for Change of Hours. ***Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service*** Sunday 1:00 pm – 6:00 pm; Monday through Saturday 11:00 am – 9:00 pm. ***Proposed Hours of Operation and Proposed Hours of Alcoholic Beverage Sales/Service:*** Sunday through Saturday 10:00 am – 10:00 pm. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 2E. SMD 2E07. ***Georgetown Wine & Spirits,*** 1500 27th Street NW Retailer A, Lic.#: 85209.

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6. Request of DC Street Food, Inc., the corporate parent of TaKorean at Union Market, LLC T/A TaKorean, 1309 5th Street, NE, Retailer's Class CT License, License No. 091197, dated May 13, 2013 to have checks for alcohol purchases drawn on the account of DC Street Food, Inc. rather than the licensee. ***TaKorean,*** 1309 5th Street NE Retailer CT, Lic.#: 91197.

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7. Manager's License: Elise M. Lane. ******

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8. Review of Application for Substantial Change: Summer Garden Endorsement (43 seats). ***Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service:*** Sunday through Thursday 11:00 am – 11:00 pm; Friday and Saturday 11:00 am – 12:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 1B. SMD 1B02. ***Cause DC,*** 1926 9th Street NW Retailer CR01, Lic.#: 90192.

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9. Review of Requests dated May 14 and 17, 2013 from E& J Gallo Winery for approval to provide retailers with products valued at more than $50 and less than $500..

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10. Review of Request for Off-Site Storage of Books and Records. ***Ghibellina,*** 1610 14th Street NW Retailer CR01, Lic.#: 88785.

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11. Review of Request for Trade Name Change: El Centro D.F. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 2E. SMD 2E05. ***Third Edition/The Taqueria,*** 1218 Wisconsin Avenue NW Retailer CR02, Lic.#: 604.

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12. Review of Application for Change of Hours. ***Approved Hours of Operation:*** Sunday through Saturday 7:00 am – 10:00 pm. ***Approved Hours of Alcoholic Beverage Sales/Service:*** Sunday through Saturday 9:00 am – 10:00 pm. ***Approved Hours of Operation for Sidewalk Café:*** Sunday 8:00 am – 7:00 pm; Monday through Saturday 7:00

am – 8:00 pm. ***Approved Hours of Alcoholic Beverage Sales/Service for Sidewalk Cafe:*** Sunday 9:00 am – 7:00 pm; Monday through Saturday 9:00 am – 8:00 pm***. Approved Hours of Entertainment:*** Sunday through Saturday 9:00 am – 10:00 pm. ***Proposed Hours of Operation:*** Sunday 7:00 am – 9:00 pm; Monday through Saturday 7:00 am – 11:00 pm***. Proposed Hours of Alcoholic Beverage Sales/Service:*** Sunday 9:00 am – 9:00 pm; Monday through Saturday 9:00 am – 11:00 pm***. Proposed Hours of Operation for Sidewalk Café:*** Sunday 8:00 am – 9:00 pm; Monday through Saturday 7:00 am – 11:00 pm. ***Proposed Hours of Alcoholic Beverage Sales/Service for Sidewalk Cafe:*** Sunday 9:00 am – 9:00 pm; Monday through Saturday 9:00 am – 11:00 pm. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Settlement Agreement. ANC 6B. SMD 6B02. ***The Silver Spork,*** 301 7th Street SE Retailer DR01, Lic.#: 88503.

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13. Review of Application for Change of Hours. ***Approved Hours of Operation:*** Sunday through Saturday 7:00 am – 10:00 pm. ***Approved Hours of Alcoholic Beverage Sales/Service:*** Sunday through Saturday 9:00 am – 10:00 pm***. Proposed Hours of Operation:*** Sunday 7:00 am – 9:00 pm; Monday through Saturday 7:00 am – 11:00 pm. ***Proposed Hours of Alcoholic Beverage Sales/Service:*** Sunday 9:00 am – 9:00 pm; Monday through Saturday 9:00 am – 11:00 pm. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No Agreement. ANC 6B. SMD 6B02. ***The Silver Spork,*** 301 7th Street SE Retailer DR01, Lic.#: 88503.

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14. Review of Application for Cover Charge Endorsement. ***Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service:*** Sunday through Thursday 11:00 am – 1:45 am; Friday and Saturday 11:00 am – 2:45 am. ***Approved Hours for Entertainment:*** Monday through Thursday 6:00 pm – 1:45 am; Friday and Saturday 6:00 pm – 2:45 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 2F. SMD 2F02. ***Black Whiskey,*** 1410 14th Street NW Retailer CT01, Lic.#: 91434.

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15. Review of Request for Stipulated License. New License in 45-day review period. ANC 4C. SMD 4C01. Masai Mara Restaurant & Lounge, LLC T/A Masai Mara Restaurant & Lounge, 1200 Kennedy St., NW. Class CR w/ Summer Garden & Entertainment Endorsement. ***Masai Mara Restaurant & Lounge,*** 1200 Kennedy Street NW Retailer CR, Lic.#: .

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16. Review of Request for License in Safekeeping. ANC 2E. SMD 2E05. ***Rugby Café,*** 1065 Wisconsin Avenue NW Retailer CR01, Lic.#: 75703.

Board's Agenda – May 29, 2013 - Page 4

17. Review of Request for License in Safekeeping. ANC 2E. SMD 2E05. ***Pizzeria Uno,*** 3211 K Street NW Retailer CR01, Lic.#: 3854.

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18. Review of Request for License in Safekeeping. ANC 1A. SMD 1A06. ***D'Vines,*** 3103 14th Street NW Retailer B, Lic.#: 77775.

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19. Review of Request for Extension of License in Safekeeping. ANC 2E. SMD 2E03. ***Come to Eat,*** 3222 O Street NW Retailer CR01, Lic.#: 85370.

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20. Review of Request for License in Safekeeping. ANC 1B. SMD 1B02. ***Zula Restaurant,*** 1933 9th Street NW Retailer CR01, Lic.#: 60547.

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21. Review of Application for Entertainment Endorsement. ***Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service:*** Sunday through Thursday 10:00 am – 2:00 am; Friday and Saturday 10:00 am – 3:00 am. ***Approved Hours of Operation and Approved Hours of Alcoholic Beverage Sales/Service for Summer Garden:*** Sunday through Saturday 10:00 am – 1:00 am. No pending investigative matters. No pending enforcement matters. No outstanding fines/citations. No conflict with Settlement Agreement. ANC 2B. SMD 2B06. ***Vapiano,*** 1800 M Street NW Retailer CR02, Lic.#: 76388.

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22. Review of Request dated May 20, 2013 from E& J Gallo Winery for approval to provide retailers with products valued at more than $50 and less than $500.

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23. Review of Request for Off-Site Storage of Books and Records. ***Satellite Room,*** 2047 9th Street NW Retailer CT, Lic.#: 87296.

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24. Review of letter, dated May 13, 2013, from Commissioner Karen Wirt of ANC 6C informing the Board of the illegal parking of tour buses in front of Armand's Chicago Pizzeria. ***Armand's Chicago Pizzeria,*** 226 Massachusetts Avenue NW Retailer CR01, Lic.#: 75464.

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25. Review of Response to Complaints and Motion to Dismiss, dated May 15, 2013, from Ely Hurwitz. ***Bistro 18,*** 2420 18th Street NW Retailer CR01, Lic.#: 86876.

Board's Agenda – May 29, 2013 - Page 5

26. Review of Motion for Reconsideration, dated May 20, 2013, from MaryEva Condon. ***Margarita's Mexican Café,*** 2317 Wisconsin Avenue NW Retailer CR01, Lic.#: 16488.

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27. Review of letter, dated May 15, 2013, from Commissioner Jackie Blumenthal of ANC 3B. ***JP's,*** 2412 Wisconsin Avenue NW Retailer CN02, Lic.#: 8511.

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28. Review of Petition to Terminate or Amend Settlement Agreement, dated April 9, 2013, for Sisy's. The Petition was untimely filed and was not submitted with the Renewal Application. ***Sisy's,*** 3911 14th Street NW Retailer CR01, Lic.#: 76125.*

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29. Review of Petition to Terminate Settlement Agreement, dated March 25, 2013, from Ghana Café. ***Ghana Café,*** 1336 14th Street NW Retailer CR01, Lic.#: 82571.*

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30. Review of Petition to Terminate or Amend Settlement Agreement, dated March 11, 2013, for Farmers & Fishers. ***Farmers & Fishers,*** 3000 K Street NW Retailer CR04, Lic.#: 74934.*

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31. Review of Settlement Agreement, dated April 8, 2013, between Farmers & Fishers, ANC 2E, Washington Harbor Condominium Association, and the Citizens Association of Georgetown. ***Farmers & Fishers,*** 3000 K Street NW Retailer CR04, Lic.#: 74934.*

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32. Review of Settlement Agreement, dated May 10, 2013, between Sol Mexican Grill and ANC 6A. ***Sol Mexican Grill,*** 1251 H Street NE Retailer CR01, Lic.#: 88292.*

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33. Review of Settlement Agreement, dated May 2, 2013, between Khan's and ANC 6A. ***Khan's,*** 1125 H Street NE Retailer CR01, Lic.#: 84082.*

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34. Review of Settlement Agreement, dated April 10, 2013, between Old Glory, ANC 2E, and the Citizens Association of Georgetown. ***Old Glory,*** 3139 M Street NW Retailer CR02, Lic.#: 76435.*

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35. Review of Settlement Agreement, dated May 19, 2013, between Black Cat, Allen Rotz, Edward Szrom, and Andrew King. ***Black Cat,*** 1811 14th Street NW Retailer CX, Lic.#: 60476.*

*** In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend.**

** **In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, this portion of the meeting will be closed to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations. The Board's vote will be held in an open session, and the public is permitted to attend.**

BRIDGES PUBLIC CHARTER SCHOOL

NOTICE: FOR PROPOSALS FOR STUDENT DATA MANAGEMENT SERVICES

Bridges Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for student data management services.

E-mail Olivia Smith, Executive Director, at osmith@bridgespcs.org to request a full RFP offering more detail on scope of work and bidder requirements.

Proposals shall be received no later than 5:00 P.M., Friday, May 31, 2013.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Olivia Smith
osmith@bridgespcs.org

Please include “Student data management services” in the subject line of the e-mail.

CARLOS ROSARIO PCS

RFP

Shore Tel Equipment

CARLOS ROSARIO PCS seeks bids for the purchase, install and maintenance ShoreTel phone System configured for 100 telephones, 1PRI, Voice Mail that will include the following specific pieces of hardware and software.

SHDLT-2304 - ShoreGear 90 Qty 2; SHDLT-3890 - ShoreGear 220T1- Qty 1; SHDEL-2650 - ShorePhone IP265 Silver – Qty 5; SHDEL-2300 - ShorePhone IP230 Silver – Qty 40; SHDEL-1150 - ShorePhone IP115 Silver – Qty 50; SHDEL-6550 - ShorePhone IP655, With Anti Glare Screen – Qty 5; SHDLT-1439 - Extension & Mailbox License For ShoreTel – Qty 100; SHDLT-2309 - ShoreTel 13.1 (General Release) – Qty 1; SHDET-4578 – Addl. Language License – Qty 1; SHDEL-1433 - Service Appliance 100 Required To Host Conferencing And Instant Messaging – Qty 1; SHDLT-0104 - 10 Concurrent Audio Conferencing Ports – Qty 2; SHDLT-0107 - 10 Concurrent Web Conferencing Ports – Qty 2; SHDEL-8695 - Personal Access License - Qty 100; SHDEL-8699 - Professional Access License (Includes Software) – Qty 10; SHDCA-0006 - Analog Harmonica And Telco Cable (FF) – Qty 2; SHDEL-4503 - ShoreGear Rack Mount Tray Gen4 – Qty 2; SHDOL-1400 - ShoreCare Enterprise Support: 1 Year No Phones – Qty 1; SHDTL-1400 - 3205sp System Administrator Training, Self Paced eLearning (Per Student) ;

Company / Vendor must have knowledge and demonstrated experience with ShoreTel Systems. A proven track record working with implementation and maintenance of these systems is critical.

For a copy of the full RFP, please contact Gus Viteri at 202-797-4700 or by email at gviteri@carlosrosario.org.

Responses are due by 4 p.m., May 30th, 2013.

CESAR CHAVEZ PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Replacement of Wireless Infrastructure

The Cesar Chavez Public Charter For Public Policy Schools solicits Request for Proposals for the replacement of its wireless infrastructure at the three schools locations.

The full text of the proposal is available upon request by sending an email to itproposals@chavezschools.org

For inquiries and proposal submissions please email to itproposals@chavezschools.org with the subject line as “Wireless Replacement”.

Deadline for submissions is May 31st, 2013.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
BUSINESS AND PROFESSIONAL LICENSING ADMINISTRATION

SCHEDULED MEETINGS OF BOARDS AND COMMISSIONS

June 2013

CONTACT PERSON	BOARDS AND COMMISSIONS	DATE	TIME/ LOCATION
Daniel Burton	Board of Accountancy	4	8:30 am-12:00pm
Leon Lewis	Board of Appraisers	19	8:30 am-4:00 pm
Leon Lewis	Board Architects and Interior Designers	14	8:30 am-1:00 pm
Sheldon Brown	Board of Barber and Cosmetology	10	10:00 am-2:00 pm
Sheldon Brown	Boxing and Wrestling Commission	11	7:00-pm-8:30 pm
Kevin Cyrus	Board of Funeral Directors	10	9:30am-2:00 pm
Daniel Burton	Board of Professional Engineering	27	9:30 am-1:30 pm
Leon Lewis	Real Estate Commission	11	8:30 am-1:00 pm
Pamela Hall	Board of Industrial Trades	18	1:00 pm-4:00 pm
	Asbestos Electrical Elevators Plumbing Refrigeration/Air Conditioning Steam and Other Operating Engineers		

Dates and Times are subject to change. All meetings are held at 1100 4th Street, SW, Suite E-300 A-B, Washington, D.C. 20024. Board agendas are available upon request.

For further information on this schedule, please call 202-442-4320.

DEPARTMENT OF EMPLOYMENT SERVICES
OFFICE OF YOUTH PROGRAMS

NOTICE OF FUNDS AVAILABILITY

YOUTH TECH PROGRAM

The District of Columbia Department of Employment Services (DOES) is soliciting grant applications to support the delivery of workforce exploration and experience-based programs that will provide purposeful and developmentally appropriate employment and career exploration opportunities to youth in the information technology fields. Applicants must employ the youth development philosophy in their approach and program design. DOES is seeking innovative proposals for high quality technology-focused employment programs that will introduce and enhance technical skills, promote Internet savvy, and build computer fluency while simultaneously reinforcing core social-development and employment outcomes for the District's youth. The *YouthTech Program* strives to:

- Offer District youth an opportunity to develop their work readiness aptitude, soft skills, personal development, and commitment necessary to succeed in today's world of work.
- Provide basic digital literacy skills in areas such as hardware and software programming.
- Provide advanced technology skills training in areas such as hardware installation, networking, coding, cloud computing, applications development, specialized computer maintenance, or the like.
- Build and bridge relationships with technology-based employers to ensure that youth are connected to and supported by obtaining and maintaining meaningful internship and job placement.
- Engage youth through intensive innovative technology projects, field work, site visits, and career panels.
- Provide a mechanism through which eligible youth can earn money, gain meaningful work experience, participate in skills training workshops and be exposed to various careers within the information technology industry.

Applicants will be required to deliver project-based learning components as part of their programming. Project-based learning engages and motivates participants in active learning processes by using real problems, materials, and tasks to produce outcomes as opposed to "make work" activities. In order to create a standardized model of youth employment and allow the outcomes from this programming to be more easily codified, applicants are required to provide skills training to reinforce the goals set for the *YouthTech Program.*

Eligibility: Applicant's primary vision and program focus must be serving youth within the District of Columbia. Applicant must be in good financial standing with the DC Office of Tax and Revenue and the Internal Revenue Service, as well as, follow all appropriate financial reporting standards. Applicant cannot be listed on the federal or District excluded parties' lists.

Length of Awards: The grant period will be for twelve months from the date of execution of a Grant Agreement with DOES. At the discretion of DOES, a maximum of 4 one year option periods may be granted based on performance and the availability of funding. Option periods may consist of a year, a fraction thereof, or multiple successive fractions of a year.

Available Funding for Awards: DOES will accept applications, regardless of budget request amount, to support an array of innovative technology driven programs.

Anticipated Number of Awards: DOES anticipates making at least one award and may make multiple awards depending on funding availability. The Request for Applications (RFA) will be released on **Friday, June 7, 2013.** The RFA will be available on the DOES website, www.does.dc.gov, by contacting the DOES Grants Office at doesgrants@dc.gov, and it will also be posted on the District's Grant Clearinghouse website at: http://opgs.dc.gov/page/opgs-district-grants-clearinghouse.

For additional information regarding this grant opportunity, please contact Kristina Savoy at Kristina.savoy2@dc.gov or the DOES Grants Office at doesgrants@dc.gov.

The deadline for application submission is Monday, July 8, 2013, at 2:00pm.

DISTRICT DEPARTMENT OF THE ENVIRONMENT

FISCAL YEAR 2013

PUBLIC NOTICE

Notice is hereby given that, pursuant to 40 C.F.R. Part 51.161, and D.C. Official Code §2-505, the Air Quality Division (AQD) of the District Department of the Environment (DDOE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue Permit (#5910-R2) to Architect of the Capitol, to operate the listed diesel-fired emergency generator engine located in Washington, DC. The contact person for the facility is James Styers, Environmental Engineer, at (202) 226-6636.

Emergency Generator to be Permitted

Equipment Location	Address	Equipment Size	Model Number	Serial Number	Permit Number
U.S. Botanic Garden Conservatory	First Street SW Washington DC 20515	150 kW (250 hp)	John-Deere 6081AF001	RG6081A108709	5910-R2

The proposed emission limits are as follows:

a. Visible emissions shall not be emitted into the outdoor atmosphere from the generator, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]

b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The estimated emissions from the unit are as follows:

Pollutant	Emission Rate (lb/hr)	Maximum Annual Emissions (tons/yr)
Total Particulate Matter, PM (Total)	0.06	0.01
Sulfur Oxides (SO_x)	0.51	0.13
Nitrogen Oxides (NO_x)	2.67	0.67
Volatile Organic Compounds (VOCs)	0.21	0.05
Carbon Monoxide (CO)	0.49	0.12

The application to operate the generator and the draft renewal permit are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45

P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
District Department of the Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No written comments or hearing requests postmarked after June 24, 2013 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

EXCEL ACADEMY PUBLIC CHARTER SCHOOL
REQUESTS FOR PROPOSALS

Food Service Management Services

Excel Academy PCS of Washington, DC is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals prepared by professional catering staff in Excel's onsite kitchen. All meals are to be delivered to children enrolled at the school for the 2013-2014 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposal (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on May 22, 2012 from:

Mr. Larry Jiggetts
2501 Martin Luther King Jr. Avenue, SE
Washington, DC 20020
(202) 373-0097
(202) 373-0477 – FAX
LJiggetts@excelpcs.org

A pre-proposal conference and site visit will be held on June 10, 2013

Proposals will be accepted at the above address on Friday, June 21, 2013 no later than 3:30 p.m.

All bids not addressing all areas as outlined in the RFP will not be considered.

HEALTH BENEFIT EXCHANGE AUTHORITY
NOTICE OF PUBLIC MEETING

Executive Board of the Health Benefit Exchange Authority

The Executive Board of the Health Benefit Exchange Authority, pursuant to the requirements of Section 6 of the Health Benefit Exchange Authority Establishment Act of 2011, effective March 2, 2012 (D.C. Law 19-0094), hereby announces a public meeting of the Executive Board. The meeting will be at 441 4th Street NW, Suite 820 N on Thursday, **June 6, 2013 at 4:40 pm**. The call in number is 1-877-668-4493, Access code 647 326 609. Topics that will be discussed include consensus recommendations from the Quality and Financial Stability Work Group.

The Executive Board meeting is open to the public.

If you have any questions, please contact Debra Curtis at (202) 741-0899.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Social Work hereby gives notice of its regularly scheduled monthly meeting dates pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2001) ("Act").

The District of Columbia Board of Social Work's regularly scheduled monthly meeting is the fourth Monday of each month at 9:30 a.m. The open (public) session begins at 9:30 a.m. The Board of Social Work meets at 899 North Capitol Street, NE, 2nd Floor, Washington, D.C. 20002.

In observance of the Memorial Day holiday, the Board will not meet in the month of May for the year 2013.

KIPP DC
REQUEST FOR PROPOSALS

Security Services
KIPP DC is soliciting proposals from qualified vendors for security services. The competitive Request for Proposal can be found on KIPP DC's website at www.kippdc.org/procurement.

Proposals are due no later than 5:00 P.M., EST, June 13, 2013. No proposals will be accepted after the deadline. Questions can be addressed to jsalsbury@pmmcompanies.com.

Landscaping Services
KIPP DC is soliciting proposals from qualified vendors for landscaping services. The competitive Request for Proposal can be found on KIPP DC's website at www.kippdc.org/procurement.

Proposals are due no later than 5:00 P.M., EST, June 13, 2013. No proposals will be accepted after the deadline. Questions can be addressed to jsalsbury@pmmcompanies.com.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
Fraternal Order of Police/Metropolitan Police Department Labor Committee,	
Complainant,	PERB Case No. 08-U-41
v.	Opinion No. 1101
District of Columbia, *et al*,[1]	**Second Motion for Reconsideration**
Respondents.	**CORRECTED COPY**

DECISION AND ORDER

I. Statement of the Case:

The instant matter stems from an unfair labor practice complaint filed on May 30, 2008, by the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("Complainant", "FOP" or "Union") against the District of Columbia, *et al*, ("Respondents" or "MPD"). The Complainant alleges that Respondents have violated D.C. Code § 1-617.01 and § 1-617.04(a)(1)-(5) by failing to bargain in good faith with the Complainant. (See Complaint at p. 16).

[1] The Complaint names the following parties as Respondents: District of Columbia Metropolitan Police Department; District of Columbia Office of the Attorney General; District of Columbia Office of Labor Relations and Collective Bargaining; Mayor Adrian Fenty; Chief Cathy L. Lanier, Metropolitan Police Department; Attorney General Peter Nickles, Office of the Attorney General; Director Natasha Campbell, Office of Labor Relations and Collective Bargaining; General Counsel Terrence Ryan, Office of the Attorney General; Supervisory Attorney Dean Aqui, Office of Labor Relations and Collective Bargaining; Attorney Ivelisse Cruz, Office of Labor Relations and Collective Bargaining; Attorney William Montross, Office of Labor Relations and Collective Bargaining; Assistant Chief Winston Robinson, Metropolitan Police Department; Assistant Chief Peter Newsham, Metropolitan Police Department: Assistant Chief Joshua Ederheimer, Metropolitan Police Department; Assistant Chief Alfred Durham, Metropolitan Police Department; Assistant Chief Patrick Burke, Metropolitan Police Department; Commander Jennifer Greene, Metropolitan Police Department; Inspector Matthew Klein Metropolitan Police Department; and Lieutenant Linda Nischan, Metropolitan Police Department.

The following is a chronology of the pleadings filed by the parties in this matter:

(1) May 30, 2008, FOP files Unfair Labor Practice Complaint;

(2) June 2, 2008, Respondents file Cross Complaint and Motion for Preliminary Relief;

(3) June 5, 2008, Respondents file Motion for Temporary Restraining Order;

(4) June 11, 2008, Respondents file Amended Cross Complaint and Motion for Preliminary Relief.

(5) June 13, 2008, FOP files Opposition to the Motion for a Temporary Restraining Order;

(6) June 16, 2008, Respondents file: (1) Answer to the FOP's Complaint; and (2) Motion to Dismiss all Respondents named in their Individual Capacity;

(7) June 18, 2008, FOP files an Opposition to the Motion for Preliminary Relief;

(8) June 19, 2008, FOP files Answer to the Respondents' Cross Complaint, including a motion to dismiss the Cross-Complaint;

(9) June 26, 2008, FOP files Answer to the Respondents' Amended Cross Complaint, including a motion to dismiss the Amended Cross Complaint;

(10) November 20, 2008, FOP files Request for Pre-Hearing Conference;

(11) February 4, 2009, FOP files Motion Requesting an Order that the Burden of Proof be Shifted to Respondents with Respect to the FOP's Charge of Bad Faith Bargaining;

(12) February 4, 2009, Respondents file Opposition to Complainant's Request to Shift the Burden of Proof;

(13) February 25, 2009, Complainant's file Motion to Dismiss Respondent's Unfair Labor Practice Cross Complaint and Motion for Preliminary Relief, and Respondents' Amended Unfair Labor Practice Cross Complaint and Motion for Preliminary Relief;

(14) March 4, 2009, Respondents file Opposition to Complainant's Motion to Dismiss Respondents' Unfair Labor Practice Cross Complaint and Motion for Preliminary Relief, and Respondents' Amended Unfair Labor Practice Cross Complaint and Motion for Preliminary Relief;

(15) March 26, 2009, Parties' file Joint Request for Continuance of Hearing;

(16) April 15-23, 2009, FOP files subpoena requests;

(17) April 23, 2009, Parties request that PERB Case No. 08-U-41 be held in abeyance for 60-days to allow the D.C. Superior Court to rule on a case with Status Report due on June 22, 2009;

(18) September 30, 2009, Board issues Decision and Order Slip Op. No. 988;

(19) October 15, 2009, FOP files Motion for Reconsideration of the Board's Decision and Order of September 30, 2009;

(20) October 29, 2009, Respondents file Opposition to Complainant's Motion for Reconsideration of the Board's Decision and Order of September 30, 2009;

(21) December 31, 2009, Board issues Decision and Order Slip Op. No. 1007.

(22) January 11, 2010, Respondents file Motion for Reconsideration of the Board's Decision and Order of December 31, 2009;

(23) January 25, 2010, FOP files Opposition to Respondents' Motion for Reconsideration of the Board's Decision and Order of December 31, 2009.

As indicated above, the Board issued a decision and order on September 30, 2009, Slip Op. No. 988, that denied: (1) the Respondents' motion to dismiss the unfair labor practice complaint filed by the FOP; and (2) the Respondents' motion for preliminary relief. (See Slip Op. No. 988 at p. 15). In addition, the Board directed that the case be referred to a hearing examiner to develop a factual record.

On October 16, 2009, FOP filed a Motion for Reconsideration of Slip Op. No. 988. Specifically, the motion asserted that the Board's decision and order in Slip Op. No. 988 failed to address the Union's motions to dismiss the Respondents' Cross Complaint and Amended Cross Complaint. Among the allegations set forth in the Union's answers and motions, the Union claimed that the Respondents' complaints alleged violations of the parties' bargaining ground rules, and that because ground rules were akin to contractual provisions, that the Board lacked jurisdiction to hear the alleged contractual violations. (See Answer to Respondents' Unfair Labor Practice Cross Complaint at p. 5; and Answer to Amended Unfair Labor Practice Cross Complaint at pgs. 7-8).

On December 31, 2009, the Board issued Slip Opinion No. 1007, which granted the FOP's motion for reconsideration of Slip Opinion No. 988. The Board found that reconsideration was appropriate because FOP's motions to dismiss the Cross Complaint and Amended Cross Complaint had not been ruled on in Slip Op. No. 988.

> A review of the language in Slip Op. No. 988 reveals that the Board acknowledged receipt of FOP's motion to dismiss; however, we did not issue a ruling concerning this motion. Therefore, we grant FOP's Motion for Reconsideration for the purpose of ruling on the motion to dismiss the Cross-Complaint.

Slip Op. No. 1007 at p. 2.

In granting the motion for reconsideration of Slip Op. No. 988, the Board determined that the Respondents' Cross Complaint and Amended Cross Complaint alleged only contractual violations (*i.e.* the parties' ground rules) and failed to assert any facts establishing a statutory violation, or interference with, coercing or restraining of employees or the District in the exercise of their rights under the CMPA. (See Slip Op. No. 1007 at p. 8). As a result, the Board concluded that it lacked jurisdiction over the matters alleged in the Cross Complaint and Amended Cross Complaint and granted the Union's motions to dismiss the Cross Complaint and Amended Cross Complaint. (See Slip Op. No. 1007 at p. 8).

On January 11, 2010, Respondents filed the instant Motion for Reconsideration of the Board's Decision and Order of December 31, 2009 ("Motion"). The Union responded with an Opposition to the Respondents' Motion ("Opposition"). The Respondents' Motion and the Union's Opposition are before the Board for disposition.

II. Discussion

The matters raised in the Respondents' Cross Complaint and Amended Cross Complaint which are at issue in the instant Motion involve the Respondents' contention the Union's Complaint as well as other communications, breached ground rules and a statutory prohibition against disclosing information concerning confidential compensation negotiations.[2]

The FOP filed an Answer to both the Cross Complaint and Amended Cross Complaint, in which it denied any violation of the CMPA.

Motion for Reconsideration of Slip Op. No. 1007.

The Respondents' Cross Complaint and Amended Cross Complaint asserted that the FOP violated the confidentiality requirements of the CMPA by: (1) disclosing the Respondents' "proposed affirmative changes" in its Complaint (PERB Case No. 08-U-41); (2) issuing "a newsletter . . . outlining substantive provisions of [Respondents'] proposals titled 'Pay and Benefits,' 'Scheduling and Position Security,' 'On the Job Injuries,' 'Discipline,' and 'Representation and the Effective End of Your Union.'"; and (3) causing "the substance of [Respondents'] proposals to be reported by several news outlets and posted on the internet." (Cross Complaint at p. 3).

The Respondents argued that:

> [t]he statutory mandate of D.C. Official Code § 1-617.12 bars the public from the bargaining process. Also, § 1-617.17(h) mandates that bargaining over compensation be kept confidential until a settlement is reached or impasse resolution proceedings have been concluded, i.e., in an interest arbitrator's award, and the ground rules reemphasize the confidentiality of negotiations as outlined in referenced statutes by making all meetings "closed meetings" and all information shared therein confidential.

[2] The Respondents cite to D.C. Official Code § 1-617.12, which states in pertinent part: "[c]ollective bargaining sessions between the District and employee organization representatives shall not be open to the public."D.C. Code § 1-617.17(h), which provides that "[a]ll information concerning [compensation] negotiations shall be considered confidential until impasse resolution proceedings have been concluded or upon settlement. (See Cross Complaint at p. 4).

(Cross Complaint at pgs. 5-6).

The Respondents claimed that the FOP, through its Complaint and contact with the media, etc., directly interfered with "management's right to confidential negotiations . . . [and that each] publication constitute[d] a violation of D.C. Official Code at § 1-617.04(b)(1), an unfair labor practice." (Cross Complaint at p. 6).

In Slip Op. No. 1007, the Board addressed these allegations and found that:

> the Cross Complaint is based, at least in part, on alleged contractual violations. The Board has previously treated Ground Rules as contractual provisions. *AFGE, Local 2741 v. D.C. Dep't of Recreation and Parks*, [46 DCR 6502,] Slip Op. No. 588 at p. 3, PERB Case No. 98-U-16 (1999). Furthermore, the Board has held that where the parties have agreed to allow their negotiated agreement to establish the obligations that govern the very acts and conduct alleged in the complaint as statutory violations of the CMPA, the Board lacks jurisdiction over the complaint allegation. [*Id.* at p. 4]. Here, the very acts and conduct alleged in the Cross Complaint as statutory violations of the CMPA, pertain to a provision in the parties' Ground Rules. Therefore, the issue of confidentiality is contained in a contractual agreement and the Board lacks jurisdiction over the complaint allegations. The Board has also held that: "If... an interpretation of a contractual obligation is necessary and appropriate to a determination of whether or not a non-contractual, statutory violation has been committed", the Board has deferred the contractual issue to the parties' grievance arbitration procedure. *AFSCME, D.C. Council 20, Local 2921 v. D.C. Public Schools*, 42 DCR 5685, Slip Op. No. 339 at n. 6, PERB Case No. 92-U-08 (1995). Therefore, the Cross Complaint is not properly before the Board and must be dismissed.

(Slip Op. No. 1007 at p. 8).

In the present case, the Respondents' Motion for Reconsideration merely asserts a disagreement with the Board's determination that the Cross Complaint failed to allege an unfair labor practice within the meaning of D.C. Code § 1-617.04(a)(1) – (5). The Respondents repeat their argument that a violation of D.C. Code § 1-617.12 and § 1-617.17 should be deemed a "*per se* violation" of the CMPA. However, as noted in Slip Op. No. 1007, no factual allegations were made that the Union interfered with, coerced or restrained union members, or the District management, in the exercise of their rights.

The Board has repeatedly held that a motion for reconsideration cannot be based upon mere disagreement with its initial decision. (See *AFGE Local 2725 v. District of Columbia Department of Consumer and Regulatory Affairs and Office of Labor Relations and Collective Bargaining*, _DCR_, Slip Op. No. 969, PERB Case No. 06 U 43 (2009); see also *D.C. Department of Human Services and Fraternal Order of Police Department of Human Services Labor Committee*, 52 DCR 1623, Slip Op. No. 717, PERB Case Nos. 02-A-04 and 02-A-05 (2003); *D.C. Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee (Shepherd)*, 49 DCR 8960, Slip Op. No. 680, PERB Case No. 01 A 02 (2002); and *AFSCME Local 2095 and AFSCME NUHHCE and D.C. Commission on Mental Health Services*, 48 DCR 10978, Slip Op. No. 658, PERB Case No. 01-AC-01 (2001). Here, Respondents' argument that the Board erred in denying the Respondents' Cross Complaint is based on its reassertion that the violation of D.C. Code § 1-617.2 and § 1-617.17 be considered a "*per se*" violation of the CMPA, and presumably unfair labor practices in violation of D.C. Code § 1-617.04(a)(1)-(5). As stated above, no allegations were put forth that, if proven, would establish the alleged statutory violations. See *Virginia Dade v. National Association of Government Employees, Service Employees International Union, Local R3-06*, 46 DCR 6876, Slip Op. No. 491 at p. 4, PERB Case No. 96-U-22 (1996); and *Gregory Miller v. American Federation of Government Employees, Local 631, AFL-CIO and D.C. Department of Public Works*, 48 DCR 6560, Slip Op. No. 371, PERB Case Nos. 93-S-02 and 93-U-25 (1994).

For the reasons discussed above, the Board denies the Respondents' Motion for Reconsideration.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Respondents' Motion for Reconsideration is denied.

2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD
Washington, D.C.

March 4, 2011

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 08-U-41 was transmitted via Fax and U.S. Mail to the following parties on this the 4th day of March 2011.

Marc L. Wilhite, Esq.
Pressler & Senftle, P.C.
1432 K Street, NW
12th Floor
Washington, D.C. 20005

FAX & U.S. MAIL

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Attorney Advisor
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Certificate of Service
PERB Case No. 08-U-41
Page 2

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U.S. MAIL

Sheryl V. Harrington
Secretary

SELA PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSAL

Janitorial and Facility Maintenance & Management Services

Sela Public Charter School is requesting proposals to provide (1) janitorial services and (2) facility maintenance and management services for its school building, located at 6015 Chillum Place, NE Washington, DC 20011. Sela Public Charter School will enter into a contract with a vendor selected as part of this RFP process in July 2013.

Requests for Proposals can be found at the Sela Public Charter School Website www.selapcs.org or by sending a request for a copy of the RFP to:

Jason Lody, Executive Director
Sela Public Charter School
jlody@selapcs.org

The deadline for submitting proposals is 5:00p.m. on Monday, June 17, 2013. An original proposal must be submitted via email to jlody@selapcs.org with the subject heading "Proposals for Janitorial Services and Facility Maintenance and Management Services". Late proposals and/or proposals submitted via postal service or facsimile will not be accepted. An on-site Pre-Bid Conference is scheduled for Wednesday, May 29, 2013 at 10:30am.

Application Timeline

- RFP Released on Monday, May 20, 2013
- Pre-Bidders Conference:

  Wednesday, May 29, 2013 from 10:30 a.m. -12:30 p.m.
  Sela Public Charter School
  6015-17 Chillum Place, NE Washington, DC 20011
- Proposal Submission Deadline Monday, June 17, 2013 at 5:00 p.m.
- Awards Announced (via email) Monday, July 1, 2013

UNIVERSITY OF THE DISTRICT OF COLUMBIA

AUDIT, ADMINISTRATION AND GOVERNANCE COMMITTEE OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The Audit, Administration and Governance Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Thursday, May 30, 2013 at 6:00 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call

II. Approval of Minutes

III. Conflict of Interest Policy Development

IV. Budget Status Report

V. Internal Auditor Report

VI. University Technology Report

VII. Legal Staff Six Month Report

VIII. Human Resources Report

IX. Executive Session

X. Closing

Adjournment

Expected Meeting Closure (Executive Session)
In accordance with Section 405(b) (10) of the Open Meetings Act of 2010, the Audit, Administration and Governance Committee hereby gives notice that it may conduct an executive session, for the purpose of discussing the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials.

UNIVERSITY OF THE DISTRICT OF COLUMBIA

BUDGET AND FINANCE COMMITTEE OF THE BOARD OF TRUSTEES

NOTICE OF PUBLIC MEETING

The Budget and Finance Committee of the Board of Trustees of the University of the District of Columbia will be meeting on Wednesday, May 29, 2013 at 6:00 p.m. The meeting will be held in the Board Room, Third Floor, Building 39 at the Van Ness Campus, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008. Below is the planned agenda for the meeting. The final agenda will be posted to the University of the District of Columbia's website at www.udc.edu.

For additional information, please contact: Beverly Franklin, Executive Secretary, at (202) 274-6258 or bfranklin@udc.edu.

Planned Agenda

I. Call to Order and Roll Call

II. Approval of Minutes

III. Reprogramming

IV. Cost of Living Adjustments (COLAs)

V. Second Quarter Budget Forecast

VI. Closing

Adjournment

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Audit Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Audit Committee will be holding a meeting on Thursday, May 30, 2013 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

1.	Call to Order	Chairman
2.	Summary of Internal Audit Activity - Internal Audit Status	Internal Auditor
3.	Executive Session	Chairman
4.	Adjournment	Chairman

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18294 of Paul and Emily Thornell, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of an addition to an existing one-family semi-detached dwelling under § 223 of the Zoning Regulations, not meeting the lot occupancy requirements under § 403, in the R-2 District at premises 3011 Ordway Street, N.W. (Square 2067, Lot 76).

HEARING DATE: January 17, 2012
DECISION DATE: February 7, 2012

DECISION AND ORDER

Paul and Emily Thornell, the property owners (the "Applicant") of the subject premises, filed an application with the Board of Zoning Adjustment ("Board") on August 18, 2011 for a special exception under § 223 to construct an addition to their residence where the addition will not conform to the lot occupancy requirements of § 403. Following a hearing on January 17, 2012, the Board voted to approve the special exception at its public meeting of February 7, 2012.

Preliminary Matters

V.W. Fowlkes, an architect retained by the Applicant, submitted a "self-certification" form with the Board which described the zoning relief that was requested. (Exhibit 4.) On October 4, 2011, Mr. Fowlkes filed additional information amending the application to ask for rear yard relief. (Exhibit 18.)[1]

Notice of Public Hearing

Pursuant to 11 DCMR § 3113.13, notice of the hearing was sent to the Applicant, all owners of property within 200 feet of the subject site, the Advisory Neighborhood Commission ("ANC") 3C, and the District of Columbia Office of Planning ("OP"). The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 27.)

ANC Report

In its report dated October 17, 2011, ANC 3C indicated that, at a regularly scheduled monthly meeting with a quorum present, the ANC adopted a resolution of no objection to the special

[1] The case was advertised with a request for rear yard relief. At the public hearing, the Applicant's representative noted that the Office of Planning had informed the Applicant that the rear yard relief was not necessary, as the irregularly shaped lot had a rear yard with a mean horizontal distance in excess of the required 20 feet. The Board agreed with the Office of Planning and the Applicant and determined that rear yard relief was not required for the proposed addition.

exception noting that the "proposed addition is small in scale and does not intrude upon the character, scale and pattern of houses along the street frontage." (Exhibit 34.) The ANC report was not filed with the Board in a timely manner, but the Board waived the 14-day filing requirement and accepted the ANC's resolution.

