VOL. 61 – NO. 19 FRIDAY, MAY 2, 2014

District of Columbia

REGISTER

HIGHLIGHTS

- DC Council passes Act 20-308, Condominium Act of 2014
- Department of Human Resources updates employee rights upon termination
- DC Taxicab Commission adopts standards for regulating digital dispatching services for taxi cabs
- Department of Behavioral Health sets a moratorium for new substance abuse treatment programs and facilities
- Executive Office of the Mayor publishes Freedom of Information Act Appeals
- Public Service Commission schedules a meeting on the development of an expedited discovery schedule for approval of Triennial Underground Plans

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances (ODAI) publishes the *District of Columbia Register* (ISSN 0419-439X) (*D.C. Register*) every Friday under the authority of the *District of Columbia Documents Act,* D.C. Law 2-153, effective March 6, 1979 (25 DCR 6960). The policies which govern the publication of the *D.C. Register* are set forth in Title 1 of the District of Columbia Municipal Regulations, Chapter 3 (Rules of the Office of Documents and Administrative Issuances.) Copies of the Rules may be obtained from the Office of Documents and Administrative Issuances. Rulemaking documents are also subject to the requirements of the *District of Columbia Administrative Procedure Act,* District of Columbia Official Code, §§2-50l *et seq.*, as amended.

All documents published in the *D.C. Register* must be submitted in accordance with the applicable provisions of the Rules of the Office of Documents and Administrative Issuances. Documents which are published in the *D.C. Register* include (1)) Acts and resolutions of the Council of the District of Columbia; (2) Notices of proposed Council legislation, Council hearings, and other Council actions; (3) Notices of public hearings; (4) Notices of final, proposed, and emergency rulemaking; (5) Mayor's Orders and information on changes in the structure of the District of Columbia government (6) Notices, Opinions, and Orders of District of Columbia Boards, Commissions and Agencies; (7) Documents having general applicability and notices and information of general public interest.

Deadlines for Submission of Documents for Publication

ODAI accepts electronic documents for publication using a Web-based portal at www.dcregs.dc.gov. To submit a document, obtain a username and password from your department's ODAI liaison. If you do not know your liaison, email ODAI at dcdocuments@dc.gov to request for your department's ODAI liaison. For guidelines on how to format and submit documents for publication, email ODAI at dcdocuments@dc.gov.

The deadline for receiving documents from the District of Columbia Agencies, Boards, Commissions, and Public Charter schools is TUESDAY, NOON of the week of publication. The deadline for receiving documents from the District of Columbia Council is WEDNESDAY, NOON of the week of publication. If an official District government holiday falls on Monday or Friday, the deadline for receiving documents remains the same as outlined above. If an official District government holiday falls on Tuesday, Wednesday or Thursday, the deadline for receiving documents is one day earlier from the deadlines outlined above.

Viewing the DC Register

ODAI publishes the *D.C. Register* ONLINE every Friday at www.dcregs.dc.gov. Copies of the *D.C. Register* are also available for public review at each branch of the District of Columbia Public Library and in each Advisory Neighborhood Commission office. There are no restrictions on the republication of any portion of the *D.C. Register*. News services are encouraged to publish all or part of the *D.C. Register*.

Legal Effect of Publication - Certification

Except in the case of emergency rules, no rule or document of general applicability and legal effect shall become effective until it is published in the *D.C. Register*. Publication creates a rebuttable legal presumption that a document has been duly issued, prescribed, adopted, or enacted and that the document complies with the requirements of the *District of Columbia Documents Act* and the *District of Columbia Administrative Procedure Act.* The Administrator of the Office of Documents hereby certifies that this issue of the *D.C. Register* contains all documents required to be published under the provisions of the *District of Columbia Documents Act.*

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

441 4th STREET - SUITE 520 SOUTH - ONE JUDICIARY SQ. - WASHINGTON, D.C. 20001 - (202) 727-5090

VINCENT C. GRAY
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

PERIODICAL POSTAGE PAID AT WASHINGTON, D.C.
POSTMASTER: Send address changes to D.C. Register, 441 - 4th Street, N.W., Suite 520 South, Washington, D.C. 20001

CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

ADOPTED CEREMONIAL RESOLUTIONS CONT'D

BILLS INTRODUCED AND PROPOSED RESOLUTIONS

COUNCIL HEARINGS

OTHER COUNCIL ACTIONS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA CONT'D

OTHER COUNCIL ACTIONS CONT'D

Reprogramming Requests - cont'd

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

FINAL RULEMAKING

PROPOSED RULEMAKING

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY RULEMAKING

NOTICES, OPINIONS, AND ORDERS
BOARDS, COMMISSIONS, AND AGENCIES

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS
BOARDS, COMMISSIONS, AND AGENCIES

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

NOTICES, OPINIONS, AND ORDERS CONT'D
BOARDS, COMMISSIONS, AND AGENCIES CONT'D

RE-ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-308

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APRIL 28, 2014

To amend the Condominium Act of 1976 to clarify the applicability of its provisions, to create a definition for electronic transmission and amend the definition for unit owner in good standing, to adopt the business judgment rule to govern decisions of condominium boards, to allow for the relocation of unit boundaries unless prohibited by the condominium instruments, to allow for the subdivision of units unless prohibited by the condominium instruments, to provide that if a unit owners' association provides notice of a proposed amendment to the condominium instruments to the address of record of a mortgagee and that mortgagee fails to respond within 60 days, the failure to respond will be deemed to be consent to the amendment, to require open meetings of a condominium's executive board and authorize electronic meetings, to clarify the unit owners' association's right to assess certain members for maintaining common elements, to allow the board to pledge as collateral for a loan or otherwise assign a unit owners' association's assessment income, to amend requirements governing insurance to allow a unit owners' association to require unit owners to purchase insurance, to permit a unit owners' association to transfer responsibility for paying the deductible in certain circumstances, to amend statutory lien requirements, to require a unit owners' association to maintain records and provide owners a right of inspection, and to allow for the issuance of a corporate surety bond or irrevocable letter of credit to secure a deposit on a condominium unit.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Condominium Amendment Act of 2014".

Sec. 2. The Condominium Act of 1976, effective March 29, 1977 (D.C. Law 1-89; D.C. Official Code § 42-1901.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Code Official § 42-1901.01) is amended to read as follows:

"Sec. 101. Applicability of act; corresponding terms; supersedure of prior law.

"(a) This act shall apply to all condominiums created in the District of Columbia; provided, that except as otherwise expressly set forth in this act, any provision of this act that became effective after the creation of a condominium, horizontal property regime, or condominium project shall not invalidate an existing provision of the condominium instruments.

"(b) For the purposes of this act:

"(1) The terms "horizontal property regime" and "condominium project" shall be deemed to correspond to the term "condominium";

"(2) The term "co-owner" shall be deemed to correspond to the term "unit owner";

"(3) The term "council of co-owners" shall be deemed to correspond to the term "unit owners' association";

"(4) The term "developer" shall be deemed to correspond to the term "declarant"; and

"(5) The term "general common elements" shall be deemed to correspond to the term "common elements."

"(c) This act shall supersede the Horizontal Property Act of the District of Columbia, approved December 21, 1963 (77 Stat. 449; D.C. Official Code § 42-2001 *et seq.*) ("Horizontal Property Act"), and Regulation 74-26 of the District of Columbia City Council, enacted October 18, 1974. No condominium shall be established except pursuant to this act after March 28, 1977. This act shall not be construed, however, to affect the validity of any provision of any condominium instrument complying with the requirements of the Horizontal Property Act and recorded before March 28, 1977. Except for section 411, subtitle IV shall not apply to any condominium created before March 29, 1977. Any amendment to the condominium instruments of any condominium, horizontal property regime, or condominium project created before March 29, 1977, shall be valid and enforceable if the amendment would be permitted by this act and if the amendment was adopted in conformity with the procedures and requirements specified by those condominium instruments and by the applicable law in effect when the amendment was adopted. If an amendment grants a person any right, power, or privilege permitted by this act, any correlative obligation, liability, or restriction in this act shall apply to that person.

"(d) This act shall not apply to any condominium located outside the District of Columbia. Sections 402 through 408 and sections 412 through 417 shall apply to any contract for the disposition of a condominium unit signed in the District of Columbia by any person, unless exempt under section 401.

"(e) Except as otherwise provided in this act, amendments to this act shall not invalidate any provision of any condominium instrument that was permitted under this act at the time the provision was recorded.".

(b) Section 102 (D.C. Official Code § 42-1901.02) is amended as follows:

(1) A new paragraph (12B) is added to read as follows:

"(12B) "Electronic transmission" shall mean any form of communication, not directly involving the physical transmission of paper, which creates a record that may be:

"(A) Retained, retrieved, and reviewed by a recipient of the communications; and

"(B) Reproduced directly in paper form by a recipient through an automated process.".

(2) A new paragraph (32) is added to read as follows:

"(32) "Unit owner in good standing," unless otherwise defined in the condominium instruments, shall mean a unit owner who is not delinquent for more than 30 days in the payment of any amount owed to the unit owners' association, or a unit owner who has not been found by the unit owners' association or its executive board to be in violation of the condominium instruments or the rules of the unit owners' association.".

(c) Section 209 (D.C. Official Code § 42-1902.09) is amended as follows:

(1) The existing language is redesignated as subsection (a).

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

"(b) The decisions and actions of the unit owners' association and its executive board shall be reviewable by a court using the "business judgment" standard. A unit owners' association shall have standing to sue in its own name for a claim or action related to the common elements. Unless otherwise provided in the condominium instruments, the substantially prevailing party in an action brought by a unit owners' association against a unit owner or by a unit owner against the unit owners' association shall be entitled to recover reasonable attorneys' fees and costs expended in the matter.".

(d) Section 225(a) (D.C. Official Code § 42-1902.25(a)) is amended to read as follows:

"(a) Unless expressly prohibited in the condominium instruments, the boundaries between adjoining units may be relocated in accordance with:

"(1) The provisions of this section and other applicable law; and

"(2) Any lawful restrictions and limitations specified in the condominium instruments.".

(e) Section 226(a) (D.C. Official Code § 42-1902.26(a)) is amended to read as follows:

"(a) Unless expressly prohibited by the condominium instruments, a unit may be subdivided in accordance with:

"(1) The provisions of this section and other applicable law; and

"(2) Any lawful restrictions and limitations specified in the condominium instruments.".

(f) Section 227 (D.C. Official Code § 42-1902.27) is amended by adding a new subsection (g) to read follows:

"(g)(1) Unless otherwise specified in the condominium instruments, if the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a unit to amend the condominium instruments, that provision shall be deemed satisfied if the procedures under this subsection are satisfied.

"(2) If the condominium instruments contain a provision requiring action on the part of the holder of a mortgage or deed of trust on a residential unit to amend the condominium instruments, the unit owners' association shall cause a copy of a proposed amendment to the condominium instruments to be delivered to the last known address of each holder of a mortgage or deed of trust entitled to notice. Absent notice of written instructions to the contrary, the association may reasonably rely upon the address of each holder as contained in the recorded mortgage or deed of trust.

"(3) If the holder of a mortgage or deed of trust of a residential unit that receives the proposed amendment fails to object, in writing, to the proposed amendment within 60 days from the date the proposed amendment is mailed or delivered to the holder, the holder shall be deemed to have consented to the adoption of the amendment.

(4) The inadvertent failure to deliver a copy of any proposed amendment to the condominium instruments to each holder of a mortgage or deed of trust entitled to notice, despite good faith efforts by the unit owners' association, shall not invalidate any action taken pursuant to this section.".

RE-ENROLLED ORIGINAL

(g) Section 303 (D.C. Official Code § 42-1903.03) is amended to read as follows:

"Sec. 303. Meetings; electronic notice.

"(a) Meetings of the unit owners' association shall be held in accordance with the provisions of the condominium instruments at least once each year after the formation of the unit owners' association and shall be open to all unit owners of record in good standing. The bylaws shall specify an officer who shall, at least 21 days in advance of any annual or regularly scheduled meeting, and at least 7 days in advance of any other meeting, send to each unit owner notice of time, place, and purposes of the meeting. Notice shall be sent by United States mail to all unit owners of record at the address of their respective units and to one other address as any of them may have designated in writing to the officer, or notice may be hand delivered by the officer; provided, that the officer certifies in writing that notice was hand delivered to the unit owner. Alternatively, notice may be sent by electronic means to any unit owner who requests delivery of notice in an electronic manner and who waives notice by mail or hand delivery, pursuant to subsection (e) of this section.

"(b)(1) Except as otherwise provided in the condominium instruments, all meetings of the unit owners' association, committees of the unit owners' association, and the executive board shall be open for observation to all unit owners in good standing. Minutes shall be recorded and shall be available for examination and copying by unit owners in good standing. This right of examination may be exercised:

"(A) Only during reasonable business hours or at a mutually convenient time and location; and

"(B) Upon 5 days' written notice identifying the specific minutes requested.

"(2) Notice, including the time, date, and place of each executive board meeting, shall be furnished to a unit owner who requests this information and published in a location reasonably calculated to be seen by unit owners. Requests by a unit owner to be notified on a continual basis must be made at least once a year in writing and include the unit owner's name, address, and zip code. Notice, reasonable under the circumstances, of special or emergency meetings shall be given contemporaneously with the notice provided to members of the executive board conducting the meeting.

"(3) Unless otherwise exempt as relating to an executive session pursuant to paragraph (5) of this subsection, at least one copy of the agenda furnished to members of the executive board for a meeting shall be made available for inspection by unit owners.

"(4) Meetings of the executive board may be conducted or attended by telephone conference or video conference or similar electronic means. If a meeting is conducted by telephone conference, video conference, or similar electronic means, the equipment or system used must permit any executive board member in attendance to hear and be heard by, and to communicate what is said by all other executive board members participating in the meeting.

"(5)(A) The executive board, upon a motion and an affirmative vote in an open meeting to assemble in executive session, may convene in executive session to consider:

"(i) Personnel matters relating to specific, identified persons who work for the unit owners' association, including a person's medical records;

RE-ENROLLED ORIGINAL

"(ii) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

"(iii) Pending or anticipated litigation;

"(iv) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

"(v) Consultation with legal counsel;

"(vi) Matters involving individual unit owners or members, including violations of the condominium instruments or rules and regulations promulgated pursuant to the condominium instruments and the personal liability of a unit owner to the unit owners' association; or

"(vii) On an individually recorded affirmative vote of two-thirds of the board members present, for some other exceptional reason so compelling as to override the general public policy in favor of open meetings

"(B) For the purpose of subparagraph (A)(iii) of this paragraph, the term "anticipated litigation" means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

"(6) The motion to assemble in executive session shall state specifically the purpose for the executive session. Reference to the motion and the stated purpose for the executive session shall be included in the minutes. The executive board shall restrict the consideration of matters during an executive session to those purposes specifically set forth in the motion. A motion passed, or other formal action taken, in an executive session shall be recorded in the minutes of the open meeting, but this shall not require disclosure of any details that are properly the subject of confidential consideration in an executive session. The action or actions authorized by a motion passed in an executive session shall be reflected in minutes available to unit owners in good standing. The requirements of this section shall not require the disclosure of information in violation of law.

"(c) Subject to reasonable rules adopted by the executive board, the executive board shall provide a designated period of time during each regularly scheduled meeting to allow unit owners an opportunity to comment on any matter relating to the unit owners' association. During a meeting at which the agenda is limited to specific topics, or at a special meeting, the executive board may limit the comments of unit owners to the topics listed on the meeting agenda.

"(d) The executive board may take action without a meeting by resolution issued with the unanimous written consent of the members of the executive board in support of the action being taken. A copy of the resolution shall be attached to the minutes of the next executive board meeting that occurs following its adoption.

"(e)(1) Notwithstanding any language contained in the condominium instruments, the unit owners' association may provide notice of a meeting or deliver information to a unit owner by electronic transmission if:

"(A) The executive board authorizes the unit owners' association to provide notice of a meeting or deliver information by electronic transmission;

"(B) The unit owner provides the unit owners' association with prior written authorization to provide notice of a meeting or deliver material or information by electronic transmission; and

"(C) An officer or agent of the unit owners' association certifies in writing that the unit owners' association has provided notice of a meeting or delivery of material or information by electronic transmission as authorized by the unit owner pursuant to this subsection.

"(2) Notice or delivery by electronic transmission shall be considered ineffective if:

"(A) The unit owners' association is unable to deliver 2 consecutive notices; and

"(B) The inability to deliver the electronic transmission becomes known to the person responsible for the sending of the electronic transmission.

"(3) The inadvertent failure to deliver notice by electronic transmission shall not invalidate any meeting or other action.".

(h) Section 305 (D.C. Official Code § 42-1903.05) is amended by adding a new subsection (g) to read as follows:

"(g)(1) Notwithstanding any language contained in the condominium instruments, the executive board may authorize unit owners to submit votes or proxies by electronic transmission if the process used to provide notice of a vote and the means to submit votes or proxies are made in a consistent form approved by the executive board and available to all unit owners and the electronic transmission contains information that verifies that the vote or proxy is authorized by the unit owner or the unit owner's proxy.

"(2) If the condominium instruments require voting by secret ballot and the anonymity of voting by electronic transmission cannot be guaranteed, voting by electronic transmission shall be permitted if unit owners have the option of casting printed secret ballots.

"(3) The inadvertent failure to submit, receive, or count votes or proxies by electronic transmission shall not invalidate any meeting or other action; provided, that the persons responsible for facilitating electronic transmission shall make good-faith efforts to submit, receive, and count the votes or proxies and resolve problems when they become known.".

(i) Section 307(a) (D.C. Official Code § 42-1903.07(a)) is amended to read as follows:

"(a)(1) Except to the extent otherwise provided by the condominium instruments, all powers and responsibilities with regard to maintenance, repair, renovation, restoration, and replacement of a condominium shall belong to:

"(A) The unit owners' association in the case of the common elements; and

"(B) The individual unit owner in the case of any unit or any part of a unit.

"(2) Each unit owner shall afford to the other unit owners and to the unit owners' association and to any agents or employees of either access to the owner's unit as may be reasonably necessary to enable them to exercise and discharge their respective powers and responsibilities. To the extent that damage is inflicted on the common elements or any unit that is accessed, the unit owner causing the same, or the unit owners' association if it caused the

same, shall be liable for the prompt repair of the damage. Notwithstanding any provision of this section or any provisions of the condominium instruments, the unit owners' association may elect to maintain, repair, or replace specified unit components, or limited common element components for which individual unit owners are responsible, using common expense funds, if failure to perform the maintenance, repair, or replacement could have a material adverse effect on the common elements, the health, safety, or welfare of the unit owners, or the income and the common expenses of the unit owners' association. The maintenance, repair, or replacement may be at the expense of the unit owners' association or, in the reasonable judgment of the executive board, if a limited number of units is affected, at the expense of the unit owners affected. The expense will be considered for all purposes an assessment against any unit to which the limited common element appertains.".

(j) Section 308(a) (D.C. Official Code § 42-1903.08(a)) is amended as follows:

(1) Paragraph (14) is amended to read as follows:

"(14) Power to assign the unit owners' association's right to further income, including the right to future income or the right to receive common expense assessments to the extent necessary for the reasonable performance of the unit owners' associations' duties and responsibilities, unless expressly prohibited in the condominium instruments;".

(2) A new paragraph (14A) is added to read as follows:

"(14A) Power to reasonably restrict the leasing of residential units; provided, that any restriction described under this paragraph shall not apply to a unit that is leased at the time of any action taken to restrict the leasing of residential units until the unit is subsequently occupied by the owner or ownership transfers;".

(k) Section 310 (D.C. Official Code § 42-1903.10) is amended as follows:

(1) Subsection (b) is amended by striking the phrase "Commencing not later" and inserting the phrase "Unless the condominium instruments expressly provide otherwise, commencing no later" in its place.

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

"(d-1) Each unit owner shall, to the extent reasonably available, purchase condominium owner's insurance coverage with dwelling (whether residential or commercial) property coverage at a minimum of $10,000 and condominium owner personal liability insurance coverage at a minimum of $300,000; provided, that the executive board may increase the minimum amounts required under this subsection at a meeting properly noticed under this act.".

(3) Subsection (e) is amended as follows:

(A) Paragraph (3) is amended by striking the phrase "policy;" and inserting the phrase "policy; and" in its place.

(B) Paragraph (4) is amended by striking the phrase "; and" and inserting a period in its place.

(C) Paragraph (5) is repealed.

(4) Subsection (j) is amended as follows:

(A) The existing language is designated as paragraph (1).

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

"(2) Unless the condominium instruments provide otherwise, if the cause of any damage to or destruction of any portion of a condominium originates from the common

elements, the association's property insurance deductible shall be a common expense. If the bylaws do not indicate the entity responsible for payment of a deductible amount if the cause of damage to or destruction of a portion of a condominium originates from a unit, the owner of the unit where the cause of the damage or destruction originated shall be responsible for the association's property insurance deductible in an amount not to exceed $5,000; provided, that the unit owners' association affords notice to unit owners of this responsibility before the damage is caused. If the owner is responsible for the association's property insurance deductible or an uncovered loss up to $5,000, this amount shall be assessed against the owner's unit. Nothing in this section is intended to limit the rights of a unit owners' association to pursue its subrogation rights, if any, against a unit owner in whose unit the cause of the property or personal liability damage or destruction originated.".

(l) Section 313 (D.C. Official Code § 42-1903.13) is amended as follows:

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

(A) The lead in language to subsection (a) is amended by striking the word "instruments" and inserting the phrase "instruments, along with any applicable interest, late fees, reasonable expenses and legal fees actually incurred, costs of collection and any other reasonable amounts payable by a unit owner under the condominium instruments," in its place.

(B) Paragraph (2) is amended by striking the phrase "to enforce the lien. The provisions of" and inserting the phrase "to enforce the lien or recordation of a memorandum of lien against the title to the unit by the unit owners' association. The provisions of" in its place.

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

(A) Paragraph (1) is amended by striking the phrase "past due, unless the condominium instruments provide otherwise. Any language" and inserting the phrase "past due. By accepting a deed to a condominium unit, the owner shall be irrevocably deemed to have appointed the chief executive officer of the unit owners' association as trustee for the purpose of exercising the power of sale provided for herein. Any language" in its place.

(B) Paragraph (3) is amended to read as follows:

"(3) The power of sale may be exercised by the chief executive officer of the unit owners' association, as trustee, upon the direction of the executive board, on behalf of the unit owners' association, and the chief executive officer of the unit owners' association shall have the authority as trustee to deed a unit sold at a foreclosure sale by the unit owners' association to the purchaser at the sale. The recitals in the deed shall be prima facie evidence of the truth of the statement made in the deed and conclusive evidence in favor of bona fide purchasers for value.".

(3) Subsection (f) is amended by striking the phrase "for costs and attorneys' fees." and inserting the phrase "for reasonable costs and attorneys' fees actually incurred by the unit owners' association." in its place.

(m) Section 314 (D.C. Official Code § 42-1903.14) is amended to read as follows:

"Sec. 314. Books, minutes, and records; inspection.

"(a) The unit owners' association, or the declarant, the managing agent, or other person specified in the bylaws acting on behalf of the unit owners' association, shall keep detailed records of the receipts and expenditures affecting the operation and administration of the condominium and specifying the association's expenses related to the common elements and any other expenses incurred by or on behalf of the association.

"(b) Subject to the provisions of subsection (c) of this section, books and records kept by or on behalf of the unit owners' association, including the unit owners' association membership list, mailing addresses of unit owners, and financial records, including aggregate salary information of the unit owners' association employees, shall be available in the District of Columbia and within 50 miles of the District of Columbia, for examination and copying by a unit owner in good standing or such unit owner's authorized agent so long as the request is for a proper purpose related to the unit owner's membership in the unit owners' association, and not for pecuniary gain, commercial solicitation, or other purpose unrelated to the unit owner's membership in the unit owners' association. This right of examination may be exercised only during reasonable hours on business days. The books shall be subject to an independent audit upon the request of owners of units to which 33 1/3 % of the votes in the unit owners' association pertain or a lower percentage as may be specified.

"(c)(1) Books and records kept by or on behalf of a unit owners' association may be withheld from examination or copying by unit owners and their agents to the extent that they are drafts not yet incorporated into the unit owners' association's books and records or if the books and records concern:

"(A) Personnel matters relating to specific, identified persons who work for the unit owners' association, including a person's medical records;

"(B) Contracts, leases, and other commercial transactions to purchase or provide goods or services, currently in or under negotiation;

"(C) Pending or anticipated litigation;

"(D) Matters involving state or local administrative or other formal proceedings before a government tribunal for enforcement of the condominium instruments or rules and regulations promulgated by the executive board;

"(E) Communications with legal counsel;

"(F) Disclosure of information in violation of law;

"(G) Minutes or other records of an executive session of the executive board;

"(H) Documentation, correspondence, management, or reports compiled for or on behalf of the unit owners' association or the executive board by its agents or committees for consideration by the executive board in executive session; or

"(I) Individual unit owner or member files, other than those of the requesting unit owner, including any individual unit owner's files kept by or on behalf of the unit owners' association.

"(2) For the purposes of paragraph (1)(C) of this subsection, the term "anticipated litigation" means those instances where there has been a specific threat of litigation from a party or the legal counsel of a party.

"(d) Before providing copies of any books or records, the unit owners' association may impose and collect a fee reflecting the actual costs of materials and labor for providing access to copies of the requests books and records.".

(n) Section 404(a)(5)(F) (D.C. Official Code § 42-1904.04(a)(5)(F)) is amended by striking the phrase "alienation; and" and inserting the phrase "alienation, including restrictions on the rental of units; and" in its place.

(o) Section 409 (D.C. Official Code § 42-1904.09) is amended as follows:

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

(2) New subsections (b), (c), (d), (e), (f), (g), and (h) are added to read as follows:

"(b) The declarant of a condominium may:

"(1) Obtain and maintain a corporate surety bond issued by a surety authorized to do business in the District, in the form and amount set forth in subsection (e) of this section; or

"(2) Obtain and maintain an irrevocable letter of credit issued by a financial institution insured by the federal government, in the form and amount set forth in subsection (f) of this section.

"(c) Except as provided in subsection (d) of this section, the declarant shall maintain the surety bond or letter of credit until the first of the following occurs:

"(1) A deed to the unit is granted to the purchaser;

"(2) The purchaser defaults under a purchase contract for the unit entitling the declarant to retain the deposit; or

"(3) The deposit is refunded to the purchaser.

"(d) The declarant may make withdrawals from an escrow account established under subsection (a) of this section that consists of sum received to finance the construction of a unit to pay, in accordance with a draw schedule agreed to by the purchaser in writing, documented claims of persons who have furnished labor or material for the construction of the unit.

"(e) The surety bond shall be payable to the District for the use and benefit of every person protected under the provisions of this act. The declarant shall file the bond with the Department of Housing and Community Development. The surety bond may either be in the form of an individual bond for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds $10,000, it may be in the form of a blanket bond. If the bond is a blanket bond, the amount of the bond shall be equal to the amount of the deposits.

"(f) The letter of credit shall be payable to the District for the use and benefit of persons protected under the provisions of this act. The declarant shall file the letter of credit with the Department of Housing and Community Development. The letter of credit may be in the form of an individual letter of credit for each deposit the declarant accepts or, if the total amount of the deposits the declarant accepts under this act exceeds $10,000, it may be in the form of a blanket letter of credit. If the letter of credit is a blanket letter of credit, the amount of the letter of credit shall be equal to the amount of the deposits.

"(g) For the purpose of determining the amount of any blanket bond or blanket letter of credit that a declarant maintains, the total amount of deposits considered held by the declarant shall be determined as of May 31 of any given calendar year, and the amount of the bond or letter of credit shall be in accordance with the amount of deposits held as of that May 31 until May 31 of the following calendar year.

"(h) Nothing in this section shall be construed to modify or limit the requirements imposed on a declarant by section 316.".

(p) Section 411(a)(2) (D.C. Official Code § 42-1904.11(a)(2)) is amended to read as follows:

RE-ENROLLED ORIGINAL

"(2) A statement of any capital expenditures approved by the unit owners' association planned at the time of the conveyance that are not reflected in the current operating budget disclosed under paragraph (4) of this subsection;".

Sec. 3. Fiscal impact statement

The Council adopts the fiscal impact statement in the committee report 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), 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.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
April 28, 2014

ENROLLED ORIGINAL

AN ACT
D.C. ACT 20-309

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
APRIL 28, 2014

To authorize the issuance of tax increment financing bonds to support the redevelopment of the Skyland Shopping Center and adjacent parcels, and to declare as surplus and to approve the disposition of this District-owned real property.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Skyland Town Center Omnibus Act of 2014".

TITLE I -- DEFINITIONS

Sec. 101. Definitions

For the purposes of this act, the term:

(1) "Authorized Delegate" means the Deputy Mayor for Planning and Economic Development, the Chief Financial Officer, the Treasurer, or any officer, or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(2) "Available Increment" shall have the same meaning as set forth in the Reserve Agreement.

(3) "Available Real Property Tax Revenues" means the revenues resulting from the imposition of the tax provided for in Chapter 8 of Title 47 of the District of Columbia Official Code, inclusive of any penalties and interest charges, exclusive of the special tax provided for in section 481 of the Home Rule Act pledged to payment of general obligation indebtedness of the District.

(4) "Available Sales Tax Revenues" means the revenues resulting from the imposition of the tax provided for in Chapter 20 of Title 47 of the District of Columbia Official Code, including penalty and interest charges, exclusive of the portion thereof required to be deposited in the Washington Convention Center Fund established pursuant to section 208 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code § 10-1202.08).

(5) "Available Tax Increment" means the sum of the Available Sales Tax Revenues and Available Real Property Tax Revenues generated in the Skyland TIF Area in any fiscal year of the District minus the sum of Available Sales Tax Revenues and Available Real Property Tax Revenues generated in the Skyland TIF Area in the base year.

(6) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(7) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this act.

(8) "CBE Agreement" means an agreement governing certain obligations of the Developer under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) ("CBE Act"), including the equity and development participation requirements set forth in section 2349a of the CBE Act (D.C. Official Code § 2-218.49a).

(9) "Certified Business Enterprise" means a business enterprise or joint venture certified pursuant to the CBE Act.

(10) "Chairman" means the Chairman of the Council of the District of Columbia.

(11) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia established by section 424(a)(1) of the Home Rule Act.

(12) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the Bonds, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(13) "Council" means the Council of the District of Columbia.

(14) "Debt Service" means principal, premium, if any, and interest on the Bonds.

(15) "Developer" means Skyland Holdings, LLC, a Delaware limited liability company, with a business address of 8405 Greensboro Drive, Suite 830, McLean, VA 22102-5121, or its successor, or one of its affiliates or assignees approved by the Mayor.

(16) "Development Costs" has the same meaning as provided in section 2(13) of the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12-143; D.C. Official Code § 2-1217.01(13)).

(17) "Development Sponsor" means Skyland Holdings, LLC, a District of Columbia limited liability company, or any other entity that undertakes the development of the project with the approval of the Mayor.

(18) "Financing Documents" means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the Bonds, including any offering document, and any required supplements to any such documents.

(19) "First Source Agreement" means an agreement with the District governing certain obligations of the Developer pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), and Mayor's Order 83-265, dated November 9, 1983, regarding job creation and employment generated as a result of the construction on the Property.

(20) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(21) "Project" means the financing, refinancing, or reimbursing of Development Costs incurred for the acquisition, construction, installing, and equipping of a mixed-use project consisting of retail and residential space and parking in the Skyland TIF Area.

ENROLLED ORIGINAL

(22) "Property" means the real property known as the Skyland Shopping Center and adjacent parcels, including any area within public alleys as hereinafter closed, and known for tax and assessment purposes as Square 5632, Lot 0001; Square 5632, Lot 0003; Square 5632, Lot 0004; Square 5632, Lot 0005; Square 5632, Lot 0802; Square 5633, Lot 0800; Square 5633, Lot 0801; Square 5641, Lot 0010; Square 5641, Lot 0011; Square 5641, Lot 0012; Square 5641, Lot 0013; Square 5641, Lot 0819; Square 5641N, Lot 0012; Square 5641N, Lot 0013; Square 5641N, Lot 0014; Square 5641N, Lot 0015; Square 5641N, Lot 0016; Square 5641N, Lot 0017; Square 5641N, Lot 0018; Square 5641N, Lot 0019; Square 5641N, Lot 0020; Square 5641N, Lot 0021; Square 5641N, Lot 0022; Square 5641N, Lot 0023; Square 5641N, Lot 0024; Square 5641N, Lot 0025; Square 5641N, Lot 0026; Square 5641N, Lot 0027; Square 5641N, Lot 0028; Square 5641N, Lot 0029; Square 5641N, Lot 0030; Square 5641N, Lot 0031; Square 5641N, Lot 0033; Parcel 0213/0052; Parcel 0213/0060; Parcel 0213/0061; Parcel 0214/0062; Parcel 0214/0088; Parcel 0214/0104; Parcel 0214/0182; Parcel 0214/0187; Parcel 0214/0189; Parcel 0214/0190; and Parcel 0214/0196.

(23) "Reserve Agreement" means that certain Reserve Agreement, dated as of April 1, 2002, by and among the District, Wells Fargo Bank Minnesota, N.A., and Financial Security Assurance, Inc.

(24) "TIF" means tax increment financing.

TITLE II -- TAX INCREMENT FINANCING BONDS ISSUANCE

Sec. 201. Creation of the Skyland TIF Fund.

(a) There is established as a nonlapsing fund the Skyland TIF Fund. The Chief Financial Officer shall deposit into the Skyland TIF Fund the Available Tax Increment and any other taxes or fees specifically designated by law for deposit in the Skyland TIF Fund.

(b) The Mayor may pledge and create a security interest in the funds in the Skyland TIF Fund, or any sub-account within the Skyland TIF Fund, for the payment of debt service on the Bonds without further action by the Council as permitted by section 490(f) of the Home Rule Act. The payment of debt service shall be made in accordance with the provisions of the Financing Documents entered into by the District in connection with the issuance of the Bonds.

(c) If, at the end of any fiscal year of the District, the balance of cash and investments in the Skyland TIF Fund exceeds the amount of debt service (including prepayment of principal and interest), reserves on any Bonds, and any approved bond-related administrative expenses during the upcoming fiscal year, the excess shall be transferred to the unrestricted balance of the General Fund of the District of Columbia.

Sec. 202. Creation of the Skyland TIF Area; Available Sales Tax Revenues base year determinations.

(a) There is created a TIF area designated as the Skyland TIF Area. The Skyland TIF Area is defined as the real property located in Square 5632, Lot 0001; Square 5632, Lot 0003; Square 5632, Lot 0004; Square 5632, Lot 0005; Square 5632, Lot 0802; Square 5633, Lot 0800; Square 5633, Lot 0801; Square 5641, Lot 0010; Square 5641, Lot 0011; Square 5641, Lot 0012; Square 5641, Lot 0013; Square 5641, Lot 0819; Square 5641N, Lot 0012; Square 5641N, Lot

ENROLLED ORIGINAL

0013; Square 5641N, Lot 0014; Square 5641N, Lot 0015; Square 5641N, Lot 0016; Square 5641N, Lot 0017; Square 5641N, Lot 0018; Square 5641N, Lot 0019; Square 5641N, Lot 0020; Square 5641N, Lot 0021; Square 5641N, Lot 0022; Square 5641N, Lot 0023; Square 5641N, Lot 0024; Square 5641N, Lot 0025; Square 5641N, Lot 0026; Square 5641N, Lot 0027; Square 5641N, Lot 0028; Square 5641N, Lot 0029; Square 5641N, Lot 0030; Square 5641N, Lot 0031; Square 5641N, Lot 0033; Parcel 0213/0052; Parcel 0213/0060; Parcel 0213/0061; Parcel 0214/0062; Parcel 0214/0088; Parcel 0214/0104; Parcel 0214/0182; Parcel 0214/0187; Parcel 0214/0189; Parcel 0214/0190; and Parcel 0214/0196 and for any other parcel located within the geographic area bounded by a line beginning for the same at a point at the intersection of the northerly line of Good Hope Road, S.E., with the northerly line of Alabama Avenue, S.E., and running then northwesterly along said line of Good Hope Road, S.E., extended, to intersect a point on the east line of Naylor Road, S.E.; then northwesterly along said line of Naylor Road, N.E., to a point at the northwesterly corner of Lot 801 in Square 5633; then northeasterly along the northerly line of said lot & square to a point at the westernmost corner of Parcel 213/52; then continuing northeasterly along the northerly line of said Parcel 213/52, to a point at the southwesterly corner of Parcel 213/60; then northeasterly along the arc of a curve, deflecting to the right, along the westerly line of said Parcel 213/60, to a point at the northernmost corner of said Parcel 213/60; then southeasterly along the easterly lines of said Parcel 213/60 and 213/52 to a point at the northwesterly corner of Lot 33 in Square North of Square 5641; then easterly along the north property lines of said Lot 33 and Lots 16 through 31, both inclusive, in Square North of Square 5641 to a point at the northeast corner of said Lot 31 in said square; then south along the east line of said Lot 31 in said square to a point at the southeast corner thereof; then Westerly along the south lines of said Lots 31, 30, 29, 28, 27, 26, 25, 24, 23 and 22 in said square to a point at the southwest corner of said lot 22, to intersect a line drawn northwesterly from the northeast corner of Lot 12 in Square North of Square 5641; then southeasterly along said line drawn and the east line of said Lot 12 in said square, to a point at the southeast corner thereof, to a point that intersects a line drawn northwesterly from the northeast corner of Lot 13 in Square 5641; then southeasterly along said line drawn and the east line of said Lot 13 in said square to a point at the southeast corner thereof; then southwesterly along the south property lines of Lots 13 and 12 in Square 5641 to a point that intersects a line drawn northwesterly from the northeast corner of Lot 819 in Square 5641; then Southeasterly along said line drawn and the east line of said Lot 819 in said square, to a point at the southeast corner of said Lot 819 in said square, on the north line of Alabama Avenue, S.E.; and then southwesterly along the arc of a circle, deflecting to the right, along said line of Alabama Avenue, to the point of beginning.

(b) As provided under section 201, the Available Tax Increment from the Skyland TIF Area shall be deposited in the Skyland TIF Fund and may be used for the purposes set forth in section 201.

(c)(1) The base year for determination of Available Sales Tax Revenues from locations within the Skyland TIF Area shall be the tax year preceding the year in which this act becomes effective.

(2) The base year for determination of Available Real Property Tax Revenues shall be the tax year preceding the year in which this act becomes effective and the initial assessed

value to be used in making the determination of Available Real Property Tax Revenues shall be the assessed value of each lot of taxable real property in the Skyland TIF Area for the tax year preceding the year in which this act becomes effective.

Sec. 203. Bond authorization.

The Council approves and authorizes the issuance of one or more series of Bonds in an aggregate principal amount not to exceed $40 million to fund the project. The Bonds, which may be issued from time to time, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in section 204(c). The proceeds of the Bonds shall be used to pay Development Costs of the project and the financing costs incurred by the District or the Development Sponsor and to fund capitalized interest and required reserves.

Sec. 204. Payment and security.

(a) Except as otherwise provided in this act, the principal of, premium, if any, and interest on the Bonds, and the payment of ongoing administrative expenses related to the bond financing shall be payable solely from proceeds received from the sale of the Bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Skyland TIF Fund, income realized from the temporary investment of those receipts and revenues before payment to the Bond owners, and other funds that, as provided in the Financing Documents, may be made available to the District for payment of the Bonds from sources other than the District, all as provided for in the Financing Documents.

(b) There is further allocated to the payment of debt service on the Bonds the Available Increment, subordinate to the allocation of Available Increment to the Budgeted Reserve, as defined in the Reserve Agreement, all as more fully described in the Reserve Agreement and to the extent that the Reserve Agreement continues to apply to the Available Increment, to be used for the payment of debt service on the Bonds to the extent that the revenues allocated in subsection (a) of this section are inadequate to pay debt service on the Bonds. The allocation of the Available Increment authorized by this subsection shall be made in compliance with all existing contractual obligations of the District with respect to the Available Increment and shall terminate on the date on which all of the Bonds are paid or provided for and are no longer outstanding pursuant to their terms.

(c) Payment of the Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Bond owners of certain of its rights under the Financing Documents and Closing Documents to the trustee for the Bonds pursuant to the Financing Documents.

(d) The trustee or paying agent is authorized to deposit, invest, and disburse the proceeds received from the sale of the Bonds pursuant to the Financing Documents.

Sec. 205. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery,

ENROLLED ORIGINAL

security for, and payment of the Bonds of each series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificated or book-entry form;

(2) The principal amount of the Bonds to be issued and denominations of the Bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the Bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the Bonds, and the maturity date or dates of the Bonds;

(5) The terms under which the Bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the Bonds and the replacement of mutilated, lost, stolen, or destroyed Bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the Bonds;

(8) The time and place of payment of the Bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the Bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed; and

(11) The terms and types of credit enhancement under which the Bonds may be secured.

(b) The Bonds shall contain a legend which shall provide that the Bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment, the Available Increment, and any other taxes and fees allocated to the Skyland TIF Fund), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The Bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds.

(e) The Bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee or paying agent to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The Bonds may be issued at any time or from time to time in one or more issues and in one or more series.

ENROLLED ORIGINAL

(g) The Bonds are declared to be issued for essential public and governmental purposes. The Bonds, the interest thereon, and the income therefrom, and all funds pledged or available to pay or secure the payment of the Bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District pledges, covenants, and agrees with the holders of the Bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the revenues pledged to secure the Bonds or the basis on which such revenues are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the Bonds, will not in any way impair the rights or remedies of the holders of the Bonds, and will not modify, in any way, the exemptions from taxation provided for in this act, until the Bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the Bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the Bonds. This subsection constitutes a contract between the District and the holders of the Bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Article 9 of Title 28 of the District of Columbia Official Code:

(1) A pledge made and security interest created in respect of the Bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 206. Issuance of the Bonds.

(a) The Bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, or issued to the Development Sponsor, and upon terms that the Mayor considers to be in the best interests of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the Bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the Bonds.

(c) The Mayor is authorized to deliver executed and sealed Bonds, on behalf of the District, for authenticationand, after the Bonds have been authenticated, to deliver the Bonds to the original purchasers of the Bonds upon payment of the purchase price.

(d) The Bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the Bonds of such series and, if the interest on the Bonds is

expected to be exempt from federal income taxation, the treatment of the interest on the Bonds for purposes of federal income taxation.

(e) 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.*), and subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract the Mayor may from time to time enter into, or determine to be necessary or appropriate, for the purposes of this act.

Sec. 207. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the Bonds.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the Bonds, the other Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, before or simultaneously with the issuance, sale, and delivery of the Bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 208. Limited liability.

(a) The Bonds shall be special obligations of the District. The Bonds shall be without recourse to the District. The Bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment, the Available Increment, and any other taxes or fees allocated to the Skyland TIF Fund), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The Bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the Bonds.

(c) No person, including, but not limited to, any Bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this act, the Bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the

Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 209. District officials.

(a) Except as otherwise provided in section 208(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the Bonds or be subject to any personal liability by reason of the issuance of the Bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, the Bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the Bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the Bonds, the Financing Documents, or the Closing Documents.

Sec. 210. Maintenance of documents.

Copies of the specimen Bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 211. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the Bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

TITLE III -- SKYLAND SURPLUS DECLARATION AND APPROVAL

Sec. 301. Findings.

(a) The Property is located at the intersection of Naylor Road, S.E., Good Hope Road, S.E., and Alabama Avenue, S.E., and consists of approximately 18.7 acres of land and is further defined in section 101(22).

(b) The Property was acquired with the intention of eliminating blight by redeveloping the underused site into retail and residential space to benefit the surrounding community and the District. Therefore, the Property is not required for public purposes and the Property needs to be declared surplus in order to dispose of the Property for redevelopment purposes.

(c) A public hearing was held on June 26, 2013, at the Francis A. Gregory Neighborhood Library located at 3660 Alabama Avenue, S.E., regarding the finding that the Property is no longer required for public purposes.

Sec. 302. Determination.

Notwithstanding 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 *et seq.*), the Council determines that the Property is no longer required for public purposes.

ENROLLED ORIGINAL

TITLE IV -- SKYLAND DISPOSITION APPROVAL

Sec. 401. Findings.

(a) The Property is located at the intersection of Naylor Road, S.E., Good Hope Road, S.E., and Alabama Avenue, S.E., consists of approximately 18.7 acres of land, and is further defined in section 101(22).

(b) The Project shall include affordable housing, such that 20% of the residential units shall be reserved for households with incomes at or below 80% of Area Median Income. An additional 10% of the residential units shall be reserved for households with incomes at or below 120% of Area Median Income.

(c) The Developer shall enter into an agreement with the District requiring the Developer to, at a minimum, contract with Certified Business Enterprises for at least 35% of the contract dollar volume of the Project, and requiring at least 20% equity and 20% development participation of Certified Business Enterprises.

(d) The Developer shall enter into a First Source Agreement with the District that shall govern certain obligations of the Developer pursuant to section 4 of the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03), and Mayor's Order 83-265, dated November 9, 1983, regarding job creation and employment as a result of the construction on the Property.

(e) The Developer shall comply with the terms set forth in Zoning Commission Order No. 09-03, July 12, 2010, pertaining to the following properties: Square 5640, Lot 33; Square 5640, Lot 35; Square 5640, Lot 816; and Par 0213, Lot 64.

(f) The Land Disposition Agreement to be executed between the District and the Developer shall be consistent with the terms in the documents submitted by the Mayor to the Council in conjunction with, and before the adoption of, the Skyland Town Center Omnibus Act of 2014, passed on 2nd reading on April 8, 2014 (Enrolled version of Bill 20-382). Any substantive change shall be submitted to the Council consistent with section 1(b-1)(6) 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(b-1)(6)).

Sec. 402. Approval of disposition.

Notwithstanding 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 *et seq.*), the Council approves the disposition of the Property to the Developer pursuant to the terms set forth in section 401.

TITLE V -- FISCAL IMPACT; EFFECTIVE DATE

Sec. 501. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report 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. 502. 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), 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.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
April 28, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-310

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APRIL 28, 2014

To amend, on a temporary basis, the District of Columbia Traffic Act, 1925 to clarify the requirements for receipt of a limited purpose driver's license, permit or identification card.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Driver's Safety Clarification Temporary Amendment Act of 2014".

Sec. 2. Section 8c(a)(2) of the District of Columbia Traffic Act, 1925, effective January 17, 2014 (D.C. Law 20-62; to be codified at D.C. Official Code § 50-1401.05(a)(2)), is amended to read as follows:

" (2)(A) Has not been assigned a social security number;

"(B) Has been assigned a social security number but cannot establish legal presence in the United States at the time of application; or

"(C) Is ineligible to obtain a social security number; and".

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

ENROLLED ORIGINAL

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
April 28, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-311

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APRIL 28, 2014

To amend, on a temporary basis, the Transportation Infrastructure Mitigation Temporary Amendment Act of 2013 and the Department of Transportation Establishment Act of 2002 to clarify the authority of the Director of the District Department of Transportation ("DDOT") to enter into an agreement pursuant to 49 U.S.C. § 5310 and a payment agreement for services related to DDOT's review of proposed and existing projects.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Transportation Infrastructure Mitigation Clarification Temporary Amendment Act of 2014".

Sec. 2. Section 2(a) of the Transportation Infrastructure Mitigation Temporary Amendment Act of 2013, effective February 22, 2014 (D.C. Law 20-68; 60 DCR 19), is amended to read as follows:

"(a) Section 3(f) D.C. Official Code 50-921.02(f)) is amended to read as follows:

"(f) The Director may:

"(1) With respect to the program established pursuant to 49 U.S.C. § 5310 (the "5310 Program"):

"(A) Enter into agreements with nonprofit organizations to provide those nonprofit organizations vehicles to transport elderly residents and residents with disabilities;

"(B) Provide an application for the 5310 Program each year, solicit applicants to apply, and administer a selection process to identify which eligible applicants may participate;

"(C) Enter into agreements with the nonprofit organizations that are selected to receive vehicles to ensure they use the vehicles as prescribed by the 5310 Program guidelines and regulations enacted pursuant to this paragraph, including the requirement that the vehicle recipient deposit matching funds into the District Department of Transportation Enterprise Fund for Transportation Initiatives; and

"(D) Enter into contracts with third parties for the procurement and maintenance of eligible vehicles to be used by the nonprofit organizations selected by the Director;

"(2) Enter into an agreement with a developer, property owner, utility company, the federal government or other governmental entity, or other person or entity requiring payment

for the costs of DDOT's review of the proposed or existing project on private property or public space that may affect the transportation infrastructure or public space in the District or DDOT's ability to manage and maintain the transportation infrastructure or public space in the District and requiring the implementation of or payment for, per the agreement, transportation infrastructure or public improvements or mitigation measures to address the project's impact on the transportation infrastructure or public space in the District or on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; provided, that:

"(A) A payment, improvement, and mitigation measure required under an agreement authorized by this paragraph shall be reasonably related to:

"(i) The costs incurred by DDOT in reviewing the project;

"(ii) The effects of the project on the transportation infrastructure or public space in the District; and

"(iii) The effects of the project on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; and

"(B) A payment made pursuant to an agreement authorized by this paragraph shall be in addition to, and not in lieu of, a payment required for the temporary use of public space or the use of the public right of way pursuant to the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10–1101.01 *et seq.*), or title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*); and

"(3) Promulgate, amend, or repeal rules to implement the provisions of this subsection, pursuant to the Mayor's authority under the District of Columbia Administrative Procedure Act , approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501, *et seq.*)".

Sec. 3. Section 3(f) of The Department of Transportation Establishment Act of 2002, effective May 21, 2002 (D.C. Law 14–137; D.C. Official Code § 50–921.02(f)), is amended to read as follows:

"(f) The Director may:

"(1) With respect to the program established pursuant to 49 U.S.C. § 5310 (the "5310 Program"):

"(A) Enter into agreements with nonprofit organizations to provide those nonprofit organizations vehicles to transport elderly residents and residents with disabilities;

"(B) Provide an application for the 5310 Program each year, solicit applicants to apply, and administer a selection process to identify which eligible applicants may participate;

"(C) Enter into agreements with the nonprofit organizations that are selected to receive vehicles to ensure they use the vehicles as prescribed by the 5310 Program guidelines and regulations enacted pursuant to this paragraph, including the requirement that the vehicle recipient deposit matching funds into the District Department of Transportation Enterprise Fund for Transportation Initiatives; and

"(D) Enter into contracts with third parties for the procurement and maintenance of eligible vehicles to be used by the nonprofit organizations selected by the Director;

"(2) Enter into an agreement with a developer, property owner, utility company, the federal government or other governmental entity, or other person or entity requiring payment for the costs of DDOT's review of the proposed or existing project on private property or public space that may affect the transportation infrastructure or public space in the District or DDOT's ability to manage and maintain the transportation infrastructure or public space in the District and requiring the implementation of or payment for, per the agreement, transportation infrastructure or public improvements or mitigation measures to address the project's impact on the transportation infrastructure or public space in the District or on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; provided, that:

"(A) A payment, improvement, and mitigation measure required under an agreement authorized by this paragraph shall be reasonably related to:

"(i) The costs incurred by DDOT in reviewing the project;

"(ii) The effects of the project on the transportation infrastructure or public space in the District; and

"(iii) The effects of the project on DDOT's ability to manage and maintain the transportation infrastructure or public space in the District; and

"(B) A payment made pursuant to an agreement authorized by this paragraph shall be in addition to, and not in lieu of, any payments required for the temporary use of public space or the use of the public right of way pursuant to the District of Columbia Public Space Rental Act, approved October 17, 1968 (82 Stat. 1156; D.C. Official Code § 10–1101.01 *et seq.*), or title VI of the Fiscal Year 1997 Budget Support Act of 1996, effective April 9, 1997 (D.C. Law 11-198; D.C. Official Code § 10-1141.01 *et seq.*); and

"(3) Promulgate, amend, or repeal rules to implement the provisions of this subsection, pursuant to the Mayor's authority under the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501, *et seq.*)".

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)).

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
April 28, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-312

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APRIL 28, 2014

To amend, on a temporary basis, the Recreation Act of 1994 to clarify that the Department of Parks and Recreation's implementation of its nutritional requirements is not contingent upon the agency's promulgation of unrelated regulations concerning field and facility permitting.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Department of Parks and Recreation Fee-based Use Permit Authority Clarification Temporary Amendment Act of 2014".

Sec. 2. Section 7a(b)(2) of the Recreation Act of 1994, effective September 14, 2011 (D.C. Law 19-21; D.C. Official Code § 10-307(b)(2)), is amended by striking the phrase "section 3(b-1) and (d), section 3a, and section 3b" and inserting the phrase "section 3(b-1) and (d) and section 3a" in its place.

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
April 28, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-313

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APRIL 28, 2014

To approve, on an emergency basis, Delivery Order Contract No. PO489769 and Modification Nos. 2 and 3 to the contract with International Salt Company, LLC, for the purchase of road deicing salt and to authorize payment for the goods 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. PO489769 and Modifications Nos. 2 and 3 Approval and Payment Authorization Emergency Act of 2014".

Sec. 2. Pursuant to section 451(b)(1) 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 Contract No. PO489769 and Modifications Nos. 2 and 3 to the contract to provide road deicing salt for the Department of Public Works' snow removal program and authorizes payment in an amount not to exceed $1,248,242.17 for goods received and to be received under the contract.

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
April 28, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-314

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APRIL 28, 2014

To approve, on an emergency basis, Modification Nos. 8 and 9 to Task Order No. DCKA-2013-T-0006 to Alta Bicycle Share, Inc. for services and equipment received by the District Department of Transportation for the Capital Bikeshare Program and to authorize payments for the services and equipment received and to be received under the modifications .

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modification Nos. 8 and 9 to Task Order No. DCKA-2013-T-0006 Approval and Payment Authorization Emergency Act of 2014".

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.8 and 9 to Task Order No. DCKA-2013-T-0006 for the Capital Bikeshare Program for the District Department of Transportation, and authorizes payment in the amount of $8,587,062.30 for services and equipment received and to be received under these modifications.

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

ENROLLED ORIGINAL

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
April 28, 2014

ENROLLED ORIGINAL

AN ACT

D.C. ACT 20-315

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

APRIL 28, 2014

To approve, on an emergency basis, Office Depot Purchase Order Nos. PO467381 and PO480871 issued pursuant to the Mid-Atlantic Purchasing Team Cooperative Agreement 11CM-221 for the purchase of supply money cards for teachers to use to purchase instructional supplies for the 2013-2014 school year.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Office Depot Purchase Order Nos. PO467381 and PO480871 Approval and Payment Authorization Emergency Act of 2014".

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 Office Depot Purchase Order Nos. PO467381 and PO480871 and authorizes payment in the amount of $1,465,060 for goods received and to be received under the purchase orders.

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 section

ENROLLED ORIGINAL

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
April 28, 2014

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

20-174

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To declare March 27, 2014, as "Developmental Disabilities Day" in the District of Columbia.

WHEREAS, developmental disabilities affect more than 7 million Americans and their families;

WHEREAS, all are encouraged to support opportunities for all persons with developmental disabilities in our community, including full access to education, housing, employment, and recreational activities;

WHEREAS, the most effective way to increase awareness is through active participation in community activities, and to individually and collectively have an openness to learn and acknowledge diverse contributions;

WHEREAS, children and adults with developmental disabilities, their families, friends, neighbors, and co-workers encourage everyone to focus on the abilities of all people;

WHEREAS, opportunities for citizens with developmental disabilities should be included, when possible, and must be continually fostered in our communities and throughout the District;

WHEREAS, citizens are encouraged to take time to get to know someone with a disability, recognize ability in action, and discover what each person has to offer; and

WHEREAS, organizations including the Arc of the District of Columbia; District of Columbia Department on Disability Services; District of Columbia Developmental Disabilities Council; Georgetown University Center for Child and Human Development Center for Excellence in Developmental Disabilities; Project ACTION; Quality Trust for Individuals with Disabilities; and University Legal Services continue to participate in the national observance of Developmental Disabilities Awareness Month and the continual

ENROLLED ORIGINAL

support and advocacy to provide tremendous insight, resource development, and further education.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Developmental Disabilities Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia recognizes and honors the invaluable contributions of all activists and community organizations that create awareness and support those individuals with developmental disabilities and hereby declares March 27, 2014, as "Developmental Disabilities 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

20-175

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize and honor the brave service and impressive contributions of women veterans who reside in the District of Columbia.