Request for Party Status

ANC 3C was automatically a party to this proceeding. The Board received a request for party status from Susan and Matthew Finston, the owners of the property located at 3514 30th Street, N.W. ("the Finstons' property"). (Exhibit 26.) The request for party status was granted and the Finstons opposed the application at the public hearing, asserting that they were concerned that the addition would damage the alley, cause disruption during the construction process, adversely impact their privacy and light and air, and the proposed addition would reduce the value of their property. At the public hearing and in a post-hearing submission, Ms. Finston provided pictures and testimony regarding the potential impacts that the addition would have on her property, including the loss of privacy, and loss of green space in the neighborhood. (Hearing Transcript of January 17, 2012, p. 142-145; Exhibits 35, 38.)

Other Persons in Support/Opposition. The Board received several letters in support of the application, including a letter of support from the owner of the adjacent property 3009 Ordway Street. (Exhibits 8, 32, and 33.) The Board also received one letter in opposition from the owners of property located at 3512 30th Street, N.W. (Exhibit 38) who claimed that the proposed addition would be out of scale with other homes in the area and would result in loss of light and enjoyment of their property. The Board also received a letter from the owners of the property located at 3516 30th Street, N.W. who raised questions and concerns regarding the impact of construction on the alley, the location of construction staging, and the loss of trees. (Exhibit 24.)

OP Report

OP reviewed the special exception application and prepared a written report recommending approval of the application. (Exhibit 28.) The OP report concluded that the proposed additions would not unduly affect light and air to neighboring properties. In addition, Paul Goldstein, the OP representative who prepared the report, testified at the public hearing in support of the application. Mr. Goldstein also testified that it was OP's conclusion that the proposed rear yard is conforming and that no rear yard relief is required.

The OP report also noted that the Historic Preservation Review Board Commission approved the project in concept at its October 27, 2011 Public Meeting and granted final approval to staff. (Exhibit 28.)

FINDINGS OF FACT

The Site and Surrounding Area

1. The subject property is a one-family, semi-detached dwelling located at 3011 Ordway Street,

N.W., (Square 2067, Lot 76) in the Cleveland Park neighborhood of Ward 3 and the Cleveland Park Historic District. The property is located in the R-2 Zone District and is irregularly shaped with a significant change in grade, approximately 24 feet, from the front of the property (along Ordway Street) to the rear of the property (and an adjacent alley to the north). The property is improved with a two-story, semi-detached dwelling with a cellar. (Exhibit 28.)

2. To the east of the property is an adjoining two-story, semi-detached dwelling. To the west is a two-story, semi-detached dwelling separated by a side yard. To the south (across Ordway Street) are one-family detached and semi-detached dwellings located in the R-1-B Zone District. Commercial uses focused on Connecticut Avenue are located approximately one and one-half blocks to the east of the property. (Exhibit 28.)

3. To the north of the property, across the 15-foot wide alley, are the rear yards of the properties located at 3512, 3514, and 3516 30th Street, N.W. As previously noted, the Finstons (granted party status in opposition to the application) own the property located at 3514 30th Street, N.W. (Exhibit 28.)

The Requested Relief

4. The Applicant proposes to construct a two-story dwelling plus rear cellar addition to the existing two-story semi-detached dwelling. The proposed addition requires the removal of a portion of the existing dwelling and elevated rear deck. The proposed addition is approximately 18 feet wide and 31 feet deep. In addition, a narrow two-level elevated porch extends an additional 14 feet in depth along the eastern property line. The height of the addition, measured from the dwelling's front finished grade to the addition's ceiling is 21 feet, six inches. The addition's roof will be below the pitched roof of the existing dwelling. The proposed addition will result in a measured rear yard of 26 feet, eight inches on the western edge of the rear lot line and 13 feet, nine inches on the eastern edge of the rear lot line, which creates a measured rear yard of 20 feet, two inches (which satisfies the matter-of-right requirements in the R-2 Zone District). (Exhibit 28.)

5. The addition would not include any windows along the shared party wall with the 3009 Ordway Street neighbor, thereby not adversely impacting the privacy of that property owner. (Exhibit 3.)

6. The property to the west (3013 Ordway Street) has a rear addition that extends approximately 20 feet past the proposed addition that is the subject of this application. The Finstons' property is located to the north and east of the subject property, shadows would only be cast late in the day and the proposed addition will not likely cast a shadow on the Finstons' property as any shadow that extends as far as the Finstons' property will likely be from the existing structure on the 3013 Ordway property. (T., p. 119-120.)

7. While the proposed addition would be visible from property owners to the north of the alley,

the proposed addition will replace an existing wood deck with an addition that does not overpower the existing house and retains elements of the house's materials. (Exhibit 3.)

8. Section 403 of the Zoning Regulations permits a maximum lot occupancy of 40% in the R-2 Zone District. The proposed addition will increase the lot occupancy from 38.6% to 43.5%, which is equal to 99 square feet of additional area. Therefore, the proposed addition will not comply with the lot occupancy requirements of § 403.

The Impact of the Addition

9. With his application, the Applicant submitted photos, elevation plans, sections, and site plans showing the relationship of the addition to adjacent buildings and views from the public ways including the adjacent alley to the north. (Exhibits 9, 25, 29, 30, and 31.)

10. The home of the Finstons is not immediately adjacent to the subject property. In order for the sun to affect the Finston's property, the shading would have to project at least 50 feet and the likelihood of this occurrence is small. Further, the home located at 3013 30th Street N.W., would intervene with any effect of light and air that would emanate from the Applicant's property.

11. The Board credits and adopts OP's finding that the proposed addition will not significantly decrease the amount of light and air received at neighboring properties due to the fact that the addition will be below the height of the dwelling's existing roof pitch, the addition will have an approximately seven-foot-wide side yard to the west and a conforming rear yard. (Exhibit 28.)

12. The Board agrees with the conclusion of the Applicant and the OP that the addition will not cause an undue impact to the privacy of use and enjoyment of neighboring properties. As noted above, the addition will have no windows along the shared property line and that property owner supports the application. The windows facing west have been reduced in size and are separated from the adjacent property by a side yard of approximately seven feet. The Board also finds that the neighbors to the north of the adjacent alley also will not be unduly impacted in the use and enjoyment of their homes due to the provisions of the required rear yard and the 15 foot-wide public alley.

13. The Board credits and adopts OP's finding that, as viewed from the street, alley, or public way, the proposed addition will not visually intrude upon the character or scale and pattern of homes along the Ordway Street frontage. The Board notes that the amount of relief requested by the Applicant from the lot occupancy requirement is quite small, approximately 99 square feet, and the impact of this additional lot coverage will not unduly impact or affect the use and enjoyment of neighboring properties, including the Finston's property.

CONCLUSIONS OF LAW

The Special Exception

The applicant is seeking a special exception pursuant to 11 DCMR §§ 223 and 3104.1 to construct an addition to a one-family dwelling in an R-2 District, where the addition will not comply with the lot occupancy requirements of § 403. As stated in § 3104.1 of the Zoning Regulations (Title 11 DCMR), the Board "is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) … to grant special exceptions, as provided in this title, where, in the judgment of the Board, the special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject in each case to the special conditions specified in this title." In this case, the "special conditions" are those specified in §§ 223.2 through 223.5.

As noted by the Court of Appeals:

> In evaluating requests for special exceptions, the BZA is limited to a determination of whether the applicant meets the requirements of the exception sought. "The applicant has the burden of showing that the proposal complies with the regulation; but once that showing has been made, the Board ordinarily must grant the application." *National Cathedral Neighborhood Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 753 A.2d 984, 986 n. 1 (D.C. 2000) (quoting *French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1032-33 (D.C. 1995)).

Georgetown Residents Alliance v. District of Columbia Bd. of Zoning Adjustment, 802, A.2d 359, 363 (D.C. 2002)

In this case, the Board concludes that the Applicant has satisfied the two general tests stated in § 3104.1 and the specific conditions contained in § 223.

As to the general tests, the Board concludes that the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The proposed addition will not change the residential use of the dwelling and will be in harmony with the existing residential neighborhood. With respect to whether the special exception will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, the Board concludes that this standard is satisfied if the specific conditions of § 223 are met. These will be discussed in the section below entitled "The 'special conditions' for an addition under § 223.1."

The "special conditions" for an addition under § 223.1. Under § 223.1 of the Zoning Regulations, an addition to a one-family dwelling shall be permitted even though it does not comply with applicable area requirements, such as the lot occupancy and rear yard requirements

if approved by the Board as a special exception, subject to its not having a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

223.2(a) The light and air available to neighboring properties shall not be unduly affected. Light and air to neighboring properties will not be unduly affected. As stated in Finding of Fact No. 10, the proposed addition will not significantly affect light and air to the adjacent 3009 and 3013 Ordway Street properties. Similarly, the proposed addition will not unduly affect the light and air that is provided to the properties located across the alley to the north, including the property owned by the Finstons.

223.2(b). The privacy of use and enjoyment of neighboring properties shall not be unduly compromised. As discussed in Finding of Fact No. 11, the privacy of use and enjoyment of neighboring properties will not be unduly compromised by the proposed addition.

223.2(c). The addition, together with the original building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale and pattern of houses along the subject street frontage. As noted in Finding of Fact No. 12, the proposed addition will cause no visual intrusion as viewed from Ordway Street or from the properties north of the adjacent alley.

223.2(d) In demonstrating compliance with paragraphs (a), (b), and (c) of this subsection, the applicant shall use graphical representations such as plans, photographs, or elevations and section drawings sufficient to represent the relationship of the proposed addition to adjacent buildings and views from public ways. The Applicant provided appropriate materials for the Board to understand the relationship between the proposed addition and the surrounding properties.

223.3 The lot occupancy of the dwelling or flat, together with the addition, shall not exceed fifty percent (50%) in the R-1 and R-2 Districts or seventy percent (70%) in the R-3, R-4, and R-5 Districts. The subject property is in the R-2 District. The proposed addition will increase the lot occupancy from 36.8% to 43.5%. Therefore, this condition will be met.

223.4 The Board may require special treatment in the way of design screening, exterior or interior lighting, building materials or other features for the protection of adjacent and nearby properties. The Board concludes that no special treatment is required in order to screen the proposed addition. The Board notes that the Historic Preservation Review Board has granted conceptual design approval to this project.

223.5 This section may not be used to permit the introduction or expansion of a nonconforming use. The proposed addition will not introduce or expand a nonconforming use.

The Board is required under § 13 of the Advisory Neighborhood Commission Act of 1975,

effective October 10, 1975 (D.C. Law 1-21), as amended; D.C. Official Code § 1-9.10(d)(3)(A)), to give "great weight" to the issues and concerns raised in the affected ANC's recommendations. For the reasons stated in this Decision and Order, the Board finds the ANC's advice to be persuasive.

In reviewing a special exception application, the Board is also required under D.C. Official Code § 6-623.04(2001) to give "great weight" to OP recommendations. For the reasons stated in this Decision and Order, the Board finds OP's advice to be persuasive.

The Board acknowledges the arguments made by Ms. Finston and the owners of the properties located at 3512 and 3516 30th Street, N.W. regarding the potential impact that the addition will have on their homes. However, the Board does not find that the potential impacts of the proposed addition on these property owners rises to the level of requiring the Board to deny this special exception request. The Board finds that the Applicant has satisfied all of the special exception requirements necessary to grant approval of this application.

For the reasons stated above, the Board concludes that the applicant has satisfied the burden of proof with respect to the application for a special exception under § 223 to allow the construction of an addition that does not comply with the lot occupancy in an R-2 District.

Therefore, for the reasons stated above, the application for a special exception is **GRANTED, SUBJECT** to the approved plans, as shown on Exhibit 25.

VOTE: 5-0-0 (Meridith H. Moldenhauer, Nicole C. Sorg, Lloyd J. Jordan, Jeffrey L. Hinkle, and Marcie I. Cohen to Grant)

Vote taken on February 7, 2012

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: July 5, 2012

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS

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PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18473 of Robert F. McCulloch, pursuant to 11 DCMR §§ 3104 and 2003, for a special exception to continue allowing the use of a pick-up dry cleaner/Laundromat in the R-4 District at premises 300 11th Street, S.E (Square 990s, Lot 812) ("the Subject Property").

HEARING DATE: December 18, 2012
DECISION DATE: December 18, 2012

DECISION AND ORDER

Zoning Administrator Letter

By letter dated June 25, 2012, the Zoning Administrator advised Mr. Han Young Kwak, a tenant of the Applicant, that his application for a certificate of occupancy to use the property as a "Pick up Dry cleaners/Laundromat" was disapproved because the use was not permitted in an R-4 Zone District. Accordingly the Applicant, on August 30, 2012, applied for a variance with the Board of Zoning Adjustment ("Board" or "BZA"). In fact, the applied for use had been permitted by prior special exceptions granted since 1988 pursuant to 11 DCMR § 2003, but the most recent approval was due to expire. The Zoning Administrator therefore modified his instructions and the Applicant amended his application to request renewal of the special exception. The advertised caption has been changed to reflect the actual relief sought.

History of the Use

The building on the Subject Property was constructed in 1908 and used ever since for commercial purposes. A coin-operated laundry was lawfully established prior to the change in the Zoning Regulations that mapped the property into a zone where that use was not permitted. As of the effective date of that amendment, the Laundromat became a nonconforming use that could lawfully continue unless and until the use was abandoned. (See 11 DCMR § 2005.)

In 1988 the Applicant sought permission to add a dry cleaning pick up service. The Board accepted the application as coming within the purview of § 2003, which permits a nonconforming use to be changed to a use that is permitted as a matter of right in the most restrictive district in which the existing nonconforming use is permitted as a matter of right. Because the existing laundromat use had been adversely impacting the neighborhood, the Board imposed seven conditions to its approval, including a term limit of two years. (See Order No. 14749.) That approval was renewed without opposition in 1990 by Order No. 15321, which included the same seven conditions, except that the term was increased to seven years. A similar non-opposed renewal occurred through the Board's issuance of Order No. 16266. Again the Board included the seven conditions of approval, but increased the term to 17 years.

Request for Approval Without Term Limit

In a statement filed in support of the Application, the Applicant requested that the Board not impose a term limit. (Exhibit No. 3.) The Applicant contended that no evidence exists that the business as operated has adversely impacted the neighborhood and therefore the "business should not be burdened with the insecurity of a temporary exception and with the time-consuming and costly process of periodic renewal." The Applicant also submitted a petition with over 500 signatures requesting the Board to "permanently extend the special exception." (Exhibit No. 4.)

Notice of Application and Notice of Hearing

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register*, and by mail to the Advisory Neighborhood Commission ("ANC") 6B, and to owners of property within 200 feet of the site. The Applicant posted placards at the property regarding the application and public hearing and submitted an affidavit to the Board to this effect. (Exhibit 23.) The site of this application is located within the jurisdiction of ANC 6B, which is automatically a party to this application.

Reports

ANC 6B

The ANC submitted a report indicating that at a regularly called, properly noticed public meeting held December 11, 2012, and with a quorum present, it voted 8-1-1 to support a grant of the appropriate zoning relief, whether it is a variance or special exception, for a 15 year term. (Exhibit 25.) The ANC report made its support contingent on the continuation of the six other conditions imposed by the Board in Order No. 16266.

The Office of Planning ("OP")

OP also submitted a report in support of the continued use of the property as a coin-operated laundry and dry cleaner subject to the conditions set forth in Order 16266 excluding an expiration date. (Exhibit 24.) OP stated in its report that this special exception was granted in the past as a neighborhood facility with conditions "to protect the value, utilization or enjoyment of property in the neighborhood." Since there were no interruptions or changes proposed to the use, OP recommended approval of the special use with the same substantive conditions but no term limitation. OP also suggested some revisions to the phrasing of the six substantive provisions.

The OP representative at the Board's hearing, Mr. Stephen Cochran, further elaborated upon the basis for the recommendation of approval without a term. Mr. Cochran noted the use has been in place "for 24 years without any letters of complaint" and in fact enjoys broad community

support, as evidenced by the over 500 signatories to the petition in support. From this Mr. Cochran concluded that the Applicant has proved the use to be a "good neighbor" that can remain in place provided it operates under the remaining six conditions.

Approval for Continued Use as a Pick-Up Dry Cleaner/Laundromat

As directed by § 3119.2 of the Zoning Regulations, the Board required the Applicant to satisfy the burden of proving the general conditions for a special exception under § 3104.1 and the specific conditions for § 2003. No parties appeared at the public hearing in opposition to this application or otherwise requested to participate as a party in this proceeding. Accordingly, as set forth in the provisions and conditions below, a decision by the Board to grant this application would not be adverse to any party.

The ANC Issues and Concerns

The Board is required under § 3 of the Comprehensive Advisory Neighborhood Commissions Reform Act of 2000, effective June 27, 2000 (D.C. Law 13-135, D.C. Code § 1-309.10(d)(3)(A), to give "great weight" to the issues and concerns raised by the affected ANC. To give great weight the Board must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice under the circumstances, and make specific findings and conclusions with respect to each of the ANC's issues and concerns. As stated, the ANC recommended that the Board grant the zoning relief requested for a 15 year term, subject to the six substantive conditions previous imposed in Board Order No. 16266.

Although the Board agrees with the ANC that adherence to the six substantive conditions should continue to be required, the Board is not persuaded that a time limit of the approval is needed.

A term limit serves three different functions.

First, a term limit provides a solution to the uncertainly in granting a first time special exception. See, e.g., *Woodbury v. Zoning Board of Review of City of Warwick*, 82 A.2d 164, 167 (R.I. 1951). (A two-year term imposed, at the end of which, "the board would be in a position, according to the facts then appearing, either to renew the exception if requested, or to permit the property to again be used as a tourist home.").

Second, a term limit "insures that in the event conditions have changed at the expiration of the period prescribed the board will have the opportunity to reappraise the proposal by the applicant in the light of the then existing facts and circumstances." *Monaco v. D.C. Bd. of Zoning Adjustment*, 407 A.2d 1091, 1097-1098 (D.C. 1979), quoting, *In re Goodwin*, Sup. Ct. N.Y., N.Y.L.J., July 5, 1962, as quoted in 3 A. Rathkopf, *The Law of Zoning and Planning* § 38.06[2] (4th ed. 1979).

Third, a term limit is useful in situations where the applicant did not comply with conditions set forth in prior orders. Thus, in *Application No. 17875 of BB & H Joint Venture, on behalf of Potomac Foods Company*, the Applicant proposed a 10-year term for continued operation of an accessory parking lot serving a fast food establishment. The affected ANC objected to the term's length citing noncompliance with the prior conditions and the resulting adverse impact on the neighborhood. Because the Board found "the ANC's concerns to be legitimate" it adopted "a three year term instead of the ten year term requested."

In the case at hand, there is no uncertainty about any potential adverse affects or changes to the neighborhood and no history of non-compliance with conditions set on the use. Instead, the use has operated in compliance with all the conditions set forth in previous orders and enjoys the extensive support of local residents. As noted by OP, the Applicant has received not one letter of complaint since the Board first approved the addition of the dry cleaning use. In light of this evidence, the Board agrees with the Applicant that there is no basis to continue the uncertainty and additional costs associated with a term limit.

The Board is cognizant of concerns expressed over the potential adverse consequences from a change in ownership, but such personal considerations are irrelevant to the review of a special exception application. The Board is confident that the conditions in place will safeguard the neighborhood against any adverse impacts, and that any noncompliance by any future owner can be effectively addressed through enforcement actions.

The OP Recommendations

The Board is also required under D.C Official Code §6-623.04 (2001) to give "great weight" to OP recommendations. In this case, the Board concurs with OP's recommendation to approve the special exception application with conditions set forth in Order 16266 except for an expiration date. The Board agrees with OP's assessment that the laundromat and dry cleaning establishment is a good neighbor and that the six conditions of approval will ensure that will remain the case.

CONCLUSIONS

Based upon the record before the Board and having given great weight to the ANC and OP reports, the Board concludes that the Applicant has met the burden of proof pursuant to §§ 3104.1 and 2003.5. In conclusion, the Board found that the requested relief could be granted, subject to the conditions set forth below, as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concluded that, subject to the conditions set forth below, the requested relief will not tend to adversely affect the use of neighboring property in accordance with the Zoning Regulations and Map.

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It is hereby **ORDERED** that the application is **GRANTED** to allow zoning relief for a special exception to allow the continued use of a pick-up dry cleaner/Laundromat in the R-4 District at premises 300 11th Street, S.E. (Square 990s, Lot 812), **SUBJECT** to the following **CONDITIONS**:

1. The hours of operation shall be from 7:00 a.m. to 9:00 p.m.;

2. An attendant shall be present on the premises at all times that the facility is in operation;

3. The coin laundry and the dry cleaning drop off and pick up facilities shall be operated as one unified facility in a visually unimpeded space;

4. No flammable dry cleaning materials, or materials with toxic fumes or noxious odors shall be used or stored on site;

5. The Applicant shall maintain the interior and exterior in a neat and clean condition; and

6. The site shall be monitored inside and outside at all times to prevent loitering or the congregating of non-customers.

VOTE: **3-0-1** (Lloyd J. Jordan, Peter G. May, Jeffrey L. Hinkle, voting to approve; Nicole C. Sorg not present, not voting; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this Order.

FINAL DATE OF ORDER: May 17, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING

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ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18521 of 819 6th St LLC, pursuant to 11 DCMR § 3103.2, for a variance from the lot occupancy requirements under § 403, and a variance from the rear yard requirements under § 404, to allow the construction of an apartment building in the DD/R-5-E District at premises 819 6th Street, N.W. (Square 485, Lot 15).

HEARING DATE: May 7, 2013
DECISION DATE: May 7, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case is self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 2C, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 2C, which is automatically a party to this application. At the hearing a letter from ANC 2C dated May 1, 2013[1] was submitted. The ANC's letter indicated that the application came before the ANC on April 24, 2013, at a duly noticed, special public meeting at which a quorum was present. The ANC voted unanimously (3:0) to support the application. (Exhibit 31.)

The Office of Planning ("OP") submitted a timely report dated April 30, 2013 in support of the application for variance relief. (Exhibit 29.) The District Department of Transportation ("DDOT") submitted a report dated March 18, 2013 of "no objection." (Exhibit 26.) A report from the Historic Preservation Office ("HPO") was submitted for the record. The HPO staff report indicated that the project was "compatible" in its recommendations to the Historic Preservation Review Board ("HPRB"). At the BZA hearing, the Applicant's attorney indicated that the HPRB unanimously approved the project "in concept" at its meeting held two weeks before the BZA hearing.

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary under § 3103.2, to establish the case for variances from the lot occupancy requirements under § 403 and the rear yard requirements under § 404. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

[1] The Board waived the timeliness rules and accepted the ANC's letter into the record at the hearing.

Based upon the record before the Board, and having given great weight to the ANC and OP reports filed in this case, the Board concludes that the Applicant has met the burden of proving under 11 DCMR § 3103.2 that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED REVISED PLANS AT EXHIBIT 28C.**

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen, and Michael G. Turnbull to Approve; Jeffrey L. Hinkle, not participating or voting, and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 15, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION

FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18532 of Michelle B. Hassine, pursuant to 11 DCMR § 3104.1, for a special exception to allow an accessory apartment under section 202.10, in the R-2 District at premises 2919 39th Street, N.W. (Square 1814, Lot 76).

HEARING DATE: May 7, 2013
DECISION DATE: May 7, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum from the Zoning Administrator (ZA) certifying the required relief. The ZA granted flexibility from the lot area requirements under section 407, eliminating the need for variance relief.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3C, which is automatically a party to this application. ANC 3C submitted a letter in support of the application. The Department of Transportation submitted a report of no objection to the application. The Office of Planning ("OP") submitted a report and testified at the hearing in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under subsection 202.10. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 202.10, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 8– Plans) be **GRANTED.**

VOTE: **3-0-2** (Lloyd J. Jordan, Michael G. Turnbull and S. Kathryn Allen to APPROVE. The NCPC member not present, not voting and the third mayoral member vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 7, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18533 of Perseus 1827 Adams Mill Investments LLC, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the number of required parking spaces under § 2101.1, a variance from the rear yard requirement under § 774, and a special exception from the roof structure requirements under § 411.11, to allow the construction of a mixed-use retail, service and residential building in the C-2-A District at premises 1827 Adams Mill Road, N.W. (Square 2580, Lot 853).[1]

HEARING DATES: April 19, 2013 and May 7, 2013
DECISION DATE: May 7, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board of Zoning Adjustment ("Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 1C, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 1C, which is automatically a party to this application. ANC 1C submitted a report in support of the application, with conditions. The Office of Planning ("OP") submitted a report in support of the application.

The District Department of Transportation submitted a report with a detailed analysis of the Applicant's project that was supportive of the application, with conditions.

Variance Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case, pursuant to § 3103.2, for area variances from § 774 and § 2101.1. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

[1] The initial application did not include rear yard relief under § 774, but included relief under § 2116.4(a). However, according to the Applicant, the Zoning Administrator has determined that rear yard relief under § 774 is required, and that relief under § 2116.4(a) is not required. Thus, the Board allowed the Applicant to amend the application to include variance relief under § 774, and to withdraw the request for relief originally sought under § 2116.4(a). The caption reflects those changes.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that in seeking variances from §§ 774 and 2101.1, the Applicant has met the burden of proving under 11 DCMR § 3103.2, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty for the owner in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief:

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for special exception relief under § 411.11. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports filed in this case, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 411.11, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application, pursuant to Exhibit 26 - Plans, be **GRANTED SUBJECT to the following CONDITIONS:**

1. The Applicant shall provide either a $75.00 SmartTrip Card, or $75.00 toward a one-year membership in either a Bikeshare or Carshare service to each new resident.

2. The Applicant shall coordinate with a car-sharing service to determine the feasibility of locating the car-sharing vehicles in nearby public space, subject to a final determination by DDOT and the car sharing company.

3. The parking garage shall include at least 20 bicycle parking spaces. Additional bicycle parking racks shall be located in public space adjacent to the site subject to DDOT review and approval.

4. The Applicant shall not bundle the cost of purchasing or renting parking spaces with the cost of purchasing or renting a residential unit.

5. The Applicant shall provide each new resident of the building the opportunity to purchase or rent one of the available residential parking spaces before any resident of the building is given the opportunity to rent or purchase a second parking space.

6. The parking plan shall be in accordance with the parking plan submitted in this application. If DDOT determines that the below-grade portion of Lot 521 beyond the Building Restriction Line must be taken for a public purpose, the parking spaces in the garage may be reconfigured, provided that there are no less than 19 parking spaces.

7. The Applicant shall determine whether it is feasible to offer one of the commercial parking spaces in the garage to a car-sharing service.

8. The Applicant shall determine whether it is feasible to allow non-residents of the building to lease available residential parking spaces in the garage.

9. The Applicant shall implement the Transportation Demand Management Plan and the Loading Management Plan included in the Wells & Associates report.

10. The Applicant shall include in all initial sales agreements for residential units in the building a provision that residents of the building are not permitted to apply for District of Columbia Residential Permit Parking stickers. The Applicant shall require that all subsequent sales agreements for residential units must contain the same prohibition language.

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen, and Michael G. Turnbull to Grant; Jeffrey L. Hinkle not present, not voting; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 17, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS

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PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18546 of Manny & Olga's Pizza, pursuant to 11 DCMR § 3104.1, for a special exception to allow a fast food establishment under § 1320.4(c)(3), in the HS-A/C-3-A District at premises 1409 H Street, N.E. (Square 1049, Lot 25).[1]

HEARING DATE: May 7, 2013
DECISION DATE: May 7, 2013

SUMMARY ORDER

REVIEW BY THE ZONING ADMINISTRATOR

The application was accompanied by a memorandum, dated February 5, 2013, from the Zoning Administrator, which stated that Board of Zoning Adjustment ("Board" or "BZA") approval is needed for a special exception[2] to use the subject premises as a "Fast food establishment", pursuant to 11 DCMR § 3104.1. (Exhibit 5.)

The Board of Zoning Adjustment (the "Board") provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to the Applicant, Advisory Neighborhood Commission ("ANC") 6A, and to all owners of property within 200 feet of the property that is the subject to this application. The subject property is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a report dated April 17, 2013, which indicated that the application came before the ANC on April 11, 2013, at a duly noticed, regularly scheduled monthly public meeting at which a quorum was present. At the meeting the ANC voted unanimously (8:0) to support the application, noting that the Applicant had committed to the ANC that it would keep trash dumpsters and cans entirely on their property, join a business improvement district for the H Street corridor if one is created, keep the public space in front of the property clean, and prevent the Applicant's vehicles from double-parking. (Exhibit 27.)

The Office of Planning ("OP") submitted a timely report dated April 23, 2013, in support of the application subject to its recommendations for four conditions. (Exhibit 30.) The District Department of Transportation ("DDOT") submitted a report of "no objection" subject to conditions. (Exhibit 25.)

[1] On its own motion, the Board amended the application to allow a fast food establishment under § 1320.4(c)(3) with the concurrence of the Office of Planning ("OP") which had cited § 733 in its report. The Board also had discussed whether special exception relief from § 743.4 was required, but determined that relief under § 1320.4(c)(3) was more appropriate. The caption has been changed accordingly.

[2] The Zoning Administrator mistakenly had cited § 1302.4, but as noted herein the application was amended to bring it under the correct provision of 11 DCMR § 1320.4(c)(3).

As directed by 11 DCMR § 3119.2, the Board required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a special exception under §§ 3104.1 and 1320.4(c)(3) from the strict application of the regulations to allow a fast food establishment. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 1320.4(c)(3), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirements of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that the application is hereby **GRANTED, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 11 AND THE FOLLOWING CONDITIONS:**

1. All loading for the fast food establishment shall occur at the rear of the building, with delivery vehicles backing into the alley, and pulling head-out onto 14th Street, N.E.

2. Garbage pick-up shall occur at the rear of the building from the public alley.

3. The Applicant shall store all refuse within a securely closed metal mini-dumpster, or a group of securely closed metal 95-gallon waste receptacles. Refuse containers shall be behind a chain link fence with opaque infill or a wooden fence and remain within the Applicant's lot at all times other than one hour before and one hour after the five-day-a-week refuse pickup that the Applicant shall schedule with a private service.

4. Business operations of the site shall not block vehicular access to any portion of the public alley.

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen, and Michael G. Turnbull to Approve; Jeffrey L. Hinkle, not participating or voting, one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 15, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR § 3205, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE

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OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18548 of Marc Fisher and Jody Goodman, pursuant to 11 DCMR § 3104.1, for a special exception under section 223, to allow a rear addition to an existing one-family detached dwelling not meeting the rear yard (section 404) requirements in the R-1-B District at premises 3907 Harrison Street, N.W. (Square 1754, Lot 2).

HEARING DATE: May 7, 2013
DECISION DATE: May 7, 2013

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 3E, and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3E, which is automatically a party to this application. ANC 3E submitted a letter in support of the application. The Department of Transportation submitted a report of no objection to the application. The Office of Planning ("OP") submitted a report and testified at the hearing in support of the application. The Board received a petition in support of the application.

As directed by 11 DCMR § 3119.2, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to § 3104.1, for a special exception under subsection 223. No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR §§ 3104.1 and 223, that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR § 3100.5, the Board has determined to waive the requirement of 11 DCMR § 3125.3, that the order of the Board be accompanied by findings of fact and conclusions of law. It is therefore **ORDERED** that this application (pursuant to Exhibit 8 – Plans) be **GRANTED.**

VOTE: **3-0-2** (Lloyd J. Jordan, S. Kathryn Allen and Michael G. Turnbull to APPROVE. The NCPC member not present, not voting and the third mayoral member vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
The majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: May 7, 2013

PURSUANT TO 11 DCMR § 3125.9, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO § 3125.6.

PURSUANT TO 11 DCMR § 3130, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 AT LEAST 30 DAYS PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THAT SUCH REQUEST IS GRANTED. NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR § 3125, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 05-28K
(CI GD Parkside 7, LLC – First-Stage PUD Modification @ Square 5041, Lot 808)
May 16, 2013

THIS CASE IS OF INTEREST TO ANC 7D

On May 13, 2013, the Office of Zoning received an application from CI GD Parkside 7, LLC (the "Applicant") for approval of a modification to a previously approved planned unit development ("PUD") for the above-referenced property.

The property that is the subject of this application consists of Lot 808 in Square 5041 in Northeast Washington, D.C. (Ward 7), which is located on property bounded by Foote Street, N.E. (west), Parkside Place, N.E., (north), Franklin Delano Roosevelt Place, N.E. (east), and Kenilworth Terrace, N.E. (south).

The previously approved PUD consists of approximately 15.5 acres of land and will consist of a series of residential, mixed-use, commercial, and retail buildings. The Applicant is proposing changes to a multi-family residential building that is being proposed for a second-stage PUD (see companion Z.C. Case No. 05-28J), including an increase in the number of units from the 140-160 units to 186 units; the addition of parking to the building (65 spaces), an increase in gross floor area from 183,000 square feet to 185,356 square feet, and a reduction in height from a maximum of 90 feet to 81 feet.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://.dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 12-09
Z.C. Case No. 12-09
NJA Associates, LLC and St. Matthews Baptist Church
(Capitol Gateway Overlay Review @ Square 743-N, Lots 79 & 834)
February 11, 2013

Pursuant to notice, the Zoning Commission of the District of Columbia (the "Commission") held a public hearing on October 25, 2012, to consider an application filed by NJA Associates, LLC ("NJA") and St. Matthews Baptist Church (collectively referred to as the "Applicant") for review and approval of a proposed residential building at 1111 New Jersey Avenue, S.E. pursuant to §§ 1604 and 1610 of the Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations ("DCMR"). The subject property includes Lots 79 and 834 in Square 743-N. In addition, the Applicant sought special exception relief to allow multiple roof structures with one structure not meeting the setback requirements under § 411.11, which is made applicable to Commercial zones by § 770.6 (a).[1] The public hearing was conducted in accordance with the provisions of 11 DCMR § 3022. For the reasons stated below, the Commission hereby approves the application.

FINDINGS OF FACT

1. On July 6, 2012, the Applicant filed an application for review and approval of a proposed residential building along M Street, S.E. pursuant to the Capitol Gateway Overlay District provisions for property located at 1111 New Jersey Avenue, S.E. The subject property includes Lots 79 and 834 in Square 743-N and covers approximately 30,360 square feet of land area. Square 743-N is bounded by L Street on the north, New Jersey Avenue on the east, M Street on the south, and 1st Street on the west in southeast Washington, D.C. The subject property occupies most of the eastern half of Square 743-N and has approximately 301 linear feet of frontage along New Jersey Avenue, S.E., 112 feet of frontage along M Street, S.E., and 69 feet of frontage along L Street, S.E. The east entrance of the Metrorail Navy Yard Station is located at the intersection of New Jersey Avenue and M Street on the southeast corner of the site. The subject property is located within the C-3-C Zone District and also falls within the Capitol South Transferable Development Rights ("TDR") Receiving Zone. Within this area, as per 11 DCMR § 1709.21, owners of properties that can achieve 130 feet in height pursuant to the Height Act are able to purchase TDRs To permit a maximum zoning height of up to 130 feet and a floor area ratio (“FAR”) of up to 10 FAR. The southern portion of the site is located within the Capitol Gateway ("CG") Overlay District. The CG Overlay extends into the subject property for a depth of approximately 150 feet from M Street.

2. The purposes and objectives of the CG Overlay District, as enumerated in § 1600.2, that are relevant to the proposed development include:

[1] In its post-hearing submission, the Applicant revised its roof plan to include two roof structures both of which measure 18'-6", thus eliminating the need for relief for enclosure of walls of unequal height.

- Assuring development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan and recommended by planning studies of the area;

- Encouraging a variety of support and visitor-related uses, such as retail, service, entertainment, cultural and hotel or inn uses;

- Requiring suitable ground-level retail and service uses and adequate sidewalk width along M Street, S.E., near the Navy Yard Metrorail Station; and

- Provide for the development of Half Street, S.E. as an active pedestrian-oriented street with active ground floor uses and appropriate setbacks from the street facade to ensure adequate light and air, and a pedestrian scale.

3. The Applicant filed a prehearing submission in support of the application on October 5, 2012 (the "Prehearing Submission"). (Exhibit ["Ex.] 11.) The Prehearing Submission included resumes of the expert witnesses, a conceptual LEED checklist, and updated architectural plans and elevations.

4. After proper notice, the Commission held a hearing on the application on October 25, 2012. Parties to the case included the Applicant and Advisory Neighborhood Commission ("ANC") 6D, the ANC within which the subject property is located.

5. At its duly noticed meeting on October 15, 2012, ANC 6D voted 6-0-1 to oppose the proposed project. In its letter to the Commission, dated October 25, 2012, the ANC stated that its opposition to the project was based on several reasons, including: the development team was not seeking LEED Certification; the design of the retail level of the building; the design of the building's New Jersey Avenue and L Street facades and alley elevations; and the landscape and rooftop designs. This ANC report, the Applicant's response, and the Commission's findings related to the ANC's issues and concerns are discussed more fully below.

6. Expert witnesses appearing on behalf of the Applicant included Frederick Hammann of WDG Architecture (architecture & design), Christopher L. Kabatt of Wells & Associates, Inc. (transportation planning and analysis), Trini M. Rodriguez of Parker Rodriguez (landscape architecture), and Steven E. Sher of Holland & Knight, LLP (land use and zoning). At the conclusion of the hearing, the record was closed except for a post-hearing submission from the Applicant that attached the revised plans presented at the hearing, and a response thereto by the ANC.

7. On November 26, 2012, the Applicant submitted its first post-hearing submission which included Revised Architectural Plans and Elevations. The revised plans included

(1) more detail on the roof plan regarding the landscaping, the areas of relief, and sections of the roof; (2) a revised retail design at the corner of M Street and New Jersey Avenue; (3) more detail regarding lighting and retail signage; (4) an updated design of the courtyards adjacent to the alley and on the second level of the building; and (5) revised cladding materials for the roof structures. The submission also included a memorandum indicating that the amount of parking provided for the project is consistent with other developments near the proposed project, as well as a copy of the Applicant's written response to each of the concerns raised by ANC 6D in its October 25, 2012 report.

8. On December 3, 2012, ANC 6D submitted a second report. The report stated the ANC continued to oppose the project, and noted a number of issues and concerns with the Project. This ANC report, the Applicant's response, and the Commission's findings related to the ANC's issues and concerns are discussed more fully below.

9. At its public meeting on December 10, 2012, the Commission considered the additional documents filed by the Applicant and the ANC.

10. The Commission expressed concern over the portion of the north penthouse structure that enclosed space intended for indoor communal recreation use. The Applicant stated that the enclosure should be permitted pursuant to § 411.1, which permits penthouses "used for recreational uses accessory to communal rooftop recreation space." The Commission interprets § 411.1 as allowing penthouses used for communal recreation where the uses are accessory to the outdoor rooftop uses, but not allowing penthouses used for indoor communal recreation that is independent of any outdoor rooftop use. The plans showed space in the north penthouse that was to be used for indoor communal recreation that was independent of the outdoor rooftop space.

11. The Commission directed the Office of Planning ("OP") to present the revised plans the Applicant submitted with its November 26, 2012 filing to the Zoning Administrator so that the Zoning Administrator could review the plans and advise whether the roof structure complied with § 411.1 of the Zoning Regulations, and for OP to report the results to the Commission. The Commission directed the Applicant to submit information about whether there are other projects with similar rooftop uses approved by the District. The Commission also requested that the Applicant respond to ANC's request that it preserve a particular large elm tree located in the tree box strip on New Jersey Avenue.

12. On January 4, 2013, OP submitted a report describing the results of its meeting with the Zoning Administrator, who concluded that the roof structure would not comply with § 411.1 of the Zoning Regulations and therefore would not be approved.

13. On January 7, 2013, the Applicant submitted a second post-hearing submission that contained additional information about the proposed roof structure, requested that the Commission approve the application with the flexibility to allow the Applicant to modify the design to comply with the Height Act and § 411.1 of the Zoning Regulations, and responded to the ANC's request to preserve the elm tree.

14. At a public meeting on January 14, 2013, the Commission considered the additional documents. The Commission concluded that the roof top design was not acceptable because the north penthouse structure contained enclosed space intended for indoor communal recreation use not permitted by § 411.1 of the Regulations, and deferred taking action to give the Applicant an opportunity to submit a revised design that would comply with the applicable Zoning Regulations.

15. On January 22, 2012 the Applicant submitted a third post-hearing submission. (Ex. 27.) The submission attached revised roof plans, and elevation drawings. The submission also attached correspondence indicating that Applicant had presented the revised plans to the Zoning Administrator, and that the Zoning Administrator concluded that they complied with the applicable Zoning Regulations.

16. At a public meeting on February 11, 2013, the Commission considered the Applicant's final submission, and took proposed and final action to approve the application. The Commission determined that the project satisfies all applicable requirements of the CG Overlay District and meets the requirements for the requested special exception relief.

Project Overview

17. The Applicant intends to construct a 13-story residential building on the subject property. The proposed building will have an overall density of up to 10.0 FAR and will rise to a maximum height of 130 feet. As noted, the achievement of this density and height will require the Applicant to purchase the requisite amount of transferrable development rights. The building will contain 312 residential units and approximately 12,889 square feet of gross floor area devoted to retail and service uses. The building will also include a four-level underground parking garage that provides a total of 172 parking spaces and 104 interior bicycle parking spaces and 20 bicycle parking spaces in public space. The proposed development will fully satisfy the requirements of Chapter 21 of the Zoning Regulations. The parking garage is presently designed to be accessed from L Street.

18. The proposed building will also include the required loading berth, service/delivery space, and loading platform. These facilities will comply with all applicable requirements of Chapter 22 of the Zoning Regulations. The loading area is presently designed to be accessed from the adjacent north-south public alley along the west side of the property.

Description of the Surrounding Area

19. The subject property is located on the west side of New Jersey Avenue between L and M Streets, in Southeast Washington, D.C. The majority of the site is a surface parking lot. The entrance to the Navy Yard - Ballpark Metrorail Station is at the southeast corner of the site. St. Matthews Baptist Church is at the southwest corner of New Jersey Avenue and L Street. A 12-story office building is across the alley to the west at 100 M Street, S.E., at the northeast corner of 1st and M Streets. A 13-story residential building is across the alley to the west at 1100 First Street, S.E., at the southeast corner of 1st and L Streets. A two-story commercial building is located to the north across L Street.

20. Although much of the surrounding property is currently vacant or underutilized, the area is quickly becoming a magnet for both public and private investment due to its proximity to the Anacostia Waterfront, the Southeast Federal Center, and the Washington Nationals Baseball Stadium.

21. Much of the surrounding property is zoned C-3-C to the north and west and CR to the south. The areas to the west, north, and east of the subject property are designated for high-density commercial use, while the property across M Street to the south is designated for mixed-use development including high-density commercial and high-density residential land uses. The site is located northwest of the U.S. Department of Transportation headquarters and Southeast Federal Center and west of the Capper/Carrollsburg planned unit development ("PUD") and the proposed Canal Blocks Park.

Capitol Gateway Overlay District Design Requirements

22. The proposed project is subject to the requirements of § 1604 of the Zoning Regulations because the new building will have frontage on M Street, S.E. within the CG Overlay District. The project is also subject to the requirements of § 1610 because the new building will be located on a lot that abuts M Street, S.E. within the CG Overlay District.
23. The proposed project will not involve the construction of any new driveways or curb cuts from M Street. The below-grade parking garage will be accessed from L Street, while the building's loading facilities will be reached from the north-south public alley dividing the square. (§ 1604.2.)

24. The proposed building will be set back approximately 27'-4" from the curb along M Street. (§ 1604.3.)

25. The proposed building will provide approximately 12,889 square feet of preferred retail uses on the ground floor. This represents approximately 42% of the gross floor area on

the building's ground floor. With the exception of areas devoted to building entrances, these preferred uses will occupy 100% of the new building's frontage along M Street. (§ 1604.4.)

26. On the ground floor, at least 58% percent of the building's streetwall along M Street will be covered by commercial entrances and display windows with clear or low-emissivity glass. (§ 1604.6.)

27. All portions of the proposed building within the CG Overlay devoted to ground-floor retail uses will have a clear floor-to-ceiling height of no less than 14 feet. (§ 1604.7.)

28. The height, bulk, and design of the proposed building, as well as its landscaping and sidewalk treatment, are consistent with the Zoning Regulations, the Comprehensive Plan, and the general scale of development in the surrounding neighborhood. The new residential and retail uses in the proposed project will result in an appropriate balance of residential and retail uses within Square 743-N and the broader vicinity. (§ 1610.3(a),(b),(c).)

29. The proposed development will provide a substantially wide sidewalk to improve the flow of pedestrian traffic near the Navy Yard Metrorail station. (§ 1610.3(c),(d).)

30. The overall project will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not tend to affect adversely the use of neighboring property. With the exception of the requested special exception relief to allow multiple roof structures with one structure not meeting the setback requirement, the proposed project will comply will all applicable zoning requirements. (§ 3104.1.)

31. By placing the entrance to the underground parking garage on L Street, rather than on M Street or on the public alley to the west, the building’s design will minimize the number of vehicles that will cross the sidewalk on M Street. (§ 1610.3(d).)

32. The proposed building's south facade has been designed to enhance the streetwall along M Street. The proposed retail uses on the ground floor will provide a vibrant pedestrian experience. (§ 1610.3(e).)

33. The proposed project will be designed with sustainability features including 51 points on the conceptual LEED scorecard, which is equivalent to LEED Silver, and will have no significant adverse impacts on the natural environment. The building will incorporate a number of sustainable design features such as energy-efficient mechanical and electrical systems. The project's proximity to the Navy Yard Metrorail station will also promote increased transit use by the building's occupants. (§ 1610.3(f).)

Special Exception Relief from the Roof Structure Requirement

34. The Applicant requested special exception relief to allow multiple roof structures with one structure not meeting the setback requirements under § 411.11, which is made applicable to Commercial zones by § 770.6 (a). Under § 411.11, special exception relief from the strict requirements for a roof structure may be granted, where full compliance is "impracticable because of operating difficulties, size of building lot, or other conditions relating to the building or surrounding area" and would be "unduly restrictive, prohibitively costly, or unreasonable." (11 DCMR § 411.11.) Deviations from the roof structure requirements may be approved if the intent and purpose of Chapter 400 and the Zoning Regulations are not "materially impaired by the structure, and the light and air of adjacent buildings shall not be affected adversely." *Id*.

35. The plans include two roof structures, both of which now measure 18'-6". The southern-most enclosure meets the setback requirements from each edge of the roof, and the northern-most enclosure requires setback relief along the western edge of the roof. Consistent with § 411.1 of the Zoning Regulations, the northern-most enclosure includes mechanical equipment and accessory communal recreation space.

36. The rooftop terrace is the main amenity space serving the residents of the building. This terrace is set back from the edge of the parapet such that the terrace area cannot be viewed from the adjacent streets. A variety of seating opportunities have been located throughout the terrace to provide for opportunities for social interaction. A swimming pool is also located at the southwest portion of the roof and is also set back such that it cannot be viewed from the adjacent streets. Plantings are located throughout the rooftop terrace at both levels in the form of a green roof and as planters associated with the higher level terrace taking advantage of the larger soil volume available for planting. This planting will add more seasonal interest and will provide an opportunity for a variety of layered planting areas. Moreover, the northern-most enclosure has been revised to include darker metal cladding materials, and the southern-most enclosure has been revised to include a "green wall."

37. The proposed building will provide adequate off-street service functions such as parking, loading facilities, and vehicular access points. The underground parking garage, spaces, and aisles will satisfy the size, location, access, maintenance, and operational requirements set forth in Chapter 21 of the Zoning Regulations. The loading facilities will comply with the all of the applicable requirements set forth in Chapter 22 of the Zoning Regulations. (§ 774.5.)

38. This application was referred to OP and the District Department of Transportation ("DDOT") for review. (§ 774.6.)

39. The requested waiver of the roof structure requirement will have no adverse impacts on neighboring properties.

Office of Planning Reports

40. By report dated October 25, 2012, OP recommended approval of the application. (Ex. 13.) The report concluded that the proposed project was consistent with the requirements of the CG Overlay District and that the Applicant met the requirements for special exception relief from the roof top structure setback requirements of § 411.11. OP stated that the proposed development does not require PUD or rezoning approval and is generally consistent with most aspects of the Zoning Regulations, specifically height, density, and use. OP found that the proposal is generally consistent with the Comprehensive Plan and would further certain General Principles of the Plan. OP stated that the application is consistent with major policies from various elements of the Comprehensive Plan including the Land Use and Transportation Citywide Elements, and the Lower Anacostia Waterfront/Near Southwest Area Element. OP testified in support of the application at the Commission's public hearing on the application.

41. In its report, OP requested that the Applicant address a number of specific questions. At the hearing, OP testified that the Applicant had addressed most of the questions identified, but stated that it had remaining questions regarding: (1) the lighting and retail signage plan; (2) the relocation of the Pepco vaults; (3) labeling areas of roof structure relief; (4) the definition of accessory recreational use area; and (5) the grading plan for the point at L Street and New Jersey Avenue.

42. The Applicant provided testimony at the hearing and a post-hearing submission to address the questions identified by OP. Specifically, the Applicant: (1) provided more detail regarding its lighting and signage plans; (2) indicated that it will address and resolve the relocation of the Pepco vaults during the public space permitting process; (3) provided a more detailed roof plan; (4) provided a more detailed plan of accessory recreational use area; and (5) provided expert testimony regarding the change in grading at L Street and New Jersey Avenue which was due to the design change from residential to retail use. Therefore, the Commission finds that the Applicant has addressed the questions outlined in OP's report.

43. By report dated January 4, 2013, OP stated that in response to the Commission's request at the December 10, 2012 public meeting, it met with the Zoning Administrator to review the proposed roof structure shown in the plans submitted November 26, 2012 to ascertain whether what was shown in the plans complied with § 411.1 of the Zoning Regulations. The report stated that the Zoning Administrator did not believe it complied with § 411.1 and would therefore not be approved. (Ex. 25.)

44. The Applicant redesigned the rooftop in response to this report, submitted the revised plans to the Commission, and attached correspondence with the Zoning Administrator in which he indicated that the revised rooftop design complied with the applicable Zoning Regulations. Therefore, the Commission finds that the Applicant has addressed this issue.

DDOT Report

45. By report dated October 15, 2012, DDOT recommended approval of the proposal and found that the design review and request for exception relief will not adversely impact the surrounding transportation network with the condition that the Applicant addresses certain questions including traffic mitigation, bicycle racks, unbundling of parking costs, parking management plan, and providing a space for car sharing services. (Ex. 14.)

46. At the public hearing, DDOT testified that the Applicant had addressed the issues of concern raised by DDOT and the only outstanding question related to the uses of the proposed parking spaces. Specifically, the Applicant (1) evaluated the intersection of L Street, S.E. and New Jersey Avenue and provided further analysis regarding sight distances and possible mitigation measures to improve safety; (2) agreed to provide bike racks at each building entrance; (3) agreed to unbundle all parking costs from the cost of lease or purchase of residential and retail spaces; (4) indicated that the parking spaces provided in excess of the zoning requirements will be for residential use only; and (5) agreed to work with DDOT to designate one on-street parking space for ridesharing, although the Applicant is unable to provide a space in the garage for ridesharing.

ANC 6D Reports

47. At its duly noticed meeting on October 15, 2012, ANC 6D voted 6-0-1 to oppose the proposed project. In its report to the Commission, dated October 25, 2012, the ANC stated the following issues and concerns: (1) first, the development team was not seeking LEED Certification, and the project is large and within the Anacostia watershed; (2) second, the design of the retail level of the building, the building in general, and the building's L Street façade; (3) third, insufficient alley lighting and openings on the ground floor; (4) fourth, several related issues pertaining to the garage access, namely a preference for garage access from the alley, a perhaps conflicting desire to maintain retail uses on the street, concern that maximum consideration be given to Anne's Wigs a longstanding business that will be hemmed in by garages and alleys, and a desire that design of the garage door is enhanced; and (5) fifth, concern that the landscape and rooftop designs are not detailed enough and do not mention sustainable features. (Ex.16.)

48. The Applicant addressed the concerns of the ANC at the hearing, in its meeting with the ANC on November 19, 2012, and in its post-hearing submissions. Specifically, the

Applicant provided the ANC 6D with revised project plans, and provided the ANC with a written memorandum indicating how the Applicant responded to each of the concerns raised by the ANC 6D its October 25, 2012 letter. The Applicant's memorandum addressed the ANC's concerns, as follows:

a) *LEED Certification*: The Applicant indicated that it increased the amount of sustainability features to be incorporated into the project. The revised building plans include 51 points on the conceptual LEED scorecard, which is the equivalent of LEED Silver. The building's sustainable design features are superior to what would be provided in a matter-of-right residential development at this location. The Commission finds that the proposed project design includes sustainability features which are the equivalent of LEED Silver;

b) *Retail Level*: The Applicant indicated that the retail level of the building has been designed to be an open and attractive feature. Also, in response to comments from ANC 6D, the Applicant increased the amount of retail from 9,409 square feet to the current proposal of 12,889 square feet. The perspective views document the emphasis placed on the retail level and define the extent of glazing, strong architectural canopies, and stone. The development also includes a lighting scheme for the pedestrian level of the building, a storefront designed to incorporate a diverse mix of retail tenants, and architectural elements incorporated into the retail level that will allow multiple storefront and signage designs to develop within a uniform framework. The Commission finds that the retail level is designed as an important feature of the building and will create an open and attractive environment which will enhance the neighborhood;

c) *Building Design*: The Applicant indicated that the design of the building should be viewed as a composition rather than isolated facade elevations. The extensive glazing at the projected bays at the M Street/New Jersey Avenue intersection is intended to create a transparent corner. This highly transparent facade treatment continues halfway down New Jersey Avenue, and reinforces the importance of the intersection. This architectural element will allow the activities occurring within the building and from the occupant’s use of the balconies to contribute to the overall activation of the building façades. The alley elevation is composed of similar design elements as those facing public streets and maintains similar architectural characteristics. Glazing and balconies have been incorporated for the units adjacent to the courtyards, which results in the building not turning its back on the alley. In addition, the courtyards adjacent to the alley have been landscaped in order to provide more activity at the rear of the building. The Commission finds that the building design will architecturally be in character with and a good compliment to existing buildings defining the neighborhood. The Commission further finds that the design of the proposed building meets the

purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations;

d) *Garage Access from L Street*: The Applicant indicated that the proposed garage entrance is located on L Street and meets the DDOT requirements regarding distances between curb cuts, driveway widths, and distance from intersections. At the request of the ANC, the Applicant studied relocating the garage entrance to the alley and found it is not feasible due to a number of constraints. The Applicant indicated that locating the garage entrance on L Street will help to minimize vehicular and pedestrian conflicts in the alley, and at the intersection of M Street and the alley, which is heavily trafficked. The Commission finds that the garage access meets DDOT requirements and that locating the garage on L Street will help minimize vehicular and pedestrian conflicts in the alley;

e) *L Street Landscape*: The Applicant indicated that it is committed to providing attractive landscaping and streetscapes adjacent to the site. The Applicant will work with DDOT to install as much landscaping as feasible and appropriate in the public space adjacent to the site on L Street. The proposed garage door on L Street has been designed as an attractive feature of the building. The Commission finds that the proposed L Street streetscape will enhance the character of L Street and the neighborhood; and

f) *Landscaping and Roof Designs*: The Applicant has prepared detailed landscaping and roof plans. The Applicant will be installing an extensive amount of landscaping on New Jersey Avenue and will include a variety of tree types and other planting material and a number of bio-retention areas, which will help to promote sustainability. The Commission finds that the Applicant's detailed landscaping and roof designs will improve the aesthetic and visual character of the building.

49. On November 19, 2012, the Applicant presented Revised Architectural Plans & Elevations to the ANC. With respect to lighting, the Applicant presented the detailed signage and lighting plans included as sheets A-11, R-11C, and R-11d of the plans which clearly depict the location and type of proposed lighting for the project. With respect to the building design, the Commission finds that the design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations.

50. On December 3, 2012, ANC 6D submitted a revised report to the Commission. The report stated the ANC continued to oppose the project, and noted the following concerns about the revised project:

- The design of the L Street façade appeared to be the back of the building when it actually a primary façade facing a street;

- The massing of the building created a monolithic appearance, and in particular the middle "punched window" section is flat and lifeless;

- The retail level had insufficient architectural articulation;

- The design of the parking garage door detracts from the architecture of the building; and

- A desire that the Applicant save the large elm tree located on the tree box strip on New Jersey Avenue near the intersection with M Street, S.E.

51. As stated above, the Commission finds that the design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations, and therefore does not find the ANC's design-related advice persuasive. With respect to the ANC's request to save the elm tree, the Applicant stated in its January 7, 2013 submission that incorporating this tree would compromise the Applicant's landscaping plan. The Applicant's plan calls for the planting of nine new street trees along the tree box strip along the project boundary, and replacing the existing tree with a new tree will allow for all the new healthy trees to grow together in a well-maintained manner. The spacing, type, and location of the trees in the plan are consistent with the District of Columbia's Public Realm Design Manual, and Anacostia Waterfront Initiative guidelines. The Commission finds that the Applicant's plan to replace the existing tree with the trees shown in the landscaping plan is preferable, because it allows the plan to work as a cohesive whole in a manner consistent with the applicable Design Manual and guidelines.

CONCLUSIONS OF LAW

1. The application was submitted pursuant to 11 DCMR §§ 1604 and 1610 for review and approval by the Commission. The application also requested special exception relief pursuant to 11 DCMR § 411.11.

2. The Commission provided proper and timely notice of the public hearing on the application by publication in the *D.C. Register* and by mail to ANC 6D, OP, and owners of property within 200 feet of the site.

3. Pursuant to 11 DCMR §§ 1604.1 and 1610.1, the Commission required the Applicant to satisfy all applicable requirements set forth in 11 DCMR §§ 1604.2 through 1604.9 and 1610.2 through 1610.3. Pursuant to § 1610.7, the Commission also required the

Applicant to meet the requirements for special exception relief set forth in 11 DCMR §§ 411.11 and 3104.1. The Commission concludes that the Applicant has met its burden.

4. The proposed development is within the applicable height, bulk, and density standards for the C-3-C Zone District and will not tend to affect adversely the use of neighboring property. The overall project is also in harmony with the general intent and purpose of the Zoning Regulations and Map.

5. The requested relief from requirements for a roof structure is in harmony with the general intent and purpose of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property.

6. The proposed residential and retail uses are appropriate for this location and are consistent with the subject property's high-density commercial designation on the Future Land Use Map of the Comprehensive Plan. The project is not inconsistent with the Comprehensive Plan.

7. The proposed project will further the objectives of the CG Overlay District as set forth in § 1600.2 and will promote the desired mix of uses set forth therein.

8. No person or parties appeared at the public hearing in opposition to the application.

9. The off-street parking for the project is in compliance with the requirements of Chapter 21.

10. The Commission is required by § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns of the affected ANC. In other words, the Commission must articulate with particularity and precision the reasons why the ANC does or does not offer persuasive advice in a particular case. As described in more detail above, the Commission concludes that the Applicant has sufficiently addressed all the issues and concerns raised by the ANC in its reports, and the Commission further finds that the design of the proposed building meets the purposes of the Capitol Gateway Overlay and meets the specific design requirements of § 1604 of the Zoning Regulations.

11. The Commission is required by § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163, D.C. Official Code § 6-623.04) to give great weight to OP recommendations. As described more fully above, OP recommended approval of the Project, and the Applicant has adequately addressed all the issues OP raised in its reports.

12. Based upon the record before the Commission, including witness testimony, the reports submitted by OP, DDOT, and ANC 6D, and the Applicant's submissions, the Commission concludes that the Applicant has met the burden of satisfying the applicable standards under 11 DCMR §§ 1604 and 1610, as well as the independent burden for the requested special exception relief under 11 DCMR §§ 1610.7 and 3104.1.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of the application consistent with this Order. This approval is subject to the following guidelines, standards, and conditions:

1. The approval of the proposed development shall apply to Lots 79 and 834 in Square 743-N.

2. The project shall be built in accordance with the Revised Architectural Plans and Elevations dated November 26, 2012, marked as Exhibit 22, as modified by Exhibit 27, and as modified by the guidelines, conditions, and standards below.

3. The project shall include no more than 303,600 square feet of gross floor area. The distribution of uses and densities shall be as shown on Sheet A-0.2 of the Revised Architectural Plans and Elevations.

4. The overall density on the site shall not exceed 10.0 FAR.

5. Except for roof structures, the maximum height of the new building shall not exceed 130 feet. Roof structures shall be constructed in accordance with Exhibit 27.

6. The landscape treatment shall be in accordance with Sheet L-2 of the Revised Architectural Plans and Elevations.

7. A minimum floor-to-ceiling clear height of 14 feet shall be provided for those portions of the building within the CG Overlay dedicated to ground-floor retail, service, entertainment, and arts uses.

8. One loading berth at 55 feet deep and one service/delivery loading space shall be provided for the proposed building.

9. A minimum of 35% of the gross floor area of the ground floor shall be devoted to the preferred uses listed in §§ 701.1 through 701.5 and §§ 721.1 through 721.6 of the Zoning Regulations.

10. Pursuant to 11 DCMR § 3130, the portions of this Order granting a special exception shall not be valid for more than two years after it becomes effective unless, within such two-year period, the Applicant files plans for the proposed structure with the Department of Consumer and Regulatory Affairs for the purpose of securing a building permit, or the Applicant files a request for a time extension pursuant to § 3130.6. No other action, including the filing or granting of an application for a modification pursuant to §§ 3129.2 or 3129.7, shall extend the time period.

11. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.1 *et seq*. (the "Act"), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violations will be subject to disciplinary action. The failure or refusal of the Applicant to comply with the Act shall furnish grounds for the denial or, if issued, the revocation of any building permits or certificates of occupancy issued pursuant to this Order.

On February 11, 2013, upon the motion of Commissioner Turnbull, as seconded by Commissioner Miller, the Zoning Commission **ADOPTED** this Order at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Marcie I. Cohen, Robert E. Miller, Peter G. May, and Michael G. Turnbull to adopt).

In accordance with the provisions of 11 DCMR § 3028, this Order shall become final and effective upon publication in the *D.C. Register*, that is on May 24, 2013.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

October 17, 2012

BY U.S. MAIL

David P. Sheldon, Esq.
Law Offices of David P. Sheldon, PLLC
512 8th Street, S.E.
Washington, D.C. 20003

Re: Freedom of Information Act Appeal 2013-1

Dear Mr. Sheldon:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated August 16, 2012 (the "Appeal"). You, on behalf of a named client ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated June 22, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "[a]ll investigation paperwork associated with an alleged assault that occurred at the Embassy Suites in Washington, D.C. (1250 22nd St Northwest Washington D.C.) on the night of February 3-4, 2006." Appellant specified the names of an alleged victim and an alleged assailant. In response, by letter dated August 28, 2012, MPD provided an incident report (Form PD-251), but denied the remainder of the FOIA Request because the release of the records would constitute a clearly unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(2).

On Appeal, Appellant challenges the denial of the FOIA Request on the ground that the MPD response "does not identify the withheld documents or explain how disclosure would damage the interests protected by the claimed exemption." Therefore, Appellant states that he "is unable to determine whether the withholding of these documents is appropriate" and seeks "a detailed index of all withheld information." Appellant also seeks disclosure of segregable, non-exempt portions of the records.

In response, by email dated October 16, 2012, MPD reaffirms its position. MPD indicates that the withheld records consist of photographs of the crime scene and the body of the victim; documents prepared by the sexual assault nurse; forensic documents; and the investigative report

and notes of the case detective. MPD states that the release of the withheld records would constitute a clearly unwarranted invasion of personal privacy and that Appellant has not stated any public interest in the release of any such records.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

D.C. Official Code § 2-534(a)(3)(C) provides an exemption from disclosure for "[i]nvestigatory records compiled for law-enforcement purposes . . . to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

The D.C. Circuit has stated:

[1] In the Appeal, we do not believe that there is any dispute that the records have been compiled for law enforcement purposes. *Cf*. D.C. Official Code § 2-534(a)(2), which applies to "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." While D.C. Official Code § 2-534(a)(2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from D.C. Official Code § 2-534(a)(3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under D.C. Official Code § 2-534(a)(3)(C) is broader than under D.C. Official Code § 2-534(a)(2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]. 'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.' *Bast*, 665 F.2d at 1254.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

In the case of the factual circumstances surrounding the Appeal, it appears that the individuals who are identified in the records are the alleged victim, suspects, or witnesses. We find that there is a sufficient individual privacy interest for a person who is being investigated for wrongdoing. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under 7(C) [as noted above, D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). The D.C. Circuit has also stated that nondisclosure is justified for documents that reveal allegations of wrongdoing by suspects who never were prosecuted. *See Bast v. U. S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question.

An individual who is a victim of an alleged criminal infraction has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). Likewise, it is clear that an individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. *See Stern v. FBI, supra*; *Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal

matters does not dissolve simply because that information may be available to the public in some form.")

There is clearly a personal privacy interest of the victim, suspects, or witnesses in the withheld records identified by MPD as responsive to the FOIA Request.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Here, there is nothing in the administrative record which implicates the conduct of MPD in the investigation. Therefore, the disclosure of the records will not contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Appellant states that the named client was subjected to nonjudicial punishment by the military and Appellant is seeking information regarding the accuser in that matter in order to restore the personal and professional reputation of the client. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989).

Appellant also raises the issue of redaction of non-exempt portions of the withheld records. However, as Appellant has identified individuals in connection with the requested records, redaction would not protect their privacy interests in any unredacted portions of the records which would be disclosed.

Therefore, the withholding of the records was proper.

Conclusion

Therefore, we uphold the decision of MPD. The Appeal is hereby dismissed.

This constitutes the final decision of this office. 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald Harris, Esq.
Teresa Quon

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

October 31, 2012

BY U.S. MAIL

Mr. Philip Kerpen
3322 Tennyson Street, N.W.
Washington, D.C. 20015

Re: Freedom of Information Act Appeal 2013-02

Dear Mr. Kerpen:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), undated (the "Appeal"). You ("Appellant") assert that the District Department of Transportation ("DDOT") improperly withheld records in response to your request for information under DC FOIA dated June 9, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. Written communications from any resident of the 3300 block of Tennyson Street, N.W. (including three named individuals) requesting the installation of a speed hump on the block.

2. Logs or other records of telephone or in-person communications from any resident of the 3300 block of Tennyson Street, N.W. (including three named individuals) requesting the installation of a speed hump on the block.

3. Any documents referencing such communications or requests.

The FOIA Request alleged that "[t]here were [three] authorized attempts to install a speed hump at 3322 Tennyson Street, N.W." and stated that the "request is intended to find any specific request from any resident of the 3300 block of Tennyson Street NW that may have been the basis for these attempts."

In response, by letter dated July 16, 2012, DDOT provided 26 pages of responsive records to Appellant, and, by letter dated July 30, 2012, DDOT provided an additional 39 pages of responsive records to Appellant. In each instance, DDOT redacted portions of the records based on exemptions for privacy under D.C. Official Code § 2-531(a)(2) and for deliberative process privilege under D.C. Official Code § 2-531(a)(4).

On Appeal, Appellant challenges the denial, in part, of the FOIA Request. As a factual predicate, Appellant states that "approximately 80 Agency emails included in the supplemental response were redacted in their entirety, and only one was disclosed. The one disclosed includes an apparent admission that procedures were not followed." Appellant contends that DDOT has offered no rationale for the assertion of the exemptions. As to the assertion of the exemption for privacy, Appellant states: "In the unlikely event that the records in question contain personal information that risks an invasion of [privacy], the proper remedy would be simple redaction of names, rather than complete redaction of entire emails." As to the assertion of the exemption for deliberative process privilege, Appellant states:

> These documents are not predecisional, but are primarily historical in nature. Moreover, they reflect no process of policy formulation, but rather the implementation of day-to-day responsibilities of the Agency, in this case the installation of speed humps. There is no apparent policy question implicated, and the Agency has offered no explanation of the[/]what policy was being formulated.

Appellant also urges the release of unredacted records as a matter of discretion in the public interest as "there was a possible breach of the Agency's published policies and procedures, as the Agency appears to have proceeded . . . without a citizen petition, without the advice of the ANC, and without notification to residents."

In its response, dated October 17, 2012, DDOT reaffirmed its prior position as to its claim of exemption both for privacy and for deliberative process privilege. With respect to the claim of exemption for privacy, it states that it "redacted the personal addresses, telephone numbers, and email addresses of private citizens, who had communicated with DDOT employees. . . . Moreover, the personal addresses, telephone numbers, and email addresses of non-government employees cannot significantly contribute to the public's understanding of DDOT operations." With respect to the claim of exemption for deliberative process privilege, DDOT states:

> In this case, the redacted emails are inter-agency and intra-agency e-mails between DDOT employees and/or a staff member of the D.C. Council. The emails contain the 'back-and-forth' deliberation regarding resolution of a residential speed hump issue. Many of the emails sought clarification regarding the issue and offered possible suggestions for resolution, before a final agency decision was reached. Thus, these e-mails should be protected under FOIA because they are both pre-decisional and deliberative. . . . DDOT contends that providing Appellant with the internal emails would stifle inter-agency communications and would discourage candid discussions.

In addition, DDOT provided copies of the unredacted documents for *in camera* review.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

This case concerns the redaction of portions of the records based on exemptions for privacy under D.C. Official Code § 2-534(a)(2) and for deliberative process privilege under D.C. Official Code § 2-534(a)(4). We will address each exemption in turn.

D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756

[1] By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). In this case, because it involves road construction, not investigatory records compiled for law-enforcement purposes, the matter would be judged by the standard for Exemption (2).

(1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

DDOT states that it has redacted personal addresses, telephone numbers, and email addresses of private citizens and this representation is consistent with our review of the redactions.[2] A privacy interest is cognizable under DC FOIA if it is substantial, that is, anything greater than de minimis. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). In general, there is a sufficient privacy interest in personal identifying information.

> Information protected under Exemption 6 [the equivalent of Exemption (2) under the federal FOIA] includes such items as a person's name, address, place of birth, employment history, and telephone number. *See Nat'l Ass'n of Retired Fed. Employees v. Horner*, 879 F.2d 873, 875 (D.C. Cir. 1989); see also *Gov't Accountability Project v. U.S. Dep't of State*, 699 F.Supp.2d 97, 106 (D.D.C.2010) (personal email addresses); *Schmidt v. Shah*, No. 08–2185, 2010 WL 1137501, at *9 (D.D.C. Mar. 18, 2010) (employees' home telephone numbers); *Schwaner v. Dep't of the Army*, 696 F.Supp.2d 77, 82 (D.D.C.2010) (names, ranks, companies and addresses of Army personnel); *United Am. Fin., Inc. v. Potter*, 667 F.Supp.2d 49, 65–66 (D.D.C.2009) (name and cell phone number of an "unknown individual").

Skinner v. U.S. Dept. of Justice, 806 F.Supp.2d 105, 113 (D.D.C. 2011).

We find that there is a sufficient privacy interest in the personal addresses, telephone numbers, and email addresses of the private citizens mentioned in the records.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

[2] DDOT has not, however, redacted the names of these individuals.

Appellant does not specifically state a public interest which would overcome the individual privacy interests. However, in connection with urging the discretionary waiver of the deliberative process privilege, Appellant argues for the release of unredacted records as a matter of discretion in the public interest as "there was a possible breach of the Agency's published policies and procedures." Assuming, for the purposes of analysis, that there was a breach of published policies and procedures, revealing the personal identifying information of complainants would not advance significantly the public understanding of the operations or activities of the government or the performance of DDOT.

Appellant argues that to the extent that the exemption for privacy applies, "the proper remedy would be simple redaction of names, rather than complete redaction of entire emails." However, based on our examination of the records which Appellant has submitted, the block redactions to which Appellant refers are those for the assertion of the exemption for deliberative process privilege, not the exemption for privacy. We will address the assertion of the exemption for deliberative process privilege next.

D.C. Official Code § 2-534(a)(4) exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (U.S. 1975). These privileges would include the deliberative process privilege.

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and a document is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

As we have stated in prior decisions, policy in the context of the deliberative process privilege is not restricted to overarching, major determinations as to the mission of an agency and the manner in which it is to be achieved. The deliberative process privilege concerns the expression of thoughts and considerations in arriving at a decision. The fact that it is "historical in nature," as Appellant argues, is of no consequence. If the document is predecisional at the time it is

prepared, it can lose that status if it is adopted as the agency position on an issue or is used by the agency in its dealings with the public. *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). However, the deliberative process privilege is not voided by the passage of time.

Nevertheless, while a "'final decision'" is not necessary to establish the privilege, *Vaughn v. Rosen*, 523 F.2d 1136, 1146 (D.C. Cir. 1975), an agency must establish "what deliberative process is involved, and the role played by the documents in issue in the course of that process." *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 868, (D.C. Cir. 1980). DDOT states that the deliberative process here is the "resolution of a residential speed hump issue." In our view, this does not provide a clear statement of the nature of the decision, if any, involved. However, as DDOT has provided the unredacted records to us for *in camera* review, we have examined them to determine if a decision is being, or has been, considered and the extent, if any, to which a deliberative process is involved. In this context, we note that "the document must be a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. Put another way, pre-decisional materials are not exempt merely because they are pre-decisional; they must also be a part of the agency give-and-take of the deliberative process by which the decision itself is made." *Vaughn v. Rosen*, 523 F.2d 1136, 1144 (D.C. Cir. 1975). We keep in mind that if *any* record related to a matter is treated as part of the deliberative process, creating a "seamless whole," it "would swallow up a substantial part of the administrative process, and virtually foreclose all public knowledge regarding the implementation of . . . policies in any given agency." *Id*. at 1145.

In this case, based upon our examination of the records, the emails which DDOT has identified as the records responsive to the FOIA Request arise from a decision to install a speed bump on the 3300 block of Tennyson Street, N.W. We have placed them into three groups. The first group of these emails was written in October, 2010. They consist of inquiries by constituents as to the installation of the speed bumps, inter-agencies inquiries seeking information in order to respond to such inquiries and reports as to the status of responses thereto, and consideration as to whether the project should be reversed. The second group of emails (one email trail) was written in June 2009 consisting of an inquiry on the status of the matter from a constituent to Councilmember Bowser, which inquiry was forwarded by her staff to DDOT with a similar request for such status, with responses within DDOT.[3] The third group of emails was written in 2012. They consist of constituent inquiries regarding the removal and possible replacement of the speed bumps, intra-agency emails regarding the facts surrounding the inquiry, and agency responses to the status requests.

With respect to the first group of emails, there is a substantial portion of emails which we find to be non-deliberative. Some of these are predecisional, but they do not reflect the give-and-take which is the hallmark of the deliberative process. They can generally be characterized as information gathering in response to constituent inquiries about a decision which was previously made, that is, the installation of speed humps, but they do not reflect consideration of a decision to be made.

[3] The email trail was forwarded within DDOT in 2012 for purposes of information.

Some of the emails (or portions thereof) arguably qualify for exemption from disclosure under the deliberative process privilege. They suggest consideration of a decision as to whether the project, i.e., the installation of the speed bumps, should be reversed. However, as a matter of discretion, under the guidance of Mayor's Memorandum 2011-01, we believe that these emails should be disclosed. The emails reflect the administration of routine business[4] of the agency and are benign in tone. The exchanges fall far short of the vigorous interchange of ideas and personal opinions which the deliberative process privilege is designed to protect at its apex. With two exceptions, we do not believe that the release of these emails would have any chilling effect on future frank and candid discussions within DPR or any other agency. The exceptions would be the following: 10/28/10 (10:27 AM) email from John Lisle to Aaron Rhones; and the first sentence of the 10/28/10 (10:20 AM) email from Aaron Rhones to John Lisle.

With respect to the second and third group of emails, they relate to inquiries, information gathering, and responses to inquiries about past decisions. They are neither predecisional nor deliberative.

Accordingly, with the exceptions noted above, the portions of the emails redacted for deliberative process privilege, except as may be necessary to protect privacy, shall be disclosed to Appellant.

Conclusion

Therefore, the decision of DDOT is upheld in part and reversed and remanded in part. With the exception of the 10/28/10 (10:27 AM) email from John Lisle to Aaron Rhones and the first sentence of the 10/28/10 (10:20 AM) email from Aaron Rhones to John Lisle, the portions of the emails redacted for deliberative process privilege, except as may be necessary to protect privacy, shall be disclosed to Appellant.

This constitutes the final decision of this office. 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Nana Bailey-Thomas, Esq.

[4] For this purpose, we would include inquiries as to possible irregularities or omissions as routine business.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

October 19, 2012

BY U.S. MAIL

Mr. Rural Hicks Bey
#04171-000
United States Penitentiary
P.O. Box 1000
Marion, Illinois 62959

Re: Freedom of Information Act Appeal 2013-03

Dear Mr. Bey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated September 27, 2012 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated August 13, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. "[C]lasses or educational programs completed by me during 1991 through 1995 while housed within the D.C. Department of Corrections Maximum Security facility at Lorton, Virginia, and the amount of goodtimes awarded for each educational program completed."

2. "[C]lasses or educational programs completed by me between 1995 through 1997 while housed within the Federal Bureau of Prisons at F.C.I. at three Rivers, Texas, and the amount of educational goodtime awarded for those completed programs."

3. "[E]ducational classes and programs that were acceptable under the standards of the D.C. Department of Corrections and/or the Mayors Office for the awarding of educational goodtime upon completion."

DOC responded by letter dated September 4, 2012. As to the first category, DOC stated that, after a search, it found no records, but advised Appellant that he may wish to contact the University of the District of Columbia as the university administered educational programs at Lorton. As to the second category, DOC stated that Appellant should contact the Federal Bureau of Prisons for records maintained by that agency. As to the third category, DOC stated that as it appeared to be a request for its policy on education good time credit, it referred to its website and specified program statement number which could be located thereon.

On Appeal, Appellant challenges, in general, the failure of DOC to provide records in response to the FOIA Request. As to the first and second categories, Appellant describes the educational programs and classes in which he participated. As to the third category, Appellant asks two questions which both appear to be related to the program statement which DOC referenced.

In its response, by email dated October 18, 2012, DOC stated that, based upon information contained in the Appeal, it conducted a new search and located responsive records, which will be provided to Appellant. DOC explained that when it received the FOIA Request and searched the agency records, it found two names and concluded that the first was that of the Appellant. However, after receiving the Appeal and consulting with federal prison bureau officials, it conducted a second search using the second name and found the responsive records which it will be providing as indicated above.

Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the revised response of DOC as indicated above.[1]

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

[1] In the Appeal, Appellant states that he has two questions regarding the third category of the FOIA Request. Appellant should note that FOIA, both local and federal, only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978).

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

October 31, 2012

BY U.S. MAIL

Colin C. Carriere, Esq.
18210 Merino Drive
Accokeek, Maryland 20607

Re: Freedom of Information Act Appeal 2013-04

Dear Mr. Carriere:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 10, 2012 (the "Appeal"). You ("Appellant") assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your requests for information under DC FOIA dated March 12, 2012 (the "First FOIA Request") and May 6, 2012 (the "Second FOIA Request"), which requests may be collectively referred to as the "FOIA Requests."