WHEREAS, the month of March is Women's History Month, and women across America and in the District have made countless contributions to our society, including protecting our liberty and freedom by serving in the United States Armed Forces;

WHEREAS, there are currently 3,991 women veterans living in the District who have served in all branches of the United States Armed Services, including the Marines, Army, Air Force, Navy, Coast Guard, and Army National Guard;

WHEREAS, those women have served, among other posts, as JAG officers, medics, aircraft mechanics, humvee drivers, military police, and quarter masters;

WHEREAS, the brave women veterans of the District have proudly served their country throughout all periods of United States history, and the women veterans currently living in the District have served in numerous conflicts and wars, including Vietnam, the Persian Gulf, Bosnia, Afghanistan, and Iraq;

WHEREAS, the challenges that face veterans as a whole often plague women veterans at a disproportionate rate: women veterans suffer higher rates of homelessness, they experience greater unemployment when returning home from war, and they earn nearly $10,000 a year less than their male veteran counterparts;

WHEREAS, according to a recent study by the RAND Corporation, women service members and veterans are at higher risk for symptoms consistent with a diagnosis for Post-Traumatic Stress Disorder and major depression;

WHEREAS, women veterans not only struggle from the physiological trauma and the stress of serving in war, but also often suffer from the trauma of sexual assault and harassment, which frequently goes unreported;

ENROLLED ORIGINAL

WHEREAS, despite these extraordinary challenges, women veterans have gone on to make major contributions to our society, continuing their service in a variety of ways, including as nonprofit executives, corporate leaders, veteran advocates, educators, and in the halls of Congress, where Tammy Duckworth and Tulsi Gabbard both serve as members of the House of Representatives;

WHEREAS, the women veterans living in the District continue to bring great pride to our city by serving their community, as seen in the work of Retired U.S. Air Force Sergeant Barbara Pittman and Retired Army Nurse Corps Captain Kathleen Hope;

WHEREAS, Barbara Pittman, a third-generation Washingtonian who retired as a highly decorated United States Air Force Sergeant, is the daughter of a World War II veteran and currently serves as the Veterans Benefits Special Assistant for the District's Office of Veterans Affairs, where she helps the District's veterans secure much-needed assistance and benefits;

WHEREAS, Kathleen Hope, a Persian Gulf veteran who retired as a Captain with the Army Nurse Corps, currently serves as an advocate for women veterans in the District as a member of the Mayor's Advisory Council for Veterans Affairs and through her organization "Ladies in Boots"; and

WHEREAS, it is fully appropriate to honor and recognize the major contributions, sacrifices, and the ongoing service of these women veterans and all of the District's women veterans, especially given the challenging circumstances that many of these women face during and after their service to our country.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Women Veterans Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia honors these incredible women for their tremendous commitment to the service of our country and the District and seeks to honor their commitment by working to improve the condition of women veterans in the District.

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

20-176

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize Constance Zimmer for the work she has done with the Dumbarton Concert Series.

WHEREAS, Constance Zimmer is a native of Mount Holly, New Jersey;

WHEREAS, Constance Zimmer is a graduate of Cedar Crest College in Allentown, Pennsylvania, where she majored in political science;

WHEREAS, Constance Zimmer moved to the District of Columbia to work on the presidential campaign of Eugene McCarthy;

WHEREAS, Constance Zimmer has held several positions as a staff member for Congress as well as with the United States Agency for International Development;

WHEREAS, in 1979, Constance Zimmer, together with her friend Leah Johnson, established the Dumbarton Concert Series to present small ensemble musical performances at reasonable prices at the historic Dumbarton United Methodist Church in Georgetown;

WHEREAS, the musical performances of the Dumbarton Concerts Series have earned the support of fiercely devoted audiences and have been widely acclaimed by critics;

WHEREAS, in 1987, Dumbarton Concerts began a musical outreach program in order that groups unable to attend concerts would nevertheless be able to experience the joy of live musical performances; and

WHEREAS, for 36 seasons, Constance Zimmer has been the guiding force and principal instrument of these programs since their inception, having become widely known and respected in the philanthropic, cultural, and educational communities of our city.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Constance Zimmer Recognition Resolution of 2014”.

ENROLLED ORIGINAL

Sec. 2. The Council of the District of Columbia recognizes Constance Zimmer for her contributions to the residents of 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

20-177

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize and honor the St. John's College High School Cadets girls varsity basketball team on winning the 2014 District of Columbia State Athletic Association city title.

WHEREAS, the Cadets 2014 roster comprises Amari Carter, Raley Hinton, Britani Stowe, Christine Morin, Kailyn Ebb, Alexis Krahling, Sarah Overcash, Niya Beverly, Madison Cheatham, Kayla Robbins, Deana Moak, Asia McCray, and Zion Campbell;

WHEREAS, St. John's coach Jonathan Scribner has led the Cadets to a winning season in 2014 with 25 wins and only 7 losses;

WHEREAS, the St. John's College High School girls varsity basketball team won the District of Columbia State Athletic Association ("DCSAA") championship at the Verizon Center on March 6, 2014;

WHEREAS, this was the second year that the DCSAA held its tournament and the first appearance by the St. John's College High School Cadets;

WHEREAS, the St. John's Cadets defeated the ninth-ranked Georgetown Visitation Preparatory School Cubs, 58-42, to capture the title;

WHEREAS, the St. John's Cadets defense forced 12 turnovers and out-rebounded the Cubs 33-24 on their way to victory;

WHEREAS, the St. John's College High School Cadets is currently ranked #4 by *The Washington Post*;

WHEREAS, Britani Stowe, a senior guard for the Cadets matched her career high of 16 points during the title game and was named tournament Most Valuable Player;

WHEREAS, last year the Cadets won the Washington Catholic Athletic Conference;

ENROLLED ORIGINAL

WHEREAS, the parents of the St. John's girls varsity team played an essential role by providing unwavering support to the team;

WHEREAS, St. John's College High School President Jeffrey Mancabelli, Principal Brother Michael Andrejk, and the entire staff administer a high-quality school in Ward 4; and

WHEREAS, the Ward 4 community is proud of the achievements of the St. John's College High School Cadets girls varsity basketball team.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "St. John's College High School Girls Varsity Basketball Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia commends and recognizes the St. John's College High School girls varsity basketball team for its superior achievement this 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

20-178

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize and honor the Washington Animal Rescue League on the occasion of the 100th anniversary of its founding.

WHEREAS, the Washington Animal Rescue League was founded on March 31, 1914, as the first-ever animal shelter in the District of Columbia for stray and abused dogs, cats, and horses;

WHEREAS, the Washington Animal Rescue League originally provided free veterinary care and held annual food drives for those who could not afford care or food for their pets or service animals;

WHEREAS, the Washington Animal Rescue League outgrew its space on Capitol Hill and moved to 71 Oglethorpe Street, N.W., in Ward 4 in 1977, adding a medical center in 1996 to serve the shelter's animals and those pets of low-income clients;

WHEREAS, the medical center now serves some 7,000 animals annually;

WHEREAS, the Washington Animal Rescue League undertook a major renovation in 2006 that resulted in it becoming one of the world's premier and progressive animal rescue and rehabilitation centers;

WHEREAS, this renovation included moving away from steel bar and concrete cages to glass-enclosed dog dens and cat condos;

WHEREAS, the Washington Animal Rescue League was named one of the United States' *Top Ten Emergency Placement Partners* by the Humane Society of the United States, won its division of the national ASPCA Adoption Challenge, and set a record for adopting 2,000 animals, *all* in 2013;

WHEREAS, the Washington Animal Rescue League, which evolves continually to

ENROLLED ORIGINAL

remain at the forefront of animal welfare, plans a future expansion that will increase its sheltering ability by more than 100%;

WHEREAS, in its 100 years of service to the District of Columbia, the Washington Animal Rescue League has rescued, cared for, and adopted over 100,000 animals;

WHEREAS, the Washington Animal Rescue League's mission to foster a human-animal bond is accomplished by having the region's only full-service medical center and a dedicated team of staff and volunteers who not only treat the temporary residents of the shelter, but also serve as the veterinary resource for area residents who struggle to financially afford veterinary care for their pets;

WHEREAS, the Washington Animal Rescue League offers discounted medical care for income-qualified residents, low-cost vaccinations and spay/neuter services, and a *Pet Food Bank* for those who cannot afford to feed their pets;

WHEREAS, the Washington Animal Rescue League is a private, nonprofit organization operating entirely on donations and accepting no government funds or tax dollars; and

WHEREAS, the Washington Animal Rescue League celebrated the 100th anniversary of its founding on March 31, 2014, with a celebration at its headquarters.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA That this resolution may be cited as the "Washington Animal Rescue League 100th Anniversary Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia recognizes and honors the many accomplishments and humane works of the Washington Animal Rescue League on the 100th anniversary of its founding.

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

20-179

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize and honor the Theodore Roosevelt High School Rough Riders boys varsity basketball team on winning the 2014 District of Columbia State Athletic Association city title and the District of Columbia Interscholastic Athletic Association championship.

WHEREAS, the Theodore Roosevelt Rough Riders boys varsity basketball team comprises Johnnie Shuler, Anthony Whitney, Troy Stancil, D'vonte Kay, Mighal Ford, David Miles, Alvin Keith, Deion Haynes, Mike Jones, Joseph Adedayo, Jibreel Faulkner, Hassan Kennie, and Jarell Allen;

WHEREAS, Theodore Roosevelt Rough Riders coach Rob Nickens, who has coached the team since 2007, led the Rough Riders to an exceptional season;

WHEREAS, on February 26, 2014, the Theodore Roosevelt Rough Riders made their 5th appearance in the District of Columbia Interscholastic Athletic Association ("DCIAA") title game in 7 seasons;

WHEREAS, the Theodore Roosevelt Rough Riders soundly beat H.D. Woodson, 77-50, to claim the DCIAA title;

WHEREAS, Theodore Roosevelt Rough Riders defeated Maret, 57-53, on March 6, 2014, at the Verizon Center to take home its first District of Columbia State Athletic Association ("DCSAA") title;

WHEREAS, guard Johnnie Shuler, the DCIAA co-player of the year, electrified the crowd by engineering his first dunk during the DCSAA title game;

WHEREAS, guard Troy Stancil scored 15 points and was named Most Valuable Player of the DCSAA title game;

WHEREAS, the Theodore Roosevelt Rough Riders finished the season with a 25-6 record, a 10-game winning streak, and an 83.5 point scoring average over the last 8 games;

ENROLLED ORIGINAL

WHEREAS, the Theodore Roosevelt Rough Riders are currently ranked #10 by the *Washington Post*;

WHEREAS, the parents of the Theodore Roosevelt Rough Riders played an essential role by providing unwavering support to the team and allowing their children to represent the District of Columbia this season;

WHEREAS, the Theodore Roosevelt Rough Riders success coincides with a $100 million modernization of their school;

WHEREAS, the Ward 4 community is proud of the achievements of the Theodore Roosevelt Rough Riders boys varsity basketball team; and

WHEREAS, the team's achievements this season lay the foundation for many more victories and the distinct honor of defending the DCSAA title next year.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Theodore Roosevelt Rough Riders Boys Varsity Basketball Team Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia commends and recognizes the Theodore Roosevelt Rough Riders boys varsity basketball team for their superior achievement this 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

20-180

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To honor the Gay and Lesbian Activists Alliance on the occasion of its 43rd 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 LGBT 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 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

ENROLLED ORIGINAL

accountability;

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

WHEREAS, GLAA, at its 43rd Anniversary Reception on April 30, 2014, will present its Distinguished Service Awards to individuals who have served the LGBT community in the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Gay and Lesbian Activists Alliance 43rd Anniversary Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia salutes GLAA on the occasion of its 43rd Anniversary Reception on April 30, 2014, and thanks its members for their long record of dedicated service that has advanced the welfare not only of the lesbian, gay, 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

20-181

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize the importance of libraries and the people who work in them, and to declare April 15, 2014, as "National Library Workers Day" in the District of Columbia.

WHEREAS, there are thousands of public, academic, school, governmental, and specialized libraries in the United States and they provide excellent and invaluable service to library users regardless of age, ethnicity, or socioeconomic background;

WHEREAS, libraries provide millions of people with access to the knowledge and information they need to live, learn, and work in the 21st century;

WHEREAS, librarians and library support staff bring the nation a world of knowledge in person and online, as well as personal service and expert assistance in finding what is needed when it is needed;

WHEREAS, it is important to recognize the unique contributions of all library workers and the value to individuals and society of those contributions;

WHEREAS, a steady stream of recruits to library work is necessary to maintain the vitality of library services in today's information society;

WHEREAS, librarians and other library workers add valuable insight to public policy discussions on key issues, such as intellectual freedom, equity of access to information for all, and narrowing the digital divide; and

WHEREAS, the District of Columbia Public Library joins libraries, library workers, and library supporters across America in celebrating National Library Workers Day sponsored by the American Library Association – Allied Professional Association.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "National Library Workers Day Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia recognizes the importance of our nation's library workers, encourages all residents of the District of Columbia to take advantage

ENROLLED ORIGINAL

of the variety of library resources available and to thank library workers for their exceptional contributions to American life, and declares April 15, 2014, as "National Library Workers 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

20-182

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize the Woodridge Warriors Youth Organization on its 50th anniversary for serving approximately 400 children each year and providing educational, cultural, and social activities for youth and their families.

WHEREAS, the Woodridge Warriors Youth Organization was established in 1963 to improve the quality of life and assure the optimal development of children, youth, and their families in Ward 5 of Washington, D.C.;

WHEREAS, the Woodridge Warriors Youth Organization was founded as the Woodridge Community Center in 1963 by Nathaniel Briscoe, Chauncey Lyles, and Mason Clark;

WHEREAS, Woodridge Community Center was established to support the Woodridge Pioneers, an organization of adult volunteers working with youth participating in football, baseball, basketball, track, and boxing teams;

WHEREAS, the Woodridge Community Center continued to operate and evolve and in July 1999 officially became the Woodridge Warriors Youth Organization;

WHEREAS, Woodridge Warriors Youth Organization is officially incorporated as a nonprofit organization in the District of Columbia and recognized by the Federal government as a tax-exempt 501(c)(3) entity;

WHEREAS, the mission of the Woodridge Warriors Youth Organization is to encourage youth development by offering activities that build self-esteem, physical fitness, discipline, academics, and life skills;

WHEREAS, Woodridge Warriors Youth Organization also develops its participants by providing academic assistance and by teaching athletic techniques, team work, and work ethic using a positive methodology;

WHEREAS, the philosophy of the Woodridge Warriors Youth Organization is one that promotes fairness, accountability, humility, simplicity, transparency, and fiscal soundness;

ENROLLED ORIGINAL

WHEREAS, the Woodridge Warriors Youth Organization's motto is "Dedication, Desire, Discipline" and the organization provides guidance and support for athletic teams, provides recreational programming, and promotes wholesome supervised activities for children and youth;

WHEREAS, Woodridge Warriors Youth Organization also develops its participants by providing academic direction and assistance and by using positive coaching to teach proper athletic techniques, team work, and work ethics; and

WHEREAS, the Woodridge Warriors Youth Organization provides these programs at the Taft Recreation Center, Taft School and the Dwight Mosley Athletic Complex, all located at 18th and Perry Streets, N.E., in Ward 5.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Woodridge Warriors Youth Organization 50th Anniversary Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia recognizes and honors Woodridge Warriors Youth Organization on the occasion of its 50th anniversary and for its continued commitment to develop, educate, and empower youth leaders in Washington D.C.

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

20-183

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize National Walking Day in the District of Columbia and the importance of regular physical activity in the prevention of cardiovascular disease.

WHEREAS, cardiovascular diseases, including coronary heart disease and stroke, are the District's leading cause of death and a leading cause of disability, with 4.3% of District residents who have suffered a heart attack and 4.6% who have suffered a stroke;

WHEREAS, today about 57% of adults and 32% of adolescents in the District are overweight or obese and childhood obesity is now a top health concern among parents in the District;

WHEREAS, the direct health care cost attributable to obesity in the District is $372 million, including $64 million in Medicare cost and $114 million in Medicaid;

WHEREAS, regular physical activity can reduce cardiovascular disease risk and may increase life expectancy, but only 48.2% of adults and 30.2% of adolescents get daily moderate or vigorous intensity physical activity;

WHEREAS, the American Heart Association recommends that children and adolescents participate in at least 60 minutes of moderate or vigorous intensity physical activity each day and adults do at least 150 minutes of moderate intensity physical activity or 75 minutes of vigorous intensity physical activity (or combination of both) each week;

WHEREAS, regular walking has many proven benefits for an individual's overall health, according to health care professionals: walking briskly for at least 30 minutes a day can help lower blood pressure, increase HDL "good" cholesterol in the blood, control weight, and control blood sugar through improved use of insulin in the body, and all of these changes help reduce the risk of cardiovascular disease and stroke;

WHEREAS, if 10% of Americans began a regular walking program, $5.6 billion in heart disease costs could be saved;

ENROLLED ORIGINAL

WHEREAS, studies indicate that one of the best investments we can make in our communities is increasing opportunities for fun and safe physical activity, and according to health care professionals, by increasing access to physical activity opportunities by providing families and children with safe places to walk and be physically active, communities can improve heart health and reduce obesity rates;

WHEREAS, studies indicate that one of the best investments a company can make is in the health of its employees, and according to health care professionals, by promoting a culture of physical activity, corporate America can decrease healthcare costs, increase productivity, and improve the quality of life and longevity of the U.S. workforce;

WHEREAS, on National Walking Day, April 2, the American Heart Association calls on everyone to wear sneakers and start walking; and

WHEREAS, District residents recognize and appreciate the major contributions of the American Heart Association and its efforts to get more people to engage in regular physical activity in an effort to curb heart disease.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia National Walking Day Recognition Resolution of 2014”.

Sec. 2. The Council of the District of Columbia urges all citizens to show their support for the fight against heart disease and commemorate this day by taking time to walk. By increasing awareness of the importance of physical activity to reduce the risk for cardiovascular disease, we can save thousands of lives each year.

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

20-184

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize and preserve the cultural history and heritage of the District of Columbia and to formally recognize the 152nd anniversary of District of Columbia Emancipation Day on April 16, 2014 as an important day in the history of the District of Columbia and the United States.

WHEREAS, on April 16, 1862, President Abraham Lincoln signed the District of Columbia Compensated Emancipation Act during the Civil War;

WHEREAS, the District of Columbia Compensated Emancipation Act provided for immediate emancipation of 3,100 enslaved men, women, and children of African descent held in bondage in the District of Columbia;

WHEREAS, the District of Columba Compensated Emancipation Act authorized compensation of up to $300 for each of the 3,100 enslaved men, women, and children held in bondage by those loyal to the Union, voluntary colonization of the formerly enslaved to colonies outside of America, and payments of up to $100 to each formerly enslaved person who agreed to leave America;

WHEREAS, the District of Columbia Compensated Emancipation Act authorized the federal government to pay approximately $1 million, in 1862 funds, for the freedom of 3,100 enslaved men, women, and children of African descent in the District of Columbia;

WHEREAS, the District of Columbia Compensated Emancipation Act ended the bondage of 3,100 enslaved men, women, and children of African descent in the District of Columbia, and made them the "first freed" by the federal government during the Civil War;

WHEREAS, nine months after the signing of the District of Columbia Compensated Emancipation Act, on January 1, 1863, President Lincoln signed the Emancipation Proclamation of 1863, to begin to end institutionalized enslavement of people of African descent in Confederate states;

WHEREAS, on April 9, 1865, the Confederacy surrendered, marking the beginning of the end of the Civil War, and on August 20, 1866, President Andrew Johnson signed a Proclamation—Declaring that Peace, Order, Tranquility and Civil Authority Now Exists in and Throughout the Whole of the United States of America;

ENROLLED ORIGINAL

WHEREAS, in December 1865, the 13th Amendment to the United States Constitution was ratified establishing that "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction";

WHEREAS, in April 1866, to commemorate the signing of the District of Columbia Compensated Emancipation Act of 1862, the formerly enslaved people and others, in festive attire with music and marching bands, started an annual tradition of parading down Pennsylvania Avenue, proclaiming and celebrating the anniversary of their freedom;

WHEREAS, the District of Columbia Emancipation Day Parade was received by every sitting President of the United States from 1866 to 1901;

WHEREAS, on March 7, 2000, at the Twenty Seventh Legislative Session of the Council of the District of Columbia, Councilmember Vincent B. Orange, Sr. (D-Ward 5) authored and introduced, with Carol Schwartz (R-At large), the historic District of Columbia Emancipation Day Amendment Act of 2000, effective April 3, 2001 (D.C. Law 13-237; D.C. Official Code §§ 1-612.02a and 32-1201);

WHEREAS, the District of Columbia Emancipation Day Emergency Amendment Act of 2000 was passed unanimously by the Council, and signed into law on March 23, 2000 by Mayor Anthony A. Williams to establish April 16th as a legal private holiday;

WHEREAS, on April 16, 2000, to properly preserve the historical and cultural significance of the District of Columbia Emancipation Day, Councilmember Orange hosted a celebration program in the historic 15th Street Presbyterian Church, founded in 1841 as the First Colored Presbyterian Church;

WHEREAS, on April 16, 2002, after a 100-year absence, the District of Columbia, spearheaded by Councilmember Orange with the support of Mayor Anthony Williams, returned the Emancipation Day Parade, to Pennsylvania Avenue, N.W., along with public activities on Freedom Plaza and evening fireworks (D.C. Official Code § 1-182);

WHEREAS, the District of Columbia Emancipation Day Parade and Fund Act of 2004, effective March 17, 2005 (D.C. Law 15-240; D.C. Official Code § 1-181 *et seq*.), established the Emancipation Day Fund to receive and disburse monies for the Emancipation Day Parade and activities associated with the celebration and commemoration of the District of Columbia Emancipation Day;

WHEREAS, on May 4, 2004, Councilmember Orange introduced the District of Columbia Emancipation Day Amendment Act of 2004, effective April 5, 2005 (D.C. Law 15-

ENROLLED ORIGINAL

288; D.C. Official Code § 1-612.02(a)(11)), which established April 16th as a legal public holiday;

WHEREAS, on April 16, 2005, District of Columbia Emancipation Day was observed for the first time as a legal public holiday, for the purpose of pay and leave of employees scheduled to work on that day (D.C. Official Code § 1-612.02(c)(2));

WHEREAS, April 16, 2014, is the 152nd anniversary of District of Columbia Emancipation Day, which symbolizes the triumph of people of African descent over the cruelty of institutionalized slavery and the goodwill of people opposed to the injustice of slavery in a democracy;

WHEREAS, the Council of the District of Columbia remembers and pays homage to the millions of people of African descent enslaved for more than 2 centuries in America for their courage and determination;

WHEREAS, the Council of the District of Columbia remembers and pays homage to President Abraham Lincoln for his courage and determination to begin to end the inhumanity and injustice of institutionalized slavery by signing the District of Columbia Compensated Emancipation Act on April 16, 1862; and

WHEREAS, the 152nd anniversary of District of Columbia Emancipation Day is a singularly important occasion that links the historic Presidency of Abraham Lincoln with the equally historic Presidency of Barack H. Obama, as the first President of the United States of African descent.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "District of Columbia Emancipation Day 152nd Anniversary Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia finds the 152nd anniversary of District of Columbia Emancipation Day is an important, historic occasion for the District of Columbia and the nation and serves as an appropriate time to reflect on how far the District of Columbia and the United States have progressed since institutionalized enslavement of people of African descent; and, most importantly, the 152nd anniversary reminds us to reaffirm our commitment to forge a more just and united country that truly reflects the ideals of its founders and instills in its people a broad sense of duty to be responsible and conscientious stewards of freedom and democracy.

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

20-185

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To recognize Milton "GoGo Mickey" Freeman for contributions he has made to GoGo Music.

WHEREAS, Milton Freeman is a native of the District of Columbia;

WHEREAS, Milton Freeman was raised in the Trinidad neighborhood;

WHEREAS, Milton Freeman released a solo, instrumental album on Liaison Records in 1991 titled "It Gets no Rougher";

WHEREAS, Milton Freeman, created No Rougher Productions in 2008;

WHEREAS, Milton Freeman has played for several R&B and Hip Hop Artists, including: Prince Markie D, Heavy D, The Roots, Doug E. Fresh, and Teddy Riley;

WHEREAS, Milton Freeman was with the Go Go Band Rare Essence for 28 years;

WHEREAS, Milton Freeman was won 2 individual "Wammies" from the Washington Area Music Association and 5 as a member of Rare Essence along with a spot in WAMA's Hall of Fame;

WHEREAS, Milton Freeman has won "Conga Player of the Year" in 2006 at the first Go-Go Awards, and won it again in 2007; and

WHEREAS, Milton Freeman is a District of Columbia Go-Go legend and is known for his fast hands on congas and for his raw beats.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Milton "GoGo Mickey" Freeman Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia recognizes Milton Freeman for his contributions to Go-Go Music and to the residents of the District of Columbia.

ENROLLED ORIGINAL

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

20-186

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

April 8, 2014

To celebrate and honor the legacy created by Manuel ("Manny") and Alma Fernandez as illustrious owners and managers of the Channel Inn Hotel and Pier Seven Restaurant located on the Southwest waterfront in the District of Columbia.

WHEREAS, Manny began his hospitality career at the renowned Fontaine Bleu Hotel in Miami, Florida;

WHEREAS, in 1964, Manny and his wife, Alma, relocated to the District of Columbia and opened the Embers Restaurant on 19th Street, N.W., in downtown Washington, D.C.;

WHERAS, in 1972, Manny and Alma sold the Embers Restaurant to their employees to pursue development opportunities on the Southwest waterfront and opened the Channel Inn Hotel and Pier Seven Restaurant;

WHEREAS, the Channel Inn Hotel and Pier Seven Restaurant has always enjoyed a large loyal client base of local and national politicians, professionals, residents, boat owners, and visitors;

WHEREAS, the Southwest waterfront community has benefitted extensively from Manny and Alma's charitable giving, including the Cherry Blossom Festival and local school events;

WHEREAS, the Engine Room in the Channel Inn Hotel and Pier Seven Restaurant has held twice weekly open-mic nights, providing the opportunity for local musical artists to gain experience and exposure before public audiences;

WHEREAS, Manny has engendered tremendous loyalty from his employees and the Channel Inn Hotel and Pier Seven Restaurant has always had low staff turnover: For example, Lucille Pringle began her tenure with Manny and Alma at the Embers Restaurant;

ENROLLED ORIGINAL

WHEREAS, Manny and Alma's vision led them to create this one-of-a-kind establishment, keep it open for 42 years, and finally, provide outstanding accommodations to residents of the Southwest community and the city; and

WHEREAS, the community came together on March 29, 2014, to bid farewell to the 42-year-old Channel Inn Hotel and Pier Seven Restaurant.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Manny and Alma Fernandez Recognition Resolution of 2014".

Sec. 2. The Council of the District of Columbia celebrates and honors the legacy created by Manny and Alma as illustrious owners and managers of the Channel Inn Hotel and Restaurant located 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.

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 is introduced.

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.

= =

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

BILL

B20-774 Captive Insurance Company Amendment Act of 2014

Intro. 04-14-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

---

PROPOSED RESOLUTIONS

PR20-735 Board of Barber and Cosmetology Norah Critzos Confirmation Resolution of 2014

Intro. 04-14-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

---

PR20-736 Board of Barber and Cosmetology Olivia French Confirmation Resolution of 2014

Intro. 04-14-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

---

PR20-737 Board of Barber and Cosmetology Tammy Musselwhite Confirmation Resolution of 2014

Intro. 04-14-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

---

PROPOSED RESOLUTIONS CON'T

PR20-738 Board of Barber and Cosmetology Eric Doyle Confirmation Resolution of 2014

Intro. 04-14-14 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business, Consumer, and Regulatory Affairs

---

Council of the District of Columbia

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY
NOTICE OF PUBLIC ROUNDTABLE
1350 Pennsylvania Avenue, NW, Washington, D.C. 20004

REVISED

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

ANNOUNCES A PUBLIC ROUNDTABLE ON

PR 20-660, THE "CHIEF MEDICAL EXAMINER ROGER MITCHELL CONFIRMATION RESOLUTION OF 2014"

Monday, May 12, 2014
11 a.m. (Previously 1 p.m.)

Room 123 (Previously 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 roundtable on Monday, May 12, 2014, beginning at 11 a.m. in Room 123 of the John A. Wilson Building. **Please note this notice has been revised to reflect a change in date and room number.**

The purpose of this roundtable is to receive public comment on the Mayor's nomination of Roger Mitchell to serve as the Chief Medical Examiner of the Office of the Chief Medical Examiner.

The Committee invites the public to testify. Those who wish to testify should contact Nicole Goines at 724-7808 or ngoines@dccouncil.us, and furnish their name, address, telephone number, and organizational affiliation, if any, by 5 p.m. on Thursday, May 8, 2014. Testimony may be limited to 3 minutes for individuals and 5 minutes for those representing organizations or groups. Witnesses should bring 15 copies of their testimony. Those unable to testify at the public hearing are encouraged to submit written statements for the official record. Written statements should be submitted by 5 p.m. on Monday, May 19, 2014 to Ms. Goines, Committee on the Judiciary and Public Safety, Room 109, 1350 Pennsylvania Ave., NW, Washington, D.C., 20004, or via email at ngoines@dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Request

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. 20-174: Request to reprogram $750,000 of Local funds budget authority from the Department of General Services (DGS) to the D.C. Department of Human Resources (DCHR) was filed in the Office of the Secretary on April 28, 2014. This reprogramming ensures that DCHR will be able to provide contractual support for the Classification and Compensation Reform project.

RECEIVED: 14 day review begins April 29, 2014

Reprog. 20-175: Request to reprogram $861,049 of Fiscal Year 2014 Special Purpose Revenue funds budget authority within the Department of Insurance, Securities, and Banking (DISB) was filed in the Office of the Secretary on April 28. 2014. This reprogramming ensures that DISB will be able to complete office build-out, meet contractual obligations, and support other programmatic needs.

RECEIVED: 14 day review begins April 29, 2014

Reprog. 20-176: Request to reprogram $620,000 of Fiscal Year 2014 Special Purpose Revenue funds budget authority from the Office of the Chief Technology Officer (OCTO) to the Public Service Commission (PSC) was filed in the Office of the Secretary on April 28, 2014. This reprogramming ensures that PSC will be able to fund the agency's planned relocation and to represent itself before the Federal Energy Regulation Commission when deemed necessary in FY 2014.

RECEIVED: 14 day review begins April 29, 2014

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, MAY 7, 2014
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Ruthanne Miller, Chairperson
Members: Nick Alberti, Donald Brooks, Herman Jones
Mike Silverstein, Hector Rodriguez, James Short

Show Cause Hearing (Status) **9:30 AM**
Case #13-CMP-00405; E & K, LLC, t/a 13th Street Market, 3582 13th Street NW, License #78242, Retailer B, ANC 1A
Sold Go-Cups

Show Cause Hearing (Status) **9:30 AM**
Case #13-CC-00114; E & K, LLC, t/a 13th Street Market, 3582 13th Street NW, License #78242, Retailer B, ANC 1A
Sale to Minor, Failed to Take Steps Necessary to Ascertain Legal Drinking Age, No ABC Manager on Duty

Show Cause Hearing (Status) **9:30 AM**
Case # 14-AUD-00002; DC Four Lessee, LLC, t/a Hotel Helix, 1430 Rhode Island Ave NW, License #79243, Retailer CH, ANC 2F
Failed to Maintain Books and Records, Failed to Qualify as a Restaurant

Show Cause Hearing (Status) **9:30 AM**
Case # 13-AUD-00031(NCBO); Partners at 723 8th Street SE, LLC t/a The Ugly Mug Dining Saloon, 723 8th Street SE, License #71793, Retailer CR, ANC 6B
Failed to Comply With the Terms of its Offer in Compromise dated October 23, 2013

Show Cause Hearing (Status) **9:30 AM**
Case # 13-AUD-00087; Justin's Café, LLC, t/a Justin's Café, 1025 1st Street SE License #83690, Retailer CR, ANC 6D
Failed to Maintain Books and Records, Failed to Qualify as a Restaurant

Show Cause Hearing (Status) **9:30 AM**
Case # 14-AUD-00004; Jaime T. Carrillo, t/a Don Jaime, 3209 Mt. Pleasant Street NW, License #21925, Retailer CR , ANC 1D
Failed to Maintain Books and Records, Failed to Qualify as a Restaurant

Board's Calendar
May 7, 2014

Show Cause Hearing (Status) **9:30 AM**
Case # 12-CMP-00018; Meseret Ali & Yonas Chere, t/a Merkato Ethiopian Restaurant, 1909 9th Street NW, License #89013, Retailer CR, ANC 1B
Operating After Legal Hours

Show Cause Hearing (Status) **9:30 AM**
Case # 13-AUD-00069; Tabard Corporation, t/a Hotel Tabard Inn, 1739 N Street NW, License #1445, Retailer CH, ANC 2B
Failed to File Quarterly Statements (2nd Quarter 2013)

Show Cause Hearing (Status) **9:30 AM**
Case # 13-CMP-00542; Panda Bear, LLC, t/a Hot N Juicy Crawfish, 2651 Connecticut Ave NW, License #86226, Retailer CR, ANC 3C
Failed to File Quarterly Statements (1st Quarter 2013)

Public Hearing* **10:00 AM**
Adams Morgan Moratorium

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

Show Cause Hearing* **1:30 PM**
Case # 12-CMP-00688; Hak, LLC, t/a Midtown, 1219 Connecticut Ave NW License #72087, Retailer CN, ANC 2B
Sale to Minor, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Show Cause Hearing* **2:30 PM**
Case # 13-CMP-00104; Mimi & D, LLC, t/a Vita Restaurant and Lounge/Penthouse Nine, 1318 9th Street NW, License #86037, Retailer CT ANC 2F
Violation of Settlement Agreement

Protest Hearing* **3:30 PM**
Case # 13-PRO-00097; The Propal Group, LLC, t/a Napoleon, 1847 Columbia Road NW, License #75836, Retailer CR, ANC 1C
Renewal Application

***The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Offical Code §2-574(b)(13).**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 2, 2014
Petition Date:	June 16, 2014
Roll Call Hearing Date:	June 30, 2014
Protest Hearing Date:	August 13, 2014
License No.:	ABRA-094922
Licensee:	American City Diner, Inc.
Trade Name:	American City Diner
License Class:	Retailer's Class "D" Restaurant
Address:	5532 Connecticut Avenue, N.W.
Contact:	Paul Pascal: 202-544-2200

WARD 3 ANC 3G SMD 3G06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license on the Roll Call 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. The Protest Hearing Date is scheduled on August 13, 2014 at 4:30 pm.

NATURE OF OPERATION
Inner city diner serving American and diner food, Sidewalk Café Indoor seats 28, Sidewalk Café Outdoor 28–Sidewalk Café Total 56 seats. Total Occupancy Load 99.

HOURS OF OPERATION
Sunday through Thursday: 7am – 2am, Friday and Saturday: 7am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday: 8am – 2am, Friday and Saturday: 8am – 3am

SIDEWALK CAFE HOURS OF OPERATION
Sunday through Thursday: 7am – 2am, Friday and Saturday: 7am – 3am

SIDEWALK CAFE HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday: 8am – 2am, Friday and Saturday: 8am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 2, 2014
Petition Date:	June 16, 2014
Hearing Date:	June 30, 2014
License No.:	ABRA-085903
Licensee:	Big Chair Café, LLC
Trade Name:	Big Chair Coffee & Grill
License Class:	Retailer's Class "C" Restaurant
Address:	2122 Martin Luther King Jr. Avenue SE
Contact Person:	Ayehubizu Yimenu 202-375-1021

WARD 8 ANC 8A SMD 8A06

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

LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO THE NATURE OF OPERATIONS:
A New Entertainment Endorsement no dancing no cover charge and a New Summer Garden with 16 seats.

CURRENT HOURS OF OPERATION
Sunday through Saturday 7 am - 2am

CURRENT HOURS OF SALES/SERVICE AND CONSUMPTION
Sunday through Saturday 12 pm – 2 am

PROPOSED HOURS OF LIVE ENTERTAINMENT, BEGINNING AFTER 6 pm
Sunday through Saturday 7 pm – 2 am

PROPOSED HOURS OF OPERATION FOR THE INSIDE AND THE SUMMER GARDEN
Sunday through Saturday 7 am - 2 am

PROPOSED HOURS OF SALES/SERVICE AND CONSUMPTION INSIDE AND THE SUMMER GARDEN
Sunday through Saturday 12 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 2, 2014
Petition Date:	June 16, 2014
Hearing Date:	June 30, 2014
License No.:	ABRA-086644

Licensee:	Das Ethiopian, Inc.
Trade Name:	Das Ethiopian Restaurant
License Class:	Retailer's Class "C" Restaurant
Address:	1201 28th Street NW
Phone:	Sileshi Alifom 202-333-4710

WARD 2 ANC 2E SMD 2E06

Notice is hereby given that this licensee who has applied for a substantial change to his license under the D.C. Alcoholic Beverage Control Act and that objector's are entitled to be heard before the granting of such on the hearing date at 10:00 am, 4th Floor, 2000 14th Street, NW, Washington, DC, 20009. A petition or request to appear before the Board must be filed on or before the petition date.

LICENSEE REQUESTS THE FOLLOWING SUBSTANTIAL CHANGE TO THE NATURE OF OPERATIONS:
Change of Hours

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/CONSUMPTION
Sunday through Saturday 11 am – 11 pm

PROPOSED HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES/CONSUMPTION
Sunday through Saturday 11 am – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 2, 2014
Petition Date:	June 16, 2014
Hearing Date:	June 30, 2014
Protest Hearing Date:	August 13, 2014

License No.:	ABRA-094995
Licensee:	Solis Incorporated
Trade Name:	El Sol Restaurant
License Class:	Retailer's Class "C" Restaurant
Address:	3911 14TH Street, N.W.
Contact:	Jeff Jackson: 202-251-1566

WARD 4 ANC 4C SMD 4C05

Notice is hereby given that this applicant has applied for a license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license 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. The Protest Hearing Date is scheduled for August 13, 2014 at 4:30pm.

NATURE OF OPERATION
This will be a full service restaurant that will serve American and Mexican food. Total Occupancy Load 31, Seating inside 23, Sidewalk Café seating 8.

HOURS OF OPERATION
Sunday through Thursday: 8am – 2am, Friday and Saturday: 8am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday: 8am – 2am, Friday and Saturday: 8am – 3am

SIDEWALK CAFÉ HOURS OF OPERATION
Sunday through Thursday: 8am – 10pm, Friday and Saturday: 8am – 11pm

SIDEWALK CAFÉ HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Thursday: 8am – 10pm, Friday and Saturday: 8am – 11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 2, 2014
Petition Date:	June 16, 2014
Hearing Date:	June 30, 2014
Protest Hearing Date:	August 13, 2014

License No.:	ABRA-094849
Licensee:	Gallery O, LLC
Trade Name:	Gallery O on H
License Class:	Retailer's Class "C" Multipurpose
Address:	1354-1356 H Street, NE
Contact:	Stephen J. O'Brien (202) 625-7700

WARD 6 ANC 6A SMD 6A06

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license 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. The Protest Hearing Date is scheduled for August 13, 2014 at 4:30pm.

NATURE OF OPERATION

This is a new Retailer's Class "C" Multipurpose license with an Entertainment Endorsement and Summer Garden.

HOURS OF OPERATION/ HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday 8am to 11:00pm, Friday and Saturday 8:00am to 12:00am

HOURS OF OPERATION SUMMER GARDEN/ HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/HOURS OF LIVE ENTERTAINMENT

Sunday through Thursday 8am to 11:00pm, Friday and Saturday 8:00am to 12:00am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 2, 2014
Petition Date: June 16, 2014
Hearing Date: June 30, 2014
Protest Date: August 13, 2014

License No.: ABRA-095041
Licensee: Grand Cata, LLC
Trade Name: Grand Cata
License Class: Retailer's Class "A"
Address: 440 K Street, NW
Contact: Emanuel Mpras, Esq. 703-642-9042

WARD 6 ANC 6E SMD 6E05

Notice is hereby given that this applicant has applied for a new 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. The Protest Hearing Date is scheduled for 4:30 pm on August 13, 2014.

NATURE OF OPERATION
Liquor Store with a tasting permit

HOURS OF OPERATION
Sunday through Saturday 7 am – 12 am

HOURS OF ALCOHOLIC BEVERAGES SALES/SERVICE/CONSUMPTION
Sunday through Saturday 7 am – 12 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 2, 2014
Petition Date: June 16, 2014
Hearing Date: June 30, 2014
Protest Date: August 13, 2014

License No.: ABRA-094826
Licensee: La Villa Restaurant INC
Trade Name: La Villa Cafe
License Class: Retail Class "C" Restaurant
Address: 6115 Georgia Avenue, N.W.
Contact: Juan Ramon Amaya 202 957-3652

WARD 4 ANC 4B SMD 4B04

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license 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. The Protest Hearing Date is scheduled on August 13, 2014 at 4:30pm.

NATURE OF OPERATION
New Restaurant. Latin American food. Entertainment with karaoke, DJ and occasional bands, dance floor will be in the back. (150 square feet). Occupancy load is 40.

HOURS OF OPERATION
Sunday through Thursday 10 am – 2 am, Friday and Saturday 10 am – 3 am

HOURS OF SALES/SERVICE/CONSUMPTION
Sunday through Thursday 10 am – 2 am, Friday and Saturday 10 am – 3 am

HOURS OF ENTERTAINMENT
Sunday through Thursday 6 pm – 2 am, Friday and Saturday 6 pm – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

****Correction**** **NOTICE OF PUBLIC HEARING**

Posting Date:	April 25, 2014
Petition Date:	June 9, 2014
Hearing Date:	June 23, 2014
Protest Hearing Date:	August 6, 2014

License No.:	ABRA-094766
Licensee:	Rudrakalash, LLC
Trade Name:	Masala Art
License Class:	Retailer's Class "C" Restaurant **
Address:	1101 4th Street, SW #120
Contact:	Atul Bhola (301)-503-6404

WARD 6 ANC 6D SMD 6D01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license 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. The Protest Hearing Date is scheduled for August 6, 2014 at 1:30 pm.

NATURE OF OPERATION

A new fine dining Indian Restaurant with a full bar service to patrons dining in the restaurant. Eating and drinking at the bar and lounge area. No dancing or entertainment. Total # of seats is 133 and the occupancy load is 150.

HOURS OF OPERATION/SIDEWALK CAFÉ/ HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION/SIDEWALK CAFE

Sunday 10 am - 2 am
Monday through Thursday 11 am – 2 am
Friday through Saturday 10 am – 3 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date:	May 2, 2014
Petition Date:	June 16, 2014
Hearing Date:	June 30, 2014
Protest Hearing Date:	August 13, 2014

License No.:	ABRA-095033
Licensee:	Mythology, LLC
Trade Name:	Mythology & Love
License Class:	Retailer's Class "C" Tavern
Address:	816 H Street, NE
Contact:	Edward S. Grandis 202-234-8950

WARD 6 ANC 6A SMD 6A01

Notice is hereby given that this applicant has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such license 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. The Protest Hearing Date is scheduled for August 13, 2014 at 4:30 pm.

NATURE OF OPERATION

This is new Retail Class "C" Tavern. The establishment is a modern white table cloth chop house on the first floor providing steaks, seafood and vegetarian options with a significant dessert menu. There will be two kitchens. One on the first floor, and one on the second floor to execute the lounge menu. Menus will be offered up to an hour before closing. Lounge operations are on the 2nd, 3rd, and 4th floors. Third floor will include collapsible doors that open to a summer garden with the back of the garden enclosed by a two story wall. Dance floor will be 15 feet by10 feet and located on the H Street side of the 2nd floor. The number of seats is 150 and the total occupancy load is 160. The rooftop Summer Garden has split-level seating with entertainment for 32 seats; 70 person load.

HOURS OF OPERATION/HOURS OF ALCOHOLIC BEVERAGE SALES/INSIDE AND THE SUMMER GARDEN

Sunday through Thursday 11 am -2 am Friday and Saturday 11 pm –3 am

HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6 PM INSIDE

Sunday through Thursday 6 pm – 2 am, Saturday 6 pm – 3 am

HOURS OF LIVE ENTERTAINMENT OCCURING OR CONTINUING AFTER 6 PM ON THE SUMMER GARDEN

Sunday through Saturday 6 pm – 2 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 2, 2014
Petition Date: June 16, 2014
Hearing Date: June 30, 2014

License No.: ABRA-081343
Licensee: PTK INCORPORATED
Trade Name: Night "N" Day 24 Hour Convenience Store
License Class: Retail Class "B"
Address: 5026 Benning Road, SE
Contact: Bernard C. Dietz (202) 548-8000

WARD 7 ANC 7E SMD 7E01

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.

Licensee requests the following substantial change to its nature of operation:

To change class from Retailer Class "B" to Retailer Class "A".

HOURS OF OPERATION
Sunday through Saturday 24 hours

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 9am to 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 2, 2014
Petition Date: June 16, 2014
Hearing Date: June 30, 2014

License No.: ABRA-060131
Licensee: Restaurant Enterprises, Inc.
Trade Name: Smith Point
License Class: Retail Class "CR"
Address: 1338 Wisconsin Avenue, NW
Contact: Catherine Hyeon 202-965-4066

WARD 2 ANC 2E SMD 2E03

Notice is hereby given that this licensee has applied for a substantial change to his 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.

Licensee requests the following substantial change to its nature of operation:

Request a Class Change from Class CR license to Class CT license

HOURS OF OPERATION
Sunday through Thursday 8 am – 1:30 am
Friday through Saturday 8 am – 2:30 am

HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday 11 am – 1:30 am
Monday through Wednesday 5 pm- 1:30 am
Thursday- Saturday 11 am – 2:30 am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Posting Date: May 2, 2014
Petition Date: June 16, 2014
Hearing Date: June 30, 2014

License No.: ABRA-093203
Licensee: The District Fishwife
Trade Name: The District Fishwife
License Class: Retail Class "D" Tavern
Address: 1309 5th Street, NE
Contact: Fiona Lewis (202) 543-2592

WARD 5 ANC 5D SMD 5D01

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.

Licensee requests the following substantial change to its nature of operation:

To change premises hours of operation and summer garden hours of operation.

HOURS OF OPERATION/ HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION
Sunday through Saturday 8am to 12am

HOURS OF OPERATION/ HOURS OF ALCOHOLIC BEVERAGE SALES/SERVICE/CONSUMPTION SUMMER GARDEN
Sunday through Saturday 8am to 12am

DISTRICT OF COLUMBIA
DEPARTMENT OF INSURANCE, SECURITIES AND BANKING

NOTICE OF PUBLIC HEARING - REVISED

Surplus and Community Health Reinvestment Review and Determination for Group Hospital and Medical Services, Inc., a Subsidiary of CareFirst, Inc.

June 25, 2014
9:00 a.m.
Hilton Garden Inn/U.S. Capitol
Astor Conference Room
1225 First Street, NE
Washington, D.C. 20002

Pursuant to section 7 of the Hospital and Medical Services Corporation Regulatory Act of 1996, effective April 9, 1997 (D.C. Law 11-245; D.C. Official Code § 31- 3506), as amended by the Medical Insurance Empowerment Amendment Act of 2008, effective March 25, 2009 (D.C. Law 17-369; D.C. Official Code §§ 31-3501 *et seq.*) (collectively the "Act"), the Commissioner of the Department of Insurance, Securities and Banking ("Department") hereby gives notice of his intent to conduct a public hearing to review the surplus and community health reinvestment of Group Hospitalization and Medical Services, Inc. ("GHMSI"), a subsidiary of CareFirst, Inc. As set forth in the Act, the public hearing is being conducted to determine: (1) whether the portion of the company's surplus attributable to the District is unreasonably large; and (2) whether the company has engaged in community health reinvestment to the maximum extent feasible consistent with financial soundness and efficiency.

This Notice of Public Hearing is being reissued to inform the public of the new hearing date and location. The rescheduled date supersedes the dates previously published in the *District of Columbia Register* on January 17, 2014 (61 DCR 384) and March 14, 2014 (61 DCR 2093). The new hearing date will be Wednesday, June 25, 2014, at 9:00 a.m., at the Hilton Garden Inn, Astor Conference Room, 1225 First Street, N.E., Washington, D.C. 20002.

The public hearing will be conducted in accordance with the Procedures for the Determination of Excess Surplus, 26A DCMR § 4601 *et seq.*, and the Department's Rules of Practice and Procedure for Hearings, 26A DCMR § 3800.1 *et seq*. Information concerning the review of GHMSI's surplus, briefing schedule, applicable rules, and further instructions to the public will be posted on the Department's website at www.disb.dc.gov.

All inquiries, correspondence, and informational filings should be sent to the attention of the Adam Levi, Assistant Attorney General: District of Columbia Department of Insurance, Securities and Banking, 810 First Street, NE, Suite 701, Washington, DC 20002. Persons who wish to testify at the public hearing should contact the Adam Levi, Assistant Attorney General, at the address above or by email at adam.levi@dc.gov. The record for the public hearing will remain open for seven (7) business days following the hearing for the submission of rebuttal or other written statements.

If a party or witness is deaf, has a hearing impediment, or otherwise cannot readily understand or communicate in English, the party or witness may apply to the Department for the appointment of a qualified interpreter. In addition, if any party or witness requires any other special accommodations, please contact the Hearing Officer at least ten (10) business days prior to the hearing.

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JUNE 24, 2014
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.

TIME: 9:30 A.M.

A.M.

WARD THREE

18779 ANC-3C **Application of Christine Trankiem,** pursuant to 11 DCMR § 3103.2, for variances from the lot occupancy (section 403), rear yard (section 404) and nonconforming structure (section 2001.3) requirements to allow a rear deck addition to an existing one-family row dwelling in the R-4 District at premises 2761 Woodley Place, N.W. (Square 2206, Lot 121).

WARD THREE

18784 ANC-3B **Application of Observatory Land Trust**, pursuant to 11 DCMR §§ 3104.1 and 3103.2, for a variance from the lot occupancy requirements under section 403, and a special exception under section 353, to construct a new six (6) unit apartment house in the R-5-A District at premises 3915 Fulton Street, N.W. (Square 1806, Lot 804).

WARD SIX

18786 ANC-6E **Application of Fenton 302/304 M St LLC,** pursuant to 11 DCMR § 3103.2, for variances from the floor area ratio (section 402), lot occupancy (section 403), rear yard (section 404) and off-street parking (subsection 2101.1) to construct a new one-family dwelling in the DD/R-5-B District at premises 304 M Street, N.W. (Square 524, Lot 19).

WARD FIVE

18785 ANC-5D **Application of Ditto Residential LLC,** pursuant to 11 DCMR § 3103.2, for a variance from the off-street parking requirements under subsection 2101.1, to allow the construction of a new four story plus cellar 45 unit residential building in the C-2-A District at premises 1326 Florida Avenue, N.E. (Square 4068, Lot 835).

WARD FIVE

18787
ANC-5E

Application of 143 Rear W Street LLC, pursuant to 11 DCMR § 3103.2, pursuant to for variances from subsection 2507.1, which permits a one-family dwelling as the only type of dwelling on an alley lot, and subsection 2507.2, which does not allow construction of a dwelling on an alley lot unless the alley lot abuts an alley 30 feet or more in width and has access to a street through an alley lot not less than 30 feet in width, to allow the construction of four flats on alley lots in the R-4 District at 143 Rear W Street, N.W. (Square 3121, Lots 73 and 74).

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, VICE CHAIRPERSON MARNIQUE HEATH, 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

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
TUESDAY, JULY 8, 2014
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.

TIME: 9:30 A.M.

A.M.

WARD THREE

18789 ANC-3E **Application of Richard Honig,** pursuant to 11 DCMR § 3104.1, for a special exception for a rear screened porch addition to an existing one-family detached dwelling under section 223, not meeting the rear yard (section 404) requirements in the R-1-B District at premises 3918 Jenifer Street, N.W. (Square 1753, Lot 16).

WARD THREE

18788 ANC-3E **Application of MEDC, LLC d/b/a Massage Envy Spas,** pursuant to 11 DCMR § 3104.1, for a special exception for a massage establishment under section 731, in the C-2-A District at premises 4620 Wisconsin Avenue, N.W., Suite B (Square 1732, Lot 45).

WARD ONE

18790 ANC-1B **Application of Jefferson-11th Street LLC**, pursuant to 11 DCMR § 3103.2, for a variance from the lot area requirements under section 401, and a variance from the off-street parking requirements under subsection 2101.1, to add eleven (11) apartment units to the basement level of an existing 24 unit apartment building in the R-4 District at premises 2724 11th Street, N.W. (Square 2859, Lot 89).

WARD FOUR

18791 ANC-4B **Application of Community Connections, Inc.,** pursuant to 11 DCMR § 3104.1, for a special exception for a Community Residence Facility (10 Residents and 3 Staff) under section 218, in the R-1-B District at premises 5422 Blair Road, N.E. (Square 3703, Lot 95).

WARD FOUR

18792 ANC-4C **Application of The Preparatory School of D.C.,** pursuant to 11 DCMR § 3104.1, for a special exception for a private school (120 Students and 10 Staff) under section 206, in the R-1-B District at premises 4501 16th Street, N.W. (Square 2702, Lot 805).

WARD THREE

THIS APPLICATION WAS POSTPONED FROM THE FEBRUARY 11, 2014, PUBLIC HEARING SESSION:

18708 ANC-3D **Application of Amir Motlagh**, pursuant to 11 DCMR § 3104.1, for a special exception to allow the construction of a one-family detached dwelling on a theoretical lot (Last approved under BZA Order No. 15882) under section 2516, in the R-1-A District at premises 4509 Foxhall Crescents Drive, N.W. (Square 1397, Lot 960).

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, VICE CHAIRPERSON MARNIQUE HEATH, 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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, June 23, 2014 @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 06-11L

THIS CASE IS OF INTEREST TO ANC 2A

Application of the George Washington University, pursuant to 11 DCMR § 3104.1, for amendment of the approved 2007 Foggy Bottom Campus Plan and further processing approval to permit university use of leased space on two floors in a building proposed to be constructed by Hillel at the George Washington University at 2300 H Street N.W.

PLEASE NOTE:

- Failure of the Applicant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Commission.

- Failure of the Applicant to be adequately prepared to present the application to the Commission, and address the required standards of proof for the application, may subject the application to postponement, dismissal, or denial.

The public hearing in this case will be conducted in accordance with the provisions of Chapter 31 of the District of Columbia Municipal Regulations, Title 11, Zoning. Pursuant to § 3117.4 of the Regulations, the Commission will impose time limits on the testimony of all individuals.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3106.2.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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 Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: http://dcoz.dc.gov/services/app.shtm**. This form may also be obtained from the Office of Zoning at the address stated below.

If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

1.	Applicant and parties in support	60 minutes collectively
2.	Parties in opposition	60 minutes collectively
3.	Organizations	5 minutes each
4.	Individuals	3 minutes each

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. Written statements may be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL -------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: **Monday, June 16, 2014 @ 6:30 p.m.**
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-S
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

Case No. 14-02 (The District of Columbia, the District of Columbia Housing Authority, A&R Development Corporation, and Preservation of Affordable Housing, Inc. - First Stage PUD & Related Map Amendment @ Squares 5862, 5865, 5866, and 5867)

THIS CASE IS OF INTEREST TO ANC 8C

On February 20, 2014, the Office of Zoning received an application from the District of Columbia, the District of Columbia Housing Authority ("DCHA"), A&R Development Corporation, and Preservation of Affordable Housing, Inc. (collectively, the "Applicant"). The Applicant is requesting approval of a first-stage planned unit development and related zoning map amendment from the R-5-A Zone District to the R-5-B and C-2-A Zone Districts for Square 5862, Lots 137-143; Square 5865, Lots 243, 249, 254, 259, 260-280, 893, 963-978, and 992; Square 5866, Lots 130, 133-136, 141-144, 147-150, 152, 831-835; and Square 5867, Lots 143, 172-174, 890-891, and 898 (the "Subject Property").

The Office of Planning provided a report on March 21, 2014. At its public meeting on March 31, 2014, the Zoning Commission voted to set the application down for a public hearing. The Applicant provided its prehearing statement on April 10, 2014.

The Subject Property has a total land area of approximately 1,106,850 square feet (25.4 acres) and consists of Barry Farm and Wade Apartments which are owned and managed by DCHA, and vacant properties owned by the District. The proposed redevelopment includes the following: (a) approximately 1,540,000 to 1,981,000 square feet of gross floor area devoted to new housing units; (b) approximately 1,324 to 1,879 residential units, with a range of housing options, including public housing units; (c) a variety of housing types, including multi-family units, row dwellings, and flats; (d) retail space, educational/office uses, and community service uses; (e) new public infrastructure, including multiple new public roads; underground utility upgrades throughout the Subject Property; and (f) approximately 86,087 square feet of open space.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, 11 DCMR § 3022.

How to participate as a witness.

Interested persons or representatives of organizations may be heard at the public hearing. The Commission also requests that all witnesses prepare their testimony in writing, submit the written

testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The applicable time limits for oral testimony are described below. Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of 11 DCMR § 3106.2.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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 Commission, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application, a copy of which may be downloaded from the Office of Zoning's website at: http://dcoz.dc.gov/services/app.shtm**. This form may also be obtained from the Office of Zoning at the address stated below.

If an affected Advisory Neighborhood Commission (ANC), pursuant to 11 DCMR 3012.5, intends to participate at the hearing, the ANC shall also submit the information cited in § 3012.5 (a) through (i). The written report of the ANC shall be filed no later than seven (7) days before the date of the hearing.