Background

Appellant's First FOIA Request sought records which:

1. "[I]dentify properties or premises for tax sales or public auction which Colin Carriere bid on and the amount of each sale during the period 1985-1999."

2. "[S]how the status of refunds to Colin Carriere regarding tax sale properties, including tax deeds, refunds, redemption, notice of delinquency, or interest accrued."

3. "[S]how notice, including mailings, return mailings, or advertisements, to Colin Carriere with respect to the properties or premises identified in Item 1 above."[1]

[1] The Appeal indicates that Appellant had submitted an earlier request which was "essentially" the same as the First FOIA Request. As an appellant is required to submit a copy of the FOIA request in order to file an appeal and Appellant has only submitted the First FOIA Request for our consideration, we have merged these requests for the purposes of the Appeal.

Appellant's Second FOIA Request sought "as a more refined FOIA request . . . any responsive electronic records related to me, in terms of tax and revenue matters pertaining to the unit block of Parker Street, N.E., in the District."

In response, by letter dated April 20, 2012, OCFO stated that "the retention of records for tax years 1985 and 1999 has expired" and it does not maintain the records on its premises. It advised Appellant that such records are sent to archives and gave Appellant the name of a contact who would provide "further assistance."

On May 6, 2012, Appellant sent a letter to OCFO questioning its response and stating that he had talked to a named employee who told him that the OCFO did, in fact, have records onsite which would be responsive to at least part of the First FOIA Request. At the end of the letter, Appellant included the Second FOIA Request. Appellant's Second FOIA Request sought "as a more refined FOIA request . . . any responsive electronic records related to me, in terms of tax and revenue matters pertaining to the unit block of Parker Street, N.E., in the District."

On June 24, 2012, when no further response was received. Appellant sent a letter to OCFO regarding the FOIA Requests. In response, by letter dated July 16, 2012, OCFO stated that it had provided Appellant with the names and telephone numbers of persons, within an OCFO division, who could assist Appellant.

On Appeal, Appellant challenges the response of OCFO and maintains that it failed to conduct an adequate search pursuant to the FOIA Request. Insofar as OCFO has stated that any responsive records are archived, citing a District rule, DCMR § 1-1518.1, Appellant asserts that OCFO maintains control of the records and it is the responsibility of OCFO to cause a search of the archived records to be made.

In response, dated October 19, 2012, OCFO reaffirmed its position. It states the FOIA Request was not denied as the Appellant, in two separate letters, was "provided with the names and telephone numbers of the personnel within ROD that can assist and provide the documents of interest." OCFO stated that it "based its decision on the fact that the information being sought by Mr. Carriere is '**public information**', which is available and can be obtained in the 'Manual Publication Inspection' booklet located in the Office of the Recorder of Deeds (ROD)."

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency

and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

D.C. Official Code § 2-532(c) states:

> A public body, upon request reasonably describing any public record, shall within 15 days (except Saturdays, Sundays, and legal public holidays) of the receipt of any such request either make the requested public record accessible or notify the person making such request of its determination not to make the requested public record or any part thereof accessible and the reasons therefor.

In response to a request under DC FOIA, an agency is required to conduct a search reasonably calculated to produce the relevant documents, *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983), and notify the requester that it will furnish the requested records or deny access to such requested records. The obligation to produce records may be satisfied by providing instructions as to accessing the materials on a website or in a public reading room or equivalent.[2]

In this case, OCFO maintains that it did not deny the FOIA Request, but fulfilled its statutory obligations by furnishing names of employees within a division of OCFO who could provide assistance. In our view, the response of OCFO on May 6, 2012, and confirmed June 24, 2012, that "the retention of records for tax years 1985 and 1999 has expired" and it does not maintain the records on its premises, is a denial. Nevertheless, even if OCFO did not intend to deny the FOIA Request, a referral by a FOIA officer to another employee or employees does not satisfy an agency obligation under DC FOIA. The FOIA officer must conduct a search, consulting with other employees as may be necessary or appropriate, and notifying the requester whether responsive records will be produced. As Appellant correctly notes, records sent to archives remain in the control of the transferring agency. *See* DCMR §§ 1-1500.6, 1-1518. 1. Here, if the requested records are in the archives, the agency FOIA Officer, not the Appellant, must contact its employees and cause the search to be made. OCFO did not do so.

In its response to the Appeal, OCFO indicates that the records are "public information" and states that it based its decision on the fact that Appellant could have obtained the records via the "Manual Publication Inspection" booklet located in the Office of the Recorder of Deeds. We do

[2] It has been held that an agency was not obligated under FOIA to produce records when the information is publically accessible via its website or the Federal Register. *Antonelli v. Fed. Bureau of Prisons*, 591 F. Supp. 2d 15, 25 (D.D.C. 2008). See also *Crews v. Commissioner*, 85 A.F.T.R.2d 2169, 2000 U.S. Dist. LEXIS 21077 (C.D. Cal. 2000)(production satisfied for documents that are publicly available either in the agency's reading room or on the Internet).

not know what meaning OCFO ascribes to the phrase "public information." Public information may be, in its broadest sense, records prepared, owned, used in the possession of, or retained by a public body not exempt from disclosure. This, of course, is the information available pursuant to DC FOIA and the reference does not provide clarification. Public information may refer to records that are open to public inspection, such as court records. Based on the administrative record, we do not know which, if any, of the requested records are open to public inspection at a location maintained by the Recorder of Deeds.

Therefore, we remand this matter to OCFO. OCFO shall conduct a search for the records requested by the First FOIA Request and the Second FOIA Request and provide the responsive records to Appellant, subject to any applicable exemptions. To the extent that the requested records are available for public inspection at a location maintained by the Recorder of Deeds, OCFO may satisfy its obligation by specifying which records are so available and provide instructions for accessing such records. We note that two of the four parts of the FOIA Request are not limited in time and the remaining two parts cover a period which begins 32 years ago. Given the age and manner in which the records may have been created and retained, OCFO may request the Appellant to provide additional information to supplement the FOIA Request to the extent that the requested records cannot be identified and located without an unreasonable amount of effort.

Conclusion

Therefore, the decision of OCFO is reversed and remanded. In accordance with, and as more particularly described in, the preceding paragraph, OCFO shall conduct a search of its records for the responsive records and provide such records, subject to any applicable exemption, to Appellant.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of OCFO pursuant to this order.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Angela Washington, Esq.
Charles Barbera, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

October 19, 2012

BY U.S. MAIL

Mr. John Merrow
Learning Matters, Inc.
127 West 26th Street, #1200
New York, N.Y. 10001

Re: Freedom of Information Act Appeal 2013-05

Dear Mr. Merrow:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated June 6, 2012 (the "Appeal"). You, on behalf of Learning Matters, Inc. ("Appellant"), assert that the Office of the Inspector General ("OIG") improperly withheld records in response to your request for information under DC FOIA dated August 9, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "a report or memo written by [a named individual] for DCPS. The report/memo analyzed the DC CAS [District of Columbia Comprehensive Assessment System][1] test results for the school year 2007-2008."

In response, by letter dated September 13, 2012, OIG stated that it was withholding the responsive record on the basis of the deliberative process privilege under the exemption from disclosure under D.C. Official Code § 2-534(a)(4).

On Appeal, Appellant does not address the exemption from disclosure under D.C. Official Code § 2-534(a)(4), but states that the "analysis could shed light on an issue of great public concern, possible cheating on the 2007-2008 DC CAS test" and that "the public interest will be served by disclosing the results of that analysis."

[1] As described in Freedom of Information Act Appeal 2012-18, the District of Columbia Comprehensive Assessment System is a standardized test that assesses public school students on reading and math in grades 3 through 8 and 10, science in grades 5 and 8, biology in high school, and composition in grades 4, 7, and 10.

In its response, by email dated September 26, 2012, OIG reaffirmed its position. OIG explained that as the requested record originated with the District of Columbia Public Schools ("DCPS"), it consulted "DCPS' FOIA Officer, who stated that DCPS had denied a similar request for this information because the documentation is deliberative and not intended for public release." In consultation with DCPS, it determined that the document was predecisional and deliberative. In support of its position, it notes that the record "is marked as 'sensitive information,'" that it "includes a 'Treat as Confidential' header and footer on each page," and that it "contains a 'security note'" that reiterates its confidentiality and states that it is based on incomplete information. OIG states that the assertion of Appellant that "the documents 'could shed light on an issue of great public concern' is too vague and nebulous to offer a compelling rationale for surrendering the District's legal privilege." OIG has attached a copy of the record for in camera review.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

D.C. Official Code § 2-534(a)(4) exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). These privileges would include the deliberative process privilege.

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and a document is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

Upon examination of the withheld record, we note that it is not a completed study itself, but a memorandum containing briefing points on the progress of the study.[2] For the purposes of this decision, we will assume that the record is responsive to the FOIA Request. OIG argues, and Appellant does not appear to contest, that the responsive record is exempt from disclosure under the deliberative process privilege. Instead, Appellant relies on the public interest in disclosure to overcome the assertion of the deliberative process privilege under the exemption. Freedom of Information Act Appeal 2012-18 involved a request for an analysis regarding District of Columbia Comprehensive Assessment System test results, albeit for a different year, amid similar suspicion of cheating. In that matter, the appellant also advanced the public interest in disclosure to overcome the assertion of the deliberative process privilege under the exemption. In upholding the withholding of the analysis, Freedom of Information Act Appeal 2012-18 adopted, in turn, the reasoning of Freedom of Information Act Appeal 2011-42, which stated:

> As the public interest is not a mandated requirement under the statutory text of DC FOIA or under case law, other than a privacy analysis, we view this as a rule of discretion rather than a statutory mandate. Nevertheless, to be sure, the public interest is not only a consideration under the rule cited by Appellant, but under Mayor's Memorandum 2011-01, Transparency and Open Government Policy. For instance, in Freedom of Information Act Appeal 2011-19, pursuant to the Memorandum, we ordered disclosure of certain records where the deliberative process privilege applied when the information therein had become stale. However, here, the public interest is in nondisclosure of the emails. The exemptions under DC FOIA are intended to achieve the correct balance between public access to information and, among other things, the efficient operation of government. The efficient operation of government dictates that a free exchange of ideas must be permitted in order to reach optimal decisions. Officials and employees need to be free to express unpopular opinions, make erroneous statements, or even look foolish on the road to making a decision without having such predecisional thoughts put under the

[2] In Freedom of Information Act Appeal 2012-80, in which Appellant was the appellant, we ruled in favor of DCPS on the basis that it did not possess the requested report. Contrary to the assertion of Appellant that "they [DCPS] were apparently to provide one to Inspector General Willoughby," it appears that the completed report, if it exists, is not in the possession of either agency.

> microscope of public scrutiny. Without the comfort that this will not occur, such persons may feel comfort only in the oral conversations and this may eliminate important sources of communication. In the words of the *Coastal States* court, 'public disclosure is likely in the future to stifle honest and frank communication.'

We believe that the reasoning in Freedom of Information Act Appeal 2012-18 applies with even greater force here as the former decision involved a completed analysis. In this matter, we have examined the record itself. As OIG notes, the record contains several legends indicating that it is to be treated as confidential, clearly stating the intent of the drafter that it is deliberative and not to be disclosed. Furthermore, as the "security note" indicates, it is based on incomplete information, a further earmark of a document subject to the deliberative process privilege. Most critically, the record sets forth ideas and thoughts which may or may not be part of the final determination and conclusion and reflects the candor and give-and-take which the deliberative process privilege is designed to protect. In other words, the record embodies the essence of the deliberative process privilege and waiver of records of this type may chill the written exchange of ideas.

Conclusion

Therefore, the decision of OIG is upheld. The Appeal is hereby dismissed.

This constitutes the final decision of this office. 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Keith Van Croft
Yolanda Jones

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

October 23, 2012

BY EMAIL

Mr. Eric Tucker
etucker@ap.org
Associated Press
1100 13th Street, N.W.
Washington, D.C.

Re: Freedom of Information Act Appeal 2013-06

Dear Mr. Tucker:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 25, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated August 17, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought all records relating to a shooting that occurred on August 15, 2012 at 801 G Street, N.W. The FOIA Request stated that "[i]n particular, I am seeking a copy of the 911 call reporting the shooting (or a transcript thereof) as well as any surveillance video that captures the shooting."

In response, by letter dated September 19, 2012, MPD provided a redacted "Event Chronology," but stated that the "request is denied in all other respects." As a factual predicate, MPD stated that there is an ongoing investigation regarding the shooting. MPD further stated that to the extent that MPD has any investigatory records, such records are exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A) "as premature release may interfere with enforcement proceedings," under D.C. Official Code § 2-534(a)(3)(C) "as their release would constitute an unwarranted invasion of privacy of the witnesses and other individuals identified in the records," and under D.C. Official Code § 2-534(a)(3)(D) "as their release may disclose the identity of confidential sources." With respect to the 911 call for the incident, MPD stated: (1) as the caller is a witness in an ongoing investigation, its release may (A) interfere with enforcement proceedings and (B) expose the caller and other witnesses to harassment and intimidation; (2) the 911 call cannot be edited to erase identifying information; and (3) there is no transcript of the

call other than the Event Chronology. MPD stated that it would make a copy of the Form PD-251 (Incident-based Event Report) available at its headquarters for a fee of $3.

On Appeal, Appellant challenges the withholding of the audio of the 911 call, stating that the provision of the Event Chronology does not fulfill the FOIA Request. First, Appellant states that "individuals and organizations, from the chairman of the D.C. Council to the Partnership for Civil Justice Fund, have been supplied with copies of 911 calls in other situations" and Appellant, "as a representative of the world's oldest and largest news organization, [should] be afforded the same courtesy . . ." Second, Appellant maintains that the exemption from disclosure under D.C. Official Code § 2-534(a)(3)(A) for investigatory records compiled for law enforcement purposes whose release would interfere with enforcement proceedings does not apply because "a 911 call is not properly classified as an investigatory record." Appellant argues that the 911 call is "an initial report of potential trouble or wrongdoing and is a record created through the Office of Unified Communications, which of course does not conduct law enforcement investigations." Third, Appellant disputes that MPD does not have the capability to redact identifying information. Appellant states that prosecutors and defense lawyers in Superior Court present cuts and splices of 911 calls to the jury and that he "should [not] be disadvantaged by a technological inadequacy that is not of my own making and one that is hard to believe actually exists in 2012." As alternatives, Appellant proposes that he could listen onsite to the recording after the point that the caller has identified himself or herself or that a written transcript of the call be created and redacted.

In response, dated October 18, 2012, MPD reaffirmed its position.

> The department maintains its position with respect to withholding the investigative documents including the 911 recording. Clearly the release of any documents related to an open investigation would interfere with the enforcement process. In addition, the department does not have the technical capability to segregate that portion of the recording that would constitute an invasion of privacy of the caller.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id.* at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

While the FOIA Request indicated that it was directed to "all files, records and documents," it stated that it was seeking "[i]n particular . . . a copy of the 911 call" and the Appeal is directed only to the 911 call.

D.C. Official Code § 2-534(a)(3) provides, in pertinent part, for an exemption from disclosure for:

> Investigatory records compiled for law-enforcement purposes,. . ., but only to the extent that the production of such records would:
>
> (A) Interfere with:
>
> (i) Enforcement proceedings;

Appellant maintains that the exemptions from disclosure under D.C. Official Code § 2-534(a)(3)(A) for investigatory records compiled for law enforcement purposes do not apply because a 911 call is not an investigatory record compiled for law enforcement purposes. Instead, Appellant asserts that the 911 call is "an initial report of potential trouble or wrongdoing and is a record created by the Office of Unified Communications, which of course does not conduct law enforcement investigations." However, contrary to the argument of Appellant, in *John Doe Agency v. John Doe Corp.*, 493 U.S. 146 (1989), the Supreme Court held that "documents need only to have been compiled when the response to the FOIA request must be made. [footnote omitted]." *Id*. at 155. *See also* Freedom of Information Act Appeal 2011-17. In this case, the 911 audio has been compiled by MPD as part of its investigatory files and is clearly an investigatory record compiled for law enforcement purposes.

MPD asserts that D.C. Official Code § 2-534(a)(3)(A)(i) exempts the 911 audio from disclosure, stating, as set forth above: "Clearly the release of any documents related to an open investigation would interfere with the enforcement process." MPD argues, as it did in Freedom of Information Act Appeal 2012-64, for a per se exemption whenever there is a pending investigation or a related law enforcement proceeding. In Freedom of Information Act Appeal 2012-64, we rejected such contention, stating:

> We note that MPD has raised a claim of exemption which may otherwise be allowable. However, MPD has not sustained its burden of proof on the applicability of this exemption. It merely asserts that there is a pending law enforcement investigation, in effect contending that there is a per se exemption whenever there is a pending investigation or a related law enforcement proceeding. In order to sustain the exemption, it must show that disclosure 'would interfere' with the law enforcement proceeding or that it would deprive a person of a right to a fair trial or an impartial adjudication. In this

case, MPD has not explained how the interference or deprivation would occur (the FOIA office has not indicated that it has seen the records).

However, the administrative record is sufficient to consider the claim of exemption for an unwarranted invasion of personal privacy under D.C. Official Code § 2-534(a)(3)(C).

The circumstances of the Appeal are similar to that in Freedom of Information Act Appeal 2011-60, where we upheld the decision of MPD to provide a transcript of relevant 911 calls, redacted for personal identifying information that constituted a clearly unwarranted invasion of personal privacy and exempt from disclosure under D.C Official Code § 2-534(a)(2), but to withhold the dispatch tape pursuant to the same exemption. One difference between the Appeal and Freedom of Information Act Appeal 2011-60 is that D.C. Official Code § 2-534(a)(3)(C), and its broader privacy standard, applies.[1] Nonetheless, the same reasoning applies here and the same result is warranted.

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The administrative record indicates the caller is a witness regarding the circumstances which gave rise to the call and that other individuals are identified on the tape. An individual who is a witness to an alleged criminal infraction has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). *See also Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id.* at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923

[1] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the record in this case involves a criminal matter, the exemption here is asserted under, and would be judged by the standard for, Exemption (3)(C).

(11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

There is clearly a personal privacy interest in the records in this matter.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

In this matter, as the administrative record does not indicate that the conduct of MPD is in question, it does not appear that the disclosure of the records will contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).
D.C. Official Code § 2-534(b) provides, in pertinent part, that "any reasonably segregable portion of a public record shall be provided to any person requesting such record after deletion of

those portions which may be withheld from disclosure under subsection (a) of this section." Thus, Appellant argues that MPD should have disclosed the tape with redactions. However, MPD states that the 911 tapes are non-segregable as it does not have the technical capability to redact audiotapes. Accordingly, we find that redaction of the tape is not feasible.

We note that in prior decisions, Freedom of Information Act Appeal 2011-11 (Reconsideration), Freedom of Information Act Appeal 2011-60, and Freedom of Information Act Appeal 2012-44, MPD was found not to have the capability to modify an audiotape and disclosure was not required. Similarly, in Freedom of Information Act Appeal 2010-08, the Office of Unified Communications was found not to have the capability to modify an audiotape and disclosure was not required. While Appellant argues that he "should [not] be disadvantaged by a technological inadequacy that is not of my own making and one that is hard to believe actually exists in 2012," DC FOIA provides no warrant to second-guess the management practices of an agency in the technologies or equipment which it acquires and maintains or, as we have stated in the past, in the compilation and maintenance of its records. Appellant proposes that that a written transcript of the call be created and redacted. However, as we have also stated in the past, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). Appellant proffers the alternative of listening onsite to the portions of the audio which follows the beginning of the call. However, the administrative record indicates that there are exempt portions of the audio which occur after the beginning of the call. Moreover, an order of this nature would establish a new requirement under DC FOIA in these types of cases. This would require an operator to identify all exempt portions of audio, which may occur at multiple locations, and to stop and re-start the audio at the appropriate places. We are unwilling to establish, as a matter of practice, a procedure which will depend on the precision of the operator in noting, in advance, the time of the exempt portions of a call as well as his or her dexterity in stopping and re-starting the audio.

Therefore, the withholding of the 911 audio was proper.

Appellant maintains that other individuals and organizations have been furnished copies of 911 calls in the past. In Freedom of Information Act Appeal 2011-50, Freedom of Information Act Appeal 2012-15, and Freedom of Information Act Appeal 2012-37, the appellants argued that they had requested and received similar records in prior request. As we stated in those appeals, the provision of records in another situation does not compel a similar result in this situation. We noted that unless otherwise prohibited by law, the release of records under DC FOIA as well as the federal FOIA is discretionary. We also noted Mayor's Memorandum 2011-01 directs not only that DC FOIA be construed with the view toward expansion of public access, but that "records exempt from mandatory disclosure be made available as a matter of discretion when disclosure is not prohibited by law or harmful to the public interest." While we have ordered the release of records for which withholding was justifiable, but which, due to age or other factors, would not impair the quality of agency decisions (Freedom of Information Act Appeal 2011-19, Freedom of Information Act Appeal 2011-51, and Freedom of Information Act Appeal 2012-50), we have declined to exercise such discretion where we believed that the release of the records may have had an impact on agency contracting (Freedom of Information Act Appeal 2012-15),

agency decision-making (Freedom of Information Act Appeal 2011-42, Freedom of Information Act Appeal 2011-50, Freedom of Information Act Appeal 2012-15, and Freedom of Information Act Appeal 2013-05), or privacy (Freedom of Information Act Appeal 2012-37). We do not believe that the circumstances justify the exercise of discretion to order disclosure in this instance as the release of such materials may, in fact, have an adverse impact on privacy (and possibly public safety).

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is hereby dismissed.

This constitutes the final decision of this office. 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.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

October 23, 2012

BY U.S. MAIL

Mr. Jacques Chevalier
2809 Gainesville Street, S.E.
Apt. 5
Washington, D.C. 20020

Re: Freedom of Information Act Appeal 2013-07

Dear Mr. Chevalier:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 5, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA made on August 17, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought a copy of a 911 call made by a named individual while in the vicinity of Faith Tabernacle of Prayer, which is located at 2465 Alabama Avenue, S.E. In response, by letter dated September 12, 2012, MPD denied the FOIA Request, stating that it could "neither admit nor deny if such a call was placed, as public disclosure thereof would constitute an unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534 (a)(2)."

On Appeal, Appellant challenges the denial of the FOIA Request. The challenge is "based upon my right to defend myself against civil and possible criminal charges now pending against me in the Superior Court of the District of Columbia. The requested information that I know from first-hand knowledge contains information that would conclusively prove my total and complete innocence of the pending charges referenced above." Appellant sets forth the factual circumstances surrounding the calls and posits his need for the allegedly exculpatory information as warranting the disclosure.

In response, dated October 18, 2012, MPD reaffirmed its position. MPD maintains that individuals "who make 911 calls clearly have a privacy interest in keeping identifying information about them from public dissemination." While acknowledging that this privacy interest can be overcome by a "significant public interest," which would be to shed light on the

operations of MPD, MPD argues that Appellant "seeks the recording for personal reasons" and has not demonstrated that there is a public interest in its release.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

MPD maintains that it can neither admit nor deny if the requested 911 call by the named individual was made, as even the disclosure of whether the call was, in fact, made would constitute an unwarranted invasion of privacy. On the other hand, Appellant states that MPD officers have already told them that the call was made by the named individual. For the purposes of analysis in this decision, we will assume that the 911 call was made.

Based on such assumption, the question is whether MPD may withhold the audio of the 911 call because disclosure would constitute a clearly unwarranted invasion of personal privacy exempt from disclosure under D.C Official Code § 2-534(a)(2). [1]

[1] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the record in this case does not yet, according to Appellant, involve a

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The administrative record indicates the caller is a witness regarding the circumstances which gave rise to the call. An individual who is a witness has a privacy interest in personal information which is in a government record. Disclosure may lead to unwanted contact and harassment. *Kishore v. United States DOJ*, 575 F. Supp. 2d 243, 256 (D.D.C. 2008); *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93 (D.D.C. 2010). *See also Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

There is clearly a personal privacy interest in the records in this matter.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

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criminal matter, the exemption here is asserted under, and would be judged by the standard for, Exemption (2).

Appellant states that the record is needed in connection with civil and possible criminal litigation. However, disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004); *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 771 (1989). As the administrative record does not otherwise indicate that the conduct of MPD is in question, it does not appear that the disclosure of the records will contribute anything to public understanding of the operations or activities of the government or the performance of MPD. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Therefore, the withholding of the 911 audio was proper.

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is hereby dismissed.

This constitutes the final decision of this office. 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.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

November 2, 2012

BY U.S. MAIL

Mr. Andrew C. Gena
Amalgamated Transit Union
5025 Wisconsin Avenue, N.W.
Washington, D.C. 20116-7824

Re: Freedom of Information Act Appeal 2013-08

Dear Mr. Gena:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 11, 2012 (the "Appeal"). You ("Appellant") assert that the District Department of Transportation ("DDOT") improperly withheld records in response to your request for information under DC FOIA, dated September 18, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought the responses to a request for information by DDOT from "Qualifying Organizations" regarding the planning and development of a streetcar system (the "RFI"). In response, by email dated October 4, 2012, DDOT denied the FOIA Request, stating: "Since the process of awarding the contract has not yet been completed, the records you requested are exempt in their entirety from disclosure due to the deliberative process/executive privilege."

On Appeal, Appellant challenges the denial of the FOIA Request. As a factual predicate, Appellant excerpts section 1.1 of the RFI, which states, in pertinent part:

> The District is seeking the industry's perspective and feedback on the project. This RFI is an inquiry only. *No contract or agreement will be entered into as a result of this process, nor does this RFI initiate a formal procurement.* However, the information contained in the responses to this RFI will help the District progress planning and development efforts for the project, which *may* result in the launch of a formal procurement. [emphasis added by Appellant].

Appellant asserts that as DDOT states that as no contract or agreement will result from the RFI, there can be no privilege arising "from the process of awarding the contract," as claimed by DDOT. In addition, Appellant argues that he has not requested any records related to the deliberations of DDOT regarding the responses to the RFI and that the records are not inter-agency or intra-agency as they are received from third parties.

In its response, October 29, 2012, DDOT stated that it "will release the documents associated with [the] Appeal," but stated that it "will need until November 16th to ensure no further exemptions apply to the documents."

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

The response of DDOT is ambiguous. On one hand, it states that it will provide the requested records to Appellant. On the other hand, it appears to be reserving the right, with our approval, to assert additional exemptions to disclosure, which exemptions would result in the withholding of the records anew (or at least their redaction). In effect, DDOT is requesting that we extend the time to respond to the Appeal. However, as a matter of well-established procedure, DDOT is required to assert any exemptions at the time that its response is due. We note that we have already provided a five-day extension to DDOT and DDOT has not stated good cause for any further extension. Thus, DDOT has withdrawn its prior claims of exemptions to disclosure and has not asserted any new exemptions to disclosure. Moreover, based on the administrative record, it does not appear that there any exemptions which DDOT could assert.[1] Accordingly, DDOT shall provide the responses to the RFI to Appellant forthwith.

[1] Among other things, we note that section 8.4 of the RFI, entitled Disclosure of Information Contents/Use of Ideas and Materials, provides: "Information submitted in response to this RFI is not generally considered confidential or proprietary." Thus, the RFI contemplated that the responses submitted pursuant to the RFI would not be confidential and would be subject to disclosure.

Conclusion

Therefore, the decision of DDOT is reversed and remanded. The responses to the RFI shall be provided to Appellant.

This constitutes the final decision of this office. 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Nana Bailey-Thomas, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

November 7, 2012

BY U.S. MAIL

Ms. Jackie Blumenthal
3515 W Place, N.W.
Washington, D.C. 20007

Re: Freedom of Information Act Appeal 2013-09

Dear Ms. Blumenthal:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 22, 2012 (the "Appeal"). You ("Appellant") assert that the Alcoholic Beverage Regulation Administration ("ABRA") improperly withheld records in response to your requests for information under DC FOIA dated September 28, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought from ABRA records related to the application to ABRA for the transfer of a retailer's license which permits the sale of alcohol at an establishment located on Wisconsin Avenue, N.W., in the Glover Park neighborhood. The particular license in question permitted nude dancing at the establishment.

In response, by email dated October 12, 2012, ABRA provided certain records to Appellant, but withheld other records, citing, among other exemptions, D.C. Official Code § 2-534(a)(1), which exempts 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.

On Appeal, Appellant challenges the withholding of five of the records, identified as follows:

1. Financial Affidavit (by an individual identified as the Managing Member of Wisconsin Ventures and the President of B.J. Enterprises, Inc.).

2. Stock Power (conveying the transfer of stock in BJ Enterprises, Inc.).

3. Operating Agreement (Wisconsin BP Investments, LLC).

4. Amended and Restated Operating Agreement (Wisconsin Ventures, LLC).

5. Summary of Shares/Percentage of Interest (BJ Enterprises, Inc.).

By way of background, Appellant recounted the history of the establishment, which "became a nude dancing bar in 1986 and was grandfathered in place when the District enacted a moratorium on issuing new liquor licenses for nude dancing establishments in 1994." Appellant states that the establishment burned down in 2008 and its license was put up for sale. Appellant also states that on October 3, 2012, the Alcoholic Beverage Control Board "approved a 'Transfer With Sale' arrangement that conveys JP's liquor license to what appears to be a cobbled-together ownership structure that raises serious concerns about who the actual owners are and whether the owners meet both the statutory intentions and standards that determine fitness for licensure."

First, Appellant contends that ABRA has no basis for its assertion that the disclosure of the information in the five withheld records in question would cause substantial harm to the competitive position of any party. Instead, Appellant argues that the "categorical" withholding "strongly suggests that the agency has applied something like a conclusive presumption—that any financial information that the participant would ordinarily want to be kept private meets the strictures of the 2-534(a)(1) exception." Insofar as competition is concerned, Appellant argues that as the establishment has a grandfathered license which permits nude dancing and no new licenses for such use may be issued (and no grandfathered licenses can be moved to a different location), the new licensee will not face competition. Moreover, Appellant states that at a meeting of Advisory Neighborhood Commission 3B, "the new owners . . . willingly offered information about the financing of the license transfer deal."

Second, even if the exemption were to apply, citing DCMR § 1-400.4, Appellant urges that the five withheld records in question be released in the "public interest." Appellant, who is a commissioner serving on Advisory Neighborhood Commission 3B, argues that she needs the records, in her role as a commissioner, to make an "independent evaluation" as to whether the application for the transfer of the license has satisfied the requirements of law. Furthermore, Appellant argues that "[r]esidents of Glover Park have a compelling interest in knowing what parties with what interests will be responsible for protecting the community from the secondary impacts associated with nude dancing establishments, such as crime, prostitution, and drug use."

In its response, dated November 1, 2012, ABRA reaffirmed its prior position. It stated that the five withheld records "are exempt from public disclosure under § 2-534(a)(1) of the District's FOIA statute because the documents contain financial information." ABRA also stated that redactions "would render the records with no substantive value, thus requiring that the documents be withheld in their entirety." In addition, ABRA provided the unredacted records for *in camera* review.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

D.C. Official Code § 2-534(a)(1) exempts from disclosure "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." This has been "interpreted to require both a showing of actual competition and a likelihood of substantial competitive injury." *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1152 (D.C. Cir. 1987). See *Washington Post Co. v. Minority Business Opportunity Com.*, 560 A.2d 517, 522 (D.C. 1989), citing *CNA Financial Corp. v. Donovan.* In construing the second part of this test, "actual harm does not need to be demonstrated; evidence supporting the existence of potential competitive injury or economic harm is enough for the exemption to apply." *Essex Electro Eng'rs, Inc. v. United States Secy. of the Army*, 686 F. Supp. 2d 91, 94 (D.D.C. 2010). See also *McDonnell Douglas Corp. v. United States Dep't of the Air Force*, 375 F.3d 1182, 1187 (D.C. Cir. 2004) (The exemption "does not require the party . . . to prove disclosure certainly would cause it substantial competitive harm, but only that disclosure would "likely" do so. [citations omitted]").

In this case, ABRA justifies its withholding of the records in question on the basis that they contain "financial information." However, it is not sufficient to state simply that the records contain financial information. Under D.C. Official Code § 2-534(a)(1), an agency must demonstrate that the "disclosure would result in substantial harm to the competitive position of the person from whom the information was obtained." ABRA has not sustained its burden of proof on the applicability of this exemption.

Nevertheless, based upon our review of the unredacted records, we believe that the exemption for personal privacy under D.C. Official Code § 2-534(a)(2) needs to be considered. D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for

"[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."[1]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

A privacy interest is cognizable under DC FOIA if it is substantial, that is, anything greater than de minimis. *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1229 (D.C. Cir. 2008). A substantial privacy interest in personal identifying information has been found when combined with financial information. *See Seized Prop. Recovery, Corp. v. United States Customs & Border Prot.*, 502 F. Supp. 2d 50, 58 (D.D.C. 2007) ("[I]ndividuals have a privacy interest in the nondisclosure of their names and addresses when linked to financial information . . ."); *Multi AG Media LLC v. Dep't of Agric.*, 515 F.3d 1224, 1230 (D.C. Cir. 2008) ("Telling the public how many crops are on how much land or letting the public look at photographs of farmland with accompanying data will in some cases allow for an inference to be drawn about the financial situation of an individual farmer.") While "only individuals (not commercial entities) may possess protectible privacy interests under Exemption 6 [the federal equivalent of Exemption (2)]," *Hodes v. U.S. Dept. of Housing and Urban Development*, 532 F. Supp. 2d 108, 119 (D.D.C. 2008), the exemption "applies to financial information in business records when the business is individually owned or closely held, and 'the records would necessarily reveal at least a portion of the owner's personal finances. [citation omitted].'" *Multi Ag Media LLC v. Department of Agriculture*, 515 F.3d 1224, 1228-1229 (D.C. Cir. 2008). It is apparent that the five records involve closely-held entities and their principals. Therefore, we will analyze each record to determine if, and to what extent that, a privacy interest exists.

1. Financial Affidavit (by an individual identified as the Managing Member of Wisconsin Ventures and the President of B.J. Enterprises, Inc.). As stated above, only individuals, not business entities, have a privacy interest in information in records of the government. Moreover, individuals have, at most, a diminished expectation of privacy with respect to their

[1] By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). In this case, because it involves an application for transfer of a license, not investigatory records compiled for law-enforcement purposes, the matter would be judged by the standard for Exemption (2).

business dealings. *See Washington Post Co. v. U.S. Dept. of Agriculture*, 943 F.Supp. 31, (D.D.C. 1996); *Hersh & Hersh v. U.S. Dept. of Health and Human Services*, 2008 WL 901539 (N.D.Cal. 2008). However, there is no privacy interest in information which is already publicly available. *CNA Financial Corp. v. Donovan*, 830 F.2d 1132, 1154 (D.C. Cir. 1987).

The establishment being acquired is owned by B.J. Enterprises, Inc., which operates the establishment under the trade name JP's. The new owners have acquired the business by purchasing all of the stock of B.J. Enterprises, Inc., from an individual. The Financial Affidavit sets forth the sources and uses of funds in connection with the proposed acquisition and operation of the business. It is executed by an individual who has been identified as a principal in the sale of the license in both the license application which ABRA has made public as well as in a resolution of Advisory Neighborhood Commission 3B.[2] The same is true with respect to entities which have also been identified. The Advisory Neighborhood Commission 3B resolution also states that the principals indicated that the acquisition was being financed by a $1 million loan. Thus, the source of funds and the entities and principals set forth on the Financial Affidavit are already known. However, on the uses of funds portion of the Financial Affidavit, the purchase price for the stock of the corporation is stated. While the name of the seller of the stock, who is an individual, is revealed in both the records which ABRA has provided and the Advisory Neighborhood Commission 3B resolution, the purchase price is not, as can be determined from the administrative record, known. We believe that the purchase price received by the seller constitutes financial information in which such seller has a personal privacy interest. Moreover, the other uses of funds cannot be disclosed without revealing the purchase price. Accordingly, we find that there is a privacy interest in the dollar amounts of the uses of funds.

2. Stock Power (conveying the transfer of stock in BJ Enterprises, Inc.). The document, denominated as a "Stock Power," effects a transfer of the shares from the individual seller to Wisconsin Ventures, LLC. The document includes the grant of a power of attorney to transfer the shares on the corporate books of BJ Enterprises, Inc. As any information therein is already publicly available or involves corporate entities or persons operating in their business capacities, there is no privacy interest in this document.

3. Operating Agreement (Wisconsin BP Investments, LLC). There is no privacy interest in this document with respect to the entity, which has been formed to engage in commercial activities. Likewise, we do not find that there is a privacy interest in the identity of Mr. Petruska, who is designated as the managing member of the entity, as he is acting in a business capacity. However, we do find that there is a privacy interest in the amount of his ownership interest. In addition, we find that there is a privacy interest in the identity and the amount of the ownership interest of the other member of the entity as the interest of the individual is ostensibly as a passive investor.[3]

[2] The resolution has been submitted for the administrative record by Appellant.

[3] While the stated amounts of the capital contributions are nominal, there is a privacy interest in such amounts as they indicate the relative ownership interests.

4. Amended and Restated Operating Agreement (Wisconsin Ventures, LLC). As was the case for the Operating Agreement of Wisconsin BP Investments, LLC, there is no privacy interest in this document with respect to the entity, which has been formed to engage in commercial activities. Moreover, the document indicates that all of the parties are entities or persons operating in their business capacities. In the case of Mr. Petruska, it appears that he was acting as a nominee and not for his personal interest. Therefore, there is no privacy interest with respect to the individuals.

5. Summary of Shares/Percentage of Interest (BJ Enterprises, Inc.). As was the case for the previous document, there is no privacy interest in this document with respect to the entity, which has been formed to engage in commercial activities. Moreover, the document indicates that all of the parties are entities or persons operating in their business capacities. Therefore, there is no privacy interest with respect to the individuals.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

There is nothing in the administrative records that suggests that the disclosure of the information in which we have found a privacy interest will contribute anything to public understanding of the operations or activities of the government or the performance of ABRA. Moreover, a generalized interest in oversight, coupled with mere allegations that an agency is not doing its job, is insufficient to overcome a privacy interest. *Providence Journal Co. v. Pine*, 1998 WL 356904, 13 (R.I. Super. 1998). Thus, as the information in which we have found a privacy interest does not appear to involve the efficiency or propriety of agency action, there is no public interest involved in disclosing such information.

As set forth above, Appellant argues that she needs the records, in her role as a commissioner, to make an "independent evaluation" as to whether the application for the transfer of the license has satisfied the requirements of law. In addition, Appellant argues that the residents of Glover Park have an interest in public disclosure. However, the availability of an exemption from disclosure is not evaluated based on the identity of the requester or the use for which the information is intended. *Nat'l Archives & Records Admin. v. Favish*, 541 U.S. 157, 162 (2004).

Conclusion

Therefore, the decision of ABRA is reversed and remanded. ABRA shall provide the withheld records to Appellant, with redactions as follows:

1. The dollar amounts of the uses of funds on the Financial Affidavit.

2. The amount of the ownership interest of Brian M. Petruska and the identity and the amount of the ownership interest of the other limited liability company member in the Operating Agreement of Wisconsin BP Investments, LLC.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: William Hager, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

November 21, 2012

BY U.S. MAIL

Mr. Paul D. Casey and Ms. Abigail O. Casey
4 Bolling Brook Drive
Clifton Park, New York 12065

Re: Freedom of Information Act Appeal 2013-10

Dear Mr. and Ms. Casey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 25, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated August 20, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought all records relating to "the investigation of the felony assault and resulting death of [a named decedent]."

In response, by letter dated September 21, 2012, MPD denied the FOIA Request. MPD stated:

> As you may be aware, a D.C. Superior Court grand jury was convened to investigate the matter, but the United States Attorney's Office suspended the investigation, subject to being reopened if additional information becomes available. Given the possibility of the grand jury being reconvened, the disclosure of the investigatory records regarding the death of [the decedent] would be premature at this time and may have a deleterious effect on any such future enforcement proceeding. Moreover, the release of the investigatory records containing the names and personal information of witnesses and other identified individuals would constitute an unwarranted invasion of personal privacy.