All individuals, organizations, or associations wishing to testify in this case are encouraged to inform the Office of Zoning their intent to testify prior to the hearing date. This can be done by mail sent to the address stated below, e-mail (donna.hanousek@dc.gov), or by calling (202) 727-0789.

The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

1.	Applicant and parties in support	60 minutes collectively
2.	Parties in opposition	60 minutes collectively
3.	Organizations	5 minutes each
4.	Individuals	3 minutes each

Pursuant to § 3020.3, the Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. Written statements may be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, MARCIE I. COHEN, ROBERT E. MILLER, PETER G. MAY, AND MICHAEL G. TURNBULL -------- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Behavioral Health ("the Department"), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the "Fiscal Year 2014 Budget Support Act of 2013", effective December 24, 2013 (D.C. Law 20-0061; 60 DCR 12472 (September 6, 2013)), hereby gives notice of his intent to adopt a new Chapter 35 entitled "Child Choice Provider Certification Standards" in Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

In 2009, the Department of Mental Health (now the Department of Behavioral Health) contracted with five (5) community providers of Mental Health Rehabilitation Services to become designated as Child Choice Providers (CCP) in the child and youth system of care. A Child Choice Provider agency is a Mental Health Rehabilitation Service (MHRS) Core Service Agency (CSA) with demonstrated ability to provide quality, evidence-based, innovative services and interventions to meet the most complex and changing needs of children, youth, and their families in the District, particularly those who have histories of abuse or neglect. Currently these Child Choice Providers have a contract with the Department for the provision of such services in addition to MHRS services. In order to ensure sufficient agency resources for this particular population, and to have a standard certification process for all Choice providers, the Department is publishing rules that all MHRS providers would have to comply with in order to be a Child Choice Provider. Child Choice Providers currently under contract with the Department for the provision of these services will also have to become certified as a Child Choice Providers in accordance with this Chapter 35 in order to continue to provide Child Choice Providers services after their contract expires.

The proposed rulemaking was published on February 14, 2014 in the *D.C. Register* at 60 DCR 001301. No comments have been received on the proposed rules, and no substantive changes were made to the proposed rules as originally published. The Director took final action on the rule on March 20, 2014. This rule will become effective on the date of publication of this notice in the *D.C. Register*.

Title 22-A (Mental Health) of the District of Columbia Municipal Regulations is amended by adding a new Chapter 35 as follows:

CHAPTER 35 CHILD CHOICE PROVIDER CERTIFICATION STANDARDS

3500 GENERAL PROVISIONS

3500.1 These rules establish the requirements and process for certification of a Core Services Agency (CSA) as a Child Choice Provider (CCP) in the District of Columbia.

3500.2 Each CCP must demonstrate an understanding of and experience in family-centered practice, which includes ensuring communication when appropriate with natural parents or legal guardians as well as foster parents and kinship caregivers. Family-centered practice will be demonstrated through family engagement and involvement in all levels of the treatment-planning process, as well as family voice and choice in the treatment and services their children receive. Service delivery is family-driven.

3501 ELIGIBLE CONSUMERS

3501.1 Eligible consumers of CCP services include the following:

(a) Children and youth consumers determined to need MHRS services; and

(b) The families of eligible children and youth.

3501.2 Priority for mental health services by a CCP will be given to children and youth who have neglect or juvenile cases within the D.C. Superior Court system (court-involved children and youth) or are also receiving services from the DC Child and Family Services Agency (CFSA).

3502 CCP PROVIDER QUALIFICATIONS

3502.1 In order to be eligible for CCP certification, a provider shall meet all of the following standards:

(a) Be an active Department of Behavioral Health (DBH)-certified CSA in accordance with Chapter 34 of this title;

(b) Be certified to provide at least one level of MHRS - Community-Based Intervention (CBI) services;

(c) Have at least three (3) years' experience providing mental health services to a minimum of 100 individual children in the DC metropolitan area;

(d) Have demonstrated an acceptable level of quality of care as a CSA through compliance with at least three of the following standards:

(1) Achieve a minimum standard of at least 70% overall Community Service Review (CSR) System Performance score in the most recent CSR prior to application, and have a written goal and supporting work plan to reach and maintain an 80% system performance score, if not already achieved;

(2) Achieve a minimum quality score of 80% on the most recent DBH MHRS Core Service Agency Provider Scorecard prior to application;

(3) Demonstrate an average of 80% compliance administration rate for the quarter prior to application of the utilization of the DBH approved standardized assessment instrument for enrolled child/youth consumers and include a plan on how the agency shall maintain 80% compliance;

(4) Demonstrate that within the six (6) months prior to the application, 70% of enrolled consumers discharged from an acute care facility receive a post-discharge appointment within seven days, and 80% of consumers discharged from an acute care facility receive a post-discharge appointment within 30 days;

(5) Demonstrate that within the six (6) months prior to the application, 80% of Diagnostic and Assessment reports for all children are completed within 30 days of the initial interview.

3502.2.1 Within the first year of certification, a CCP must be:

(a) Approved by DBH to provide at least one evidence-based practice described in Subsection 3504.1; and

(a) Certified as a Free Standing Mental Health Clinic (FSMHC).

3502.3 The CCP shall notify DBH immediately of any changes in its operation that affect the CCP's continued compliance with these certification standards, including changes in ownership or control, changes in service, and changes in its affiliation and referral arrangements.

3502.4 The Director may revoke certification if the CCP fails to comply with any certification standard under Subsection 3502.1, or is no longer qualified to provide an evidenced-based practice listed in Subsection 3504.1.

3502.5 Certification shall be considered terminated and invalid if the CCP fails to apply for renewal of CCP certification 90 days prior to the expiration date of the current CCP certification, voluntarily relinquishes CCP certification, goes out of business, or loses its certification as a CSA.

3502.6 If a CCP loses certification as a CCP, its status as CSA will not be affected as long as the CSA maintains compliance with the certification requirements for CSAs as described in Chapter 34 of this title.

3503 CCP CERTIFICATION PROCESS

3503.1 Each applicant seeking certification as a CCP shall submit a CCP certification application to the DBH in the format established by the DBH Office of Accountability. The completed application shall include:

(a) Proof of current certification as a CSA;

(b) Proof of meeting certification standards listed in Section 3502 of this chapter; and

(c) Other information as requested by DBH.

3503.2 The certification process for organizations seeking to be certified as CCPs will be conducted in accordance with Section 3401 of Chapter 34 of this title.

3503.3 The Director may restrict the number of CCP certification applications to be accepted for consideration based upon the needs of the public mental health system.

3503.4 An applicant for CCP certification that fails to comply with the certification standards shall receive a corrective measures plan (CMP) from DBH and shall submit a written corrective action plan (CAP) in accordance with Section 3401 of Chapter 34 of this title. If a CMP is issued, the procedures of Section 3401 of Chapter 34 of this title shall be followed to bring the CCP into compliance and continue the certification process. The Director may deny certification if the applicant fails to satisfy the CMP or complete the certification requirements.

3503.5 A CCP shall be certified for a period of two (2) calendar years from the date that the certification is issued, subject to the CCP's continuous compliance with these certification standards. Certification shall remain in effect until it expires or is revoked. Certification shall specify the effective date of the certification, and the types of services the CCP is certified to provide.

3503.6 Certification is not transferable to any other organization.

3504 CCP EVIDENCE-BASED PRACTICES TO BE PROVIDED AS CLINICAL INTERVENTION SERVICES

3504.1 Specific Evidence-Based Practices (EBPs) to be provided by CCPs shall include one (1) or more of the following:

(a) Multi-Systemic Therapy (MST) and Multi-Systemic Therapy for Youth with Problem Sexual Behavior (MST-PSB);

(b) Functional Family Therapy (FFT);

(c) Child-Parent Psychotherapy for Family Violence (CPP-FV);

(d) Trauma-Focused Cognitive Behavioral (TF-CBT);

(e) Transition to Independence (TIP); and

(f) Trauma Systems Therapy (TST)

3505 CHILD CHOICE PROVIDER RESPONSIBILITIES

3505.1 Each CCP must maintain the required staffing and practices to satisfy the evidence-based practice standards for the respective EBP(s) that they practice. Adherence to prescribed staffing requirements and nationally established fidelity standards to each respective model service delivery is a condition of recertification. Failure to maintain the standards required for the EBPs identified by the CCP as a provided service may result in a CAP or decertification.

3505.2 Each CCP shall conduct ongoing assessments as follows:

(a) Each enrolled child and youth must receive a Diagnostic/Assessment in accordance with the requirements of Section 3415 of Chapter 34 of this title within seven (7) business days of enrollment to a new provider;

(b) The written report from the Diagnostic/Assessment shall be completed within ten (10) business days from the date of the diagnostic interview;

(c) The Diagnostic/Assessment must include a completed DBH approved standardized assessment instrument for each child consumer. The DBH approved standardized assessment instrument shall be administered in accordance with DBH policy; and

(d) CCPs shall ensure that all enrolled children and youth and their families receive collaborative team-based planning process for service delivery in accordance with DBH policy on teaming.

3505.3 The CCP shall adhere to the DBH policy on continuity of care practice guidelines for children and youth.

3505.4 For court involved children and youth, each CCP shall participate in the teaming process established by the court-identified lead agency for the child.

(a) The teaming process may occur at the point of placement, at placement disruptions, or at regular intervals in the process of serving the family, and whenever there is a concern that the family's or the child's needs are not being met.

(b) CCP clinicians shall participate in all team meetings of children on their caseloads or with whom they have existing clinical relationships.

3505.5 A CCP shall ensure that the as a child or youth's needs change, the child or youth's individual plans of care are tracked, revised and adjusted as needed to ensure needs are addressed appropriately.

3506 REVOCATION OF CERTIFICATION

3506.1 If Certification is revoked, DBH will issue a notice of revocation, giving the CCP provider the effective date of the revocation, the reasons for the revocation, and explaining the right to an administrative review under this subsection.

3506.2 If Certification is revoked, the CCP provider may request an administrative review from DBH within fifteen (15) business days of the date on the notice of revocation.

3506.3 Each request for an administrative review shall contain a concise statement of the reason why the CCP provider should not have the certification revoked, with supporting documentation, if available.

3506.4 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the CCP provider's request.

3506.5 The Director shall issue a written decision which sets forth his or her evaluation and resolution of the request. If a CCP provider does not agree with the Director's decision, the CCP provider may request a hearing under the D.C. Administrative Procedure Act. This hearing shall be limited to the issues raised in the administrative review request.

3599 DEFINITIONS

"Child-Parent Psychotherapy for Family Violence or "CPP-FV" – a relationship-based treatment intervention for young children with a history of trauma exposure or maltreatment, and their caregivers.

"Child Choice Provider" or "CCP" – a Mental Health Rehabilitation Service (MHRS) Core Service Agency (CSA) with a demonstrated ability to provide quality, evidence-based, innovative services and interventions to meet the most complex and changing needs of children, youth, and their families in the District, particularly those who have histories of abuse or neglect.

"Core Services Agency" or "CSA" - a DBH-certified community-based MHRS provider that has entered into a Human Care Agreement with DBH to provide specified MHRS. A CSA shall provide at least one core service directly and may provide up to three core services via contract with a sub-provider or subcontractor. A CSA may provide specialty services directly if certified by DBH as a specialty provider. However, a CSA shall also offer specialty services via an affiliation agreement with all specialty providers.

"Evidence-Based Practice" or "EBP" - preferential use of mental and behavioral health interventions for which systematic empirical research has provided evidence of statistically significant effectiveness as treatments for specific problems.

"**Family"** – consists of two or more people, one of whom is the householder, related by birth, marriage, or adoption and residing in the same housing unit. A family consists of all people who occupy a housing unit regardless of relationship. A family may consist of a person living alone or multiple unrelated individuals or families living together.

"Family Team" - family members and their community supports that come together to create, implement a plan with the child/youth and family. The plan builds on strength of the child/youth and family and addresses their needs, desires, and dreams.

"Functional Family Therapy" or "FFT" – an outcome-driven prevention/intervention program integrating clinical theory, home engagement, and sustaining strategies for at-risk youth ages 11-18 who have presented issues with delinquency, violence, substance abuse, conduct disorder, oppositional defiant disorder, or disruptive behavior disorder.

"Multi-Systemic Therapy or "MST" and "Multi-Systemic Therapy for Youth with Problem Sexual Behavior" or "MST-PSB" - an intensive family- and community-based treatment program that focuses on the entire world of chronic and violent juvenile offenders — their homes and families, schools and teachers, neighbourhoods and friends. MST-PSB is a clinical adaptation of Multi-Systemic Therapy (MST) that is specifically targeted to adolescents who have committed sexual offenses and demonstrated other problem behaviors. The primary objectives of MST-PSB are to decrease problem sexual and other antisocial behaviors and out-of-home placements.

"Teaming" - A process by which a group of individuals, who the family believes can help them, along with individuals who represent agencies which provide services to the family, form a working team that meets, develops

and implements a plan of care that will assist the child and family to achieve their vision of the future.

"Transition to Independence Process" or "TIP" - A community-based evidence supported model which improves outcomes of youth and young adults with emotional and/or behavioral difficulties. The TIP system prepares youth and young adults for their movement into adult roles through an individualized process, engaging them in their own futures planning process, as well as providing developmentally-appropriate services and supports.

"Trauma-Focused Cognitive Behavioral Therapy" or "TF-CBT" - a model of psychotherapy that combines trauma-sensitive interventions with cognitive behavior therapy to address the bio-psychosocial needs of children diagnosed with Post Traumatic Stress Disorder (PTSD) or other problems related to traumatic life experiences. TF-CBT designed to help children, youth, and their parents overcome the negative effects of traumatic life events such as child sexual or physical abuse; traumatic loss of a loved one; domestic, school, or community violence; or exposure to disasters, terrorist attacks, or war traumas.

"Trauma Systems Therapy" or "TST" - a mental health treatment model for children and adolescents who have been exposed to trauma, defined as experiencing, witnessing, or confronting "an event or events that involved actual or threatened death or serious injury, or a threat to the physical integrity of self or others". TST focuses on the child's emotional and behavioral needs as well as the environments where the child lives (home, school, community).

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2012 Repl. & 2013 Supp.)) and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2012 Repl.)), hereby gives notice of the adoption of amendments to Sections 1900 – 1909 of Chapter 19 (Home and Community-based Services Waiver for Individuals with Intellectual and Developmental Disabilities) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These final rules establish general standards for the services provided to participants in the Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and conditions of participation for providers.

The Waiver was approved by the Council of the District of Columbia and renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services for a five-year period beginning November 20th, 2012. These rules amend the previously published final rules by: (1) deleting the term "service delivery plan" and clarifying which documents are required to be maintained under Subsection 1909.2; (2) requiring that the Direct Support Professionals' (DSPs) supervisors shall have two (2) years of experience working with persons with intellectual and developmental disabilities instead of three (3); (3) establishing that persons enrolled in the waiver shall have fair hearing rights and the right to notices issued in accordance with 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55; (4) requiring cost reports to be submitted only by providers of Residential Habilitation, Host Home, Supported Living, Day Habilitation, Individualized Day Supports, Employment Readiness and Supported Employment instead of all Waiver providers; (5) deleting the requirement that on-site audits shall be conducted no less than once every three years and clarifying DHCF's general right to conduct on-site audits and access to information maintained by the Waiver provider; (6) adding language to Subsection 1902.1 to align with the approved Waiver application, to clarify that an eligible person must currently be receiving services from the Department on Disability Services' Developmental Disabilities Administration; and (7) clarifying words and/or phrases to reflect more person-centered language and to simplify interpretation of the rule.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on March 14th, 2014 at 61 DCR 002263. No comments were received and no changes have been made. The Director adopted these rules as final on April 18, 2014 and they shall become effective on the date of publication of this notice in the *D.C. Register*.

Chapter 19, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, of Title 29, PUBLIC WELFARE, of the DCMR, is amended as follows:

Section 1900, GENERAL PROVISIONS, through Section 1909, FAIR HEARINGS are deleted in their entirety and amended to read as follows:

CHAPTER 19 HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

1900 GENERAL PROVISIONS

1900.1 The purpose of this chapter is to establish criteria governing Medicaid eligibility for services under the Home and Community-Based Services (HCBS) Waiver for Individuals with Intellectual and Developmental Disabilities (Waiver) and to establish conditions of participation for providers of Waiver services.

1900.2 The Waiver is authorized pursuant to Section 1915(c) of the Social Security Act, approved by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services (CMS), and shall be effective through November 19, 2017, and any extensions thereof.

1900.3 The Waiver shall be operated by the Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), under the supervision of the Department of Health Care Finance (DHCF).

1900.4 Enrollment of people eligible to receive Waiver services shall not exceed the ceiling established by the approved Waiver application.

1900.5 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 of the District of Columbia Municipal Regulations (DCMR) during the provider's participation in the program.

1901 COVERED SERVICES AND RATES

1901.1 Services available under the Waiver shall include the following:

(a) Art Therapies;

(b) Behavioral Supports;

(c) Day Habilitation;

(d) Dental;

(e) Employment Readiness;

(f) Environmental Accessibilities Adaptations;

(g) Family Training;

(h) Host Home without Transportation;

(i) Individualized Day Supports;

(j) In-Home Supports;

(k) Occupational Therapy;

(l) One-Time Transitional Services;

(m) Personal Care Services;

(n) Personal Emergency Response System (PERS);

(o) Physical Therapy;

(p) Residential Habilitation;

(q) Respite;

(r) Shared Living;

(s) Skilled Nursing;

(t) Small Group Supported Employment;

(u) Speech, Hearing and Language Services;

(v) Supported Employment;

(w) Supported Living;

(x) Supported Living with Transportation;

(y) Vehicle Modifications; and

(z) Wellness Services.

1901.2 Medicaid provider reimbursement for Waiver services shall be made according to the District of Columbia Medicaid fee schedule available online at: https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload.

1902 ELIGIBILITY REQUIREMENTS

1902.1 Any person eligible to receive Waiver services shall be a person who currently receives services from DDS/DDA and meets all of the following requirements:

(a) Has a special income level up to 300% of the SSI federal benefit or be aged and disabled with income up to 100% of the federal poverty level or be medically needy as set forth in 42 C.F.R. §§ 435.320, 435.322, 435.324 and 435.330;

(b) Has an intellectual disability;

(c) Is eighteen (18) years of age or older;

(d) Is a resident of the District of Columbia as defined in D.C. Official Code § 7-1301.03(22);

(e) Has a Level of Care (LOC) determination that the person requires services furnished in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or be a person with related conditions pursuant to the criteria set forth in § 1902.4; and

(f) Meets all other eligibility criteria applicable to Medicaid recipients including citizenship and alienage requirements.

1902.2 Waiver services shall not be furnished to a person who is an inpatient of a hospital, ICF/IID, or nursing facility.

1902.3 Each person enrolled in the Waiver shall be re-certified annually as having met all of the eligibility requirements as set forth in § 1902.1 for continued participation in the Waiver.

1902.4 A person shall meet the LOC determination set forth in § 1902.1(e) if one of the following criteria has been met:

(a) The person's primary disability is an intellectual disability with an intelligence quotient (IQ) of fifty-nine (59) or less;

(b) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has at least one (1) of the following additional conditions:

(1) Mobility deficits;
(2) Sensory deficits;
(3) Chronic health problems;
(4) Behavior problems;
(5) Autism;
(6) Cerebral Palsy;
(7) Epilepsy; or
(8) Spina Bifida.

(c) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has severe functional limitations in at least three (3) of the following major life activities:

(1) Self-care;
(2) Understanding and use of language;
(3) Functional academics;
(4) Social skills;
(5) Mobility;
(6) Self-direction;
(7) Capacity for independent living; or
(8) Health and safety.

(d) The person has an intellectual disability, has severe functional limitations in at least three (3) of the major life activities as set forth in § 1902.4(c)(1) through § 1902.4(c)(8), and has one (1) of the following diagnoses:

(1) Autism;
(2) Cerebral Palsy;
(3) Prader Willi; or
(4) Spina Bifida.

1903 LEVEL OF CARE AND FREEDOM OF CHOICE

1903.1 The DC Level of Need (LON) is a comprehensive assessment tool, initiated by the Service Coordinator and completed with the person, their advocate and other members of their support team who serve as the resource for providing the information that is entered into the LON.

1903.2 The LON is reviewed on an annual basis and/or whenever the person experiences a significant change in their life anytime during the year. The LON documents the person's health, intellectual and developmental health diagnoses, and support needs in all major life activities to determine the LOC determination criteria specified in § 1902.4.

1903.3 The person shall meet the LOC as described under § 1902. The following describes the process for the initial evaluation and re-evaluation:

(a) A Qualified Developmental Disabilities Professional (Q/DDP), employed by DDS, shall perform the initial evaluation and re-evaluation of the LOC and make a LOC determination; and

(b) Re-evaluations of the LOC shall be conducted every twelve (12) months or earlier when indicated.

1903.4 Written documentation of each evaluation and re-evaluation shall be maintained by DDS for a minimum period of three (3) years, except when there is an audit or investigation, in which case, the records shall be maintained by DDS until the review has been completed.

1903.5 Once a person has been determined eligible for services under the Waiver, the person and/or legal representative shall document the choice of institutional or HCBS Waiver on a Freedom of Choice form.

1903.6 The Freedom of Choice form shall consist of:

(a) The choice of institutional services; and

(b) The choice of HCBS.

1903.7 Each person who is not given the choice of HCBS as an alternative to institutional care in an ICF/IID as set forth in § 1902.1(e), shall be entitled to a fair hearing in accordance with 42 C.F.R. Part 431, Subpart E.

1904 PROVIDER QUALIFICATIONS

1904.1 HCBS Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:

(a) A resume and three letters of reference demonstrating that the owner(s)/operators(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities;

(b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;

(c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);

(d) A description of ownership and a list of major owners or stockholders owning or controlling five (5%) percent or more outstanding shares;

(e) A list of Board members and their affiliations;

(f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;

(g) A copy of the most recent audited financial statement of the agency, if available;

(h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;

(i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;

(j) A copy of the certificate of good standing from the DCRA;

(k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at: http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1;

(l) A continuous quality improvement plan;

(m) A copy of professional/business liability insurance of at least one (1) million dollars;

(n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports; and

(o) Any other documentation deemed necessary to support the approval as a provider.

1904.2 Professional service provider applicants who are in private practice as an independent clinician and are not employed by an enrolled HCBS Waiver provider agency or a Home Health Agency, shall complete and submit to DDS the Medicaid provider enrollment application and the following:

(a) Documentation to prove ownership or leasing of a private office, even if services are always furnished in the home of the person receiving services;

(b) A copy of a professional license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided; and

(c) A copy of the insurance policy verifying at least one (1) million dollars in liability insurance.

1904.3 Home Health Agencies shall complete and submit to DDS the Medicaid provider enrollment application and the following documents:

(a) A copy of the Home Health Agency license pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), and implementing rules; and

(b) If skilled nursing is utilized, a copy of the registered nurse or licensed practical nurse license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law

6-99; D.C. Official Code § 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided.

1904.4 In order to provide services under the Waiver and qualify for Medicaid reimbursement, DDS approved HCBS Waiver providers shall meet the following requirements:

(a) Maintain a copy of the approval letter issued by DHCF;

(b) Maintain a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for services under the Waiver;

(c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;

(d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;

(e) Maintain a copy of the most recent Individual Support Plan (ISP) and Plan of Care that has been approved by DDS for each person;

(f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;

(g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy;

(h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: http://dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies/VI.+Administrative+DDA/Language+Access+Policy;

(i) Offer the Hepatitis B vaccine to all employees with potential exposure;

(j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 C.F.R. § 1910.1030;

(k) Ensure compliance with the provider agency's policies and procedures and DDS policies such as, reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at: http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1;

(l) Provide a written staffing schedule for each site where services are provided, if applicable;

(m) Maintain a written staffing plan, if applicable;

(n) Develop and implement a quality assurance system to evaluate the effectiveness of services provided;

(o) Ensure that a certificate of occupancy is obtained, if applicable;

(p) Ensure that a certificate of need is obtained, if applicable;

(q) Obtain approval from DDS for each site where residential, day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;

(r) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;

(s) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner.

(t) Complete the DDA abbreviated readiness process, if applicable; and

(u) Adhere to the specific provider qualifications in each service rule.

1904.5 Each service provider under the Waiver for which transportation is included shall:

(a) Ensure that each vehicle used to transport a person has valid license plates;

(b) Ensure that each vehicle used to transport a person has at least the minimum level of motor vehicle insurance required by law;

(c) Present each vehicle used to transport a person for inspection by a certified inspection station every six (6) months, or as required in the jurisdiction where the vehicle is registered, and provide proof that the vehicle has passed the inspection by submitting a copy of the Certificate of Inspections to DDS upon request;

(d) Ensure that each vehicle used to transport a person is maintained in safe, working order;

(e) Ensure that each vehicle used to transport a person meets the needs of the person;

(f) Ensure that each vehicle used to transport a person has seats fastened to the body of the vehicle;

(g) Ensure that each vehicle used to transport a person has operational seat belts;

(h) Ensure that each vehicle used to transport a person can maintain a temperature conducive to comfort;

(i) Ensure that each vehicle used to transport a person is certified by the Washington Metropolitan Area Transit Commission;

(j) Ensure that each person is properly seated when the vehicle is in operation;

(k) Ensure that each person is transported to and from each appointment in a timely manner;

(l) Ensure that each person is provided with an escort on the vehicle, when needed;

(m) Ensure that each vehicle used to transport a person with mobility needs is adapted to provide safe access and use;

(n) Ensure that each staff/employee/contractor providing services meets the requirements set forth in § 1906 of these rules; and

(o) Ensure that each staff/employee/contractor providing services be certified in Cardiopulmonary Resuscitation (CPR) and First Aid.

1905 PROVIDER ENROLLMENT PROCESS

1905.1 Prospective providers shall send a letter of interest to DDA to enroll as a Medicaid provider of Waiver services.

1905.2 Upon receipt of the letter of interest, prospective providers shall be invited by DDA via email to attend an informational meeting at DDA. Preceding the meeting, providers shall obtain a copy of the Medicaid provider enrollment application at DDS.dc.gov.

1905.3 Upon receipt of the Medicaid provider enrollment application by DDA, prospective providers shall receive an invitation to be interviewed or a denial letter. The denial letter shall be issued by DDA within sixty (60) business days from the time a Medicaid provider enrollment application is received by DDA and shall meet the requirements set forth in § 1905.5.

1905.4 If the Medicaid provider enrollment application is incomplete, DDA shall issue a denial letter, in accordance with § 1905.5, within sixty (60) business days from the time a Medicaid provider enrollment application is received.

1905.5 The denial letter shall include the following:

(a) The basis and reasons for the denial of the prospective provider's Medicaid provider enrollment application;

(b) The prospective provider's right to dispute the denial of the application and to submit written argument and documentary evidence to support its position; and

(c) Specific reference to the particular sections of relevant statutes and/or regulations.

1905.6 The provider interviews shall be conducted by an application review committee at DDA.

1905.7 Pursuant to the committee's recommendation and the overall merit of the application, DDA shall either issue a denial letter to the prospective providers or send the application of the DDA-recommended provider to DHCF for its review within thirty-five (35) business days of the committee's review date. The denial letter shall be issued in accordance with the requirements set forth in § 1905.5.

1905.8 Within thirty (30) business days of DHCF's receipt of DDA's recommendation, DHCF shall issue an approval or denial letter to the prospective providers. The denial letter shall be issued in accordance with the requirements set forth in § 1905.5.

1905.9 If a denial letter was issued by DDA or DHCF, the prospective provider shall be prohibited from submitting an application to enroll as a provider for a period of one year from the date the Medicaid provider enrollment application was received by DDA.

1905.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS, currently known as the Provider Certification Review process; and to all policies and procedures promulgated by DDS that are applicable to providers during the provider's participation in the Waiver program.

1906 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS

1906.1 The basic requirements for all employees and volunteers providing direct services are as follows:

(a) Be at least eighteen (18) years of age;

(b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis and hepatitis B;

(c) Possess a high school diploma or general educational development (GED) certificate;

(d) Possess an active CPR and First Aid certificate and ensure that the CPR certification is renewed annually and that First Aid certification is renewed every three (3) years;

(e) Complete pre-service and in-service training as described in DDS policy;

(f) Have the ability to communicate with the person to whom services are provided;

(g) Be able to read, write, and speak the English language;

(h) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and

(i) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code § 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §44-551 *et seq.*) for the following employees or contract workers:

(1) Individuals who are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;

(2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and

(3) Housekeeping, maintenance, and administrative staff who may foreseeably come in direct contact with Waiver recipients or patients.

1906.2 Volunteers who work under the supervision of an individual licensed pursuant to Chapter 12 of Title 3 of the D.C. Official Code shall be exempt from the unlicensed personnel criminal background check requirement set forth in § 1906.1(i).

1907 INDIVIDUAL SUPPORT PLAN (ISP)

1907.1 The ISP is the plan that identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met.

1907.2 The ISP shall include all Waiver and non-waiver supports and services the person is receiving or shall receive consistent with his or her needs.

1907.3 The ISP shall be developed by the person and his or her support team.

1907.4 At a minimum, the composition of the support team shall include the person being served, his or her substitute decision maker and other individuals directly involved in the person's life as agreed to by the person and the DDS Service Coordinator.

1907.5 The ISP shall be reviewed and updated annually by the support team. The ISP may be updated more frequently if there is a significant change in the person's status or any other significant event in the person's life which affects the type or amount of services and supports needed by the person or if requested by the person.

1907.6 The Plan of Care shall be derived from the ISP and shall describe services to be furnished to the person, the frequency of the services, and the type of provider to furnish the services.

1907.7 The provider shall:

(a) Ensure that the service provided is consistent with the person's ISP and Plan of Care;

(b) Participate in the annual ISP and Plan of Care meeting or Support Team meetings when indicated; and

(c) Develop the documents described under § 1909.2(i), including goals and objectives, within thirty (30) days of the initiation of services, which shall address how the service will be delivered to each person, after notification by DDS that a service has been authorized.

1907.8 DHCF shall not reimburse a provider for services that are not authorized in the ISP, not included in the Plan of Care, furnished prior to the development of the ISP, furnished prior to receiving a service authorization from DDS, or furnished pursuant to an expired ISP.

1907.9 Each provider shall submit to the person's DDS Service Coordinator a quarterly report which summarizes the person's progress made toward achieving the desired goals and outcomes and identification and response to any issue relative to the provision of the service.

1908 REPORTING REQUIREMENTS

1908.1 Each Waiver provider shall submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

1908.2 For purposes of reporting, the first quarter shall begin on the effective date of a person's ISP.

1908.3 Each Waiver provider shall submit assessments, quarterly reports as set forth in § 1909.2(o), documents as described in § 1909.2(i), and physician orders, if applicable, to the DDS Medicaid Waiver unit for the authorization of services.

1908.4 Each Waiver provider shall complete all documents required for authorization of services as set forth in each service rule and shall submit the documents to the DDS Service Coordinator at the ISP meeting. Failure to submit all required documents prior to the effective date of the ISP may result in a delay of the approval of services. The date of the authorization of services shall be the date of receipt of the required documents by the Medicaid Waiver Unit, if the documents are submitted after the effective date of the ISP.

1908.5 Each Waiver provider shall report on a quarterly basis to the person served, his or her family, as applicable, guardian and/or surrogate decision maker and the DDS Service Coordinator about the programming and support provided to fulfill the objectives and outcomes identified in the ISP and Plan of Care, and any revisions to the ISP and Plan of Care, when necessary, to promote continued skill acquisition, no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

1908.6 Each Waiver provider shall report all serious reportable incidents to DDS pursuant to the timelines established under DDA's Incident Management and Enforcement Policy and Procedures, available at: http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1.

1909 RECORDS AND CONFIDENTIALITY OF INFORMATION

1909.1 Each Waiver provider shall allow appropriate personnel of DHCF, DDS and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access to all records during announced and unannounced audits and reviews.

1909.2 Each Waiver provider entity shall maintain the following records, if applicable, for each person receiving services for monitoring and audit reviews:

(a) General information including each person's name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician's name, address and telephone number, and the DDS Service Coordinator's name and telephone number;

(b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person's needs;

(c) A record of all service authorization and prior authorizations for services;

(d) A record of all requests for change in services;

(e) The person's medical records;

(f) A discharge summary;

(g) A written staffing plan;

(h) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;

(i) Documents which contain the following information:

(1) The results of the provider's functional assessment for service delivery;

(2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the ISP and the date and time of the activity, The staff as identified in the staffing plan;

(3) Age-appropriate and measurable goals based on the assessment tool consistent with the duration of time spent at the person's home, provider's facility or the community venue; and

(j) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy, Any records relating to adjudication of claims;

(k) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;

(l) A supervision plan for each staff member who is classified as a Direct Support Professional (DSP), developed and implemented by a provider designated staff member, containing the following information:

(1) The name of the DSP and date of hire;

(2) The DSP's place of employment, including the name of the provider entity or day services provider;

(3) The name of the DSP's supervisor who shall have at least two (2) years' experience working with persons with intellectual and developmental disabilities;

(4) A documentation of performance goals for the DSP;

(5) A description of the DSP's duties and responsibilities;

(6) A comment section for the DSP's feedback;

(7) A statement of affirmation by the DSP's supervisor confirming statements are true and accurate;

(8) The signature, date, and title of the DSP; and

(9) The signature, date, and title of the DSP's supervisor.

(m) Daily progress notes, as set forth in each service rule, containing the following information:

(1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;

(2) The health or behavioral events or change in status that is not typical to the person;

(3) A listing of all community activities attended by the person;

(4) The start time and end time of any services received including the DSP's signature; and

(5) The matters requiring follow-up on the part of the Waiver service provider or DDS.

(n) Reports on a quarterly basis, containing the following information:

(1) An analysis of the goals identified in the ISP and Plan of Care and monthly progress towards reaching the goals;

(2) The service interventions provided and the effectiveness of those interventions;

(3) A summary analysis of all habilitative support activities that occurred during the quarter; and

(4) Any modifications or recommendations that may be required to be made to the documents described under § 1909.2 (i), ISP, and Plan of Care from the summary analysis.

1909.3 Each Waiver provider shall maintain all records, including but not limited to, progress reports, financial records, medical records, treatment records, and any other documentation relating to costs, payments received and made, and services provided, for six (6) years from service initiation or until all audits, investigations, or reviews are completed, whichever is longer.

1909.4 Each Waiver provider agency and independent practitioner shall maintain records to document staff training and licensure requirements, for a period of no less than six (6) years.

1909.5 Each Waiver provider shall secure service records for each person in a locked room or file cabinet and limit access only to authorized individuals.

1909.6 The disclosure of treatment information by a Waiver provider shall be subject to all provisions of applicable federal and District laws and rules, for the purpose of confidentiality of information.

1909.7 For residential providers, the records, including program, medical, and financial records for the current ISP, shall be located at the person's residence. Providers shall archive their records annually and ensure that they are available upon request.

1909.8 For non-facility based providers, including Supported Employment and Individualized Day, a policy shall be developed that identifies where records are located and archived, and that ensures that the records are available upon request.

1909.9 If the provider maintains electronic records, the electronic records shall be immediately available in an established electronic record keeping system. The electronic record keeping system shall meet the following requirements:

(a) Have reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of the records kept in electronic format;

(b) Be capable of retaining, preserving, retrieving, and reproducing the electronic records;

(c) Be able to readily convert paper originals stored in electronic format back into legible and readable paper copies;

(d) Be able to create back-up electronic file copies; and

(e) Provide the appropriate level of security for records to comply with federal requirements for safeguarding information.

Section 1911, REQUIREMENTS FOR PERSONS PROVIDING DIRECT SERVICES, is deleted in its entirety and amended to read as follows:

1911 INDIVIDUAL RIGHTS

1911.1 Each Waiver provider shall develop and adhere to policies which ensure that each person receiving services has the right to the followings:

(a) Be treated with courtesy, dignity, and respect;

(b) Participate in the planning of his or her supports and services;

(c) Receive treatment, care, and services consistent with the ISP;

(d) Receive services by competent personnel who can communicate with the person;

(e) Refuse all or part of any treatment, care, or service and be informed of the consequences;

(f) Be free from mental and physical abuse, neglect, and exploitation from staff providing services;

(g) Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;

(h) Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation;

(i) Have access to his or her records; and

(j) Be informed orally and in writing of the following:

(1) Services to be provided, including any limitations;

(2) The amount charged for each service, the amount of payment received/authorized for him or her and the billing procedures, if applicable;

(3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third party source;

(4) Acceptance, denial, reduction, or termination of services;

(5) Complaint and referral procedures;

(6) The name, address, and telephone number of the provider; and

(7) The telephone number of the DDS customer complaint line.

1911.2 Each provider shall notify DDS of any incidents as set forth in DDS's Policy and Procedure entitled "Incident Management and Enforcement".

Section 1912, COMMUNITY SUPPORT TEAM SERVICES, is deleted in its entirety and replaced to read as follows:

1912 INITIATING, CHANGING, OR TERMINATING ANY APPROVED SERVICE

1912.1 A provider shall provide each person receiving Waiver services at least thirty (30) calendar days advance written notice of intent to initiate, suspend, reduce, or terminate services. A copy of the notice shall also be provided to DDS and DHCF. If DDS intends to suspend, reduce or terminate services, DDS shall also provide written notice which complies with the requirements set forth in this section.

1912.2 In accordance with 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55(a)(2), a provider shall give people receiving services or the person's representative and the DDS Service Coordinator at least thirty (30) calendar days advance written notice prior to the effective date of the termination or reduction of services, and be responsible for notifying DDS of any person who is undergoing treatment of an acute condition.

1912.3 The written notice shall comply with the requirements of 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55(a)(2) and the provider shall transfer the person's original record to the new service provider at the time of the transfer, unless the person is deceased or no longer chooses to participate in the Waiver program.

1912.4 The DDS Service Coordinator shall be responsible for initiating, changing, or terminating Waiver services for each person in accordance with the ISP and identifying those people for whom an HCBS is no longer an appropriate alternative.

1912.5 The provider shall notify DDS in writing whenever any of the following circumstances occur:

(a) Death of a person;

(b) Hospitalization of a person;

(c) Any other circumstance in which Waiver services are interrupted for more than seven (7) days;

(d) The person is discharged or terminated from services; or

(e) Any other delay in the implementation of Waiver services.

1912.6 In the event of a person's death, a provider shall comply with all written notice requirements and any policies established by DDA in accordance with DDA's Incident Management and Enforcement Policy and Procedures available at: http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1.

1912.7 When the health and safety of the person or provider agency personnel is endangered, the thirty (30) calendar days advance notice shall not be required. The provider shall notify the person or the person's representative and the DDS Service Coordinator as soon as possible and send a written notice on the date of

termination in accordance with 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55(a)(2).

1912.8 Each person enrolled in the Waiver shall be provided a fair hearing in accordance with 42 C.F.R. § 431 and D.C. Official Code § 4-210.01 if the government:

(a) Fails to offer the person a choice of either institutional care in an intermediate care facility for the intellectually disabled (ICF/IID) or home and community-based waiver services;

(b) Denies a waiver service requested by the person;

(c) Terminates, suspends, or reduces a waiver service; or

(d) Fails to give the person the provider of his or her choice.

1912.9 DDS or the provider shall be responsible for issuing each required notice to the person enrolled in the Waiver or their representative regarding the right to request a hearing as described under Subsection 1912.8.

1912.10 The content of the notice issued pursuant to Subsections 1912.8 and 1912.9 shall comply with the requirements of 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55.

A new Section 1937 (Cost Reports and Audits) is added to read as follows:

1937 COST REPORTS AND AUDITS

1937.1 Each waiver provider of residential habilitation, host home, supported living, day habilitation, individualized day supports, respite, employment readiness and supported employment services shall report costs annually to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception. All cost reports shall cover a twelve (12) month cost reporting period.

1937.2 A cost report that is not completed shall be considered an incomplete filing, and DHCF shall notify the waiver provider within thirty (30) days of the date on which DHCF received the incomplete cost report.

1937.3 All of the facility's accounting and related records, including the general ledger and records of original entry, and all transaction documents and statistical data, shall be permanent records and be retained for a period of not less than five (5) years after the filing of a cost report.

1937.4 DHCF shall evaluate expenditures subject to the requirements in this Section through annual review of cost reports.

1937.5 DHCF, or its designee, shall review each cost report for completeness, accuracy, compliance, and reasonableness.

1937.6 DHCF shall retain the right to conduct audits at any time. Each waiver provider shall allow access, during on-site audits or review by DHCF or U.S. Department of Health and Human Services auditors, to relevant financial records and statistical data to verify costs previously reported to DHCF or any other documents relevant to the administration and provision of the Waiver service.

Section 1999, DEFINITIONS, is amended to include the new terms as follows:

1999 DEFINITIONS

When used in this chapter, the following terms and phrases shall have the meaning ascribed:

Abbreviated Readiness Process- A process that assures that existing providers that have been approved as HCBS Waiver providers possess and demonstrate the capability to effectively serve people with disabilities and their families by providing the framework for identifying qualified providers ready to begin serving people in the Waiver and assisting those providers already in the DDS/DDA system who may need to improve provider performance.

Archive – Maintenance and storage of records.

Home Health Agency - Shall have the same meaning as "home care agency" and shall meet the definitions and licensure requirements as set forth in the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*), and implementing rules.

Individual Support Plan (ISP) - Identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met.

Intermediate Care Facility for Individuals with Intellectual Disabilities - Shall have the same meaning as an "Intermediate Care Facility for Individuals with Mental Retardation" as set forth in Section 1905(d) of the Social Security Act.

Qualified Developmental Disabilities Professional - Someone who oversees the initial habilitative assessments of people, develop, monitor, and review ISPs, and integrate and coordinate Waiver services.

Plan of Care - A written service plan that meets the requirements set forth in Subsection 1907.6 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Provider - Any entity that meets the Waiver service requirements, has signed a Medicaid Provider Agreement with DHCF to provide those services, and is enrolled by DHCF to provide Waiver services.

Registered Nurse - An individual who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*), as amended, or licensed as a registered nurse in the jurisdiction where services are provided.

Service Coordinator – The DDS staff responsible for coordinating a person's services pursuant to their ISP and Plan of Care.

Serious Reportable Incident - Events that due to severity require immediate response, notification to, and investigation by DDS in addition to the internal review and investigation by the provider agency. Serious reportable incidents include death, allegations of abuse, neglect or exploitation, serious physical injury, inappropriate use of restraints, suicide attempts, serious medication errors, missing persons, and emergency hospitalization.

Skilled Nursing- - Health care services that are delivered by a registered or practical nurse acting within the scope of their practice and shall meet the definitions and licensure requirements as set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*), as amended, and implementing rules.

Waiver - Shall mean the HCBS Waiver for Individuals with Intellectual and Developmental Disabilities as approved by the Council of the District of Columbia (Council) and CMS, as may be further amended and approved by the Council and CMS.

D.C. DEPARTMENT OF HUMAN RESOURCES

NOTICE OF FINAL RULEMAKING

The Director of the D.C. Department of Human Resources, with the concurrence of the City Administrator, pursuant to Mayor's Order 2008-92, dated June 26, 2008, and in accordance with Section 954 of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-609.54(b) (2012 Repl.)), hereby gives notice that final rulemaking action was taken to adopt the following amendments to Section 3813, "Employee Rights Upon Termination", of Subtitle B of Title 6 "Government Personnel", of the District of Columbia Municipal Regulations (DCMR).

The purpose of these rules is to amend Chapter 38, "Management Supervisory Service," of 6-B DCMR, Chapter 38. Specifically, to include new provisions for awarding severance pay in accordance to D.C. Official Code § 1-609.54(b); and to amend Subsection 3813.5 so that employees with "Educational" Service status may retreat within three (3) months of the effective date of the termination. Additionally, a non-substantial change was made to Subsection 3813.6 of the chapter.

No comments were received and no changes were made to the Notice of Proposed Rulemaking published February 28, 2014 at 61 DCR 001763. The rules were adopted as final on April 4, 2014 and shall become effective upon publication of this notice in the *D.C. Register*.

Chapter 38, "Management Supervisory Service," of Subtitle B of Title 6, "Government Personnel", of the District of Columbia Municipal Regulations is amended as follows:

Section 3813, "Employee Rights Upon Termination," repealed in its entirety and replaced with the following:

3813 EMPLOYEE RIGHTS UPON TERMINATION

3813.1 An appointment to the Management Supervisory Service is an at-will appointment. A person appointed to a position in the Management Supervisory Service serves at the pleasure of the appointing authority, and may be terminated at any time. An employee in the Management Supervisory Service shall be provided a fifteen-day (15-day) notice prior to termination.

3813.2 No termination action shall be initiated under this chapter unless first authorized by the agency head (or designee) and the Director, D.C. Department of Human Resources (DCHR), or independent personnel authority, as applicable; except that a termination of a Management Supervisory Service employee in the DCHR shall be first authorized by the Director, DCHR (or designee), and the Chief of Staff for the Mayor.

3813.3 In accordance with Section 954 of the CMPA (D.C. Official Code § 1-609.54 (b)), at the discretion of the agency head, an employee in the Management Supervisory Service may be paid severance pay upon termination for non-disciplinary reasons according to his or her length of employment in the District government, as follows:

Length of Employment	Maximum Severance
Up to 6 months	2 weeks of the employee's basic pay
6 months to 1 year	4 weeks of the employee's basic pay
1 to 3 years	8 weeks of the employee's basic pay
More than 3 years	10 weeks of the employee's basic pay

3813.4 Severance pay shall not be paid to any individual who has accepted an appointment to another position in the District government without a break in service.

3813.5 At the discretion of the personnel authority, an employee in the Management Supervisory Service who separates, may within three (3) months of the effective date of the termination retreat to a vacant position within the agency to which he or she was promoted and for which he or she qualified; provided, he or she has Career or Educational Service status or Excepted Service status (only applicable to appointments as attorneys in the Excepted Service).

3813.6 A retreat in accordance with Subsection 3813.5 of this section shall be to a position in the service in which the person acquired status.

3813.7 Terminations from the Management Supervisory Service are not subject to administrative appeals.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FINAL RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(2), (3), (4), (5), (7), (19) and (20), 14, 20 and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2), (3), (4), (5), (7), (19) and (20) (2012 Repl. & 2013 Supp.); D.C. Official Code § 50-313 (2012 Repl. & 2013 Supp.); D.C. Official Code § 50-319 (2012 Repl. & 2013 Supp.); and D.C. Official Code § 50-320 (2012 Repl. & 2013 Supp.)); D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Repl. & 2013 Supp.) hereby gives notice of its creation of a new Chapter 16 (Dispatch Services) of Title 31 (Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules creating a new Chapter 16 were originally approved by the Commission for publication on February 13, 2013, and published in the *D.C. Register* on March 15, 2013, at 60 DCR 3774. The Commission held a public hearing on the proposed rules on March 29, 2013, to receive oral comments on the proposed rules. A Notice of Second Proposed Rulemaking was published in the *D.C. Register* on May 10, 2013, at 60 DCR 6723. A Notice of Emergency and Proposed Rulemaking was adopted by the Commission on May 24, 2013, took effect on May 31, 2013, and was published on June 7, 2013 in the *D.C. Register* at 60 DCR 8714. A Notice of Second Emergency and Proposed Rulemaking was adopted by the Commission on July 17, 2013, and was published on July 26, 2013 in the *D.C. Register* at 60 DCR 11007. A Third Emergency and Proposed Rulemaking was adopted on September 11, 2013, and was published on September 27, 2013, in the *D.C. Register* at 60 DCR 13431. A Fourth Emergency Rulemaking was adopted by the Commission on March 12, 2014, and took effect immediately.

The rules and regulations proposed in this notice regulate digital dispatch services only in the manner and to the extent authorized by law, including: (1) by the Taxicab Service Improvement Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-184; 59 DCR 9431) ("Improvement Act"), insofar as it allows the Commission to "[establish procedures] for the implementation [of a passenger surcharge]" and "[for the] administration of a passenger surcharge amount" and "[e]stablish any rule relating to the regulation and supervision of the public vehicle-for-hire industry not specifically delineated in this act, so long as the rule is consistent with this act and related to the furtherance and protection of the public interest in public vehicle-for-hire transportation"; and (2) by the Public Vehicle for Hire Innovation Amendment Act of 2013, effective April 23, 2013 (D.C. Law 19-270; 60 DCR 1717) ("Innovation Act") , insofar as it allows the Commission to promulgate "rules and regulations [respecting digital dispatch services] that are necessary for the safety of customers and drivers or consumer protection," which "protect personal privacy rights of customers and drivers," which "[will] not result in the disclosure of confidential business information," and which "[will] allow providers to limit the geographic location of trip data to individual census tracts" and to "[c]harge and collect reasonable fees for services it is authorized to provide under this act and D.C. Official Code § 47-2829(e)(2)".

The Commission has concluded that it retains authority under the Establishment Act, as amended by the Improvement and Innovation Acts, to impose on digital dispatch services the minimal requirements created by this chapter, which make registration by each digital dispatch service indispensable for enforcement of the operating requirements imposed on digital dispatch services, and on the owners, operators, and vehicles with which they associate, including collection of the passenger surcharge and reporting of trip data. *See* preamble to the Third Emergency and Proposed Rulemaking, adopted on September 11, 2013, and published on September 27, 2013 in the *D.C. Register* at 60 DCR 13431.

A Notice of Fourth Emergency Rulemaking was adopted by the Commission on March 12, 2014, and became effective immediately, expiring May 2, 2014. This final rulemaking was adopted on April 9, 2014, and will take effect upon publication in the *D.C. Register*.

Chapter 16, DISPATCH SERVICES, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is added to read as follows:

CHAPTER 16 DISPATCH SERVICES

1600 APPLICATION AND SCOPE

1600.1 This chapter establishes substantive rules governing dispatch services for public vehicles-for-hire limited to rules intended to ensure the safety of passengers and operators, to protect consumers, and to collect a passenger surcharge, provided, however, that nothing in this chapter shall be construed to limit the Commission's authority to regulate a telephone dispatch service under any chapter of this title.

1600.2 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act, as amended by the Improvement Act, and by the Innovation Act.

1600.3 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, the more restrictive provision shall control.

1601 GENERAL REQUIREMENTS

1601.1 No person shall provide telephone or digital dispatch, or digital payment, for public vehicles-for-hire in the District, except in compliance with this chapter, all applicable provisions of this title then in effect, and other applicable laws.

1601.2 Nothing in this chapter shall be construed to solicit or create a contractual relationship between the District of Columbia and any person.

1601.3 Implementation of regulations applicable to dispatch services and associated owners and operators. Each dispatch service shall:

(a) Operate in compliance with § 1603; and

(b) Maintain compliance with the provisions of § 1604 for all services it provides in the District;

1601.4 No person regulated by this title shall associate with, integrate with, or conduct a transaction in cooperation with, a dispatch service that is not in compliance with § 1604.

1602 RELATED SERVICES

1602.1 A person may operate a dispatch service and one or more affiliated businesses, provided each affiliated business is operated in compliance with all applicable provisions of this title and other applicable laws.

1602.2 All provisions of this title applicable to digital dispatch services (DDS) shall apply equally to each DDS regardless of whether such DDS receives payment from the passenger or the operator in connection with dispatch services.

1603 OPERATING REQUIREMENTS FOR ALL DISPATCH SERVICES

1603.1 Each dispatch service shall be licensed to do business in the District of Columbia.

1603.2 Each dispatch service that provides digital services for sedans shall operate in compliance with this chapter and Chapters 12 and 14 of this title.

1603.3 Each dispatch service that participates in providing taxicab service shall operate in compliance with this chapter and Chapters 4, 6, and 8 of this title.

1603.4 Each dispatch provided by a dispatch service shall comply with the definitions of "dispatch".

1603.5 Each gratuity charged by a dispatch service shall comply with the definition of "gratuity".

1603.6 Each digital dispatch service that processes digital payments shall:

(a) Comply with the requirements for passenger rates and charges set forth in § 801 for taxicab service and § 1402 for sedan service;

(b) If the payments are processed for taxicab service, comply with the integration, payment, and passenger surcharge requirements of § 408;

(c) Provide receipts as required by § 803 for taxicab service and § 1404 for sedan service;

(d) Use technology that meets Open Web Application Security Project ("OWASP") security guidelines, complies with current standards of the PCI Security Standards Council ("Council") for payment card data security, if such standards exist, and, if not, then with current guidelines of the Council for payment card data security, and, for direct debit transactions, complies with the rules and guidelines of the National Automated Clearing House Association; and

(e) Promptly inform the Office of a security breach requiring a report under the Consumer Personal Information Security Breach Notification Act of 2006, effective March 8, 2007 (D.C. Law 16-237, D.C. Official Code §§ 28-3851, *et seq.*), or other applicable law.

1603.7 Each dispatch shall clearly provide the person seeking service with the option to request an available wheelchair-accessible vehicle.

1603.8 Each dispatch service shall maintain a bona fide administrative office or a registered agent authorized to accept service of process, provided, however, a dispatch service operated by a taxicab company required to maintain such an office pursuant to Chapter 5 of this title shall operate its dispatch service at that location or another bona fide administrative office.

1603.9 Each dispatch service shall maintain a customer service telephone number for passengers with a "202" prefix or a toll-free area code, or an email address posted on its website that is answered or replied to during normal business hours.

1603.10 Each dispatch service shall maintain a website with current information that includes:

(a) The name of the dispatch service;

(b) Contact information for its bona fide administrative office or registered agent authorized to accept service of process;

(c) Its customer service telephone number or email address, and;

(d) The following statement prominently displayed:

Public vehicle-for-hire services in Washington, DC
are regulated by the DC Taxicab Commission
2041 Martin Luther King Jr., Ave., SE, Suite 204
Washington, DC. 20020
www.dctaxi.dc.gov
dctc3@dc.gov 1-855-484-4966 TTY: 711

and;

(e) A statement of how the fare is calculated for each class of service it offers, which shall include a statement of the rates and charges allowed by § 1402, and, for sedan service, shall indicate whether the dispatch service uses demand pricing and, if so, how such pricing affects its rates.

1603.11 Each dispatch service shall comply with §§ 508 through 513, to the same extent as if it were a taxicab company.

1603.12 Each dispatch service shall provide its service throughout the entire District.

1603.13 Each dispatch service shall perform the service agreed to with a passenger in a dispatch, including picking up the passenger at the agreed time and location, except for a bona fide reason not prohibited by § 819.5 or other applicable provision of this title.

1603.14 Protection of certain information relating to passenger privacy and safety.

(a) A dispatch service shall not:

(1) Release information to any person that would result in a violation of the personal privacy of the passenger or the person requesting service, or that would threaten the safety of a passenger or an operator; or

(2) Permit access to real-time information about the location, apparent gender, or number of passengers awaiting pick up by a person not authorized by the dispatch service to receive such information.

(b) This subsection shall not limit access to information by the Office or a District enforcement official.

1603.15 A dispatch service shall not transmit to the operator any information about the destination of a trip, except for the jurisdiction of the destination, until the trip has been booked.

1603.16 Each dispatch service shall store its business records in compliance with industry best practices and all applicable laws, make its business records related to compliance with its legal obligations under this title available for inspection and copying as directed by the Office, and retain its business records for five (5) years.

1603.17 Each dispatch service shall comply with all applicable provisions of this title and other laws regulating origins and destinations of trips, including all reciprocal agreements between governmental bodies in the Washington Metropolitan Area governing public vehicle-for-hire service such as those in § 828.

1603.18 Each DDS that provides digital services for sedans shall:

(a) Maintain with the Office an accurate and current inventory of the vehicles and operators associated with the DDS to use its system in the manner required by § 1403; and

(b) Collect from the passenger and pay to the District the sedan passenger surcharge in the manner required by § 1403.

1604 REGISTRATION

1604.1 No dispatch service shall participate in providing a public vehicle-for-hire service in the District unless it is registered with the Office pursuant to this section, except for a taxicab company with existing operating authority under Chapter 5 of this title, which, as of the effective date of this rulemaking, is operating a telephone dispatch service.

1604.2 An applicant seeking to register with the Office shall provide the following information:

(a) Its name and contact information;

(b) The name of and contact information for each public vehicle-for-hire business or service associated with, or operated by an owner of, the dispatch service, including any payment service provider (PSP), and any business or service operated or offered outside the District,

(c) A technical description of the dispatch or payment solution, digital payment system, or both, offered by the DDS, including the trade names and software applications, platforms, and operating systems used;

(d) A blank sample of each agreement or policy, including any user agreement or privacy policy, applicable to the DDS's association with vehicle owners and operators, and with passengers, or a URL web address where such information may be found;

(e) An indication by the applicant of whether the dispatch service intends to offer dispatch of sedans, and whether it intends to offer dispatch services or digital payments for taxicabs, or both;

(f) If it will be dispatching sedans, its initial operator and vehicle inventory pursuant to § 1403;

(g) A certification by the applicant that the DDS owns the right to, or holds licenses to, all the intellectual property used by the dispatch service for all

technology used for the dispatch or payment solution or the digital payment system it provides;

(h) Proof that it is licensed to do business in the District of Columbia; and

(i) Such other information and documentation as the Office may determine is reasonably necessary in order to verify that the DDS will comply with all applicable provisions of this title and other applicable laws.

1604.3 Each application under § 1604.2 shall be:

(a) Provided under penalty of perjury;

(b) Accompanied by the surcharge bond required by § 403.3 (if the dispatch service is a DDS is required to collect a passenger surcharge for taxicab service), or by § 1403, if the dispatch service is a DDS that will be dispatching sedans, provided, however, that a DDS shall not be required to deposit a more than one (1) surcharge bond if the DDS collects and pays passenger surcharges for both taxicabs and for sedans; and

(c) Accompanied by a fee of five hundred dollars ($500), except that the fee for an application to amend an existing registration under § 1604.5, regardless of the number of services proposed to be added to the existing registration, shall be three hundred dollars ($300).

1604.4 Each registration shall continue in force and effect for twenty four (24) months, during which time no substantial change may be made to a DDS's dispatch or payment solution for taxicabs, or to a DDS's digital payment system for sedans, unless the DDS informs the Office of the proposed substantial change at least fifteen (15) days prior to its implementation, during which time the DDS shall cooperate with the Office as necessary so the Office is fully informed of the nature of the proposed change and is able to verify whether the proposed change is in compliance with relevant laws and regulations. In addition, each registered DDS shall notify the Office of any other change in the information contained in its registration or its supporting documentation, such as contact information, within seven (7) days after the change.

1604.5 Each DDS registered under this section may at any time file an application to amend its registration to include additional services it wishes to market to public vehicle-for-hire owners and operators for which registration is required under this chapter.

1604.6 Each DDS registered under this section shall file to renew its registration at least sixty (60) days prior to the expiration thereof, by providing such information for renewal as determined by the Office. Registration shall continue in force and

effect beyond its expiration period during such time as an application to renew is pending acceptance in proper form.

1604.7 A DDS registered under this section shall annually provide to the Office, beginning on the first (1st) day of the thirteenth (13th) month after its certificate of registration was issued:

(a) Proof that it is licensed to do business in the District;

(b) Proof that it maintains a bona fide administrative office or registered agent authorized to accept service of process, as required by § 1603.1;

(c) Proof that it maintains a website, as required by § 1603.10;

(d) A report on the wait times and fares charged to passengers seeking wheelchair-accessible service in the prior twelve (12) months; and

(e) A list of incidents in the prior twelve (12) months that involved an allegation or dispute concerning the following matters, which shall include an indication of whether the allegation or dispute has been resolved:

(1) A payment, where the dispute involved fifty dollars ($50) or more;

(2) Fraud or criminal activity; or

(3) Violations of the anti-discrimination rules of Chapter 5 of this title.

1604.8 The Office may arrange one (1) demonstration for each of the DDS's dispatch or payment solutions for taxicabs, or its digital payment system for sedans, where the Office's technical staff may examine and test the equipment to ensure compliance with all applicable provisions of this title and other applicable laws. The Office's staff may ask questions of the DDS's technical staff, who shall attend the demonstration.

1604.9 The Office shall determine whether to grant or deny registration within ten (10) days after an application is filed, provided however, that such period may be extended by the Office for no more than seven (7) days with notice to the DDS. The Office shall deny registration only if it determines that the DDS is not or will not be in compliance with the provisions of this title or other applicable laws.

1604.10 If the Office grants an application, it shall provide notice to the DDS in writing.

1604.11 If the Office denies an application, it shall state the reasons for its decision in writing, including the specific facts upon which the Office has determined that the DDS is not or will not be in compliance with the provisions of this title or other applicable laws. A decision to deny may be appealed to the Chief of the Office

within fifteen (15) business days. If the decision to deny is not appealed within the fifteen (15) business day period, it shall constitute a final decision of the Office. If the decision to deny is appealed within the fifteen (15) business day period, the Chief shall issue a decision within thirty (30) days. A timely appeal of a denial shall extend an existing certificate or registration pending the Chief's decision. A decision of the Chief to affirm or reverse a denial shall constitute a final decision of the Office. A decision of the Chief to remand to the Office for further review of the filing shall extend an existing certificate pending the final decision of the Office.

1604.12 The name of each registered DDS, and the name of its dispatch or payment solution for taxicabs, and/or digital payment system for sedans, shall be listed on the Commission's website.

1604.13 A DDS's registration may be suspended or revoked, or not renewed, by the Office with reasonable notice and an opportunity to be heard if the Office learns that the DDS is not in substantial compliance with this title, or other applicable law, or that a DDS's digital payment system, or dispatch or payment solution, is being used in a manner that poses a significant threat to passenger or operator safety, or to consumer protection, or is failing to collect the passenger surcharge.

1605 PROHIBITIONS

1605.1 No person shall dispatch a public vehicle-for hire or process a digital payment for a public vehicle-for-hire in the District except as provided in this chapter.

1605.2 No person shall operate a dispatch service that is not registered with the Office under § 1604 for all the services it provides in the District.

1605.3 No dispatch service shall dispatch or process digital payments except as provided in this chapter and in Chapters 4, 6, and 8 (for taxicabs), and in this chapter and in Chapters 12 and 14 (for sedans).

1605.4 No dispatch service may alter or attempt to alter its legal obligations under this title or to impose an obligation on any person or limit the rights of any person in a manner that is contrary to public policy or that threatens passenger or operator safety or consumer protection.

1605.5 A DDS shall not provide digital dispatches to a taxicab operator who provides service with a vehicle that displays on its exterior the name, color scheme, or other unique branding of a taxicab fleet or association, if such fleet or association does not agree to the operator's association with the DDS, and:

(a) For thirty (30) days following the effective date of this rulemaking, such fleet or association is operating a dispatch service limited to its associated vehicles; or

(b) After thirty (30) days following the effective date of this rulemaking, such fleet or association has filed for or received registration for a DDS limited to its associated vehicles.

1605.6 No DDS shall provide digital payment for taxicabs which allows the operator to manually enter fare information into any device except as permitted by § 801, or by the integration rules of Chapter 4.

1605.7 No fee charged by a DDS in addition to a taximeter fare shall be processed by a payment service provider, or displayed on or paid using any component of an MTS unit, provided, however, that such a fee may be processed by a payment service provider or displayed on or paid using a component of an MTS unit pursuant to an integration agreement between the DDS and the PSP that has been approved by the Office pursuant to Chapter 4, this chapter, and all other applicable provisions of this title, and incorporates reasonable measures to avoid passenger confusion between regulated and non-regulated rates and charges.

1605.8 This section shall not apply to sedan services until November 1, 2013.

1606 ENFORCEMENT

1606.1 The enforcement of any provision of this chapter shall be governed by the procedures set forth in Chapter 7 of this title. If, at the time of violation, the procedures in Chapter 7 do not extend in their terms to DDSs, violations of this chapter shall be enforced as if such DDS were a taxicab owner or operator.

1607 PENALTIES

1607.1 A dispatch service that violates this chapter shall be subject to:

(a) A civil fine of five hundred dollars ($500) for the first violation of a provision, one-thousand dollars ($1,000) for the second violation of the same provision, and one-thousand five-hundred dollars ($1,500) for each subsequent violation of the same provision;

(b) Suspension, revocation, or non-renewal of its registration;

(c) Any penalty available under Chapter 4 in connection with the dispatch of taxicabs or under Chapter 14 in connection with the dispatch of sedans;

(d) Any combination of the sanctions listed in this subsection; or

(e) Any penalty authorized by a provision of this title other than in this chapter or by other applicable law.

1699 DEFINITIONS

1699.1 The terms “cashless payment,” “modern taximeter system,” “MTS,” “MTS unit”, “payment service provider”, “PSP”, and “taximeter fare” shall have the meanings ascribed in Chapter 4 of this title.

1699.2 The term “sedan” shall have the meaning ascribed to it in Chapter 12 of this title.

1699.3 The terms “digital payment system,” and “DPS” shall have the meanings ascribed to them in Chapter 14 of this title.

1699.4 The term “person” and “license” shall have the meanings ascribed to them in Section 3 of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502).

1699.5 The following words and phrases shall have the meanings ascribed:

“Affiliated” - common ownership.

“Associated” - a voluntary relationship of employment, contract, joint venture, or agency. For purposes of this chapter, an association not in writing shall be ineffective for compliance purposes.

“Booked” - agreed and accepted by the customer.

“Customer” - a person that requests public vehicle-for-hire service, including a passenger, or any other person that requests service on behalf of a passenger.

“Dispatch” - booking public vehicle-for-hire service through an advance reservation consisting of a request for service from a person seeking service, an offer of service by the dispatch service, an acceptance of service by the person seeking service, and an acknowledgement by the dispatch service that includes an estimated time of arrival of a booked vehicle.

“Dispatch or payment solution” - any reasonable technology solution that allows a DDS to provide taxicabs with digital dispatch service, digital payment service, or both.

“Digital dispatch” - dispatch via computer, mobile phone application, text, email, or Web-based reservation.

“Digital dispatch service” or “DDS” - a business that provides digital dispatch of taxicabs, sedans, or both.

"Digital payment" - a non-cash payment processed by a digital dispatch service and not by the vehicle operator, such as a payment by a payment card (a credit or debit card), processed through a mobile- or Web-based application. A digital payment does not mean a "cashless payment" as such term is defined in Chapter 6 of this title.

"Digital services" - digital dispatch or digital payment for a public vehicle-for-hire.

"Dispatch service" - a business that offers telephone or digital dispatch.

"District enforcement official" - a public vehicle enforcement inspector or other authorized official, employee, or general counsel of the Office, or a law enforcement official authorized to enforce a provision of this title.

"Passenger surcharge" - the passenger surcharge required to be collected from passengers and remitted to the District for each trip in a taxicab or sedan, as required by Chapters 4, 6, and 8, for taxicabs, and by this chapter and Chapter 14 for sedans.

"Substantial change" - (1) a replacement of an existing DDS dispatch or payment solution for taxicabs, or digital payment system for sedans, or (2) a material change in the DDS's manner of compliance with § 1603.6 (a)-(d) (other than a change in non-regulated rates and charges established by the DDS) or with § 1603.7. A substantial change does not include an update to an application or to an operating system, a service update, or other routine modification or incremental improvement of an existing DDS dispatch or payment solution for taxicabs, or digital payment system for sedans.

"Surcharge bond" - a security bond of fifty-thousand dollars ($50,000) payable to the D.C. Treasurer that is effective throughout the period when the dispatch service has operating authority and for one (1) year thereafter.

"Telephone dispatch" - dispatch via telephone.

"Telephone dispatch service" - a business that provides telephone dispatch for taxicabs.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(3), (7), 14, 20, and 20g of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(3), (7), 50-313, 50-319, 50-329, (2012 Repl. & 2013 Supp.)), hereby announces its intent to adopt amendments to Chapter 4 (Taxicab Payment Services) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

These rules address various compliance standards for Payment Service Providers (PSPs), including: (1) fees for untimely renewal applications, (2) suspensions and revocations of approvals to operate as a PSP in the District, (3) cooperation with the Office of Taxicabs ("Office"), (4) reporting to the Office, (5) maintenance of separate vehicle and operator inventories, and (6) define "double seal" of a taximeter. PSP compliance with the requirements of this title, and this chapter, are important to ensure that the ongoing modernization of the District's taxicab industry provide appropriate consumer and driver protection.

This Notice of Proposed Rulemaking was adopted on March 12, 2014. A thirty (30) day comment period will begin upon publication of the notice in the *D.C. Register*. Directions for submitting comments may be found at the end of this Notice. The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice in the *D.C. Register*.

Chapter 4, TAXICAB PAYMENT SERVICES, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 406, RENEWAL APPLICATIONS, is amended as follows:

Subsection 406.1 is amended to read as follows:

406.1 Each approved MTS shall be submitted for renewal of its approval at least sixty (60) days before the expiration of the approval, unless the Office grants a waiver in writing for good cause shown. A renewal application submitted less than sixty (60) days before the expiration of the approval shall be accompanied by a late fee of one thousand dollars ($1,000). The procedures applicable to new applications shall apply to renewal applications, except as otherwise required by this title or other applicable law.

Section 407, SUSPENSION OR REVOCATION OF APPROVAL, is amended to read as follows:

407 SUSPENSION OR REVOCATION OF APPROVAL

407.1 Order of immediate suspension. The Office may immediately suspend an MTS's approval issued under § 405 when:

(a) The Office has reasonable grounds to believe the PSP that operates the MTS has committed or is committing a willful or repeated violation of § 408.9 (failure to cooperate with or report to the Office), § 408.13 (failure to timely pay owners), § 603.9 (failure to provide MTS service and support), or § 408.14 (failure to maintain operator and vehicle inventories);

(b) The Office has reasonable grounds to believe there exists an imminent or significant risk that the MTS may be or has been used by one or more individuals, or by an entity other than the PSP, to violate or enable the violation of one or more provisions of this title or other applicable law;

(c) The Office has reasonable grounds to believe the MTS or the PSP's operations or conduct pose an imminent or significant threat to the safety and welfare of passengers, operators, or the public; or

(d) The Office has reasonable grounds to believe the MTS or the PSP's operations or conduct pose an imminent or significant threat to consumer protection or passenger privacy.

407.2 As provided in § 407.4, a PSP's failure to timely and fully comply with the terms and conditions of an order of immediate suspension, or to further violate this title or other applicable law during the pendency of an order, shall be a sufficient basis for revocation of the PSP's approval.

407.3 Notice of proposed suspension. The Office may issue a notice of proposed suspension of a PSP's approval issued under § 405 when:

(a) The Office has reasonable grounds to believe the PSP has:

(1) Committed fraud, made a fraudulent or material misrepresentation to any person in connection with the conduct of its MTS business, or has concealed material information from the Office, or

(2) Induced any other person to commit an act enumerated in (a) (1).

(b) The Office has reasonable grounds to believe the PSP no longer meets the requirements for approval under this chapter;

(c) An order of immediate suspension has been issued against the PSP;

(d) The Office has reasonable grounds to believe one or more grounds exist for immediate suspension of the PSP under § 407.1;

(e) The PSP or an employee, agent, or independent contractor associated with it has been convicted of a criminal offense involving fraudulent conduct in connection with the conduct of an activity within the jurisdiction of the Commission; or

(f) The Office has reasonable grounds to believe the PSP has failed to comply with any provision of this title or other applicable law.

407.4 Notice of proposed revocation. The Office may issue a notice of proposed revocation of a PSP's approval issued under § 405 when:

(a) The PSP's approval has been previously suspended at any time on any grounds;

(b) The Office has reasonable grounds to believe the PSP has committed substantial or repeated acts which would constitute grounds for an order of immediate or proposed suspension under § 407.1 or § 407.3; or

(c) The Office has reasonable grounds to believe the PSP failed to timely and fully comply with the terms and conditions of an order of suspension, or further violated this title or other applicable law during the pendency of an order of suspension.

407.5 Content of order or notice. Each order of immediate suspension and notice of proposed suspension or revocation shall:

(a) Be in writing;

(b) State the grounds for the order or notice;

(c) State the terms and conditions required for compliance with the order or notice (if any) including any deadlines;

(d) State that the PSP is entitled to a review of the order by OAH:

(1) Within three (3) business days, if it is an order of immediate suspension;

(2) Within thirty (30) calendar days, if it is a notice of proposed suspension or revocation;

(e) Include full contact information for OAH;

(f) Include a reference to OAH regulations, or to Section 10 of the DCAPA (D.C. Official Code § 2-509), that detail the hearing procedures to be used during OAH's review of the Order; and

(g) Include a statement that a party or witness may apply for the appointment of a qualified interpreter if he or she is deaf or cannot readily understand or communicate the spoken English language.

407.6 Method of service and filing. Each order of immediate suspension and notice of immediate suspension or revocation shall:

(a) Be served promptly on the PSP by hand delivery to the address on file with the Office for the PSP or its agent, leaving the document with a person over the age of sixteen (16) residing or employed at that address.

(b) Be filed promptly with OAH, and, if it is an order of immediate suspension, not later than the next business day after service.

407.7 The Office may, but shall not be required to, invite a PSP to participate in mediation in advance of any suspension or revocation action authorized by this section.

Section 408, OPERATING REQUIREMENTS APPLICABLE TO PSPs AND DDSs, is amended as follows:

Subsection 408.9 is amended to read as follows.

408.9 Cooperation and reporting. Each PSP shall:

(a) Timely and fully cooperate with the Office and all District enforcement officials in the enforcement of and compliance with all applicable provisions of this title and other applicable laws;

(b) Timely provide full and complete reports as required by Chapter 6;

(c) Timely provide full and complete trip data as directed by the Office pursuant to § 603; and

(d) Appear at the administrative offices of the Office with any records demanded, when directed to do so by the Office pursuant to this title, except for good cause shown.

Section 408.14 is amended to read as follows.

408.14 Inventory requirements.

(a) Each PSP shall maintain with the Office accurate and current inventories of all vehicles and all operators on active status with which it associates for its MTS. Only active vehicles and active operators shall appear on inventories.

(b) Each PSP shall ensure that:

(1) Its vehicle and operator inventories are maintained and updated in the manner and frequency determined by the Office;

(2) When a vehicle or operator is no longer associated with the PSP as a result of a threat to passenger or public safety, the inventories shall be updated promptly; and

(3) Separate inventories are maintained for vehicles and operators.

(c) Each vehicle inventory shall include, as to each vehicle:

(1) The name, address, work telephone number, and cellular telephone number, for the owner(s);

(2) The name, address, telephone number, and cellular telephone number for the taxicab company, association or fleet with which the owner is associated, if any;

(3) The vehicle's PVIN, make, model, and year of manufacture;

(4) A certification that the vehicle is in compliance with the insurance requirements of Chapter 9 of this title; and

(5) A statement of whether the vehicle is wheelchair accessible.

(d) Each operator inventory shall include, as to each operator:

(1) The name, address, work telephone number and cellular telephone number, for the operator; and

(2) The operator’s DCTC commercial operator license number and the

name, address, telephone number and cellular telephone number for any taxicab company, association, or with which the operator is associated.

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, DC 20020, Attn: Jacques P. Lerner, General Counsel and Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C. Register*.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Taxicab Commission, pursuant to the authority set forth in Sections 8(c)(3), (5) and (7), 14, 20, and 20g of the District of Columbia Taxicab Commission Establishment Act of 1985, effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(3), (c)(5), (c)(7), 50-313, 50-319, 50-329 (2012 Repl. & 2013 Supp.)), hereby gives notice of its intent to adopt amendments to Chapters 6 (Taxicab Parts and Equipment) and 8 (Operation of Taxicabs) of Title 31 (Taxicabs and Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules would: (1) require that taximeters be double-sealed to prevent the use of unauthorized meters, (2) correct inconsistent references to the Dome Light status, (3) change the trip data reporting in the service and support requirements of Section 603 to provide that each modern taximeter system report the public vehicle identification number in a non-anonymous format, and (4) provide a one thousand ($1,000) fine for the use of an improperly sealed meter.

The proposed rulemaking was adopted on April 9, 2014, and will begin a thirty (30) day comment period upon publication in the *D.C. Register*. The Commission also hereby gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the publication of this notice of proposed rulemaking in the *D.C. Register*. Directions for submitting comments may be found at the end of this notice.

Chapter 6, TAXICAB PARTS AND EQUIPMENT, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 602, TAXIMETERS, is amended as follows:

Subsection 602.1(c)(23) and (24) are amended to read as follows:

(23) Be permanently affixed to the vehicle in a location approved by the Commission and double sealed so as to prevent tampering, removal, or opening;

(24) Have a Commission-approved Dome Light that is connected to the engine and controlled by engaging the meter; provided, however, that the Dome Light may contain a driver-activated switch located on the side of the Dome Light that will allow the complete Dome Light to remain dark when the vehicle is being utilized for personal use, in compliance with Subsections 605.5, 605.6, 605.7 and 605.8.

Section 603, MODERN TAXIMETER SYSTEMS, is amended as follows.

Subsection 603.9 (c) is amended to read as follows:

(c) Transmit to the TCIS every twenty-four (24) hours via a single data feed consistent in structure across all PSPs, in a manner as established by the Office, the following data:

(1) The operator's identification (Face Card) number

(2) The operator's PVIN;

(3) The vehicle tag (license plate) number;

(4) The name of the PSP;

(5) The name of the taxicab company, association, or fleet, if applicable;

(6) The PSP-assigned tour of duty identification number;

(7) The date and time when the operator completed the required login process pursuant to Subsection 603.9(a) at the beginning of the tour of duty;

(8) The time (duration) and mileage of each trip;

(9) The date and time of pickup and drop-off of each trip;

(10) The geospatially-recorded place of pickup and drop-off of each trip which may be generalized to census tract level;

(11) The number of passengers;

(12) The unique trip identification number assigned by the PSP;

(13) The taximeter fare and an itemization of the rates and charges pursuant to § 801;

(14) The form of payment (cash payment, cashless payment, voucher, or digital payment), the payment method, and, if a digital payment, the name of the DDS;

(15) The date and time of logoff at the end of the tour of duty;

(16) The date and time that the data transmission to TCIS takes place;

Subsection 603.9 (d) is amended to read as follows.

(d) Provide the Office with all information necessary to ensure that the PSP pays the taxicab passenger surcharge for each taxicab trip and that the District receives required data pursuant to Subsection 603.9, regardless of how the fare is paid, including:

(1) Weekly surcharge reports (due every Monday by the close of business (COB));

(2) Weekly vehicle installation and inventory reports (consistent with the requirements of Subsection 408.14 (due every Friday COB);

(3) Weekly TCIS trip rejected reports;

(4) Weekly non-payment drivers lists;

(5) Weekly detailed trip records, including driver's information upon request of the Office; and

(6) Any other reports as may be required by the Office for purposes consistent with this section.

Section 605, DOME LIGHTS AND TAXI NUMBERING SYSTEM, is amended as follows:

Subsections 605.5, 605.6, and 605.7 are amended to read as follows:

605.5 The LED portion of the Dome Light shall display "Taxi For Hire" at all times when the taxicab is available for hire and the LED portion of the Dome Light shall go "dark" when the taxicab is not available for hire because the taxicab is carrying a passenger. The Dome Light may contain a driver activated switch on the side of the Dome Light that will allow the complete Dome Light to remain dark when the vehicle is being utilized for personal use.

605.6 Whenever a taxicab operator removes his or her vehicle from service and is proceeding to a place of his or her choosing without intending to take on passengers, the LED portion of the Dome Light shall display "Taxi Off Duty".

605.7 Whenever a taxicab is responding to a dispatch call or proceeding to a prior arranged transport, the LED portion of the Dome Light shall display "Taxi On Call".

Chapter 8, OPERATION OF TAXICABS, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is amended as follows:

Section 825, TABLE OF CIVIL FINES AND PENALTIES, is amended as follows:

Subsection 825.2 is amended by adding to the current rows of infractions, as the last row

under the heading "Taximeter" the following:

Operating with an improperly sealed meter	$1,000; license suspension, revocation, or non-renewal, or any combination of these sanctions

Copies of this proposed rulemaking can be obtained at www.dcregs.dc.gov or by contacting Jacques P. Lerner, General Counsel and Secretary to the Commission, District of Columbia Taxicab Commission, 2041 Martin Luther King, Jr., Avenue, S.E., Suite 204, Washington, D.C. 20020. All persons desiring to file comments on the proposed rulemaking action should submit written comments via e-mail to dctc@dc.gov or by mail to the DC Taxicab Commission, 2041 Martin Luther King, Jr., Ave., S.E., Suite 204, Washington, DC 20020, Attn: Jacques P. Lerner, General Counsel and Secretary to the Commission, no later than thirty (30) days after the publication of this notice in the *D.C Register*.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Z.C. Case No. 13-07
(Zoning Map Amendment for a Portion of Square 5081 from the C-3-A Zone District to the R-5-C Zone District)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797; D.C. Official Code § 6-641.01 (2012 Repl.)), hereby gives notice of its intent to amend the Zoning Map to rezone a portion of Square 5081from the C-3-A Zone District to the R-5-C Zone District.

Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following rulemaking action is proposed:

The Zoning Map of the District of Columbia is amended as follows:

SQUARE	LOTS	Map Amendment
5081	11-13 (Tax Lot 805)	C-3-A to R-5-C
5081	14	C-3-A to R-5-C
5081	15	C-3-A to R-5-C
5081	16-17 (Tax Lot 806)	C-3-A to R-5-C
5081	18-21 (Tax Lot 804)	C-3-A to R-5-C
5081	22	C-3-A to R-5-C
5081	52	C-3-A to R-5-C

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001, or signed electronic submissions may be submitted in PDF format to zcsubmissions@dc.gov. Ms. Schellin may also be contacted by telephone at (202) 727-6311 or by email: at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DISTRICT OF COLUMBIA TAXICAB COMMISSION

NOTICE OF FOURTH EMERGENCY RULEMAKING

The District of Columbia Taxicab Commission (Commission), pursuant to the authority set forth in Sections 8(c)(2), (3), (4), (5), (7), (19) and (20), 14, 20 and 20a of the District of Columbia Taxicab Commission Establishment Act of 1985 ("Establishment Act"), effective March 25, 1986 (D.C. Law 6-97; D.C. Official Code §§ 50-307(c)(2), (3), (4), (5), (7), (19) and (20) (2012 Repl. & 2013 Supp.); D.C. Official Code § 50-313 (2012 Repl. & 2013 Supp.); D.C. Official Code § 50-319 (2012 Repl. & 2013 Supp.); and D.C. Official Code § 50-320 (2012 Repl. & 2013 Supp.)); and D.C. Official Code § 47-2829 (b), (d), (e), (e-1), and (i) (2012 Repl. & 2013 Supp.), hereby gives notice of its intent to create a new Chapter 16 (Dispatch Services) of Title 31 (Public Vehicles for Hire) of the District of Columbia Municipal Regulations (DCMR).

Proposed rules creating a new Chapter 16 were originally approved by the Commission for publication on February 13, 2013, and published in the *D.C. Register* on March 15, 2013, at 60 DCR 3774. The Commission held a public hearing on the proposed rules on March 29, 2013, to receive oral comments on the proposed rules. A Notice of Second Proposed Rulemaking was published in the *D.C. Register* on May 10, 2013, at 60 DCR 6723. A Notice of Emergency and Proposed Rulemaking was adopted by the Commission on May 24, 2013, took effect on May 31, 2013, and was published on June 7, 2013 in the *D.C. Register* at 60 DCR 8714. A Notice of Second Emergency and Proposed Rulemaking was adopted by the Commission on July 17, 2013, and was published on July 26, 2013 in the *D.C. Register* at 60 DCR 11007. A Third Emergency and Proposed Rulemaking was adopted on September 11, 2013, and was published on September 27, 2013, in the *D.C. Register* at 60 DCR 13431.

The registration, administrative, operating and other rules contained in this Fourth Emergency Rulemaking are necessary to prevent legal and practical incongruities that would otherwise halt or impair the uniform implementation of existing operating and other requirements, pertaining modern taximeter systems and the digital dispatch of taxicabs, in Chapters 4, 6, and 8, and digital payment systems and the digital dispatch of sedans, in Chapters 12 and 14. *See* 60 DCR 10975 – 11002; 60 DCR 12394 – 12419. The implementation of this rulemaking on an emergency basis is therefore necessary for the immediate and continued preservation and promotion of the public peace, safety, and welfare of the residents of and visitors to the District of Columbia, by updating and clarifying the complete regulatory framework for the continued digital dispatch of taxicabs and sedans. In the absence of such immediate update and clarification, it would be impossible or impracticable for the Office of Taxicabs ("Office") to effectively regulate the continuing practice of digitally dispatching taxicabs and sedans pursuant to the aforementioned chapters of Title 31. As digital dispatch companies are currently registered with the Commission to operate such services, the rules proposed herein will not significantly burden the digital dispatch industry while the Commission continues to consider the standard business model for digital dispatch services prior to the promulgation of final rulemaking.

The rules and regulations proposed in this notice regulate digital dispatch services only in the manner and to the extent authorized by law, including: (1) by the Taxicab Service Improvement Amendment Act of 2012, effective October 22, 2012 (D.C. Law 19-184; 59 DCR 9431 (August

10, 2012)) ("Improvement Act"), insofar as it allows the Commission to "[establish procedures] for the implementation [of a passenger surcharge]" and "[for the] administration of a passenger surcharge amount" and "[e]stablish any rule relating to the regulation and supervision of the public vehicle-for-hire industry not specifically delineated in this act, so long as the rule is consistent with this act and related to the furtherance and protection of the public interest in public vehicle-for-hire transportation"; and (2) by the Public Vehicle for Hire Innovation Amendment Act of 2013, effective April 23, 2013 (D.C. Law 19-270; 60 DCR 1717 (February 15, 2013)) ("Innovation Act") , insofar as it allows the Commission to promulgate "rules and regulations [respecting digital dispatch services] that are necessary for the safety of customers and drivers or consumer protection," which "protect personal privacy rights of customers and drivers," which "[will] not result in the disclosure of confidential business information," and which "[will] allow providers to limit the geographic location of trip data to individual census tracts" and to "[c]harge and collect reasonable fees for services it is authorized to provide under this act and D.C. Official Code § 47-2829(e)(2)".

The Commission has concluded that it retains authority under the Establishment Act, as amended by the Improvement and Innovation Acts, to impose on digital dispatch services the minimal requirements created by this chapter, which make registration by each digital dispatch service indispensable for enforcement of the operating requirements imposed on digital dispatch services, and on the owners, operators, and vehicles with which they associate, including collection of the passenger surcharge and reporting of trip data. *See* preamble to the Third Emergency and Proposed Rulemaking, adopted on September 11, 2013, and published on September 27, 2013 in the *D.C. Register* at 60 DCR 13431. These emergency rules will maintain continuity of the industry and prevent legal incongruity while the Commission continues to determine the content and wording of final rulemaking.

This fourth emergency rulemaking was adopted by the Commission on March 12, 2014 and took effect immediately. The emergency rules shall expire on May 2, 2014, with the publication of the Notice of Final Rulemaking.

Chapter 16, DISPATCH SERVICES, of Title 31, TAXICABS AND PUBLIC VEHICLES FOR HIRE, of the DCMR, is added to read as follows:

CHAPTER 16 DISPATCH SERVICES

1600 APPLICATION AND SCOPE

1600.1 This chapter establishes substantive rules governing dispatch services for public vehicles-for-hire limited to rules intended to ensure the safety of passengers and operators, to protect consumers, and to collect a passenger surcharge, provided, however, that nothing in this chapter shall be construed to limit the Commission's authority to regulate a telephone dispatch service under any chapter of this title.

1600.2 The provisions of this chapter shall be interpreted to comply with the language and intent of the Establishment Act, as amended by the Improvement Act, and by the Innovation Act.

1600.3 In the event of a conflict between a provision of this chapter and a provision of another chapter of this title, the more restrictive provision shall control.

1601 GENERAL REQUIREMENTS

1601.1 No person shall provide telephone or digital dispatch, or digital payment, for public vehicles-for-hire in the District, except in compliance with this chapter, all applicable provisions of this title then in effect, and other applicable laws.

1601.2 Nothing in this chapter shall be construed to solicit or create a contractual relationship between the District of Columbia and any person.

1601.3 Implementation of regulations applicable to dispatch services and associated owners and operators. Each dispatch service shall:

(a) Operate in compliance with § 1603; and

(b) Maintain compliance with the provisions of § 1604 for all services it provides in the District;

1601.4 No person regulated by this title shall associate with, integrate with, or conduct a transaction in cooperation with, a dispatch service that is not in compliance with § 1604.

1602 RELATED SERVICES

1602.1 A person may operate a dispatch service and one or more affiliated businesses, provided each affiliated business is operated in compliance with all applicable provisions of this title and other applicable laws.

1602.2 All provisions of this title applicable to digital dispatch services (DDS) shall apply equally to each DDS regardless of whether such DDS receives payment from the passenger or the operator in connection with dispatch services.

1603 OPERATING REQUIREMENTS FOR ALL DISPATCH SERVICES

1603.1 Each dispatch service shall be licensed to do business in the District of Columbia.

1603.2 Each dispatch service that provides digital services for sedans shall operate in compliance with this chapter and Chapters 12 and 14 of this title.

1603.3 Each dispatch service that participates in providing taxicab service shall operate in compliance with this chapter and Chapters 4, 6, and 8 of this title.

1603.4 Each dispatch provided by a dispatch service shall comply with the definitions of "dispatch".

1603.5 Each gratuity charged by a dispatch service shall comply with the definition of "gratuity".

1603.6 Each digital dispatch service that processes digital payments shall:

(a) Comply with the requirements for passenger rates and charges set forth in § 801 for taxicab service and § 1402 for sedan service;

(b) If the payments are processed for taxicab service, comply with the integration, payment, and passenger surcharge requirements of § 408;

(c) Provide receipts as required by § 803 for taxicab service and § 1404 for sedan service;

(d) Use technology that meets Open Web Application Security Project ("OWASP") security guidelines, complies with current standards of the PCI Security Standards Council ("Council") for payment card data security, if such standards exist, and, if not, then with current guidelines of the Council for payment card data security, and, for direct debit transactions, complies with the rules and guidelines of the National Automated Clearing House Association; and

(e) Promptly inform the Office of a security breach requiring a report under the Consumer Personal Information Security Breach Notification Act of 2006, effective March 8, 2007 (D.C. Law 16-237, D.C. Official Code §§ 28-3851, *et seq.*), or other applicable law.

1603.7 Each dispatch shall clearly provide the person seeking service with the option to request an available wheelchair-accessible vehicle.

1603.8 Each dispatch service shall maintain a bona fide administrative office or a registered agent authorized to accept service of process, provided, however, a dispatch service operated by a taxicab company required to maintain such an office pursuant to Chapter 5 of this title shall operate its dispatch service at that location or another bona fide administrative office.

1603.9 Each dispatch service shall maintain a customer service telephone number for passengers with a "202" prefix or a toll-free area code, or an email address posted on its website that is answered or replied to during normal business hours.

1603.10 Each dispatch service shall maintain a website with current information that includes:

(a) The name of the dispatch service;

(b) Contact information for its bona fide administrative office or registered agent authorized to accept service of process;

(c) Its customer service telephone number or email address, and;

(d) The following statement prominently displayed:

> Public vehicle-for-hire services in Washington, DC
> are regulated by the DC Taxicab Commission
> 2041 Martin Luther King Jr., Ave., SE, Suite 204
> Washington, DC. 20020
> www.dctaxi.dc.gov
> dctc3@dc.gov 1-855-484-4966 TTY: 711

and;

(e) A statement of how the fare is calculated for each class of service it offers, which shall include a statement of the rates and charges allowed by § 1402, and, for sedan service, shall indicate whether the dispatch service uses demand pricing and, if so, how such pricing affects its rates.

1603.11 Each dispatch service shall comply with §§ 508 through 513, to the same extent as if it were a taxicab company.

1603.12 Each dispatch service shall provide its service throughout the entire District.

1603.13 Each dispatch service shall perform the service agreed to with a passenger in a dispatch, including picking up the passenger at the agreed time and location, except for a bona fide reason not prohibited by § 819.5 or other applicable provision of this title.

1603.14 Protection of certain information relating to passenger privacy and safety.

(a) A dispatch service shall not:

(1) Release information to any person that would result in a violation of the personal privacy of the passenger or the person requesting service, or that would threaten the safety of a passenger or an operator; or

(2) Permit access to real-time information about the location, apparent gender, or number of passengers awaiting pick up by a person not authorized by the dispatch service to receive such information.

(b) This subsection shall not limit access to information by the Office or a District enforcement official.

1603.15 A dispatch service shall not transmit to the operator any information about the destination of a trip, except for the jurisdiction of the destination, until the trip has been booked.

1603.16 Each dispatch service shall store its business records in compliance with industry best practices and all applicable laws, make its business records related to compliance with its legal obligations under this title available for inspection and copying as directed by the Office, and retain its business records for five (5) years.

1603.17 Each dispatch service shall comply with all applicable provisions of this title and other laws regulating origins and destinations of trips, including all reciprocal agreements between governmental bodies in the Washington Metropolitan Area governing public vehicle-for-hire service such as those in § 828.

1603.18 Each DDS that provides digital services for sedans shall:

(a) Maintain with the Office an accurate and current inventory of the vehicles and operators associated with the DDS to use its system in the manner required by § 1403; and

(b) Collect from the passenger and pay to the District the sedan passenger surcharge in the manner required by § 1403.

1604 REGISTRATION

1604.1 No dispatch service shall participate in providing a public vehicle-for-hire service in the District unless it is registered with the Office pursuant to this section, except for a taxicab company with existing operating authority under Chapter 5 of this title, which, as of the effective date of this rulemaking, is operating a telephone dispatch service.

1604.2 An applicant seeking to register with the Office shall provide the following information:

(a) Its name and contact information;

(b) The name of and contact information for each public vehicle-for-hire business or service associated with, or operated by an owner of, the dispatch service, including any payment service provider (PSP), and any business or service operated or offered outside the District,

(c) A technical description of the dispatch or payment solution, digital payment system, or both, offered by the DDS, including the trade names and software applications, platforms, and operating systems used;

(d) A blank sample of each agreement or policy, including any user agreement or privacy policy, applicable to the DDS's association with vehicle owners and operators, and with passengers, or a URL web address where such information may be found;

(e) An indication by the applicant of whether the dispatch service intends to offer dispatch of sedans, and whether it intends to offer dispatch services or digital payments for taxicabs, or both;

(f) If it will be dispatching sedans, its initial operator and vehicle inventory pursuant to § 1403;

(g) A certification by the applicant that the DDS owns the right to, or holds licenses to, all the intellectual property used by the dispatch service for all technology used for the dispatch or payment solution or the digital payment system it provides;

(h) Proof that it is licensed to do business in the District of Columbia; and

(i) Such other information and documentation as the Office may determine is reasonably necessary in order to verify that the DDS will comply with all applicable provisions of this title and other applicable laws.

1604.3 Each application under § 1604.2 shall be:

(a) Provided under penalty of perjury;

(b) Accompanied by the surcharge bond required by § 403.3 (if the dispatch service is a DDS is required to collect a passenger surcharge for taxicab service), or by § 1403, if the dispatch service is a DDS that will be dispatching sedans, provided, however, that a DDS shall not be required to deposit a more than one (1) surcharge bond if the DDS collects and pays passenger surcharges for both taxicabs and for sedans; and

(c) Accompanied by a fee of five hundred dollars ($500), except that the fee for an application to amend an existing registration under § 1604.5, regardless of the number of services proposed to be added to the existing registration, shall be three hundred dollars ($300).

1604.4 Each registration shall continue in force and effect for twenty four (24) months, during which time no substantial change may be made to a DDS's dispatch or payment solution for taxicabs, or to a DDS's digital payment system for sedans,

unless the DDS informs the Office of the proposed substantial change at least fifteen (15) days prior to its implementation, during which time the DDS shall cooperate with the Office as necessary so the Office is fully informed of the nature of the proposed change and is able to verify whether the proposed change is in compliance with relevant laws and regulations. In addition, each registered DDS shall notify the Office of any other change in the information contained in its registration or its supporting documentation, such as contact information, within seven (7) days after the change.

1604.5 Each DDS registered under this section may at any time file an application to amend its registration to include additional services it wishes to market to public vehicle-for-hire owners and operators for which registration is required under this chapter.

1604.6 Each DDS registered under this section shall file to renew its registration at least sixty (60) days prior to the expiration thereof, by providing such information for renewal as determined by the Office. Registration shall continue in force and effect beyond its expiration period during such time as an application to renew is pending acceptance in proper form.

1604.7 A DDS registered under this section shall annually provide to the Office, beginning on the first (1st) day of the thirteenth (13th) month after its certificate of registration was issued:

(a) Proof that it is licensed to do business in the District;

(b) Proof that it maintains a bona fide administrative office or registered agent authorized to accept service of process, as required by § 1603.1;

(c) Proof that it maintains a website, as required by § 1603.10;

(d) A report on the wait times and fares charged to passengers seeking wheelchair-accessible service in the prior twelve (12) months; and

(e) A list of incidents in the prior twelve (12) months that involved an allegation or dispute concerning the following matters, which shall include an indication of whether the allegation or dispute has been resolved:

(1) A payment, where the dispute involved fifty dollars ($50) or more;

(2) Fraud or criminal activity; or

(3) Violations of the anti-discrimination rules of Chapter 5 of this title.

1604.8 The Office may arrange one (1) demonstration for each of the DDS's dispatch or payment solutions for taxicabs, or its digital payment system for sedans, where

the Office's technical staff may examine and test the equipment to ensure compliance with all applicable provisions of this title and other applicable laws. The Office's staff may ask questions of the DDS's technical staff, who shall attend the demonstration.

1604.9 The Office shall determine whether to grant or deny registration within ten (10) days after an application is filed, provided however, that such period may be extended by the Office for no more than seven (7) days with notice to the DDS. The Office shall deny registration only if it determines that the DDS is not or will not be in compliance with the provisions of this title or other applicable laws.

1604.10 If the Office grants an application, it shall provide notice to the DDS in writing.

1604.11 If the Office denies an application, it shall state the reasons for its decision in writing, including the specific facts upon which the Office has determined that the DDS is not or will not be in compliance with the provisions of this title or other applicable laws. A decision to deny may be appealed to the Chief of the Office within fifteen (15) business days. If the decision to deny is not appealed within the fifteen (15) business day period, it shall constitute a final decision of the Office. If the decision to deny is appealed within the fifteen (15) business day period, the Chief shall issue a decision within thirty (30) days. A timely appeal of a denial shall extend an existing certificate or registration pending the Chief's decision. A decision of the Chief to affirm or reverse a denial shall constitute a final decision of the Office. A decision of the Chief to remand to the Office for further review of the filing shall extend an existing certificate pending the final decision of the Office.

1604.12 The name of each registered DDS, and the name of its dispatch or payment solution for taxicabs, and/or digital payment system for sedans, shall be listed on the Commission's website.

1604.13 A DDS's registration may be suspended or revoked, or not renewed, by the Office with reasonable notice and an opportunity to be heard if the Office learns that the DDS is not in substantial compliance with this title, or other applicable law, or that a DDS's digital payment system, or dispatch or payment solution, is being used in a manner that poses a significant threat to passenger or operator safety, or to consumer protection, or is failing to collect the passenger surcharge.

1605 PROHIBITIONS

1605.1 No person shall dispatch a public vehicle-for hire or process a digital payment for a public vehicle-for-hire in the District except as provided in this chapter.

1605.2 No person shall operate a dispatch service that is not registered with the Office under § 1604 for all the services it provides in the District.

1605.3 No dispatch service shall dispatch or process digital payments except as provided in this chapter and in Chapters 4, 6, and 8 (for taxicabs), and in this chapter and in Chapters 12 and 14 (for sedans).

1605.4 No dispatch service may alter or attempt to alter its legal obligations under this title or to impose an obligation on any person or limit the rights of any person in a manner that is contrary to public policy or that threatens passenger or operator safety or consumer protection.

1605.5 A DDS shall not provide digital dispatches to a taxicab operator who provides service with a vehicle that displays on its exterior the name, color scheme, or other unique branding of a taxicab fleet or association, if such fleet or association does not agree to the operator's association with the DDS, and:

(a) For thirty (30) days following the effective date of this rulemaking, such fleet or association is operating a dispatch service limited to its associated vehicles; or

(b) After thirty (30) days following the effective date of this rulemaking, such fleet or association has filed for or received registration for a DDS limited to its associated vehicles.

1605.6 No DDS shall provide digital payment for taxicabs which allows the operator to manually enter fare information into any device except as permitted by § 801, or by the integration rules of Chapter 4.

1605.7 No fee charged by a DDS in addition to a taximeter fare shall be processed by a payment service provider, or displayed on or paid using any component of an MTS unit, provided, however, that such a fee may be processed by a payment service provider or displayed on or paid using a component of an MTS unit pursuant to an integration agreement between the DDS and the PSP that has been approved by the Office pursuant to Chapter 4, this chapter, and all other applicable provisions of this title, and incorporates reasonable measures to avoid passenger confusion between regulated and non-regulated rates and charges.

1605.8 This section shall not apply to sedan services until November 1, 2013.

1606 ENFORCEMENT

1606.1 The enforcement of any provision of this chapter shall be governed by the procedures set forth in Chapter 7 of this title. If, at the time of violation, the procedures in Chapter 7 do not extend in their terms to DDSs, violations of this chapter shall be enforced as if such DDS were a taxicab owner or operator.

1607 PENALTIES

1607.1 A dispatch service that violates this chapter shall be subject to:

(a) A civil fine of five hundred dollars ($500) for the first violation of a provision, one-thousand dollars ($1,000) for the second violation of the same provision, and one-thousand five-hundred dollars ($1,500) for each subsequent violation of the same provision;

(b) Suspension, revocation, or non-renewal of its registration;

(c) Any penalty available under Chapter 4 in connection with the dispatch of taxicabs or under Chapter 14 in connection with the dispatch of sedans;

(d) Any combination of the sanctions listed in this subsection; or

(e) Any penalty authorized by a provision of this title other than in this chapter or by other applicable law.

1699 DEFINITIONS

1699.1 The terms “cashless payment,” “modern taximeter system,” “MTS,” “MTS unit”, “payment service provider”, “PSP”, and “taximeter fare” shall have the meanings ascribed in Chapter 4 of this title.

1699.2 The term “sedan” shall have the meaning ascribed to it in Chapter 12 of this title.

1699.3 The terms “digital payment system,” and “DPS” shall have the meanings ascribed to them in Chapter 14 of this title.

1699.4 The term “person” and “license” shall have the meanings ascribed to them in Section 3 of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-502).

1699.5 The following words and phrases shall have the meanings ascribed:

“Affiliated” - common ownership.

“Associated” - a voluntary relationship of employment, contract, joint venture, or agency. For purposes of this chapter, an association not in writing shall be ineffective for compliance purposes.

“Booked” - agreed and accepted by the customer.

“Customer” - a person that requests public vehicle-for-hire service, including a passenger, or any other person that requests service on behalf of a passenger.

"Dispatch" - booking public vehicle-for-hire service through an advance reservation consisting of a request for service from a person seeking service, an offer of service by the dispatch service, an acceptance of service by the person seeking service, and an acknowledgement by the dispatch service that includes an estimated time of arrival of a booked vehicle.

"Dispatch or payment solution" - any reasonable technology solution that allows a DDS to provide taxicabs with digital dispatch service, digital payment service, or both.

"Digital dispatch" - dispatch via computer, mobile phone application, text, email, or Web-based reservation.

"Digital dispatch service" or "DDS" - a business that provides digital dispatch of taxicabs, sedans, or both.

"Digital payment" - a non-cash payment processed by a digital dispatch service and not by the vehicle operator, such as a payment by a payment card (a credit or debit card), processed through a mobile- or Web-based application. A digital payment does not mean a "cashless payment" as such term is defined in Chapter 6 of this title.

"Digital services" - digital dispatch or digital payment for a public vehicle-for-hire.

"Dispatch service" - a business that offers telephone or digital dispatch.

"District enforcement official" - a public vehicle enforcement inspector or other authorized official, employee, or general counsel of the Office, or a law enforcement official authorized to enforce a provision of this title.

"Passenger surcharge" - the passenger surcharge required to be collected from passengers and remitted to the District for each trip in a taxicab or sedan, as required by Chapters 4, 6, and 8, for taxicabs, and by this chapter and Chapter 14 for sedans.

"Substantial change" - (1) a replacement of an existing DDS dispatch or payment solution for taxicabs, or digital payment system for sedans, or (2) a material change in the DDS's manner of compliance with § 1603.6 (a)-(d) (other than a change in non-regulated rates and charges established by the DDS) or with § 1603.7. A substantial change does not include an update to an application or to an operating system, a service update, or other routine modification or incremental improvement of an existing DDS dispatch or payment solution for taxicabs, or digital payment system for sedans.

"Surcharge bond" - a security bond of fifty-thousand dollars ($50,000) payable to the D.C. Treasurer that is effective throughout the period when the dispatch service has operating authority and for one (1) year thereafter.

"Telephone dispatch" - dispatch via telephone.

"Telephone dispatch service" - a business that provides telephone dispatch for taxicabs.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
INVESTIGATIVE AGENDA

THURSDAY, MAY 7, 2014
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

On May 7, 2014 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#14-CMP-00156 Manchester Bar & Restaurant, 944 FLORIDA AVE NW Retailer C Tavern, License#: ABRA-075377

---

2. Case#14-CC-00033 Stoney's, 1433 P ST NW Retailer C Restaurant, License#: ABRA-075613

---

3. Case#14-CMP-00081 Bandolero, 3241 M ST NW Retailer C Restaurant, License#: ABRA-075631

---

4. Case#14-CC-00036 Midtown, 1219 CONNECTICUT AVE NW Retailer C Nightclub, License#: ABRA-072087

---

5. Case#14-CC-00031 Meiwah, 1200 NEW HAMPSHIRE AVE NW Retailer C Restaurant, License#: ABRA-071154

---

6. Case#14-CC-00028 New Da Hsin Trading, Inc, 811 7TH ST NW Retailer A Retail - Liquor Store, License#: ABRA-023501

---

7. Case#14-CC-00032 The Front Page Restaurant & Grille, 1333 NEW HAMPSHIRE AVE NW Retailer C Restaurant, License#: ABRA-001910

---

8. Case#14-CC-00029 Log Cabin Liquor, 1748 7TH ST NW Retailer A Retail - Liquor Store, License#: ABRA-082040

---

9. Case#14-CMP-00133 Lupo Verde, 1401 T ST NW Retailer C Restaurant, License#: ABRA-088527

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LEGAL AGENDA

WEDNESDAY, MAY 7, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review of letter dated March 26, 2014 from Emanual Mpras Counsel for Red Line DC, LLC. ***Red Line,*** 707 G Street NW, Retailer CR, Lic#: 85225.

---

2. Review of Request for payment extension dated April 25, 2014 from Adeba Beyene Owner of Vita Restaurant and Lounge. ***Vita Restaurant and Lounge,*** 1318 9th Street NW, Retailer CT, Lic#: 86037.

---

3. Review of letter of support for license renewal dated April 21, 2014 from Leona Agouridis, Executive Director of Golden Triangle BID. ***Barcode,*** 1101 17th Street NW, Retailer CT, Lic#: 82039.

---

4. Review of Resolution to Amend Settlement Agreement dated February 12, 2014 between ANC 1A and Juanita's Restaurant. ***Juanita's Restaurant,*** 3251 14th Street NW, Retailer CR, Lic#: 91432.

---

5. Review Settlement Agreement dated April 10, 2014 between ANC 2B and 1624 U Street Inc. ***Chi-Cha Lounge,*** 1624 U Street NW, Retailer CT, Lic#: 26519.

---

6. Review of Proposed Amendment to Voluntary Agreement dated April 5, 2014 between ANC 2B, Group of 5 or More and Inner Circle1223, LLC. ***Dirty Martini/Dirty Bar,*** 1223 Connecticut Avenue NW, Retailer CR, Lic#: 83919.

---

7. Review of Proposed Amendment to Voluntary Agreement dated April 5, 2014 between ANC 2B, Group of 5 or More and HAK, LLC. ***Midtown,*** 1219 Connecticut Avenue NW, Retailer CN, Lic#: 72087.

---

8. Review of five (5) requests from E & J Gallo to provide retailers with products valued at more than $50 and less than $500.

*** In accordance with D.C. Official Code §2-574(b) Open Meetings Act, 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**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, MAY 7, 2014 AT 1:00 PM
2000 14th STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review request for substantial change from attorney Andrew Kline on behalf of licensee. No Outstanding Fines/Citations. No pending enforcement matters. Settlement Agreement. ANC 2B. SMD 2B08. ***Penthouse Pool & Lounge,*** 1612 U Street, NW, Retailer CT, License No. 086789.

---

2. Review application for Entertainment Endorsement. No Outstanding Fines/Citations. No pending enforcement matters. Settlement Agreement. ANC 2B. SMD 2B08. ***Penthouse Pool & Lounge,*** 1612 U Street, NW, Retailer CT, License No. 086789.

---

3. Review application for Entertainment Endorsement. No Outstanding Fines/Citations. No pending enforcement matters. No Settlement Agreement. ANC 5D. SMD 5D02. ***Bardo,*** 1216 Bladensburg Road NE, Retailer CT, License No. 090430.

---

4. Review substantial change application request for rooftop summer garden. No Outstanding Fines/Citations. No pending enforcement matters. Settlement Agreement. ANC 4B. SMD 4B02. ***Takoma Station Tavern***, 6419 4th Street NW, Retailer CT, License No. 079370.

---

5. Review letter of request to extend license in Safekeeping. ***The Roberts Law Group,*** 1029 Vermont Avenue NW, Retailer CN, License No. 083728.

---

6. Review application to place license in Safekeeping. ANC 1B. SMD 1B02. No Outstanding Fines/Citations. No pending enforcement matters. ***Living Social***, 918 7th Street NW, Retailer CX, License No. 088360.

---

7. Review letter from new applicant requesting consideration to reinstate cancelled license. ANC 7F. SMD 7F06. ***Minnesota Food Mart***, 3728 Minnesota Avenue NE, Retailer B Grocery, License No. 072048.

---

8. Review application request for new retailer full service grocery. ANC 5D. SMD 5D01. ***MOM'S Organic Market,*** 1401 New York Avenue NE, Retailer B Full Service Grocery, License No. 094996.

---

9. Review application for Change of Hours of Operation only. ***Approved Hours of Operation***: Sunday-Thursday 11am to 2am. Friday and Saturday 11am to 3am. ***Proposed Hours of Operation:*** Sunday 11am to 5am. Monday-Thursday 11am to 4am. Friday and Saturday 11am to 5am. No Outstanding Fines/Citations. February 23, 2014 Hours of Sale violation-Case #14-CMP-00088. No Settlement Agreement. ANC 2C. SMD 2C01. ***Ming's***, 617 H Street, NW, Retailer CR, License No. 083415.

---

10. Review application for Change of Hours. ***Approved Hours of Operation***: Sunday-Wednesday 11am to 2am. Thursday 11am to 2:30am. Friday 11am to 3:30am, Saturday 11:30am to 3:30am. ***Approved Hours of Alcoholic Beverage Sales and Consumption***: Sunday-Thursday 11:30am to 1:30am. Friday and Saturday 11:30am to 2:30am. ***Approved Hours of Live Entertainment:*** Sunday-Thursday 6pm to 1:30am. Friday and Saturday 6pm to 2:30am. ***Proposed Hours of Operation***: Sunday-Thursday 8am to 2am. Friday and Saturday 8am to 3:30am. ***Proposed Hours of Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 8am to 2am. Friday and Saturday 8am to 3am. ***Proposed Hours of Live Entertainment***: Sunday-Thursday 6pm to 2am. Friday and Saturday 6pm to 3am. No Outstanding Fines/Citations. No pending enforcement matters. No Settlement Agreement. ANC 2B. SMD 2B06. ***The Bottom Line***, 1716 I Street NW, Retailer CT, License No. 000755.

---

11. Review application and letter for Change of Hours. ***Approved Hours of Operation, Alcoholic Beverage Sales and Consumption:*** Sunday-Saturday 11am to 12am. ***Proposed Hours of Operation, Alcoholic Beverage Sales and Consumption***: Sunday-Saturday 11am to 1am. No Outstanding Fines/Citations. No pending enforcement matters. No Settlement Agreement. ANC 2C. SMD 2C02. ***Sixth Engine***, 438 Massachusetts Avenue NW, Retailer CT, License No. 084584.

***In accordance with D.C. Official Code §2-574(b) of the Open Meetings Amendment Act, 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.**

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE

The Director of the D.C. Department of Behavioral Health (DBH), pursuant to the authority set forth in sections 5113, 5115, 5117 and 5118 of the "Department of Behavioral Health Establishment Act of 2013," effective December 24, 2013, D.C. Law 20-0061, 60 DCR 12523, hereby gives notice that effective June 1, 2014, DBH will not accept applications from community-based organizations seeking certification as a provider of substance abuse treatment and recovery services. Applications submitted on or after June 1, 2014 will be returned to the provider and will not be reviewed or processed by DBH.

Applications that are currently under review by the DBH Certification and Regulation Branch will be processed in accordance with applicable law and regulations.

The Department plans to publish new substance abuse treatment provider certification regulations that will be effective on or before October 1, 2014. These new regulations are necessary to align our certification standards with the District of Columbia Medicaid State Plan Amendment for Adult Substance Abuse Rehabilitative Services (ASARS). The Department will evaluate the need for additional substance abuse treatment and recovery services providers after the new certification rules are effective.

All questions regarding this Notice should be directed to Atiya Frame-Shamblee, Deputy Director of Accountability, DBH, at 64 New York Ave. NE, 3rd floor, Washington D.C. 20002; or Atiya.Frame@dc.gov; or (202) 671-2245.