On Appeal, Appellant challenges the withholding of the records. First, Appellant states that "[t]he investigation was not 'suspended' by the USAO; it was closed with no criminal charges filed. . . . There is no current 'enforcement proceeding.'" Appellant states that neither MPD nor the United States Attorney's Office is conducting any investigation and argues that the

suspended status is unlikely ever to be changed, permanently leaving them without any disclosure. Second, Appellant states that they are "not interested in the names or personal information of uninvolved witnesses or other independent parties" and "fully expected that MPD would judiciously redact records to maintain confidentiality."

In response, dated November 18, 2012, MPD stated that it was not in a position to respond to the Appeal

> as it needs a determination from the United States Attorney for the District of Columbia (USAO) as to which documents were presented to the grand jury that investigated the death of [the decedent]. Pursuant to the Federal Rules of Criminal Procedure Rule 6(e) information presented to a grand jury can only be released under certain enumerated circumstances.

MPD states that it will immediately request an expedited review from the United States Attorney's Office as to which records may be released without violating Rule 6(e).

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

D.C. Official Code § 2-534(a)(4) exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). Although rules of procedure promulgated by the Supreme Court generally do not qualify as statutes for exemption under D.C. Official Code § 2-534(a)(4) or its federal equivalent, "Exemption 3," Rule 6(e) qualifies because it was specifically adopted by an Act of Congress. *Fund for Constitutional Government v. National Archives and Records Service*, 656 F.2d 856, 867 (D.C. Cir. 1981); *Senate of Puerto*

Rico v. DOJ, 823 F.2d 574, 582, n.23 (D.C. Cir. 1987)(relying upon *Fund for Constitutional Government*).

MPD bases its withholding upon the possible applicability of Rule 6(e) to the requested records, that is, that such records are exempt from disclosure if they have been presented to a grand jury. It states that it needs the guidance of the United States Attorney's Office in order to complete its final response. However, such guidance is not necessary as the requested records will not be exempt from disclosure under Rule 6(e) even if they have been presented to the grand jury. The D.C. Circuit, in an opinion by Ruth Bader-Ginsburg, has set forth the limitations of Rule 6(e) as applied to FOIA:

> We have never embraced a reading of Rule 6(e) so literal as to draw "a veil of secrecy . . . over all matters occurring in the world that happen to be investigated by a grand jury." *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1382 (D.C. Cir.) (*en banc*), *cert. denied*, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed.2d 289 (1980). There is no *per se* rule against disclosure of any and all information which has reached the grand jury chambers; as the district court correctly observed, the touchstone is whether disclosure would "tend to reveal some secret aspect of the grand jury's investigation" such matters as "'the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of jurors, and the like.' " [footnote omitted]. The disclosure of information "coincidentally before the grand jury [which can] be revealed in such a manner that its revelation would not elucidate the inner workings of the grand jury" is not prohibited. *Fund for Constitutional Government v. National Archives and Records Service*, 656 F.2d 856, 870 (D.C. Cir. 1981); *see also Dresser*, 628 F.2d at 1383 ("The fact that a grand jury has subpoenaed documents concerning a particular matter does not insulate that matter from investigation in another forum."); *United States v. Interstate Dress Carriers, Inc.*, 280 F.2d 52, 54 (2d Cir. 1960) (Rule 6(e)'s purpose is not "to foreclose from all future revelation to proper authorities the same information or documents which were presented to the grand jury"). Automatically sealing all that a grand jury sees or hears would enable the government to shield any information from public view indefinitely by the simple expedient of presenting it to the grand jury.

Senate of Puerto Rico v. DOJ, 823 F.2d 574, 582 (D.C. Cir. 1987).

In explaining its decision in *Senate of Puerto Rico*, the D.C. Circuit stated:

> [T]he government may not bring information into the protection of Rule 6(e) and thereby into the protection afforded by Exemption 3, simply by submitting it as a grand jury exhibit. A contrary holding could render much of FOIA's mandate illusory, as the government could often conceal otherwise disclosable information simply by submitting the information to a grand jury.

Here, it is clear from its response that MPD does not have knowledge of what occurred in the grand jury proceedings. Thus, its disclosure of the requested records cannot violate the secrecy

of the grand jury proceedings as it is in possession of the records separate and apart from the jury proceedings and has no knowledge of what occurred in the proceedings. As is clear from judicial authority cited above, the mere fact that a record has been submitted to a grand jury is insufficient, standing alone, to bring it within the ambit of Rule 6(e). MPD clearly indicates that it does not know what records were presented to the grand jury. "Persons not described in FRCP 6(e)(2)(B) incur no obligation of secrecy under FRCP 6(e)." *Sussman v. United States Marshals Serv.*, 494 F.3d 1106, 1113 (D.C. Cir. 2007). There is no danger of violating the secrecy of the grand jury proceedings. Thus, regardless of the response of the United States Attorney's Office, the records will not be exempt from disclosure by reason of Rule 6(e). Nevertheless, we will consider the exemptions raised by MPD in its initial response letter to Appellant.

D.C. Official Code § 2-534(a)(3) provides, in pertinent part, for an exemption from disclosure for:

> Investigatory records compiled for law-enforcement purposes,. . ., but only to the extent that the production of such records would:
>
> (A) Interfere with:
>
> (i) Enforcement proceedings;

MPD asserts that D.C. Official Code § 2-534(a)(3)(A)(i) exempts the requested records from disclosure, stating, as set forth above: "Given the possibility of the grand jury being reconvened, the disclosure of the investigatory records regarding the death of [the decedent] would be premature at this time and may have a deleterious effect on any such future enforcement proceeding."

For purposes of the applicability of the exemption, it is sufficient if the enforcement proceedings are "reasonably anticipated." *Sussman v. United States Marshals Serv.*, 494 F.3d 1106, 1114 (D.C. Cir. 2007) (quoting *Mapother v. DOJ*, 3 F.3d 1533, 1540 (D.C. Cir. 1993). In this case, in its initial response, MPD stated that the United States Attorney's Office suspended the investigation. In light of such suspension, with no indication that the investigation will be re-opened, we cannot find that enforcement proceedings can meet the threshold of being reasonably anticipated. A mere possibility is not sufficient.[1]

[1] We note that the views of the United States Attorney's Office have not been represented on the record. Accordingly, we would be willing to reconsider our decision based upon a declaration by the United States Attorney's Office as to prospects for the institution of enforcement proceedings and the manner in which the disclosure of the records would interfere with such enforcement proceedings. As we have provided in our order that MPD has until December 13, 2012, to furnish the records to Appellant, it will have ample time to contact the United States Attorney's Office.

In addition, MPD asserts that releasing the requested records would reveal the names and personal information of individuals such as witnesses and that the exemption under D.C. Official Code § 2-534(a)(3)(C), applies.[2] This exemption would justify the redaction of the names and such information, not the withholding of the records in whole. Appellant appears to concede the assertion by MPD of an exemption for personal privacy. However, Appellant states that the expectation that redactions would be made for "*uninvolved* witnesses or other *independent* parties [emphasis added]" and that such redactions would be made "judiciously," conceding the matter only as to limited redactions. However, we do not believe that such redactions need be so limited.

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The D.C. Circuit has stated:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]. 'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.' *Bast*, 665 F.2d at 1254.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

In the case of the factual circumstances surrounding the Appeal, it appears that the individuals who are identified in the records are the alleged victim, suspects, or witnesses. We find that there is a sufficient individual privacy interest for a person who is being investigated for wrongdoing. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to

[2] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the record in this case involves a criminal matter, the exemption here is asserted under, and would be judged by the standard for, Exemption (3)(C).

invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under 7(C) [as noted above, D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). The D.C. Circuit has also stated that nondisclosure is justified for documents that reveal allegations of wrongdoing by suspects who never were prosecuted. *See Bast v. U. S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question.

There is clearly a personal privacy interest in the records in this matter with respect to suspects or witnesses, involved or uninvolved.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

There is nothing in the administrative record that suggests that the disclosure of the information in which we have found a privacy interest will contribute anything to public understanding of the operations or activities of the government or the performance of MPD. Moreover, a generalized interest in oversight, coupled with mere allegations that an agency is not doing its job, is insufficient to overcome a privacy interest. *Providence Journal Co. v. Pine*, 1998 WL 356904, 13 (R.I. Super. 1998). Thus, as the information in which we have found a privacy interest does not appear to involve the efficiency or propriety of agency action, there is no public interest involved in disclosing such information.

Conclusion

Therefore, the decision of MPD is reversed and remanded. MPD shall provide the records to Appellant, with redactions permitted as set forth in this decision, on or before December 13, 2012.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the redactions made by MPD pursuant to this order.

This constitutes the final decision of this office. 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

December 17, 2012

BY U.S. MAIL

Mr. Byron Smith
#11701-007
United States Penitentiary Marion
P.O. Box 1000
Marion, Illinois 62959

Re: Freedom of Information Act Appeal 2013-12

Dear Mr. Smith:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated November 21, 2012 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated October 10, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. "[C]lasses or educational programs completed by me during 1992 through 1997 while housed within the D.C. Department of Corrections Maximum Security facility at Lorton, Virginia, and the amount of goodtime awarded for each program completed."

2. "[C]lasses or educational programs completed by me during 1990 through 1992 while housed at the Frio County jail, in Pearsall, Texas, and the amount of goodtime awarded for each program completed."

3. "[C]lasses or educational programs completed by me during 1990 through 1992 while housed at the CCA-Northeast Ohio Correctional Center, in Youngstown, Ohio, and the amount of goodtime awarded for each program completed."

4. "[C]lasses or educational programs completed by me during 1990 through 1992 while housed at Sussex II, in Sussex, Virginia, and the amount of goodtime awarded for each program completed."

5. "[C]lasses or educational programs completed by me during 2003 through 2005 while housed at U.S.P. Leavenworth, in Leavenworth, KS, and the amount of goodtime awarded for each program completed."

6. "[C]lasses or educational programs completed by me during 2003 through 2005 while housed at U.S.P. Hazelton, in West Virginia, and the amount of goodtime awarded for each program completed."

7. "[C]lasses or educational programs completed by me during 2007 through 2010 while housed at U.S.P. Tucson, in Tucson, AZ, and the amount of goodtime awarded for each program completed."

8. "[E]ducational classes and programs that were acceptable under the standards of the D.C. Department of Corrections and/or the Mayors Office for the awarding of educational goodtime upon completion."

In response, by letter dated November 7, 2012, DOC stated that after conducting a search, no responsive records were found. In particular, DOC stated that the "institutional file" of Appellant was not found. DOC offered, as a possible explanation, that since Appellant was last in the custody of DOC on July 18, 2001, and, under its retention policy, DOC only maintains the institutional file of an inmate for ten years after the inmate has been released from DOC custody, the institutional file may been destroyed.

On Appeal, Appellant challenges the response of DOC to the FOIA Request based upon the alleged incorrect statement that Appellant was released from custody on July 18, 2001. Appellant states that he has been transferred to several correctional facilities since 2001, but has not been released from custody, and that his continuing incarceration is pursuant to the same conviction under District law received in the Superior Court of the District of Columbia. Accordingly, Appellant believes that the records should be available.

In its response, by email dated December 14, 2012, DOC reaffirmed its position. First, DOC states that pursuant to the provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997,[1] whereby all prisoners at the Lorton Correctional Complex were to be transferred to the Bureau of Prisons, Appellant was transferred from the custody of DOC to the custody of the Bureau of Prisons. According to the affidavit of the Inmates Records Office Administrator, Central Detention Facility,[2] in the DOC Records Office, it was the practice of DOC to transfer the institutional file of a felony inmate to Bureau of Prisons when custody of the

[1] Public L. No. 105-33. In particular, DOC cites and quotes section 11201(b).

[2] The Inmates Records Office Administrator states that she has been employed by DOC since January, 1982, and has been located in DOC records offices for the Lorton facilities.

prisoner was transferred to the Bureau of Prisons.[3] Thus, as opposed to its prior hypothesis that the institutional file was destroyed, DOC states that the file was transferred to the Bureau of Prisons. Furthermore, according to the affidavit, documentation of inmate achievements while in custody, such as General Education Development certificates, was placed in the institutional file of the inmate. Citing judicial authority, DOC states that it "is not obligated to extend its search to the files of the BOP where Mr. Smith's institutional file was transferred along with him." Second, according to the affidavit of the Education Program Administrator of DOC, inmates' records are organized and maintained "under their names and DCDC#s" and that, after a search for the records of Appellant, no records were found.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

Appellant contests the adequacy of the search for the requested records, contending that, contrary to the statement of DOC, he was not released from custody and the records should be available as his incarceration pursuant to District law and judicial proceedings continues.

An agency is not required to conduct a search which is unreasonably burdensome. *Goland v. CIA*, 607 F.2d 339, 353 (D.C. Cir. 1978); *American Federation of Government Employees, Local 2782 v. U.S. Dep't of Commerce*, 907 F.2d 203, 209 (D.C. Cir. 1990).

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that

[3] Such practice was continued until 2004, when the Bureau of Prisons notified DOC that it would no longer accept such institutional files.

full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In testing the adequacy of a search, we have looked to see whether an agency has made reasonable determinations as to the location of records requested and made, or caused to be made, searches for the records. See, e.g., Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-55. However, a search will be deemed to be adequate if an individual familiar with the records of an agency states that an agency does not maintain the responsive records. *American-Arab Anti-Discrimination Comm. v. United States Dep't of Homeland Sec.*, 516 F. Supp. 2d 83, 88 (D.D.C. 2007).

In this case, based on its knowledge of the manner in which records are maintained, DOC has determined that the requested records, if they exist, would be maintained in its Educational Records Office or in the institutional file of Appellant. Based upon his knowledge of the manner in which the records were maintained, the Education Program Administrator searched the records in the Educational Records Office. However, no records were located. In addition, a search was made for the institutional file of Appellant, but none was found. Here, based on the knowledge of the record maintenance and transfer practices of DOC, the Inmates Records Office Administrator offers a reasonable explanation for its absence, that is, that the institutional file was transferred to the Bureau of Prisons when the custody of Appellant was transferred from DOC to the Bureau of Prisons. In this regard, Appellant should note that while he has not been released from incarceration, as confirmed by the Inmate Transfer History Report submitted as part of the response of DCC, he was released from the custody of DOC into the custody of the Bureau of Prisons in 2001.

Accordingly, we find that the search was adequate.

In addition, we note that DOC is under no obligation under DC FOIA to recover any records which may be responsive to the FOIA Request and provide them to Appellant. Under the test enunciated by the Supreme Court in *DOJ v. Tax Analysts*, 492 U.S. 136 (1989), agency records are those that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. In this case, the second test has not been met. Generally, an agency "is under no duty to disclose documents not in its possession." *Rothschild v. DOE*, 6 F. Supp. 2d

38, 40 (D.D.C. 1998). *See also* Freedom of Information Act Appeal 2012-55 and, as cited by, and quoted from, by DOC, *Valencia-Lucena v. U.S. Coast Guard*, 180 F.3d 321, 328 (D.C. Cir. 1999)(An agency "has no responsibility under FOIA to make inquiries of other law enforcement agencies . . . for documents no longer within its control or possession.")

While Appellant may feel that DOC should have maintained the requested records, as we have stated in prior decisions, DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records. It would appear that, if the requested records exist, they are maintained by the Bureau of Prisons.

Conclusion

Based on the foregoing, the decision of DOC is upheld. The Appeal is dismissed.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 3, 2013

BY EMAIL

Mr. Ethan Schwartz
59 Kent Street, #2-E
Brooklyn, New York 11222
ethandschwartz@yahoo.com

Re: Freedom of Information Act Appeal 2013-13

Dear Mr. Schwartz:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated October 24, 2012 (the "Appeal"). You ("Appellant") assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your request for information under DC FOIA dated December 21, 2011 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. "Emails, faxes and other written communications between DCPS officials and staff regarding Michelle Rhee's annual one-on-one meetings with DCPS principals about school performance goals for school years 2007-08, 2008-09 and 2009-2010."

2. "Communications between DCPS officials and employees of the Washington Post, including Fred Hiatt and JoAnn Armao."

3. "All FOIA requests served on DCPS in 2010 and 2011."

4. "Michelle Rhee's calendars, appointment books and travel records for 2008 and 2009."

5. "Michelle Rhee's vacation and leave records for 2008 and 2009."

6. "Employment records for [certain named] DCPS employees . . ."

7. "Advertisements, contracts and invoices related to recruitment of principals, including ads featuring [certain named DCPS employees]."

8. "Scale scores on DCAS in all available years by grade and subject for each school. Scale scores in all available years by grade and subject for the district, broken down by race and ethnicity, and eligibility for free or reduced lunch."

In response, by letter dated October 24, 2012, DCPS denied the FOIA Request. As to parts 1, 3, and 4 of the FOIA Request, DCPS stated that it did not possess responsive records. As to parts 2 and 7, DCPS stated that these parts of the FOIA Request were not stated with sufficient clarity. As to parts 5 and 6, DCPS, citing "D.C. Code §§ 2-534(a)(2) and (6) and D.C. Code § 1-631.01 et seq.," stated that "District of Columbia law and regulations prevent the release of personnel records without the consent of the individual employee, unless the release is to law enforcement or personnel authorities, or in conjunction with a lawfully issued subpoena." As to part 8 of the FOIA Request, DCPS stated that the request should be sent to the Office of the State Superintendent of Education.

On Appeal, Appellant challenges the response to the FOIA Request. Noting that the FOIA Request "was met with zero responsive records and took ten months to answer," Appellant states "if my request was either overly abroad, or there were no responsive records, the response shouldn't have taken nearly a year to complete." In addition, Appellant states that he should be given an opportunity to modify his request to the extent that it is overly broad.

In its response, by email dated December 20, 2012, DCPS modified its position in part. As to parts 2 and 7, DCPS stated that it "is willing to work with" Appellant to "narrow" these parts of the FOIA Request. However, DCPS otherwise reaffirmed its position as to the withholding or unavailability of the records. As to parts 5 and 6, DCPS stated that "the information is exempt from release pursuant to the statutory provisions cited in its original response." As to part 1 of the FOIA Request, DCPS stated that

> there were no responsive documents. DCPS cannot produce what it does not have, and there is no established retention period for the type of documents requested. Moreover, if responsive documents had been in the possession of DCPS, they likely would have been determined to be exempt from release insofar as the documents could reasonably be deemed to be personnel information.

As to part 3 of the FOIA Request, DCPS stated:

> DCPS maintains records of its FOIA requests in an electronic data base. A separate document would need to be created in order satisfy the request, and the FOIA statute does not require an agency to create documents in order satisfy a request. Furthermore, DCPS submits that records of its FOIA requests are exempt from release pursuant to D.C. Official Code § 2-534(a)(2). DCPS has never publicly released the contents of FOIA requests received by the agency, and doing so could reasonably violate the privacy interests of other requesters.

As to part 4 of the FOIA Request, DCPS stated: "DCPS maintains that it does not possess responsive documents. Ms. Rhee left DCPS in October, 2010 and the requested information was not retained by DCPS after her departure." As to part 8 of the FOIA Request, DCPS referenced its prior response to Appellant.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

We have described the initial response of DCPS to the eight parts of the FOIA Request in four groupings. We will analyze each grouping separately.

Parts 2 and 7 of the FOIA Request

In its initial response to Appellant, DCPS stated that these parts of the FOIA Request were not stated with sufficient clarity. DCMR § 1-402.5 states:

> Where the information supplied by the requester is not sufficient to permit the identification and location of the record by the agency without an unreasonable amount of effort, the requester shall be contacted and asked to supplement the request with the necessary information. Every reasonable effort shall be made by the agency to assist in the identification and location of requested records.

In its response to the Appeal, it stated that it "is willing to work with" Appellant to "narrow" these parts of the FOIA Request. Although this would appear to moot the issue as DCPS states that it "is willing to work with" Appellant, this should not be viewed by DCPS as a concession. Under the rule stated above, an agency is required to contact a requester if a request is not stated with sufficient clarity to attempt to clarify or narrow the request. Accordingly, DCPS shall contact Appellant and attempt to clarify or narrow, as may be necessary or appropriate, parts 2 and 7 of the FOIA Request.

Parts 5 and 6 of the FOIA Request

DCPS, citing "D.C. Code §§ 2-534(a)(2) and (6) and D.C. Code § 1-631.01 et seq.," states that "District of Columbia law and regulations prevent the release of personnel records without the consent of the individual employee, unless the release is to law enforcement or personnel authorities, or in conjunction with a lawfully issued subpoena."

DCPS cites statutory authority specifically and the District of Columbia Municipal Regulations generally for its decision to withhold Michelle Rhee's vacation and leave records and the employment records of three named employees. The main contention is based on D.C. Official Code § 2-534(a)(6), which provides an exemption for information specifically exempt from disclosure by statute if the statute requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or establishes particular criteria for withholding or refers to particular types of matters to be withheld. The statute which DCPS cites in support of its contention is Title XXXI of the District of Columbia Comprehensive Personnel Act, which is codified beginning in D.C. Official Code § 1-631.01. In particular, we note two provisions. D.C. Official Code § 1-631.01 provides: "All official personnel records of the District government shall be established, maintained, and disposed of in a manner designed to ensure the greatest degree of applicant or employee privacy . . ." D.C. Official Code § 1-631.03 provides:

> It is the policy of the District government to make personnel information in its possession or under its control available upon request to appropriate personnel and law-enforcement authorities, except if such disclosure would constitute an unwarranted invasion of personal privacy or is prohibited under law or rules and regulations issued pursuant thereto.

The provisions in Title XXXI do not establish a specific exemption for withholding personnel records as it does not provide a blanket exemption or clear criteria for the withholding. Similarly, with respect to the reference to the District of Columbia Municipal Regulations, in Freedom of Information Act Appeal 2011-36 and Freedom of Information Act Appeal 2011-36, we were unwilling to find that a personnel rule alone can support an exemption which requires statutory authority. However, in such decisions, as the privacy rule cited there was rooted in personal privacy considerations, which considerations are addressed by exemptions under DC FOIA, we considered the matter under D.C. Official Code § 2-534(a)(2). Here DCPS specifically cites this provision as sufficient authority for its position. D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy."[1]

[1] By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

> We stated in Freedom of Information Act Appeal 2012-76: "In general, it has been held that an employee has a privacy interest in the contents of his employment file." In *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984), the court found that applications for employment implicated a sufficient privacy interest. In *Ripskis v. Department of Housing and Urban Development*, 746 F.2d 1, 3 (D.C. Cir. 1984), the court found that employee evaluation forms implicate a sufficient privacy interest. "[D]isclosure of even favorable information may well embarrass an individual or incite jealousy in his or her co-workers. We therefore agree with the District Court's finding that substantial privacy interests are at stake." *Id*. Likewise, there is a sufficient privacy interest in personal financial information of a government employee. *See, e.g., Barvick v. Cisneros*, 941 F.Supp. 1015, 1020 (D. Kan.1996) ("life insurance; annuitant indicator; retirement plan").

Freedom of Information Act Appeal 2012-75. It is clear that there is a sufficient privacy interest in the records requested in parts 5 and 6 of the FOIA Request.

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privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption 3(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption 3(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). In this case, because it involves personnel records, not investigatory records compiled for law-enforcement purposes, the matter would be judged by the standard for Exemption (2).

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

While there may be a public interest in revealing the identity of a high-level government official involved in wrongdoing, there is generally not such an interest when lower-level employees are involved, particularly when they are not the subjects of an investigation. *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984). In the case of the Appeal, with respect to the three named employees in part 6 of the FOIA Request, there is no indication in the administrative record that they are higher-level employees, that they were implicated in any wrongdoing, or that disclosure of the records would inform the public about agency operations. In short, there is not a public interest in the disclosure of these records.

With respect to part 5 of the FOIA Request, the subject, Michelle Rhee, is the agency head. Nevertheless, there is nothing in the administrative record that indicates that disclosure of her vacation and leave records would contribute anything to public understanding of the operations or activities of the government or the performance of DCPS nor is it otherwise apparent that the disclosure of these records would do so. Mere suspicion by a requester does not create a sufficient public interest. *Harrison v. Fed. Bureau of Prisons*, 611 F. Supp. 2d 54, 66 (D.D.C. 2009). *See* Freedom of Information Act Appeal 2012-75. We find that the public interest in disclosure of these records does not outweigh her personal privacy interest.

Parts 1, 3, and 4 of the FOIA Request

In its initial response, DCPS stated that it did not possess responsive records. It reaffirms this as to parts 1 and 4. The issue as to these parts is the adequacy of the search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that

full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. See, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30, and Freedom of Information Act Appeal 2012-35. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-28, DOES stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-35, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations. In the case of DCPS itself, in Freedom of Information Act Appeal 2012-80, it identified the particular division in which the records would be located, the Chief of that division identified the relevant files to be searched (the paper-based files and the electronic files on the "shared drive" of the division), and the Chief searched such files.

In the case of the Appeal, DCPS has provided merely a conclusory statement that it does not possess the records requested in parts 1 and 4 of the FOIA Request, but has not stated the manner in which the searches were conducted. Accordingly, we have no basis to conclude that it has conducted an adequate search. However, based on the administrative record, we are not confident that simply ordering a new search would be productive. Therefore, we are ordering DCPS to state to Appellant the manner in which each category of the requested records is maintained and the manner in which the search was conducted. As part of such disclosure, DCPS shall state which divisions maintain the records, in what form the records are maintained, e.g., electronic (email, word processing, PDF files, or other program) or paper-based, and how

such records were searched. Based on the foregoing disclosure to Appellant, if Appellant is not satisfied with the search methodology employed by DCPS, Appellant may submit a request for reconsideration of the decision, identifying the deficiencies and proposing an appropriate order.

As to part 3 of the FOIA Request, in its initial response, DCPS stated that it had no responsive records. However, in its response to the Appeal, DCPS stated that it maintains records of its FOIA requests in an electronic data base. Nevertheless, it contends that it is not required to produce any records on two bases. First, it contends that it would be required to create a new document in order to satisfy this part of the FOIA Request. Second, it contends that the records are exempt from disclosure under D.C. Official Code § 2-534(a)(2) as disclosure of the requests would violate the privacy interests of other requesters. We do not find either argument is sufficient to justify the withholding of the records.

As we have stated in many decisions, under DC FOIA, an agency "has no duty either to answer questions unrelated to document requests or to create documents." *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985). The law only requires the disclosure of nonexempt documents, not answers to interrogatories. *Di Viaio v. Kelley*, 571 F.2d 538, 542-543 (10th Cir. 1978).

DC FOIA only requires production of records in the possession of an agency. As indicated, an agency is not required to create or maintain records.

> It is well established that an agency is not "required to reorganize (its) files in response to (a plaintiff's) request in the form in which it was made," [footnote omitted] and that if an agency has not previously segregated the requested class of records production may be required only "where the agency (can) identify that material with reasonable effort." [footnote omitted].

Goland v. CIA, 607 F.2d 339, 353 (D.C. Cir. 1978).

Nonetheless, as we indicated in Freedom of Information Act Appeal 2011-58 and Freedom of Information Act Appeal 2012-68, in accordance with provisions of the federal FOIA, which we use as a guideline, an agency will be required to extract records from an electronic database in a requested form or format if it is not difficult to do so. Here, no new records will be required to be created. DCPS can simply print out the existing, requested records or copy them to another medium, such a disk, and furnish them to Appellant.

We have set forth in our discussion of parts 5 and 6 of the FOIA Request the legal principles applicable to privacy analysis under D.C. Official Code § 2-534(a)(2). As we set forth therein, the first part of the analysis is to determine whether there is a sufficient privacy interest present. The cases are not uniform as to the privacy interest of an individual contacting his or her government. Nevertheless, it has been held that FOIA requesters do not ordinarily expect that their names will be kept private. *See*, e.g., *Holland v. CIA*, 1992 WL 233820 (D.D.C. Aug. 31, 1992), citing and adopting statement in *Department of Justice Guide to the Freedom of Information Act*. We note that past appeals decisions pursuant to D.C. Official Code § 2-537(a)

which have been made public have included the identity of the requesters. Moreover, DCPS is asserting a blanket exemption for all requesters, regardless of identity. However, "only individuals (not commercial entities) may possess protectible privacy interests under Exemption 6 [the federal equivalent of Exemption (2)]," *Hodes v. U.S. Dept. of Housing and Urban Development*, 532 F. Supp. 2d 108, 119 (D.D.C. 2008). In sum, as a general matter, we do not find that there is a sufficient privacy interest with respect to the disclosure of the identity of FOIA requesters.

Accordingly, the records requested under part 3 of the FOIA Request shall be disclosed to Appellant, subject to the following. D.C. Official Code § 2-534(a) provides, in pertinent part: "Any reasonably segregable portion of a public record shall be provided to any person requesting the record after deletion of those portions which may be withheld from disclosure pursuant to subsection (a) of this section." It is possible that some of the FOIA requests may contain personal identifying or other information which may qualify for exemption from disclosure under D.C. Official Code § 2-534(a)(2).[2] DCPS may redact such portions of the records.[3]

Part 8 of the FOIA Request

In its initial response to this part of the FOIA Request, DCPS stated simply that the request should be sent to the Office of the State Superintendent of Education, and has incorporated this response in its response to the Appeal. Standing alone, this response is insufficient.

As indicated above, DC FOIA requires production of records in the possession of an agency. D.C. Official Code § 2-532(a) provides, in pertinent part, that "[a]ny person has a right to inspect . . . any public record of a public body . . . in accordance with reasonable rules. . . " DCMR § 1-402.1 provides that "[a] request for a record . . . shall be directed to the particular agency." Under the test enunciated by the Supreme Court in *DOJ v. Tax Analysts*, 492 U.S. 136 (1989), agency records are those that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. The fact that another agency may possess the requested records does not absolve an agency receiving a request to conduct a search and produce any responsive records in its possession. *See* Freedom of Information Act Appeal 2012-54 (the fact that another agency maintained copies of contracts did not relieve agency of duty to search for, and produce, contracts). If the requested records are in the agency's possession, it cannot refuse to act on the request because the records originated elsewhere. *McGehee v. Cent. Intelligence Agency*, 697 F.2d 1095, 1110 (D.C. Cir. 1983). A referral to another agency after it has been determined that an agency does not maintain responsive records is appropriate, but it is not appropriate in lieu of a proper determination that it does not possess such records. It may be the case that DCPS does not maintain any records responsive to this part of the FOIA Request.

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[2] For example, the FOIA Request may contain the social security number of a requester.

[3] Our decision will provide that Appellant may challenge, by separate appeal, any response required by this decision (except that, with respect to parts of parts 1 and 4 of the FOIA Request, in lieu thereof, Appellant may request a reconsideration of the decision). Any redactions made by DCPS to the FOIA requests produced shall be included in the responses which may be so challenged.

However, as DCPS has not any offered any showing that it conducted a search reasonably calculated to produce the relevant documents, we have little choice but to order DCPS to conduct a search reasonably calculated to produce the responsive records, subject to any exemptions which may be applicable.

Conclusion

Therefore, the decision of DCPS is upheld in part and remanded in part. Within fifteen business days after the date of this decision and in accordance with this decision, DCPS shall:

1. Contact Appellant and attempt to clarify or narrow, as may be necessary or appropriate, parts 2 and 7 of the FOIA Request, and produce any records as a result of any agreement reached with Appellant.

2. State to Appellant the manner in which each category of the requested records is maintained and the manner in which the search was conducted. As part of such disclosure, DCPS shall state which divisions maintain the records, in what form the records are maintained, e.g., electronic (email, word processing, PDF files, or other program) or paper-based, and how such records were searched.

3. Provide to Appellant the records requested under part 3 of the FOIA Request, subject to redaction personal identifying or other information which may qualify for exemption from disclosure under D.C. Official Code § 2-534(a)(2).

4. Conduct a search reasonably calculated to produce the responsive records under part 8 of the FOIA Request and provide the responsive records to Appellant, subject to any exemptions which may be applicable.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal (or reconsideration as provided herein), to the response of DCPS pursuant to this order.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Eboni Govan, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 17, 2013

BY U.S. MAIL

David A. Fuss, Esq.
Wilkes Artis
1835 I Street, N.W.
Washington, D.C. 20006

Re: Freedom of Information Act Appeal 2013-14

Dear Mr. Fuss:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 5, 2012 (the "Appeal"). You ("Appellant") assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to your request for information under DC FOIA dated October 18, 2012 (the "FOIA Request").

Appellant's FOIA Request sought information regarding the "Cap Rate Study" prepared by Delta Associates for the Office of Tax and Revenue, an agency under the OCFO, in connection with real property tax assessments for the tax year 2013. The FOIA Request contains the same, but not all, of the FOIA requests which were the subject of Freedom of Information Act Appeal 2011-25, in which the appellant was a member of the same law firm as Appellant.

In response, by letter dated November 15, 2012, OCFO identified responsive records, but withheld the records on the basis that it would constitute an unwarranted invasion of personal privacy exempt from disclosure under D.C. Official Code § 2-534(a)(3)(C).

On Appeal, Appellant challenges the denial of the FOIA Request. Appellant states that D.C. Official Code § 2-531(a)(3)(C) is inapplicable as it applies to investigatory records compiled for law-enforcement purposes and the records requested do not constitute investigatory records compiled for law-enforcement purposes.

In response to the Appeal, OCFO contacted Appellant and, pursuant to their discussion, OCFO provided responsive records to Appellant, which production Appellant indicates, by email dated

January 17, 2013, satisfies the FOIA Request. As Appellant has stated that the matter has been settled, the Appeal is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Charles Barbera, Esq.
Angela Washington, Esq.
Laverne Lee

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 8, 2013

BY U.S. MAIL

Mr. Michael Shively
1917 2nd Street, N.E., #301
Washington, D.C. 20002

Re: Freedom of Information Act Appeal 2013-15

Dear Mr. Shively:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 14, 2012 (the "Appeal"). You ("Appellant") assert that the Department of Consumer and Regulatory Affairs ("DCRA") improperly withheld records in response to your request for information under DC FOIA received October 19, 2012 and revised on May 21, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "all internal communication (any emails, messages, memo, meeting minutes, etc) which relates to [real property identified by address]." By email dated October 19, 2012, Appellant stated that the time period covered by the FOIA Request is August 2010 until the date of the FOIA Request.

In response, by email dated December 13, 2012, DCRA provided to Appellant six responsive records—"copies of five email 'threads' containing multiple emails each, and a copy of one document attached to one of these email threads."[1]

[1] The initial search did not yield any responsive records, but a second search was made after Appellant clarified the nature of the FOIA Request. In addition, Appellant clarified that it was not necessary to provide him with any records which he had already been sent directly or on which he was copied. In the initial response, DCRA interpreted the FOIA Request to include permit review application reviews which are transmitted from reviewer to reviewer and stated that, pursuant to D.C. Official Code § 2-536(a)(8A), permits, permit applications, and all documents submitted in support of permit applications are all required to be made publicly available and may be obtained at the DCRA Permit Center Records Room. Appellant does not appear to be challenging the response as pertains to such publically-available records.

On Appeal, Appellant challenges the response to the FOIA Request.

> The response that I received only provided a small number of internal communications, all of which ask unanswered questions. One relates to a meeting that took place, but no notes were provided from that meeting. I have been communicating with DCRA since March of 2012 over issues at this property, and therefore I find it impossible that so little communication exists.

In its response, by email dated December 20, 2013, DCRA reaffirmed its position. DCRA indicates that it conducted two separate searches. It states that, based upon the property address and a lengthy description of non-DCRA related activity at the property provided by Appellant, it first searched the DCRA Accela permitting and inspections tracking system and the records in the DCRA Communications and Customer Service office. DCRA found no responsive records as a result of the first search. After contacting Appellant and clarifying the nature of the FOIA Request, it conducted a second search by identifying DCRA employees familiar with the subject property and asking them to provide responsive records. In addition, a DCRA employee in the Communications and Customer Service office was contacted again and asked to search for responsive records "including but not limited to IQ system correspondence, complaint correspondence to the agency, and correspondence to or from other agencies regarding the property." While no responsive records were identified by the Communications and Customer Service office in the second search, the other DCRA employees produced responsive records, all of which were provided to Appellant. With respect to the meeting identified by Appellant, DCRA states that there were no responsive records located.

In addition, DCRA states that two other District government employees, the DCRA General Counsel and an attorney in the Office of Consumer Protection of the Office of the Attorney General ("OAG"), were included in email correspondence which were part of the responsive records, but "records in their possession are not properly within the scope of the request or within the authority of the DCRA FOIA Office, other than correspondence records of theirs which intersect with those of DCRA employees . . ." DCRA states that the DCRA General Counsel, while serving as its general counsel, is an employee of OAG.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

The issue in this matter is the adequacy of the search and the belief of Appellant that more records exist.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. See, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2012-35, and Freedom of Information Act Appeal 2012-56. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-28, DOES stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-35, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations.

In this case, it appears that DCRA has made a good-faith effort to locate the responsive records pursuant to the FOIA Request. After a first search did not yield any results, it worked with Appellant to craft a search that did, in fact, produce responsive records by identifying employees who were involved in the real property matter as those individuals would be familiar with the records surrounding such matter. That being said, there is some uncertainty remaining as to whether the search has been conducted sufficiently in accordance with the principles outlined above. In light of the results of the first search, the identification of employees who were involved in the real property matter, and a subsequent search by such employees, was a reasonable method to produce the responsive records. However, it is unclear as to which locations were searched by those employees, e.g., electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains, and that all likely locations were searched. Moreover, in the case of email accounts, where emails may be deleted from the searchable files of the employee, it is possible that not all relevant emails may have been searched.

In Freedom of Information Act Appeal 2012-35, as is the case here, while we found that DOES had made a good-faith effort to locate all responsive records pursuant to the FOIA request, it had not placed on the administrative record an explanation sufficient for us to conclude that it had conducted a reasonable and adequate search. DOES identified those employees who would have knowledge of the location of the records, but did not establish that it made reasonable determinations as to the location of records requested. There, as here, we could not rule out the possibility that the records were not produced because some appropriate locations were not searched. In Freedom of Information Act Appeal 2012-35, given the circumstances, we recognized that a new search may have been unnecessarily duplicative and provided that DOES could make disclosures which indicated the manner in which the search was made. We will adopt the same approach here. Accordingly, except as hereinafter provided, we will remand the matter to DCRA for disposition as follows:

1. DCRA shall determine whether or not each employee identified as involved in the real property matter has searched all relevant electronic databases for the requested records (and, as to email, that there were no relevant deleted email files).

A. If the employees have searched all relevant electronic databases, DCRA shall so state in writing and indicate the manner in which such search was made.

B. If the employees have not searched all relevant electronic databases, DCRA shall search all such relevant electronic databases and provide any responsive records, subject to any applicable exemption under DC FOIA, to Appellant. It shall also indicate, in writing, the manner in which such search was made.

2. DCRA shall determine whether or not each employee identified as involved in the real property matter has searched all relevant files for the paper-based forms of the requested records.

A. If the employees have searched all relevant files, DCRA it shall so state in writing and indicate the manner in which such search was made.

B. If the employees have not searched all relevant files for the paper-based forms of the requested records, DCRA shall search all such relevant files and provide any responsive records, subject to any applicable exemption under DC FOIA, to Appellant. It shall also indicate, in writing, the manner in which such search was made.