CENTER CITY PUBLIC CHARTER SCHOOLS, INC.

REQUEST FOR PROPOSAL

Center City Public Charter Schools, Inc. is soliciting proposals from qualified vendors for the following:

Center City PCS would like to engage one or more contractors to furnish and install new window treatments in classrooms at one of our campuses during the summer of 2014. The goal is to create school buildings which are well maintained and are conducive to PK-8th grade instruction. Our buildings are generally 50-100 years old and have been serving as schools since inception.

To obtain copies of full RFP's, please visit our website: www.centercitypcs.org. The full RFP's contain guidelines for submission, applicable qualifications and deadlines.

Contact person:

Natasha Harrison
nharrison@centercitypcs.org

D.C. PREPARATORY ACADEMY

REQUEST FOR PROPOSALS

LOW VOLTAGE CABLING SERVICES

D.C. Preparatory Academy Public Charter School (DC Prep) is seeking competitive proposals for IT low voltage cabling services for a public charter school facility project. For a copy of the RFP, please contact Mr. Ryan Gever of Brailsford & Dunlavey at rgever@programmanagers.com. All proposals must be submitted by 12:00 pm on Friday, May 16, 2014.

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCIES

The District of Columbia Board of Elections hereby gives notice that there are vacancies in two (2) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 2E08 and 5E08

Petition Circulation Period: **Monday, May 5, 2014 thru Tuesday, May 27, 2014**
Petition Challenge Period: **Friday**, **May 30, 2014 thru Thursday, June 5, 2014**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

D.C. Board of Elections
441 - 4th Street, NW, Room 250N
Washington, DC 20001

For more information, the public may call **727-2525**.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling Vacancies
In Advisory Neighborhood Commissions

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancies have been filled in the following single-member districts by the individuals listed below:

Mark Ranslem
Single-Member District 1B08

Malachy Nugent
Single-Member District 3F06

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 1100 15th Street, NW, Suite 800 Washington, DC 20001 on **Wednesday, May 14, 2014 at 5:30 pm**. The call in number is 1-877-668-4493, Access code 735 723 219.

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 CARE FINANCE

NOTICE OF PUBLIC MEETING

Department of Health Care Finance Pharmacy and Therapeutics Committee

The Department of Health Care Finance (DHCF) Pharmacy and Therapeutics Committee (P&T Committee), pursuant to the requirements of Mayor's Order 2007-46, dated January 23, 2007, hereby announces a public meeting of the P&T Committee to obtain input on the review and maintenance of a Preferred Drug List (PDL) for the District of Columbia. The meeting will be held **Thursday, June 12, 2014**, at **2:30 PM** in the **10th Floor Main Conference Room 1028** at **441 Fourth Street NW, Washington, DC 20001**. Please note that a government issued ID is needed to access the building. Use the North Lobby elevators to access the 10th floor.

The P&T Committee will receive public comments from interested individuals on issues relating to the topics or class reviews to be discussed at this meeting. The clinical drug class review for this meeting will include:

Glucocorticoids, Inhaled
Bronchodilators, Beta Agonist
COPD Agents
Epinephrine, Self-Injected
Leukotriene Modifiers
Intranasal Rhinitis Agents
Antihistamines, Minimally Sedating
PAH Agents, Oral And Inhaled
Antimigraine Agents
Skeletal Muscle Relaxants
Analgesics, Narcotics Long Acting
Opiate Dependence Treatments
NSAIDs
Ophthalmics, Glaucoma Agents
Ophthalmics for Allergic Conjunctivitis
Ophthalmics, Anti-Inflammatories
Ophthalmic Antibiotics
Ophthalmic Antibiotic-Steroid Combinations
Otic Antibiotics
Steroids, Topical High
Steroids, Topical Low
Steroids, Topical Medium
Steroids, Topical Very High
Irritable Bowel Syndrome
Vaginal Antibiotics

Any person or organizations who wish to make a presentation to the DHCF P&T Committee should furnish his or her name, address, telephone number, and name of organization represented by calling (202) 442-9076 **no later than 4:45 PM on Thursday, June 5, 2014**. The person or organization may also submit the aforementioned information via e-mail to Charlene Fairfax (charlene.fairfax@dc.gov).

An individual wishing to make an oral presentation to the P&T Committee will be limited to three (3) minutes. A person wishing to provide written information should supply twenty (20) copies of the written information to the P&T Committee **no later than 4:45 PM on Thursday, June 5, 2014. Handouts are limited to no more than two standard 8-1/2 by 11 inch pages of "bulleted" points (or one page front and back).** The ready-to-disseminate, written information can also be mailed **to arrive no later than Thursday, June 5, 2014** to:

Department of Health Care Finance
Attention: Charlene Fairfax, RPh, CDE
441 Fourth Street NW, Suite 900 South
Washington, DC 20001

KIPP DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Photocopier Services

KIPP DC Charter Schools will receive bids for photocopier services until 5:00pm on May 9, 2014. For a full RFP, see www.kippdc.org/procurement.

Construction Management Services

KIPP DC Charter Schools will receive bids for Construction Management Services for a PreK-8th grade campus expansion project until 5:00pm on May 16, 2014. For a full RFP, see www.kippdc.org/procurement.

Architectural & Engineering Services

KIPP DC Charter Schools will receive bids for A/E Services for a PreK-8th grade campus expansion project until 5:00pm on May 16, 2014. For a full RFP, see www.kippdc.org/procurement.

OPTIONS PUBLIC CHARTER SCHOOL

Requests for Proposals
Educational Consulting Services (Special Education)
Educational Consulting Services (School Improvement)

SCHOOL OVERVIEW

Options Public Charter School (Options PCS) is an open-enrollment public charter school in Northeast D.C., serving students in grades 6 through 12. Options provides individualized instruction and targeted support to help all students earn the knowledge and skills they need to be successful in college and post-secondary careers.

REQUESTS FOR PROPOSALS

Options PCS seeks proposals from prospective candidates to provide the following services:

1. **Educational Consulting Services** to monitor and implement short-term special education improvement plans and to develop a longer-term special education improvement plan. *Contract period: May – August 2014.*

2. **Educational Consulting Services** to develop and implement effective short-term school improvement strategies in collaboration with Receiver and school leadership and to prepare written reports on planning activities and results. *Contract period: May – August 2014.*

Proposals are due on Friday, May 9, 2014, by 5:00 p.m. EDT and should be submitted electronically, in Portable Document Format (PDF), to proposals@optionsschool.org. For additional bid information, including the full requests for proposals, email proposals@optionsschool.org.

OPTIONS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSAL

Options Public Charter School seeks bids from prospective candidates to provide landscaping and outside ground service maintenance.

Options Public Charter School comprises the old Kingsman campus located at 1375 E Street NE. It is a 61,113 Square Foot facility.

Proposals may be submitted, in person, by email, or by fax and are due in our offices by Monday May 12th, 2014 by 4:00 pm.

For the full RFP, please contact:

Dr. Charles Vincent
cvincent@optionsschool.org
1375 E St NE
Washington DC 20002
202 547 1028 ext 205
202 5471072 fax

PERRY STREET PREP PUBLIC CHARTER SCHOOL

NOTICE: FOR PROPOSALS FOR TECHNOLOGY EQUIPMENT AND SERVICES AND PHONE SERVICES

The Perry Street Prep Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide laptop equipment, IT support services, and telephone services to the school. These are separate RFPs and vendors interested in providing multiple elements (e.g. both the laptop equipment and the IT support services) should submit separate proposals.

E-mail the Bid Administrator at psp_bids@pspdc.org to request a full RFP offering more detail on scope of work and bidder requirements. Please include the subject of this notice in your e-mail request.

Proposals shall be received no later than 5:00 P.M., Tuesday, May 13, 2014.

Prospective Firms shall submit one electronic submission via e-mail to the following address:

Bid Administrator
psp_bids@pspdc.org

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE

MEETING TO DEVELOP AN EXPEDITED DISCOVERY SCHEDULE FOR APPROVAL OF TRIENNIAL UNDERGROUND PLANS

1. On March 3, 2014, the Mayor of the District of Columbia signed into law the Electric Company Infrastructure Improvement Financing Act of 2014 ("ECIIFA"), which governs the Potomac Electric Power Company ("Pepco") and the District of Columbia Department of Transportation's ("DDOT") public-private partnership to bury overhead primary power lines to improve electric service reliability in the District of Columbia.

2. Section 307(a) of the ECIIFA requires Pepco and DDOT to submit every three (3) years, through September 30, 2022, a joint application for the Commission's approval of a triennial Undergrounding Plan consisting of DDOT's Underground Electric Company Infrastructure Improvement Activity and Pepco's Infrastructure Activity. The ECIIFA also authorizes an annually adjusted surcharge to recover costs associated with the Electric Company Infrastructure Improvement Costs ("Underground Project Charge") approved by the Commission. Section 309(d) of the ECIIFA requires the Commission to expedite its consideration of an application to approve a triennial Undergrounding Plan.

3. Subsection 309(b)(1) of the ECIIFA requires the Public Service Commission of the District of Columbia ("Commission") to issue an order, within 30 days of the effective date of the ECIIFA, to establish an expedited discovery schedule to be used in all proceedings to consider triennial Undergrounding Plans. In this connection, the ECIIFA provides the following guidance regarding discovery to be held in proceedings to consider triennial Undergrounding Plans:

a. The period of discovery shall commence on the date that the application is filed with the Commission and shall continue for 60 days thereafter;

b. Discovery should allow for reasonable periods for responses to information requests on shortened timelines and address the use of all reasonable procedures for expediting the discovery process, including discovery conferences;

c. Discovery should also permit parties to inspect all the relevant data, documents, studies analyses, and work papers that form the basis of the triennial Underground Infrastructure Improvement Projects Plan and any revenue requirements or charges provided therein; and

d. The discovery schedule is to afford parties the rights provided under Chapter 1 of Title 15 of the District of Columbia Municipal

Regulations, while maintaining the statutory 60-day discovery period described in the ECIIFA.

4. In light of the above, the Commission opened *Formal Case No. 1116* to consider applications for approval of power line underground projects plans ("triennial Undergrounding Plans"). The Commission hereby gives notice that Commission Staff will convene a public meeting to allow the statutory parties of right under ECIIFA, *i.e.*, Pepco, DDOT, the Office of the People's Counsel ("OPC"), and the Government of the District of Columbia ("District Government"), and other interested person to discuss and recommend an expedited discovery schedule to be used in Commission proceedings where triennial Undergrounding Plans are being considered.

5. The Commission's public meeting will be held on **May 9, 2014**, at **10:00 a.m.** in the Commission's Hearing Room, 1333 H Street, NW, 7th Floor, East Tower, Washington, D.C. 20005. All interested persons, including Pepco, OPC, District Government, and DDOT are invited to attend.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF INQUIRY

FORMAL CASE NO. 982, IN THE MATTER OF THE ANNUAL CONSOLIDATED REPORT OF THE POTOMAC ELECTRIC POWER COMPANY

1. As the Public Service Commission of the District of Columbia ("Commission") continues into its second century of operation, it is our intention to examine certain of the reports the Commission requires from the companies subject to our regulation. We undertake this effort to assure that these reports continue to provide the Commission and stakeholders with information appropriate in the current regulatory environment, without being unduly burdensome to the parties who prepare and review that information.

2. In the first of these efforts, the Commission announced in Order No. 17455 that we will address the format and content of the Annual Consolidated Report ("ACR") filed by the Potomac Electric Power Company ("Pepco").[1] We will also examine the process that is used by the Commission Staff and by other parties to review and comment upon the ACR.

3. The goal of the Commission in requiring the ACR is to have a single, integrated document that contains key information about the year-to-year changes in Pepco's operations and information about Pepco's planned programs and operations, including any necessary construction during the next decade. This information provides a basis for the Commission's review and consideration of Pepco's planning and operational decisions. This review helps the Commission ensure that Pepco provides safe and reliable services on the electric distribution system funded by District ratepayers while taking into consideration public safety, the economy of the District, the conservation of natural resources and the preservation of environmental quality.

4. In its current form, Pepco's ACR consists of three Commission-required elements. First, beginning in 1987 the Commission, by rule, required Pepco to file a Productivity Improvement Plan ("PIP").[2] The PIP, to be filed on February 15th of each year, was intended to set forth annual, cost-effective productivity improvement goals for Pepco. Second, the Commission required Pepco to submit a comprehensive plan including an assessment of, and future plans for, its distribution facilities. The Commission required the filing of the

---

[1] Pepco's ACRs can be inspected and downloaded through the Commission's eDocket, located on the Commission's website (http://www.dcpsc.org/); Previous ACRS may generally be found at Formal Case No. 766, up to and including its 2013 ACR. Beginning with the 2014 ACR, the Commission is docketing these reports under the prefix "PEPACR" followed by the applicable reporting year, and ending with a sequence number. Thus, Pepco's 2014 ACR is docketed as PEPACR-2014-01.

[2] See 15 D.C.M.R. §§ 513.1 *et seq*. (June 26, 1987).

Comprehensive Plan to be made together with the PIP.[3] Third, in 2005, the Commission required that Pepco file the Manhole Event Report as Part 3 of what had become the Annual Consolidated Report.[4] It is the current content of this three-part report that we will be addressing in our inquiry.

5. The Comprehensive Plan and the PIP began as Pepco shed its generation and began to adjust to the new restructured retail electricity market in the District. They later served as vehicles to keep Pepco's attention focused on certain issues related to its reliability performance. In the interim, there have been a number of new policy initiatives in the District that impact Pepco's operations. These include the increase in the use of renewable energy resources and their integration into the electric distribution system; the introduction of distribution automation and AMI-enabled Smart Meters; a recent period of steady population growth in the District after a period of population decline; energy efficiency and sustainability programs that lead to a reduction in energy use; and the planned construction that will relocate underground a significant number of the least reliable of Pepco's overhead electric circuits ("feeders") in the District. At the same time, there has been a growing community of ratepayers who are becoming ever more sensitive to, and more vigilant about, rate increases.

6. By issuing this Notice of Inquiry ("NOI"), the Commission is asking interested persons what changes, if any, they recommend be made to the content of the Annual Consolidated Report. Specifically, the Commission is asking interested persons to provide comments on:

a) What current content of the ACR should be retained in its current format, including specific charts, maps, and responses to past Commission directives;

b) What current content should be retained, but modified and how should it be modified;

c) What current content should not be retained and why (*e.g.* the content is duplicative of another filing; the content is no longer relevant to current issues; the directive has been satisfied, etc.);

d) What new content should be added to the ACR, including any specific new charts or maps, and why;

e) Whether the suggested new content is contained in any other report(s) filed with the Commission and if so, where;

---

[3] *Formal Case No. 991, In the Matter of the Investigation into Explosions Occurring In or Around the Underground Distribution Systems of the Potomac Electric Power Company*, Order No. 12735, May 16 2003, ¶ 140.

[4] *Formal Case No. 766, In the Matter of the Commission's Fuel Adjustment Clause Audit and Review Program*, Order No. 13812, November 9, 2005 at ¶ 8.

f) What content should have a sunset provision, what should that sunset provision be, and why; and

g) What revisions to the Commission's Rules are needed to accommodate the recommended changes.

7. The Commission's rules set out the process for the review of the Annual Consolidated Report once it is filed by Pepco. Currently, the public has forty-five days measured from the date of its filing to comment upon the ACR.[5] After those comments are received, the Commission's Rules require that the Commission Staff review the ACR, provide a report summarizing and evaluating the ACR and the public comments of parties, and provide its recommendations with regard to these.[6] The Staff Report is required to be filed by May 1st of each year. Finally, the Rules provide that the Commission shall review the ACR, along with the Staff Report and public comments, and make public its evaluation by June 1st.[7] In recent years, there has been considerable slippage in achieving those dates. In addition, the length of Pepco's Annual Consolidated Reports, the length of the Staff Reports, the length of the Commission orders addressing the ACR, and the number of directives given to Pepco in orders following the review have grown.

8. By issuing this Notice of Inquiry ("NOI"), the Commission is also asking interested persons to tell us what changes, if any, they recommend be made to the process by which the Annual Consolidated Report is reviewed. The Commission has already identified one change that it is considering: the elimination of the two-tier review under which the Staff Report is prepared after a first round of comments have been made on the ACR. Specifically, the Commission is seeking comments on the following:

a) What changes need to be made to the review process and why;

b) What revisions to the Commission's Rules are needed to accommodate the suggested changes; and

c) What schedule should be used to transition from the present format of the ACR to a new format, if changes are made to the ACR.

9. All persons interested in commenting (including providing suggested changes) on the current contents of, and review process for, Pepco's Annual Consolidated Reports[8] are invited to submit written comments and reply comments no later than sixty (60) and eighty-one (81)

---

5 See 15 D.C.M.R. §513.8 (1987).

6 See 15 D.C.M.R. §513.9 (1987).

7 See 15 D.C.M.R. §513.10 (1987).

8 The current review process for Pepco's Annual Consolidated Reports is found in Section 513 of the Commission's Rules, *i.e.*, 15 D.C.M.R §§ 513, *et seq*.

days, respectively, after the publication of this Notice. Written comments should be filed with: Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005 or at the Commission's website at http://www.dcpsc.org.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE

Siemens Management Audit of Pepco System Reliability

1. By Order No. 16087, in Formal Case No. 1076, the Public Service Commission of the District of Columbia ("Commission") directed the Potomac Electric Power Company ("Pepco," or "the Company") to procure a contractor to conduct an independent management audit of the Company focusing on Pepco's distribution systems reliability. To that end, a management audit contract was awarded to Siemens Industry, Inc. On April 11, 2014, the management audit ("Siemens Audit") was submitted to the Commission. The Commission hereby gives notice that the Siemens audit is available for review and comment by interested parties. All persons interested in commenting on the Siemens Audit are invited to submit written comments no later than 60 days from the date of publication of this notice in the *D.C. Register*. Reply comments are due 20 days thereafter.

2. The general scope of the management audit was for Siemens to:

- Assess Pepco's investment in the "3 Ts" of proactive reliability management (Trees [vegetation management], Tools and Training), especially investments in field patrols, and inspections, and in tools such as Pole Mounted Remote Terminal Units ("RTUs") for visualization and situational awareness of the overhead cable system;
- Evaluate Pepco's vegetation management practices, including tree-trimming cycles, budgets and expenditures;
- Evaluate the adequacy of tree-trimming cycles and expenditures, including comparisons with the expenditures of similar utilities. The comparisons should be unitized for differences in utility sizes (*e.g.*, Overhead ("OH") line miles, customers, etc.). Determine to what extent tree-related outages have or have not improved if Pepco's tree-trimming cycle is two years;
- Evaluate Pepco's reliability-related budgets, schedules/timelines, milestones, and responsibilities to back up Pepco's statements in its annual Consolidated Reports for the past three years;
- Determine to what extent Pepco has implemented the best practices of field inspection of a statistically significant portion of the overhead system to determine the tree conditions on the primary, secondary, and service drop portions of the distribution system in the District. This included visual inspection of poles and attached equipment (per applicable codes), especially around Feeders 15709, 15801 and other at-risk feeders with overhead portions;
- Determine to what extent Pepco has implemented the 20 best practices selected from the 2009 Polaris Program. Determine costs and accountabilities, and quantify the benefits of implementation;

FC 1076
Siemens Audit

- Evaluate Pepco's equipment inspection and testing schedules and compare them with accepted industry practice for same, and determine the extent of Pepco's use of the "run to fail" method, and "life cycle" versus "fit for service" maintenance, rehabilitations, and replacement practices;
- Evaluate Pepco's level of equipment-related outages compared with industry averages;
- Assess all of Pepco's efforts and programs to improve distribution system reliability over the last three years. For example, what were the reliability improvement projects as distinct from normal capital expenditures and O&M projects? How much have these programs cost Pepco to date and what are the results?;
- Assess Pepco's implementation of its Emergency Response Plan and Major Outage Restoration Plan during major storm outages over the past three years;
- Evaluate the continued use of paper insulated lead cable ("PILC") in Pepco's underground system and the reasons why other utilities have replaced PILC; and
- Review staffing, Company-wide wage and salary policies, compensation and incentive programs (including executive, managerial, professional, salaried, non-salaried, and union employees) to determine and quantify linkages of compensation and incentive pay to achievement of reliability.

3. The Siemens Audit is available for review at the Public Service Commission's Office of the Commission Secretary, 1333 "H" Street, NW, 2nd Floor – West Tower, Washington, D.C. 20005 between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the Siemens Audit can be purchased at the Commission at the actual reproduction cost with 24 hour notice. The Siemens Audit may also be reviewed online at the Commission website http://www.dcpsc.org. All written comments should be filed with Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1333 H Street, N.W., West Tower, Suite 200, Washington, D.C. 20005 or at the Commission's website at http://www.dcpsc.org no later than 60 days from the date of publication of this notice in the *D.C. Register*. Reply comments are due 20 days thereafter.

THE DISTRICT OF COLUMBIA COMMISSION ON THE MARTIN LUTHER KING, JR. HOLIDAY

NOTICE OF PUBLIC MEETING

Wednesday, May 7, 2014
200 I Street SE Washington, DC 20001

The District of Columbia Commission on the Martin Luther King, Jr. Holiday will hold its open public meeting on Wednesday, May 7, 2014 at 1:00 pm in the Offices of the DC Commission on the Arts and Humanities. The Commission will be in attendance to discuss program events being planned for 2014 and for January 15, 2015.

The regular monthly meetings of the District of Columbia Commission on the Martin Luther King, Jr. Holiday are held in open session on the first Wednesday of the month, except for the month of August. If you have any questions or concerns, please feel free to contact Sharon Anderson at sharond.anderson@dc.gov.

OFFICE OF THE SECRETARY OF THE DISTRICT OF COLUMBIA

RECOMMEND FOR APPOINTMENTS OF NOTARIES PUBLIC

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after June 1, 2014.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on April 29, 2014. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 2**

Allen	Devin	The Ups Store 3320 N Street, NW	20007
Apelt	Carol Anne	American Conservative Union 1331 H Street, NW, Suite 500	20005
Baker	Lisa A.	House of Representatives Longworth Office Building	20002
Bangura	Alexis	The Segal Company 1920 N Street, NW	20036
Barb	Barbara	American Clean Skies Foundation 1875 Connecticut Avenue, NW, Suite 405	20009
Barrantes	Laura	TechoServe 1120 19th Street, NW, 8th Floor	20036
Behlin	Calencia E.	Ropes & Gray, LLC 700 12th Street, NW	20005
Benefield	Adrian M.	Same Day Process Services, Inc. 1219 11th Street, NW	20001
Bennett	Charles	Capital Reporting Company 1821 Jefferson Place, NW	20036
Blakers	Debra	ProEx Delivery Corporation 5185 MacArthur Boulevard, NW, Suite 710	20016
Bocskor	Catherine E.	ABC Imaging of Washington, Inc. 1155 21st Street, NW, M400	20036
Boser	Alex	Capital One Bank, N.A. 1700 K Street, NW	20006
Bosse	Lisa	Capitol Title Insurance Agency , Inc. 1501 27th Street, SE	20861
Bourgoin	Katharine H.	Capitol Compliance Associates, Inc. 600 Pennsylvania Avenue, SE, Suite 210	20003
Brangman	Deisy	Marshall Moya Design 2201 Wisconsin Avenue, Suite 305	20007

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 3**

Brown	Marie-Claire	DC Department of Health, Health Emergency Preparedness & Response Administration 55 M Street, SE, Suite 300, Box 4	20003
Burgess	Dianna	First American Title 1801 K Street, NW, Suite 200	20006
Butler	Grace	Brinton Woods at Dupont Circle 2131 O Street, NW	20037
Carpenter	Malikah	IAM National Pension Fund 1300 Connecticut Avenue, NW, Suite 300	20036
Carter	Yvette P.	Self 217 Walnut Street, NW	20012
Castle	Phyllis	Equal Employment Opportunity Commission 131 M Street, NE	20507
Cheatham	Earlina	Esquire Solutions 1025 Vermont Avenue, NW	20005
Conant	Ann Martha	March for Life Education and Defense Fund 1317 8th Street, NW	20001
Coreas	Mercedes A.	Meridian Manor Apartments c/o Edgewood Management Corporation 1424 Chapin Street, NW	20009
Decker	J. Diana	U.S. Senate Disbursing Office 127 Hart Sentate Office Building	20510
Demchak	Ashley	Postal Regulatory Commission 901 New York Avenue, NW, Suite 200	20268
DiPietro	Urcella E.	Well & Lighthouse, LLC 1244 19th Street, NW	20036
Dolores	Christian Joshua	Brown Rudnick, LLP 601 13th Street, NW, Suite 600S	20005
Duncan	Yvonne P.	Self 2843 24th Street, NE, Suite 102	20002

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 4**

Dunston	Pamala	University of the District of Columbia - David A. Clark School of Law 4200 Connecticut Avenue, NW, Building 52, 4th Floor	20019
Fairley	Kathryn A.	DC Board of Elections 441 4th Street, NW, Suite 250 North	20001
Feeser	Elizabeth	Wells Fargo Bank 5201 MacArthur Boulvard, NW	20016
Fields	Brandon	Deposition Services, Inc 2200 Pennsylvania Avenue, NW, 4th Floor East Tower	20037
Figura	Linda M.	DHR Holdings LLC 1718 M Street, NW, Suite 366	20036
Ford	Al'Geria	Wells Fargo Bank 3325 14th Street, NW	20010
Galloway	Ann M.	Hausfeld LLP 1700 K Street, NW, Suite 650	20006
Garcia	Karla D.	DC Board of Elections 441 4th Street, NW	20001
Gaskins	Gloria A.	Kleinfeld, Kaplan & Becker, LLC 1140- 19th Street, NW, Suite 900	20036
Ghemadi	GinaL.	Ackerson Kauffman Fex, PC 1701 K Street, NW, Suite 1050	20006
Gorman	Christelle	National Alliance of State & Territoral Aids Directors 444 North Capitol Street, NW	20001
Green	Doris M.	Public Company Accounting Oversight Board 1666 K Street, NW, Suite 800	20006
Griffith	Penny	Grossberg, Yochelson, Fox & Beyda, LLP 2000 L Street, NW, Suite 675	20036
Hamilton	JoAnn G.	BlueCross BlueShield Assocation 1310 G Street, NW	20005

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 5**

Haro	Cheryl	Oceana 1350 Connecticut Avenue, NW, 5th Floor	20036
Harris	Julie Gerrard	Rust Insurance Agency, LLC 910 17th Street, NW, 9th Floor	20006
Hart	Yaribeth Y.	PAHO/WHO Credit Union 2112 F Street, NW, Suite 201	20037
Hill	Shanan	Wells Fargo Bank 3200 Pennsylvania Avenue, SE	20020
Hollander	Mary Sawyer	American Institute for Cancer Research 1759 R Street, NW	20009
Holliday, Jr.	Richard E.	Richard E. Holliday, Jr. , P.C. 1604 Sixth Street, NW	20001
Hong	Chul	DC Lottery and Charitable Games Control Board 2101 Martin Luther King, Jr., Avenue, SE	20020
Hounshell	Lisa T.	The NHP Foundation 1090 Vermont Avenue, NW, Suite 400	20005
Howard	Ayanna D.	Earl Howard Studios 2528 Pennsylvania Avenue, SE	20020
Hull	Carrie E.	HSBC 1130 Connecticut Avenue, NW, 12th Floor	20036
Ingram	Patricie	Fitch, Even, Tabin & Flannery, LLP 1120 20th Street, NW, Suite 750S	20036
Jackson	Jean	Greenberg Trauig, LLP 2101 L Street, NW, Suite 1000	20037
Jacobs	Dorothy I.	Law Offices Jay S. Weiss, P.C. 1828 L Street, NW, Suite 625	20036
Jones	Kena Cofield	Government of the District of Columbia, Department of Human Services 441 4th Street, NW, Suite 330South	20001
Koch	Kimberly	National Association of Conservation Districts 509 Capitol Court, NE	20002

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 6**

Kunz	David	Bank-Fund Staff Federal Credit Union 1725 I Street, NW	20006
Lacon	Kim	Self 1380 Monroe Street, NW, Suite 556	20010
Luerssen, Jr.	James A.	Defenders of Wildlife 1130 17th Street, NW	20036
Mack	Cornelia	Self 4451 Ponds Street, NE	20019
Marks	Stephanie	Planet Depos 1100 Connecticut Avenue, NW, Suite 9000	20036
Martey	Robert	Wells Fargo Bank 5701 Connecticut Avenue, NW	20015
Martin	Janice V.	Williams & Connolly, LLP 725 12th Street, NW	20005
McCall	Deleesha C.	Presidential Bank FSB 1660 K Street, NW	20006
Minor	Wendy E.	American Institute for Cancer Research 1759 R Street, NW	20009
Monroe	Nadia	Congressional Black Caucus Foundation 1720 Massachusetts Avenue, NW	20036
Morris	Patricia P.	Ropes & Gray, LLP 700 12th Street, NW, Suite 900	20005
Napoleoni	Migdalia	American Association for the Advancement of Science 1200 New York Avenue, NW	20005
Nelson	Sylvia	Morris & Foerster LLP 2000 Pennsylvania Avenue, NW, Suite 6000	20006
Newman ll	Michael	CDQ Consulting & Insurance, LLC 20 F Street, #700, NW	20001

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 7**

Noriega	Joseph T.	Lockheed Martin 300 M Street, SE, #700	20003
Nzioka	Victor	Wells Fargo Bank 1700 Pennsylvania Avenue, NW	20006
Patel	Zarna L.	Zeigler Builders, Inc. 5185 MacArthur Boulevard, NW, Suite 310	20016
Pillay	Anand M.	Self 5505 30th Place, NW	20015
Pope	Phyllis P.	Baker Botts, LLP 1299 Pennsylvania Avenue, NW	20004
Quander	Cecelia	American Association for the Advancement of Science 1200 New York Avenue, NW	20005
Riu	Isabelle	Sierra Club 50 F Street, NW, 8th Floor	20001
Romo	Raul	Laz Parking 1125 15th Street, NW, Suite 400	20005
Ruiz	Denisse	Garfield Law Group 1634 I Street, NW, Suite 400	20006
Rumingan	Ma. Linda P.	Venable LLP 575 7th Street, NW	20004
Salas	Andrew G.	EJF Real Estate Services, Inc. 1428 U Street, NW, 2nd Floor	20009
Scott	William J.	Baker Botts, LLP 1299 Pennsylvania Avenue, NW	20004
Sewell	Charisse	Office of Bar Counsel 515 5th Street, NW, Superior Court Building A, Room 117	20001
Shaffer	Judy A.	Form Architects 3333 K Street, NW, Suite 60	20007

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 8**

Silva	Leana M.	Arnold & Porter, LLP 555 12th Street, NW	20004
Smith	Malikah	North American Electric Reliability Corporation "NERC" 1325 G Street, NW, Suite 600	20005
Sosa	Luis	Self 2300 Washington Place, NE, Apt. 100	20018
Spurlock	Vicky L.	Berkeley Research Group 1919 M Street, NW	20036
Standard	Rachelle	Hogan Lovells, LLP 555 13th Street, NW	20004
Stocker	Stephen D.	The World Bank 1818 H Street, NW	20433
Talero	Miguel	Bank of America 3131 Mount Pleasant Street, NW	20010
Tang	Laci	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	22036
Tate	Merenda	Patient Centered Outcomes Research Institute (PCORI) 1828 L Street, NW, Suite 900	20036
Tellez	Nidia	Catholic Charities 924 G Street, NW	20001
Thompson	Shonzia	National Association of Manufacturers 733 10th Street, NW, Suite 700	20001
Trexler	Rebecca	Olender Reporting 1100 Connecticut Avenue, NW, Suite 810	20036
Ulerich	Kathryn	Environment Working Group 1436 U Street, NW, Suite 100	20009
Walker	Hazel A.	Arnold & Porter, LLP 555 12th Street, NW	20004

D.C. Office of the Secretary **Effective: June 1, 2014**
Recommended for appointment as a DC Notaries Public **Page 9**

Waller	Gretchen R.	Mooney, Green, Saindon, Murphy & Welch, P.C. 1920 L Street, NW, Suite 400	20036
White	Deborah E.	Van Ness Feldman, LLP 1050 Thomas Jefferson Street, NW	20007
Whorley	Carlos L.	CLW Notary Services at City Center 875 Tenth Street, NW	20001
William, Sr.	Keith	Lockheed Martin 300 M Street, SE, #700	20003
Wilson	Kerry L.	Carmen Group, Inc. 505 9th Street, NW, Suite 700	20004
Young	Julia S.	National Park Service 1100 Ohio Drive, SW	20242

SHINING STARS MONTESSORI ACADEMY PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS:

Construction & Renovation Services DATE: 4/28/2014

Summary
Through this Request for Proposals (RFP) Shining Stars Montessori Academy Public Charter School seeks qualified firms to provide competitive bids for certain **Construction & Renovation Services**.

The selected vendor(s) will be expected to work with Shining Stars administrative staff to renovate a new building for occupancy in the 2014-2015 school year. This will be a short term contract, subject to cancellation at the sole discretion of Shining Stars.

Scope of Work
Bidders shall submit a sealed competitive bid to provide Construction and Renovation services as listed under the General Scope of Work

Service Area	General Scope of Work	Fee
Construction & Renovation	• Construction and Renovation Services including planning and design of alterations, remodeling, painting, flooring, plumbing, signage, and other repair for classrooms and bathrooms in existing 10,000 sqf building.	• Bidder to provide construction & renovation fee proposal to provide good, attractive, hazard-free facility for the children attending Shining Stars Montessori Academy. Site visit will be scheduled to take place 5/8/14.

Shining Stars Montessori Academy Public Charter Schools is seeking qualified professionals and competitive bids for the above services. Bids must include evidence of experience in field, qualifications and estimated fees to provide services.

Site Visit
A site visit to the location will take place Thursday, May 8th, 2014. Email knewsome@shiningstarsdc.org by Monday, May 5th to RSVP.

Questions
Deadline for questions is Wednesday, May 14 at 5pm EST. Submit all questions in writing to:
Kamina Newsome, Director of Operations & Vendor Services at knewsome@shiningstarsdc.org.

Please email proposals to knewsome@shiningstarsdc.org and include service area in heading.
Sealed/Emailed proposals must be received by Friday, May 16, 2014 at 12 Noon.
Mail, deliver, or email proposals to:

Shining Stars Montessori Academy, PCS
1328 Florida Avenue, NW
The Annex
Washington, DC 20009
Attn: Kamina Newsome, Director of Operations
knewsome@shiningstarsdc.org

SHINING STARS MONTESSORI ACADEMY PUBLIC CHARTER SCHOOL

REQUESTS FOR PROPOSALS
2014 – 2015 School Services
DATE: 4/28/2014

Summary
Through this Request for Proposals (RFP) Shining Stars Montessori Academy Public Charter School seeks qualified firms to provide competitive bids for certain **School Services** throughout the 2014 – 2015 school year.

The selected vendor(s) will be expected to work with Shining Stars administrative staff on an as-needed basis throughout the 2014 – 2015 school year. This will be a one-year contract from date of award, subject to cancellation at the sole discretion of Shining Stars within 180 days of the anniversary date.

Scope of Work
Bidders shall submit a sealed competitive bid to provide school services listed under the General Scope of Work throughout the 2014-2015 school year:

Service Area	General Scope of Work	Fee
Building Maintenance	• Custodial/Janitorial Services	• Bidder to provide firm fixed-price fee for 1 year of custodial service.
Catering	• Food Services to include provision of healthy breakfast, lunch, and snack for up to 124 children ages 2.5 – 6 years old.	• Bidder to provide firm fixed-price fee for 1 year of catering service.
IT	• Computers for classrooms • Laptops for teachers • Instructional software • IT and support services	• Bidder to provide fee proposal for equipment plus 1 year of IT support service.
Human Resources	• Health insurance benefits for employees from health insurance providers • Retirement benefits for employees from retirement system providers	• Bidder to provide fee proposal for 1 year of Human Resource Management Services
Academic	• Association Montessori International approved Montessori Primary Classroom Materials • Association Montessori International approved Montessori Elementary Classroom Materials • Curriculum development consulting (to also include alignment of Montessori Learning Standard with	• Bidder to provide fee proposal and schedule of deliverables.

	Common Core State Standards for District of Columbia) • Professional D services • Therapeutic Consultants • Special Education Contracted services etc. • ELL and ESOL contracted services • Aftercare and Extended Learning Programs	
Security	• Daily Security (Unarmed)	• Bidder to provide firm fixed-price fee proposal for 1 year of unarmed security service.
Legal	• General Legal Consulting	• Bidder to provide hourly fee proposal for 1 year of legal service
Financial Management and Accounting Services	• General Accounting Services	• Bidder to provide firm fixed-price proposal.
Auditing	• Yearly Audit	• Bidder to provide firm fixed-price proposal.

Shining Stars Montessori Academy Public Charter Schools is seeking qualified professionals and competitive bids for the above services. Bids must include evidence of experience in field, qualifications and estimated fees to provide services.

Deadline for questions is Wednesday, May 14 at 5pm EST. Submit all questions in writing to: Kamina Newsome, Director of Operations & Vendor Services at knewsome@shiningstarsdc.org.

Please email proposals to knewsome@shiningstarsdc.org and include service area in heading. **Sealed/Emailed proposals must be received by Friday, May 16, 2014 at 12 Noon.**

Mail, deliver, or email proposals to:

Shining Stars Montessori Academy, PCS
1328 Florida Avenue, NW
The Annex
Washington, DC 20009

Attn: Kamina Newsome, Director of Operations
knewsome@shiningstarsdc.org

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY

DSLBD Small Business Improvement Grant

This NOFA has been amended since its original posting on April 11, 2014. Amended items have an asterisk (*).

The Department of Small and Local Business Development (DSLBD) is soliciting applications for the **Small Business Improvement Grant.** DSLBD will award up to six (6)* grants from a fund that totals $356,000*.

The purpose of the Small Business Improvement Grant (the "Program") is to: 1) support expansion of existing small businesses; 2) increase the District's tax base; 3) create new jobs for District residents; 4) create opportunities for businesses that are Certified Business Enterprises (CBEs); and 5) encourage businesses to meet Sustainable DC Plan goals.

Eligible applicants are nonprofit organizations or businesses. For additional eligibility requirements and exclusions, please review the Request for Application (RFA) which is currently posted at www.dslbd.dc.gov and* at https://octo.quickbase.com/db/biwtsjp5n.

The **Service Areas** are*:

- **12th Street NE** — 12th Street NE from Rhode Island Avenue NE to Michigan Avenue, NE
- **Logan Circle/U Street —** U Street NW from 9th Street, NW to 18th Street NW; and 9th, 11th, 12th, 13th and 14th Streets NW from Massachusetts Avenue NW to U Street NW
- **Ward 3**
- **Ward 4**
- **Ward 5**
- **Ward 6**

(*North Capitol Street is no longer a service area.)

Eligible Use of Funds: Applicants may propose to manage sub-grants or provide technical assistance to small businesses located in the service areas listed above. DSLBD will consider the following types of projects.

1. **Sub-Grants for Capital Improvements** including exterior and interior building improvements. Funds can be used for projects which have been completed, permitted, and inspected after October 1, 2013 or for projects which have not yet begun.
2. **Technical Assistance** through the provision of direct one-on-one consultations in topics that would benefit small business operators, including but not limited to: bookkeeping, digital business strategies, legal assistance, marketing strategies, website improvement, visual

merchandising, and green business strategies.

3. **Sub-Grants of Working Capital** of less than $5,000 to expand business operations including but not limited to: inventory, equipment, point of sales systems, mobile payment systems, rent for additional space, or other non-fixed improvements to benefit a small business.

Grantees may use grant funds to extend existing grant programs and cover some administrative costs. For additional examples of eligible uses of funds and exclusions, please review the RFA.

If awarded a grant, grantees must begin the project within thirty (30) days of executing the grant agreement and complete funded projects within two and a half (2.5) months, or by September 15, 2014*.

Application Process: Interested applicants must complete an online application and submit it on or before June 2, 2014 at 4:00 p.m. DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.** Instructions on how to access the online application will be posted in the RFA.

Selection Process: DSLBD will select grant recipients through a competitive application process. Each application will first be screened by DSLBD for basic eligibility and completeness. All applications deemed eligible and complete will be forwarded to a review panel to be evaluated, scored, and ranked based on the selection criteria listed below.

1. Applicant Demonstrates Previous Relevant Experience (25 points)
2. Financial Viability of Businesses Benefiting from the Grant (25 points)
3. Percentage of Grant Funds Directly Benefitting Individual Businesses (25 points)
4. New Jobs Created for District Residents (25 points)
5. Percentage of Funds Benefiting CBEs (25 points)
6. Grant Supports Business Growth and Expansion (25 points)
7. Proposed Project Supports Sustainable DC Plan Goals (25 points)
8. Proposed Project Includes Matching Funds from Business Owners (25 points)

The DSLBD program team will review the panel reviewers' recommendations and the DSLBD Director will make the final determination of grant awards under the Program. DSLBD will determine grant award selection by June 30, 2014.

Award of Grants:
The maximum grant award for an application that serves all six service areas is $356,000*. Applications for individual service areas must conform to the funding allocations for each service area.

- **12th Street NE**,$104,000*; $25,000 of this fund was provided by Monroe Street Market through Bozzuto Development and Abdo Development;
- **Logan Circle/U Street**, $48,000*;
- **Ward 3**, $34,000*;
- **Ward 4**, $68,000*;

- **Ward 5**, $68,000*; and
- **Ward 6**, $34,000*.

The **Request for Application** (RFA) **is** available at www.dslbd.dc.gov and* https://octo.quickbase.com/db/biwtsjp5n.

DSLBD will host 2 **Pre-Submission Meetings:**

- April 23, 2014 at 1:30 p.m. The location of the meeting will be 441 4th Street, NW, Suite 805
- May 7, 2014* at 1:30 p.m. The location of the meeting will be 441 4th Street, NW, Suite 1114

You must bring identification to enter this building. Additional Pre-Submission Meetings may be scheduled; information about additional meetings will be posted at www.dslbd.dc.org. Registration is not required to attend the Pre-Submission Meeting but is recommended so that prospective applicants will receive updates about this grant. Please register at https://octo.quickbase.com/db/biwtsjp5n.

For more information, contact Lauren Adkins or Camille Nixon at the Department of Small and Local Business Development at lauren.adkins@dc.gov or camille.nixon@dc.gov.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 18641 of Aung Hla and Myint Myint San pursuant to 11 DCMR § 3104.1 for a special exception under § 223 of the Zoning Regulations to allow an addition to an existing semi-detached row dwelling not meeting requirements for lot occupancy (§ 403.2), open court (§ 406.1), or enlargement of a nonconforming structure (§ 2001.3) in the CAP/R-4 District at premises 404 Independence Avenue, S.E. (Square 818, Lot 807).

HEARING DATE: October 29, 2013
DECISION DATE: October 29, 2013

DECISION AND ORDER

This self-certified application was submitted on July 30, 2013 by Aung Hla and Myint Myint San (the "Applicant"), the owner of the property that is the subject of the application. The application requests a special exception under § 223 of the Zoning Regulations to allow construction of a two-story rear addition to a one-family semi-detached row dwelling not meeting the zoning requirements for lot occupancy under § 403.2, open court under § 406.1, or enlargement of a nonconforming structure under § 2001.3 in the Capitol Interest ("CAP") Overlay District of the R-4 Zone at 404 Independence Avenue, S.E. (Square 818, Lot 807) (the "Subject Property"). Following a public hearing, the Board voted to approve the application.

PRELIMINARY MATTERS

Notice of Application and Notice of Hearing. By memoranda dated August 1, 2013, the Office of Zoning provided notice of the application to the Office of Planning ("OP"); the District Department of Transportation (DDOT); the Councilmember for Ward 6; Advisory Neighborhood Commission ("ANC") 6B, the ANC in which the subject property is located; Single Member District/ANC 6B02; and the Architect of the Capitol ("AOC"). Pursuant to 11 DCMR § 3113.13, the Office of Zoning mailed letters on August 22, 2013 providing notice of the hearing to the Applicant, ANC 6B, and the owners of all property within 200 feet of the subject property. Notice of the hearing was published in the *D.C. Register* on August 23, 2013 (60 DCR 12214).

Party Status. The Applicant and ANC 6B were automatically parties to this proceeding. The Board granted a request for party status in opposition to Elizabeth and Brandon Prelogar, owners of the adjacent property to the west, 402 Independence Avenue, S.E.

Applicant's Case. The Applicant provided evidence and testimony describing the proposed project – to demolish an existing portion of the structure and construct a two-story rear addition – and asserted that the application satisfied all requirements for special exception zoning relief.

The Applicant, after consulting with the party in opposition, offered to modify the project, as shown in the revised plans dated October 15, 2013. (Exhibit 29.) In the revisions, the Applicant proposed to decrease the height of the second story addition using a gabled roof design. The design of the slanted roof was intended to give the adjacent neighbors increased access to light and air in their rear yard. With the revised plan, the Applicant provided a sun study, which compared the shadows cast by the existing structure and to those cast by the proposed addition. The study indicated that access to light for the neighboring properties would not be impacted by the proposed addition (Exhibit 30.)

OP Report. By memorandum dated October 22, 2013, the OP recommended approval of the application. OP's analysis concluded that the Applicant had met all the requirements for special exception relief. (Exhibit 33.)

DDOT Report. By memorandum dated September 18, 2013, DDOT indicated no objection to approval of the special exception. (Exhibit 23.)

ANC Report. By letter dated October 17, 2013, ANC 6B indicated that it discussed the application at its regularly scheduled, properly noticed meeting on October 8, 2013, and with a quorum present, voted 7-2-1 to oppose the application. The ANC explained that, as proposed, the addition would have undue impacts on light and air at 402 Independence Avenue S.E. The ANC also indicated it would be inclined to support the request if the Applicant significantly revised the design of the second floor addition so as to improve the neighboring property's access to air and light. (Exhibit 32.)

Architect of the Capitol Report. By letter dated October 8, 2013, the Architect of the Capitol indicated that the application is not inconsistent with the intent of the CAP/R-4 District and would not adversely affect the health, safety, and general welfare of the U.S. Capitol Precinct and area adjacent to this jurisdiction. The AOC found that granting special exception relief would not be inconsistent with the goals and mandates of the United States Congress as stated in 11 DCMR § 1200.1. (Exhibit 24.)

Party in opposition. The party in opposition contended that the proposed addition would have a substantial negative impact on their access to light and air, especially in the rear patio of their property. The party in opposition also stated that the proposed addition would intrude on the sense of openness in their rear yard and hinder their enjoyment of the property. The party in opposition acknowledged that the revised plans dated October 15, 2013 addressed their concerns to some degree, but maintained the same objections to the addition's potential to obstruct light, air, and open space.

Persons in support. No persons appeared to testify in support of the Applicant. The owner of the adjacent property at 408 Independence Avenue S.E. filed a letter in support, along with a petition of support from five neighboring residents. (Exhibit 26.)

BZA APPLICATION NO. 18641
PAGE NO. 3

FINDINGS OF FACT

1. The property is an interior, L-shaped lot located on the north side of the street at 404 Independence Avenue, S.E. between 4th Street S.E. and 5th Street S.E. (Square 818, Lot 807) (the "Subject Property").

2. The Subject Property is improved with a semi-detached one-family dwelling with two-story and one-story rear additions.

3. The Subject Property is zoned R-4. The Subject Property has also been included in the Capitol Interest Overlay District.

4. The existing lot occupancy of the Subject Property is 934.6 square feet or 55%. The maximum lot occupancy allowed in an R-4 Zone District is 40% by matter of right (11 DCMR § 403.2) and 70% by special exception (11 DCMR § 223.3). The existing structure is set back from the rear property line by 18.25 feet to 43.6 feet.

5. The adjacent properties include an apartment building to the east and a three-story row dwelling to the west. The Subject Property has no rear alley access to the north.

6. The Subject Property is nonconforming in terms of lot area and side yard. The Subject Property measures 1,694 square feet. The Zoning Regulations require a minimum lot area of 1,800 square feet for row dwellings in the R-4 District (11 DCMR § 401.3). The Subject Property provides a 2.3 foot side yard to the East. Subsection 405.2 provides that in an "R-4 District a one-family semi-detached dwelling shall be subject to the side yard requirements of an R-2 District." Subsection 405.9 requires an eight foot wide side yard in an R-2 District.

7. The Applicant proposed to partially demolish the existing two-story addition and to completely demolish the existing one-story addition. The Applicant proposed to construct a new two-story addition that would add 2.4 feet to the depth of the structure and increase the width of the dwelling to the full width of the Subject Property.

8. The proposed addition would convert the semi-detached row dwelling into a row dwelling and convert the nonconforming 2.3 foot side yard on the eastern side into an open court, which would be 2.3 feet wide at its narrowest and 6.5 feet at its widest. The proposed addition would also create a 1.5 foot open court on the western side of the Subject Property. A one-family dwelling in the R-4 Zone District is required to have open courts measuring not less than six feet. (11 DCMR § 406.1).

9. The proposed addition would increase the Subject Property's lot occupancy to 1,185.8 square feet or 70%, which is the maximum lot occupancy approvable in the R-4 District by § 223.3.

10. In the Applicant's revised plans dated October 15, 2013, the rear 13 feet of the proposed addition would include a gabled roof on the second story which would decrease the height of

the wall to 15.6 feet. The portions of the addition without a slanted roof would measure 20 feet tall. The addition would be set back from the western property line by 1.6 feet thereby increasing the side yard's nonconformity.

11. A sun study provided by the Applicant demonstrated that the proposed addition would not cast shadows onto neighboring properties beyond those generated by the apartment building to the east. As shown in the study, access to light on adjacent properties would not be substantially impacted by the proposed addition.

12. The addition will include two windows on the east, which will be set back seven to ten feet from the property line, three windows facing north, and no windows facing west.

13. The addition would be visible through the open court off of Independence Avenue.

14. The addition will be constructed of high quality materials that are historically appropriate for the surrounding neighborhood.

15. The R-4 District is designed to include those areas now developed primarily with row dwellings, but within which there have been a substantial number of conversions of the dwellings into dwellings for two or more families. (11 DCMR § 330.1.) The primary purpose of the R-4 District is the stabilization of remaining one-family dwellings. (11 DCMR § 330.2.) The R-4 District is not an apartment house district as contemplated under the General Residence (R-5) Districts, since the conversion of existing structures is controlled by a minimum lot area per family requirement. (11 DCMR § 330.3.)

16. The Capitol Interest Overlay District is established to promote and protect the public health, safety, and general welfare of the U.S. Capitol precinct and the area adjacent to this jurisdiction in a manner consistent with the goals and mandates of the United States Congress in title V of the Legislative Branch Appropriations Act, 1976, (Master Plan for Future Development of the Capitol Grounds and Related Areas), approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288) and in accordance with the master plan promulgated under the Act. (11 DCMR § 1200.1.)

CONCLUSIONS OF LAW AND OPINION

The Applicant requests special exception relief under § 223 of the Zoning Regulations to allow construction of a two-story rear addition to a one-family semi-detached row dwelling not meeting the zoning requirements for lot occupancy under § 403.2, open court under § 406.1, or enlargement of a nonconforming structure under § 2001.3 in the Capitol Interest ("CAP") Overlay District of the R-4 Zone at 404 Independence Avenue, S.E. (Square 818, Lot 807). The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2008) to grant special exceptions, as provided in the Zoning Regulations, where, in the judgment of the Board, the special exception 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 Map, subject to specific conditions. (*See* 11 DCMR § 3104.1.)

Because the proposed addition does not meet the zoning requirements for lot occupancy, open court, or enlargement of a nonconforming structure, the Applicant must satisfy the requirements of § 223 to be granted special exception relief. Additionally, because the Subject Property falls within the CAP Overlay District, the Applicant must meet the requirements of § 1202.

Pursuant to § 223, an addition to a one-family dwelling may be permitted as a special exception, despite not meeting certain zoning requirements, subject to the enumerated conditions. These conditions include that the addition must not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property. Specifically, the light and air available to neighboring properties must not be unduly affected (§ 223.2(a)), the privacy of use and enjoyment of neighboring properties must not be unduly compromised (§ 223.2(b)), and the addition, together with the original building, must not substantially visually intrude upon the character, scale, and pattern of houses along the subject street frontage (§ 223.2(c)).

Based on the findings of fact, the Board concludes that the request for special exception relief, as represented by the October 15, 2013 revised plan, satisfies the requirements of § 223. The Board credits the testimony of the Applicant and the Office of Planning and finds that the proposed addition will not unduly affect the light and air available to adjacent properties. As shown in the sun study provided by the Applicant, the proposed addition will create only minimal impacts on the neighboring properties' access to light. The revised design, including a sloping gabled roof, serves to further preserve the adjacent properties' access to light and air.

Based on the testimony of the Applicant and OP, the Board also finds that the proposed rear addition will not compromise the privacy or enjoyment of neighboring properties. The proposed addition ensures privacy, as the windows facing east would be over seven feet away from the property line and as no windows overlook the property to the west. The design also provides for a gabled roof that allows for neighbors' continued sense of open space and enjoyment of their rear yard. The Board finds that the proposed addition will not visually intrude on the character, scale or pattern of houses along the street frontage. The addition would be visible through the open court off of Independence Avenue and will be constructed of high quality materials that are historically appropriate for the surrounding neighborhood. Accordingly, the Board concludes that the proposed addition satisfies the requirements of § 223.

Pursuant to § 1202.1, a special exception within the CAP Overlay District must be consistent with the present and proposed development of the neighborhood, the mandates of Title V of the Legislative Branch Appropriation Act, 1976, approved July 25, 1975 (Pub. L. No. 94-59, 89 Stat. 288), and the master plan promulgated under the Act. Title V of the Act authorizes funds to enable the Architect of the Capitol to develop a master plan for the future development of the grounds of the U.S. Capitol, and accordingly, § 1202.3 requires the Board to submit an application for a special exception within the CAP Overlay District to the AOC for review and

report. The Board received a letter from the AOC stating that the relief requested in this application would not be inconsistent with the intent of the CAP/R-4 District nor with the goals and mandates of the United States Congress as stated in the Zoning Regulations. Therefore, the Board finds that the application satisfies the requirements of § 1202.1.

For these same reasons, the Board also finds that the proposed addition will not adversely affect the use of neighboring properties as required by § 3104.1. Further, the Board finds that the addition will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The R-4 Zone District is intended to stabilize remaining one-family dwellings and would even permit a more intense use, such as the conversion of the row dwelling into a dwelling for two or more families. As discussed, the proposed addition is also not inconsistent with the Zoning Plan and Map for the CAP Overlay District. The Board concludes that the Applicant meets the requirements of § 3104.1.

The Board is required to give "great weight" to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2012 Repl.).) In this case, for the reasons discussed, the Board concurs with OP's recommendation to approve the application.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC in its written report. (Section 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) (2012 Repl.)).) On October 8, 2013, ANC 6B voted 7-2-1 to oppose the application, based on neighbors' concerns about access to air and light. In their report, ANC 6B indicated willingness to support the application if significant changes were made to the Applicant's proposal to address the issues raised at the meeting. Based on suggestions by the ANC, the Applicant revised his plans by redesigning the second floor to allow his neighbors increased access to air and light, as shown in the plans dated October 15, 2013. The Board concludes that the revised plans properly address the addition's potential impact on neighboring properties and that special exception relief should be granted.

Based on the findings of fact and conclusions of law, the Board finds that the Applicant has satisfied the burden of proof with regard to the request for special exception relief under § 223 to allow construction of a two-story rear addition to a one-family semi-detached row dwelling not meeting the zoning requirements for lot occupancy under § 403.2, open court under § 406.1, or enlargement of a nonconforming structure under § 2001.3 in the Capitol Interest Overlay District of the R-4 Zone at 404 Independence Avenue, S.E. (Square 818, Lot 807). Accordingly, it is **ORDERED** that the application is **GRANTED, SUBJECT** to the Revised Plans as shown on Exhibit 29.

VOTE: **3-0-2** (Lloyd J. Jordan, Marcie I. Cohen, and S. Kathryn Allen to Approve; Jeffrey L. Hinkle not present, not voting; one Board seat vacant.)

BZA APPLICATION NO. 18641
PAGE NO. 7

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: April 23, 2014

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. 18692 of 1717 E Street LLC, pursuant to 11 DCMR § 3103.2, for a variance from the use provisions to construct a new eight-unit apartment house under § 330.5, in the R-4 District at premises 1717 E Street, N.E. (Square 4546, Lots 165, 166, and 167).