There is one aspect of the search in which we have clearly identified a deficiency. DCRA takes the position that the records associated with its general counsel are the records of the OAG as its general counsel is an employee of OAG. We disagree. Under the test enunciated by the Supreme Court in *DOJ v. Tax Analysts*, 492 U.S. 136 (1989), agency records are those that are (1) either created or obtained by an agency, and (2) under agency control at the time of the FOIA request. While, as a technical matter, the DCRA General Counsel may be an employee of OAG, the DCRA General Counsel performs the work of DCRA as an integrated member of the agency and, as is the case with other agency counsel, works exclusively on the business of the agency. Indeed, emails identify the DCRA General Counsel as a member of the agency. In *Judicial Watch, Inc. v. Department of Energy*, 412 F.3d 125 (D.C. Cir. 2005), records created by employees of one agency who were detailed to another agency were held to be the records of the agency to which they were detailed. The court stated that as "detailees were as a practical matter employees of the [agency to which they were detailed], and not of the agency [by whom they were employed], it follows that the records those employees created or obtained while on detail were those of the [agency to which they were detailed], not those of the [agency by whom they were employed]." *Id*. at 132. The records associated with, or maintained by, the DCRA General Counsel are those of DCRA and should be searched as DCRA has identified those records as those which may contain responsive records. DCRA shall provide any responsive records, subject to any applicable exemption under DC FOIA, to Appellant.

The Appellant may challenge, by separate appeal, the response of DCRA to this order.

As we stated above, Appellant believes that there are additional records which have not been provided. However, Appellant should note that we are not expressing any opinion as to whether or not there are additional responsive records which have not been provided.

Conclusion

Therefore, the decision of DCRA is remanded for disposition as set forth above.

This constitutes the final decision of this office. 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Hamilton Kuralt

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

January 10, 2013

BY EMAIL

Mr. Jonah Newman
jonahshai@gmail.com

Re: Freedom of Information Act Appeal 2013-16

Dear Mr. Newman:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), undated (the "Appeal"). You assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA, undated (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. "A list of all of 2012 homicide case closures to date, including prior year and administrative closures." In addition, for each such case, Appellant requested the following:

> Case number; date homicide occurred; location of homicide; district and PSA where homicide occurred; date case was closed; all available information about decedent, including name, age, race, gender, and date of birth; all available information about defendant including name, age, race, gender, date of birth and charge; reason for closure; detective(s) assigned to the case; and motive and manner of death.

2. "[C]opies of the police reports for all of the 2012 homicide cases to date that were closed by administrative closure.

In response, by letter dated December 14, 2012, MPD provided responsive records to Appellant, but redacted the name, race and date of birth of the defendants on the ground that provision of such information would constitute an unwarranted invasion of personal privacy exempt from disclosure under D.C. Official Code § 2-534(a)(2) and (3)(C).

On Appeal, Appellant challenges the redaction of the information "on account of the fact that such information is already in the public record on affidavits of arrest and in other publicly available court documents."

In its response, dated December 31, 2012, MPD reaffirmed its position.

> [D]efendants' personal privacy interest is not outweighed by the public interest. The core function of the Freedom of Information Act is to provide a means for the public to become informed of the workings of the government. Release of the redacted personal information of the defendants would not inform the public of how the government operates.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

MPD asserts an exemption based on personal privacy under two different provisions of DC FOIA. D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As the record in this case involves criminal matters, we do not think that there is any dispute that the exemption should be judged by the standard for, Exemption (3)(C).

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). The D.C. Circuit has stated:

> [I]ndividuals have a strong interest in not being associated unwarrantedly with alleged criminal activity. Protection of this privacy interest is a primary purpose of Exemption 7(C)[D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]. 'The 7(C) exemption recognizes the stigma potentially associated with law enforcement investigations and affords broader privacy rights to suspects, witnesses, and investigators.' *Bast*, 665 F.2d at 1254.

Stern v. FBI, 737 F.2d 84, 91-92 (D.C. Cir. 1984).

The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). "[I]nformation in an investigatory file tending to indicate that a named individual has been investigated for suspected criminal activity is, at least as a threshold matter, an appropriate subject for exemption under 7(C) [as noted above, D.C. Official Code § 2-534(a)(3)(C) under DC FOIA]." *Fund for Constitutional Government v. National Archives & Records Service*, 656 F.2d 856, 863 (D.C. Cir. 1981). The D.C. Circuit has also stated that nondisclosure is justified for documents that reveal allegations of wrongdoing by suspects who never were prosecuted. *See Bast v. U. S. Dep't of Justice*, 665 F.2d 1251, 1254 (D.C. Cir. 1981). As set forth above, the D.C. Circuit in the *Stern* case stated that individuals have a strong interest in not being associated unwarrantedly with alleged criminal activity and that protection of this privacy interest is a primary purpose of the exemption in question.

In the case of the Appeal, while it is not stated on the administrative record, it appears that the individuals who are identified in the records may be either suspects or individuals charged with crimes. As indicated by the principles stated above, and by our past decisions, see, e.g., Freedom of Information Act Appeal 2013-10, there is clearly a sufficient individual privacy interest in information contained in investigatory files regarding suspects. However, we have not ruled directly upon the sufficiency of a personal privacy interest in information contained in investigatory files regarding an individual charged with a crime. Appellant argues essentially that a sufficient privacy interest does not exist because the information has already been disclosed in court records which are publically available.

The legal principles regarding the disclosure of the identity of defendants in investigatory files was squarely addressed in *Long v. U.S. Dept. of Justice*, 450 F.Supp.2d 42 (D.D.C. 2006). In *Long*, with respect to criminal cases, the requester contested the withholding of the case or docket number assigned by the court, the caption of the case, and the name of the defendant. While noting the statement of the Supreme Court in *Reporters Comm. for Freedom of Press* that "there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a

computerized summary located in a single clearinghouse of information," *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 764 (1989), the requester, like Appellant, argued that much of the withheld information is readily available to the public as part of the Public Access to Court Electronic Records ("PACER") service of the federal courts and in the databases provided to the unredacted database provided by the Department of Justice to the National Archives and Records Administration ("NARA"). However, applying the "categorical principle" of *Reporters Comm. for Freedom of Press*, quoted above, that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy, the court held that

> disclosure of fields identifying the subject of the records would implicate privacy interests protected by Exemption 7(C). . . . The categorical principle announced in *Reporters Committee* is particularly applicable here, where the information at issue is maintained by the government in computerized compilations. . . . the fact that some of the personal information contained in these records already has been made public in some form does not eliminate the privacy interest in avoiding further disclosure by the government. . . . the records available at NARA and on PACER are no substitute for the central case management databases at issue in this litigation.

Long v. U.S. Dept. of Justice, 450 F.Supp.2d 42, 68 (D.D.C. 2006). While the court did note that "the extent to which the withheld information is publicly available is relevant in determining the magnitude of the privacy interest at stake [and] that information available at the NARA or . . . through PACER is decidedly less obscure than 'public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country,'" *Id*., it nevertheless found that there was a privacy interest in the names of the criminal defendants and the case captions and docket numbers.

In the Appeal, MPD acknowledges the argument of Appellant that the information is publically available "affidavits of arrest and in other publicly available court documents," but does not otherwise address it. Nevertheless, we must still evaluate the claim of Appellant. In Freedom of Information Act Appeal 2011-55, in response to the assertion of the appellant an affidavit in support of the arrest warrant becomes a public document when it is executed, we stated: "That is not strictly accurate. The public has a presumptive right to see arrest warrant affidavits, but access is still subject to the discretion of the court. See *Mokhiber v. Davis*, 537 A.2d 1100, 1107, fn. 5 (D.C. 1988), citing *Commonwealth v. Fenstermaker*, 530 A.2d 414, 420 (Pa. 1987)." Even absent such consideration, the information which is "publicly available" from our local courts is no more accessible than from the federal courts and, in the case of documents available from PACER, are less accessible. Thus, following the federal court in *Long*, we find that there is sufficient privacy interest in the names of the defendants which were withheld.

Given our finding that there is a privacy interest in the names of the defendants, we will consider whether, in the absence of those names, there is a sufficient individual privacy interest in the race of the defendants and their dates of birth. The question is whether the disclosure of these items would lead to the identification of individual defendants. In the case of the race of the defendant, we do not believe that the disclosure of this item could be used to connect the individual

defendant to the other information which is disclosed. In fact, we believe that the same analysis applies even to suspects. Accordingly, we find that there is not a sufficient individual privacy interest in the race of the defendants or of suspects. In the case of the date of birth of the defendants, this is a more difficult judgment. While the cases which we have examined have found a privacy interest in the date of birth of an individual when included with other identifiers, particularly the name of the individual, it would appear that an adroit researcher, using such information in conjunction with news accounts available electronically, could use the unredacted information to identify the associated individual and nullify the effect of the redaction of the name. Accordingly, resolving any doubt in favor of the privacy of the individual, we find, under the circumstances of the Appeal, a privacy interest in the date of birth.

In sum, we find that there is a personal privacy interest in the names and dates of birth of the individual defendants, but not in the race of the defendants or of suspects.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

Appellant does not posit any public interest in the disclosure of the redacted information. Moreover, on our own examination, we find nothing in the administrative record that suggests that the disclosure of the information in which we have found a privacy interest will contribute anything to public understanding of the operations or activities of the government or the performance of MPD. Thus, as the information in which we have found a privacy interest does not appear to involve the efficiency or propriety of agency action, there is no public interest involved in disclosing such information.

Conclusion

Therefore, the decision of MPD is upheld in part and reversed and remanded in part. MPD shall disclose to Appellant the race of the individuals, which race was redacted in its initial response.

This constitutes the final decision of this office. 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 Superior Court of District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 14, 2013

BY U.S. MAIL

Mr. Paul D. Casey and Ms. Abigail O. Casey
4 Bolling Brook Drive
Clifton Park, New York 12065

Re: Freedom of Information Act Appeal 2013-31

Dear Mr. and Ms. Casey:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 9, 2013 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to our decision in Freedom of Information Act Appeal 2013-10 (the "Prior Decision").

Background

In Freedom of Information Act Appeal 2013-10, Appellant challenged the withholding of the records relating to "the investigation of the felony assault and resulting death of [a named decedent]." MPD took the position that it could not respond to the appeal as it needed to consult with the United States Attorney for the District of Columbia ("USAO") "as to which documents were presented to the grand jury that investigated the death of [the decedent]. Pursuant to the Federal Rules of Criminal Procedure Rule 6(e) information presented to a grand jury can only be released under certain enumerated circumstances." In the Prior Decision, we held in favor of Appellant and ordered MPD to provide, subject to redaction to protect the personal privacy of suspects or witnesses, the requested records. We stated, in part, that MPD's "disclosure of the requested records cannot violate the secrecy of the grand jury proceedings as it is in possession of the records separate and apart from the jury proceedings and has no knowledge of what occurred in the proceedings." We also provided that Appellant could assert any challenge, by separate appeal, to the redactions made by MPD pursuant to the Prior Decision.

In response to the Prior Decision, under a cover letter dated December 14, 2012, MPD provided records to Appellant. It stated that "the names and personal information of witnesses and other identified individuals have been redacted under D.C. Official Code § 2-534(a)(3)(C)" and that "information regarding the Grand Jury ha[s] been redacted pursuant to D.C. Official Code § 2-

534(a)(6)." The underlying basis of its assertion under D.C. Official Code § 2-534(a)(6) was Federal Rules of Criminal Procedure Rule 6(e) ("Rule 6(e)"). When Appellant contacted MPD about alleged deficiencies in the MPD response, MPD reaffirmed its position by email dated January 29, 2013.

On Appeal, Appellant challenges a portion of the redactions made by MPD pursuant to the Prior Decision. First, Appellant contests redactions of the records based on "grand jury information." Appellant identifies these documents as "PD854 Investigative Report forms." Appellant indicates that all of the material information on a "number" of these forms was completely redacted. In pertinent part, Appellant states:

> We believe the General Counsel to the Mayor has already determined that the police records requested are accessible public records subject only to redactions for personal privacy. . . . We have not asked for the release of any information of 'matters occurring before the grand jury.'. . . The records authorized for release by the appeals decision were obtained independent of the grand jury.

Second, Appellant states that MPD did not provide "full accounts of witness interviews." The interviews in question were recorded, no written transcripts of the interviews were prepared, and, as MPD stated to Appellant, it is "'unable to redact all identifying information from the video recorded interviews.'" Appellant maintains that "[t]here certainly is technology available to do such editing" and that "[t]he video could be converted to an audio tape and redactions made for identifying information."

In response, MPD reaffirmed its position. As a preliminary matter, MPD states that Appellant "ha[s] not specifically identified the documents they deem to be improperly redacted or withheld."

With respect to the provision of witness interviews, MPD states that it "is unable to redact all identifying information from the video recorded interviews" because it "does not have the necessary equipment in which to properly redact images" and "is not obligated under FOIA to procure the equipment or to contract for the redaction of images."[1]

As to the redactions based on Rule 6(e), the MPD re-stated its position as previously stated to Appellant.

> The department further advised that redactions to the homicide file that were related to the grand jury investigation proceedings were made in good faith after consultation with the office of the United States Attorney for the District of Columbia. The department stated:

[1] MPD also states that it "does not have transcripts of witness interviews conducted by the Homicide Branch."

> Rule 6([e]) applies if the contested material would 'tend to reveal some secret aspect of the grand jury's investigation: such matters as 'the identities of witnesses or jurors, the substance of testimony, the strategy or direction of the investigation, the deliberations or questions of the jurors, and the like[.]' The information redacted in the homicide file labeled 'Grand jury information[']document the identities of individuals who were either the recipients of a grand jury subpoena and/or testified before a grand jury and/or comments in some way as to disclose the substance of their grand jury testimony. If the witness was not interviewed prior to the grand jury convening, the description of the interview was not redacted unless it revealed that he/she received a grand jury subpoena and/or somehow described witness' grand jury testimony.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

In our Prior Decision, we ordered MPD to provide to Appellant all responsive records, subject only to redactions for personal privacy pursuant to D.C. Official Code § 2-534(a)(3)(C). We specifically rejected the contention of MPD that Rule 6(e) provided an exemption from disclosure.[2] However, notwithstanding our order, MPD nevertheless made redactions based on

[2] In the Prior Decision, we stated that Federal Rules of Criminal Procedure Rule 6(e) applied as a consequence of D.C. Official Code § 2-534(a)(4). The Prior Decision should have indicated that Federal Rules of Criminal Procedure Rule 6(e) applied as a consequence of D.C. Official Code § 2-534(a)(6), which exempts from disclosure:

> (6) Information specifically exempted from disclosure by statute (other than this section), provided that such statute:
>
> (A) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or
>
> (B) Establishes particular criteria for withholding or refers to particular types of matters to be withheld[.]

Rule 6(e). As Appellant correctly states, we decided this issue in the Prior Decision. Like Appellant, we do not understand the contention of MPD that the identity of an individual who testified before the grand jury will be revealed as the Prior Decision provided for the redaction of the identity of the names of individuals who were witnesses, whether or not they testified before the grand jury. MPD states that Appellant "ha[s] not specifically identified the documents they deem to be improperly redacted or withheld." However, as stated above, Appellant identifies these documents as "PD854 Investigative Report forms." We agree with Appellant that these were statements made outside of the grand jury and do not necessarily reflect the testimony, if given at all, before the grand jury. Therefore, we re-state our order that these records be provided to Appellant, subject only to redactions for personal privacy pursuant to D.C. Official Code § 2-534(a)(3)(C). As we set forth, in part, in the Prior Decision, quoting judicial authority:

> 'We have never embraced a reading of Rule 6(e) so literal as to draw 'a veil of secrecy . . . over all matters occurring in the world that happen to be investigated by a grand jury.' *SEC v. Dresser Industries, Inc.*, 628 F.2d 1368, 1382 (D.C. Cir.) (*en banc*), *cert. denied*, 449 U.S. 993, 101 S.Ct. 529, 66 L.Ed.2d 289 (1980). There is no *per se* rule against disclosure of any and all information which has reached the grand jury chambers . . .'
>
> *Senate of Puerto Rico v. DOJ*, 823 F.2d 574, 582 (D.C. Cir. 1987).

As MPD is well aware, having utilized the procedure previously, if a party desires to obtain variance from a decision, the appropriate procedure is to request reconsideration of the decision. Indeed, in the Prior Decision, as to the issue of interference with enforcement proceedings, we noted that the views of the United States Attorney's Office had not been represented on the record and stated that we would be willing to reconsider our decision based upon a declaration by the United States Attorney's Office as to prospects for the institution of enforcement proceedings and the manner in which the disclosure of the records would interfere with such enforcement proceedings. Instead, MPD acted unilaterally after "consultation" (without explaining what the consultation entailed or citing any legal authority) with the United States Attorney's Office to redact the records. Nevertheless, as it is still the case that the views of the United States Attorney's Office have not been represented on the record with respect to the applicability of Rule 6(e), we would similarly be willing to reconsider our decision based upon a declaration by the United States Attorney's Office as to both the applicable law and facts.

In addition to the challenge to the redactions with respect to Rule 6(e), Appellant also challenges the withholding of the all records of video interviews. As set forth above, Appellant maintains that "[t]here certainly is technology available to do such editing" and that "[t]he video could be converted to an audio tape and redactions made for identifying information." As also set forth above, in response, MPD states that it "is unable to redact all identifying information from the video recorded interviews" because it "does not have the necessary equipment in which to properly redact images."

We note that in prior decisions, Freedom of Information Act Appeal 2011-11 (Reconsideration), Freedom of Information Act Appeal 2011-60, Freedom of Information Act Appeal 2012-44, and Freedom of Information Act Appeal 2013-06, MPD was found not to have the capability to modify an audiotape and disclosure was not required. Similarly, in Freedom of Information Act Appeal 2010-08, the Office of Unified Communications was found not to have the capability to modify an audiotape and disclosure was not required. In those cases, we found that redaction of the audiotapes was not feasible. Here, based on the representation of MPD that it does not have the necessary equipment to do so, we similarly find that redaction of the videotapes is not feasible. As to the contention of Appellant that the technology is available, we responded to a similar argument in Freedom of Information Act Appeal 2013-06:

> While Appellant argues that he 'should [not] be disadvantaged by a technological inadequacy that is not of my own making and one that is hard to believe actually exists in 2012,' DC FOIA provides no warrant to second-guess the management practices of an agency in the technologies or equipment which it acquires and maintains or, as we have stated in the past, in the compilation and maintenance of its records. Appellant proposes that that a written transcript of the call be created and redacted. However, as we have also stated in the past, an agency 'has no duty either to answer questions unrelated to document requests or to create documents.' *Zemansky v. United States Environmental Protection Agency*, 767 F.2d 569, 574 (9th Cir. 1985).

Conclusion

Therefore, the decision of MPD is upheld in part and reversed and remanded in part. MPD shall provide the records, other than video interviews, to Appellant, with redactions permitted for privacy as set forth in this decision and the Prior Decision.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.
Terrence D. Ryan, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 4, 2013

BY U.S. MAIL

Mr. Griffin Mack
Griffin.mack50@yahoo.com

Re: Freedom of Information Act Appeal 2013-32

Dear Mr. Mack:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 11, 2013 (the "Appeal"). You ("Appellant") assert that Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated January 23, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought video footage taken on January 20, 2013, between 2:00PM and 4:00PM, at the intersection of 13th and G Streets, N.W., in connection with an alleged traffic accident occurring at approximately 3:00PM.

In response, by letter dated February 11, 2013, sent by email, MPD stated:

> After due consideration, your request cannot be granted. Unfortunately, the retention period of recordings of the CCTV cameras is ten (10) days. After ten (10) days of the incident date the footage is overwritten.

On Appeal, Appellant states, in pertinent part:

> As a result of not be[ing] able to obtain the video footage concerning the false claim made against me, I humbly request a review of the information submitted to your department. . . . My driving record is perfect and I am being scammed. I therefore request the citation be removed or unofficial hearing to tell my side of the incident.

In its response, by email by letter dated March 1, 2013, MPD stated that it interpreted the Appeal as seeking a "'review'" of the search and a request to "verify the absence of the subject video recording." MPD conducted another search, but could not locate the video recording. It

informed Appellant of the second search by email dated February 27, 2013, reciting the same reason for the absence of the video recording as in its original response.

Discussion

It is the public policy of the District of Columbia (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 § 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*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

Appellant seeks a "review" of the MPD response to the FOIA Request, but does not allege a deficiency in the response other than noting his failure to obtain the requested video footage. However, based on the foregoing, it is apparent that the basis of the Appeal would be the adequacy of the search.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). In this case, MPD identified the likely location of the record—its closed circuit television camera video records—and searched those records, but no record was available. Moreover, it provided a reasonable explanation as to the absence of the requested record, that is, the retention period of recordings of its closed circuit television camera video records is ten days and the search occurred after the expiration of the retention period. Accordingly, we find the search by MPD was reasonable and adequate.

Appellant also requests that a citation alleged to be issued in connection with a traffic accident be dismissed or that we convene an "unofficial hearing" so that he may present testimony in connection with the traffic accident. It should be clearly noted that our jurisdiction under D.C. Official Code § 2-537(a) only encompasses the review of the failure of an agency to provide records to a requester under DC FOIA and does not extend to matters delegated to another agency, such as, in this case, adjudication of traffic citations. In this regard, according to the administrative record, Appellant has already requested a hearing on the citation and, thus, will have a forum for its adjudication.

Appellant notes that he made his FOIA Request three days after the alleged traffic accident, but "[n]o one from [MPD] apparently considered the urgency of my request." There is no evidence on the administrative record as to whether the FOIA officer knew about the retention period of recordings of its closed circuit television camera video records prior to the search. Nonetheless, it would be prudent for MPD to examine its FOIA intake procedures to account for time-sensitive materials.

Conclusion

Based on the foregoing, the decision of MPD is upheld. The Appeal is dismissed.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 8, 2013

BY U.S. MAIL

Mr. Gregory A. Slate
P.O. Box 21020
Washington, D.C. 20009

Re: Freedom of Information Act Appeal 2013-33

Dear Mr. Slate:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 13, 2013 (the "Appeal"). You ("Appellant") assert that the Office of Police Complaints ("OPC") improperly withheld records in response to your request for information under DC FOIA dated November 8, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "a list of all complaints received by your agency" concerning certain named Metropolitan Police Department ("MPD") officers. In response, by letter dated December 3, 2012, OPC stated that, after a search, no responsive records were located for the named MPD officers.

On Appeal, Appellant challenges the adequacy of the search of OPC.

> OPC's search was not reasonably calculated to uncover all relevant documents. OPC has received at least three complaint against [one of the named MPD officers]. Attached hereto please find copies of letters from OP[C] to me and two other individuals verifying OPC's receipt of complaints against [the named MPD officer]. OPC should be required to produce the requested records and an affidavit demonstrating their search was reasonably calculated to locate the requested records.[1]

[1] The Appeal stated that "[t]he request sought records indicating the number of complaints filed against 7 MPD officers," but that this is not reflected in the FOIA Request.

In response, by letter dated March 4, 2013, OPC revised its original response. Although OPC had previously stated that no responsive records were located for the named MPD officers, OPC stated: "OPC does not grant review of the requested records because OPC does not maintain 'a list of all complaints received' with respect to individual officers. Nor does OPC maintain 'records indicating the number of complaints,' as appellant described the request in his appeal."

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

As set forth above, OPC has changed the basis of its response. Although it originally interpreted the FOIA Request as a request for records regarding complaints against the named MPD officers, it now interprets the FOIA Request as a request for a list of complaints against the named MPD officers, that is, a record which aggregates complaints received. Subsection 1-402.4 of the District of Columbia Municipal Regulations provides: "A request shall reasonably describe the desired record(s)." Despite its original interpretation, we find that the current interpretation better describes the FOIA Request.[2]

However, as to the new interpretation, there remains a possible issue presented as to the adequacy of the search by OPC. We characterize it as possible because Appellant has not had an opportunity to respond to the new interpretation.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that

[2] Nevertheless, if the formulation of the FOIA Request does not reflect the intent of Appellant, Appellant is free to re-formulate the request and submit it as a new request to OPC.

full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency.

An agency has the burden to establish the adequacy of its search. *See*, e.g., *Patterson v. IRS*, 56 F.3d 832, 840 (7th Cir. 1995); Freedom of Information Act Appeal 2012-48. An administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding. Nevertheless, in its response, OPC is silent as to the manner in which OPC made its search for the records requested by Appellant. Accordingly, if Appellant was to challenge the adequacy of the search, we would have no basis to conclude that the search of OPC was reasonable and adequate. However, even presuming such challenge by Appellant, simply ordering OPC to conduct a new search would not be productive as we would expect the same result. In lieu of a new search, OPC shall state in writing to Appellant the manner in which the records of the type requested are maintained and the manner in which the search was conducted. OPC shall state which divisions maintain the records, in what form the records are maintained, e.g., electronic (email, word processing, or PDF files) or paper-based, and how such records were searched.

Based on the foregoing, if Appellant is not satisfied with the search methodology employed by OPC, Appellant may submit a request for reconsideration of this decision. Such request should identify the deficiencies and propose an appropriate order.

Conclusion

Therefore, the decision of OPC is remanded for disposition as set forth above.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Christian J. Klossner
Nykisha Cleveland, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 4, 2013

BY U.S. MAIL

Ms. Deborah Lyles
12854 Claxton Drive
Laurel, Maryland 20708

Re: Freedom of Information Act Appeal 2013-34

Dear Ms. Lyles:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 20, 2013 (the "Appeal"). You ("Appellant") assert that the Office of Human Rights ("OHR") improperly withheld records in response to your requests for information under DC FOIA dated January 31, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records:

1. All correspondence that Appellant submitted to OHR relating to a complaint that Appellant filed.

2. All correspondence that Appellant and another named individual submitted to OHR regarding the complaint.

3. The OHR investigation report.

In its written response, by letter dated February 13, 2013, OHR stated that it provided all responsive records to Appellant on February 4, 2013, with redactions based on the exemptions for privacy in D.C. Official Code § 2-534(a)(2) and (3)(C). OHR further stated that it did not withhold any records.

On Appeal, Appellant challenges the response of OHR as incomplete. Appellant specifies records which she believes should be provided to her. These records include the sworn statement submitted by Appellant to OHR, documents identified as submitted by the employer that is the

subject of the complaint submitted by Appellant to OHR, and a "Summary of Findings" by the OHR investigator.

In its response, by letter dated February 27, 2013, and as supplemented by letter dated February 28, 2013 pursuant to our invitation, OHR reaffirmed its position. In making its initial search, OHR determined that the records would be contained in the investigation case file of the Appellant. OHR explained that an "investigation case file is a paper-based file which contains all electronic documents that are printed and stored in the file." The entire investigation case file was retrieved and copied and all records therein were provided to Appellant. When Appellant contacted OHR and alleged that documents were missing from the records provided to her, the FOIA officer made inquiries to all individuals in the chain of custody of any documents which would have been received (the file room clerk, the receptionist, the Intake Officer (who initially interviewed the Appellant and received the initial records); and the investigator), and such individuals made a second search for any additional records. No additional records were located by the file room clerk, the receptionist, or the Intake Officer. The investigator searched all files on her computer and did not find any additional records, but did locate a paper-based file of additional documents, which were provided to Appellant.

OHR also addressed the absence of each record specifically identified by Appellant as missing. OHR states that it furnished a copy of the sworn statement that Appellant submitted to OHR, but Appellant "claims that it was not the statement that she requests." OHR indicates that it does not have a "Summary of Findings" and explains that the only findings of fact are submitted to the Office of the General Counsel and are incorporated in a proposed Letter of Determination submitted to the Director. OHR represents that all information submitted by the former employer of Appellant was provided to her.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

The basis of the Appeal is the adequacy of the search by OHR.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence that records exist, is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-28, the agency stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-28, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations.

In the case of the Appeal, OHR has employed a search methodology was which was reasonably designed to locate the responsive records. OHR identified the investigation case file as the likely source of the requested records and, given the nature of the requested records, this is reasonable. In addition, it caused an additional search to be made by all the individuals who would have received any responsive records. In particular, the investigator, who ostensibly would have accessed all of the responsive records and would be familiar with the records, searched her computer and her paper-based files.

As we stated above, Appellant specifies records which she believes should have been provided to her. As we have stated in prior decisions, an expectation that an agency possesses certain records is not sufficient to warrant a conclusion that a search was not reasonable and adequate. *See*, e.g., Freedom of Information Act Appeal 2012-04 and Freedom of Information Act Appeal 2012-11. Here there is not sufficient evidence on the administrative record to find that the search by OHR was not adequate to find all responsive records. With respect to the documents which Appellant identified as submitted by her former employer, there appears to be simply an expectation that such information would be submitted as part of the investigation. While Appellant states that she was not provided the sworn statement which she submitted to OHR, OHR states that it did provide the sworn statement in the investigation case file, but that Appellant disputes that it is the same statement. The fact that there was a sworn statement in the investigation case file, as one would expect, and that such statement was furnished to Appellant, would be consistent with a reasonable and adequate search and the representation by OHR that it has provided to Appellant all records in the investigation case file.[1] With respect to the "Summary of Findings" by the OHR investigator, OHR indicates that there is no such document, but findings were included in another document. As all records in the investigation case file were furnished to Appellant, this document was ostensibly furnished to Appellant.

Accordingly, we find the search by OHR was reasonable and adequate.[2]

Conclusion

Therefore, the decision of OHR is upheld. The Appeal is dismissed.

[1] Assuming that there is an original statement that differs from the current statement, it is not clear that such document still exists. Moreover, given that OHR has made an initial search and a follow-up search which were reasonably calculated to locate the responsive records and for which method we can find no deficiency, it would be futile to order another search as we cannot direct a methodology for a new search which would yield a different result.

[2] Appellant has submitted two replies to the response of OHR to the Appeal. As we have stated in prior appeals, an administrative appeal under DC FOIA is a summary process. Replies are not part of the procedure (or the administrative record) for appeals and would, in accordance with procedure, necessitate another agency response. (In certain cases, such as this one, we may invite an agency supplement to obviate a possible reconsideration and delay to the resolution of the matter.) In this case, the first reply of Appellant stated that the response of OHR "does not reflect [ ] my concerns of the OHR Director making a decision on my protected activity case without having all of the facts and documents." It should be clearly noted that our jurisdiction under D.C. Official Code § 2-537(a) only encompasses the review of the failure of an agency to provide records to a requester under DC FOIA and does not extend to supervision of matters delegated to another agency, such as, in this case, action on a discrimination complaint.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Jewell Little, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 1, 2013

BY U.S. MAIL

Fritz Mulhauser, Esq.
American Civil Liberties Union of the Nation's Capital
4301 Connecticut Avenue, N.W.
Suite 434
Washington, D.C. 20008

Re: Freedom of Information Act Appeal 2013-35

Dear Mr. Mulhauser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), dated February 20, 2013 (the "Appeal"). You ("Appellant") assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your request for information under DC FOIA dated January 23, 2013 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought "the Chancellor's current operative directive governing school visitors, together with any implementing training or other guidance materials furnished to principals." Appellant states that DCPS acknowledged the FOIA Request on January 23, 2013, but when a final response was not received, Appellant initiated the Appeal.

In its response, dated February 27, 2013, DCPS stated that, on February 22, 2013, following the filing of the Appeal, it responded to the FOIA Request, providing the directive. DCPS states that it spoke to Appellant by telephone on February 26, 2013 regarding the uncompleted portion of the FOIA Request, i.e., the training or other guidance materials. Based on the representation of DCPS that such materials did not exist, Appellant agreed to withdraw the Appeal. It attached a copy of an email of Appellant to the Mayor's Correspondence Unit, dated February 27, 2013, withdrawing the Appeal, which email this office has not received as of this date.

Based on the foregoing, the Appeal is hereby dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 12, 2013

BY U.S. MAIL

Mr. Will Sommer
3636 16th Street, N.W.
Apt. A965
Washington, D.C.

Re: Freedom of Information Act Appeal 2013-36

Dear Mr. Sommer:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 21, 2013 (the "Appeal"). You assert that the Office of the Attorney General ("OAG") improperly withheld records in response to your request for information under DC FOIA dated January 11, 2013 (the "FOIA Request").

Appellant's FOIA Request sought a letter, dated January 9, 2013, from Lee Levine, an attorney, which letter is referenced in January 11, 2013, letter written by the Attorney General about the decision not to pursue charges against NBC employees based on the events associated with a December 23, 2012 broadcast. In response, by email dated February 19, 2013, MPD denied the FOIA Request based on D.C Official Code § 2-534(a)(3)(A)(i), which provides an exemption from disclosure for investigatory records compiled for law-enforcement purposes if their release would interfere with enforcement proceedings. On Appeal, Appellant challenged the denial of the FOIA Request based on the statement of the Attorney General that OAG would not initiate any enforcement proceedings.

In response, by email dated March 12, 2013, OAG states that it has reconsidered its position and has provided the responsive record to Appellant. Based upon the foregoing, we will now consider the Appeal to be moot and it is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Victor A. Bonett

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 7, 2013

BY U.S. MAIL

Mr. John Merrow
Learning Matters, Inc.
127 West 26th Street, #1200
New York, N.Y. 10001

Re: Freedom of Information Act Appeal 2013-37

Dear Mr. Merrow:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 21, 2012 (the "Appeal"). You, on behalf of Learning Matters, Inc. ("Appellant"), assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your request for information under DC FOIA dated July 3, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought emails between a named individual alleged to be a DCPS contractor and the Chief of Data and Accountability of DCPS. Appellant stated that "the work would most likely pertain to work that [the named individual] was doing for DCPS analyzing the 2008 DC CAS test scores. In response, by letter dated August 20, 2012, DCPS stated that, after a search of emails, it did not locate any responsive records.

On Appeal, Appellant challenges the response of DCPS, stating that, in light of copies of invoices which Appellant received showing that the contractor billed more than $200,000 for his services over roughly two years and that the contractor reported to the Chief of Data and Accountability, "[w]e find it difficult to believe that there can be no email communication between the two."

In its response, by letter dated March 1, 2013, DCPS reaffirmed its position. DCPS states that, on its behalf, the Office of the Chief Technology Officer conducted a search of all emails between the named individual and the Chief of Data and Accountability "from January 1, 2008 until January 1, 2009." DCPS indicated that "DC CAS," "test scores," "analyze!' and the name of the contractor were used as search terms.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

As was the case in Freedom of Information Act Appeal 2012-80 in which Appellant sought a report alleged to have prepared for DCPS, the crux of this matter is the adequacy of the search and the belief of Appellant that the records exist. Although the basic legal principles remain the same, we will re-state them for the convenience of the Appellant.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [Oglesby v. United States Dep't of the Army, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases

where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. See, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2012-35, and Freedom of Information Act Appeal 2012-56. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-28, DOES stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-28, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations.

In this case, we believe that DCPS has made a good-faith effort to locate the responsive records pursuant to the FOIA Request. However, we believe that the design of the search may be modified to locate any responsive records which the prior search may have missed. First, the search was made for the calendar year 2008. It appears that DCPS chose this period as a consequence of the statement by Appellant in the FOIA request that the named contractor was performing in connection with the "2008 DC CAS test scores." As was indicated in Freedom of Information Act Appeal 2012-18, the District of Columbia Comprehensive Assessment System ("DC CAS") is a standardized test that assesses public school students on reading and math in grades 3 through 8 and 10, science in grades 5 and 8, biology in high school, and composition in grades 4, 7, and 10. According to a webpage on the District government website, DC CAS is taken in "mid-April."[1] Although the date of the results of the 2008 DC CAS does not appear on the administrative record, another webpage on the District government website indicates that the results of the 2012 DC CAS were released in July.[2] Based on results of the DC CAS becoming available in July, the alleged contract would likely have commenced later in the year. In addition, the FOIA Request indicated that the alleged contract was for a period of approximately two years. Therefore, if the alleged contract commenced later in the year, the date range of the email search would have missed most or all of the emails. Therefore, we are directing DCPS to make a new search for a 2-year period. We note that in Freedom of Information Act Appeal 2012-80, Appellant indicated that a report alleged to have been prepared by the named contractor "would most likely have been commissioned after November, 2008." Rather than speculating on the appropriate beginning date for the new search, DCPS shall use a beginning date as shall be supplied by Appellant. Appellant shall contact the DCPS FOIA Officer when Appellant makes the determination of the appropriate beginning date. Second, in addition to searching by

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[1] http://dc.gov/DCPS/In+the+Classroom/The+DCPS+Academic+Plan/What+does+this+mean+for+the+DC+CAS%3F.

[2] http://mayor.dc.gov/release/mayor-vincent-c-gray-announces-2012-dc-cas-results-0.

specifying the names of sender and recipient, DCPS used additional search terms ("DC CAS," "test scores," "analyze!"). It was unnecessary to use search terms other than to search by sender and recipient and the additional limiting terms may have resulted in a failure to locate responsive records. Therefore, in making a new search, DCPS shall not specify the additional search terms.

It should be clearly noted that by directing a new search to be made, we are not indicating that responsive records do, in fact, exist. Until such search is conducted, we will not know whether or not there are records which are to be disclosed.

Conclusion

Therefore, we remand this matter to DCPS for disposition in accordance with this decision. Upon Appellant contacting DCPS and providing a beginning date for the search, DCPS shall make a new search for a 2-year period specifying only the sender and recipient of the emails.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 21, 2013

BY U.S. MAIL

Jeffrey Light, Esq.
D.C. Trans Coalition
1712 Eye Street, N.W.
Washington, D.C. 20006

Re: Freedom of Information Act Appeal 2013-38

Dear Mr. Light:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated April 13, 2012 (the "Appeal"). You, on behalf of the D.C. Trans Coalition ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated July 5, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request was a multipart, detailed request, seeking records whose description is summarized as follows:

1. Records that relate to the training of MPD members about interactions with transgender/transsexual/trans ("trans") individuals or responding to hate/bias crimes.

2. Complaints and any records created in response to complaints processed under General Order PCA-501.02.

3. Any written examination administered as part of a psychological evaluation to applicants; guidelines, manuals, procedures, or other records relating to such psychological examinations; and any records relating to aggregate results of the examinations for all applicants and for applicants who were hired as officers.

4. Records "concerning the number of calls received from transgender individuals or the corresponding response rate."

5. Any records relating to the discipline of MPD members for conduct alleged to have been committed against trans individuals or involving trans bias.

6. Records relating to the closure rates for hate/bias crimes related to (real or perceived) gender identity or expression, hate/bias crimes generally, and all crimes; and records relating to the closure rates for hate/bias homicides related to (real or perceived) gender identity or expression, hate/bias homicides generally, and all homicides.

7. Records related to the number of calls to which the Gay and Lesbian Liaison Unit ("GLLU") responded or were generated in response to a call to the GLLU.

8. Records relating to "the GLLU's monthly campaigns and school visits or public safety seminars."

9. Any emails between Chief Cathy Lanier and any individual with an email address ending in "adl.org."

10. Any emails to or from Chief Cathy Lanier that contain the terms "ADL" or "Defamation League."

The FOIA Request specified the period beginning January 1, 2009 for all parts, except that the seventh part was for 2012 and the ninth and tenth parts were for the period beginning January 1, 2011.

MPD sent a formal response by letter dated February 6, 2013, setting forth its responses to the FOIA Request, indicating as follows:

1. On August 30, 2012, MPD provided responsive records for parts 1, 2, 4, 7, and 8 of the FOIA Request, which disclosure included responsive records relating to the following: GLLU training, officer training, special liaison training, use training and information, bias-related/hate crimes modules, guidelines and manuals, incident reports, transgender community outreach information, and GLLU calls for service.

2. On August 30, 2012, MPD provided responsive records for part 6 of the FOIA Request.

3. With the February 6, 2013 letter, MPD provided responsive records for parts 9 and 10 of the FOIA Request, with redactions for personal identifying information whose release would constitute an unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534(a)(2) and for text exempt from disclosure under the deliberative process privilege under D.C. Official Code § 2-534(a)(4).

4. With respect to part 3 of the FOIA Request, MPD stated that it was withholding written psychological examinations on the basis of the exemptions from disclosure under D.C. Official Code § 2-534 (a)(1) and (5).

5. With respect to part 3 of the FOIA Request, MPD stated that it searched its records of its Personnel Performance Management System ("PPMS") and no responsive records were located.