HEARING DATES: January 14, 2014, March 4, 2014, and April 15, 2014
DECISION DATE: April 15, 2014

SUMMARY ORDER

SELF-CERTIFIED

The zoning relief requested in this case was 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 Advisory Neighborhood Commission ("ANC") 6A, and to owners of property within 200 feet of the site. The site is located within the jurisdiction of ANC 6A, which is automatically a party to this application. ANC 6A submitted a timely written report dated February 28, 2014, in support of the application with a condition restricting the number of residential parking permits to no more than three. The ANC also conditioned its approval on the Applicant's commitment to hire residents from the surrounding area to maintain the property and construct the apartment house as well as to support a neighborhood youth organization. The report indicated that at a duly noticed, regularly scheduled monthly meeting of the ANC on February 25, 2014, at which a quorum was present, the ANC voted to support the application by a vote of 4-1-0. (Exhibit 27.) The Office of Planning ("OP") submitted a timely report in which OP recommended the Board not approve the application for eight units and suggested that only six units be approved. (Exhibit 24.)[1] The District Department of Transportation ("DDOT") submitted a report stating that DDOT had no objection to the requested variance relief. (Exhibit 23.) 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 variance under § 3103.2 from the strict application of the use provisions to construct a new eight-unit apartment house under § 330.5. 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] At its public hearing of March 4, 2014, the Board continued the case to April 15, 2014 and asked the Applicant for additional information to augment the burden of proof, in particular to address "reasonable rate of return" and "self-imposed" concerns relative to the burden for the proposed eight-unit apartment house. The Applicant submitted the requested supplemental information. (Exhibit 29.)

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 the variance relief 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 an undue hardship 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 REVISED CONCEPT PLANS[2] AT EXHIBIT 25 AND WITH THE FOLLOWING CONDITION:**

1. The Applicant shall limit the number of Residential Parking Permits (RPP) to no more than three permits.

VOTE: **3-1-1** (Marcie I. Cohen, Lloyd J. Jordan, and Marnique Y. Heath to APPROVE; Jeffrey L. Hinkle, opposed; S. Kathryn Allen, not participating or voting.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

FINAL DATE OF ORDER: April 24, 2014

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

[2] The approval includes restriction of the number of Residential Parking Permits (RPP) to no more than three permits. In response to the community's concerns, the Applicant stated on the record its commitment to limiting RPP permits for occupants of the building to three and indicated that the restriction on RPP would be included in the sales documents. (Exhibit 25.) The Board accepted the Applicant's commitment and noted that the Applicant would be responsible for compliance with that commitment.

PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO § 3130.6 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO § 3129.9, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO §§ 3129.2 OR 3129.7, SHALL TOLL OR 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. 18740 of Sheridan School Inc., pursuant to 11 DCMR §§ 3104.1, for a special exception under § 206 to allow the continued operation of an existing private school[1] with an increase in student enrollment from 226 to 230, in the R-2 District at premises 4400 36th Street, N.W. (Square 1968, Lot 10).

HEARING DATE: April 15, 2014
DECISION DATE: April 15, 2014

SUMMARY ORDER

SELF CERTIFIED

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR § 3113.2. (Exhibit 5.)

The Board of Zoning Adjustment ("Board" or "BZA") 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") 3F and to owners of property within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 3F, which is automatically a party to this application. ANC 3F submitted a timely written report, dated March 23, 2014, in which the ANC indicated that at a properly noticed, regularly scheduled public meeting held on March 18, 2014, with a quorum present, the ANC voted unanimously (5:0:0) to support the application's request for an increase in enrollment but not to support the permanent removal of a term limit. (Exhibit 22.)

The Office of Planning ("OP") submitted a timely report on April 8, 2014, recommending approval of the application with the revised conditions submitted by the Applicant, including the removal of the term limit of approval. (Exhibit 26.) The District Department of Transportation ("DDOT") submitted a letter recommending "no objection" together with a waiver of the time requirements to submit the report. (Exhibit 28.) Previously, DDOT had provided a timely report but with no recommendation since it required more information. (Exhibit 24.)

The Applicant satisfied the burden of § 3119.2 in its request for special exception relief to allow an increase in student enrollment from 226 to 230 and continued operation of an existing private school under §§ 3104.1 and 206. 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] This use of the property as a private school was previously approved by the Board in BZA Order Nos. 7282 (July 2, 1963), 13089 (February 27, 1980), 15656 (December 23, 1992), and 16977 (February 4, 2004).

The Board concludes that the Applicant has met the burden of proof for special exception relief, pursuant to 11 DCMR §§ 3104.1 and 206 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. The waiver will not prejudice the rights of any party and is appropriate in this case.

It is therefore **ORDERED** that this application be **GRANTED SUBJECT TO FOLLOWING CONDITIONS**:

1. The parking layout of the small parking area in front of the school building on 36th Street, N.W. shall be maintained in the current configuration and no stacked parking shall be allowed in the parking area in front of the school building on 36th Street.

2. The main parking area on Alton Place, N.W. shall be maintained in the current configuration and the drive aisle in the lot shall not be used for the parking of motor vehicles.

3. During school hours, the parking area on Alton Place shall only be used by faculty and staff. After-school hours, the parking area shall only be used by school visitors, parents, and members of the board of trustees.

4. The Applicant shall maintain and enhance all landscaping in a healthy growing condition, replacing it when necessary.

5. The number of students shall not at any time exceed 230, of which no more than 50 shall be kindergarten students. The term "students" is defined without exception as all children (including children who pay tuition or receive scholarships) who are enrolled in the school or participate in summer school or summer camp activities.

6. The hours of operation shall be between 7:30 a.m. and 6:00 p.m., Monday through Friday.

7. No trash collection shall occur before 9:00 a.m. or after 6:00 p.m., Monday through Friday.

8. The Applicant shall schedule deliveries at the property so that:

a. All pickups or deliveries shall occur at any entrance located on the north side of the building (i.e., facing Alton Place) after 9:00 a.m. and before 6:00 p.m., Monday through Friday. The Applicant shall post and maintain a sign adjacent to the door located nearest to the parking lot on Alton Place indicating that deliveries shall only be accepted during the designated hours.

b. Only as necessary, time-sensitive deliveries of produce, perishable goods, or similar items may be accepted at the building's main entrance on 36th Street between 7:00 a.m. and 9:00 a.m.

c. No deliveries shall be made during the weekend or on school holidays.

9. The Applicant shall maintain a community liaison group in coordination with Advisory Neighborhood Commission 3F. The Applicant shall:

   a. At least once a year, and at other times as requested, meet with the ANC and the community liaison group at the school and review issues of ongoing interest, including traffic and parking, landscaping, compliance with BZA conditions, school operations, and any planned construction, renovations, and maintenance, and

   b. Provide electronic notice of special events on a continuous basis, but not less than monthly, to ANC 3F and to the community liaison group (all property owners or occupants in the 3500 and 3600 blocks of Yuma Street, N.W., 3500 and 3600 blocks of Alton Place, N.W., and 4300 – 4500 blocks of 36th Street, N.W.).

10. The Applicant shall not park school buses or vans: (a) on any residential streets within the boundaries of ANC 3F or (b) on the property after school hours unless arrangements for off-site parking are terminated by the owner of the off-site parking area (or other third party who controls the parking area) and the Applicant is unsuccessful in making arrangement for alternative off-site parking. In the event the arrangements for off-site parking are terminated, the Applicant shall in good faith seek to make alternative arrangements for off-site parking promptly, and shall not park any school buses or vans on the property, after school hours, longer than 60 days in the aggregate. Within 14 days of an event when a school bus or van is parked on the property, the Applicant shall report to the community liaison group on its good-faith efforts to make arrangements for alternative off-site parking arrangements. Thereafter, the Applicant shall continue to report to the group on a biweekly basis until the bus or van is relocated off property.

11. All mechanical equipment associated with the central heating and cooling ("HVAC") systems shall be located in the basement of the school building or in other interior areas of the building, except that new or replacement HVAC equipment may be installed and operated on the exterior of the building (including

its roof) so long as the new or replacement HVAC equipment (a) generates operating noise no greater than the noise generated by the HVAC equipment it replaces, (b) is screened from neighboring property, and (c) is no larger in size, shape, or profile than the HVAC equipment it replaces. Any HVAC equipment not permitted by this paragraph shall require Board of Zoning Adjustment approval as a modification of the special exception approved in this Order.

12. Evening and weekend activities or events at the property shall be restricted to those activities and events that are customary to an elementary school (kindergarten through eighth grade).

    a. During activities or events at the school, ingress and egress shall be restricted to the building's main entrance on 36th Street, N.W.

    b. The Applicant shall deliver to all members of the community liaison group all notice of planned activities or events at least one week in advance by mail or electronic mail.

    c. With the exception of the farmer's market, the Applicant shall be restricted to a maximum of 12 activities or events of 50 or more persons.

13. The Applicant shall not allow the use of the property for commercial or profit-making functions or activities such as dances, concerts, exercise classes, or other events. This condition shall not apply to the CASA or similar summer educational program or summer camp traditional to an elementary school offered by the Applicant or to the farmer's market operating at the property.

14. The Applicant shall use its best efforts to ensure that:

    a. Students enter and exit the school building by either the 36th Street entrance or the playground doors closest to 36th Street that face Yuma Street;

    b. Faculty and staff enter and exit the school building through (i) the doors located on 36th Street, (ii) the doors adjacent to the Yuma Street playground, or (iii) the doors adjacent to the parking area on Alton Place for faculty and staff who park their vehicles in that parking area; and

    c. Students, parents, visitors, faculty, and staff enter and exit the school building on the Alton Place (north) side of the building when coming to the subject property by bicycle and using a bicycle rack located on the Alton Place side.

15. The Applicant shall provide faculty and staff with incentives, including the Smart Benefits program, to encourage the use of public transportation or carpooling to

the property. The Applicant shall give priority to or reserve at least three sign-designated parking spaces for persons who carpool.

16. The Applicant shall comply with, implement, and enforce the traffic management plan ("TMP") described in the Applicant's Traffic Report at Exhibit 27, as may be amended after consultation with the community liaison group and provided the traffic impact is not greater than that contained in the TMP.

17. No later than May 1st of each year, the Applicant shall submit an annual report to the Zoning Administrator setting forth its ongoing compliance with the Conditions of this Order during the prior calendar year, and shall transmit copies of the annual report, by mail or electronic mail, to the Office of Planning, ANC 3F, and the community liaison group. The annual report shall include, at minimum:

    a. Detailed information on the number of students enrolled (by range and average number enrolled);

    b. A breakdown of faculty and staff by full-time, part-time, and contract basis for those contract personnel who work more than 10 hours per week on average; and

    c. The number of written complaints or allegations of non-compliance received by the Applicant during the prior year, with a description of the nature of the complaints or allegations and a copy of each complaint.

18. The Applicant shall notify ANC 3F and the community liaison group, at least 30 days in advance, of any plans it has for the renovation of the existing playground, any substantial maintenance or renovation, or interior work. The Applicant shall meet with the community to discuss the schedule and appropriate construction management measures for the playground project or any other larger scale maintenance work.

19. The Applicant shall not be required to obtain additional Board approval for in kind renovations to the existing playground provided that the existing footprint, location and topography or grade is generally maintained.

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this summary order.

VOTE: **4-0-1** (Michael G. Turnbull, Marnique Y. Heath, Lloyd L. Jordan, and Jeffrey L. Hinkle to Approve; S. Kathryn Allen, not participating or voting.)

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: April 24, 2014

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 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
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL TO THE MAYOR
Freedom of Information Act Appeal: 2014-18

December 18, 2013

Fritz Mulhauser, Esq.

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 November 24, 2013 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated October 7, 2013 (the "FOIA Request).

Appellant's FOIA Request sought records "pertaining to contact by MPD members with [the client] on August 7, 2013 at or near the Sixth District MPD station." When MPD failed to provide a timely final response to the FOIA Request, Appellant initiated Freedom of Information Act Appeal 2014-16. When MPD responded to Appellant by email dated November 18, 2013, the prior appeal became moot. However, because MPD stated that it was the withholding the requested records based on D.C. Official Code § 2-537(a)(3)(A)(i) and (iii) because the FOIA Request "concerns an open and ongoing investigation," Appellant filed the instant Appeal to challenge the response.

In its response to the Appeal, dated December 17, MPD stated that it is "releasing the responsive documents subject to appropriate redactions." 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 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
Freedom of Information Act Appeal: 2014-19

December 24, 2013

Ms. Deborah Awolope

Dear Ms. Awolope:

This letter responds to your administrative appeal to the Mayor under the District of Columbia Freedom of Information Act, D.C. Official Code § 2-531(a)(2001) ("DC FOIA"), dated December 6, 2013 (the "Appeal"). You, on behalf of the Public Defender Service for the District of Columbia ("Appellant"), assert that the Office of Police Complaints ("OPC") improperly withheld records in response to your request for information under DC FOIA dated September 3, 2013 ("FOIA Request").

Background

Appellant's FOIA Request sought information for a named Metropolitan Police Department ("MPD") officer, including disciplinary records such as citizen complaints and records of disciplinary action.

In response, by letter dated September 19, 2013, OPC stated that it could neither admit nor deny the existence of disciplinary records or complaints regarding the named MPD officer because it would be an unwarranted invasion of privacy of the officer under D.C. Official Code § 2-534(a)(2) and (3)(C).

On Appeal, Appellant contends that the public interest, "the public knowledge of how its police force is behaving," outweighs any privacy interest of the MPD officer.

> The public is entitled to know by what means MPD officers do their duties, whether they stay within the limits of the law (as opposed, *e.g.*, to using excessive force), and whether the MPD disciplines its officers when they step outside the law.
>
> The requested information is vital in performing the critical oversight function of ensuring that MPD officers have not engaged in unlawful behavior, and where they have, they have been disciplined.

In its response, dated November 23, 2011, OPC reaffirmed its position. OPC asserts that, under D.C. Official Code § 2-534(a)(3)(C), "officers have a strong privacy interest in any investigation of them by the agency" and that the public interest in oversight of MPD is served by disclosures which OPC provides as a matter of practice. OPC states:

The kind of information which would accomplish the goals stated in the appeal is already public. OPC already publishes on its website, with names redacted, all decisions issued by the agency sustaining, as opposed to dismissing, allegations of police misconduct. The agency also publishes in its annual report what specific disciplinary action was taken by MPD in response to sustained findings of misconduct, again without providing the names of the officers. The annual report also includes extensive data regarding the number and kinds of allegations, demographics of complainants, and accused officers, and information presented in the aggregate regarding the outcomes of OPC investigations.

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 § 2-537(a). 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 may be examined to construe the local law.

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. *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).[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 Exemption (3)(C) applies to internal investigations which focus on

The first part of the privacy analysis is whether a sufficient privacy interest exists regarding the disclosure of the disciplinary records of the named MPD officer. 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)[Exemption (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).

We find that there is a sufficient individual privacy interest for a person who is simply being investigated for wrongdoing based on allegations. "[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, Exemption (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. We believe that the same interest is present with respect to civil disciplinary sanctions which could be imposed on an MPD officer. The records sought by Appellant may consist simply of mere allegations of wrongdoing, the disclosure of which can have a stigmatizing effect without regard to the accuracy of the allegations.

We say "may consist" because, in this case, OPC has not stated, and has maintained that it will not state, whether or not there are any records which exist relating to the named MPD officer. However, "[c]ourts have recognized that in some instances even acknowledging that certain records are kept would jeopardize the privacy interests that the FOIA exemptions are intended to protect. In these cases, the courts have allowed the agency neither to confirm nor deny the existence of requested records." *Antonelli v. FBI*, 721 F.2d 615, 617 (7th Cir.1983). *See also Rushford v. Civiletti*, 485 F. Supp. 477 (D.D.C. 1980)(involving records regarding complaints of criminal or other misconduct by judges. "[T]he Department of Justice may not be required to deny the existence of a criminal investigation when there has been none and to refuse to confirm or deny its existence when information to that effect does exist." *Id*. at 481.) This is referred to as a "Glomar" response. A Glomar response is warranted only when the confirmation or denial

---

acts which could, if proved, result in civil or criminal sanctions (*see Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974); *Rugiero v. United States DOJ*, 257 F.3d 534 (6th Cir. 2001)(The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well." *Id*. at 550.)), and the records which Appellant seeks relate to such type of investigation, the exemption here would be judged by the standard for Exemption (3)(C).

of the existence of responsive records would, in and of itself, reveal exempt information. We think that this approach is justified in the case of the Appeal. If there is a record of a written complaint or subsequent investigation against the MPD officer, simply identifying the written record may result in the harm that the exemption was intended to protect.

As stated above, the second part of a privacy analysis under Exemption (3)(C) 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).

As set forth above, Appellant argues that there is an overriding public interest in knowledge of misconduct of MPD officers and the internal disciplinary processes of MPD. In this case, we cannot find that there is a public interest in disclosure of disciplinary records of a lower-level employee which outweighs his individual privacy interests in nondisclosure. Such disclosure will not materially, if at all, inform one about an agency's performance of its statutory duties. See, e.g., *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984); *Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). ("A government employee has at least some privacy interest in his own employment records, an interest that extends to 'not having it known whether those records contain or do not contain' information on wrongdoing, whether that information is favorable or not. See *Dunkelberger*, 906 F.2d at 782."); *Kimberlin v. DOJ*, 139 F.3d 944, 948 (D.C. Cir. 1998). *See also* Freedom of Information Act Appeal 2011-20 and Freedom of Information Act Appeal 2012-06. Therefore, based on the foregoing, we find that the response of OPC to the FOIA Request was proper.

Conclusion

Therefore, we uphold the decision of OPC. 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: Nykisha Cleveland, Esq.
Christian J. Klossner

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-21

December 19, 2013

Mr. Edgar M. King

Dear Mr. King:

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 December 10, 2013 (the "Appeal"). You ("Appellant") assert that the Office of Employee Appeals ("OEA") improperly withheld records in response to your request for information under DC FOIA dated March 7, 2013 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought "a copy of the signed form 52 and a copy of the signed letter by the Custodian of the Record certifying the original record, that was provided by General Counsel Sheila Barfield" in a specified matter in the Superior Court of the District of Columbia. On Appeal, Appellant asserts that OEA never responded to him.

In response, by email dated December 17, 2013, OEA states that it has, in fact, responded to the FOIA Request. In support, it has provided a letter dated April 12, 2013, to Appellant, which letter attaches a Certificate of Filing for each of the three occasions on which OEA has filed with the Superior Court the case file in the associated administrative action. In addition, the letter states that while there is no Form 52, OEA has attached the relevant copies of Personnel Action Form 1.

Based on the foregoing, we find that OEA has responded to the FOIA Request and the Appeal is dismissed.[1]

[1] As part of submission made by Appellant, he submits a letter dated December 11, 2013, addressed to OEA, which is characterized as a "third request", seeking "the name, address, and number of files that your office provided to anyone, pertaining to OEA Matter No. 000014P (MPA) in the year of 2012." We note that this request is somewhat different from the FOIA Request, does not relate to the form of a previous request which was furnished to us as a part of the administrative record, and was submitted to OEA after the date of the Appeal. Accordingly, we will not consider this request as part of the Appeal. Moreover, OEA states: "The information he is requesting this time is nearly identical to what he requested in his first FOIA request and differs only with respect to the timeframe he is currently referencing. I will respond to this request within the time allotted under the law."

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: Sheila Barfield, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-22

January 27, 2014

Mr. Victor Rivera Melendez

Dear Mr. Melendez:

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 3, 2013 (the "Appeal"). You ("Appellant") assert that the District of Columbia Fire and Emergency Medical Services Department ("FEMS") improperly withheld records in response to your request for information under DC FOIA dated November 5, 2013 (the "FOIA Request).

Background

Appellant's FOIA Request sought records relating to a fire occurring at a specified real property on a specified date. FEMS denied the FOIA Request, stating that the requested records were investigatory records compiled for law enforcement purposes exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A). Appellant challenged the denial of the FOIA Request, stating that the records "must be disclosed under the FOIA because this fire report is a public document as the incident happened in Washington, DC, and was investigated by both the Fire and EMS Department and the Metropolitan Police."

In its response, dated January 16, 2014, FEMS states that, citing D.C. Official Code § 5-417.01, its "denial rests upon the role and authority of its fire investigators who determine whether the cause of a fire is incendiary (i.e., intentional)." FEMS states further that "[t]he cause of the fire was intentional and . . . the Department's FOIA Officer determined that releasing report at this time would interfere with enforcement proceedings." In its supplement to the response, FEMS indicated that release of the withheld document "would compromise enforcement proceedings" resulting from "the exercise of its police powers" under D.C. Official Code § 5-417.01. With respect to redactions, FEMS states that "[i]t is not feasible to release redacted portions . . . because it would harm the Department's law enforcement interests if it had to denote the specific exemptions under subsection (a) in the applicable portion(s) of the record."

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) provides, in pertinent part, an exemption from disclosure for:

> Investigatory records compiled for law-enforcement purposes, including the records of Council investigations . . ., but only to the extent that the production of such records would:
>
> (A) Interfere with:
>
> (i) Enforcement proceedings;

For the purposes of DC FOIA, law enforcement agencies conduct investigations which focus on acts which could, if proved, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well." *Rugiero v. United States DOJ*, 257 F.3d 534, 550 (6th Cir. 2001).

While it is only necessary under the counterpart provision in the federal Freedom of Information Act to demonstrate that the disclosure "could reasonably be expected to interfere with enforcement proceedings," the standard for establishing the exemption under DC FOIA is that the disclosure "would interfere with enforcement proceedings," which was formerly the standard under the federal Freedom of Information Act.[1]

Federal cases prior to such change do provide guidance. The types of harm which have been found to warrant an exemption include "(1) destruction or alteration of evidence; (2)

[1] *See* Freedom of Information Act Appeal 2011-62 and Freedom of Information Act Appeal 2013-69.

identification of knowledgeable individuals, leading to their intimidation or harm; and (3) fabrication of fraudulent alibis." *Spannaus v. U.S. Dep't of Justice*, 813 F.2d 1285, 1289 (4th Cir. Va. 1987)(citing *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 239 (1978), *Willard v. IRS*, 776 F.2d 100, 103 (4th Cir. 1985). Disclosure of evidence would harm enforcement proceedings if it would "defin[e] the nature, direction, and scope of the government's case." *Willard v. IRS*, 776 F.2d 100, 102 (4th Cir. 1985).

The burden is on the agency to establish the exemption. As we have stated in prior decisions,[2] in Freedom of Information Act cases, "'conclusory and generalized allegations of exemptions' are unacceptable, *Found. Church of Scientology of Wash., D.C, Inc*. v. *Nat'l Sec. Agency*, 197 U.S. App. D.C. 305, 610 F.2d 824, 830 (D.C. Cir. 1979) (quoting *Vaughn v. Rosen*, 157 U.S. App. D.C. 340, 484 F.2d 820, 826 (1973))." *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).[3]

As was the case with the subject agency in Freedom of Information Act Appeal 2012-64 and Freedom of Information Act Appeal 2013-06, FEMS

> merely asserts that there is a pending law enforcement investigation, in effect contending that this 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.

Freedom of Information Act Appeal 2013-06. Although FEMS has not stated specifically how the disclosure would interfere with the law enforcement proceeding in this matter, we have examined the withheld record, an Incident Report. The record contains direct information about the investigation, such as the observations of the cause and area of the origin of the fire and other impressions of the investigator(s). The record, if disclosed, would alert potential criminal suspects to the ongoing investigation, would reveal the direction of the investigation, and allow potential criminal suspects to take action in accordance with such information. This would compromise the investigation and cause the necessary interference with the existing enforcement proceedings.

D.C. Official Code § 2-534(b) provides for the disclosure of "[a]ny reasonably segregable portion of a public record . . ." Thus, we have considered whether the record may be provided

---

[2] *See* Freedom of Information Act Appeal 2011-26, Freedom of Information Act Appeal 2012-05, Freedom of Information Act Appeal 2013-13, Freedom of Information Act Appeal 2013-62, and Freedom of Information Act Appeal 2014-07.

[3] *See also Washington Post Co. v. U.S. Dept. of Justice*, 863 F.2d 96, 101 (D.C. Cir. 1988). ("The burden of proof rests on the party who seeks to prevent disclosure. See *EPA v. Mink*, 410 U.S. 73, 79, 93 S.Ct. 827, 832, 35 L.Ed.2d 119 (1973). That burden cannot be met by mere conclusory statements; the agency must show how release of the particular material would have the adverse consequence that the Act seeks to guard against. See *Campbell v. HHS*, 682 F.2d 256, 259 (D.C.Cir.1982).")

in redacted form. Although the bulk of the Incident Report is exempt from disclosure under D.C. Official Code § 2-534(a)(3)(A)(i), we believe that the section of the report titled "Basic" may be disclosed as it reveals information which is already known. Although FEMS claims that the nature of the exemption claimed would interfere with the investigation if the record was released in redacted form, the exemption was revealed when FEMS responded to the FOIA Request.

Conclusion

Therefore, the decision of FEMS is upheld in part and reversed and remanded in part. FEMS shall provide the record redacted except for the Basic section.

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: Shakira Pleasant, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-23

January 17, 2014

Ms. Felicia Chambers

Dear Ms. Chambers:

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 17, 2013 (the "Appeal"). You ("Appellant") assert that the Office of the Chief Financial Officer ("OCFO") improperly withheld records in response to our decision in Freedom of Information Act Appeal 2014-08 (the "Decision"), which resulted from your request for information under DC FOIA dated August 26, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought:

1. "[T]he record who paid and the amount paid of real property taxes for [a specified real property] for each tax period from June 1978 to the present."

2. "[T]he Records Disposition and Retention Schedule that pertain to the above records for each time period."

In response, although OCFO provided a schedule of payments made and payors, to the extent that the payors were known, for tax years 1995 through 2013, it provided only a conclusory statement that the requested records for 1978 through 1994 did not exist, onsite or in the archives, and gave no indication as to whether it conducted a search of its archives or that a sufficient determination was made in another manner. In addition, OCFO had not responded to the portion of the FOIA Request regarding the records retention. Therefore, we remanded the matter to OCFO as follows:

> OCFO shall conduct a search for the requested records for the tax periods of 1978 through 1994 and provide any responsive records. OCFO shall state to Appellant the manner in which the search was conducted or, if a determination was made that such records no longer exist, how such determination was made. In addition, OCFO shall provide to Appellant the applicable portions of the records disposition and retention schedule with respect to such records.

On December 16, 2013, OCFO provided a records retention schedule, but stated that it had no other payment records.

> Officials in the Real Property Administration conducted a diligent search utilizing the Integrated Tax System (ITS), the Real Property Tax 2000 (RPT 2000) and the Tax Sale System databases to fulfill your FOIA request. Unfortunately, the records requested for the tax years 1978 to 1994 within the Real Property Tax Administration do not exist.

In addition, it indicated that, according to its records retention schedule, "Payment Record Cards" are only retained for four years.

On Appeal, Appellant challenges the response of OCFO, stating, in pertinent part:

> While it is true that OTR indicated that it had reviewed what are presumably databases [footnote omitted] and that the retentions schedule provided that Payment Record Cards [are to be retained] for only four (4) years nonetheless, OTR still indicated that it had provided me with the only available information that is housed within the Real Property Tax Administration[.] . . . These responses do not clearly state that the records do not exist. Rather, they beg the question whether the records exist elsewhere. Moreover, while the records retention schedule does not require the records to be maintained beyond four years, OTR provided me with records dated as far back as 1995. Thus, it is reasonable to assume that other records dating further back may be maintained either somewhere within the Real Property Tax Administration or elsewhere.

In response, dated January 16, 2014, OCFO reaffirmed its position. It states, in pertinent part:

> [W]e have conducted a diligent search of all our records including both physical records and our on-line records systems including the Integrated Tax System (ITS), the Real Property Tax 2000 (RPT 2000) and the Tax Sale System databases in an attempt to fulfill your FOIA request.
>
> In addition, we have contacted the District of Columbia Archives Center and the Archives Center has indicated that they do not have such records in their possession. Accordingly, the requested records do not exist either in RPTA, the D.C. Archives Center or anywhere else within our control.
>
> In addition, the assumption in your letter of December 17, 2013 is incorrect. We provided you with the relevant portion of the Records Retention Schedule (RRS) relating to RPTA. We indicated in the letter of December 16th that Section 24 of the RRS requires that an administration keep such Payment Records Cards for four (4) years. Since OTR has to keep the requested records for only four years, OTR does not have the requested 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).

As stated above, in Freedom of Information Act Appeal 2014-08, we remanded the matter to OCFO because we found that it had not produced the records retention schedule requested and that it had not demonstrated that it conducted a search of its archives for the other records requested or that it made a sufficient determination in another manner that it had not archived such records, such as by referring to its records retention practices.[1] In the Appeal, Appellant does not allege a failure to furnish the relevant records retention schedule, but challenges the adequacy of the search for the other requested records.

While we indicated that OCFO had not demonstrated that it conducted a search of its archives for the other records requested or that made a sufficient determination in another manner that it had not archived such records, OCFO has now established the adequacy of its search. First, OCFO indicates that, according to its records retention schedule, Payment Records Cards are retained only for 4 years. Other than computer-generated schedules from which OCFO has already furnished the requested information to Appellant, Payment Records Cards are the documents where the requested information regarding the payor, and the amount paid, of real property taxes would be found. Thus, due to the limited record retention period, the archives are not a likely place where the records would be found. Second, OCFO contacted the custodian of the archives, who indicated that the requested records are not maintained. Accordingly, we believe that OCFO has conducted an adequate search for the requested records.

Conclusion

Therefore, we uphold the decision of OCFO. The Appeal is dismissed.

[1] We also directed OCFO to state the manner in which its search was made. This direction was not intended to be a remedy itself, but to serve as a basis for Appellant to determine whether there was a basis for any subsequent appeal.

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: Angela Washington
Charles Barbera, Esq.
Laverne Lee

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-24

January 28, 2014

Mr. Garth Kant

Dear Mr. Kant:

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 January 2, 2014 (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 December 26, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought "any and all video, including but not limited to dash-cam and security-cam footage, of the shooting of [a named individual] by uniformed Secret Service agents and U.S. Capitol Police officers on Oct. 3, 2013."

In response, by email dated January 2, 2014, MPD denied the FOIA Request based on the exemption from disclosure under D.C. Official Code § 2-534(a)(3)(A), stating as follows: "As you may be aware, the Metropolitan Police Department is currently investigating this matter. Release of any video of the chase and shooting at this time would be premature and would adversely affect any resulting criminal proceeding."

On Appeal, Appellant challenges the withholding of the requested records, stating that the public interest would be served by allowing the video of the incident to be viewed and "[v]ideo is simply a neutral an objective way for the public to see what happened;" "[n]early three months have passed since the incident;" "[o]ther major police departments . . . have recently released videos of officer-involved shootings while investigations were underway;" video of a second shooting of the named individual should be released as video of the first shooting is already public; and an assertion that the video would prejudice a possible criminal prosecution is "an admission that the video casts the conduct of officers and agents in a bad light."

In response, dated January 21, 2014, MPD reaffirmed its position. By way of background, MPD explains that it has been conducting an investigation with respect to the law enforcement chase and shooting "to determine whether criminal charges should be placed against any law enforcement officer who used force that is not consistent with the requirements of law." MPD indicates that it has gathered video from several federal agencies and from private parties. MPD states further:

> The Office of the United States Attorney for the District of Columbia has advised the department that release of the videos would most certainly be detrimental to the pending investigation or any resulting criminal prosecution. The videos identify witnesses which leaves open the possibility of witness tampering or coercion. Also, release of the videos would affect the recollections and/or perceptions of persons involved in the incident.

MPD also asserts the "law enforcement privilege" under D.C. Official Code § 2-534(a)(4) and states: "These videos would reveal the location of security cameras and their capabilities throughout the chase route."[1]

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 relies mainly on the exemption from disclosure under D.C. Official Code § 2-534(a)(3)(A).

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;

[1] MPD also advances an argument made by the U.S. Capitol Police ("USCP"). USCP maintains that the videos which it provided to MPD are its properties, are to be returned when the investigation or any prosecution has been completed, and is a legislative branch entity not subject to DC FOIA.

While it is only necessary under the counterpart provision in the federal Freedom of Information Act to demonstrate that the disclosure "could reasonably be expected to interfere with enforcement proceedings," the standard for establishing the exemption is that the disclosure "would interfere with enforcement proceedings."[2] The burden is on the agency to establish the exemption. As we have stated in prior decisions,[3] in Freedom of Information Act cases, "'conclusory and generalized allegations of exemptions' are unacceptable, *Found. Church of Scientology of Wash., D.C, Inc*. v. *Nat'l Sec. Agency*, 197 U.S. App. D.C. 305, 610 F.2d 824, 830 (D.C. Cir. 1979) (quoting *Vaughn v. Rosen*, 157 U.S. App. D.C. 340, 484 F.2d 820, 826 (1973))." *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).[4]

In support of its claim of exemption, MPD offers three arguments. First, it sets forth the opinion of the Office of the United States Attorney that the disclosure of the videos "would most certainly be detrimental to the pending investigation or any resulting criminal prosecution." However, this is a conclusion which does not indicate how the disclosure would result in the claimed harm. Second, MPD states that the "videos identify witnesses which leaves open the possibility of witness tampering or coercion." However, a mere possibility is insufficient to establish that the requisite interference *would* occur. Third, MPD states that the disclosure "would affect the recollections and/or perceptions of persons involved in the incident." However, we note that witnesses are frequently provided an opportunity to view videos prior to testifying.

MPD also sets forth the applicability of the law enforcement privilege as a basis for its claim of exemption for withholding the videos. The law enforcement privilege is a common law privilege first adopted in *Roviaro v. United States*, 353 U.S. 53 (1957) as a federal privilege. While the privilege was originally adopted to allow the withholding of the identities of confidential informants, it has been expanded to other aspects of law enforcement activities. The law enforcement privilege was adopted locally in *Kay v. Pick*, 711 A.2d 1251 (D.C. 1998). It is a qualified privilege requiring the balancing, using ten factors, of the public interest in nondisclosure against the need for the records. The privilege

> must be asserted with particularity by a high official of the law enforcement agency who is both authorized to assert the privilege on behalf of the agency and who is in a position to know that the privilege is necessary. . . The party claiming the privilege must have '[1] seen and considered the contents of the documents and [2] himself formed the view that

---

[2] This was formerly the standard under the federal Freedom of Information Act. *See* Freedom of Information Act Appeal 2011-62 and Freedom of Information Act Appeal 2013-69.

[3] *See* Freedom of Information Act Appeal 2011-26, Freedom of Information Act Appeal 2012-05, Freedom of Information Act Appeal 2013-13, Freedom of Information Act Appeal 2013-62, and Freedom of Information Act Appeal 2014-07.

[4] *See also Washington Post Co. v. U.S. Dept. of Justice*, 863 F.2d 96, 101 (D.C. Cir. 1988). ("The burden of proof rests on the party who seeks to prevent disclosure. See *EPA v. Mink*, 410 U.S. 73, 79, 93 S.Ct. 827, 832, 35 L.Ed.2d 119 (1973). That burden cannot be met by mere conclusory statements; the agency must show how release of the particular material would have the adverse consequence that the Act seeks to guard against. See *Campbell v. HHS*, 682 F.2d 256, 259 (D.C.Cir.1982).")

> on grounds of public interest, they ought not be produced, [3] state with specificity the rationale of the claimed privilege [namely, 3(a)] specifying which documents or class of documents are privileged and [3(b)] for what reasons.. [citations omitted].

Kay v. Pick, 711 A.2d 1251, 1256 (D.C. 1998).

The law enforcement privilege has been "largely incorporated into the various state and federal freedom of information acts." *In re Department of Investigation of City of New York*, 856 F.2d 481, 484-485 (2d Cir. 1988). In the District, the counterpart is codified in D.C. Official Code § 2-534(a)(3). We are unaware of any FOIA case in which the law enforcement privilege separate from the counterpart statutory exemption has been used as the basis for upholding an exemption for disclosure. This is likely due to the fact that, unlike the law enforcement privilege, once the applicability of one of the enumerated harms under D.C. Official Code § 2-534(a)(3) is established, no balancing is required. Thus, the codified exemptions in D.C. Official Code § 2-534(a)(3) have a broader reach. Therefore, in a FOIA case, a law enforcement privilege claim should be considered under D.C. Official Code § 2-534(a)(3). Here, MPD claims that the disclosure "would reveal the location of security cameras and their capabilities." This argument implicates a claim of exemption under D.C. Official Code § 2-534(a)(3)(E), which establishes an exemption from disclosure for law enforcement records which would "[d]isclose investigative techniques and procedures not generally known outside the government." Whether this claim is considered under the law enforcement privilege or D.C. Official Code § 2-534(a)(3)(E), we note that some of the videos were from cameras maintained by non-law enforcement entities, i.e., the Department of Commerce, the management of the Ronald Reagan building, and private citizens.

However, we do not believe that it is necessary to resolve the Appeal based on these claims of exemption or upon the argument advanced on behalf of USCP. Based on the administrative record, we believe that the requested records are exempt from disclosure under D.C. Official Code § 2-534(a)(3)(C). D.C. Official Code § 2-534(a)(3)(C) provides an exemption for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, . . . , but only to the extent that the production of such records would . . . (C) Constitute an 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). MPD states that the "videos identify witnesses." 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 (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.") In Freedom of Information Act Appeal 2013-63, we found that there was a personal privacy interest of individuals whose images were captured on surveillance videotape.

As stated above, the FOIA Request sought videos showing a shooting by uniformed Secret Service agents and U.S. Capitol Police officers. As such responsive records would show such law enforcement officers, it seems reasonable to presume that those officers could be identified.

> [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 past decisions, we have found that there is a sufficient individual privacy interest for a person who is simply being investigated for wrongdoing based on allegations. "[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. We believe that the same interest is present with respect to the sanctions which could be imposed on the subject law enforcement officers. 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 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).

Here, Appellant indicates that there is a public interest in the viewing of the incident, presumably, in the viewing of alleged wrongful conduct by uniformed Secret Service agents and U.S. Capitol Police officers. However, these officers are not members of MPD, the agency to whom the FOIA Request was addressed. Accordingly, 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).

Appellant urges disclosure, arguing, in part, that other police departments have released similar videos. However, we are construing the statutory regime in the District—other jurisdictions may have differing disclosure laws or policies. Moreover, as we stated in prior appeals where the appellants argued that they had requested and received similar records in prior requests, 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 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 on the right of the law enforcement officers, if any are charged, to obtain a fair trial[5]).

[5] D.C. Official Code § 2-534(a)(3)(B) provides an exemption for disclosure for investigatory records compiled for law-enforcement purposes if disclosure would "deprive a person of a right

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, Esq.

---

to a fair trial or an impartial adjudication." In *Washington Post Co. v. DOJ*, 863 F.2d 96 (D.C. Cir. 1988), the leading case on the exemption, the Circuit Court stated that "to withstand a challenge to the applicability of (7)(B)[the federal counterpart to D.C. Official Code § 2-534(a)(3)(B)], the government bears the burden of showing: (1) that a trial or adjudication is pending or truly imminent; and (2) that it is more probable than not that disclosure of the material sought would seriously interfere with the fairness of those proceedings." *Id*. at 102. As there is no trial which is pending or imminent, D.C. Official Code § 2-534(a)(3)(B) does not apply. Nevertheless, we believe that disclosure of the videos would be inflammatory and pose a risk to a fair adjudication if charges are brought.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-25

January 28, 2014

Mr. Jim Baker

Dear Mr. Baker:

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 January 2, 2014 (the "Appeal"). You ("Appellant") assert that the District of Columbia Retirement Board ("DCRB") improperly withheld records in response to your request for information under DC FOIA dated November 25, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought, related to an investment in a specified private equity real estate fund (the "Fund"), a "pitchbook," board presentation, staff recommendation, and recommendation of a consultant (the "Consultant") to DCRB.

In response, by letter dated December 31, 2013, DCRB provided a written motion for approval of investment in the Fund, but withheld the recommendation of the Consultant, which recommendation was in the form of a report (the "Report"), based on the exemption from disclosure under D.C. Official Code § 2-534(a)(1).

On Appeal, Appellant contests the failure of DCRB to provide "all segregable portions of otherwise exempt material" of the Report.

In response, dated January 22, 2014, DCRB submits an analysis, with accompanying affidavit, prepared by the Consultant, in support of the assertion of the claim of exemption from disclosure under D.C. Official Code § 2-534(a)(1). The Consultant states that it

> is a real estate investment advisor and, as part of its business model, [Consultant] prepares reports as pre-investment diligence information. These reports include [Consultant]'s confidential and proprietary review and analysis of an investment in a particular private investment fund. The disclosure of [Consultant]'s confidential and proprietary review and analysis . . . would allow other investment consultants to replicate [Consultant]'s analytical methods and processes to complete similar reports. . . .

> The [Consultant] Report details [Consultant]'s strategies and analytical methodologies for real estate investments in general, and it provides the detailed performance monitoring data and statistical information compiled by [Consultant] with respect to [the Fund]. [Consultant]'s analytical methodologies extend to the factual information it chooses to summarize in its reports and to the factual information it chooses not to include in any factual summary.

The Consultant maintains that the information in the Report cannot be reasonably segregated without causing competitive harm.

> The disclosure of even factual summaries would inevitably lead to the disclosure of the thoughts, impressions, priorities and methodology of [Consultant]'s consultants based on the factual information [Consultant] chooses to include and factual information [Consultant] chooses to exclude from its reports to clients.

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).

Although the FOIA Request had four parts, Appellant is only challenging a portion of the response of DCRB. Appellant contends that DCRB failed to provide segregable material from the withheld record, i.e., the Report. However, DCRB contends that the Report is exempt in whole from disclosure under D.C. Official Code § 2-534(a)(1).

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]").

DCRB, through the Consultant, contends that the Report reveals "the real estate strategies and analytical methodologies" of the Consultant as well as "detailed performance monitoring data and statistical information" compiled by Consultant with respect to the proposed investment. The Consultant indicates that the disclosure of the Report would allow its competitors to replicate the business model which it has developed over many years. Accordingly, it argues that it would be harmed by such disclosure. We have recognized that the real estate industry in the District is highly competitive and real estate advisory services would fall within this sphere. Moreover, disclosure of business methods not generally known and which enable rival real estate advisory services to wrest business from Consultant would cause the competitive harm contemplated by D.C. Official Code § 2-534(a)(1). In Freedom of Information Act Appeal 2014-07R, in which we reconsidered, in part, our decision in Freedom of Information Act Appeal 2014-07, we approved the withholding, under D.C. Official Code § 2-534(a)(1), of a legal memorandum, prepared by an attorney for a real estate developer, analyzing the alternative legal structures for a condominium portion of a project and making a recommendation as to the best alternative. In agreeing earlier to reconsider the disclosure of this record, we stated:

> While the knowledge set forth in the memorandum may not be unique to the writer, it is a sophisticated legal analysis which, we believe, is not generally known. If the memorandum is disclosed, the analysis set forth therein would be available to other developers and attorneys and it may diminish the opportunities for the writer to exploit such knowledge. Accordingly, this is commercial information whose disclosure may result in competitive harm.

The description by the Consultant of its proprietary real estate strategies and analytical methodologies and detailed performance monitoring data and statistical information sets forth a comparable compilation of commercially exploitable information. However, we note that in Freedom of Information Act Appeal 2014-07, while the agency similarly claimed that it was withholding records which contained "proprietary" financial information and negotiation strategies, upon examination of the records provided, we found that the information therein was "unremarkable" and disclosure would not result in the claimed harm.[1] Here, although the affidavit of the Consultant indicates that the Report was attached, DCRB did not provide that portion of the affidavit and we were not able to conduct an in camera review. As the purpose of the Report is to analyze a proposed investment in a single real estate fund, it is unclear that the Report necessarily involves the business model and processes of the Consultant. However, it is not necessary to rest our decision on the exemption from disclosure under D.C. Official Code §

[1] Upon reconsideration when all records were examined, there were a few records which qualified as exempt from disclosure.

2-534(a)(1). The Report is exempt from disclosure under the deliberative process privilege under D.C. Official Code § 2-534(a)(4).

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.

"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 is clear that communications with parties outside the government whose consultation has been requested by an agency can qualify as "inter-agency."

> Unquestionably, efficient government operation requires open discussions among all government policy-makers and advisors, whether those giving advice are officially part of the agency or are solicited to give advice only for specific projects. Congress apparently did not intend 'inter-agency' and 'intra-agency' to be rigidly exclusive terms, but rather to include any agency document that is part of the deliberative process. . . . When an agency record is submitted by outside consultants as part of the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an 'intra-agency' memorandum for purposes of determining the

> applicability of Exemption 5. This common sense interpretation of 'intra-agency' to accommodate the realities of the typical agency deliberative process has been consistently followed by the courts. [footnote omitted].

Ryan v. Department of Justice, 617 F.2d 781, 789-790 (D.C. Cir. 1980). In accord, *McKinley v. Bd. of Governors of the Fed. Reserve Sys*., 647 F.3d 331, 339 (D.C. Cir. 2011); *Citizens for Responsibility & Ethics v. United States Dep't of Homeland Sec.*, 514 F. Supp. 2d 36, 44 (D.D.C. 2007).

The Report is an analysis and recommendation regarding a proposed action to be taken. By its very nature, it is predecisional and deliberative. Appellant contends that there may be portions of the Report which may be disclosed.

While internal communications consisting of advice, recommendations, and opinions do not pose particular problems of identification as exempt where the deliberative process is applicable, factual information or investigatory reports may present the need for additional scrutiny. The legal standard is that

> purely factual material which is severable from the policy advice contained in a document, and which would not compromise the confidential remainder of the document, must be disclosed in an FOIA suit. . [citing, by footnote, *Environmental Protection Agency v. Mink*, 410 U.S. 73, 91 (1973)]. . . . We have held that factual segments are protected from disclosure as not being purely factual if the manner of selecting or presenting those facts would reveal the deliberate process, [citing, by footnote, *Montrose Chem. Corp. v. Train*, 491 F.2d 63, 68 (D.C. Cir. 1974)] or if the facts are "inextricably intertwined" with the policy-making process. [citing, by footnote, *Soucie v. David*, 448 F.2d 1067, 1078 (D.C. Cir. 1971)]. The Supreme Court has substantially endorsed this standard. [citing, by footnote, *Environmental Protection Agency v. Mink*, 410 U.S. 73, 92 (1973)].

Ryan v. Department of Justice, 617 F.2d 781, 790 (D.C. Cir. 1980).

Here, the nature of the Report is such that even the factual material in the Report qualifies for exemption from disclosure under the deliberative process privilege. The Consultant aptly stated that "[t]he disclosure of even factual summaries would inevitably lead to the disclosure of the thoughts, impressions, priorities . . . based on the factual information [Consultant] chooses to include and factual information [Consultant] chooses to exclude from its reports to clients." *See also* Freedom of Information Act Appeal 2012-49.

Conclusion

Therefore, we uphold the decision of DCRB. 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: Erie Sampson, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-26

February 11, 2014

Mr. Philip Kerpen

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"), dated January 6, 2014 (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. The "emails asking to expedite" the installation of an additional speed hump on the 3300 block of Tennyson Street NW referenced by [named employee] in his October 28, 2010 email to [named employees], along with any other relevant communications antecedent and subsequent to those emails.
>
> 2. Any written or electronic communications resulting in the attempted March 11, 2011 installation of an additional speed hump on the 3300 block of Tennyson Street NW.
>
> 3. The March 11, 2011 email sent at approximately 10:02AM from [named employee] to [named employee] and others that says, in part, "We are looking into this," as well as any resulting written or electronic communications, including but not limited to the March 11, 2011 email sent at approximately 10:54AM from [named employee] to [named employee] that says, in part, "This will resolve the issue."
>
> 4. Any written or electronic communications resulting in the attempted June 8, 2012 installation of a second speed hump on the 3300 block of Tennyson Street NW.
>
> 5. Any written or electronic communications regarding the installation of an additional speed hump on the 3300 block of Tennyson Street NW on or after June 8, 2012, including but not limited to the email with the subject "FW: News from Muriel 6-17-09" forwarded on June 21, 2012 by [named employee] to [named employee] and then

> forwarded by [named employee] to [named employees] and any discussion regarding that email.
>
> 6. Any written or electronic communications regarding a second speed hump on the 3300 block of Tennyson St NW from Councilmember Muriel Bowser or any of her staff, including but not limited to [named employees].
>
> 7. Any written or electronic communications regarding a second speed hump on the 3300 block of Tennyson St NW from an employee of the Executive Office of the Mayor, including but not limited to [named employees].
>
> 8. Any written or electronic communications discussing my FOIA request to your agency of June 9, 2012 and its appeal to the Mayor's Correspondence Unit, including but not limited to any discussion of redactions.

In response, by letter dated November 29, 2013, DDOT notified Appellant that it would provide responsive records (other than those previously provided pursuant to a prior FOIA request), but that it was redacting portions of certain records based on the exemption for privacy under D.C. Official Code § 2-534(a)(2) and withholding other records based on the exemption for deliberative process privilege under D.C. Official Code § 2-534(a)(4).

On Appeal, Appellant challenges the denial, in part, of the FOIA Request, stating that DDOT "has offered no rationale for the assertion" of the exemptions. Furthermore, Appellant notes that the claim of the deliberative process privilege was not upheld in a prior appeal. Appellant also urges the release of records withheld based upon the deliberative process privilege as a matter of discretion in the public interest as "in apparent breach of the Agency's published policies and procedures, 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 January 23, 2014, 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, after citing and explaining applicable judicial authority, it states:

> The Executive Office of the Mayor (EOM), previously held in FOIA Appeal number 2013-12 [2013-12] that the non-disclosure of personal information such as personal addresses, telephone numbers and email addresses of private citizens were properly withheld. In this case, DDOT redacted the personal addresses, telephone numbers, and email addresses of private citizens, who had communicated with DDOT employees. Emails where Appellant's name was included on the emails was not redacted. DDOT again asserts that releasing such personal information would pose an unwarranted invasion of privacy to these individuals. Moreover, the personal addresses, telephone numbers, and email addresses of non-government employees cannot contribute significantly to the public's understanding of DDOT operations.

With respect to the claim of exemption for deliberative process privilege, after citing and explaining applicable judicial authority, DDOT states:

> In this case, the redacted emails are inter-agency and intra-agency e-mails between DDOT employees, EOM, 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.
>
> DDOT contends that providing Appellant with the internal emails would stifle inter-agency communications. . . . In addition, several of the emails communications were sent in order to formulate a final response for Appellant's FOIA request. Releasing these emails would prematurely show the Agency's efforts in resolving the speed-hump issue and formulation of Appellant's FOIA response.

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 same issues that we considered in Freedom of Information Act Appeal 2013-02, that is, redaction or withholding 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). In fact, the FOIA Request has produced overlapping results with the prior request. We will address each exemption in turn and, for the convenience of the parties, we will re-state, without quotes, the relevant analysis in the prior decision.

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

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.

As in Freedom of Information Act Appeal 2013-02, 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] As we stated in Freedom of Information Act Appeal 2013-02, 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).

As in Freedom of Information Act Appeal 2013-02, 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.

---

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).

[2] DDOT has not, however, redacted the names of these 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).

Appellant does not specifically state a public interest which would overcome the individual privacy interests. Instead, Appellant merely states that DDOT "has offered no rationale for the assertion" of the exemptions. However, as Appellant raised the same issue in Freedom of Information Act Appeal 2013-02, Appellant was well aware of the rationale for claimed exemption for privacy (as well as for the deliberative process privilege, which we will address next). As in Freedom of Information Act Appeal 2013-02, revealing the personal identifying information would not advance significantly the public understanding of the operations or activities of the government or the performance of DDOT.

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.

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). As in Freedom of Information Act Appeal 2013-02, DDOT states that the deliberative process here is the "resolution of a residential speed hump issue." As we did in that decision, we have examined the unredacted records provided to us for *in camera* review to determine if a decision is being, or has been, considered and the extent, if any, to which a deliberative process is involved. In performing the review, 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.

For purposes of our analysis, we will place the responsive records regarding the deliberative process privilege into two groups. The first group of emails relate to the installation of, or attempts to install, a speed bump on the 3300 block of Tennyson Street, N.W. These emails were written in October, 2010 (and are some of the records we considered in Freedom of Information Act Appeal 2013-02), March, 2011, and late January through May 2012, 2013. Much like Freedom of Information Act Appeal 2013-02, although they are not all of the same records, they consist generally of inquiries by constituents as to the installation of the speed bumps, inter-agency email seeking information regarding the project and responses thereto, and directions as to future actions. For the same reasons that we set forth in Freedom of Information Act Appeal 2013-02, we believe, with the exceptions noted in that appeal, that these emails should be disclosed in full.

Some of the emails 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 about decisions which were previously made, but they do not reflect consideration of a decision to be made. The other emails (or portions thereof) arguably qualify for exemption from disclosure under the deliberative process privilege. They suggest consideration of a series of decisions as to whether the project, i.e., the installation of the speed bumps, should be reversed or how it should be implemented. However, as in Freedom of Information Act Appeal 2013-02, 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[3] of the agency and are benign in tone. The exchanges fall short of the vigorous interchange of ideas

[3] For this purpose, we would include inquiries as to possible irregularities or omissions as routine business.

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 DDOT 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.

The second group of emails relates to the prior FOIA request of Appellant and the resulting Freedom of Information Act Appeal 2013-02, "including but not limited to any discussion of redactions." This appears to be a clear intent to probe the deliberative processes in responding to both the FOIA request and the appeal. In Freedom of Information Act Appeal 2013-46, we held that the responsive records were exempt from disclosure under the deliberative process privilege where the pertinent portion of the FOIA request indicated "a clear effort to probe the mental processes of the decision-makers" and the impulse of DDOT to resist such an effort here was warranted. However, upon examination of the responsive emails, the redacted portions reflect the information gathering necessary to respond to the prior FOIA request or reporting the result of the appeal and do not reflect internal deliberations as to the resolution of disclosure issues in connection with the request. Therefore, those emails should be provided to Appellant.

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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-27

January 22, 2014

Mr. Mark A. Pendleton

Dear Mr. Pendleton:

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 January 6, 2014 (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, as amended, dated December 4, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request was a multipart request which sought:

> "1. Copies of all DC Employment Applications (DC 2000) and Resumes of Applicants determined to be 'Best Qualified' and were interviewed by an established Certification Panel of three (3) members, who conducted applicant interviews from June 2013 through August 2013.
>
> 2. Copies of the Selection Panel Members notes, comments, numerical ratings, and recommendations for each applicant that was interviewed from June 2013 through August 2013.
>
> 3. Copy of the Panel Members Certification for the period of June 2013 through August 2013.
>
> 4. Copies of all DC Employment Applications (DC 2000) and Resumes of applicants determined to be 'Best Qualified' and were interviewed by an established Certification Panel of three (3) members, who conducted applicant interviews from September 2013 through November 2013.
>
> 5. Copies of the Selection Panel Members notes, comments, numerical ratings, and recommendations for each applicant that was interviewed from September 2013 through November 2013.

> 6. Copies of any other relevant documents, notes, communications, letters, and e-mails specifically relating to the selection process for OCFO Announcement No. AD-OIO-003 (Senior Criminal Investigator).
>
> 7. Copy of the applicable OCFO or District regulation, policy, or rule that authorizes two (2) Panel Certifications for one vacancy announcement under OCFO Announcement No. AD-OIO-003 (Senior Criminal Investigator)."

By email dated December 24, 2013, OCFO responded to the above-numbered parts as follows:

1. With respect to parts 1 and 4, OCFO provided copies of the DC Employment Applications (DC 2000) and resumes, redacted for personal information determined to be exempt from disclosure based on the exemption for personal privacy under D.C. Official Code § 2-534(a)(2), for the successful candidates. OCFO withheld the DC Employment Applications (DC 2000) and resumes of the unsuccessful candidates based on the exemption for personal privacy under D.C. Official Code § 2-534(a)(2).

2. With respect to parts 2, 3, 5, and 6, OCFO withheld the responsive records based on the deliberative process privilege under D.C. Official Code § 2-534(a)(4).

3. With respect to part 7, OCFO stated that there were no responsive records.

On Appeal, Appellant challenges the response of OCFO to the FOIA Request. Appellant alleges, as the circumstances surrounding the selections for the positions to be filled, that OCFO improperly convened two selection panels and that the successful candidates did not have the requisite experience for the positions to be filled. With respect to the FOIA Request itself, Appellant states:

> [The] FOIA response focused on the end result or conclusion of the selection process of these two 'Successful' candidates but failed to address the unknown number of candidates who were interviewed by two separate sets of Certification Panel Members, their specific ratings for each applicant, and the Selection Certificates for both Certification Panel Member to clarify the matter.

Appellant alleges that if there are two different selection certificates, then "corrupt behavior" has occurred and that there should be "documentation and evidence" to establish the same.

In its response, dated January 17, 2014, OCFO reaffirmed its position. With respect to its assertion of the exemption from disclosure due to personal privacy, citing prior appeals decisions, OCFO maintains that that while there is a public interest in disclosure of information by successful job applicants of information relating to name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary, which public interest would result in disclosure, there is not a public interest in similar information contained in applications of unsuccessful job applicants. With respect to its assertion of the deliberative process privilege, OCFO maintains that the records withheld are

both predecisional and deliberative and were prepared by a selection committee as a recommendation to the selecting official.

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 withholding or redaction of records in the Appeal is based on the assertion of the exemption for personal privacy under D.C. Official Code § 2-534(a)(2) and the deliberative process privilege under D.C. Official Code § 2-534(a)(4). We will examine each claim of exemption.