On Appeal, Appellant challenges the response of MPD to parts 1, 3 through 5, and 9 and 10 of the FOIA Request, as follows:

1. With respect to the first part of the FOIA Request, Appellant states: "MPD did not conduct an adequate search for records. For each category of document listed in Request #1, MPD should be required to either produce responsive records or to affirmatively state that no responsive records could be found."

2. With respect to the third part of the FOIA Request, Appellant states: "MPD improperly withheld guidelines, procedures, manuals, and examinations and failed to determine whether non-exempt information could be segregated and released."

3. With respect to the fourth part of the FOIA Request, Appellant states, in pertinent part:

> [T]he records provided by MPD are not responsive to the request. MPD has neither denied that it could locate, nor provide[], any records documenting, the number of calls received from transgender individuals and the corresponding response rate. The records provided by MPD, for example, do not include all calls to 911 by individuals identifying as transgender or the corresponding response rate. MPD is required to maintain this information in accordance with General Order PCA-501.02 . . .

4. With respect to the fifth part of the FOIA Request, Appellant states, in pertinent part:

> MPD did not conduct an adequate search. PPMS is not the only system which contains disciplinary information regarding MPD officers. MPD's Office of Human Resources also maintains records of disciplinary actions which may be responsive to this request. Additionally, disciplinary actions taken pursuant to chain-of-command investigations are not contained in PPMS, but records of such actions are likely to contain responsive records.

5. With respect to the ninth and tenth parts of the FOIA Request, Appellant contends that MPD has improperly asserted the exemption from disclosure based upon the deliberative process privilege. After citing and explaining applicable principles of case law regarding the application of the deliberative process privilege under the federal FOIA, Appellant states:

> The emails which contain redactions do not appear to relate to a specific decision, and based on the context, it does not appear that the redacted portions make recommendations or express opinions on legal or policy matters to be decided by the agency.
>
> Further, some of the emails appear to contain redactions related to how to respond to an inquiry from Mr. Jason Terry of the D.C. Trans Coalition. The emails thus do not reflect

> deliberations or decisions regarding policy, but merely how to portray a situation to a community member.

In its response, MPD reaffirms and amplifies its position, as follows:

1. With respect to the first part of the FOIA Request, MPD states it has conducted an adequate search for the responsive records. In particular, MPD states that its "training academy is the repository for all training documents related to transgender/transsexual/trans individuals" and that academy personnel searched its paper and electronic files.

2. With respect to the third part of the FOIA Request, MPD sets forth arguments both with respect to D.C. Official Code § 2-534 (a)(1) and (5). As to D.C. Official Code § 2-534 (a)(1), MPD states that it consulted the vendor of the examination.

> The representative of the vendor states that release of the guidelines, procedures and manuals would definitely harm it as the vendor has a copyright on the testing protocols that it used for the department's applicants. The representative indicated that release of his company's protocols could result in the loss of competitive position in this unique field. He also stated that other testing protocols were used and are presently used that are copyrighted by other entities. He indicated that these protocols are used and relied upon by certified experts who have been authorized to use then in the testing of applicants for law enforcement positions throughout the country. He stressed that release of the protocols would severely harm the entire field as the protocols are part of the basic testing process that have been in use for years.

As to D.C. Official Code § 2-534 (a)(5), MPD states: "Release of the tests and the keying and scoring data would educate future applicants on how not to respond in future examinations. The value of the testing would be completely lost and the publishers of the tests would suffer economic harm."

3. With respect to the fourth part of the FOIA Request, MPD states that the GLLU is responsible for maintaining records from transgender individuals and searched all electronic and paper-based files.

4. With respect to the fifth part of the FOIA Request, MPD first explains that its Human Resources Bureau includes the following divisions or personnel: the Disciplinary Review Division ("DRD"), which manages the disciplinary process; the Internal Affairs Division ("IAD"), which maintains investigatory files on employees; and staff that is responsible for managing the PPMS. MPD further explains that "PPMS contains electronic investigatory records created by the Internal Affairs Division and chain-of-command investigation records created by police district command officials." As to the conduct of the search, MPD states: "No responsive documents were located pursuant to a search of the PPMS. FOIA staff further verified that there were no responsive documents by checking with DRD and IAD staff."

5. With respect to the ninth and tenth parts of the FOIA Request, after citing and setting forth applicable principles of case law regarding the application of the deliberative process privilege, MPD indicates that the text redacted on the basis of the deliberative process privilege were discussions about draft agency policy and the dissemination of that policy and of the composition of a task force. MPD also indicates that the Chief of Police was involved in the deliberations. MPD attached a Vaughan index identifying the relevant emails and briefly describing the nature of each email.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

Under the Appeal, the Appellant has set forth challenges to the response to six parts of the FOIA Request, which challenges may be grouped into three issue areas. First, Appellant contends that MPD has failed to perform a search reasonably calculated to yield responsive records as to three of the parts of the FOIA Request. Second, Appellant contends that MPD improperly asserted the exemption for the deliberative process privilege under D.C. Official Code § 2-534(a)(4) with respect to two parts of the FOIA Request. Third, Appellant contends that has improperly withheld records under the third part of the FOIA Request, for which withholding MPD has asserted exemptions under D.C. Official Code § 2-534(a)(1)("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") and D.C. Official Code § 2-534(a)(1)("Test questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon"). We will examine each of these challenges by issue group.

The first issue grouping is the adequacy of the search. In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2013-27, and Freedom of Information Act Appeal 2013-34. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. Indeed, in Freedom of Information Act Appeal 2012-28, the agency stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-28, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations.

Appellant challenges the response to the first part of the FOIA Request, records relating to the training of MPD members about trans individuals or responding to hate/bias crimes, stating that "MPD should be required to either produce responsive records or to affirmatively state that no responsive records could be found." The original response by MPD to the FOIA Request and the response by MPD to the Appeal both indicate that training records were provided, so the issue with respect to this part was whether the search was reasonably calculated to locate *all* responsive records. Here, MPD identified its training academy as the likely location of the requested records[1] and identified the types of records which would yield the requested records, i.e., its paper and electronic files. With respect to the first part of the FOIA Request, MPD has employed a search methodology was which was reasonably designed to locate the responsive records.

[1] The "training academy is the repository for all training documents related to transgender/transsexual/trans individuals."

Appellant challenges the response to the fourth part of the FOIA Request, records "concerning the number of calls received from transgender individuals or the corresponding response rate," stating, in pertinent part and as set forth above:

> MPD has neither denied that it could locate, nor provide[] any records documenting, the number of calls received from transgender individuals and the corresponding response rate. The records provided by MPD, for example, do not include all calls to 911 by individuals identifying as transgender or the corresponding response rate. MPD is required to maintain this information in accordance with General Order PCA-501.02 . . .

In response, MPD identifies the GLLU as the likely location of the requested records as it states that the GLLU "is responsible for maintaining records from transgender individuals." This is consistent with General Order PCA-501.02, cited by Appellant and available as a matter of public record on the MPD website. MPD also identified the types of records which would yield the requested records, i.e., its paper and electronic files, and stated that all of these records were searched. It is not clear on the administrative record the extent to which records were produced in response to this part of the FOIA Request. Nevertheless, MPD has employed a search methodology which was reasonably designed to locate the responsive records. Based on General Order PCA-501.02, Appellant had an expectation that more records would be maintained and produced. However, as we have stated in prior decisions, DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records.

Appellant challenges the response to the fifth part of the FOIA Request, records relating to the discipline of MPD members for conduct alleged to have been committed against trans individuals or involving trans bias, contending that in addition to searching the PPMS, MPD should also have searched the records of its Office of Human Resources. Moreover, Appellant states that "disciplinary actions taken pursuant to chain-of-command investigations are not contained in PPMS."

In response, MPD states that its search was not limited to the PPMS system, but encompassed three divisions of the Human Resources Bureau includes the following divisions or personnel: the Disciplinary Review Branch ("DRD"), which manages the disciplinary process; the Internal Affairs Division ("IAD"), which maintains investigatory files on employees; and staff that is responsible for managing the PPMS. (We consulted the organizational chart of MPD listed on the MPD website. We noted that the IAD is listed as a division of the Internal Affairs Bureau and not of the Human Resources Bureau. This is not significant—what is significant is that it was identified appropriately as a likely location of the requested records.) In addition, MPD clarified that the PPMS, an electronic records system, includes chain-of-command investigation records created by police district command officials. Thus, MPD identified the likely locations of the requested records, two divisions of which are located in its Human Resources Bureau. This responds to the stated objection of Appellant. MPD also reaffirms that the PPMS was searched. In addition, it states that DRD and IAD staff indicated that there were no responsive records. As to this last particular, it is not clear how DRD and IAD conducted its search, i.e., which types of records were searched. However, simply ordering MPD to conduct a new search

would not be productive as we would expect the same result. In lieu of a new search, MPD shall state in writing to Appellant in what form the relevant records (other than PPMS) are maintained, e.g., electronic (word processing or PDF files) or paper-based, by DRD and IAD, and how such records were searched. Based on the foregoing, if Appellant is not satisfied with the search methodology employed by MPD, Appellant may submit a request for reconsideration of this decision. Such request should identify the deficiencies and propose an appropriate order.

The second issue grouping is the challenge to the assertion by MPD of the deliberative process privilege under D.C. Official Code § 2-534(a)(4) with respect to certain redactions of emails to or from Chief Cathy Lanier. In addition to contesting the assertion under basic principles of the deliberative process privilege, Appellant objects to the assertion of the privilege with respect to deliberations about the response to a "community member," contending, with citation of judicial authority, that such response "do[es] not reflect deliberations or decisions regarding policy."

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and a document is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

"Manifestly, the ultimate purpose of this long-recognized privilege is to prevent injury to the quality of agency decisions." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 152 (1975).

An internal memorandum or other document drafted by a subordinate employee which is ultimately routed through the chain-of-command to a senior official with decision-making authority is likely to be a part of an agency's deliberative process because it will probably "reflect his or her own subjective opinions and will clearly have no binding effect on the recipient." *Access Reports v. Department of Justice*, 926 F.2d 1192, 1195 (D.C. Cir. 1991).

It should be noted that policy in the context of the deliberative process privilege is not restricted to overarching, major determinations as to the mission of an agency and the manner in which it is to be achieved. The deliberative process privilege concerns the expression of thoughts and considerations in arriving at a decision. *See Renegotiation Bd. v. Grumman Aircraft Engineering*

Corp., 421 U.S. 168, 184 (1975). *See also Quarles v. Department of Navy,* 893 F.2d 390, 392 (D.C. Cir. 1990).

> To fall within the deliberative process privilege, materials must bear on the formulation or exercise of agency policy-oriented *judgment*. . . . To the extent that predecisional materials, even if 'factual' in form, reflect an agency's preliminary positions or ruminations about how to exercise discretion on some policy matter, they are protected under Exemption 5 [the federal equivalent of D.C. Official Code § 2-534(a)(4)]. Conversely, when material could not reasonably be said to reveal an agency's or official's mode of formulating or exercising policy-implicating judgment, the deliberative process privilege is inapplicable.

Petroleum Info. Corp. v. United States Dep't of Interior, 976 F.2d 1429, 1435 (D.C. Cir. 1992).

Moreover, an agency deliberative process may involve a series of related decisions about a particular matter. In *Citizens for Responsibility & Ethics v. United States Dep't of Homeland Sec.*, 514 F. Supp. 2d 36, 46 (D.D.C. 2007), the court addressed the claim that "the withheld materials concerned deliberations regarding the ongoing response to Hurricane Katrina." *Id*. at 45. The court found that there were a number of decisions, including personnel, which, according to the agency affidavit, "'arose in the context of larger policy deliberations about how to most effectively respond to the extraordinarily difficult challenges that arose in the wake of Hurricane Katrina,' . . . [and] were thus part of the overall deliberations on how to effectively respond to Hurricane Katrina and other catastrophic events." *Id*. As the court stated, "gauging the appropriate response to a specific type of problem is clearly part of the ongoing, deliberative process about how to respond to a natural disaster." *Id*. at 45-46. As to briefings and reports which

> consist of reports regarding various problems relating to the *ongoing* response to Katrina and *suggesting* solutions and approaches and *draft* situation reports . . . FEMA thus properly withheld those briefings and reports as communications regarding the analysis of the ongoing policy of the Government's response to Katrina. *Reno*, 2001 U.S. Dist. LEXIS 25318, 2001 WL 1902811 at *3; see *Hornbostel v. United States DOI*, 305 F. Supp. 2d 21, 31 (D.D.C. 2003) (finding 'emails exchanging thoughts and opinions about various legal and policy decisions' and briefings and reports exempt from FOIA disclosure as 'part of the group thinking and preliminary actions encompassed by the policy making process in an agency'); *Judicial Watch, Inc. v. Reno*, 2001 U.S. Dist. LEXIS 25318, 2001 WL 1902811, *4 (D.D.C. Mar. 30, 2001) (where documents contain facts bearing on formulation or exercise of agency policy-oriented judgment, deliberative). [footnote omitted].

Id. at 46.

In the case of the Appeal, MPD indicates that the text redacted on the basis of the deliberative process privilege were discussions about a draft agency policy (particularly, a draft agency policy statement), and the dissemination of that policy, the composition of a task force, and funding for

a program. As MPD notes and is expressly provided for in the FOIA Request, all emails include the Chief of Police, the most senior official in the agency with decision-making authority. Discussion regarding composition of a task force and funding for a program are clearly decisions which fall within the deliberative process privilege, as are draft policy statements. Although MPD does not specify the matter under consideration with respect to the policy statement, this is not necessarily fatal. As we have stated in past decisions, an administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search or the claim of exemption as would be expected in a judicial proceeding. Here, based on the presentation of the predecisional matters as a whole, in this case, we find that MPD has set forth a sufficient justification for its assertion of the exemption.

Appellant argues specifically that deliberations as to communications strategy, and particularly a response to a constituent, do not fall within the deliberative process privilege and cites applicable supporting judicial authority from the 2nd Circuit. However, we do not believe that this is the prevailing view. As we stated in Freedom of Information Act Appeal 2012-43:

> [T]he formulation of a communications strategy and development of materials associated with that strategy, including talking points, briefing books, and press releases, are encompassed within policy decisions subject to the deliberative process privilege. *See*, e.g., *Thompson v. Department of Navy*, 1997 WL 527344, 5 (D.D.C. 1997)("the process by which the Navy formulates its policy concerning statements to and interactions with the press" subject to deliberative process privilege); *Judicial Watch, Inc. v. United States Dep't of Commerce*, 337 F. Supp. 2d 146, 174 (D.D.C. 2004)("talking points and recommendations for how to answer questions" properly withheld.); *Williams v. United States Dep't of Justice*, 556 F. Supp. 63, 65 (D.D.C. 1982)("briefing papers prepared for the Attorney General prior to an appearance before a congressional committee in executive session [are] clearly deliberative.").

We believe that this is the prevailing view and we have followed this line of authority, as expressed by the D.C. Circuit, in our prior appeals decisions.

The third issue grouping is the assertion of exemptions under D.C. Official Code § 2-534(a)(1) and D.C. Official Code § 2-534(a)(5) with respect to the third part of the FOIA Request, written examinations administered as part of a psychological evaluation to applicants, and guidelines, manuals, procedures, or other records relating thereto. D.C. Official Code § 2-534(a)(1) exempts from disclosure "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." D.C. Official Code § 2-534(a)(5) exempts from disclosure"[t]est questions and answers to be used in future license, employment, or academic examinations, but not previously administered examinations or answers to questions thereon."

In response to the assertion of Appellant that "MPD improperly withheld guidelines, procedures, manuals, and examinations," as set forth above, MPD argued with respect to D.C. Official Code § 2-534(a)(1):

> The representative of the vendor states that release of the guidelines, procedures and manuals would definitely harm it as the vendor has a copyright on the testing protocols that it used for the department's applicants. The representative indicated that release of his company's protocols could result in the loss of competitive position in this unique field. He also stated that other testing protocols were used and are presently used that are copyrighted by other entities. He indicated that these protocols are used and relied upon by certified experts who have been authorized to use then in the testing of applicants for law enforcement positions throughout the country. He stressed that release of the protocols would severely harm the entire field as he protocols are part of the basic testing process that have been in use for years.

First, MPD states that the vendor has a copyright on the testing protocols. It does not follow from this statement that disclosure would result in harm as competitors would be prevented from using the testing protocols by virtue of the copyright. Second, MPD advances the statement of the vendor that "release of his company's protocols could result in the loss of competitive position in this unique field." However, this is merely a conclusion. "[C]onclusory and generalized allegations of substantial competitive harm . . . cannot support an agency's decision to withhold requested documents." *Public Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983). Third, MPD sets forth the statement by the vendor that "release of the protocols would severely harm the entire field." These arguments do not demonstrate substantial harm to the competitive position of the MPD vendor, but to all vendors in the market, ostensibly equally.

With respect to D.C. Official Code § 2-534(a)(5), MPD states: "Release of the tests and the keying and scoring data would educate future applicants on how not to respond in future examinations. The value of the testing would be completely lost and the publishers of the tests would suffer economic harm." The problem with the argument of MPD is that the exemption under D.C. Official Code § 2-534(a)(5) specifically excludes "previously administered examinations or answers to questions," which is what Appellant seeks.

Sua sponte, we have undertaken our own analysis of the issue. First, we note that under federal law, there are provisions which address, or have been interpreted to address, this issue. 5 U.S.C. § 552a(k)(6), under the so-called Privacy Act, specifically exempts from disclosure "(6) testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process." In addition, Exemption 2 of the federal FOIA, 5 U.S.C. § 552(b)(2), which exempts from disclosure, records "related solely to the internal personnel rules and practices of any agency," has been construed to exempt the disclosure of testing materials as well. However, neither DC FOIA nor other District law, to our knowledge, has a testing-specific exemption other than D.C. Official Code § 2-534(a)(5).

An Illinois case, *Roulette v. Department of Cent. Management Services*, 490 N.E.2d 60 (Ill. App. Ct. 1st Dist. 1986), considered the issue of the disclosure of records regarding psychological

testing, but it provided for withholding under provisions of law which are not present in DC FOIA.

The early construction of the competitive harm exemption under the federal FOIA limited the reach of the competitive harm exemption to the use of the disclosed information only by competitors. The D.C. Circuit stated:

> [T]he important point for competitive harm in the FOIA context . . . is that it be limited to harm flowing from the affirmative use of proprietary information *by competitors*. Competitive harm should not be taken to mean simply any injury to competitive position, as might flow from customer or employee disgruntlement or from the embarrassing publicity attendant upon public revelations concerning, for example, illegal or unethical payments to government officials or violations of civil rights, environmental or safety laws. [citation omitted]

Public Citizen Health Research Group v. Food & Drug Admin., 704 F.2d 1280, 1291, fn. 30 (D.C. Cir. 1983).

However, without discussion of *Public Citizen* or other cases adopting its formulation, in *McDonnell Douglas Corp. v. NASA*,[2] the D.C. Circuit introduced the possibility of usage of the disclosed records by other parties. In a case concerning line-item pricing, the application of competitive harm resulting from the use of the information by the customers of a competitor was considered and found to be within the ambit of the exemption.

> Appellant claimed the release of line item pricing information would cause it competitive harm for two reasons: it would permit its commercial customers to bargain down ("ratchet down") its prices more effectively, and it would help its domestic and international competitors to underbid it (the company claimed that disclosure of the line item pricing data would allow competitors to calculate its actual costs with a high degree of precision). . . .
>
> Both of the reasons McDonnell Douglas advanced for claiming its line item prices were confidential commercial or financial information are indisputable.

McDonnell Douglas Corp. v. NASA, 180 F.3d 303, 306-307 (D.C. Cir. 1999).

As reported by the *Department of Justice Guide to the Freedom of Information Act* (2009), in a concurring opinion in denying the rehearing in *McDonnell Douglas Corp.*, Justice Silberman stated in a concurring opinion: "Other than in a monopoly situation anything that undermines a

[2] 180 F.3d 303 (D.C. Cir. 1999), *reh'g en banc denied*, No. 98-5251, slip op. at 2 (D.C. Cir. Oct. 6, 1999), *dismissed as moot on motion for entry of judgment*, 102 F. Supp. 2d 21 (D.D.C.), *reconsideration denied*, 109 F. Supp. 2d 27 (D.D.C. 2000).

supplier's relationship with its customers must necessarily aid its competitors." *Id*. at 305-306, fn. 259.

The Second Circuit has also found that use of the information by a party other than a competitor can cause competitive harm. In *Nadler v. FDIC*, 899 F. Supp. 158 (S.D.N.Y. 1995), the third party was a citizen group opposing a real estate project.

> Plaintiffs are correct insofar as they note that the opponents of the joint venture project do not compete with the joint venturers as rival New York City real estate developers. But the economic injury they may inflict on the joint venture is nonetheless a competitive injury. Plaintiffs' avowed goal is to drive the joint venture out of business. Any financial loss by the joint venture will jeopardize both the venture's relative position vis-a-vis other New York City real estate developers and its solvency.

Id. at 163.

Thus, use of disclosed proprietary information by third parties which results in economic injury may constitute the requisite harm to the competitive position of the individual or entity whose information is being disclosed.

In the case of the Appeal, the information sought by Appellant is a psychological test and interpretative materials. The psychological examination is not a knowledge-based test and, therefore, there are no correct or incorrect answers.[3] The evaluation of the examination would be made by an evaluation of the responses, or the pattern of responses, of, in this case, any MPD applicant. If the psychological examination and the interpretative materials were released, an applicant armed with knowledge of these materials may attempt to tailor his or her responses to the test. Even if the applicant were not able to determine what the correct pattern of responses were needed to demonstrate psychological fitness, it would result in responses which were not candid. *See Roulette v. Department of Cent. Management Services*, 490 N.E.2d 60, 62 (Ill. App. Ct. 1st Dist. 1986). The consequence would be a reduced utility of such psychological examination to MPD and the selection by MPD (or other municipal police departments who use the same test) of a psychological examination from another vendor. Such economic injury would result in the requisite competitive harm under the reasoning of the court in *McDonnell Douglas Corp. v. NASA*. Thus, under the circumstances surrounding the use of psychological examinations, we find that the records sought by the third part of the FOIA Request are exempt from disclosure.[4]

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[3] Unlike a knowledge-based examination, as there are no correct or incorrect answers, the content of a psychological examination is unlikely to change with each administration of a test.

[4] Appellant raises the issue of segregation of the records, i.e., provision of some of the records. The only candidate for release, in our view, would be the psychological examination itself. The consequences of release of this record are uncertain and, given the possible effect on the candor of the responses of an MPD applicant, we decline to order its release.

Conclusion

Therefore, the decision of MPD is upheld in part and remanded in part as set forth above with respect to the fifth part of the FOIA Request.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 5, 2013

BY U.S. MAIL

Jeffrey A. Wigodsky, Esq.
Karp, Frosh, Wigodsky & Norwind, P.A.
1737 King Street, Suite 220
Alexandria, Virginia 22314

Re: Freedom of Information Act Appeal 2013-39

Dear Mr. Wigodsky:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 25, 2013 (the "Appeal"). You, on behalf of a named client ("Appellant"), assert that Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated October 19, 2013 (the "FOIA Request").

Appellant's FOIA Request sought video footage taken on January 22, 2013, at the intersection of 7th and H Streets, N.W., in connection with an alleged traffic accident occurring at approximately 3:30AM. In response, by letter dated February 19, 2013, MPD stated that "the incident referenced above is an open case currently under investigation" and denied the FOIA Request based on the exemption from disclosure under D.C. Official Code § 2-534(a)(3)(A)(i). On Appeal, Appellant challenged the assertion of the exemption on the basis that disclosure of the record would not compromise the investigation or any resulting prosecution. By email dated March 5, 2013, Appellant withdrew the Appeal, advising this office that, after the filing of the Appeal, MPD had provided the video to Appellant.

Based on the foregoing, the Appeal is hereby dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 14, 2013

BY U.S. MAIL

Ms. Sharon Rondeau
P.O. Box 195
Stafford Springs, Connecticut 06076

Re: Freedom of Information Act Appeal 2013-40

Dear Ms. Rondeau:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated December 22, 2012 (the "Appeal"). You ("Appellant") assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA made on August 17, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following:

> [A] transcript, audio recording or both of any call placed on behalf of Secretary of State Hillary Clinton regarding a reported fall and subsequent concussion she allegedly suffered while in her office at the U.S. State Department . . . as reported here: http://www.washingtopost.com/world/national-security/hillary-clinton-gets-concussion-after-fainting/2012/12/15/bf33f62c-46f1-11e2-9648-a2c323a991d6 story.html.
>
> Because the State Department spokesman said that Clinton fell ill at her office, it is presumed that an ambulance was called by someone at State to transport her to a nearby hospital. No specific date or time was provided by the spokesman, but I am requesting that you search the time frame between December 10 and December 15, 2012.

In response, by email dated September 12, 2012, MPD denied the FOIA Request, stating that, without admitting or denying the existence of such records, release of a transcript or audio would constitute an unwarranted invasion of personal privacy pursuant to D.C. Official Code § 2-534 (a)(2).

On Appeal, Appellant challenges the denial of the FOIA Request.

> I maintain that Secretary Clinton is in the employ of the people of United States of America as a public servant and, as was reported by a Commerce Department spokesman for then-Commerce Secretary John Bryson last summer, any accident, hospitalization, or illness should be reported to the people as a matter of course. . . . I am not asking for medical information; only the 911 call.

In response, dated March 13, 2013, MPD revised its position.

> Upon receipt of the appeal the department reviewed the request and has determined that the Fire and Emergency Medical Services department is the appropriate responding agency for this request. The Metropolitan Police Department does not have the management responsibility for documents created in relation to 911 calls for medical services.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

Based on the administrative record in this matter, we find that the issue in the Appeal presents difficulty in framing. On one hand, Appellant's FOIA Request sought any 911 call made from the State Department, the place of employment of Hillary Clinton, with regard to a "fall and subsequent concussion" as reported in the Washington Post, but the Washington Post article which Appellant cites states that the incident which would have given rise to the call occurred at the home of Ms. Clinton. In filing the Appeal, Appellant acknowledges that she is uncertain where the incident occurred or if the incident occurred at all.[1] It is unclear, then, whether Appellant is seeking only a call made from the State Department or any call made with respect to the alleged incident. This raises an issue as to the sufficiency of the description in the FOIA

[1] Appellant states: "Some reports say that Secretary Clinton fainted and hit her head while on the premises of the State Department, while another report said that it had occurred at her home. At least one news outlet has expressed doubt it ever occurred at all."

Request. On the other hand, it is unclear whether there are any records at all which are responsive to the FOIA Request. The initial response of MPD stated that it could neither admit nor deny the existence of records because disclosure of any records would constitute an unwarranted invasion of privacy. We do not understand why a statement simply of the existence of the record would result in an unwarranted invasion of privacy given the widespread reporting of the incident, but MPD indicates in its response to the Appeal that it is no longer relying on this contention. Instead, it maintains that it need not respond to the FOIA Request as the Fire and Emergency Medical Services Department has the "the management responsibility for documents created in relation to 911 calls for medical services" and that the Fire and Emergency Medical Services Department is responsible for responding to the FOIA Request. This position is untenable. Under DC FOIA, an agency is responsible for all records which are in its possession whether or not another agency has possession of the same record or such other agency has "management responsibility" for the record.

It is not necessary to address or resolve all of these potential issues. Even if there are any such records which exist with respect to the alleged incident, we would find that such records are exempt from disclosure under D.C Official Code § 2-534(a)(2). [2]

An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).

In this case, there are two possible privacy interests at stake. First, there is the interest of the individual who would have made the telephone call regarding Ms. Clinton and, assuming that a telephone call was made from the workplace, is presumably an employee working in the State Department. Second, there is the interest of Ms. Clinton herself.

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[2] D.C. Official Code § 2-534(a)(2) ("Exemption (2)") provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." By contrast, D.C. Official Code § 2-534(a)(3)(C) ("Exemption (3)(C)") provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, including the records of Council investigations and investigations conducted by the Office of Police Complaints, but only to the extent that the production of such records would . . . (C) Constitute an unwarranted invasion of personal privacy." It should be noted that the privacy language in this exemption is broader than in Exemption (2). While Exemption (2) requires that the invasion of privacy be "clearly unwarranted," the adverb "clearly" is omitted from Exemption (3)(C). Thus, the standard for evaluating a threatened invasion of privacy interests under Exemption (3)(C) is broader than under Exemption (2). *See United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989). As any record in this case would not have been compiled for law enforcement purposes, the exemption here is asserted under, and would be judged by the standard for Exemption (2).

We note first that while these two individuals are both presumably government employees, they are employees of the federal government and not the District government. As to the District government, these individuals are third parties. The Supreme Court held that "as a categorical matter that a third party's request for law enforcement records or information about a private citizen can reasonably be expected to invade that citizen's privacy . . ." *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 780 (1989). It is clear that an individual who is a witness has a sufficient privacy interest in his or her name and other identifying information which is in a government record. *See Stern v. FBI, supra*; *Lahr v. NTSB*, 569 F.3d 964 (9th Cir. 2009)(privacy interest found for witnesses regarding airplane accident); *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1023 (9th Cir. 2008)(privacy interest found for government employees who were cooperating witnesses regarding wildfire); *Lloyd v. Marshall*, 526 F. Supp. 485 (M.D. Fla. 1981) ("privacy interest of the witnesses [to industrial accident] and employees is substantial . . ." *Id*. at 487); *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 923 (11th Cir. 1984)(privacy interest found for witnesses regarding industrial accident); *Codrington v. Anheuser-Busch, Inc.*, 1999 U.S. Dist. LEXIS 19505 (M.D. Fla. 1999) (privacy interest found for witnesses regarding discrimination charges). An individual does not lose his privacy interest because his or her identity as a witness may be discovered through other means. *L & C Marine Transport, Ltd. v. United States*, 740 F.2d 919, 922 (11th Cir. 1984); *United States Dep't of Defense v. Federal Labor Relations Auth.*, 510 U.S. 487, 501 (1994). ("An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.")

We believe that there is a privacy interest in the unnamed individual in his or her identity and actions in relation to any call made and in Ms. Clinton in any details regarding her medical condition which would presumably have been disclosed in the telephone call.

Even if we were to view these individuals under the standards for government employees, we would still reach the same conclusion.

> [A]n employee has at least a minimal privacy interest in his or her employment history and job performance evaluations. See *Department of the Air Force v. Rose*, 425 U.S. 352, 48 L. Ed. 2d 11, 96 S. Ct. 1592 (1976); *Simpson v. Vance*, 208 U.S. App. D.C. 270, 648 F.2d 10, 14 (D.C. Cir. 1980); *Sims v. CIA*, 206 U.S. App. D.C. 157, 642 F.2d 562, 575 (D.C. Cir. 1980). That privacy interest arises in part from the presumed embarrassment or stigma wrought by negative disclosures. See *Simpson*, 648 F.2d at 14. But it also reflects the employee's more general interest in the nondisclosure of diverse bits and pieces of information, both positive and negative, that the government, acting as an employer, has obtained and kept in the employee's personnel file.

Stern v. FBI, 737 F.2d 84, 91 (D.C. Cir. 1984).

Moreover, it has been recognized that "while the privacy interests of public officials are 'somewhat reduced' when compared to those of private citizens, 'individuals do not waive all

privacy interests . . . simply by taking an oath of public office.'[citation omitted.]" *Forest Serv. Emples. v. United States Forest Serv.*, 524 F.3d 1021, 1025 (9th Cir. 2008).

There is clearly a personal privacy interest in any responsive records in this matter.

As stated above, the second part of a privacy analysis must examine whether the public interest in disclosure is outweighed by the individual privacy interest. The Supreme Court has stated that this must be done with respect to the purpose of FOIA, which is

> 'to open agency action to the light of public scrutiny.'" *Department of Air Force v. Rose*, 425 U.S., at 372 . . . This basic policy of 'full agency disclosure unless information is exempted under clearly delineated statutory language,' *Department of Air Force v. Rose*, 425 U.S., at 360-361 (quoting S. Rep. No. 813, 89th Cong., 1st Sess., 3 (1965)), indeed focuses on the citizens' right to be informed about "what their government is up to." Official information that sheds light on an agency's performance of its statutory duties falls squarely within that statutory purpose. That purpose, however, is not fostered by disclosure of information about private citizens that is accumulated in various governmental files but that reveals little or nothing about an agency's own conduct.

United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 772-773 (1989).

"To obtain disclosure, a FOIA plaintiff 'must produce evidence that would warrant a belief by a reasonable person that [an] alleged Government impropriety might have occurred.' *Nat'l Archives and Records Admin. v. Favish*, 541 U.S. 157, 174, 124 S. Ct. 1570, 158 L. Ed. 2d 319 (2004). Otherwise, the balancing requirement simply does not come into play. *Id*. at 175." *Blackwell v. FBI*, 680 F. Supp. 2d 79, 93-94 (D.D.C. 2010).

> Information about individuals that does not directly reveal the operations or activities of the government -- which is the focus of FOIA – 'falls outside the ambit of the public interest that the FOIA was enacted to serve' and may be protected under Exemption 7(C). *U.S. Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 775, 109 S. Ct. 1468, 103 L. Ed. 2d 774 (1989). . . . To obtain disclosure, Mr. Kishore may not rests [sic] on 'a bare suspicion' . . .

Kishore v. United States DOJ, 575 F. Supp. 2d 243, 256-257 (D.D.C. 2008).

Here, Appellant bases its argument on the fact that Ms. Clinton is a "public servant." This rationale standing alone is insufficient. As the judicial authority quoted above indicates, individuals do not waive all privacy interests simply by taking an oath of public office. We considered a substantially similar contention in Freedom of Information Act Appeal 2011-61 and the same analysis applies here:

> In this case, Appellant has only offered that this matter involves "a significant arrest that relates to high-profile person." However, it appears that the arrest is significant only because it applies to a person characterized as high-profile. Celebrity alone does not

establish a public interest. Here, the disclosure of the records will not contribute anything to public understanding of the operations or activities of the government or the performance of MPD. See *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 775 (1989). Thus, as this is not a case involving the efficiency or propriety of agency action, there is no public interest involved.

> In the usual case, we would first have identified the privacy interests at stake and then weighed them against the public interest in disclosure. See *Ray*, 112 S. Ct. at 548-50; *Dunkelberger*, 906 F.2d at 781. In this case, however, where we find that the request implicates no public interest at all, "we need not linger over the balance; something … outweighs nothing every time." *National Ass'n of Retired Fed'l Employees v. Horner*, 279 U.S. App. D.C. 27, 879 F.2d 873, 879 (D.C. Cir. 1989); see also *Davis*, 968 F.2d at 1282; *Fitzgibbon v. CIA*, 286 U.S. App. D.C. 13, 911 F.2d 755, 768 (D.C. Cir. 1990).

Beck v. Department of Justice, 997 F.2d 1489, 1494 (D.C. Cir. 1993).

Therefore, assuming the existence of any records regarding a 911 call with respect to the incident, such records would be exempt from disclosure.

Conclusion

Therefore, the decision of MPD is upheld. The Appeal is hereby dismissed.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 13, 2013

BY U.S. MAIL

Fritz Mulhauser, Esq.
American Civil Liberties Union of the Nation's Capital
4301 Connecticut Ave, N.W.
Suite 434
Washington, D.C. 20008

Re: Freedom of Information Act Appeal 2013-41

Dear Mr. Mulhauser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) (the "DC FOIA"), dated March 2, 2013 (the "Appeal"). You, on behalf of the American Civil Liberties Union ("Appellant"), assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your requests for information under DC FOIA dated January 23, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought "a directive by Wilson High School Principal Peter Cahall ordering teachers to call students 'scholars' and follow-up directive stressing that teachers must comply." Appellant stated that it was aware of the directives based upon "[i]nformation and belief." In response, by letter dated February 15, 2013, DCPS stated that it did not have any responsive records.

On Appeal, Appellant challenges the adequacy of the search. By way of background, Appellant states that it learned that the principal "ordered staff in fall 2011 to use only one term in speaking of those enrolled—'scholars.' And when the staff didn't follow his order, Mr. Cahall a few weeks later repeated his direction and stressed staff must comply." As to the inadequacy of the search, Appellant states, in pertinent part:

> Since we know the records requested existed at one fairly recent point in time, a FOIA response that the agency now does not have been is unreasonable without more.
>
> That the search was unreasonable is suggested not by mere speculation. They once existed, not too long ago; the ACLU has information that we believe reliable from individuals who saw the directives as sent over electronic message system and read them at the time.

In its response, by email dated March 8, 2013, DCPS reaffirms its position. It states that it contacted the high school principal in question and requested a search for the responsive records. The principal stated, in pertinent part: "There has been no directive or requirement for teachers to refer to students as scholars." A copy of the statement of the principal was attached to the response.

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2013-27, and Freedom of Information Act Appeal 2013-34. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency.

In the case of the Appeal, DCPS made a reasonable determination as to location of the requested records, i.e., records maintained by the alleged author of the requested records, the high school principal. The principal stated, in no uncertain terms, that there were no such directives. We presume that an individual has knowledge of the documents which he or she has prepared (at the very least, where, as here, such documents would be of a unique nature). *See*, e.g., Freedom of Information Act Appeal 2013-27 (with respect to a request for an investigation report, the individual conducting the investigation). We also presume that agencies, and their employees, make good-faith representations as part of appeals. While Appellant has certainly stated a basis for its belief that the requested records exist, the hearsay statements of unidentified third parties are not sufficient for us to discredit the statement of the high school principal and order a new search.

Conclusion

Therefore, the decision of DCPS is upheld. The Appeal is dismissed.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

March 14, 2013

BY U.S. MAIL

Fritz Mulhauser, Esq.
American Civil Liberties Union of the Nation's Capital
4301 Connecticut Avenue, N.W.
Suite 434
Washington, D.C. 20008

Re: Freedom of Information Act Appeal 2013-42

Dear Mr. Mulhauser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated March 2, 2013 (the "Appeal"). You ("Appellant") assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your request for information under DC FOIA dated January 23, 2013 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought "new materials since April 2011 aimed at assuring school principals and others understand the Fourth Amendment rights of students, especially any that explain the quantum of evidence that constitutes reasonable suspicion as the legal basis for searches." Appellant states that DCPS acknowledged the FOIA Request on January 25, 2013, but when a final response was not received, Appellant initiated the Appeal.

In its response, dated March 14, 2013, DCPS stated that, on March 11, 2013, following the filing of the Appeal, it responded to the FOIA Request. Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DCPS.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Donna Whitman Russell, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

April 5, 2013

BY U.S. MAIL

Mr. Robert J. Flanagan
259 N. Central Boulevard
Broomall, Pennsylvania 19008

Re: Freedom of Information Act Appeal 2013-43

Dear Mr. Flanagan:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated February 11, 2013 (the "Appeal"). You ("Appellant") assert that Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated January 11, 2013 (the "FOIA Request").

Appellant's FOIA Request sought records regarding an accident occurring on November 30, 2011, involving a taxicab. In particular, Appellant sought the name and address of the taxicab company and the taxicab driver and all statements made by witnesses. In response, by letter dated March 16, 2013, MPD stated that, "after a comprehensive search by the Metropolitan Police Department, Second District," no responsive records were found.

On Appeal, Appellant challenges the response to the FOIA Request. "I am aware that there were statements given at the scene and the name of the cab company but I am requesting a copy of these as well as the driver[']s contact information."

In its response, by email by letter dated April 1, 2013, MPD revised its original response and stated, in pertinent part:

> Upon receipt of the appeal, staff in the FOIA office contacted the Patrol Services and School Security Bureau (PSSB) and the Criminal Investigations Division (CID). Both electronic and hard copy files were searched in these units. The FOIA staff received from CID responsive documents which are presently being reviewed. These documents will be released to Mr. Flanagan after the review has been completed and any applicable redactions have been made. The review is expected to be completed within two days after the receipt of this response.