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 personnel records, 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.

In Freedom of Information Act Appeal 2011-36, we stated:

> There is a cognizable and sufficient privacy interest in information about an individual contained in employment applications and relating to the employment process. *Core v. United States Postal Service,* 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros,* 941 F. Supp. 1015 (D. Kan. 1996).

Furthermore, as our decisions indicate, government employees have a privacy interest associated with their public service.

> [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).

Accordingly, there is a sufficient privacy interest in the application materials for the positions to be filled.

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 Freedom of Information Act Appeal 2011-36, we also stated:

> While it has been found that there is a public interest in disclosure of information by successful job applicants of information relating to name, present and past job titles, present and past grades, present and past salary, present and past duty stations, and present and past salary, which public interest would result in disclosure, there is not a public interest in similar information contained in applications of unsuccessful job applicants. *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros*, 941 F. Supp. 1015 (D. Kan. 1996). These latter applicants have a substantial privacy interest in their anonymity as the disclosure of such information could reveal their identities and that knowledge of their nonselection could lead to embarrassment or adversely affect future employment or promotion prospects. *Id*.

See also Freedom of Information Act Appeal 2014-06, Freedom of Information Act Appeal 2014-11, and MCU 409467, where these principles were applied to exempt disclosures regarding unsuccessful applicants.

Appellant alleges that "corrupt behavior" may have occurred and that the withheld records may be necessary to establish whether or not improprieties have occurred. However, we have not found that mere suspicion will support a public interest in disclosure which will override an individual privacy interest. Most recently, in Freedom of Information Act Appeal 2014-20, we indicated that "there may be a sufficient interest in oversight where the request bears on agency performance regarding a program which affects a significant portion of the public and represents a significant expenditure of public funds, as opposed to operations affecting only one or a few individuals." Thus, in the circumstances affecting only one or a few individuals, we found that a generalized interest in oversight will not suffice to support an overriding interest in disclosure. *See*, e.g., Freedom of Information Act Appeal 2013-63. Moreover, in Freedom of Information Act Appeal 2014-20, we noted that "[i]n our past decisions, we have not found a public interest where there has not been a sufficient presentation of evidence of wrongdoing or where such wrongdoing does not apply to a higher-level employee.[2]" *See also Oguaju v. United States*, 288 F.3d 448, 451 (D.C. Cir. 2002) ("[E]ven if the records Oguaju seeks would reveal wrongdoing in his case, exposing a single, garden-variety act of misconduct would not serve the FOIA's purpose of showing 'what the Government is up to'."). Here, as in, for instance, Freedom of Information Act Appeal 2014-11, "the examination of a single hiring decision does not further a significant public interest." Here, as we indicated, Appellant has no actual knowledge of wrongdoing, but is hoping to uncover evidence of wrongdoing.

Thus, the public interest in disclosure of the application materials as to the unsuccessful applicants does not outweigh the individual privacy interests involved.

---

[2] *See*, e.g., Freedom of Information Act Appeal 2012-38 ("there is a minimal public interest in the activities of a single, low-level staff employee of a contractor.")

In addition, in Freedom of Information Act Appeal 2012-75, although we required the disclosure of the application materials of successful candidates, we upheld the redaction of personal information, such as home telephone numbers and addresses. Thus, in the case of the Appeal, OCFO has appropriately redacted the personal information of successful candidates in the records provided.

In Freedom of Information Act Appeal 2014-11, we indicated that the documents generated in selecting, and documenting the hiring of, a successful applicant also implicates an individual privacy interest. Thus, although OCFO did not advance the argument, for the reasons set forth above in our privacy analysis, the names of the rating panel members who make a recommendation to the selecting official are exempt from disclosure. However, as asserted by OCFO, we find that the other responsive records in this matter may be withheld as such records are exempt from disclosure under 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.

"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).

The notes, comments, numerical ratings, and ultimate recommendations of the selection panel were prepared as advice to the selecting official and clearly fall within the ambit of the deliberative process privilege. In Freedom of Information Act Appeal 2014-06, we held that the records of the selection panel were exempt from disclosure under the deliberative process privilege, stating:

Here, the ratings of the applicants for the Legislative Analyst position were prepared for the deciding official for the use of such official in making the hiring decision. They reflect a quantification of the judgments made by the rater for the use of the deciding official in making a final decision.

Conclusion

Therefore, we uphold the decision of OCFO. 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: Treva Saunders, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-28

February 3, 2014

Ms. Lori Nickens

Dear Ms. Nickens:

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 January 17, 2014 (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 January 9, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought mug shots of named individuals who allegedly victimized her. In response, by email dated January 17, 2014, MPD denied the FOIA Request based on the exemption from disclosure under D.C. Official Code § 2-534(a)(2), stating that, without admitting or denying the existence of such records, disclosure of any responsive records without the consent or authorization of the individuals would constitute an unwarranted invasion of personal privacy.

On Appeal, Appellant challenges the withholding of the requested records, stating that she needs the records to identify the individuals who allegedly perpetrated the crimes against her.

In response, dated January 21, 2014, MPD reaffirmed its position.

> The release of any arrest photos, if they exist, would surely constitute an invasion of privacy of the persons identified. Ms. Nickens has not asserted any basis for questioning any government action that might be relevant to her request. As no public interest has been identified in requiring the release of the photos, the privacy interest of the subjects of the photos has not been outweighed.

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 for disclosure for "[i]nvestigatory records compiled for law-enforcement purposes, . . . , but only 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).

For the reasons stated in Freedom of Information Act Appeal 2011-15, a copy of which is attached for the convenience of Appellant, the requested records are exempt from disclosure under D.C. Official Code § 2-534(a)(3)(C). In Freedom of Information Act Appeal 2011-15, we stated:

---

[1] 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." By contrast, 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." 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 requested records in this case would have been compiled in connection with a criminal matter or matters, the exemption here is asserted under, and would be judged by the standard for, Exemption (3)(C).

> Despite the view of the Sixth Circuit, we agree with other courts finding that the release of mugshots would be an unwarranted invasion of privacy not outweighed by the public interest. First, there is a clear privacy interest present. Much like the disclosure of rap sheets found to implicate privacy interests by the Supreme Court in *Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989), the contents of which rap sheets may already be known to the public, mugshots do indeed tend to have a stigmatizing effect. This effect may occur regardless of the guilt or innocence of the charges or the degree of severity of the charges. Second, the disclosure of mugshots reveals little or nothing about the conduct of the duties of an agency. Accordingly, there is no real public interest in disclosure.

Appellant states that she needs the records to identify the individuals who allegedly perpetrated the crimes against her. However, as we also stated in Freedom of Information Act Appeal 2011-15:

> [D]isclosure 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). As articulated in case law, the public interest concerns information that sheds light on an agency's performance of its duties and that is the standard which is applied here.

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 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
Freedom of Information Act Appeal: 2014-29

February 4, 2014

Ms. Dwanna Lee

Dear Ms. Lee:

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 6, 2013 (the "Appeal"). You ("Appellant"), assert that the Office of the State Superintendent of Education ("OSSE") improperly withheld records in response to your request for information under DC FOIA dated October 14, 2013 ("FOIA Request").

Background

Appellant's FOIA Request sought health questions on the District of Columbia Comprehensive Assessment System tests for school years 2011-12 and 2012-13 and "2012 and 2013 School Health Profile data."

In response, by email dated October 16, 2013, OSSE provided records regarding the requested health data, but withheld the other records based on the exemption from disclosure under D.C. Official Code § 2-534(a)(5).

On Appeal, Appellant challenges the withholding of the records, stating, in pertinent part, as follows:

> While DC Code § 2-534(a)(5) does exempt 'test questions and answers to be used in future license, employment, or academic examinations' from disclosure, it does not pertain to 'previously administered examinations or answers to questions thereon.' My FOIA request was for health questions included on two previous examinations, not future examinations.

In its response, dated November 23, 2011, OSSE reaffirmed its position. OSSE states that while Appellant presumes that each examination uses "a unique set of test items," in fact, "test questions are continually reused until new items are developed." Moreover, if past examinations are disclosed, it will "require that OSSE develop new replacement test items at a significant cost

to the District." OSSE supports its position with an affidavit from its Director of Data Management. The Director states that OSSE uses multiple forms for testing.

> The practical impact of multiple forms is the items on each test are not retired after each year, but are instead used in subsequent years and to guide future form assembly. . . .
>
> With relatively new assessments, there is a limited bank of high-quality items that are aligned to standards and can, therefore, be used to accurately assess what students know and are able to do. As the assessments age, and new items are developed, the banks become more robust, allowing entities to retire release items to the public for instructional use. As the DC CAS Health is still a relatively young test, there is simply not a sufficient bank of valid and reliable items to retire and release. OSSE has historically released items once the bank is sufficiently robust, and plans to continue doing so, when possible. Releasing health items now would severely impact the item bank.

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 § 2-537(a). 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 may be examined to construe the local law.

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." It is clear on its face that this provision is intended to prevent applicants or test-takers from having advance knowledge of the questions prior to an examination. It would defeat the purpose of this provision if questions to be used on future examinations were to be revealed simply because they were used on a prior examination. Here, OSSE indicates that any prior question may be selected to be used on a future District of Columbia Comprehensive Assessment System examination even if all prior questions are not used on a particular examination. Therefore, we find that the requested records are exempt from disclosure.

Conclusion

Therefore, we uphold the decision of OSSE. The Appeal is 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: Brandee Reed

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-30

February 24, 2014

Mr. Russell Ptacek

Dear Mr. Ptacek:

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 January 2, 2014 (the "Appeal"). You ("Appellant") assert that the District Of Columbia Taxicab Commission ("DCTC") improperly withheld records in response to your request for information under DC FOIA dated December 11, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought

> [A]ny and all reports distributed, collected, or held by DCTC under previous or existing FOIA requests relating to the total $0.25 surcharges remitted to the DCTC by each of the individual DDS companies since becoming approved and a report of the total $0.25 surcharges remitted to the DCTC by each of the individual PSP companies since becoming approved.

In response, by email dated January 3, 2014, DCTC stated that it was withholding the responsive records based on D.C. Official Code § 2-534(a)(1), which 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."

On Appeal, Appellant challenges the denial of the FOIA Request, stating: "The DCTC use of 'trade secrets' to withhold information on monies owed a public agency is overly broad and if upheld could be used to cloak nearly all transactions involving contractors."

In response, dated February 3, 2014, DCTC modified its prior position. DCTC states that it "incorrectly stated that the records requested 'are exempt from disclosure under D.C. Code § 2-534(a)(1).'" DCTC now re-states its position as follows: "No records were withheld in connection with this FOIA request." It explains that it received one similar prior request[1] and

[1] The prior request sought "A report of the total $0.25 surcharges remitted to the DCTC by each

responded to such request by stating that it was withholding the responsive records based upon D.C. Official Code § 2-534(a)(1). Consequently, it concludes:

> Although no records were withheld in connection with this FOIA request, [the response] letter should have stated that the request was granted because request merely sought records previously released, and these were provided (the same response provided to the Earlier Request was given here)[footnote omitted].

DCTC was invited to supplement its response to address the nature of each type of company, Digital Dispatch Service or Payment Service Provider, and the regulatory authority under which they are licensed or regulated, the nature of their markets, and the nature of the specific harm which would result to Digital Dispatch Service companies from a disclosure of the records withheld in the prior request referenced in its response. As indicated in its response, Digital Dispatch Services and Payment Service Provider are entities which are subject to regulation by DCTC under statute and/or implementing rules. The passenger surcharge is authorized to be imposed on each passenger trip and deposited in the Public Vehicle-for-Hire Consumer Service Fund, which, under D.C. Official Code § 50-320, may be used to "pay the costs incurred by the Commission, including operating and administering programs, investigations, proceedings, and inspections, administering the Fund, and improving the District's public vehicles-for-hire industry." DCTC states that the "passenger surcharge is the agency's primary source of funding." However, citing applicable rules, DCTC states that "DDSs and PSPs are not entitled to any of the surcharges." DCTC indicates that, with respect to the market, there are five Digital Dispatch Services and eight Payment Service Providers.[2]

DCTC reaffirmed its position that "disclosure of the total amount of surcharges remitted to DCTC" is exempt under D.C. Official Code § 2-534(a)(1). It states that it contacted all of the entities and asked for any objections to the disclosure. DCTC further states that all but three of the active companies responded and all indicated that "the disclosure of their surcharges remitted would put them at a competitive disadvantage." DCTC bases its position on these responses.

> The Commission made the determination that the statements of the companies, being that all of the responses the Commission received asserted that disclosure would result in substantial harm, were credible, and that the companies were in the best position to know the harm that may result to the disclosure of their financial information.

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

---

of the individual DDS companies since becoming approved [and] a report of the total $0.25 surcharges remitted to the DCTC by each of the individual PSP companies since becoming approved."

[2] It indicates, however, that one of the Payment Service Providers is no longer in business.

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 FOIA Request sought "reports distributed, *collected, or held* by *DCTC under previous or existing FOIA requests* [emphasis added]." While DCTC initially determined that there were responsive records, but that such records were exempt from disclosure under D.C. Official Code § 2-534(a)(1), DCTC contends now that Appellant "merely sought records previously released" and because no records were previously released, there were no records to be provided. However, we cannot agree with this interpretation of the FOIA Request. The FOIA Request did not merely seek records *distributed*, but also sought records *collected or held* with respect to other FOIA requests. As the prior request indicates that there were records which were withheld, and thus which would have been collected or deemed to be so, there are in fact responsive records in this matter. As DCTC previously asserted an exemption from disclosure, we invited DCTC to supplement its response in order to have a fuller administrative record for the decision.

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]").

As we have stated in prior decisions,[3] in Freedom of Information Act cases, "'conclusory and generalized allegations of exemptions' are unacceptable, *Found. Church of Scientology of Wash.*,

[3] See Freedom of Information Act Appeal 2011-26, Freedom of Information Act Appeal 2012-

D.C, Inc. v. *Nat'l Sec. Agency*, 197 U.S. App. D.C. 305, 610 F.2d 824, 830 (D.C. Cir. 1979) (quoting *Vaughn v. Rosen*, 157 U.S. App. D.C. 340, 484 F.2d 820, 826 (1973))." *In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007).[4] Here, DCTC provides only the self-serving, conclusory determinations of the subject companies to support its claim of exemption. However, DCTC does not describe or explain how the disclosure of the information in question will result in competitive harm.

It is not otherwise evident that the disclosure of the amount of passenger surcharges by each company will result in substantial competitive harm to any company. As an initial matter, contrary to the assertion of Appellant, Digital Dispatch Services and Payment Service Providers are not contractors of DCTC. Rather, they are merely regulated, to varying extents, by DCTC. As set forth by DCTC, these companies are mere collectors of the surcharges and do not have a right to retain any portion of the surcharge. Furthermore, the surcharges are a flat amount and are not a function of income. Therefore, they cannot be used to compute revenue. The relative percentages of remittance by each category of provider could be used to estimate market share. While market share can be commercial information which is exempt from disclosure, it has not, to our knowledge, been held to be exempt standing alone, but in combination with other factors. *See*, e.g., *Sharkey v. FDA*, 250 Fed. Appx. 284 (11th Cir. Fla. 2007)(market share and sales volume). However, mere "insight" into market share "fail[s] to show how such 'insight' creates a likelihood of substantial competitive harm." *Biles v. HHS*, 931 F. Supp. 2d 211, 223 (D.D.C. 2013). One court found that there would be no competitive disadvantage if all competitors would have access to the information of all of the other competitors.

> [I]n the instant case if the government is ordered to comply with plaintiff's FOIA request, the testing and inspection information of every laboratory in the NIDA program would be publicly available. No one laboratory in the program would receive a competitive advantage over another; each laboratory would have access to the same type of information as every other laboratory in the program.

Silverberg v. HHS, 1991 U.S. Dist. LEXIS 19286, 13-14 (D.D.C. 1991). Here, DCTC characterizes the market as consisting of all of the reporting companies in each category of provider.

The conclusory statements provided by DCTC are insufficient to justify its claim of exemption. DCTC shall provide to Appellant the records withheld in the prior request and requested by Appellant in the FOIA Request.

05, Freedom of Information Act Appeal 2013-13, Freedom of Information Act Appeal 2013-62, and Freedom of Information Act Appeal 2014-07.

[4] *See also Public Citizen Health Research Group v. Food & Drug Admin.*, 704 F.2d 1280, 1291 (D.C. Cir. 1983)("Conclusory and generalized allegations of substantial competitive harm, of course, are unacceptable and cannot support an agency's decision to withhold requested documents."

Conclusion

Therefore, the decision of DCTC is reversed and remanded. DCTC shall provide to Appellant the records withheld in the prior request and requested by Appellant in the FOIA Request.

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: Neville R. Waters

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-31

February 11, 2014

Mr. Michael DeBonis

Dear Mr. DeBonis:

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 4, 2014 (the "Appeal"). You, on behalf of the Washington Post ("Appellant"), assert that the Office of Campaign Finance ("OCF") improperly withheld records in response to your request for information under DC FOIA dated January 27, 2014 (the "FOIA Request").

Appellant's FOIA Request sought, with respect to the "audit of the Gray for Mayor campaign . . . draft and final audit reports as well as receipts, statements, ledgers and other financial documentation used by OCF in the course of its investigation."

In response, by email dated January 28, 2014, OCF denied the FOIA Request, stating that "the requested information remains part of an active investigation" and was exempt from disclosure under D.C. Official Code § 2-534(a)(3). By email dated January 29, 2014, Appellant requested that OCF reconsider the denial and release the "final audit" (the "Audit"), which, according to reported statements of an agency official, was "completed on May 15, 2012." When he received no response, Appellant filed the Appeal.

On Appeal, the Appellant challenges the response of OCF to the FOIA Request only with respect to "the denial of my request for a copy of the Audit."

Subsequent to the filing of the Appeal, we have learned that, by email dated February 6, 2014, OCF notified Appellant that it was forwarding his request for reconsideration, together with another request, to the FOIA Officer for the Board of Elections for disposition. Therefore, as the request for reconsideration which was filed prior to the filing of the Appeal will be considered, we will stay our consideration of the Appeal. If, upon reconsideration, the denial of the FOIA Request is affirmed, Appellant may notify us and submit, if desired, a supplemental statement in support of the Appeal. Thereupon, we will forward the Appeal to OCF for a response and proceed to a decision. In any event, we request that the parties keep our office apprised of the status of this matter.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: William O. SanFord, Esq.
Terri Stroud, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-32

March 7, 2014

Ms. Jillian Melchior

Dear Ms. Melchior:

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 January 31, 2014 (the "Appeal"). You, on behalf of National Review ("Appellant"), assert that the District of Columbia Health Benefit Exchange Authority ("HBX") improperly withheld records in response to your request for information under DC FOIA dated December 12, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought, with respect to the hiring of enrollment assisters (popularly referred to as "navigators"):

> 1. "[R]ecords mentioning, discussing or otherwise citing individuals (including the hires'/successful applicants' names) who, to DC Health Link's current knowledge, have a criminal record *and* were hired or approved as navigators by, with or for DC Health Link or any of its affiliates or grant recipients."
>
> 2. "[R]ecords containing information reflecting any criminal convictions turned up by background checks for such successful applicants to be navigators."
>
> 3. "[R]ecords mentioning, discussing, or otherwise citing individuals (including applicants names) who, to DC Health Link's current knowledge, were *not* hired as navigators specifically because they failed to pass a background check."
>
> 4. "[I]nformation regarding what the background check entails . . . and also specific information about what offenses would be considered disqualified for prospective navigators."

In response, by letter dated January 8, 2014, HBX provided responsive records with respect to the fourth part of the FOIA Request, but withheld the responsive records for the first three parts of the FOIA Request based on an exemption for personal privacy under D.C. Official Code § 2-

534(a)(2), indicating that such records contained "the names, addresses, Social Security numbers, employers and other personally identifiable information of non-person sister applicants" or "the names of in-person assister applicants and criminal background check and criminal history information."

On Appeal, Appellant challenges the withholding of the records. Appellant argues that the assisters are government agents and disclosure of the records is in the public interest.

> Here, disclosure is clearly within the public interest because a large number of D.C. residents are being compelled to purchase health insurance, and many will do so through a navigator, who has access to their Social Security numbers, financial and tax records, addresses, and tax records. Therefore, it is in the public interest to know whether their private information is being given to someone with a criminal record and, if that is the case, what crime the navigator has committed and when. Anything short of disclosure puts criminal navigators' tenuously held privacy 'rights' above the actual and certain privacy rights of the innocent public.

In its response, dated February 28, 2014, HBX reaffirms its position. By way of background, HBX indicates that it has "combined assister and navigator programs jointly referred to as DC Health Link Assisters."

> DC Health Link Assister Organizations employ or use existing staff to become certified DC Health Link Assisters, if the individuals meet certain requirements including background checks and training.
>
> HBX requires DC Health Link Assisters to pass a criminal background check as a condition of certification. The check consists of a fingerprint-based FBI check, a DC Metropolitan Police Department check, and a National Sex Offender Public Registry check. . . .
>
> The Background Check Process indicates that a criminal history involving financial misconduct, fraud or violent crimes within the past three years would disqualify an applicant from becoming a certified assister.

HBX groups the withheld records into three categories. The first is a spreadsheet listing all of the applicants to become assisters (sometimes referred to as in-person assisters or individual "IPAs"), with fields including personal details and results of federal and state background checks. The second category is "documents related to a specific individual with a criminal history not involving financial misconduct, fraud or violent crimes within the past three years." These documents "consist of emails between the agency and the individual, a statement from the individual and a letter to the individual from his or her attorney outlining the disposition of the matter." The third category is "documents related to a specific individual with a criminal history involving financial misconduct, fraud or violent crimes within the past three years." These documents "consist of emails between the agency and DOH, between the agency and the IPA organization, between the agency and the individual, a statement from the individual, a reference letter, and court documents." HBX indicates that the first two categories relate to the first and

second part of the FOIA Request and the third category relates to the third part of the FOIA Request.

Citing judicial precedent, HBX argues that an individual's name, address, and criminal history implicate a privacy interest cognizable under D.C. Official Code § 2-534(a)(2) and "[c]entral to the responsive documents that were denied in response to the FOIA request in this case are personal criminal histories of individuals who applied to become certified DC Health Link Assisters." With respect to the public interest in disclosure against which such privacy interest must be balanced, citing judicial precedent, HBX states that the applicable standard is the extent to which disclosure would contribute significantly to public understanding of the operations or activities of the government. Here, "[t]he appellant has not asserted any such public interest in knowing the specific individuals and crimes for approved or non-approved DC Health Link Assisters . . ."

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).

HBX is a District instrumentality established to implement a portion of the federal Patient Protection and Affordable Care Act. In particular, under its authorizing act, a prime function of HBX is to establish an insurance marketplace or "exchange" to "assist qualified individuals in the District with enrollment in qualified health plans," D.C. Official Code § 31-3171.04(a)(1), and "through which qualified employers may access coverage for their employees." D.C. Official Code § 31-3171.04(a)(2). According to its website, a hyperlink to which HBX provided as part of its submission,[1] HBX is "developing a set of robust outreach and enrollment mechanisms."[2] The Appeal arises out of the implementation of one these initiatives, the In-Person Assister Program.

---

[1] http://hbx.dc.gov/sites/default/files/dc/sites/Health%20Benefit%20Exchange%20Authority/publication/attachments/IPA-DCHBX-2013-RFA01.pdf. The linked page posts a Request for Applications for an In-Person Assister Program, as described hereafter.

[2] *Id*. at 7.

> One of these resources, the In-Person Assister Program ("IPA Program") is aimed at outreach to uninsured and hard-to-reach populations to help consumers learn about, apply for, and enroll in an appropriate health insurance product, including a Qualified Health Plan or completing an application for Medicaid.
>
> The IPA Program will offer services through "IPA Entities," which are organizations that can perform the full range of IPA duties (see below). IPA Entities will perform these duties with a range of staff including both certified and non-certified personnel. Certified personnel, known as IPAs, will be required to complete a training sponsored by the Exchange and successfully complete a skills-based exam.[3]

An organization applying to become an IPA Entity is required, among other things, to "[p]rovide the names, relevant experience, and qualifications of the key individuals who will serve as individual IPAs"[4] and to disclose if any principals or key employees have been charged, indicted, or convicted of any crime regarding the organization or for "any crime or offense involving financial misconduct or fraud."[5] The Request for Applications states that "background checks will be performed on all personnel staffing the IPA Program for the IPA Entity."[6]

Appellant challenges the withholding of the records relating to the background checks as requested in the first three parts of the FOIA Requests. As set forth above, HBX has asserted the exemption for personal privacy under D.C. Official Code § 2-534(a)(2) as the basis for such withholding.

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).

The withheld records relate to the application of organizations, and more particularly, individuals within those organizations to perform services on behalf of HBX. Although those individuals, the in-person assisters, are not employees, as Appellant argues, they are akin to employees. In

---

[3] *Id*.
[4] *Id*. at 24.
[5] *Id*. at 31.
[6] *Id*. at 32.

any event, as Appellant also argues, the records are subject to DC FOIA. The application materials submitted by the organizations are for the purpose of providing services to HBX (and, as a consequence, to its constituents) to implement the operation of the insurance exchange. Those materials generally do not relate to a law enforcement function. However, that is not the case with respect to the records relating to the background check. In *Mittleman v. Office of Personnel Mgmt.*, 76 F.3d 1240, 1243 (D.C. Cir. 1996), the court held that the information gathered in the course of a background check constitute investigatory records compiled for law-enforcement purposes.

> The principal purpose of a background investigation is to ensure that a prospective employee has not broken the law or engaged in other conduct making her ineligible for the position. *See Koch v. Department of Justice*, 376 F. Supp. 313, 315 (D.D.C. 1974). The check also helps 'to determine whether there are any law enforcement or security issues in [her] past that could affect [her] ability … to carry out' the position. *See Doe v. United States Department of Justice*, 790 F. Supp. 17, 20 (D.D.C. 1992). We have held that the term 'law enforcement purpose' is not limited to criminal investigations but can also include civil investigations and proceedings in its scope. *See Pratt v. Webster*, 218 U.S. App. D.C. 17, 673 F.2d 408, 420 n.32 (D.C. Cir. 1982). Thus, ''enforcement' of the law fairly includes not merely the detection and punishment of violations of law but their prevention.' *Miller v. United States*, 630 F. Supp. 347, 349 (E.D.N.Y. 1986). It is immaterial to those objectives that OPM did not discover any information suggesting that Mittleman actually violated the law.

Id. at 1243.

Here, as responsive records which have been withheld relate exclusively to background checks, the matter will be judged by the broader standard under 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 first part of the analysis is to determine whether there is a sufficient privacy interest present.

As we have stated in past decisions, 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). In *Bennett v. DEA*, 55 F. Supp. 2d 36, (D.D.C. 1999), the court stated that, under *Reporters Comm. for Freedom of Press*, "there is a very high privacy interest in compilations of criminal records. [citation omitted]." *See ACLU v. United States DOJ*, 655 F.3d 1 (D.C. Cir. 2011), also citing *Reporters Comm. for Freedom of Press*, indicating that there is a privacy interest in criminal convictions and pleas, although the court also indicated that the strength of the privacy interest may be less than that for individuals who have been investigated but not charged. In Freedom of Information Act Appeal 2012-06, where the appellant alleged that an MPD officer was a "convicted criminal," we were unwilling

to find that, even if the allegation was true, the officer lost all of his or her privacy interests based upon one public sanction.

As the in-person assisters carry out government functions, Appellant analogizes the applicants to government employees. In Freedom of Information Act Appeal 2011-36, we stated:

> There is a cognizable and sufficient privacy interest in information about an individual contained in employment applications and relating to the employment process. *Core v. United States Postal Service*, 730 F.2d 946 (4th Cir. 1984); *Barvick v. Cisneros*, 941 F. Supp. 1015 (D. Kan. 1996).

Furthermore, as our decisions indicate, 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).

In *Wolk v. United States*, 2005 U.S. Dist. LEXIS 8163 (E.D. Pa. 2005), the court found that there was a "clear privacy interest" in the security background check, which included a criminal records check, of an individual nominated to be a judge.

Appellant argues that there is no privacy interest involved as criminal records are available online and, by law, certain records cannot be sealed. However, the fact that some records may be located by a diligent researcher does not negate the privacy interest. In Freedom of Information Act Appeal 2013-19, incorporating our decision in Freedom of Information Act Appeal 2013-19, we discussed what is sometimes referred to as "practical obscurity," stating:

> In reaching our conclusion in Freedom of Information Act Appeal 2013-16, we stated:
>
> > With respect to defendants, 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 federal district court in *Long v. U.S. Dept. of Justice*, 450 F.Supp.2d 42 (D.D.C. 2006), 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." *Id*. at 68). 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.

> The foregoing illustrates what is sometimes referred to as "practical obscurity." The fact that information can be compiled if great effort or resources are devoted thereto does not make the information freely available. Indeed, it is the compilation of hard-to-obtain information in a central repository which is critical in this context. As the Supreme Court observed, "if the summaries were 'freely available,' there would be no reason to invoke the FOIA to obtain access to the information they contain." *U.S. Dept. of Justice v. Reporters Committee For Freedom of Press*, 489 U.S. 749, 764 (1989).

See also Freedom of Information Act Appeal 2013-69. Here, as in Freedom of Information Act Appeal 2013-19, there is no showing or reason to believe that the information should be considered widely available.

Accordingly, there is a sufficient privacy interest in the withheld 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).

The Supreme Court has held that

> where there is a privacy interest protected by Exemption 7(C)[the federal equivalent of Exemption (3)(C)] and the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion in order to obtain disclosure. Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.

Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 174 (2004). The Court explained that there is a presumption of legitimacy accorded to the official conduct of the government's and

> where the presumption is applicable, clear evidence is usually required to displace it. . . . Allegations of government misconduct are 'easy to allege and hard to disprove,' *Crawford-El v. Britton*, 523 U.S. 574, 585, 140 L. Ed. 2d 759, 118 S. Ct. 1584 (1998), so courts must insist on a meaningful evidentiary showing.

Id. at 174-175. The Court also indicated considerations involved in evaluating the public interest.

> First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.

Id. at 172. In accord, *Kretchmar v. FBI*, 882 F. Supp. 2d 52 (D.D.C. 2012) ("An overriding public interest warranting disclosure of exempt material is established only upon a showing that the withheld information is necessary to confirm or refute 'compelling evidence that the agency denying the FOIA request is engaged in illegal activity.' *Quinon v. FBI*, 86 F.3d 1222, 1231, 318 U.S. App. D.C. 228 (D.C. Cir. 1996) (citations omitted)." *Id*. at 57.)

In the Appeal, there has been no allegation of wrongdoing by HBX, the agency in question. Accordingly, under the principles set forth above, there is not a sufficient public interest to overcome the personal privacy interest in the disclosure of the criminal background of the in-person assister applicants.

Appellant indicates that there is a public interest in knowing about the possible criminal background of in-person assisters. As HBX indicates that it conducts a criminal background check for all requesters, Appellant seeks to confirm that HBX has properly performed such investigation, but has not alleged that HBX engaged in any improprieties in doing so. As we have indicated in past decisions, a generalized interest in oversight alone will not suffice to support an overriding interest in disclosure. *See*, e.g., Freedom of Information Act Appeal 2013-63. See also *McCutchen v. United States Dep't of Health & Human Servs.*, 30 F.3d 183, 188 (D.C. Cir. 1994) ("A mere desire to review how an agency is doing its job, coupled with allegations that it is not, does not create a public interest sufficient to override the privacy interests protected by Exemption 7(C)."); *Providence Journal Co. v. Pine*, 1998 WL 356904, 13 (R.I. Super. 1998).[7]

---

[7] "'[W]hen governmental misconduct is alleged as the justification for disclosure, the public interest is insubstantial unless the requester puts forth compelling evidence that the agency denying the FOIA request is engaged in illegal activity and shows that the information is necessary in order to confirm or refute that evidence.' *Computer Professionals v. United States Secret Service*, 72 F.3d 897, 905 (D.D.C.1996). A mere desire to review how an agency is doing its job, coupled with allegations that it is not, does not create a public interest sufficient to override the privacy interests protected by exemption 7(C). *Id*."

In *Wolk v. United States*, 2005 U.S. Dist. LEXIS 8163 (E.D. Pa. 2005), the requester sought the security background check, which included a criminal records check, of an individual nominated to be a judge. Like the Appellant here, the requester sought the records "determine the adequacy of the FBI's investigation." *Id.* In the absence of any misconduct or even any allegation of wrongdoing, the court held that there was not an overriding public interest in disclosure.

> Given the focus on agency action, the critical public interest inquiry is whether the FBI has engaged in any wrongdoing. . . . Plaintiff fails to assert that the FBI engaged in any illegality. Plaintiff indicates that he seeks disclosure of information about Judge Carnes to determine the adequacy of the FBI's investigation of her, which he believes is relevant to his proposed legislation regarding judicial accountability. He argues that divulging the requested information would 'shed[] light on the extent to which the backgrounds of lifetime appointed federal judges are actually investigated." (Id.) [footnote omitted]. These averments are not sufficient to establish a cognizable public interest under Exemption 7(C).

As stated above, there is not a sufficient public interest to overcome the personal privacy interest in the disclosure of the criminal background of the in-person assister applicants.[8]

Conclusion

Therefore, the decision of HBX 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 Superior Court of the District of Columbia.

Sincerely,

[8] Appellant seeks the criminal background check records for both successful and unsuccessful job applicants. As we have indicated in past decisions, there is an insufficient public interest in the personal records of unsuccessful job applicants. Appellant states that there is a "public interest to know whether [residents'] private information is being given to someone with a criminal record," but such information will not be given to an unsuccessful applicant.

Donald S. Kaufman
Deputy General Counsel

cc: Mary Beth Senkewicz, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-33

February 25, 2014

Ms. Susan E. Borecki, Esq.

Dear Ms. Borecki:

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 6, 2014 (the "Appeal"). You, on behalf of a client ("Appellant"), assert that the Metropolitan Police Department ("MPD") improperly withheld records in response to your request for information under DC FOIA dated February 5, 2014 ("FOIA Request").

Background

Appellant's FOIA Request sought "information pertaining or relating to any complaints, allegations or investigations" for a named MPD officer.

In response, email dated February 6, 2014, MPD stated that it could neither admit nor deny the existence of disciplinary records or complaints regarding the named MPD officer because it would be an unwarranted invasion of privacy of the officer under D.C. Official Code § 2-534(a)(2).

On Appeal, Appellant challenges the denial of the FOIA Request.

> The material is requested and is necessary to learn of any evidence presented and any findings relating to the veracity and professionalism of a sworn officer. This is not a matter of the personal interest of [the named officer]. It is a matter of public interest to the community, where [the named officer] is employed as and is expected to conduct himself as a public figure.
>
> [the named officer] wields the power of a governmental agent over the public. [the named officer] is a sworn officer and as such is subject to public scrutiny of evidence and findings of his conduct. Thus, he has no claim to personal privacy. The government cannot assert on his behalf that he as a government agent may hide behind the very status that makes his conduct a public issue.

In its response, dated February 25, 2014, MPD reaffirmed its position. MPD asserts that, without admitting or denying the existence of the records, disclosure of any complaints or disciplinary

files implicate a privacy interest and there is no public interest cognizable under D.C. FOIA outweighing such privacy interest.

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 § 2-537(a). 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 may be examined to construe the local law.

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. *United States DOJ v. Reporters Comm. for Freedom of Press*, 489 U.S. 749, 756 (1989).[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 Exemption (3)(C) applies to internal investigations which focus on acts which could, if proved, result in civil or criminal sanctions (*see Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974); *Rugiero v. United States DOJ*, 257 F.3d 534 (6th Cir. 2001)(The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well." *Id*. at 550.)), and the records which Appellant seeks relate to such type of investigation, the exemption here would be judged by the standard for Exemption (3)(C).

The first part of the privacy analysis is whether a sufficient privacy interest exists regarding the disclosure of the disciplinary records of the named MPD officer. 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)[Exemption (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).

Furthermore, as our decisions indicate, government employees have a privacy interest associated with their public service.

> [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 find that there is a sufficient individual privacy interest for a person who is simply being investigated for wrongdoing based on allegations. "[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, Exemption (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. We believe that the same interest is present with respect to sanctions which could be imposed on an MPD officer. The records sought by Appellant may consist simply of mere allegations of wrongdoing, the disclosure of which can have a stigmatizing effect without regard to the accuracy of the allegations.

We say "may consist" because, in this case, MPD has not stated, and has maintained that it will not state, whether or not there are any records which exist relating to the named MPD officer. However, "[c]ourts have recognized that in some instances even acknowledging that certain records are kept would jeopardize the privacy interests that the FOIA exemptions are intended to protect. In these cases, the courts have allowed the agency neither to confirm nor deny the existence of requested records." *Antonelli v. FBI*, 721 F.2d 615, 617 (7th Cir.1983). *See also Rushford v. Civiletti*, 485 F. Supp. 477 (D.D.C. 1980)(involving records regarding complaints of criminal or other misconduct by judges. "[T]he Department of Justice may not be required to deny the existence of a criminal investigation when there has been none and to refuse to confirm or deny its existence when information to that effect does exist." *Id*. at 481.) This is referred to as a "Glomar" response. A Glomar response is warranted only when the confirmation or denial of the existence of responsive records would, in and of itself, reveal exempt information. We think that this approach is justified in the case of the Appeal. If there is a record of a written complaint or subsequent investigation against the MPD officer, simply identifying the written record may result in the harm that the exemption was intended to protect.

As stated above, the second part of a privacy analysis under Exemption (3)(C) 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).

As set forth above, Appellant argues that there is an overriding public interest in knowledge of misconduct of MPD officers and the internal disciplinary processes of MPD. In this case, we cannot find that there is a public interest in disclosure of disciplinary records of a lower-level employee which outweighs his individual privacy interests in nondisclosure. Such disclosure will not materially, if at all, inform one about an agency's performance of its statutory duties. *See*, e.g., *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984); *Beck v. Department of Justice*, 997 F.2d 1489, 1494 (D.C. Cir. 1993). ("A government employee has at least some privacy interest in his own employment records, an interest that extends to 'not having it known whether those records contain or do not contain' information on wrongdoing, whether that information is favorable or not. See *Dunkelberger*, 906 F.2d at 782."); *Kimberlin v. DOJ*, 139 F.3d 944, 948 (D.C. Cir. 1998). *See also* Freedom of Information Act Appeal 2011-20, Freedom of Information Act Appeal 2012-06, and Freedom of Information Act Appeal 2014-19. Therefore, based on the foregoing, we find that the response of MPD to the FOIA Request 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 B. Harris, Esq.
Teresa Quon Hyden, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-34

March 11, 2014

Mr. Julian Byrd

Dear Mr. Byrd:

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 15, 2013 (the "Appeal"). You ("Appellant") assert that the Department of Corrections ("DOC") improperly withheld records in response to our decision in Freedom of Information Act Appeal 2014-01 (the "Decision"), which resulted from your requests for information under DC FOIA dated May 24, 2013, and revised and re-submitted August 2, 2013 (the "FOIA Request").

Background

In the prior appeal, Appellant challenged three parts of the FOIA Request, including one part which requested "[a]ny information" regarding certain specified cases "related to the miscalculation of my sentence and erroneous transfer to [the] Bureau of Prisons." In response to part described, DOC referred Appellant to a Case Manager pursuant to a DOC written policy. In the Decision, we held that while such written policy provides an alternative avenue for an inmate to obtain records, it does not supersede the requirements of DC FOIA and ordered a search. In response to the Decision, DOC performed the search and provided records to Appellant.

On Appeal, Appellant contends that DOC has not conducted an adequate search for the requested records based on the paucity of the records provided. In particular, as evidence of an incomplete search, Appellant cites an affidavit signed by a named DOC employee and submitted in a court filing, but which was not provided as part of the search results.

In its response, by letter emailed October 11, 2013, DOC reaffirmed its position. DOC states that it "searched the Inmate Institutional File which was created for appellant," explaining further that "[a]n inmate's sentence computation (or calculation) documents are maintained in the Inmate Institutional File created for him or her." In response to an invitation to submit a supplement clarifying the administrative record, DOC indicates that the Inmate Institutional File is the same as the Inmate File, which is referred to in Program Statement 4060.2E.[1] DOC also indicates that both the electronic and paper-based files comprising the Inmate Record of Appellant were searched.

[1] DOC submitted Program Statement 4060.2E for the administrative record.

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 presented by the Appeal is the adequacy of the search for the requested records in the first part of the FOIA Request. The legal principles regarding the adequacy of searches were set forth in the Decision, but we will re-state them for the convenience of the parties.

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 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).

The DOC standard for record-keeping and location of records is set forth in Program Statement 4060.2E (the "PS"). Under the PS, an Inmate Record is created for each inmate.[2] Each Inmate Record is directed to be "continuously updated in accordance with the judicial, administrative, and programmatic changes affecting the inmate, both electronically and in hard copy."[3] Therefore, as all judicial and administrative records relating to an inmate are directed to be placed in the Inmate Record, the Inmate Record appears to be the location where responsive records concerning the sentencing of Appellant would be found. DOC indicates that it searched both the electronic and paper-based files of in the Inmate Record of Appellant. Accordingly, based on the foregoing, we find that the search was adequate.

Appellant contends that there are additional records not produced based on an affidavit of a named DOC employee submitted in a court filing. As we have set forth above, 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. Based on the FOIA Request which was submitted, there was no reason to suspect that the DOC employee would have had any records which would have been responsive to the request. The affidavit of the DOC employee described by Appellant appears to have been created in the course of the prosecution of a judicial proceeding. Even given the contention that there are responsive records associated with the DOC employee, it is not clear that DOC maintains any records under the name of the employee as such records may be maintained by the Office of the United States Attorney, which presumptively prosecuted such matter. Whether or not any additional records are maintained by DOC, based on the FOIA Request, there was no reason to believe that there were any responsive records not contained in the Inmate Record.

Conclusion

Therefore, the decision of DOC is upheld. The Appeal is dismissed.

---

[2] PS, § 8(a) and (b).

[3] PS, § 9(a). Program Statement 4060.2E superseded Program Statement 4060.2D, which was described in Freedom of Information Act Appeal 2013-44. We note that Program Statement 4060.2E is less prescriptive about the contents of the files and the nature of the electronic and paper-based records.

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
Freedom of Information Act Appeal: 2014-35

March 12, 2014

Mr. Joseph S. Fichera

Dear Mr. Fichera:

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 26, 2014 (the "Appeal"). You, on behalf of Saber Partners, LLC ("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 January 4, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records referring or relating to:

> (i) Saber Partners, LLC,
>
> (ii) Any of Saber's members, employees or representatives, including without limitation Joseph Fichera, Paul Sutherland, Michael Noel,
>
> (iii) The qualifications, experience and/or reputation of any of the foregoing,
>
> (iv) The merits of any reports, articles or work product prepared by Saber regarding any prior utility securitization transaction, including the $267,408,000 Phase-In Recovery Bond Transaction sold on July 23, 2013 (Ohio Report), and/or
>
> (v) The feasibility or advisability of Saber providing advisory services to the District or the Office of the Chief Financial Officer now or in the future on any matter.

In the FOIA Request, Appellant stated that it had discussions with an OCFO employee who indicated that Public Resources Advisory Group ("PRAG"), a consultant providing financial advisory services to OCFO, had been asked to comment on a report prepared by Appellant in connection with a proposed Ohio utility securitization and that it was seeking, in particular, records regarding the PRAG comments. Insofar as the exemption under D.C. Official Code § 2-534(a)(1)[1] may implicated, Appellant states that it "only seek[s] the records as they relate to Saber and its personnel (i.e., the competitive position of Saber)."

[1] D.C. Official Code § 2-534(a)(1) exempts from disclosure "trade secrets and commercial or

By email dated January 15, 2014, OCFO 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 challenges the response of OCFO to the FOIA Request. By way of background, Appellant states that, according to communications with an OCFO employee, PRAG, a consultant to OCFO, and another financial advisor had been asked to comment on a report prepared by Appellant in connection with a proposed Ohio utility securitization and that PRAG did so; that the OCFO employee stated in a telephone conversation that "there is a reason you [Saber] haven't done a deal since 2009"; and that the OCFO employee stated that the procurement for the contract for a financial advisor was completed. Appellant asserts that the deliberative process privilege does not apply to the requested records because there was no deliberative process ongoing.

> OCFO's communication with Joseph Fichera and Saber did not relate to any procurement process, which were [sic] expressly stated to be closed. Thus, all such communications were made *after any alleged policy decisions were made*, and thus not protected by the purported privilege.

Appellant also contends that the deliberative process privilege does not apply to any third-party communications.

In its response, dated January 17, 2014, OCFO reaffirmed its position. As a matter of clarifying the factual background, OCFO indicates that there are several inaccuracies in background statement of Appellant. First, OCFO did not request that its other financial advisor provide comments on a report prepared by Appellant. Second, contrary to the allegation that the OCFO employee stated "there is a reason you [Saber] haven't done a deal since 2009," the employee indicated that he asked a question, viz., "is there a reason you have not worked on a securitization deal since 2009?" Third, while Appellant alleges that the OCFO employee stated that the procurement process had been completed, the employee stated that he does not recall making this statement.

OCFO states that "PRAG provided, at all relevant times, financial advisory services under contract with the District relating to hundreds of millions of dollars of bond transactions." OCFO also states that Appellant "conveyed serious allegations to the OCFO regarding the lack of competency of PRAG." This formed the basis on which the policy and legal issues arose.

> OCFO was presented with very serious policy and legal issues as a result of Saber's allegations regarding the performance and competency of PRAG. . . . Saber's actions made it imperative that the OCFO investigate the validity of the Saber accusation to enable the OCFO to make a policy decision and a legal decision with regard to whether

---

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."

> the OCFO should continue to use the financial advisory services of PRAG, or should the OCFO discontinue to use the financial advisory services of PRAG, and if the decision is to terminate, what are the legal procedures and consequences of termination.

OCFO provided a list and a copy of the records withheld for 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).

As set forth above, in its response, OCFO asserts, as a basis for exemption, not only the deliberative process privilege, as in its initial response to the FOIA Request, but also the attorney-client 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 the attorney-client privilege and 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.

"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 is clear that communications with parties outside the government whose consultation has been requested by an agency can qualify as "inter-agency."

> Unquestionably, efficient government operation requires open discussions among all government policy-makers and advisors, whether those giving advice are officially part of the agency or are solicited to give advice only for specific projects. Congress apparently did not intend 'inter-agency' and 'intra-agency' to be rigidly exclusive terms, but rather to include any agency document that is part of the deliberative process. . . . When an agency record is submitted by outside consultants as part of the deliberative process, and it was solicited by the agency, we find it entirely reasonable to deem the resulting document to be an 'intra-agency' memorandum for purposes of determining the applicability of Exemption 5. This common sense interpretation of 'intra-agency' to accommodate the realities of the typical agency deliberative process has been consistently followed by the courts. [footnote omitted].

Ryan v. Department of Justice, 617 F.2d 781, 789-790 (D.C. Cir. 1980). In accord, *McKinley v. Bd. of Governors of the Fed. Reserve Sys*., 647 F.3d 331, 339 (D.C. Cir. 2011); *Citizens for Responsibility & Ethics v. United States Dep't of Homeland Sec.*, 514 F. Supp. 2d 36, 44 (D.D.C. 2007).

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).

Appellant sets forth two main arguments. First, the requested records are post-decisional, that is, they were created after the completion of the relevant deliberative process, the procurement for a financial advisor, and do not qualify for exemption under the deliberative process privilege. Second, even if there is an applicable deliberative process, it does not apply to communications from third parties.

While Appellant identifies the relevant deliberative process as the procurement for a financial advisor, OCFO identifies the relevant deliberative process as the decision with regard to whether OCFO should continue to use the financial advisory services of PRAG and the consideration of the legal procedures and consequences of termination. In addition, based on our review of the withheld records, it also appears that OCFO was considering whether to retain its secondary financial advisor and what response, if any, was necessary in light of the actions which Appellant indicated that it would take. Thus, there are relevant decisions which have been identified. In addition, while Appellant asserts that communications from third parties are not covered by the deliberative process privilege, as we have set forth above, communications from consultants may be exempt under the privilege.

The first withheld record is a memorandum submitted to the Office of the General Counsel of OCFO by the OCFO employee which Appellant identifies. It addresses the policy decision identified by OCFO and is clearly written in the course of the attorney-client relationship. Accordingly, it is exempt from disclosure under both the deliberative process privilege and the attorney-client privilege. There are two additional emails from the same OCFO employee, one of which is part of a trail, which involves other OCFO employees, including attorneys in the Office of the General Counsel. These emails involve not only the evaluation of PRAG, but also, in one case, the retention of the secondary financial advisor and, in the other case, what response, if any, was necessary in light of the actions which Appellant indicated that it would take. These records are also exempt from disclosure under both the deliberative process privilege and the attorney-client privilege. A fourth record is an email which was solicited from PRAG regarding its analysis of the report submitted by Appellant in connection with the Ohio securitization. As this analysis was solicited by OCFO from its consultant in connection with the policy decision which it identified and bears directly upon such decision, it is exempt from disclosure under the deliberative process privilege.

There are two additional records which have been withheld by OCFO. One is a "Final Report" in the form of a letter from PRAG and another associated entity to the Public Utilities Commission of Ohio regarding the bond issuance referenced by Appellant in the FOIA Request. This record states that it is provided on a confidential basis and may not be circulated, quoted, or referred to without prior written consent. Thus, while it does not appear to have been created in the course of the identified deliberative process, the confidentiality provision does appear to raise an issue as to whether it is commercial or financial information exempt from disclosure under D.C. Official Code § 2-534(a)(1). However, in the FOIA Request, Appellant stated that insofar as the exemption under D.C. Official Code § 2-534(a)(1) may implicated, Appellant states that this exemption would not apply as it "only seek[s] the records as they relate to Saber and its personnel (i.e., the competitive position <u>of Saber</u>)." As the Final Report does not relate to Saber, its personnel, or its competitive position, but only to the bond issuance (in which it was not

involved), the record is nonresponsive to the FOIA Request and need not be provided. The second record is a submission made by Appellant to the Public Utilities Commission of Ohio regarding the bond issuance and, among other things, comments upon the performance of PRAG. Similarly, this record does not appear to have been created in the course of the identified deliberative process and, therefore, would not qualify for exemption. However, as it is a record created by Appellant and presumably in its possession, it would not appear that this is a record which it is seeking and, therefore, it is not necessary that we direct that it be disclosed as a part of this decision. However, if Appellant requests this record, OCFO shall provide it to Appellant.

Conclusion

Therefore, we uphold the decision of OCFO. 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: Charles Barbera, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-36

April 8, 2014

Mr. Robert Gordon

Dear Mr. Gordon:

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 3, 2014 (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 January 22, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought the following records with respect to a real estate development project at 5333 Connecticut Avenue, N.W.:

> 1. "Communications . . . between the developer, the developer's lawyers, planners, construction personnel, representatives, consultants, and all others concerning [5333 Connecticut Avenue, N.W.]".
>
> 2. Communications "between the ANC 3G and DDOT regarding [5333 Connecticut Avenue, N.W.]".

In response, by letter dated January 22, 2014, DDOT notified Appellant that it would provide responsive records, but that it was redacting portions of certain records based on the "trade secrets" exemption under D.C. Official Code § 2-534(a)(1), the exemption for privacy under D.C. Official Code § 2-534(a)(2), and the exemption for deliberative process privilege under D.C. Official Code § 2-534(a)(4).

On Appeal, Appellant challenges the redactions, asserting that records provided were over-redacted[1] and there was "no reason or explanation for the redactions." In its initial filing, Appellant raised an objection with respect to 17 records, but expanded the Appeal to include all redactions.

[1] "Over 80% of the DDOT emails were redacted completely."

In its response, dated March 14, 2014, DDOT reaffirmed its prior position as to its claim of exemption both for privacy and for deliberative process privilege.[2] Due to the manner in which Appellant submitted the Appeal, it addressed the 17 records which Appellant initially identified.

With respect to the claim of exemption for privacy, after citing and explaining applicable judicial authority, it states:

> DDOT redacted portions of email addresses and cell phone numbers belonging to private individuals, who were not District government employees. However, those email addresses that were contained within a list serve email chain were not redacted. Releasing personal information, such a personal email addresses and cell phone numbers of non-government employees would clearly constitute an unwarranted invasion of privacy . . .

With respect to the claim of exemption for deliberative process privilege and the 17 identified records, the response of DDOT may be placed into three groups. First, DDOT states that after receiving the Appeal and reviewing records 7, 13, 14, and 15 as identified by Appellant, it has determined that these records will be provided to Appellant. Second, DDOT states that it cannot respond regarding records 1, 8, 9, 10, 11, 12, and 16 as identified by Appellant because it needs "clarifying information such as the specific date and time of the emails." Third, after citing and explaining applicable judicial authority, DDOT states with respect to records 2, 3, 4, 5, and 6 as identified by Appellant:

> These emails contain internal communications between DDOT's Director, Associate Directors, and Supervisors. . . . . Although, the emails contained some factual information, the emails also reflected candid discussions regarding an ANC meeting and possible next steps the Agency should take regarding Transportation Demand Management ("TDM"). Releasing these emails would discourage candid discussions and managerial assessment regarding projects.

In addition, DDOT provided copies of certain of the unredacted documents for *in camera* review.

After review of the submissions, we invited the parties to supplement their submissions. We invited Appellant to supplement his submission to identify further the records for which DDOT sought clarifying information to enable DDOT either to consider whether it will provide such records to Appellant or explain why it will continue to claim an exemption from disclosure. However, Appellant did not supplement its submission. We also invited DDOT to supplement its response to address the redactions made on records other than the 17 identified above.

With respect to the claim of exemption for privacy, the supplement of DDOT indicates that it made the redactions on the remaining records in the same manner as it articulated in its initial response to the Appeal. With respect to the claim of exemption for deliberative process privilege for the remaining records, DDOT states:

[2] DDOT states that trade secrets exemption was referenced erroneously and did not form a basis for the assertion of its exemptions.

> DDOT applied redactions to internal email communications between DDOT managerial and supervisory staff. Many of these emails sought clarifications regarding the status of reviewers for the Cafritz development located at 5333 Connecticut Avenue, NW, Washington, DC. In addition, redactions were applied to internal email exchanges that included draft documents and comments regarding Traffic Operations, Parking, and Safety Review and meeting overview summaries. However, if the document (even in draft form) was sent to the DC Council, the document was released to Appellant.

In addition, DDOT provided copies of certain of the documents in redacted and unredacted form 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).

The Appeal concerns the redaction of 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."[3]

[3] 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

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.

DDOT states that it has redacted email addresses and cell phone numbers belonging to private individuals. These redactions are similar, but not identical, to its redactions in Freedom of Information Act Appeal 2013-02 and Freedom of Information Act Appeal 2014-26. As we stated in Freedom of Information Act Appeal 2013-02 and Freedom of Information Act Appeal 2014-26, 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 email addresses and cell phone numbers belonging to private 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

---

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 issues surrounding the regulatory review for a real estate development project, not investigatory records compiled for law-enforcement purposes, the matter would be judged by the standard for Exemption (2).

> 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 specifically state a public interest which would overcome the individual privacy interests. However, as in Freedom of Information Act Appeal 2013-02 and Freedom of Information Act Appeal 2014-26, revealing the personal identifying information would not advance significantly the public understanding of the operations or activities of the government or the performance of DDOT.

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 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).

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 indicates that the deliberative process here is the Traffic Operations, Parking, and Safety Review related to a planned real estate development. We have examined the unredacted records provided to us for *in camera* review to determine if a decision is being, or has been, considered and the extent, if any, to which a deliberative process is involved. In performing the review, 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.

After review of the sample of records (which are emails) provided to us, for reasons similar to those in the aforementioned Freedom of Information Act Appeal 2013-02 and Freedom of Information Act Appeal 2014-26, we believe that, with one exception, the portions of the records redacted for deliberative process privilege shall be disclosed to Appellant.[4]

The emails 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 updates regarding the status of the matter and coordination of timing for upcoming efforts and meetings or events. The emails reflect the administration of routine business of the agency and are benign in tone. The exchanges fall short of the vigorous interchange of ideas and personal opinions which the deliberative process privilege is designed to protect at its apex. With one exception, we do not believe that the release of these emails would have any chilling effect on future frank and candid discussions within DDOT or any other agency. The exception is the 12/27/12 (3:07 PM) email from Sam Zimbabwe to Matthew Marcou and Jeffrey Powell, with a copy to Jamie Henson.

[4] Based upon our review of the portion of redacted records provided to us, the redaction of material in the records was not substantial and falls far short of the 80% characterization of Appellant.

Conclusion

Therefore, the decision of DDOT is upheld in part and reversed and remanded in part. With the exception of the 12/27/12 (3:07 PM) email from Sam Zimbabwe to Matthew Marcou and Jeffrey Powell, with a copy to Jamie Henson, the portions of the emails redacted for deliberative process privilege 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.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-37

March 21, 2014

Moses V. Brown, Esq.

Dear Mr. Brown:

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 12, 2014 (the "Appeal"). You ("Appellant") assert that the Office of Risk Management ("ORM") improperly withheld records in response to your request for information under DC FOIA dated January 27, 2014 (the "FOIA Request").

Appellant's FOIA Request sought records "related to an inspection for mold or any other spores fungal material at Neval Thomas Elementary School on or around May 20, 2013 by Mr. Thomas Hurbert." In response, by letter dated February 7, 2014, ORM provided responsive records, which consisted of photographs. On Appeal, Appellant challenges the adequacy of the search, contending that it is likely that there is a "corresponding report written which memorializes what the pictures are."

Subsequent to the filing of the Appeal, by email dated March 20, 2014, ORM provided to Appellant a supplemental record, a written report. Thereafter, ORM stated that it contacted Appellant and Appellant indicated that the supplemental production satisfied the FOIA Request. Based on the representation that the matter has been settled, the Appeal is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Phillip A. Lattimore, Esq.
Kim Nimmo

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-38

March 26, 2014

Ms. Mary Levy

Dear Ms. Levy:

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 18, 2013 (the "Appeal"). You assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your request for information under DC FOIA dated February 11, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request, addressed to both DCPS and the Office of the Chief Financial Officer ("OCFO"), sought the following record from either agency:

> The current version of the DCPS Schedule A, sometimes referred to as 'Position Listing' or 'PeopleSoft Report' listing all positions, and including the position number, job title, employee name, salary, benefits, pay plan, pay grade, pay step, salary admin plan, FTE, project number, grant number, agency fund (fund detail), program 3 code, org4 code, department name, date of hire, CBU, and employee number, if inclusion of it is permissible.

In addition, Appellant stated:

> I would like to receive this information electronically, as provided in the Freedom of Information Amendment Act of 2000, enacted by the D.C. Council as Law 13-283, 48 DC Register 1917-1921, D.C. Code § 2-532. If you provide it electronically, I do not need any paper copies.

In response, by email dated March 7, 2014, DCPS provided a responsive record. On the same date, without giving the agency an opportunity to respond to her objection, Appellant filed the Appeal, stating, in pertinent part:

> It [the record provided] was responsive in terms of the content, but the file was locked (password-protected) so that it cannot be searched, rearranged, or otherwise be used –

> one cannot even lock the panes so as to retain the column headings. On previous FOIA requests I have received files not so locked. . . .
>
> I have notified DCPS of my concern and stated that I will notify you and drop this appeal, if the locking of the file was inadvertent, and I receive an unlocked file. Given the possibility that it was deliberate, I file this appeal.

In its response, by letter emailed March 21, 2014, DCPS, after noting that "Appellant admits that the information received was responsive to her request," states as follows:

> DCPS's intent to send a password-protected document was quite intentional and deliberate. DCPS has a common and long-standing practice of sending password-protected documents, particularly when the data is being sent in an Excel spreadsheet format. DCPS also send documents scanned into PDF versions. In doing so, DCPS ensures that that data is not subject to manipulation by the requester or by any third parties that the requester may share the data with. There is no language in the FOIA statute or implementing regulations that prevents an agency from securing the integrity of the documents it releases through the use of password protection or any other means.

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(a-1) provides, in pertinent part, that "a public body shall provide the record in any form or format requested by the person." (By contrast, the federal FOIA provides, under 5 USCS § 552(b)(3), "an agency shall provide the record in any form or format requested by the person if the record is readily reproducible by the agency in that form or format.") Accordingly, if a requester requests a record in a searchable format, an agency shall provide it in such format if it is able to do so. In the federal context, *see*, e.g., *TPS, Inc. v. United States DOD*, 330 F.3d 1191 (9th Cir. 2003) (agency required to make records available in zipped format. The court stated that the "presumption in favor of public access to information suggests that we should invoke the same presumption in requiring disclosure in the requested format so as

to 'enhance public access to agency records.'" *Id*. at 1196.); *Laroche v. United States SEC*, 2006 U.S. Dist. LEXIS 75415 (N.D. Cal. 2006)(finding that agency did not have the capability to create the type of searchable electronic document requested, distinguishing *TPS, Inc. v. United States DOD*, where the "agency was required to produce zipped files where technical capability was not at issue and agency regularly reproduced data in zipped format." *Id*. at 9).

Here, Appellant requested the record in an electronic format, but made no further specification. Appellant objects to the password-protected format based only on an expectation from prior experience that the record would be searchable and manipulable, but failed to request the record in that format. Therefore, the record that DCPS provided was responsive to the FOIA Request. Nevertheless, it is clear that Appellant desires the requested record in a form that is searchable and manipulable, that is, not password-protected. Rather than compel Appellant to file a FOIA Request anew to obtain the single already identified and responsive record, in the interest of administrative efficiency, we are directing DCPS to provide the responsive record to Appellant without password protection.

Conclusion

Therefore, we remand this matter to DCPS to provide the responsive record to Appellant without password protection.

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.
Laverne Lee

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-40

March 27, 2014

BY U.S. MAIL

Dear Mr. Johnson:

This letter responds to your request, dated March 10, 2014 (the "Request"), for reconsideration of our decision, dated August 23, 2013 (the "Decision"), in response 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 10, 2013 (the "Appeal").

Background

The Request relates to your First FOIA Request, dated July 6, 2013, in which you ("Appellant") sought your complete institutional file relating to your incarceration at Lorton Youth Center One beginning in 1984. As we stated in the Decision, "[t]he essential issue presented by the Appeal is the adequacy of the search for the requested records . . ." In the Decision, we found that "DOC employed a search methodology consistent with record-keeping practices" and that the search was adequate. With regard to the absence of the institutional file, we noted in the Decision that "DOC 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."

Based on the examination of records which were provided to him, Appellant sets forth several "discrepancies" which are offered as justification for reconsidering the Decision. First, Appellant describes a handwritten correction of his first name on a 2005 DOC "Face Sheet." Second, Appellant indicates that, on the bottom of a 2001 document titled "Security Designation Form," there is a phrase "Dummy File," which, according to the experience of Appellant, "means that the file is empty and the original is held elsewhere." Third, Appellant describes a handwritten deletion of an incorrect inmate number on a 2001 DOC "Face Sheet." Fourth, Appellant states that when he requested his DOC files from the Bureau of Prisons, the Bureau of Prisons stated in writing to him that it was unable to locate such files.

In response to the Request, DOC states that the Appeal was resolved by the Decision, which found that "'DOC employed a search methodology consistent with record-keeping practices' and that the search was adequate," and that the appropriate forum for further review is the Superior Court of the District of Columbia.

Discussion

In appeals where we remand the matter to an agency to perform an additional search or to produce records, we generally provide that the appellant may, by separate appeal, challenge the response of the agency to our order. The purpose of this proviso is to ensure that we have a full administrative record to adjudicate a subsequent controversy as the germane facts and legal arguments may not have been submitted for the purposes of the initial decision. In the Decision, we did indeed provide relief to Appellant, but, in the interests of administrative efficiency, we provided the record, which was in our possession as well as in the possession of DOC, to Appellant. When the Request was received, it was docketed as a separate appeal rather than as a request for reconsideration of the Decision. Despite the assignment of a separate appeal number, we will treat the Request as a request for reconsideration.

On behalf of the Mayor, pursuant to D.C. Official Code § 2-537, this office decides appeals of the denial of requests for information under DC FOIA. Under law, if the decision of an agency is upheld, an appellant has the right to commence a civil action against the District of Columbia government in the Superior Court of the District of Columbia. However, the objective of this office is to render a decision which is correct based on the law and the facts and which takes into account the respective rights and interests of the parties. If there is law, or there are facts, which have not been taken into account in deciding an appeal, the appropriate procedure to obtain variance from the decision is to request reconsideration of the decision and, if the request merits reconsideration, we will grant the request of an appellant and provide the agency with an opportunity to respond. It should be noted that, as a general matter, reconsideration of a prior decision is discretionary and we will not reconsider a decision if additional law or facts could or should have been raised in the initial response of the requesting party. We also note that we have agreed to reconsider a decision where the interests of a third party may be affected and such third party has not had an opportunity to have its interests reflected on the administrative record, e.g., the Office of the United States Attorney regarding the effect of disclosure on its interest in prosecution of criminal matters.

The "discrepancies" which Appellant raises do not indicate that the search was not adequate. The errors on the records indicated in the first and third discrepancies do not have any bearing on the manner in which the search was conducted, nor does the presence of an empty file, as alleged in the second discrepancy, indicate that the manner in which the search was conducted was not adequate.[1] Similarly, with respect to the final discrepancy, the fact that a federal agency has not retained or was unable to locate files does not indicate that DOC has not conducted an adequate search. Moreover, an adequate search need not be a perfect search.

> As we have recently made clear, 'the issue is not whether any further documents might conceivably exist but rather whether the government's search for responsive documents was adequate.' *Perry v. Block*, 221 U.S. App. D.C. 347, 684 F.2d 121, 128 (D.C. Cir.

[1] Furthermore, these are facts which should have been raised when the initial appeal was filed.

> 1982) (per curiam) (emphasis in original); *see Goland v. CIA*, 197 U.S. App. D.C. 25, 607 F.2d 339, 367, 369 (D.C. Cir. 1979) (per curiam on motion to vacate and petition for rehearing), cert. denied, 445 U.S. 927, 100 S. Ct. 1312, 63 L. Ed. 2d 759 (1980).

Weisberg v. U.S. Dep't of Justice, 705 F.2d 1344, 1351 (D.C. Cir. 1983).

Conclusion

Based on the foregoing, the Decision is affirmed.

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
Freedom of Information Act Appeal: 2014-41

April 8, 2014

Jarrod S. Sharp, Esq.

Dear Mr. Sharp:

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 6, 2014 (the "Appeal"). Your law firm, on behalf of a named client ("Appellant"), asserts that the District Department of Transportation ("DDOT") improperly withheld records in response to your request for information under DC FOIA dated January 28, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought, with respect to a named client ("Client"):

> "1. [Client]'s personnel file;
> 2. Any and all reviews, performance appraisals, investigations, and/or studies relating to [Client]'s employment; and
> 3. Any and all documents relating to [Client]'s job evaluations, achievements, and awards;
> 4. Any and all documents reflecting or relating to wages, benefits, merit increases, bonuses, insurance, or any other forms of compensation that DDOT paid to [Client] during her employment;
> 5. Any and all reports, letters of commendation, reviews or other similar documents relating to [Client]'s job performance not contained in [Client]'s personnel file; and
> 6. All personnel and policy manuals, handbooks, and other memoranda concerning employee policies, rules, discipline, performance, and compensation in use during that period of time in which [Client] was employed with DDOT;
> 7. Any and all policies, statements, memoranda, guidelines, contracts, agreements, proposals, grants, loans, appropriations, rules, statutes, or other documents relating to DDOT's policies or practices regarding discrimination;
> 8. Any and all policies, statements, memoranda, guidelines, contracts, agreements, proposals, grants, loans, appropriations, rules, statutes, or other documents relating to the source of funds from which DDOT may pay any settlements or judgments in any lawsuit or legal claim against DDOT; and

> 9. A copy of any Complaint or Petition and any judgment or settlement agreement in any and all lawsuits filed against DDOT within the last five (5) years in which discrimination, retaliation, or a violation of 42 U.S.C. § 1983 was alleged; and
> 10. All written complaints or grievances made by employees of DDOT from January 1, 2008 to the present."

In response, by letter dated March 5, 2014, DDOT stated that it responded to the first five parts of the FOIA Request on February 10, 2014,[1] but advised Appellant that additional information may be available at the Department of Human Resources ("DCHR") and at the PeopleSoft account of Client. DDOT stated that the responsive records for part 6 of the FOIA Request could be found at the website of DCHR. DDOT stated that responses to the seventh and eighth parts of the FOIA Request were being processed and were anticipated to be provided by March 28, 2014. DDOT stated that the responsive records for part 9 of the FOIA Request could be found at the website of the federal Equal Employment Opportunity Commission and at the websites of the Office of Employee Appeals and the Office of Administrative Hearings. Finally, DDOT stated that part 10 of the FOIA Request was too broad.

On Appeal, Appellant challenges the response of DDOT as either incomplete or nonresponsive. Appellant contends that "requests 1-4 were partially addressed. Requests 5-10 remain completely unaddressed." As to the personnel file of Client, Appellant states that "the file was missing numerous documents." In response to the suggestion that Appellant should contact DCHR, Appellant contends that "this is disingenuous as the documents to which [Client] seeks access, even if they are held at DCHR, would have been created and also retained at DDOT." Appellant asserts that "[i]nstead of responding, DDOT is attempting to pass the baton to its sister agencies."

In its response, by email dated April 3, 2014, DDOT reaffirmed and amplified its position. After setting forth the legal principles applicable to proper searches, DDOT states that, in response to the first five parts of the FOIA Request, it located "Appellant's unofficial personnel file, which is retained by DDOT's Human Resources department" and provided the responsive records to Appellant. In addition, "Appellant was also referred to DC's PeopleSoft data system in order to access and retrieve copies of her compensation, performance reviews, insurance and wage increases information." With respect to the sixth and seventh parts of the FOIA Request, DDOT states that other than reaffirming the referral to the DCHR website which contains "the District's Personnel Manual, DDOT also inquired of its Human Resources department to identify any other manuals used for discipline and policy purposes [and] none were identified." With respect to the eighth part of the FOIA Request, DDOT provided two records which were attached to its response.

With respect to the tenth part of the FOIA Request, DDOT first indicated that, in the absence of a response to narrow the scope of this part of the FOIA Request, on its own, it conducted a search for responsive records with respect to discrimination complaints or grievances. However, after examination of these records, DDOT asserts that the records are exempt from disclosure under

[1] By email dated February 11, 2014, DDOT confirmed to Appellant that DDOT had provided Client "with her personnel files that we have here at DDOT."

D.C. Official Code § 2-534(a)(3)(C). After setting forth the legal principles indicating that this statutory exemption applies rather than the privacy exemption under D.C. Official Code § 2-534(a)(2), it asserts that there is a cognizable privacy interest, stating, in pertinent part:

> DDOT located 147 pages of documents used by DDOT's Office of Civil Rights when conducting possible discrimination investigations. These documents not only contain employees' names, but also contain Intake Questionnaires, Notice of Right to File Discrimination Complaint forms, and Exit Letter Notices, which contain factual information. In addition, the Title VII Questionnaire form clearly indicates that the information contained within these forms shall remain confidential . . .

With respect to the public interest in disclosure, DDOT states that "Appellant has failed to assert any public interest justifying the release of such documents . . ."

In response to an invitation to supplement the administrative record to indicate the manner in which the search for the records in the ninth part of the FOIA Request (complaints, judgments, and settlements regarding allegations of discrimination) was conducted, DDOT stated:

> In an effort to respond [to the ninth part of the FOIA Request], DDOT's FOIA team referred Appellant to the Office of Attorney General, Office of Employee Appeals and Office of Human Rights, since these documents originate from these various agencies. DDOT also searched electronic files containing the words, "settlement", "discrimination" and "retaliation". This uncovered more than 1000 documents. DDOT then used the search term "OEA", "OHR," and "EEOC." These search terms narrowed the search to roughly 250 search results. DDOT's FOIA team is still attempting to review the documents and anticipates completing this review by April 11th.

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, 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 2012-22, 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 2012-29, 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. 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).

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).

In the case of the Appeal, with respect to the first five parts of the FOIA Request, DDOT identified the appropriate location of the requested records, the personnel file which it maintained for Appellant, and provided the responsive records contained in the file. DDOT informed Appellant that the main or "official" personnel file is maintained by DCHR, but Appellant asserts that the files maintained by both agencies would be identical and all documents in the file would have been created by DDOT. However, Appellant offers no legal or factual support for this contention. As a matter of our own knowledge and experience, for which we take notice, DCHR creates personnel records independent of the agencies which it supports. Moreover, it is not unreasonable to believe that DDOT would not have all of such records. Under DC FOIA, an agency is only required to furnish responsive, nonexempt records in its possession. While Appellant may feel that DDOT should maintain the requested records, as we have stated in prior decisions,[2] DC FOIA provides no warrant to second-guess the management practices of an agency in the compilation and maintenance of its records.

The sixth through eighth parts of the FOIA Request seeks records which sets forth the provisions of law and rules relating to DDOT and the District. Under the law, 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). "FOIA creates only a right of access to records, not a right to personal services." *Hudgins v. IRS*, 620 F. Supp. 19, 21 (D.D.C. 1985). *See also Brown v. F.B.I.*, 675 F. Supp. 2d 122, 129-130 (D.D.C. 2009). Under these principles, the courts have held that an agency is not required to provide statutes and regulations in response to a FOIA request. *See Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 59, 64 (D.D.C. 2003)(agency not required to identify and list regulations meeting the description in its FOIA request); *West v. Jackson*, 448 F. Supp. 2d 207 (D.D.C. 2006)(citing *Landmark Legal Found. v. EPA*, FOIA request which sought HUD statutes, regulations, and policies regarding discrimination investigations, Section 8 housing, and emergency housing for the homeless improper); *Tolotti v. IRS*, 2000 U.S. Dist. LEXIS 12083 (D. Nev. 2000)(request for described regulations improper).

With one exception, the sixth through eighth parts of the FOIA Request require DDOT to identify and provide to Appellant provisions of laws and rules, both local and federal. Under the legal principles set forth above, such requests are improper under DC FOIA. While DDOT provided an accommodation to Appellant by referring Appellant to various websites where Appellant could obtain such information and by providing statutory provisions with its response, it was not required to do so by law. The exception referred to above would be any guidance records which were prepared by DDOT or prepared by another agency, such as DCHR, and in

[2] Freedom of Information Act Appeal 2011-18, Freedom of Information Act Appeal 2011-58, Freedom of Information Act Appeal 2011-22, Freedom of Information Act Appeal 2011-09R, Freedom of Information Act Appeal 2012-30, Freedom of Information Act Appeal 2012-55, Freedom of Information Act Appeal 2013-06, Freedom of Information Act Appeal 2013-12, Freedom of Information Act Appeal 2013-38, Freedom of Information Act Appeal 2013-81, and Freedom of Information Act Appeal 2014-13.

the possession of DDOT. However, it is clear that DDOT does not possess such records as it made an inquiry to DCHR to determine whether DCHR had any such records.[3]

The challenge to the response of DDOT to the ninth part of the FOIA Request is moot. DDOT indicates in its supplement to the administrative record that it has conducted a supplemental search for responsive records, is reviewing the results of the search, and will provide nonexempt responsive records. Appellant may, by separate appeal, challenge the results and revised response of DDOT when made.

The last part of the FOIA Request sought written complaints or grievances made by employees of DDOT. In its initial response to Appellant, DDOT stated that this part of the FOIA Request was too broad. Under DCMR § 1-402.5, if "the information supplied by the requester is not sufficient to permit the identification and location of the record by an agency without an unreasonable amount of effort," the agency should contact the requester to attempt to clarify the request. As we set forth above, an agency is not required to conduct a search which is unreasonably burdensome. Here, DDOT identified this part of the FOIA Request as being too broad and, in accordance with DCMR § 1-402.5, asked Appellant to narrow the scope of the request. However, Appellant failed to do so. Nevertheless, DDOT has accommodated Appellant by conducting a search for discrimination complaints or grievances. As Appellant did not respond to DDOT, we will deem this interpretation to be sufficient.

DDOT conducted a search in its Office of Civil Rights, which appears to be the appropriate location for the requested records, and located 147 pages of responsive records. However, DDOT has withheld the records under D.C. Official Code § 2-534(a)(3)(C).

The claim of exemption with respect to the redactions for the responsive records is based on privacy. As DDOT states, two provisions of DC FOIA provide exemptions for relating to personal privacy. 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 the comparable exemption in the other provision, D.C. Official Code § 2-534(a)(2) ("Exemption (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 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 DDOT also states in its response to the Appeal, prior to undertaking the privacy analysis, we must determine whether the broader privacy exemption of Exemption (3)(C) applies. For the

[3] We note that even if DCHR had such records, the records would have been nonresponsive as they would have been in the possession of DCHR, not DDOT.

purposes of DC FOIA, law enforcement agencies conduct investigations which focus on acts which could, if proved, result in civil or criminal sanctions. *Rural Housing Alliance v. United States Dep't of Agriculture*, 498 F.2d 73, 81 (D.C. Cir. 1974). The exemption "applies not only to criminal enforcement actions, but to records compiled for civil enforcement purposes as well." *Rugiero v. United States DOJ*, 257 F.3d 534, 550 (6th Cir. 2001). In the case of the Appeal, DDOT could take disciplinary action, including termination, in response to complaints or grievances regarding discrimination. Accordingly, in light of the possible disciplinary action, Exemption (3)(C) will apply to this case.

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).

As a general matter, 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).

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).

> [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).

Here, complainants, witnesses, and the individuals alleged to have committed discriminatory acts would all have a sufficient personal privacy interest in the 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).

The Supreme Court has held that

> where there is a privacy interest protected by Exemption 7(C)[the federal equivalent of Exemption (3)(C)] and the public interest being asserted is to show that responsible officials acted negligently or otherwise improperly in the performance of their duties, the requester must establish more than a bare suspicion in order to obtain disclosure. Rather, the requester must produce evidence that would warrant a belief by a reasonable person that the alleged Government impropriety might have occurred.

Nat'l Archives & Records Admin. v. Favish, 541 U.S. 157, 174 (2004). The Court explained that there is a presumption of legitimacy accorded to the official conduct of the government's and

> where the presumption is applicable, clear evidence is usually required to displace it. . . . Allegations of government misconduct are 'easy to allege and hard to disprove,' *Crawford-El v. Britton*, 523 U.S. 574, 585, 140 L. Ed. 2d 759, 118 S. Ct. 1584 (1998), so courts must insist on a meaningful evidentiary showing.

Id. at 174-175. The Court also indicated considerations involved in evaluating the public interest.

> First, the citizen must show that the public interest sought to be advanced is a significant one, an interest more specific than having the information for its own sake. Second, the citizen must show the information is likely to advance that interest. Otherwise, the invasion of privacy is unwarranted.

Id. at 172. In accord, *Kretchmar v. FBI*, 882 F. Supp. 2d 52 (D.D.C. 2012) ("An overriding public interest warranting disclosure of exempt material is established only upon a showing that the withheld information is necessary to confirm or refute 'compelling evidence that the agency denying the FOIA request is engaged in illegal activity.' *Quinon v. FBI*, 86 F.3d 1222, 1231, 318 U.S. App. D.C. 228 (D.C. Cir. 1996) (citations omitted)." *Id*. at 57.)

In the Appeal, the only indication on the administrative record that there is any wrongdoing rests in whatever allegations are contained in the complaints or grievances which are withheld. As indicated above, mere allegations of wrongdoing are not sufficient to establish a public interest in disclosure. Moreover, there is no indication that allegations concerned upper-level employees. As we stated in Freedom of Information Act Appeal 2011-33:

> We cannot find that there is a public interest in disclosure of mere allegations of wrongdoing by lower-level employees which outweighs their individual privacy interests in nondisclosure. The mere disclosure that a complaint has been filed against a lower-level employee will not materially, if at all, inform one about an agency's performance of its statutory duties. *See*, e.g., *Stern v. FBI*, 737 F.2d 84 (D.C. Cir. 1984).

Similarly, in Freedom of Information Act Appeal 2013-25, where the employees alleged to have been involved in improprieties were not "final decisionmakers or policy makers," we found that the "disclosure of the names of the employees will not contribute significantly to public understanding of the operations or activities of the government or the performance of" the agency.

Accordingly, under the principles set forth above, there is not a sufficient public interest to overcome the personal privacy interests in the disclosure of records surrounding allegations of discrimination and the investigation thereof.

The question remains whether the withheld records can be disclosed with redactions to protect the identity of complainants, witnesses, and the individuals alleged to have committed discriminatory acts.

D.C. Official Code § 2-534(b) provides for the disclosure of "[a]ny reasonably segregable portion of a public record . . ." The D.C. Circuit has stated that "non-exempt portions of a document must be disclosed unless they are inextricably intertwined with exempt portions. [footnote omitted]." *Mead Data Cent., Inc. v. United States Dep't of the Air Force*, 566 F.2d 242, 260 (D.C. Cir. 1977). However, an agency

> need not expend substantial time and resources to 'yield a product with little, if any, informational value.' *Assassination Archives & Research Ctr. v. CIA*, 177 F. Supp. 2d 1, 9 (D.D.C. 2001); *see also Nat'l Sec. Archive Fund, Inc. v. CIA*, 402 F. Supp. 2d 211, 220-21 (D.D.C. 2005) (defendant need not release non-exempt information intertwined with exempt information where release 'would produce only incomplete, fragmented, unintelligible sentences composed of isolated, meaningless words').

Brown v. United States DOJ, 734 F. Supp. 2d 99, 110-111 (D.D.C. 2010). *See also Flightsafety Servs. Corp. v. DOL*, 326 F.3d 607, 613 (5th Cir. 2003)(redaction not required where "any disclosable information is so inextricably intertwined with the exempt, confidential information that producing it would require substantial agency resources and produce a document of little informational value.")

In the case of the records withheld by DDOT, redactions would be required, as stated, to protect the identity of complainants, witnesses, and the individuals alleged to have committed discriminatory acts. In addition, it is reasonable to expect that the titles of the individuals involved as well as the offices in which the events occurred would need to be redacted in order for the identity of the individuals involved to be protected. After all of those redactions, what

remains are likely to be records with little or no informational value. Therefore, the withheld records need not be disclosed.[4]

Conclusion

Therefore, the decision of DDOT is upheld in part and moot in part; provided, that this decision shall be without prejudice to Appellant to assert any challenge, by separate appeal, as provided 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: Nana Bailey-Thomas, Esq.

[4] We note that, with respect to the last part of the FOIA Request, the results of the search and the assertion of the exemption have been communicated for the first time with the response of DDOT to the Appeal. Consequently, Appellant has not had an opportunity to respond on the administrative record to the position of DDOT. Therefore, if there is law or facts which we have not considered, Appellant may request reconsideration of this portion of our decision.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-42

March 26, 2014

Roy L. Kaufmann, Esq.

Dear Mr. Kaufmann:

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 4, 2014 (the "Appeal"). You ("Appellant") assert that the Department of Insurance, Securities, and Banking ("DISB") improperly withheld records in response to your request for information under DC FOIA dated February 6, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought documents relating to the Foreclosure Mediation Program ("FMP") from the inception of the program through February 2, 2014, as follows:

1. "Amounts collected by the FMP:
    - o Received from lenders or other parties who filed Notices of Default with DISB
    - o Received from borrow[er]s availing themselves of the opportunity to participate in mediation
    - o Penalties collected from:
        - o Lenders or other parties who filed Notices of Default
        - o Borrowers availing themselves of the opportunity to participate in mediation
    - o Other income."
2. "Itemized expenditures of the FMP for the same time period."

In response, by email dated March 4, 2014, DISB stated that it did not have any responsive records.

On Appeal, Appellant challenges the response of DISB, contending that it is a denial of the FOIA Request and stating: "The information requested should be disclosed to ascertain whether the mortgage mediation program is efficient, cost-efficient, and a benefit to the taxpayer."

In its response, by email dated March 21, 2014, DISB reaffirmed its position. DISB re-states that it does not have documents responsive to the FOIA Request. It states further:

> No such document now exists. The agency and the Office of the Chief Financial Officer would have to do research to compile data and create a report that would be responsive to this FOIA request. The creation of a responsive document is not required under FOIA.

Pursuant to our invitation to supplement its response to indicate the manner in which the search for records was conducted, DISB states, in pertinent part, that it consulted

> Christopher Weaver, the Associate Commissioner for Banking, and Ben Arnold, the administrator of the Foreclosure Mediation Program on the method and manner of their search and both report the following: No such report or document was ever created for the FMP that would have the data requested.
>
> The FMP is a discrete program administered by one person, Ben Arnold, essentially. His reporting manager is the Associate Commissioner for Banking. Any such document or report in any version would have been in their possession or the file areas immediately adjacent. A search of their program files both electronic and paper based, including any word processing files, confirms that neither has created such a document and neither has knowledge of the existence of such a document. The kind of data that the requestor is seeking has simply never been gathered in any form.
>
> There was however no search of the department's e-mail database because again, there was no such report or document ever created that would have been transmitted by e-mail or otherwise.

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 does not set forth a legal argument, only a reason why the disclosure of the requested information would be useful. However, although it is not so stated by Appellant, the issue presented by the Appeal is the adequacy of the search for the requested records.

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 2012-22, 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 2012-29, 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. 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).

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).

As a threshold matter, we will determine the nature of the records sought by the FOIA Request. The FOIA Request could be interpreted as requiring the disclosure of all records which show the receipt of income or fees or the payment for an expenditure. However, the better interpretation of the FOIA Request is that it seeks the aggregate amount of expenditures in each category requested rather than the underlying records which would allow the computation of the aggregate amounts.

Under section 424(d) of the District of Columbia Home Rule Act, codified at D.C. Official Code § 1-204.24d, the Chief Financial Officer is responsible for all financial transactions and the maintenance of books and records for the District of Columbia. In order to discharge its functions, it locates personnel at the various agencies and instrumentalities within the District government. Despite the fact that they are located at the agency, in this case, DISB, such employees are OCFO employees and the financial records are those of OCFO. *See* Freedom of Information Act Appeal 2012-29, where this distinction was applied. Therefore, it is most likely that the records sought would be maintained by the Office of the Chief Financial Officer ("OCFO"). Nevertheless, it is reasonable to posit that some or all of the records sought by Appellant have been furnished to DISB by OCFO for management purposes, notwithstanding the fact that the records may have been compiled and maintained by OCFO.

As we set forth above, 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. In its supplement, DISB identified the Associate Commissioner for Banking and the administrator of the Foreclosure Mediation Program as the management officials who are responsible for the administration of the program. These officials would be the individuals who would be furnished the records sought by Appellant. Both officials have indicated that, to their knowledge, DISB does not have responsive records. Moreover, they have indicated that they have searched the files where the requested records would have been located and did not locate any responsive records. Accordingly, we find that the search for the requested records was adequate.

Conclusion

Therefore, the decision of DISB 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: Dena Reed, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-43

March 24, 2014

Mr. Vaughn Bennett

Dear Mr. Bennett:

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 17, 2014 (the "Appeal"). You assert that the District of Columbia Public Schools ("DCPS") improperly withheld records in response to your request for information under DC FOIA dated January 12, 2014 (the "FOIA Request").

Appellant's FOIA Request sought records "that show the job description, title or classification of a former DCPS employee. In response, by emails dated March 5, 2014, and March 6, 2014 (the latter in response to an inquiry by Appellant), DCPS stated that it would need a release because disclosure of the requested information would constitute "a clearly unwarranted invasion of personal privacy." Appellant challenged the denial of the FOIA Request, stating that the requested information is not personal information and that there is no statutory or regulatory authority requiring a release.

In its response, by letter emailed March 21, 2014, DCPS states that, by email dated March 20, 2104, it provided the requested records to Appellant, with certain redactions of nonresponsive information, based on personal privacy. Based on the foregoing, we will now consider the Appeal to be moot and it is 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
Freedom of Information Act Appeal: 2014-44

March 31, 2014

Mr. Russell Carollo

Dear Mr. Carollo:

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 15, 2013 (the "Appeal"). You ("Appellant") assert that the Board of Ethics and Government Accountability ("BEGA") improperly withheld records in response to your request for information under DC FOIA dated March 12, 2014 (the "FOIA Request).

Background

Appellant's FOIA Request sought "all FOIA requests letters since Jan. 1, 2010." In response, by letter dated March 14, 2013, BEGA stated: "All FOIA request letters may be found on the BEGA Website at http://www.bega-dc.gov/bega-foia-responses."

On Appeal, Appellant challenges the response of BEGA, stating in pertinent part:

> The law doesn't require agencies to post all public documents on the Internet; therefore, directing a requestor to a website without assuring the requestor that an adequate search was conducted and that the website contains "all" information falling under the scope of a request is not appropriate. The response offers no such assurances.
>
> Furthermore, a website does not offer a FOIA requester the opportunity to appeal or the opportunity to file a lawsuit for violations of the law.
>
> Even if such assurances were provided, the website does not allow visitors to view entire documents, only search what documents the agency deemed appropriate for the public to search. This does not allow the requestor to search full documents and make necessary associations search-only functions do not, and, furthermore, a search-only function puts the requestor at the mercy of data entry technicians, who frequently misspell words or otherwise corrupt data.

In response, by letter delivered March 28, 2014, BEGA reaffirmed its position. It states, in pertinent part:

> The requestor was notified that all FOIA requests and corresponding documents may be found on the BEGA Website at http://www.bega-dc.gov/bega-foia-responses. Upon review of the documents supplied pursuant to this notice of appeal, it was determined that the FOIA request submitted to BEGA in April 2013 was not on the BEGA website. All documents are now on the website.

BEGA separately provided to our office a copy of the posted 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).

Appellant raises two issues: the adequacy of the search for the requested records and the propriety of referring a requester to a webpage in response to a FOIA request.

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).

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); Freedom of Information Act Appeal 2011-31; Freedom of Information Act Appeal 2012-63; Freedom of Information Act Appeal 2012-73; Freedom of Information Act Appeal 2014-02; Freedom of Information Act Appeal 2014-07. The contention of Appellant to the contrary is not supported by judicial precedent or our past decisions.[1] Although it has been so stated by BEGA, it is clear that BEGA places records regarding each FOIA request on its website.

In Freedom of Information Act Appeal 2012-73, we found that DCPS satisfied DC FOIA where it "posted the records online and provided the information necessary to allow Appellant to access the requested records." In this case, BEGA has provided the information necessary to allow Appellant to access the posted records, that is, a hyperlink to the webpage where the records are located. However, when we accessed the webpage, both prior to and after receipt of the BEGA response, and examined the records which were provided to us, we found responses to FOIA requests, but only one FOIA request, the April 2013 request. Thus, as of the date of this decision, with the exception of the April 2013 request, such requests do not appear on its website. Therefore, BEGA shall furnish to Appellant all FOIA requests which it has received other than the April 2013 request (or, in the alternative, post the FOIA requests on its website and notify Appellant of the posting).

Conclusion

Therefore, the decision of BEGA is upheld in part and reversed and remanded in part. As set forth above, BEGA shall furnish to Appellant all FOIA requests which it has received other than the April 2013 request (or, in the alternative, post the FOIA requests on its website and notify Appellant of the posting).

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.

[1] The claim by Appellant that providing the link to a website "does not offer a FOIA requester the opportunity to appeal" is contradicted by the filing of the Appeal.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Traci Hughes, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-45

March 31, 2014

Mr. Russell Carollo

Dear Mr. Carollo:

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 15, 2013 (the "Appeal"). You ("Appellant") assert that the Board of Ethics and Government Accountability ("BEGA") improperly withheld records in response to your request for information under DC FOIA dated February 4, 2014 (the "FOIA Request).

Background

Appellant's FOIA Request sought "access to and copies of the database(s) used to track FOIA requests." In response, by letter dated February 5, 2013, BEGA stated: "The Board of Ethics and Government Accountability does not maintain a FOIA tracking database."

On Appeal, Appellant challenges the response of BEGA. Appellant indicates that he contacted BEGA by telephone and was told that "the agency had no electronic copy of information on its FOIA requests because there were too few requests to justify creating such an electronic copy." Appellant states that, subsequently, he made a FOIA request for "all request letters" and, in response, received a hyperlink where the records were located. The latter FOIA request is the subject of Freedom of Information Act Appeal 2014-44. Appellant re-states the same arguments that he made in that appeal regarding the adequacy of such response.

In response, by letter delivered March 28, 2014, BEGA reaffirmed its position. It states: "BEGA does not maintain a database of FOIA requests, and all requests are submitted via electronic mail directly to traci.hughes@dc.gov [the FOIA officer for BEGA]."

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).

Although it is not so stated by Appellant, the issue presented by the Appeal is the adequacy of the search for the requested records.

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. 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).

Here, the FOIA officer for BEGA, which agency itself is one of recent vintage, would be familiar with the records used to track FOIA request as such officer is the individual who receives and responds to such requests. She states that the requested record does not exist. In its submission, Appellant provided the explanation of the FOIA officer for its absence: an electronic database is not necessary "because there were too few requests to justify creating such an electronic copy." Accordingly, we find that that the search for the requested records was adequate.

Conclusion

Therefore, the decision of BEGA 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Traci Hughes, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-46

March 31, 2014

Mr. Russell Carollo

Dear Mr. Carollo:

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 15, 2013 (the "Appeal"). You ("Appellant") assert that the Board of Ethics and Government Accountability ("BEGA") improperly withheld records in response to your request for information under DC FOIA dated March 12, 2014 (the "FOIA Request).

Background

Appellant's FOIA Request sought "all FOIA requests and appeals since Jan. 1, 2010, submitted by, on behalf of or about Washington City Paper; all correspondence related to those requests/appeals; and all responsive documents provided in response to those requests/appeals." In response, by letter dated March 14, 2013, BEGA stated, in pertinent part:

> To date, the Board of Ethics and Government Accountability has received and responded to two requests from the Washington City Paper, c/o Will Sommer, in October and November of 2013. The response letters and all corresponding documentation may be found on the BEGA Website at http://www.bega-dc.gov/bega-foia-responses.
>
> All FOIA appeals are issued by the Executive Office of the Mayor. Therefore, the Board of Ethics and Government Accountability does not retain documentation concerning appeals or related correspondence concerning appeals.

On Appeal, Appellant challenges the response of BEGA, stating, as it did in Freedom of Information Act Appeal 2014-44:

> The law doesn't require agencies to post all public documents on the Internet; therefore, directing a requestor to a website without assuring the requestor that an adequate search was conducted and that the website contains "all" information falling under the scope of a request is not appropriate. The response offers no such assurances.
>
> Furthermore, a website does not offer a FOIA requester the opportunity to appeal or the opportunity to file a lawsuit for violations of the law.

> Even if such assurances were provided, the website does not allow visitors to view entire documents, only search what documents the agency deemed appropriate for the public to search. This does not allow the requestor to search full documents and make necessary associations search-only functions do not, and, furthermore, a search-only function puts the requestor at the mercy of data entry technicians, who frequently misspell words or otherwise corrupt data.

In addition, Appellant states: "The response doesn't mention appeal documents."

In response, by letter delivered March 28, 2014, BEGA reaffirmed its position. First, BEGA stated that it granted review of the responsive requests, which were made in October and November, 2013, by notifying Appellant "all FOIA requests and corresponding documents may be found on the BEGA Website at http://www.bega-dc.gov/bega-foia-responses." Second, it stated that "[a]ll documents relating to Case No.: AI-016-13 are withheld because the matter has been expunged by the Office of Government Ethics." Third, it stated that the "November 2013 FOIA request and corresponding documents were posted on the date of BEGA's March 14, 2013 response to the requestor at http://www.bega-dc.gov/bega-foia-responses/sommerfoia-responsenovember2013.".

BEGA separately provided to our office a copy of the posted 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).

Although it is not so stated by Appellant, the issue presented by the Appeal is the adequacy of the search for the requested records.

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 2012-22, 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 2012-29, 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. 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).

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); Freedom of Information Act Appeal 2011-31; Freedom of Information Act Appeal 2012-63; Freedom of Information Act Appeal 2012-73; Freedom of Information Act Appeal 2014-02; Freedom of Information Act Appeal 2014-07. The contention of Appellant to the contrary is not

supported by judicial precedent or our past decisions.[1] As we stated in Freedom of Information Act Appeal 2014-44, although it has been so stated by BEGA, it is clear that BEGA places records regarding each FOIA request on its website.

With respect to the portion of the FOIA Request for the FOIA requests made by the Washington City Paper, and the responses to those requests, we have the same situation as in Freedom of Information Act Appeal 2014-44. As we stated in that appeal, BEGA has provided the information necessary to allow Appellant to access the posted records, that is, a hyperlink to the webpage where it posts its FOIA requests and responses. However, as in Freedom of Information Act Appeal 2014-44, when we accessed the webpage, both prior to and after receipt of the BEGA response, and examined the records which were provided to us, we found only responses to the requested FOIA requests, but not the FOIA requests themselves. As was the case in Freedom of Information Act Appeal 2014-44, as of the date of this decision, such requests do not appear on its website. Accordingly, BEGA shall furnish to Appellant the Washington City Paper FOIA requests which were made in October and November, 2013 (or, in the alternative, post the FOIA requests on its website and notify Appellant of the posting). Nevertheless, as we stated above, all of the responses to the requests were posted and this satisfies that portion of the FOIA Request.

With respect to the portion of the FOIA Request for records regarding appeals relating to the FOIA requests made by the Washington City Paper, BEGA did not provide a specific response. In its response, it indicated that it "does not retain documentation concerning appeals or related correspondence concerning appeals." In the usual case, correspondence regarding appeals is sent to and from agencies by email and, even if agency personnel do not retain copies of such emails on their desktop computer, such emails may be located by a search conducted by the Office of the Chief Technology Officer of records which are otherwise maintained on District servers. However, we have no desire to send agencies on a fool's errand. This office adjudicates all appeals under DC FOIA and, until receiving the appeals filed by Appellant, we have not adjudicated an appeal involving BEGA. Therefore, as there have been no prior appeals, a search for records relating to appeals or correspondence relating to appeals is not necessary.

With respect to the portion of the FOIA Request for correspondence related to the FOIA requests made by the Washington City Paper, BEGA has provided a link to its webpage, but, as set forth above, the records posted there relate only to responses made to FOIA requests. Correspondence related to the FOIA requests would also include, for example, acknowledgement letters or emails and letters or emails regarding clarification of a FOIA request. Here, BEGA has given no indication as to the manner in which it conducted a search for the records requested in this portion of the FOIA Request or that it conducted any search at all. Therefore, BEGA shall conduct a search for correspondence related to the FOIA requests made by the Washington City Paper and provide any responsive records to Appellant. Appellant should note that this portion of the decision only requires that BEGA conduct an adequate and reasonable search. Until such

[1] The claim by Appellant that providing the link to a website "does not offer a FOIA requester the opportunity to appeal" is contradicted by the filing of the Appeal.

search is conducted, we will not know whether or not there are records which are to be disclosed.[2]

Conclusion

Therefore, the decision of BEGA is upheld in part and reversed and remanded in part. As set forth above, BEGA shall:

1. Furnish to Appellant the Washington City Paper FOIA requests which were made in October and November, 2013 (or, in the alternative, post the FOIA requests on its website and notify Appellant of the posting).

2. Conduct a search for correspondence related to the FOIA requests made by the Washington City Paper and provide any responsive records to Appellant.

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: Traci Hughes, Esq.

[2] BEGA indicates that certain records responsive to the FOIA request of the Washington City Paper were withheld. However, as the FOIA Request only sought "responsive documents provided in response," the propriety of the withholding is not at issue in the Appeal.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-47

April 14, 2014

Ms. Tara N. Kearns

Dear Ms. Kearns:

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 19, 2014 (the "Appeal"). You, on behalf of Roman & Associates ("Appellant"), assert that the District Department of Transportation ("DDOT") improperly withheld records in response to your request for information under DC FOIA dated February 11, 2014, and amended February 25, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought records of "prior accidents or complaints" regarding "a low beam" at the vehicle entrance to Union Station from H Street, N.E. In response, by email dated February 27, 2014, DDOT stated that it did not have any responsive records.

On Appeal, Appellant challenges the response of DDOT to the FOIA Request, stating: "We firmly believe that there are other incidents, reports, etc. of other occurrences of vehicles being lodged under the low beam at the vehicle entrance to Union Station off H Street NE."

In its response, dated April 7, 2014, DDOT reaffirmed its prior position. DDOT indicates that it contacted three of its divisions, the Infrastructure and Project Management Administration, Street and Bridge Maintenance Administration, and Asset Management Administration, and each of the divisions searched the Transportation Online Permitting System and Cityworks database systems of DDOT. It states that no responsive records were located.

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 presented by Appellant is the adequacy of the search for the requested records.

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 2012-22, 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 2012-29, 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. 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).

DDOT indicates that it identified three of its divisions, the Infrastructure and Project Management Administration, Street and Bridge Maintenance Administration, and Asset Management Administration, as the likely sources of its records. Each of the divisions searched the Transportation Online Permitting System and Cityworks database systems of DDOT, which appears to be the likely location of the requested records. However, no responsive records were located. Under the circumstances presented here, the search for the requested records was adequate. Moreover, DDOT provided an explanation to Appellant for the likely absence of responsive records, that is, the accident occurred at Union Station, Union Station is operated by an instrumentality which is not part of the District government.

Conclusion

Therefore, the decision of DDOT 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 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
Freedom of Information Act Appeal: 2014-48

April 9, 2014

Mr. Peter Bryant

Dear Mr. Bryant:

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 20, 2014 (the "Appeal"). You ("Appellant") assert that the Department of Employment Services ("DOES") improperly withheld records in response to your requests for information under DC FOIA dated February 27, 2014 (the "FOIA Request").

Background

Appellant's FOIA Request sought the "certified payroll submitted by JP Phillips Inc., Phenomenal-LLC and Allstate Flooring and any other sub tier contractor performing ceramic or quarry title installation from March 1, 2013 through February 27, 2014" in connection with "construction work performed at the Marriott Marquis Hotel project located at 901 Massachusetts Avenue, NW, Washington DC." In response, by letter dated February 28, 2014, DOES stated that, after conducting a search, it did not have any responsive records.

On Appeal, Appellant challenges the response of DOES. Appellant states that, under statutory law establishing a First Source Program and pursuant to an agreement entered into under the program by Hensel Phelps, the monthly and cumulative certified payrolls of the Hensel Phelps (presumably the general contractor) and JP Phillips Inc., Phenomenal-LLC, and Allstate Flooring (presumably its subcontractors) are required to be submitted to DOES. Appellant contends that as JP Phillips Inc., Phenomenal-LLC, and Allstate Flooring performed work on the project and should have submitted certified payrolls, DOES should have the requested records.

In its response, by email dated April 7, 2014, DOES reaffirmed its position. DOES states:

> The requestor sought certified payrolls for JP Phillips, Inc., Phenomenal-LLC and Allstate Floors and any other sub tier contractor performing ceramic or quarry tile installation from March 1, 2013 through February 27, 2014. These are subcontractors of the general contractor, Hensel Phelps. These contractors are engaged in the construction of the Marriot Marquis Hotel, also known as the Convention Center Hotel. DOES did an

> extensive search of its records and determined that no such records were in its possession. . . .
>
> The originating first source agreement with Hensel Phelps, the general contractor on the Marriot Marquis Hotel project (project), was executed on July 20, 2009. This entire project is specifically governed by the New Convention Center Hotel Amendment Act of 2009 and there is no statutory requirement for the contractors to submit certified payrolls to DOES. The Workforce Intermediary Establishment and Reform of First Source Amendment Act of 2011 and the new statutory requirement for contractors to submit certified payrolls to DOES is inapplicable to this project. Thus, the certified payrolls sought by the requestor were not required to be collected by DOES and are not in the possession of DOES.

By supplement dated April 7, 2014, DOES stated: "The search was conducted in paper files, as any certified payrolls would be in hard copy."

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 the Appeal 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. 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. 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 the case of the Appeal, DOES states that it receives all certified payrolls in hard copy and has searched its paper-based files, but has not found any responsive records. Ordinarily, we would expect the agency to specify the location of the records (e.g., the particular division or office which receives the records), but, in this case, it will not be necessary.

As stated above, 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. Here, the FOIA Officer, who is the General Counsel for DOES and would be familiar with the legal requirements of, and compliance practices for, the First Source Program, states that the project which is the subject of the FOIA Request is governed by law specific to the project and not by subsequent law regarding the submission of certified payrolls of subcontractor. Thus, based on her knowledge of legal requirements and compliance practices of the First Source Program, she states that DOES does not maintain the requested records.

Accordingly, we find the search by DOES was reasonable and adequate.

Conclusion

Therefore, the decision of DOES 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: Tonya Sapp, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-49

April 2, 2014

Ms. Cynthia Perry

Dear Ms. Perry:

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, 2014 (the "Appeal"). You ("Appellant") assert that the Office of the Chief Medical Examiner ("OCME") improperly withheld records in response to your request for information under DC FOIA dated February 21, 2014 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought the names of all OCME employees who are not in any bargaining unit and their position titles and grades. When a response was not received, Appellant initiated the Appeal.

In its response, dated April 2, 2014, OCME stated that, by letter emailed March 27, 2014, it provided Appellant with a response 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 OCME.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Mikelle L. Devillier, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-50

April 9, 2014

Mr. Russell Carollo

Dear Mr. Carollo:

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 28, 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 5, 2014 (the "FOIA Request).

Background

Appellant's FOIA Request sought all records related "to the proposed/contemplated construction of a soccer stadium and/or any related facility at Buzzard Point in Southwest Washington, D.C." In response, by email dated February 20, 2014, OCP stated that, after conducting a search, it did not have any responsive records.

On Appeal, Appellant challenges the adequacy of the search by OCP based upon the following: (1) Appellant received an acknowledgment and response intended for another requester; (2) the individual at OCP processing the FOIA Request stated that she had many FOIA requests and routed the response intended for another requester to Appellant; and (3) the response to Appellant misspelled Buzzard Point.

In response, by email dated April 3, 2014, OCP reaffirmed its position. OCP recounted the history of the processing of the request and stated that OCP "conducted a thorough search of OCP records for responsive documents" and "did not have any documents responsive to Mr. Carollo's request."

Pursuant to our invitation to supplement the record to indicate the manner in which the search for the requested records was conducted, by email dated April 9, 2014, OCP indicated as follows. First, with respect to the manner in which the requested records are maintained, OCP stated:

> OCP does not maintain the requested records in this case and we do not know who at the District is negotiating any Buzzard Point development. OCP does not maintain records related to real estate acquisition or development, other than maybe to engage a consultant or environmental firm.

Second, with respect to the form in which the requested records are maintained, OCP stated: "OCP does not maintain any of the requested records. In general, OCP maintains records in

electronic format (e-mails, searchable databases and word processing forms) and some paper-based files." Third, with respect to the manner in which the search was conducted, OCP stated: "The search was conducted in the OCP's Ariba based Procurement Automated Support System (PASS) by key words 'Buzzard Point' and 'soccer stadium'. The search came back with no information in PASS for those two key words."

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 presented by Appellant is the adequacy of the search for the requested records.

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 2012-22, 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 2012-29, 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. 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).

As we have stated in prior decisions,[1] in Freedom of Information Act cases, generalized and conclusory allegations cannot suffice to establish an adequate search or the availability of exemptions. *See In Def. of Animals v. NIH*, 527 F. Supp. 2d 23, 32 (D.D.C. 2007). In its initial response, OCP stated that it "conducted a thorough search of OCP records for responsive documents," but did not explain how it conducted the search. Therefore, in order to clarify the administrative record, we invited OCP to supplement its response.

OCP indicates that, as a matter of its statutory mission, it is unlikely to possess records of the nature requested, stating: "OCP does not maintain records related to real estate acquisition or development, other than maybe to engage a consultant or environmental firm." This is consistent with District law, which places real property acquisition under the Department of General Services. Under D.C. Official Code § 10-551.01(2), one of the functions of the Department of General Services is to "(2) Acquire real property, by purchase or lease, for use by the District government." Thus, OCP indicates that to the extent that it would have any records related to real estate acquisition, the subject of the FOIA Request, it would be in the nature of consulting contracts. Although it does not clearly state, it indicates that the likely repository of any such contracts and supporting records would be its electronic Procurement Automated Support System ("PASS"). It further indicates that it searched PASS for the requested records, but could not locate any records. Under the particular circumstances presented here, we find that the

[1] See Freedom of Information Act Appeal 2011-26, Freedom of Information Act Appeal 2012-05, Freedom of Information Act Appeal 2013-13, Freedom of Information Act Appeal 2013-62, Freedom of Information Act Appeal 2014-07, and Freedom of Information Act Appeal 2014-30.

search by OCP was adequate. The misrouting of a response or a typographical error alone do not warrant an inference that the search was not adequate.

Conclusion

Therefore, the decision of OCP 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 Superior Court of the District of Columbia.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Nancy Hapeman, Esq.
Jody M. Harrington, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-51

April 9, 2014

Mr. Kenard E. Johnson

Dear Mr. Johnson:

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 10, 2013 (the "Appeal"). You assert that the Department of Youth Rehabilitation Services ("DYRS") improperly withheld records in response to your request for information under DC FOIA dated October 28, 2013 (the "FOIA Request") by failing to respond to the FOIA Request.

Appellant's FOIA Request sought records pertaining to him and noted that he was committed to the Cedar Knoll Children's Center. When a response was not received, Appellant initiated the Appeal.

In its response, by email dated April 9, 2014, DYRS states that, by letter dated April 9, 2014, it responded to Appellant, which letter indicated that there were no responsive records because DYRS was not in existence during the time period that Appellant was at Cedar Knoll Children's Center. Based on the foregoing, we will now consider the Appeal to be moot and it is dismissed.

Sincerely,

Donald S. Kaufman
Deputy General Counsel

cc: Dionne Hayes, Esq.
Adam Aljoburi, Esq.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
EXECUTIVE OFFICE OF THE MAYOR
OFFICE OF THE GENERAL COUNSEL
Freedom of Information Act Appeal: 2014-52

April 15, 2014

Mr. Paul Varnado

Dear Mr. Varnado:

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 24, 2014 (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 dated December 11, 2013 (the "FOIA Request").

Background

Appellant's FOIA Request sought records "concerning construction activity at 3447-3449 14th St NW (also known as 'W H Bacon Funeral Home') since 2005. Documents should include, but are not limited to: applications, permits, inspection reports, agency actions, exemptions and internal communications."

In response, by email dated January 15, 2014, DCRA indicated that permits were made publically available at its Permit Center Records Room, providing an address and telephone number; that three inspections reports were located and attached; and that "[r]egarding your request for agency actions, exemptions and internal deliberations and communications, a search of our records found no documents responsive to your request." By email dated January 16, 2014, DCRA corrected its prior response, stating that it was incomplete. First, it stated that certain records with respect to one of the real property addresses were not included in the prior response and that it was attaching responsive records. Second, it stated that its updated response was a "partial response" and that it was conducting an additional search, using stated criteria, for emails (by search conducted by the Office of the Chief Technology Officer) and for letters, memorandums, and meeting notes/minutes (by "an internal search within DCRA"). The administrative record does not reflect that DCRA made a supplemental disclosure.

On Appeal, Appellant alleges that DCRA has failed to provide responsive records, stating that the agency "has not yet provided materials and has not met several successive estimated dates for production."

In response, dated April 15, 2014, DCRA disputes that any records have been withheld. DCRA states:

> The agency has not denied review of records as requested. On January 16, 2014 Mr. Varnado received all document/records that were in DCRA's possession at that time. Portions of the documents provided to Mr. Varnado were exempted from disclosure per DC FOIA Regulations, and were so cited.

DCRA states further:

> As part of the FOIA request Mr. Varnado wanted '. . . internal deliberations and communications.' This particular request required a search that had to be conducted by the Office of Chief Technology Officer for any emails related to Mr. Varnado's request. That office responded with a voluminous amount of documents . . . The review process is still in progress, and all responsive documents will be denied or granted (in part or in whole) per DC FOIA exemptions. As the review of documents proceeds, Mr. Varnado will receive all responsive documents, and all applicable exemptions will be cited in the body of 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).

D.C. Official Code § 2-532(c) provides that an agency shall have 15 business days to respond to a request. D.C. Official Code § 2-532(d) provides for an extension of 10 business days to respond to a request. D.C. Official Code § 2-532(e) provides, in pertinent part:

> Any failure on the part of a public body to comply with a request under subsection (a) of this section within the time provisions of subsections (c) and (d) of this section shall be deemed a denial of the request . . .

In this case, the extension was exercised, but, by its own statement, DCRA has only made a partial response. While DCRA states that it has not "withheld" any records, under DC FOIA,

notwithstanding its proffer to provide responsive records, the failure to provide records timely is deemed to be a withholding of records.

However, as we have noted in prior appeals where the agency has stated that it will provide records albeit belatedly, there is little relief that we can currently offer. The most that we can do is to order DCRA to complete the search and review that it has already initiated and provide the responsive records as it has already proffered to do. Thus, we could view the Appeal as moot on this basis. Nevertheless, although the outcome will be the same, we can provide some assurances to Appellant by ordering DCRA to complete its search and review and provide the remaining responsive records. In this case, such search and review will be as provided in its updated response of January 16, 2014, i.e., for responsive emails (by search conducted by the Office of the Chief Technology Officer) and for responsive letters, memorandums, and meeting notes/minutes (by "an internal search within DCRA").

Conclusion

Therefore, we remand this matter to DCRA for disposition in accordance with this decision, without prejudice to challenge, by separate appeal, the supplemental response of DCRA when made.

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: Tania Williams

District of Columbia REGISTER – May 2, 2014 – Vol. 61 - No. 19 4304 – 4662