Appellant challenges the response to the FOIA Request, alleging that the name of the taxicab company and witness statements were given to MPD. It is apparent that the basis of the Appeal would be the adequacy of the search. However, as MPD has made a new search and will provide additional responsive records, it also appears that MPD has responded to the objection set forth by Appellant.

Based upon the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the revised response of MPD.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Ronald B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

April 19, 2013

BY U.S. MAIL

Mr. Gregory A. Slate
P.O. Box 21020
Washington, D.C. 20009

Re: Freedom of Information Act Appeal 2013-44

Dear Mr. Slate:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated March 25, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to your request for information under DC FOIA dated May 8, 2012 (the "FOIA Request").

Background

Appellant's FOIA Request sought "all records, including but not limited to grievances, appeals, medical records, internal affairs complaints, recorded interviews, injury reports, and photographs," concerning himself. Appellant also furnished a list of inmate grievances and appeals which he had filed. On May 16, 2012, Appellant sent an email to "reiterate" his request. On May 16, 2012, DOC notified Appellant that the FOIA Request was forwarded to its FOIA Officer.

By letter dated June 25, 2012, DOC sent 61 pages of medical and grievance records to Appellant. DOC also stated: "You should note that the agency's Internal Affairs office has not concluded the investigation of your sexual harassment complaint and a complaint against a Correctional Officer. The DOC does not disclose records relating to an on-going investigation." DOC also stated that a search for electronic records was also ongoing. DOC also notified Appellant, by email dated June 26, 2012, that it had mailed medical and grievance records to him and that the agency was continuing to search for responsive records.

On Appeal, Appellant states that DOC provided no further response after the June 26, 2012 email and asserts that DOC did not conduct a reasonable and adequate search, alleging that it has additional records. In support of his allegations, Appellant states that, on March 12, 2013, he spoke with a named DOC employee, "who indicated that additional[] records, including

'investigative reports,' were filed under my name but insisted that I had to file a new FOIA request to obtain those records."

In its response, by email dated April 8, 2013, DOC maintains that it has provided all responsive, non-exempt records to Appellant and provides supporting declarations in support of its position. First, DOC argues that the FOIA Request did not constitute a proper request under DC FOIA as required under DCMR § 1-403.3, which states, in pertinent part: "The outside of the envelope or the subject line of the fax or e-mail shall state: 'Freedom of Information Act Request' or 'FOIA Request'." DOC argues:

> The email request for records that [the] agency received from Mr. Slate does not contain this language in its subject line or in the text of the email or anywhere else. The regulation does not require that all requests for records be treated as FOIA requests. It is a FOIA requester that must identify his or her request as a FOIA request. In fact, the regulation counsels in favor of maintaining the practice of providing information records to the public in the 'customary' fashion of doing so prior to the codification of the DC FOIA. Specifically, DCMR 400.3 provides that 'employees may continue to furnish to the public, informally and without compliance with these (FOIA) procedures, information and records, which they customarily furnished in the regular performance of their duties.'

Second, DOC sets forth a chronology of its production and search efforts. Pursuant to the FOIA Request, by letter dated June 25, 2012, DOC furnished 51 pages of medical records and 10 pages of grievance records; informed Appellant that a search for electronic records was ongoing; and stated that an investigation of his sexual harassment complaint was ongoing and any records in connection therewith could not be disclosed. In addition, DOC stated that on March 12, 2013, it "received an email from Mr. Slate, seeking [the] report of the investigation, which has been completed and closed." DOC states that it is providing to Appellant the incident records and investigation report, redacted for the names and identifying information of individuals other than Appellant. It identifies a video which is responsive to the FOIA request, but cannot be provided to Appellants because it does not have the technical ability to redact the video to protect the identity of individuals on the video. Finally, DOC states that no responsive records were located after a search of electronic records. In order to set forth the manner in which the search was conducted, DOC attached declarations of its FOIA officer; a grievance coordinator who searched grievance records; a correctional officer in the litigation support unit of the Central Detention Facility who searched incident and disciplinary records; a supervisory investigator in the Office of Internal Affairs; and an information technology specialist who searched electronic records. The material portions are summarized as follows.

The grievance coordinator stated that, on April 1, 2013, she received a request to conduct a search for "grievance records" maintained on Appellant. In response, using the name and DOC identifying number of Appellant for the period of December 2011 to April 2012,[1] she conducted a search of "all files and locations that the requested records could conceivably be found,

[1] In a supplement to the response, DOC clarified that the end date of the search was May, not April.

including files in the Majors Office" and "also searched electronic records maintained in JACCS." She states that 10 pages of grievance records were found.

The supervisory investigator stated that, in response to a request to search for records that the Office of Internal Affairs maintained on Appellant, she conducted a search in May, 2012, and found that there was "an on-going investigation of Mr. Slate's sexual harassment/assault complaint." She so informed the FOIA Officer. In March, 2013, when asked by the FOIA Officer for an update, she advised the FOIA Officer that the investigation had been completed.

The correctional officer stated that, in response to a request to search for incident and disciplinary records maintained on Appellant, using the name and DOC identifying number of Appellant for the period of December 2011 to April 2012,[2] she conducted a search of "all files and locations that the requested records could conceivably be found, including files in the Adjustment Board and the Majors Office" and "also searched electronic records maintained in Lotus Notes, Paper Clips and JACCS." She states that no responsive records were found.

The information technology specialist stated that in May, 2012, in response to a request to search for emails mentioning Appellant "received or sent by certain named agency[] officials,"[3] no responsive records were found. He stated that a new search was conducted on March 26, 2013, with the same results.

In order to clarify the administrative record, DOC was invited to supplement the response to clarify or address the record-keeping practices of the agency, certain statements in the declarations, and the period of incarceration of Appellant. For the administrative record, DOC provided Program Statement 4060.2D (February 22, 2012), which "provides guidelines for the creation and management of the Inmate Record by the D.C. Department of Corrections." DOC also provided written descriptions of its record-keeping consistent with Program Statement 4060.2D. Both will be discussed in more detail below.

DOC described the functions of the Adjustment Office and the Major's Office as follows. When inmates are charged with rules violations, the Adjustment Board conducts hearings and imposes discipline on inmates who have been found guilty. The Adjustment Board is the custodian for disciplinary records. The functions of the Major's Office include "the receipt of reports/packages of incidents and assaults." The Major's Office is the custodian for these records.

Appellant was incarcerated at the Central Detention Facility (known as D. C. Jail) during the following periods: December 17-23, 2011; January 5-April 24, 2012; April 25-30, 2012; and June 15-20, 2012.

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[2] In a supplement to the response, DOC clarified that the end date of the search was May, not April.

[3] In a supplement to the response, DOC identified the agency officials as the Director, the Deputy Director for Management Support Services, the Deputy Director for Operations, and the General Counsel.

Discussion

It is the public policy of the District of Columbia (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 § 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*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

As an initial matter, we will address the argument of DOC that the FOIA Request did not constitute a proper request under DC FOIA as required under DCMR § 1-403.3. DOC is correct that the FOIA Request did not technically comply with the rule. However, the FOIA Request was sufficient to allow it to be processed under DC FOIA and it appears that, at all times, DOC, to its credit, treated it as a request under DC FOIA, e.g., the original recipient at DOC forwarded the request to its FOIA officer. Moreover, DOC did not provide Appellant any opportunity to clarify the nature of his request or cure any technical deficiency. At this juncture, to the extent that DOC would otherwise raise a valid argument, such argument is not timely raised.[4]

The crux of this matter is the adequacy of the search and the belief of Appellant that more records exist.

Appellant is familiar with the relevant legal principles. As we stated in Freedom of Information Act Appeal 2013-33, in which Appellant was the appellant:

> DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

[4] DOC also suggests that the FOIA Request was processed under the authority of DCMR § 1-400.3, which provides that "employees may continue to furnish to the public, informally and without compliance with these procedures, information and records, which they customarily furnished in the regular performance of their duties." While it is not necessary to construe this provision for the purposes of this decision, we believe that its purpose is to permit employees to furnish information, as appropriate, outside the FOIA process, notwithstanding the FOIA process, but does not direct that this is a preference.

Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, and Freedom of Information Act Appeal 2012-30. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency.[5]

The DOC standard for record-keeping and location of records is set forth in Program Statement 4060.2D (the "PS"). Under the PS, an Inmate Record is created for each inmate.[6] Each Inmate Record is directed to be "stored in hard copy at the Records Office and in appropriately designed electronic information systems."[7] The PS directs that the Inmate Record be "electronically maintained in JACCS and/or Paperclips."[8] Each inmate is assigned a Paperclips file associated with his or her DOC identifying number.[9] An Inmate Record is archived after 90 days following release and will be reactivated only if the inmate is recommitted to custody within 90 days.[10]

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[5] As we also stated in Freedom of Information Act Appeal 2013-33: "An administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial proceeding."

[6] PS, § 8(a) and (b).

[7] PS, § 9(c).

[8] PS, § 9(b). DOC states that "JACCS is the acronym for the agency's electronic records maintenance system, known as the Jail and Community Corrections System."

[9] PS, § 11.

[10] PS, § 9(e).

The description by DOC in its supplement is consistent with the PS. DOC indicates that the Records Office maintains the paper-based Inmate Record (sometimes referred to as the Institutional File or Jacket) and the Office of Management Information and Technology Services maintains all electronic records, and these repositories contain "virtually all records created on inmates." Nevertheless, other offices and divisions maintain paper copies of the records as needed to perform their functions.

As we stated above, in order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Here, according to the PS, the Inmate Record is to be maintained in hard copy at the Records Office and electronically in its electronic information system. Based on the descriptions of the documents in the "Hard Copy Inmate Record" in section 10 of the PS and in the "Electronic Inmate Record" in section 11 of the PS, it appears that the hard copy record in the Records Office and the electronic files are not duplicative. However, although it is possible that, in practice, there are other records which are not maintained as part of the hard copy record or the electronic records maintained by the Office of Management Information and Technology Services, DOC states that "virtually all records created on inmates" are in these repositories.

Accordingly, to fulfill the FOIA Request, a search of the hard copy record at the Records Office and the electronic records maintained by the Office of Management Information and Technology Services would be reasonable and adequate. However, it does not appear that the search which was conducted would have encompassed all records comprised therein.

The DOC searches (both before and after the filing of the Appeal) were conducted by four individuals. Two of the individuals, the grievance officer and the correctional officer, stated that they searched "all files and locations that the requested records could conceivably be found" and stated that they includes files in the Adjustment Board and/or the Majors Office. Contextually, it appears that this refers to a search of hard copy records. Nevertheless, it is unclear that the search was not limited to certain offices and did not include the Records Office. Moreover, it is not clear that the search included all records which would be found in the Records Office. Even if we assume that it included all locations which would have included all records maintained by the Records Office, the search was limited to grievance records in the case of the grievance coordinator and to incident and disciplinary records in the case of the correctional officer. Likewise, the search by the supervisory investigator, with a method which was not stated, was limited to records of the Office of Internal Affairs and the search by the information technology specialist was limited to the email accounts of a few officials. However, the types of records which would be maintained in an Inmate Record are more extensive than the types of records for which the DOC search was conducted. For instance, according to the PS, the Hard Copy Inmate Record would include, among other records not included in the DOC search, commitment documents such as judgment and commitment orders and special handling notices, and the Electronic Inmate Record would include, among other records not included in the DOC search, housing determinations, program review recommendations, and an inmate property inventory. The DOC search appears to have been directed to the illustrative categories stated in the FOIA Request. As the FOIA Request sought "all records," not limited to the illustrative categories

which were more specifically stated, we cannot find that the search was as comprehensive as needed to be deemed adequate.

Therefore, we direct DOC to search the hard copy of the Inmate Record of Appellant which would have been maintained in the Records Office[11] and the electronic records maintained in JACCS and Paperclips with respect to Appellant, which repositories contain "virtually all records created on inmates." The period of the search should be from the commencement date of the custody of Appellant, December 17, 2011, through May 30, 2012.[12] If there are any additional records which are found, DOC may assert any applicable exemptions and Appellant may assert, by separate appeal, such response.

One of the contentions of Appellant is that DOC failed to provide records, including an investigative report, regarding a complaint which Appellant had filed. As DOC states that it is providing, with redactions for privacy (other than a video which cannot be redacted), those records to Appellant, we will consider the issue to be moot.[13]

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[11] On the date of the FOIA Request, the records would have been maintained in an active file in the Records Office. As more than 90 days have passed since Appellant was in custody, the hard copy records of Appellant should have been archived and the archive must be accessed.

[12] As we stated in Freedom of Information Act Appeal 2012-16, the date-of-search is the most reasonable and favored cut-off date, absent a compelling justification. In this case, the date-of-search for the initial response by DOC on June 25, 2012 is not reflected on the administrative record. As the declaration of the information technology specialist indicates that he received his portion of the search request on May 30, 2012, we will presume, for the purposes of this decision, that this is the date of the search.

We are not requiring an additional, separate search with respect to email accounts. The FOIA Request does not specify a search with respect to any named officials. According to the FY 2013 Proposed Budget and Financial Plan, prepared by the Mayor and submitted to the Council of the District of Columbia, which we deem to be a matter of public record, the number of budgeted full-time equivalent employees in the Department of Corrections for Fiscal Year 2011 was approximately 880. Under the circumstances of the Appeal, we believe that a search of the email accounts of all employees would be unduly burdensome.

[13] In its response to the FOIA Request, DOC stated that "DOC does not disclose records relating to an on-going investigation." A proper response should have stated a specific exemption as the reason for withholding any records. We do note that DOC was not required to produce any responsive records created after the date of the initial search, *see* fn. 12, and, as the investigative report was presumably created after the date of the initial search, the statement to Appellant by DOC that a new request for the investigative report was required would be correct. Nevertheless, in light of the production by DOC as stated above, this issue is moot.

Conclusion

Therefore, the decision of DOC is remanded. As set forth above, DOC shall search the hard copy of the Inmate Record of Appellant which would have been maintained in the Records Office and the electronic records maintained in JACCS and Paperclips with respect to Appellant. The period of the search should be from the commencement date of the custody of Appellant, December 17, 2011, through May 30, 2012. If there are any additional records which are found, DOC may assert any applicable exemptions and Appellant may assert, by separate appeal, such response.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Oluwasegun Obebe, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

April 8, 2013

BY U.S. MAIL

Fritz Mulhauser, Esq.
American Civil Liberties Union of the Nation's Capital
4301 Connecticut Avenue, N.W.
Suite 434
Washington, D.C. 20008

Re: Freedom of Information Act Appeal 2013-45

Dear Mr. Mulhauser:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated March 27, 2013 (the "Appeal"). You ("Appellant") assert that the Office of Contracting and Procurement ("OCP") improperly withheld records in response to your request for information under DC FOIA dated February 2, 2013 (the "FOIA Request) by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records relating to a contract award for a study of the cost of an adequate education. When a final response was not received, Appellant initiated the Appeal.

In its response, dated April 8, 2013, OCP stated that, on March 28, 2013, it responded to the FOIA Request, providing 186 pages with redactions for certain information based upon specified exemptions. Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed; provided, that the dismissal shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of OCP.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Nancy Hapeman, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

EXECUTIVE OFFICE OF THE MAYOR

Office of the General Counsel to the Mayor

April 30, 2013

BY U.S. MAIL

Mr. Dion E. Black
3143 O Street, S.E.
Washington, D.C.

Re: Freedom of Information Act Appeal 2013-46

Dear Mr. Black:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-537(a)(2001) ("DC FOIA"), dated March 29, 2013 (the "Appeal"). You ("Appellant") assert that the District Department of Transportation ("DDOT") improperly withheld records in response to your request for information under DC FOIA dated February 10, 2013, as amended February 11, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request consisted of 22 parts, seeking records whose description may be summarized as follows:

1. The approved procedures for alternative dispute resolution of employee grievances pursuant to § 1633.1 of the District Personnel Manual and copies of requests, and responses to requests, for those procedures.

2. Documents given, or correspondence sent, to named officials designated by Appellant as deciding officials relating to the "Official Reprimand" of Appellant and a named official designated by Appellant as the grievance official.

3. All correspondence related to the detail of Appellant to the DDOT Policy Office and to the Office of Labor Relations and Collective Bargaining.

4. The December, 2011 and January, 2012 cell phone records of Appellant.

In the first submission of the FOIA Request, Appellant stated: "The documents requested are generally related to DDOT's human resources functions." The amended submission was made to correct typographical errors.

In response, by letter dated March 18, 2013, DDOT stated:

> Please find attached 60 pages of documents that are responsive to your FOIA request. In addition, 193 pages of documents were also located; however, these documents are exempt from disclosure in their entirety due to the attorney-client and attorney work product privileges. See *D.C. Official Code* §§ 2-534(a)(2),(4),(2011).

On Appeal, Appellant challenges the response to the FOIA Request, stating four arguments.

First, Appellant states: "DDOT failed to disclose information that the agency is authorized or mandated to disclose by law in accordance with D.C. Official Code § 2-534(c)." Quoting from provisions of D.C. Official Code § 2-534(c) ("This section shall not operate to permit nondisclosure of information of which disclosure is authorized or mandated by other law."), D.C. Official Code § 1-616.53, which, *inter alia*, directs the Mayor to issue rules for grievance procedures, including "an alternative dispute resolution mechanism," and DCMR § 6-B-1633.1, which provides *inter alia*, the alternative dispute resolution procedures be made available to employees, Appellant argues:

> The D.C. Freedom of Information Act makes it clear that DDOT cannot fail to disclose documents when the disclosure of such documents is mandated or authorized by law. DDOT must produce the approved alternative dispute resolution procedures, or provide the documents in accordance with D.C. Official Code §§ 1-616.53, and 2-534(c). If DDOT is not in possession of these documents, then DDOT must state such in writing.

Second, Appellant states: "DDOT failed to meet its burden of demonstrating that the requested documents are exempt from disclosure because DDOT did not provide the requester a Vaughn Index." Appellant asserts that, citing a judicial decision, the response of DDOT to the FOIA Request is insufficient to meet the requirements of a Vaughn Index.

Third, Appellant states: "DDOT failed to establish whether it could have segregated non-exempt information from exempt information."

Fourth, Appellant states: "The requestor believes that responsive documents exist that DDOT cannot assert are subject to attorney-client privilege or attorney-client work product." In support of this contention, Appellant argues that his original response to the proposed reprimand, which response was specifically requested in the FOIA Request, was not provided in the records which DDOT produced pursuant to the FOIA Request.

Appellant requests that DDOT be ordered to provide a Vaughan index to him.

In response, dated April 17, 2013, DDOT affirmed and amplified its position. In addition to its claim of exemption based upon the attorney-client privilege and the work-product privilege, DDOT also claims that the withheld records are exempt based upon the deliberative process privilege and the exemption for privacy. With respect to the exemption for privacy, DDOT

states that "the documents can be withheld . . . since they contain private personnel information involving Appellants' discipline." With respect to the exemption based upon the deliberative process privilege, DDOT states:

> the inter-agency email communications concerned Appellant's discipline. The withheld documents contributed to the Advance Notice of Proposed Reprimand, Final Notice of Advance Reprimand and Response to Appellate Grievance, thus making the documents pre-decisional. In addition, the e-mails can be considered to 'deliberative' because both managers and attorneys provided candid feedback regarding Appellant's job performance and discipline.

With respect to the exemption based upon the attorney-client privilege, DDOT states:

> In this case, all of the correspondence consisted of email exchanges between the DDOT agency attorneys and various DDOT employees regarding Appellant's reprimand and grievance. . . . All parties' involved circulated information to and from one another in order to determine the most appropriate response in addressing Appellant's discipline matter.

With respect to the exemption based upon the work product privilege, DDOT states:

> many of the documents were created in anticipation of litigation by Appellant. . . . In this case, it is clear that Appellant intends to contest his disciplinary matter, which ultimately may lead to litigation against the agency. Many of the email documents were created or edited by a member of the OGC legal team.

DDOT also maintains that it conducted an adequate search for the records requested by Appellant. It states that, through the Office of the Chief Technology Officer, it searched the email records of 6 DDOT employees for the period January 1 2011, to February 20, 2013, and further refined the search by using Appellant's name and the terms "reprimand" and "grievance." In addition, it manually searched the office of a former DDOT employee, but did not find any responsive records. In addition, DDOT states that, upon further review, some of the records which it originally deemed to be responsive to the FOIA Request are not responsive. DDOT has provided those records for confidential review.

In addition, DDOT provided, for confidential review, "a reasonable sample of the records which were withheld" and the search request which was submitted to the Office of the Chief Technology Officer.[1]

[1] Unless it pertains to the identity of the employees whose mailboxes were searched, it is not apparent why the search request is confidential. We note that federal courts require the specifics of the search method employed, including the search terms used, although we do not require the same for our appeals. (As we stated in Freedom of Information Act Appeal 2013-33: "An administrative appeal under DC FOIA is a summary process and we have not insisted on the same rigor in establishing the adequacy of a search as would be expected in a judicial

Discussion

It is the public policy of the District of Columbia (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 § 2-531. In aid of that policy, DC FOIA creates the right "to inspect … and … copy any public record of a public body . . ." *Id*. at § 2-532(a). Moreover, in his first full day in office, the District's Mayor Vincent Gray announced his Administration's intent to ensure that DC FOIA be "construed with the view toward 'expansion of public access and the minimization of costs and time delays to persons requesting information.'" Mayor's Memorandum 2011-01, Transparency and Open Government Policy. Yet that right is subject to various exemptions, which may form the basis for a denial of a request. *Id*. at § 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), and 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).

The heart of the Appeal is the adequacy of the search and the applicability of exemptions with respect to the records which were located by the search which was made. However, we will first address a challenge by Appellant to the form of the response by DDOT. Appellant challenges the failure of DDOT to furnish a Vaughan index in a specified form in response to the FOIA Request. It could be viewed as the centerpiece of the Appeal in that Appellant has made its provision his request for relief. However, a Vaughan index is not required to be furnished in response to a request under D.C. Official Code § 2-532(a). Under D.C. Official Code § 2-533(a), a denial of a request for a record need only state:

> (1) The specific reasons for the denial, including citations to the particular exemption(s) under § 2-534 relied on as authority for the denial;
>
> (2) The name(s) of the public official(s) or employee(s) responsible for the decision to deny the request; and
>
> (3) Notification to the requester of any administrative or judicial right to appeal under § 2-537.

The need for a Vaughan index arises once litigation commences. In addition, as we stated in Freedom of Information Act Appeal 2012-05 and Freedom of Information Act Appeal 2012-25:

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proceeding.") In this case, all of the names of the employees have been either provided by Appellant or appear in the records provided to Appellant, or both. Thus, we will not treat the information therein as privileged, but, nevertheless, will not reveal the precise information except as necessary for the purposes of the decision.

> [T]here is no particular form which this must take. An agency may submit declarations which describe the documents, or groups of documents, withheld and identify the reasons why a particular exemption is applicable, sufficient to allow the decision-maker to evaluate the claim. *Judicial Watch, Inc. v. FDA*, 449 F.3d 141, 146 (D.C. Cir. 2006).

In the case of the Appeal, DDOT has provided additional detail to support its position, including its claim of exemption. Therefore, the matter is ripe for adjudication.

Neither the FOIA Request nor the Appeal filed by Appellant contains the underlying factual circumstances which give rise to this matter. Nevertheless, upon examination of the records which have been released and those submitted for confidential review, it is clear that the FOIA Request arises out of a disciplinary process, including a reprimand and a grievance. As we set forth above, the FOIA Request consisted of 22 parts. It is unclear to which parts the records produced to Appellant and records withheld by DDOT relate. Most of the parts relate to, as summarized above, documents given, or correspondence sent, to named officials designated by Appellant as deciding officials relating to the "Official Reprimand" of Appellant[2] and a named official designated by Appellant as the grievance official. Two of the parts are directed to the details of Appellant, one to the DDOT Policy Office and one to the Office of Labor Relations and Collective Bargaining. While this could be interpreted as a broad request encompassing all the activities in which Appellant was involved during such details, the original request indicates that it relates to human resources functions and we will interpret it in that manner. The third portion of the parts in dispute concerns the request for the DDOT procedures for alternative dispute resolution of employee grievances and prior requests for copies of the procedures.[3]

We believe that the adequacy of the search for these records is the most salient issue which arises from the administrative record.

DC FOIA requires only that, under the circumstances, a search is reasonably calculated to produce the relevant documents. The test is not whether any additional documents might conceivably exist, but whether the government's search for responsive documents was adequate. *Weisberg v. U.S. Dep't of Justice*, 705 F.2d 1344, 1351 (D.C. Cir. 1983). Speculation, unsupported by any factual evidence, that records exist is not enough to support a finding that full disclosure has not been made. *Marks v. United States (Dep't of Justice)*, 578 F.2d 261 (9th Cir. 1978).

In order to establish the adequacy of a search,

> 'the agency must show that it made a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested.' [*Oglesby v. United States Dep't of the Army*, 920 F.2d 57, 68

[2] The assignment of the deciding official for the proposed reprimand was apparently changed several times for reasons which do not appear on the administrative record.

[3] DDOT provided a record in response to the request for cell phone records of Appellant and such request is not in dispute.

> (D.C. Cir. 1990)]. . . The court applies a 'reasonableness test to determine the 'adequacy' of a search methodology, *Weisberg v. United States Dep't of Justice*, 227 U.S. App. D.C. 253, 705 F.2d 1344, 1351 (D.C. Cir. 1983) . . .

Campbell v. United States DOJ, 164 F.3d 20, 27 (D.C. Cir. 1998).

In order to make a reasonable and adequate search, an agency must make reasonable determinations as to the location of records requested and search for the records in those locations. Such determinations may include a determination of the likely electronic databases where such records are to be located, such as email accounts and word processing files, and the relevant paper-based files which the agency maintains. *See*, e.g., Freedom of Information Act Appeal 2012-05; Freedom of Information Act Appeal 2012-04, Freedom of Information Act Appeal 2012-26, Freedom of Information Act Appeal 2012-28, Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2013-27, and Freedom of Information Act Appeal 2013-34. The determinations as to the likely locations of records would involve a knowledge of the record creation and maintenance practices of the agency. In Freedom of Information Act Appeal 2012-28, the agency stated that its search was conducted by examining the electronic database of unemployment compensation records and paper files. It also stated that there was no search of emails because their "routine and customary business practice" is to request records via facsimile and receive them via facsimile. By contrast, in Freedom of Information Act Appeal 2012-28, while the agency identified its employees who would have knowledge of the location of the requested records and stated that those employees searched agency records, it did not establish that it made reasonable determinations as to the location of records requested and made searches for the records in those locations.

In this case, DDOT searched only the email accounts of six employees—three individuals serially designated as the deciding official, the grievance official, an individual who appears to be the supervisor in its Office of Labor Relations and Collective Bargaining, and another individual whose position does not appear on the administrative record—and the office (presumably, paper-based files) of an unnamed employee who is no longer a DDOT employee. DDOT has not submitted any information on the organization of the relevant offices or the manner in which the offices maintains records as germane to the FOIA Request. However, based upon our examination of the administrative record and the FOIA Request, we do not believe that the design of the search was adequate. First, it appears that not all locations where records were likely to be found, and not all types of relevant records, were searched. In examining the administrative record, it appears that documents were created in or sent to a system called Sharepoint, which appears to be document-based information storage and sharing system. However, this system was not searched. Moreover, it would appear likely that responsive records may be created in other word processing files such as Word. In addition, the requested records are of the type which are often maintained in paper-based files. Other than the office of one former employee, these types of records were not searched. With respect to the search of email records, while the email records of the supervisor in the Office of Labor Relations and Collective Bargaining was searched, the supervisor of the DDOT Policy Office was not searched. In addition, the name of one employee, Steven Messam, was misspelled when it was sent to the Office of the Chief Technology Officer. Second, the scope of the search was

too narrow. Although the FOIA Request may have emanated from the reprimand and grievance process, the human resources function is broader than simply such process and would include, at the least, administrative records such as those indicating the commencement and termination of the details of Appellant. Third, there has been no search for the DDOT procedures for alternative dispute resolution of employee grievances or of requests for the same.[4]

Prior to considering the corrective action which should be taken, we will consider the exemptions asserted with respect to the records which were withheld or may be withheld pursuant to a subsequent search.

While the withholding of records in response to the FOIA Request was based upon on the attorney-client privilege and the work-product privilege, DDOT raises for the first time a blanket exemption for privacy under D.C. Official Code § 2-534(a)(2), asserting that "they contain private personnel information involving Appellants' discipline."

D.C. Official Code § 2-534(a)(2) provides for an exemption from disclosure for "[i]nformation of a personal nature where the public disclosure thereof would constitute a clearly unwarranted invasion of personal privacy." An inquiry under a privacy analysis under FOIA turns on the existence of a sufficient privacy interest and a balancing of such individual privacy interest against the public interest in disclosure. See United States DOJ v. Reporters Comm. for Freedom of Press, 489 U.S. 749, 756 (1989). The first part of the analysis is to determine whether there is a sufficient privacy interest present.

Unlike the usual third-party request for the records of others, here the FOIA Request of Appellant is a "first-party" request for his own records.

> Under the FOIA, for example, a person who requests records pertaining to himself has rights that will sometimes--albeit rarely--differ from those of other, third-party requestors. See *Reporters Committee* [*United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989)], 489 U.S. at 771 ("Except for cases in which the objection to disclosure is based on a claim of privilege and the person requesting disclosure is the party protected by the privilege, the identity of the requesting party has no bearing on the merits of his or her FOIA request."). . . . a privilege or privacy exemption that would block disclosure of documents requested by a third party might not always apply with equal force when the requestor is the subject of the sought-after documents. See, e.g., *United States Dep't of Justice v. Julian*, 486 U.S. 1, 14, 100 L. Ed. 2d 1, 108 S. Ct. 1606 (1988) ("there is good reason to differentiate between a

[4] Appellant argues that disclosure is mandated under D.C. Official Code §§ 1-616.53, and 2-534(c). While Appellant may be entitled to disclosure under D.C. Official Code § 1-616.53, such disclosure would be under a statutory scheme separate from DC FOIA and, therefore, it is not apposite here. In this context, we read D.C. Official Code § 2-534(c) as preventing the assertion of the exemptions under D.C. Official Code § 2-534 in a claim brought under D.C. Official Code § 1-616.53, but, as indicated, here the claim is brought under DC FOIA, not D.C. Official Code § 1-616.53. Nevertheless, an adequate search is required.

> governmental claim of privilege for presentence reports when a third party is making the request and such a claim when the request is made by the subject of the report"); *Reporters Committee*, 489 U.S. at 771 ("the FBI's policy of granting the subject of a rap sheet access to his own criminal history is consistent with its policy of denying access to all other members of the general public").

Sinito v. United States DOJ, 176 F.3d 512, 516-517 (D.C. Cir. 1999). As we found with respect to the incarceration records of a requester in Freedom of Information Act Appeal 2012-33, we find that there is no privacy interest in the personnel records which are only those of the Appellant. Moreover, on the date of the initial FOIA Request, Appellant expressly authorized the release of his personal information contained in his personnel file. Thus, D.C. Official Code § 2-534(a)(2) does not provide for an exemption from disclosure.

The remaining claims of exemption are based upon the deliberative process privilege, the attorney-client privilege, and the work product privilege. D.C. Official Code § 2-534(a)(4) exempts from disclosure "inter-agency or intra-agency memorandums or letters . . . which would not be available by law to a party other than a public body in litigation with the public body." This exemption has been construed to "exempt those documents, and only those documents, normally privileged in the civil discovery context." *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 149 (1975). These privileges would include deliberative process privilege, the attorney-client privilege, and the work product privilege.

The deliberative process privilege protects agency documents that are both predecisional and deliberative. *Coastal States Gas Corp., v. Dep't of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). A document is predecisional if it was generated before the adoption of an agency policy and a document is deliberative if it "reflects the give-and-take of the consultative process." *Id*.

> The exemption thus covers recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency. Documents which are protected by the privilege are those which would inaccurately reflect or prematurely disclose the views of the agency, suggesting as agency position that which is as yet only a personal position. To test whether disclosure of a document is likely to adversely affect the purposes of the privilege, courts ask themselves whether the document is so candid or personal in nature that public disclosure is likely in the future to stifle honest and frank communication within the agency . . .

Id.

As we have noted in past decisions, policy in the context of the deliberative process privilege is not restricted to overarching, major determinations as to the mission of an agency and the manner in which it is to be achieved. The deliberative process privilege concerns the expression of thoughts and considerations in arriving at a decision. *See Renegotiation Bd. v. Grumman Aircraft Engineering Corp.*, 421 U.S. 168, 184 (1975). *See also Quarles v. Department of Navy*, 893 F.2d 390, 392 (D.C. Cir. 1990).

> To fall within the deliberative process privilege, materials must bear on the formulation or exercise of agency policy-oriented *judgment*. . . . To the extent that predecisional materials, even if 'factual' in form, reflect an agency's preliminary positions or ruminations about how to exercise discretion on some policy matter, they are protected under Exemption 5 [the federal equivalent of D.C. Official Code § 2-534(a)(4)]. Conversely, when material could not reasonably be said to reveal an agency's or official's mode of formulating or exercising policy-implicating judgment, the deliberative process privilege is inapplicable.

Petroleum Info. Corp. v. United States Dep't of Interior, 976 F.2d 1429, 1435 (D.C. Cir. 1992).

The attorney-client privilege applies to confidential communications from clients to their attorneys made for the purpose of securing legal advice or services. *Elec. Privacy Info. Ctr. v. DOJ*, 584 F. Supp. 2d 65, 78-79 (D.D.C. 2008); *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 862-863 (D.C. Cir. 1980). However, "[n]ot all communications between attorney and client are privileged." *Clarke v. American Commerce Nat'l Bank*, 974 F.2d 127, 129 (9th Cir. 1992). "[T]he privilege 'protects only those disclosures necessary to obtain informed legal advice which might not have been made absent the privilege.' *Fisher v. United States*, 425 U.S. 391, 403 (1976)." *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 862-863 (D.C. Cir. 1980). "The privilege does not allow the withholding of documents simply because they are the product of an attorney-client relationship, however." *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 253 (D.C. Cir. 1977).

The work product privilege is a qualified immunity from discovery for the "work product of the lawyer" recognized in *Hickman v. Taylor*, 329 U.S. 495(1947). *FTC v. Grolier, Inc.*, 462 U.S. 19, 24 (1983). "[I]t is firmly established that there is no privilege at all unless the document was initially prepared in contemplation of litigation, or in the course of preparing for trial. [citation omitted]." *Coastal States Gas Corp. v. Department of Energy*, 617 F.2d 854, 865 (D.C. Cir. 1980).

As we stated above, as to the majority of the parts of the FOIA Request, Appellant generally sought all documents, including correspondence, given to the deciding officials and to the grievance official in those roles. In the case of the last designated deciding official, i.e., the individual who made the decision, Appellant requested records showing the access of the Sharepoint system by such official, including his creation of a draft decision. It is apparent that this portion of the FOIA Request is an attempt to probe the mental processes of the decision-makers. These mental processes are protected by the deliberative process privilege.

> The bar against probing the mental processes of an executive branch decision-maker is not recently derived from exemption 5 of FOIA [the federal equivalent of D.C. Official Code § 2-534(a)(4)]. Indeed, the courts have long recognized the sanctity of the decision-making process, absent discernible likely gross abuse. . . .

> The protection of the deliberative process of agency decision-makers, stressed in the Morgan litigation, has also been reflected in cases under FOIA. This Circuit and others have emphasized that the purpose of exemption 5 is not simply to encourage frank intra-agency discussion of policy, but also to ensure that the mental processes of decision-makers are not subject to public scrutiny. [footnote omitted].

Montrose Chemical Corp. v. Train, 491 F.2d 63, 69-70 (D.C. Cir. 1974).

In *Montrose Chemical Corp.*, an administrative decision was issued without a written opinion and, in lieu of the written opinion, the Plaintiff sought written summaries of factual evidence prepared for the decision-maker. In holding that the written summaries were not subject to disclosure, the court stated:

> To probe the summaries of record evidence would be the same as probing the decision-making process itself. To require disclosure of the summaries would result in publication of the evaluation and analysis of the multitudinous facts made by the Administrator's aides and in turn studied by him in making his decision. Whether he weighed the correct factors, whether his judgmental scales were finely adjusted and delicately operated, disappointed litigants may not probe his deliberative process. [footnote omitted].

Id. at 68.

As the FOIA Request indicates a clear effort to probe the mental processes of the decision-makers, such records are exempt from disclosure and a search as to the records of the deciding officials and the grievance officials in those roles will not be necessary. In the sample of records which were withheld by DDOT but provided for confidential review, certain of the records withheld involve assistance sought and received by the grievance official in the preparation of his decision. As reflected in our discussion above, these records would be covered by the deliberative process privilege.

Nevertheless, a party to an administrative adjudication should be able to obtain the formal submissions of all parties. The provision of these submissions does not implicate the deliberative process privilege. In this case, DDOT has not provided these records to Appellant and it does not appear that an adequate search was made for these records. Notwithstanding our statement in the previous paragraph that a search as to the records of the deciding officials and the grievance officials in those roles will not be necessary, a search for the formal submissions of all parties will be necessary.

Based on our examination of the other records which were withheld, they appear to relate to the portion of the FOIA Request relating to the details of Appellant to the DDOT Policy Office and to the Office of Labor Relations and Collective Bargaining. More particularly, the records relate to the decision as to whether to propose disciplinary action with respect to Appellant and the prosecution of the administrative action to accomplish the same. As such, we believe that they are properly withheld, in the main, on the basis of the deliberative process privilege with respect to the decision to propose disciplinary action and, in the main, on the basis of the attorney-client

privilege with respect to the prosecution of the administrative action.[5] However, that does not obviate the need for an additional search with respect to the details of Appellant to remedy the deficiencies discussed above.

Therefore, to correct the deficiencies set forth above, DDOT shall conduct a new search. With respect to records given, or correspondence sent, to named officials designated by Appellant as deciding officials relating to the "Official Reprimand" of Appellant and a named official designated by Appellant as the grievance official, DDOT shall provide the formal submissions of all parties in the reprimand and grievance proceedings. In order to provide such records, DDOT shall search the email records of the deciding officials and the grievance official, the electronic databases for word processing files, including Sharepoint, and the paper-based files maintained by or on behalf of the deciding officials and the grievance official and the individuals who were assigned to make the submissions on behalf of DDOT (which may include Melissa Williams, Kenneth Higgins, and Steve Messam).

With respect to records regarding the detail of Appellant to the DDOT Policy Office and to the Office of Labor Relations and Collective Bargaining, DDOT shall conduct a new search which shall not be limited to the reprimand and grievance proceedings, but shall include all human resources actions. DDOT shall search the email records of the supervisors in the DDOT Policy Office and the Office of Labor Relations and Collective Bargaining, the electronic databases for word processing files, including Sharepoint, and the paper-based personnel files maintained within DDOT regarding the Appellant.

DDOT shall conduct a search for the approved procedures for alternative dispute resolution of employee grievances and copies of requests, and responses to requests, for those procedures.

Conclusion

Therefore, the decision of DDOT is upheld in part and reversed and remanded in part. DDOT shall make a new search in accordance with this decision.

This order shall be without prejudice to Appellant to assert any challenge, by separate appeal, to the response of DDOT pursuant to this order.

[5] Appellant argues that the attachments to these records which are submissions in the administrative proceedings are segregable and should be produced even if the discussions in the body of the records are exempt. It is arguable, however, that the contents of the attachments are exempt as well as they are integral to the other portions of records which would be exempt. As we have provided elsewhere for a search which should yield the production these records, it is not necessary to decide this issue. Moreover, in light of our conclusion that the deliberative process privilege and the attorney-client privilege apply, it is not necessary to analyze the applicability of the work product privilege.

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

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Nana Bailey-Thomas, Esq.